**IN THE COURT OF COMMON PLEAS**
**PORTAGE COUNTY, OHIO**

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| **ROTEK INCORPORATED,** | ) | CASE NO. 2013 CV 868 |
| | ) | |
| Appellant, | ) | |
| v. | ) | JUDGE LAURIE J. PITTMAN |
| | ) | |
| **DIRECTOR, ODJFS, ET AL.** | ) | **ORDER AND JOURNAL ENTRY** |
| | ) | |
| Appellees. | ) | |

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## A. STATEMENT OF THE CASE

Before the Court is an appeal from a decision of the Ohio Unemployment Compensation Review Commission ("Commission") granting unemployment compensation benefits under R.C. 4141.29(D)(1)(a) to approximately 125 employees ("Claimants") of Appellant Rotek, Inc. Appellees are Director, ODJFS, et al and United Steelworkers Local Union 8565.

Claimants are members of the United Steelworkers Local Union 8565. After claimants filed for unemployment compensation benefits, the matter came on for hearing pursuant to R.C. 4141.283. By decision issued February 28, 2013, the hearing officer deemed the claimants "unemployed" pursuant to R.C. 4141.29(D)(1)(a) and thus entitled to receive benefits. Rotek's appeal of said decision was disallowed on July 31, 2013, and this appeal seeks reversal of the Commission's final decision.

## B. STATEMENT OF THE FACTS

Claimants herein are employed by Rotek, a manufacturer of sling bearings and rings based in Aurora, Ohio. (Transcript of February 4, 2013, hearing at 18, 168, hereinafter referred to as "T.") Rotek is a wholly-owned subsidiary of ThyssenKrupp

USA, which is a wholly-owned subsidiary of ThyssenKrupp AG, based in Germany. Rotek has another plant in Kentucky, which makes similar but smaller sized bearings than the Aurora plant. (T. at 236-237)

Central to the case sub judice is the parties' five-year collective bargaining agreement ("CBA") which expired on November 1, 2012. At an October 19, 2012, first negotiation session, Rotek stated it had twenty million dollars in losses over a three-year period, i.e. fiscal years 2010, 2011, and 2012, which were projected to continue at some level into fiscal years 2013, 2014, and 2015. (T. at p. 174, l.3 - - p. 175, l.19; Hearing Exh. C)

During the years of the business downturn, Rotek's salaried employees had their wages frozen for two years, but received a salary increase in the third year, 2011, after a wage survey and salary adjustment (T. at 231, 234-235) At the time of the instant hearing, the salaries had been frozen and were to be re-evaluated in September, 2013. (T. at 235-236)

On October 26, 2012, the parties agreed to extend the CBA on a day-to-day basis subject to a five-day termination notice option for both parties (T. at 22, 49; Exh. D) On December 14, 2012, Rotek issued a five-day notice to terminate the extension. (T. at 49-50; Exh. E) The Union responded with correspondence on December 19, 2012, proposing to extend the CBA for an additional three weeks while the parties continued to negotiate. (T. at 51; Exh. F)

On December 19, 2012, Rotek made its last, best and final offer to the Union. (T. at 51-52; Exh. G) Rotek agreed to extend the CBA until January 5, 2013, to give the

Union an opportunity to present the offer to its membership and hold a vote on the offer. (T. at 53-54; Exh. H) On January 5, 2013, the Union notified Rotek that its membership had overwhelmingly rejected the offer, and had also voted to authorize a strike. (T. at 65-66; Exh. I) However, the Union informed Rotek that its members would continue to work under the "status quo"[1] and "bargain in hopes of reaching a new labor agreement." (T. at 65-66; Exh. I)

Fourteen negotiation sessions were held between October 19, 2012, and January 10, 2013. (T. at 24) The parties met with a federal mediator on January 10, 2013. (T. at 26, 66) A further negotiation session was scheduled for February 19, 2013. (T. at 25)

In October the Union initially requested more detailed financial information from Rotek, indicating its need to have its analyst review the information requested. (T. at 42-44, 45-46, 70-71, 256-257) The Union made further verbal requests for the data in November and December. (T. at 255-257) On January 13, 2013, the Union tendered a written request for the data. (T. at 74-75; Exh. J) At that time, the Union reiterated that it had offered again to maintain the current CBA when the parties met with the federal mediator on January 10. On January 30, 2013, the Union again requested the financial data in writing. (T. at 78; Exh. K)

Rotek's treasurer, Helmut J. Wittine testified that financial data was provided to the Union, but in summary format rather than detailed information. (T. at p. 248, l. 21 - - p. 249, l. 25) Rotek never provided the Union with the specific information. (T. at 78; Wittine testimony at 252-253) At the January 10, 2013, negotiating session, the Union

[1] As pointed out by Appellant "status quo" is spelled as "statuesque" throughout the transcript.

offered to continue the expired CBA for a year to permit further negotiations. (T. at p. 67, lls. 3-9)

On January 11, 2013, Rotek sent the Union correspondence declaring an impasse, further stating it would be making its full and final offer on January 14, 2013. (T. at 32, 72-73; Exh. L) Wittine testified that an impasse had been reached because the Union refused to accept concessions and his company did not view the Union's offer to remain at "status quo" to be concessionary. (T. at 189-190)

Rotek tendered its best and final offer on January 14, 2013. (T. at 25, 54-55) The claimants continued to work for three days before beginning a work stoppage on January 18, 2013. (T. at 32-33, 54-55, 113-114) The work stoppage was ongoing on the date of the above referenced Commission's hearing (2/4/13) and claimants began picketing the plant on that date. No one had crossed the picket line nor had Rotek hired any permanent replacement workers (T. at 38-40)

## C. STANDARD OF REVIEW

In this matter this Court is bound by the following explicit standard of review:

> The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.
>
> R.C. 4141.282(H)

Adhering to R.C. 4141.282(H) and the authorities invoking it, this Court is prohibited from deciding the credibility of witnesses, rendering factual determinations

and/or substituting its judgment for that of the Commission. See Irvine v. Unemploy. Comp. Bd. of Review (1985), 19 Ohio St.3d 15, 18.

## D. ASSIGNMENTS OF ERROR

Appellant raises the following three assignments of error:

I. The Director and the UCRC acted unlawfully, unreasonably, and against the manifest weight of the evidence by disallowing Rotek's application for appeal because the Hearing Officer improperly ignored the parties' bargaining impasse.

II. The Director and the UCRC acted unlawfully, unreasonably, and against the manifest weight of the evidence by disallowing Rotek's application for appeal because the Hearing Officer applied the wrong legal test to the labor dispute.

III. The Director and the UCRC acted unlawfully and unreasonably by disallowing Rotek's application for appeal because the Hearing Officer's Decision was untimely.

## E. DISCUSSION AND LAW

Appellant's first two assigned errors pertain to the merits of the decision below and they will be discussed jointly. The issue herein is whether the record contains sufficient evidence to support the Commission's decision that Claimants' unemployment was due to a lockout. R.C. 4141.29(D)(1)(a) defines the test for a lockout 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. (Emphasis added)

Our Ohio Supreme Court has defined lockout "as . . . a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for (*sic*) the employer more desirable terms." See Bays v. Shenango Co. (1990), 53 Ohio St. 3d 132, 133, citations omitted. Bays emphasized that a lockout is not confined or restricted to an actual physical closing of the place of employment but can arise from circumstances surrounding the subject labor dispute as in Zanesville Rapid Transit, Inc. v. Bailey (1958), 168 Ohio St. 351. As articulated by the Zanesville court:

> The point is that, in order to constitute a lockout, the conduct of the employer in laying down terms must lead to unemployment inevitably in the sense that the employees could not reasonably be expected to accept the terms and, in reason, there was no alternative for them but to leave their work. The conditions of employment is a withholding of work so as to constitute a lockout lies in the question whether the conditions imposed are such that his employees could not be expected to continue work under them and, in reason, they had no other course open to them but to leave their employment.
>
> (At 355)

Appellant disputes the Commission's holding that "all of the claimants herein are unemployed due to a lockout which began on January 18, 2013," claiming the hearing officer "applied the wrong legal test [Bays id.] about the nature of the legal dispute." (Brief at 16, para. 3) Appellant contends that the Commission should have applied the Zanesville "reasonableness" test rather than what it considers the more stringent "compelling reason" Bays test as follows:

> In analyzing the reasonableness of an employer's actions in the labor relations context, it is important to remember that an employer is only

> required 'to permit work to continue for a reasonable time under the pre-existing terms and conditions of employment pending further negotiations'.
>
> (Brief at 17, para. 2, emph. in orig., citations omitted)

It is undisputed that the Commission specifically employed Bays in its reasoning regarding the "status quo" and "lockout" issues. As stated by Appellee:

> After determining that the overarching issue to be resolved was whether the Claimants' unemployment was caused by a lockout or a labor dispute other than a lockout, the Hearing Officer first looked at the Supreme Court's decision in Bays, supra, for the application of the status quo test. Exhibit A, at 5. In so doing, he noted that the Supreme Court had held that if an employer refuses to work under the existing contract for a reasonable time while the parties continued to negotiate, then the employer deviates from the status quo. Exhibit A, at 5.
>
> (Brief at 16, para. 2)

Citing Bays the decision states:

> 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.
>
> (Decision at 5, para. 2, Reasoning)

Also:

> In this matter, applying the status quo test from the Bays decision, the evidence and testimony indicate that the members of Local 8565 became unemployed when they began a work stoppage on January 18, 2013, **after Rotek had changed the status quo by implementing a concessionary package final offer a few days earlier, on January 14, 2013.**
>
> (Decision at 6, para. 2, Reasoning, emph. added)

Notwithstanding that Bays was decided in 1990 while Zanesville was decided in 1958, no language in Bays overrules, reverses or modifies Zanesville in any manner. Indeed, the Bays definition of "lockout" cites Zanesville at p. 134.

This Court concludes that the Commission's determination that (1) Rotek breached the status quo after the Union had offered to continue negotiations while working under the expired CBA and (2) the claimants were unemployed due to a lockout is amply supported by the record and is not unlawful, unreasonable, or against the manifest weight of the evidence per R.C. 4141.282(H).

Appellant's third assigned error alleges that the Commission's decision was not timely filed and should be invalidated. This claim lacks all merit and is held for naught.

**F. CONCLUSION**

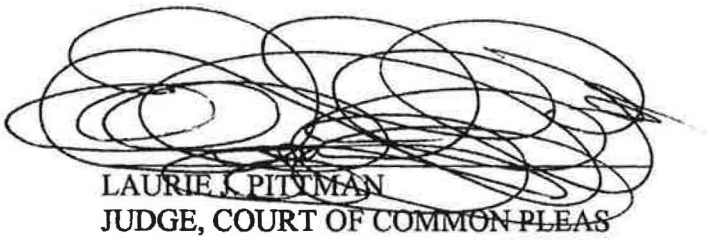
Upon review of the record of proceedings and briefs presented herein, this Court finds that the decision below is lawful and determines that Appellant's appeal is not well taken.

IT IS THEREFORE ORDERED that the appeal of Appellant Rotek Inc. is denied and the decision of the Commission be and hereby is affirmed.

Costs to be taxed to Appellant.

The clerk is instructed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ.R.58(B).

SO ORDERED.



LAURIE J. PITTMAN
JUDGE, COURT OF COMMON PLEAS

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Cc: Timothy J. Gallagher, Esq.
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**NOTICE: AN ORDER HAS BEEN FILED IN THE CASE IDENTIFIED BELOW:**

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FILED
COURT OF COMMON PLEAS
January 16, 2014
LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

**Mail to:**

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**Case Number: 2013 CV 00868**

**ROTEK INC VS. DIRECTOR OF OHIO DEPT OF JOB AND FAMILY SERVICES et al**

**Date entry was filed: JANUARY 16, 2014**

**Court of Common Pleas, Portage County, Ravenna, Ohio**

**Certificate of Service Completed and filed by the Clerk**

The document described above was mailed by ordinary mail or by facsimile to attys/parties by the clerk on **JANUARY 16, 2014.**

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**SCANNED**