

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:

United Steelworkers Of America	:	Docket	No.	LD-000-005
AFL-CIO-CLC	:			
Local 618 L	:			
(USWA Local 618L)	:			
	:			
Union/Claimants	:			
	:	Hearing Officer:		
	:	Jim Bubutiev		
and	:			
	:			
	:	Date of Hearing:		
Molding Technologies, Inc.	:	April 24, 2000		
(MTI)	:			
	:			
Employer	:	Date of Issuance:		
	:	May 04, 2000		

**Appearances**

Nancy J. Ogilbee, Human Resource Manager, and Larry Cox, an Operations Consultant under contract with MTI, represented and acted as witnesses for MTI.

Anthony Fletcher, a Claimant, represented himself and acted as a witness on his own behalf.

USWA Local 618L chose not to attend this Hearing and did not present good cause for failing to appear.

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. MTI and USWA Local 618L also received courtesy telephone calls after this Hearing was scheduled to begin. MTI decided to enter an appearance and, as previously mentioned, USWA Local 618L decided not to enter an appearance. This Hearing was held on April 24, 2000 at the Heath Municipal Building City Council Chambers, 1287 Hebron Road, in Heath, Ohio.

**FINDINGS OF FACT:**

The claimants in this matter are members of USWA Local 618L and were employed by MTI.

MTI produces compression molding and fiberglass reinforced composites. MTI's work site is located in Hebron, Ohio.

MTI currently employs an estimated 124 individuals, not including approximately 54 individuals who are members of USWA 618L (Transcript Page 16).

MTI purchased the assets of Caine Corporation on January 28, 2000 (Transcript Pages 12,38/Employer Exhibit 1). The Caine Corporation terminated the employment of all members of USWA Local 618L thereby making January 28, 2000 their last day with the Caine Corporation. Thereafter MTI offered them employment, with terms and conditions of employment that differed from those within the collective bargaining labor agreement that USWA Local

618L members previously had with the Caine Corporation, beginning on January 29, 2000. There were approximately 80-85 members of USWA Local 618L at the time MTI purchased the Caine Corporation and those that chose to work for MTI beginning on January 29, 2000 remained. An estimated 12 individuals did not receive an offer to become employed by MTI (Transcript Pages 12-13,16-20,40-42/Employer Exhibit 4).

Those members of USWA Local 618L that accepted employment with MTI under the new terms and conditions, beginning on January 29, 2000, then worked for MTI until February 22, 2000 (Transcript Pages 13,25/Employer Exhibits 3,4).

On February 22, 2000, the remaining members of USWA Local 618L working for MTI went out on strike because MTI would not recognize them as a Union. Further, MTI would not negotiate a new collective bargaining labor agreement with them as a Union. USWA Local 618L was not taking issue with MTI's terms and conditions of employment (Transcript Pages 13-18,42-50,54-57,59-62/Employer Exhibit 3,6).

USWA Local 618L had a collective bargaining labor agreement with the Caine Corporation that was effective from July 28, 1996 through July 31, 1999, and on March 30, 1999 was extended until July 29, 2000 (Transcript Page 18/Employer Exhibit 5). MTI continued offering employment to the members of USWA Local 618L after February 22, 2000, under the terms and conditions it put in place after buying the assets of the Caine Corporation, through March 3, 2000 (Transcript Pages 25,28-29/Employer Exhibit 3,4).

At the end of March of 2000 MTI permanently replaced the members of USWA Local 618L and sent each member written notice of it by certified mail (Transcript Pages 25-33,52-53).

There have been no negotiations between MTI and USWA Local 618L since February 22, 2000 (Transcript Page 19).

**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 MTI?
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 MTI was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when they chose to strike and form a picket line at MTI's work location beginning on February 22, 2000, and thereby started a labor dispute other than a lockout.

Thereafter, on March 31, 2000, MTI ended the labor dispute when it sent written notice to the claimants that they had been permanently replaced.

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 *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.

The court found there was a labor dispute that led to a strike. The strike forced the employer to close its plants for a time period and the strike caused the plant closings for that 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 *Baugh v. United Telephone Co.*, (1978), 54 Ohio St. 2d 419, the employer notified the striking employees, in writing, that they had been permanently replaced.

The Ohio Supreme Court held that when the employer terminates the employer-employee relationship by replacing a striking employee, the employer has thereby removed the labor dispute as the proximate cause of unemployment.

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 USWA Local

618L began a work stoppage on February 22, 2000 and, in fact, started picketing at MTI's work location.

Applying the Leach definitions of a strike and a labor dispute, this Hearing Officer finds, based upon the testimony and evidence, that the actions of the members of USWA Local 618L, on February 22, 2000, fit the meaning of a strike and a labor dispute, and not that of a lock out as defined in Zanesville.

Using the Bays standard, this Hearing Officer finds, based upon the testimony and evidence, that USWA Local 618L first changed the status quo when members of USWA Local 618L decided

to strike on February 22, 2000, and to form a picket line at MTI's work location at that time. The members of USWA Local 618L had worked for MTI, starting on January 29, 2000 until February 22, 2000.

Applying the holding in Baugh, once MTI sent out notice that the members of USWA Local 618L were permanently replaced at the end of March of 2000, the labor dispute other than a lock out ended.

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 that ended at the end of March of 2000.

**DECISION:**

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a labor dispute other than a lockout at MTI. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which February 22, 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 between USWA Local 618L and MTI began on February 22, 2000 and it ended on March 31, 2000 when MTI sent out permanent replacement notices to the claimants.

This decision applies to:

NAME

SSAN

LOCAL OFFICE

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 04, 2000.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS ON MAY 25, 2000.

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Jim Bubutiev  
Hearing Officer