

OHIO BUREAU OF EMPLOYMENT SERVICES  
UI SPECIAL PROGRAMS UNIT  
145 South Front Street  
P.O. Box 182830  
Columbus, Ohio 43218-2830  
(614) 752-8418

In The Matter Of A Labor Dispute  
Between:

International Brotherhood of	:	Docket No. LD-000-004
Teamsters Union Locals 52, 92;	:	
Bakery, Confectionary, Tobacco	:	
Workers, And Grain Millers	:	
International Union Locals 12,	:	
19, 33; And International	:	
Association Of Machinists Union	:	Hearing Officer:
Locals 1363, 1519	:	Jim Bubutiev
(Union Locals)	:	
	:	Date of Hearing:
Union/Claimants	:	April 17, 2000
	:	
and	:	Date Hearing Concluded:
	:	April 24, 2000
Interstate Brands Corporation	:	
(IBC)	:	
	:	Date of Issuance:
Employer	:	May 03, 2000

**Appearances**

Robert Velka represented and was a witness for BCTGM Local 33. Phil Lukic and Mike Galassi represented BCTGM Local 19. Phil Lukic was a witness for BCTGM Local 19. David Dudas represented and was a witness for Teamsters Local 52.

Marilyn Brown represented and was a witness for IBC.

This matter was heard by Jim Bubutiev, Hearing Officer for the Administrator of the Ohio Bureau of Employment Services, pursuant to Section 4141.28(D)(1) of the Ohio Revised Code. The purpose of this hearing is to determine the reason for unemployment of certain individuals who have filed claims for unemployment compensation

benefits. Section 4141.28(D)(1)(a) of the Ohio Revised Code provides that the Administrator is to schedule a hearing when there is reason to believe that the unemployment of twenty-five or more individuals relates to a labor dispute.

All interested parties were notified of this hearing pursuant to law. This hearing was held on April 17, 2000 at the Senator Oliver R. Ocasek Government Office Building, 161 South High Street, in Akron, Ohio. This hearing was held open and concluded after a telephone conference call on April 24, 2000.

**FINDINGS OF FACT:**

The claimants in this matter are members of Teamsters Locals 52 & 92; BCTGM Locals 19 & 33; IAM Locals 1363 & 1519; and are IBC employees.

IBC operates a bakery in Akron, Ohio that supplies various distribution centers and retail stores in northeast Ohio. The distribution centers may also have a retail storefront. IBC also operates bakeries in Cincinnati, Columbus, and Toledo that utilize a similar set up of distribution centers and retail stores as the Akron facility.

IBC employs an estimated total of 750 individuals, and approximately 375 of the total IBC employees are employed in Ohio. An estimated 700 of the total IBC employees are members of various Union Locals, and approximately 350 of them are Union Local members employed in Ohio. BCTGM Local 33 has 105 members employed by IBC. BCTGM Local 19 and Teamsters Local 52 each have an estimated 225 members employed by IBC (Transcript Pages 45-48).

Teamsters Union Local 485 from Pittsburgh, Pennsylvania had a labor dispute with IBC regarding an expired contract and sent out written notice to IBC that they would strike as of 8:00 p.m. on March 17, 2000 (Transcript Pages 10, 56-57/Employer Exhibit 1). IBC received written notice from Teamsters Union Locals 40, 52, 92, and 377 that they would all honor a picket line by Teamsters Union Local 485 when and if it extended into Ohio (Transcript Pages 10/Employer Exhibit 1).

Two members of Teamsters Union Local 485 from Pittsburgh began to picket at the IBC facility on South Forge Street in Akron on Wednesday, March 22, 2000 through Thursday, March 23, 2000, and the members of Teamsters Union Local 52 honored the picket line (Transcript Pages 10-11,27,29,39). Members of IAM Union Local 1363 who are claimants also work at the South Forge Street location.

BCTGM Union Local 19 did not agree to honor the Teamsters picket. Three members of Local 19 who are claimants were put on layoff status due to a lack of product at their work location in Steubenville, Ohio from Monday, March 20, 2000 through Friday, March 24, 2000. There was picketing at the Steubenville, Ohio work location and a sign on the door indicating closure was related to the Teamster's strike (Transcript Page 32).

BCTGM Union Local 33 members received a letter from IBC, or were otherwise advised, late on Tuesday, March 21, 2000, that they were being placed on layoff as of Wednesday, March 22, 2000, due to a lack of work (Transcript Page 27/Employer Exhibit 2). BCTGM Local Union 33 members work at the South Forge Street location in Akron where the Teamster's picket was put in place on March 22 and 23, 2000.

A member of IAM Union Local 1519 who is a claimant works at a Youngstown, Ohio location on Mahoning Avenue. The Mahoning Avenue location had Teamsters Union Local members who were honoring the Teamster's picket (Transcript Page 16/Employer Exhibit 1).

A member of Teamsters Union Local 92 who is a claimant works at a Canton, Ohio location on Atlantic Boulevard, as do two members of BCTGM Local 19 who are also claimants. This location also had Teamsters Union Local members who were honoring the Teamster's Picket (Transcript page 20/Employer Exhibit 1).

IBC and Teamsters Union Local 485 resolved their labor dispute and work resumed on or about March 25, 2000.

**ISSUES:**

Pursuant to Section 4141.28(D)(1) of the Ohio Revised Code, this Hearing Officer is required to make a determination as to whether the claimants are disqualified from receiving benefits under the unemployment compensation laws of the State of Ohio. The issues can be stated thus:

1. What is the reason for the claimants' unemployment from IBC?
2. Are the claimants disqualified from receiving unemployment compensation benefits?
3. What is the duration of the labor dispute?

The applicable law is Section 4141.29(D)(1)(a) of the Ohio Revised Code, which provides as follows:

- (D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

- (1) For any week with respect to which the administrator finds that:
  - (a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute.

**REASONING:**

The first issue to be resolved is whether the reason for the claimants' unemployment from IBC was due to a lockout or a labor dispute other than a lockout.

The evidence indicates some claimants became unemployed when members of Teamsters Local Union 485 extended their March 17, 2000, strike into Ohio from Pittsburgh, Pennsylvania and Teamsters Local Unions 40, 52, 92, and 377 honored the extended picket line. This extension into Ohio also caused IBC to layoff many claimants who were members of other Unions and Locals due to a lack of work or product at locations where Teamster picketing was occurring. Therefore, all the claimants were unemployed due to a labor dispute other than a lockout.

Section 4141.29(D)(1)(a) of the Ohio Revised Code provides that no individual is entitled to benefits for any week during which their unemployment is due to a labor dispute other than a lockout. Thus, in order to come to a conclusion regarding the reason for the unemployment of the claimants, it is necessary to determine whether the labor dispute was a lockout within the meaning of the Ohio unemployment compensation law. The claimants would not be disqualified from eligibility for unemployment compensation benefits if the labor dispute is found to be a lockout.

In *Cornell v. Bailey*, (1955), 163 Ohio St. 50, the claimants were not members of the striking union and were not concerned in the dispute between the employer and its drivers and helpers. Additionally, the claimants did not participate in the labor dispute or the resulting strike and continued working after the strike began. However, the employer operated a wholesale grocery business and the lack of normal delivery service caused a substantial decrease in business. Eventually, the employer had no more work for the claimants and they were laid off due to a lack of work.

The Ohio Supreme Court ruled that the claimants in *Cornell* were unemployed due to a labor dispute other than a lockout. The court held that the statute did not differentiate between those individuals who were actually on strike and those individuals innocently unemployed because of the strike. The court explained the only question to answer was whether the claimants lost their employment by reason of a labor dispute and that the only answer to the question had to be in the affirmative.

In *Zanesville Rapid Transit v. Bailey*, (1958), 168 Ohio St. 351, the Ohio Supreme Court defined a "lockout" as a withholding of work from employees in an effort to get more favorable terms for the employer.

In *Zanesville*, the employer implemented a 10% wage reduction after the expiration of the labor agreement. The employer was a public utility that had experienced problems making a profit and had been unable to gain permission from the local city council to increase fares.

The court held that the 10% wage reduction was not unreasonable under the circumstances and did not manifest a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not a lockout.

In *Leach v. Republic Steel Corp.*, (1964), 176 Ohio St. 221, the Ohio Supreme Court stated that a "strike" is a work stoppage by employees in an effort to obtain more desirable terms with respect to wages, working conditions, etc., while a "labor dispute" is broader in scope and also includes an employer-employee controversy concerning wages, working conditions or terms of employment.

In *Leach* the court found there was a labor dispute that led to a strike. The strike caused the employer to close its plants for a certain time period. The court ruled that in such a situation employees were not entitled to unemployment compensation benefits during any week that unemployment was due to the labor dispute.

In *Ohio Bureau of Employment Services v. Hodory*, (1977), 97 S. Ct. 1898, the claimant was an employee at one of the employer's plants and he was furloughed when the plant was shut down because of a reduction in fuel supply resulting from a national strike by the employer's coal mine workers.

The United States Supreme Court held in *Hodory* that the Ohio statute disqualifying an "innocent bystander" from unemployment compensation benefits because his unemployment was due to a labor dispute other than a lockout was constitutional because it had a rational relation to a legitimate state interest.

In *Hopkins v. Giles*, (1982), 7 Ohio App. 3d 79, the claimant was laid off by the employer because the employer anticipated a strike would begin the next day.

The Court of Appeals in *Hopkins* held that when an employee is laid off at the end of a workday because the employer anticipates a strike to begin the following day, and the strike does actually occur, the employee is not entitled to unemployment compensation benefits because his unemployment was due to a labor dispute. The court ruled that the strike caused the layoff even though the layoff occurred first in sequence.

In *Bays v. Shenango Co.* (1990), 53 Ohio St. 3d 132, a collective bargaining agreement between the employer and the union expired and the union offered to continue working under the terms of the expired contract for one year while a new contract continued to be negotiated.

The Ohio Supreme Court held that if an employer refuses to allow work to continue for a reasonable time under the existing terms and conditions of employment, while negotiations continue, then the employer is deviating from the status quo. Thus, the Supreme Court has set forth what is known as the "status-quo" test for deciding whether a work stoppage was the result of a lockout or due to a labor dispute other than a lockout. In applying this test it must be determined "which side, union or management, first refused to continue operations under the status quo after the contract had technically expired, but while negotiations were continuing." *Id.* at 134.

In the instant case the evidence indicates that on March 15, 2000 Teamsters Local 485 in Pittsburgh provided IBC in Akron with written notice of their intent to strike beginning on March 17, 2000. Two members of Teamsters Local 485 did, in fact, picket at IBC's South Forge Street facility on March 22 and 23, 2000. Furthermore, the Teamsters Local 485 picketing extended to the work locations of all the claimants during a time frame between March 17 and 25, 2000.

Teamsters Union Locals 40, 52, 92, and 377 sent IBC written notice of their intent to honor the picket lines of Teamsters Local 485. BCTGM Union Locals 19 and 33, and IAM Union Locals 1363 and 1519 did not send IBC any notice that they intended to honor the Teamsters picket line. IBC did place some of the claimants on layoff status due to lack of work prior to any actual picketing but it is clear IBC's action was directly caused by the labor dispute with the Teamsters.

Applying the aforementioned *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that Teamsters Union Local 485 first changed the status quo when members of Local 485 decided, on March 15, 2000, to commence striking on March 17, 2000, and formed a picket line at IBC's South Forge Street work location on March 22 and 23, 2000, and picketed at the other work locations of all the claimants between March 17, 2000 until the labor dispute was resolved on or about March 25, 2000.

Applying the holdings of *Zanesville* and *Leach*, this Hearing Officer finds, based upon the testimony and evidence, that IBC did not lockout the claimants but instead was involved in a labor dispute with Teamsters Union Local 485 that led to a strike by Local 485 members.

Applying the holdings of *Cornell*, *Hodory*, and *Hopkins*, this Hearing Officer finds, based upon the testimony and evidence, that regardless of how sympathetic the positions are of the nonstriking claimants who are not members of the Teamsters Union Locals there is no so-called "innocent bystander" provision in Section 4141.29(D)(1)(a) of the Ohio Revised Code. All the claimants worked at locations where the Teamsters did picket and their unemployment was directly caused by the labor dispute between IBC and Teamsters Union Local 485.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a labor dispute other than a lockout.

**DECISION:**

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due a labor dispute other than a lockout at IBC's various work locations. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which March 17, 2000 occurs pursuant to Section 4141.29 (D) (1) (a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the labor dispute directly causing the unemployment of the claimants, between Teamsters Union Local 485 and IBC, began on March 17, 2000 and ended on March 25, 2000 (Transcript Page 12). Therefore, the ending date of the labor dispute, which caused the claimants' unemployment, is March 25, 2000.

This decision applies to:

NAME

SSAN

LOCAL OFFICE

- 66 NAMED CLAIMANTS -

If you disagree with this decision then you have the right to appeal. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, 145 S. FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299 MAY BE FILED BY ANY INTERESTED PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THE DECISION. IN ORDER TO BE CONSIDERED TIMELY, THE APPEAL MUST BE FILED IN PERSON OR POSTMARKED NO LATER THAN TWENTY-ONE (21) DAYS AFTER THE DATE OF MAILING INDICATED ON THIS DECISION. IF THE 21ST CALENDAR DAY IS A SATURDAY, SUNDAY OR LEGAL HOLIDAY, THE PERIOD FOR FILING IS EXTENDED TO INCLUDE THE NEXT SCHEDULED WORK DAY. UPON RECEIPT OF CERTIFIED MEDICAL EVIDENCE STATING THAT THE INTERESTED PARTY'S PHYSICAL CONDITION OR MENTAL CAPACITY PREVENTED THE FILING OF AN APPEAL WITHIN THE SPECIFIED 21 CALENDAR DAY PERIOD, THE INTERESTED PARTY'S TIME FOR FILING THE APPEAL SHALL BE EXTENDED AND CONSIDERED TIMELY IF FILED WITHIN 21 CALENDAR DAYS AFTER THE ENDING OF THE PHYSICAL OR MENTAL CONDITION.

THIS DECISION WAS MAILED ON May 03, 2000.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS ON MAY 24, 2000.

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Jim Bubutiev  
Hearing Officer