

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
Telephone: (614) 752-8418
Web Page: www.state.oh.us/odjfs/labordisputes

In The Matter Of A Labor Dispute
Between:

Teamsters Local 40	:	Docket No. LD-003-004
(Local 40)	:	
	:	
Union/Claimants	:	
	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
Mansfield Plumbing	:	
Products, Inc.	:	
(Mansfield Plumbing)	:	Date of Hearing:
	:	July 21, 2003
Employer	:	
	:	Date of Issuance:
	:	July 31, 2003

Appearances

Michael J. Markham, Business Agent and Recording Secretary for Local 40, represented Local 40 at the hearing. Michael J. Markham was also a witness for Local 40.

Mansfield Plumbing, although properly notified, was not represented and did not appear at the hearing.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to Section 4141.283 of the Ohio Revised Code. The purpose of the hearing is to determine the reason for the unemployment of certain individuals

who have filed claims for unemployment compensation benefits. Division (A) of Section 4141.283 of the Ohio Revised Code provides that the Director 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. The Ohio Department of Job and Family Services has received 309 claims for unemployment benefits that relate to a labor dispute between Local 40 and Mansfield Plumbing.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on July 21, 2003, in Mansfield, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 40 and are employed by Mansfield Plumbing.

Mansfield Plumbing is a manufacturer of vitreous china bathroom fixtures and has plant locations in Perrysville, Ohio and Big Prairie, Ohio (Transcript Pages 7,14).

Mansfield Plumbing employs approximately 640 individuals in Ohio, and approximately 560 of them are also members of Local 40 (Transcript Page 7).

Local 40 had a three (3) year collective bargaining labor agreement with Mansfield Plumbing effective through June 30, 2003. The parties agreed to a two (2) day extension of the agreement, through July 2, 2002, to allow time for the members of Local 40 to vote on a new collective bargaining labor agreement (Transcript Pages 9,13/Union Exhibit 2).

There were about fifteen (15) negotiation sessions held prior to the expiration of the then existing collective bargaining labor agreement, between May of 2003, and July 2, 2003 (Transcript Pages 10-12).

The primary issue between the parties dealt with health insurance benefits and, specifically, the increased cost and some changes in coverage for the members of Local 40 (Transcript Page 12).

On July 2, 2003, the members of Local 40, by a vote of approximately 246 to 204, voted to reject the new collective bargaining labor agreement. Mansfield Plumbing was informed of the voting results the night of July 2, 2003. (Transcript Pages 10,13-14,20-22).

Local 40 offered to continue working under the exact terms and conditions of the expired collective bargaining labor agreement, while negotiation sessions continued, after the July 2, 2003, vote to reject a new agreement. Mansfield Plumbing's response to Local 40's offer was that plant operations would be curtailed (Transcript Pages 20-22).

Mansfield Plumbing began sending the members of Local 40 home from work after midnight July 2, 2003. Later, when members of Local 40 reported for work they were sent home and others were called and told not to report at all. Thus, a work stoppage began on July 3, 2003 (Transcript Pages 13,15-16).

On July 3, 2003, Mansfield Plumbing mailed a letter to all the members of Local 40 concerning their health care coverage. The letter said, in part, as follows: "Your loss of coverage under the group health plan is resulting from the lockout caused by the breakdown of negotiations" (Transcript Pages 16-17/Union Exhibit 2).

On July 9, 2003, the members of Local 40 re-voted on the same offer of a new agreement that had been rejected by the vote taken on July 2, 2003. The re-vote resulted in a ratification of the new agreement by a vote of approximately 351 to 148. Thereafter, the members began returning to work on the morning of July 10, 2003, and the work stoppage

ended (Transcript Pages 17-19).

The members of Local 40 did not picket at either of the plant locations in Perrysville, Ohio or Big Prairie, Ohio, during the work stoppage (Transcript Page 15).

Mansfield Plumbing did not hire any replacement workers during the work stoppage (Transcript Page 19).

ISSUES:

Pursuant to Section 4141.283 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 Mansfield Plumbing?
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 director 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:

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.

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

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.

The evidence and testimony indicate the members of Local 40 became unemployed on July 3, 2003, when, after offering to continue working under the exact terms and conditions of the then existing collective bargaining labor agreement once it expired, and after a vote to reject a new agreement had taken place on July 2, 2003, they were not allowed to continue working or to go to work when they attempted to do so. Consequently, it was Mansfield Plumbing that started a lockout beginning July 3, 2003.

Using the test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Mansfield Plumbing that first changed the status quo, while negotiations were ongoing, when the decision was made to not allow the members of Local 40 to work beginning July 3, 2003, under the terms and conditions of the just expired collective bargaining labor agreement.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began July 3, 2003. Furthermore, the lockout ended on July 10, 2003, when members of Local 40 began returning to work at Mansfield Plumbing's

Ohio plant locations as a result of a re-vote they took on July 9, 2003, which resulted in the acceptance of a new agreement.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at Mansfield Plumbing which began July 3, 2003. The claimants are not disqualified from eligibility for unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes July 3, 2003.

It is also the decision of this Hearing Officer that the lockout which resulted in the unemployment of the claimants ended July 10, 2003, when they returned to work after a re-vote and acceptance of a new agreement.

* * * THIS DECISION APPLIES TO 309 NAMED CLAIMANTS * * *

If you disagree with this decision then you may appeal it. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, 145 SOUTH FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299; OR BY FAX TO (614) 752-8862; MAY BE FILED BY ANY INTERESTED

PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THIS DECISION. IN ORDER TO BE CONSIDERED TIMELY, THE APPEAL MUST BE FILED IN PERSON, FAXED, 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 JULY 31, 2003.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS AUGUST 21, 2003.

Jim Bubutiev
Hearing Officer

