JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

ALCOA INC. PO BOX 283 ST LOUIS, MO 63166-0283 0015494002	Date Issued 12/07/2006 Determination Identification Number 213791719-1 ODJFS Office Bureau of UC Program Services
Employer's Name ALCOA INC.	UC Account Number 0015494002

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:	**UAW Region 2B Local 1050**	Employer:	**ALCOA INC.**
Docket No:	**000000000600034**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**11/27/2006**	Date of Issuance:	**12/07/2006**

APPEARANCES

Nick Parente, International Representative, represented UAW Local 1050. Jeffrey Judson, President of UAW Local 1050, was a witness for UAW Local 1050.

Michael Chesney and Daniel Ward, Attorneys At Law, represented ALCOA. Kevin O Brien, Industrial Relations Consultant, Mark Robinson, Human Resources Manager, and Charles Cooke, Area Leader, were witnesses for ALCOA.

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 Department of Job and Family Services has received approximately 656 unemployment compensation benefits claims that relate to a labor dispute between UAW Local 1050 and ALCOA.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 27, 2006, in Akron, Ohio.

FINDINGS OF FACT

ALCOA is a manufacturer and producer of aluminum forge product at a facility located in Cleveland, Ohio (Transcript Pages 16-17,90-91).

The claimants in this matter are members of UAW Local 1050 and ALCOA employs approximately 830 of them at the Cleveland facility. ALCOA employs a total of approximately 1,200 individuals at the Cleveland facility (Transcript Pages 17,91).

UAW Local 1050 had a collective bargaining labor agreement with ALCOA that was effective from September 30, 2001, through September 29, 2006 (Transcript Page 18/Union Exhibit A).

A minimum of thirty-five (35) negotiation sessions have been held between the parties beginning September 1, 2006, and continuing through November 17, 2006, with another negotiation session scheduled for the day after the date of this hearing. Prior to the commencement of negotiations the members of UAW Local 1050 authorized the possibility of a strike in the event a new agreement wasn t reached (Transcript Pages 20-21,26-27,29,93-94,98-99).

The parties verbally agreed to extend the terms and conditions of the soon to expire collective bargaining labor agreement beyond September 29, 2006, on a day-to-day basis. The members of UAW Local 1050 continued to work under the terms and conditions of the expired agreement, while negotiations continued, until November 6, 2006. On September 29, 2006, ALCOA made an offer for a new agreement which was rejected by the members of UAW Local 1050 by a vote taken on or about October 5, 2006. On November 6, 2006, ALCOA made a second offer for a new agreement which was rejected by the members of UAW Local 1050 by a vote taken on November 6, 2006. On November 6, 2006, at approximately 9:00 p.m., UAW Local 1050 commenced with a work stoppage and began picketing. UAW Local 1050 asserts the reason for the work stoppage is because the members voted to reject ALCOA s second offer for a new agreement and because ALCOA was threatening to implement changed health care coverage and costs for the claimants and retirees effective January 1, 2007. ALCOA would have allowed the members of UAW Local 1050 to continue working under the terms and conditions of the expired agreement, while negotiations continued, and ALCOA continues to maintain that negotiation position as of the date of hearing. Alcoa asserts the changes in the health care coverage terms were merely proposals as part of the offer for a new agreement (Transcript Pages 18-19,24-39,40-43,49-54,57-60,62-64,67-69,72-76,79-80,83-84,95-100,107-112,119-123,134-135/Employe r Exhibits 1-4/Union Exhibits B,C and D).

The main issues between the parties deal with mandatory overtime and attendance, and health care coverage and costs to the claimants and retirees (Transcript Pages 22-23,44-49,93-94).

ALCOA has continued operating using salaried employees. ALCOA has not hired any replacement workers (Transcript Pages 31-32,91-92).

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 are:

1. What is the reason for the claimants' unemployment

from ALCOA?

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 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 were found to be a lockout.

The issue to be resolved is whether the reason for the claimants' unemployment from ALCOA 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.

Moreover, the recently decided Ohio Supreme Court case of M. Conley Co. v. Anderson (2006) 108 Ohio St. 3d 252, favorably discusses the Bays case and the status quo test.

A review of the testimony and exhibits in this case indicate the claimants became unemployed when they began a work stoppage and started picketing after 9:00 p.m. on November 6, 2006.

The testimony and exhibits in the record establish that ALCOA did not withhold work from the members of UAW Local 1050 in an effort to obtain more desirable terms in a new collective bargaining labor agreement.

In fact, the testimony and exhibits in the record clearly show that ALCOA proposed implementing changed health care coverage terms for the claimants and retirees no sooner than January 1, 2007, and that negotiations were and are continuing between the parties. ALCOA would allow the members of UAW Local 1050 to continue working under the terms and conditions of the expired collective bargaining labor agreement while negotiations continue. At no time has ALCOA ever indicated an unwillingness to maintain the status quo.

Essentially, UAW Local 1050 and ALCOA are involved in a labor dispute that ultimately led the members of UAW Local 1050 to conduct a work stoppage in an effort to obtain terms that are more desirable in a new collective bargaining labor agreement with ALCOA.

Therefore, by applying the holding of the Zanesville case, it is clear that ALCOA did not lockout the members of UAW Local 1050 on November 6, 2006.

Using the Bays case standard, this Hearing Officer finds, based upon the totality of the testimony and exhibit evidence in the record, that the members of the UAW Local 1050 first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on November 6, 2006. ALCOA s conduct did not indicate it would not maintain the status quo while negotiations continued.

Therefore, the members of UAW Local 1050 are unemployed due to a labor dispute other than a lockout that began November 6, 2006, and the labor dispute other than a lockout is continuing.

DECISION

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a labor dispute other than a lockout beginning November 6, 2006, and it is continuing. The claimants are disqualified from receiving unemployment compensation benefits starting with the week which includes November 6, 2006, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

The labor dispute other than a lockout that has resulted in the unemployment of the claimants is also continuing.

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 **12/07/2006**.

The twenty-one day appeal period ends on **12/28/2006**.