[Cite as *Magnode Corp. v. Ohio Dept. of Job & Family Servs.*, 2006-Ohio-3086.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

MAGNODE CORPORATION,	:	
Plaintiff-Appellee,	:	CASE NO. CA2005-02-050
	:	O P I N I O N
- vs -	:	6/19/2006
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2001-08-1817

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BRESSLER, J.

{¶1} This matter is an administrative appeal in which defendant-appellant, the Ohio Department of Job & Family Services, et al. ("ODJFS"), appeals the decision of the Butler

County Court of Common Pleas reversing the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") which previously granted unemployment benefits to former employees of plaintiff-appellee, Magnode Corporation ("Magnode"). We affirm the lower court's decision.

{¶2} This matter arises from a dispute between Magnode and 58 members ("Claimants") of the International Association of Machinists and Aerospace Workers Local 1312 ("Union"). In December 2000, Magnode and the Union began negotiating a new collective bargaining agreement, as the current agreement was in effect only until February 2001. When Magnode and the Union were unable to reach an agreement by the expiration of the collective bargaining agreement, the Union rejected Magnode's offer to continue work, and Claimants and other members of the Union began a strike.

{¶3} Magnode continued operations with non-Union employees and a few temporary replacement workers. On March 22, 2001, Magnode verbally notified the Union that it would begin the process of hiring permanent placement workers to fill the positions vacated by the striking workers. On March 28, 2001, Magnode notified the Union in writing that it intended to hire permanent replacement workers if the Union failed to ratify Magnode's last proposed collective bargaining agreement. After the Union failed to ratify the proposal, Magnode began to hire employees to permanently replace the positions vacated by the striking members of the Union on April 2, 2001.

{¶4} Between April 1, 2001 and April 14, 2001, the Claimants filed individual applications for unemployment benefits with ODJFS. On May 3, a hearing officer for the Review Commission found that the Claimants were unemployed due to a labor dispute other than a lockout which ended on April 2, 2001, when Magnode began hiring replacement workers. Accordingly, the Review Commission granted the claims of all 58 Claimants for unemployment benefits beginning on April 2, 2001. Magnode filed a request for further review

of this decision, which ODJFS denied. Magnode appealed the Review Commission's decision to the Butler County Court of Common Pleas ("lower court").

{¶5} On October 18, 2002, the lower court found that, according to the evidence presented to the ODJFS hearing officer, "several Claimants voluntarily quit employment with Magnode, retired, took paid vacation, or quit striking and went back to work for Magnode between January 1, 2001 and June 1, 2001." The court held that employees who quit and those who voluntarily returned to work were not entitled to unemployment benefits, those who retired should have their unemployment benefits reduced by the amount of the retirement or pension allowances, and those who took paid vacation were not entitled to unemployment benefits during the period of their vacation. The court remanded the matter to the Review Commission to determine which Claimants are entitled to any unemployment benefits and which Claimants are entitled to reduced benefits.

{¶6} Upon remand, the Review Commission determined that the period of the labor dispute began on February 26, 2001, and ended on April 2, 2001, when Magnode began hiring replacement workers. The Review Commission found that no claimants were paid any benefits during this period, and that all instances where benefits were erroneously paid to Claimants had been corrected. Magnode then filed a motion in the lower court for reconsideration of its prior decision and/or relief from the Review Commission's order.

{¶7} After a hearing, the trial court reversed the Review Commission's order, finding that although Magonde began hiring replacement workers on April 2, 2001, positions were available for striking Claimants at least until the end of the strike in November 2001, and that Claimants were never notified in writing that their positions had been permanently filled by replacement workers. ODJFS appeals the lower court's decision, raising a single assignment of error.

{¶8} In its assignment of error, ODJFS argues the lower court erred in reversing the

Review Commission's decision, which held that Claimants were no longer employed due to a labor dispute other than a lockout as of April 2, 2001. ODJFS maintains Claimants are entitled to unemployment benefits pursuant to R.C. 4141.29(D)(1)(a) and *Baugh v. United Tel. Co.* (1978), 54 Ohio St.2d 419. Further, ODJFS claims that the Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence, and should not have been reversed. We disagree.

{¶9} The scope of our review of the Review Commission's decision is limited to that of the lower court's, which is a determination as to whether the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. See R.C. 4141.282(H); *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696-697, 1995-Ohio-206.

{¶10} The purpose of the Ohio Unemployment Compensation Act is "to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. However, R.C. 4141.29(D)(1)(a) provides that an individual is not entitled to unemployment compensation benefits where "[t]he individual's unemployment was due to a labor dispute other than a lockout * * * for so long as the individual's unemployment is due to such labor dispute."

{¶11} In *Baugh*, 54 Ohio St.2d at 419-420, workers went on strike in January, and the employer notified the workers that they would begin hiring replacement workers in June. After hiring replacement workers, the company sent a second letter to the workers notifying them that their positions had been filled. Id. at 425. The Ohio Supreme Court held that the hiring of replacement workers terminated the striking workers' status as employees, and was the proximate cause of the strikers' unemployment, entitling them to unemployment compensation benefits. Id.

{¶12} Recently, in *M. Conley Co. v. Anderson*, 108 Ohio St.3d 252, 2006-Ohio-792, ¶21, the Court reaffirmed its holding in *Baugh*, and held, "the hiring of permanent replacement workers *coupled with notice* to striking workers that they have been replaced or that their positions have been permanently filled severs the employee relationship for purposes of R.C. 4141.29(D)(1)(a) and removes the disqualification to receive unemployment compensation benefits." (Emphasis added.) However, the Court distinguished the cases of *Baugh* and *M. Conley*, where striking workers were given clear notification, in writing, that their jobs had been permanently replaced, from cases cited by the employer where no such notification was provided. Id. at ¶14. Specifically, the Court found that in *Hi-State Beverage Co. v. Ohio Bur. of Emp. Servs.* (1991), 77 Ohio App.3d 633, and *Moriarity v. Elyria United Methodist Home* (1993), 86 Ohio App.3d 502, striking workers did not receive notice that the employer had permanently replaced them or that their positions had permanently been filled. Id.

{¶13} After reviewing the record in this matter, we agree with the lower court's conclusion that the Review Commission's decision is unlawful, unreasonable, and against the manifest weight of the evidence. It is undisputed that the work stoppage began when the Union voted to begin an economic strike, which Claimants participated in beginning on February 26, 2001, and that this work stoppage was not caused by a lockout. The record indicates that Magnode began hiring replacement workers on April 2, 2001. However, there were positions available for striking workers from April 2, 2001 until the strike ended on November 1, 2001, and in fact, ten striking workers actually returned to work during this time. Therefore, Magnode did not sever the employment relationship with the striking workers by merely beginning to hire replacement workers. Morever, the lower court properly noted, "* * * unlike the employer in *Baugh*, [Magnode] never sent the striking employees a second letter informing them that their positions had been permanently replaced or that they no longer had a job." Accordingly, we find that Claimants were unemployed due to a labor dispute other

than a lockout between February 26, 2001 and November 1, 2001, and were not entitled to receive unemployment compensation benefits pursuant to R.C. 4141.29(D)(1)(a).

{¶14} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.

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