

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
OFFICE OF UNEMPLOYMENT COMPENSATION  
DECISION ON LABOR DISPUTE ISSUE

JFS-83000 09/08/2011



A35221328B0022881001

THOMAS & THORNGREN INC PO BOX 280100 NASHVILLE, TN 37228-0100 	Date Issued 12/24/2012
	Determination Identification Number
	ODJFS Office Bureau of UC Program Services
Employer's Name VECTREN ENERGY DELIVERY OF OHIO, INC.	UC Account Number

**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  
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**In The Matter Of A Labor Dispute Between**

Union: **UWUA Local 175** Employer: **VECTREN ENERGY DELIVERY OF OHIO, INC.**  
Docket No: **000000001200023** Hearing Officer: **Jim Bubutiev**  
Date of Hearing: **12/10/2012** Date of Issuance: **12/24/2012**

**Appearances**

John Doll, Attorney at Law, represented the Utility Workers Union of America of the AFL-CIO, Local 175 (Local 175). Chris Tebbe and Kelly Cooper, were witnesses for Local 175.

Vectren Energy Deliver of Ohio (VEDO) did not make an appearance.

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.

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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 25 or more individuals relates to a labor dispute. The Department has received approximately 116 claims for unemployment compensation benefits relating to this matter.

All interested parties were duly notified of this hearing pursuant to Ohio law. This hearing was held on December 17, 2012, in Springdale, Ohio.

**FINDINGS OF FACT:**

The claimants in this matter are members of Local 175 and are employed by VEDO in several Ohio locations including Washington Courthouse, Centerville, Fairborn, Dayton, Troy, and Bellefontaine (Transcript Pages 12-13).

Vectren Corporation is an energy holding company which is headquartered in Evansville, Indiana. Vectren Utility Holdings is a wholly owned subsidiary of Vectren Corporation and serves as the intermediate holding company for VEDO. VEDO provides energy delivery services to natural gas customers in 17 counties throughout west central Ohio (Transcript Pages 12-13).

VEDO employs an estimated 125 members of Local 175 (Transcript Pages 12-13).

Local 175 had a collective bargaining labor agreement with VEDO that was effective November 1, 2009 to October 31, 2012. The parties agreed to an extension of the agreement through November 15, 2012 (Transcript Pages 15-16,33-34,40-41/Union Exhibits 1-2).

On November 15, 2012, the members of Local 175 voted to reject an offer from VEDO concerning a new collective bargaining agreement (Transcript Pages 21-24,37,41).

A work stoppage began on November 16, 2012, when members of Local 175 reported to work and VEDO informed them that their services were not needed. VEDO had them turn in their work cell phones, badges, keys, and they were escorted off the property. VEDO was aware the members were willing to continue working under the terms and conditions of the expired agreement while negotiations for a new agreement continued (Transcript Pages 20-22,28,31-32,37-38,42-44).

On September 21, 2012 the parties began negotiations for a new agreement. Thirteen negotiation sessions were held through November 26, 2012. The main issue that kept the parties from reaching a new agreement dealt with safety regarding watch rotations for service, construction, and regulation. Local 175 wanted the assurance that properly qualified employees respond to calls. VEDO had proposed that the employees closest to the location respond to calls (Transcript Pages 17-19,33-34,40-42,Union Exhibit 2).

On November 26, 2012 the parties were able to resolve the safety issue. The members of Local 175 voted to accept a new collective bargaining agreement on November 30, 2012 and returned to work on December 3, 2012 (Transcript Page 27).

VEDO continued operating on November 16, 2012 until December 3, 2012 using nonunion supervisory personnel and outside contractors. VEDO did not hire any replacement workers (Transcript Pages 28-29).

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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 VEDO?
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 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 unemployment of the claimants from VEDO 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 *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.

Furthermore, the Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discussed *Bays*.

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In this matter the evidence and testimony indicates the claimants became unemployed when VEDO made the decision to lock them out beginning November 16, 2012.

Applying the Zanesville definition of a lockout, the facts indicate this was a physical lockout by VEDO in an attempt to gain more favorable terms on the safety issue in a new agreement.

Applying the Bays legal standard, this Hearing Officer finds, based upon a review of the testimony and evidence, that VEDO changed the status quo when the decision was made to lockout the members of Local 175, beginning on November 16, 2012, instead of allowing them to continue working while negotiations continued. Local 175 indicated a willingness to maintain the status quo while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case are unemployed due to a lockout which began on November 16, 2012. The lockout ended on December 3, 2012 when the members of Local 175 returned to work after the parties reached 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 VEDO. The claimants are not disqualified from receiving unemployment compensation benefits beginning November 16, 2012 pursuant to Section 4141.29 (D) (1) (a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the lockout between Local 175 and VEDO ended on December 3, 2012.



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**APPEAL RIGHTS:** If you disagree with this decision, 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, Ohio Dept. Of Job And Family Services, PO Box 182299, Columbus, OH 43218-2299; or by fax to 1-614-387-3694; 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. **If unemployed**, claimants should continue to file weekly claims for benefits while under appeal.

This decision was mailed on **12/24/2012**.

The twenty-one day appeal period ends on **01/14/2013**.

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