



OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



A35221914B030279001

JON JAY ASSOCIATES INC PO BOX 182523 COLUMBUS, OH 43218-2523  0001255001	Date Issued 12/29/2006
	Determination Identification Number 213877075-1
	ODJFS Office Bureau of UC Program Services
Employer's Name PRETTY PRODUCTS INC.	UC Account Number 0001255001

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: <http://jfs.ohio.gov/labordisputes>**

In The Matter Of A Labor Dispute Between

Union: United Steelworkers Local 50L	Employer: Pretty Products Inc.
Docket No: 00000000600032	Hearing Officer: Jim Bubutiev
Date of Hearing: 12/19/2006	Date of Issuance: 12/29/2006

Appearances

Timothy Cogan, Attorney at Law, represented Local 50L. Gary Shearn, President of Local 50L, and Billy Boyce, Sub-District Director of United Steelworkers of America District 1, were witnesses for Local 50L.

Gust Callas, Attorney at Law, represented Pretty Products. E.R. Salmon, Vice President - Human Resources, was a witness for Pretty Products.

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. 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, to date, approximately 145 claims for unemployment benefits that relate to a labor dispute between Local 50L and Pretty Products.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 19, 2006, in Zanesville, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 50L and were employed by Pretty Products in Coshocton, Ohio.

Pretty Products is a manufacturer of automobile accessories with the primary product being automobile mats. Pretty Products plant in Coshocton, Ohio, is the only location involved in this matter (Transcript Pages 10-11).

Pretty Products employed about 399 individuals. Approximately 290 to 295 of them are also members of Local 50L which includes about 45 Local 50L members laid off prior to the beginning of the labor dispute (Transcript Pages 11-12,75).

Local 50L had a three (3) year collective bargaining labor agreement with Pretty Products that was effective through May 13, 2006. The parties agreed to an extension of the expiring collective bargaining labor agreement through May 20, 2006. Although there was no formal extension in place after May 20, 2006, the members of Local 50L continued to work, and Pretty Products allowed work to continue, under the terms and conditions of the expired collective bargaining labor agreement until September 25, 2006 (Transcript Pages 12-14,18-21,35-37,42,77/EmployerExhibits 1 & 2).

Negotiation sessions have been held between Local 50L and Pretty Products, beginning in late April/early May of 2006, through December 1, 2006, with another session scheduled for December 22, 2006. A federal mediator has been involved since May of 2006 (Transcript Pages 15-16,23-24,75-76).

The main issues between the parties include the cost of health care insurance coverage, wages, and the pension plan (Transcript Pages 17,50,75,106-107).

On June 22, 2006, Pretty Products made an offer to Local 50L. On July 15, 2006, the members of Local 50L voted to reject the offer. Pretty Products made a second offer in September of 2006, which included some slight modifications of the initial offer, which was rejected by the members of Local 50L in a vote taken on September 23, 2006. The rejection vote taken on September 23, 2006, was also a vote to conduct a work stoppage. The members of Local 50L began a work stoppage, and started picketing, on September 25, 2006 (Transcript Pages 14,18-23,31-33,35-39,77-79,105,113/EmployerExhibit 2).

Pretty Products has continued operating since the work stoppage began. Operations initially continued with management staff and then with the hiring of temporary replacement workers on or about October 10, 2006. The hired replacement workers became permanent in late November of 2006, and Local 50L was notified of the permanent replacement workers in writing on December 1, 2006. By the end of November of 2006 Pretty products had hired 210 permanent replacement workers. Pretty Products asserts that about 30 positions remain available and that 11 members of Local 50L have crossed the picket line, and returned to work under the terms and conditions of the expired agreement, since the beginning of the work stoppage (Transcript Pages 25-29,30-31,35-38,41-42,83-87/EmployerExhibits 2 & 3/Union Exhibit A).

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 Pretty Products?

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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 may be paid 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 were found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from Pretty Products 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 *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. The Court stated that the employer's action of permanent replacement prevented any volition on the part of the workers to return to work and since it severed the labor dispute as the cause of the unemployment, the statutory disqualification provision of section 4141.29 of the Ohio Revised Code did not apply and was not a bar to the appellants' right to receive unemployment compensation benefits.

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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 pre-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 134-135.

Furthermore, the recently decided Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discusses the *Baugh* and *Bays* cases.

In this matter, the evidence and testimony indicate the members of Local 50L became unemployed when they began a work stoppage on September 25, 2006, after voting to reject Pretty Products' second offer.

There was no evidence or testimony to indicate that Pretty Products would not have allowed the members of Local 50L to continue working under the terms and conditions of the expired agreement after September 25, 2006, while negotiations continued.

Therefore, by applying the holding from the *Zanesville* decision and the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 50L that first changed the status quo, while negotiations were ongoing, when the decision was made via a vote on or about September 23, 2006, to conduct a work stoppage beginning on September 25, 2006.

Also, under the *Baugh* decision as reaffirmed in the *M. Conley Co.* decision, the totality of the testimony and evidence indicate that Pretty Products ended the employer-employee relationship with the members of Local 50L by permanently replacing them beginning December 1, 2006, and thereby severed the labor dispute as the proximate cause of unemployment.

On December 1, 2006, Pretty Products informed Local 50L in writing that permanent replacement workers were hired (see Union Exhibit A). In addition, while Pretty Products maintains that about 30 positions remain available, the record clearly shows that at least 210 permanent replacement workers have already been hired. There were only approximately 240 to 245 members of Local 50L working for Pretty Products when the labor dispute began. Therefore, the vast majority of them have been, with clear certainty, permanently replaced.

Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a labor dispute other than a lockout which began September 25, 2006, and ended December 1, 2006, when Pretty Products hired permanent replacement workers.

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 Pretty Products which began September 25, 2006. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week that includes

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September 25, 2006, 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 other than a lockout between Local 50L and Pretty Products began September 25, 2006, and ended on December 1, 2006, when Pretty Products hired permanent replacement workers.

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, PO Box 182299, Ohio Dept. Of Job And Family Services, 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.

This decision was mailed on **12/29/2006**.

The twenty-one day appeal period ends on **01/19/2007**.

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