



JFS-83000 10/14/2002

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

Table with claimant information: Claimant's Name, Social Security Number, Benefit Year Beginning/Ending Dates, Application Date, Date Issued, Determination Identification Number, and ODJFS Office (Bureau of UC Program Services).

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

Bureau of UC Program Services
Ohio Dept. of Job & Family Services
PO Box 182830
Columbus, OH 43218-2830
Telephone: (614) 752-8419
Web Page: www.state.oh.us/odjfs/labordispute

In The Matter Of A Labor Dispute Between

Union: UAW Local 2029 Employer: NUTONE INC.
Docket No: 00000000500044 Hearing Officer: Jim Bubutiev
Date of Hearing: 08/01/2005 Date of Issuance: 08/10/2005

Appearances

Frederick G. Cloppert, Jr., Attorney At Law, represented Local 2029. Wayne M. Reynolds, International Representative, was a witness for Local 2029. Gerald Lancaster, Chairperson, was also a witness for Local 2029.

NuTone, although properly notified pursuant to Ohio unemployment compensation law, did not appear and was not represented.

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 this hearing is to determine the reason for the unemployment of certain individuals who have filed claims for unemployment compensation benefits.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on August 1, 2005, in Springdale, Ohio.

FINDINGS OF FACT:

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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 may be paid benefits for any week during which the individual's 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 key issue to be resolved is whether the reason for the claimants' unemployment from NuTone was due to a lockout or a labor dispute other than 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 ten percent (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 ten percent (10%) wage reduction was reasonable under the circumstances and did not show a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not 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.

In this matter, the evidence and testimony clearly indicate the members of Local 2029 became unemployed when they were locked out by NuTone on July 16, 2005. NuTone physically closed the place of employment directly causing the claimant's unemployment and causing a change in the status quo.

Therefore, by applying the definition of a lockout from the *Zanesville* decision and the status-quo test from the *Bays* decision, this Hearing Officer finds that NuTone locked out the members of Local 2029 beginning July 16, 2005.

Thus, it is the conclusion of this Hearing Officer that the claimants in the instant case are unemployed due to a lockout

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The claimants in this matter are members of Local 2029 and are employed by NuTone in Cincinnati, Ohio.

NuTone is a manufacturer of bathroom ventilators, fans, and door chimes (Transcript Page 9).

NuTone employs approximately 430 individuals who are members of Local 2029. (Transcript Pages 10-11/Union Exhibit 1).

Local 2029 had a one (1) year collective bargaining labor agreement with NuTone that was effective through June 8, 2005 (Transcript Pages 12, 39-40/Union Exhibit 3).

Twelve (12) negotiation sessions were held between Local 2029 and NuTone, from May 6, 2005, through June 8, 2005, and on June 16, 2005, in an effort to reach a new collective bargaining labor agreement. The parties exchanged final proposals on June 8, 2005. NuTone rejected Local 2029's final proposal. On June 12, 2005, the membership of Local 2029 rejected NuTone's final proposal (Transcript Pages 12-13,18,26,29-31).

The issues between the parties deal with health care insurance, seniority, mandatory overtime, severance pay, and paid union time (Transcript Pages 19-21,38-39).

The members of Local 2029 continued to work for NuTone after June 8, 2005, through July 15, 2005, under the terms and conditions of the expired collective bargaining labor agreement with two exceptions. The exceptions were that NuTone was no longer deducting union dues from the paychecks of Local 2029 members and there was no longer an arbitration process in place. On July 16, 2005, NuTone locked out the members of Local 2029, and informed them of the lockout in writing (Transcript Pages 14-19,35-36,40-41/Union Exhibit 2).

The members of Local 2029 would have continued working for NuTone on July 16, 2005, and thereafter, under the terms and conditions of the expired collective bargaining labor agreement with the two exceptions until a new collective bargaining labor agreement could be negotiated (Transcript Pages 23,26,28,41-42).

NuTone has ceased production at the Cincinnati work location and no replacement workers have been hired there (Transcript Pages 24,28-29).

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 central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment from NuTone?
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:

The individual's unemployment was due to a labor dispute other than a lockout at

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which began July 16, 2005, and the lockout is continuing.

DECISION:

It is the decision of this Hearing Officer that all of the Claimants herein were unemployed due to a lockout at NuTone which began July 16, 2005. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout starting with the week which includes July 17, 2005.

This decision applies to:
CLAIMANTS WHO ARE NOT DISQUALIFIED

APPEAL RIGHTS: 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, Redetermination Unit, PO Box 182292, Ohio Dept. Of Job And Family Services, Columbus, OH 43218-2292; or by fax to 1-614-752-4810 ; 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, faxed, or postmarked no later than twenty-one (21) days after the date of mailing indicated on this decision. If the 21st calendar day falls on 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 **08/10/2005**.

The twenty-one day appeal period ends on **08/31/2005**.

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