



JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



A35224294X0019498001

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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: www.state.oh.us/odjfs/labordispute

In The Matter Of A Labor Dispute Between

Union: United Steelworkers Local 1-00639-01

Employer: ERAMET MARIETTA INC RT 7 S

Docket No: 00000000600029

Hearing Officer: Jim Bubutiev

Date of Hearing: 10/16/2006

Date of Issuance: 10/26/2006

APPEARANCES

Colleen E. Cook, Attorney at Law, represented Eramet. Jerry Jenkins, Director of Human Resources, and Russell Craig, Chief Executive Officer, were witnesses for Eramet. Timothy Cogan, Attorney At Law, represented USW Local 1-00639-01. Steven Tompkins, Vice President of USW Local 1-00639-01, and Dennis Longwell, USW District 1 Staff Representative, were witnesses for USW Local 1-00639-01.

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 273 unemployment compensation benefits claims that relate to a labor dispute between USW Local 1-00639-01 and Eramet in Marietta, Ohio. All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on October 16, 2006, in Marietta, Ohio.

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FINDINGS OF FACT

The claimants in this matter are members of USW Local 1-00639-01 and are employed by Eramet in Marietta, Ohio.

Eramet is a manufacturer of manganese and special metal products for the steel, aluminum, and aerospace industries, as well as for other special alloys industries (Transcript Pages 17,74).

Eramet employs approximately 405 individuals and about 290 of them are members of USW Local 1-00639-01 (Transcript Pages 17,72,81,130).

USW Local 1-00639-01 had a collective bargaining labor agreement with Eramet that was effective from September 17, 2003, until 12:01 a.m. on August 27, 2006 (Transcript Page 19/Union Exhibit 2).

The parties did not agree to any extensions of the agreement (Transcript Page 19).

There were approximately 21 negotiation sessions held between the parties in an effort to agree to a new collective bargaining labor agreement. The sessions began July 11, 2006, and continued through October 11, 2006. The last 5 negotiation sessions have included a federal mediator and, as of the date of hearing, no further negotiation sessions are scheduled between the parties (Transcript Pages 20-23).

The members of USW Local 1-00639-01 voted to authorize a strike in June or July of 2006. However, USW Local 1-00639-01 has never informed Eramet that a strike would actually occur, or communicated an intent to strike on some specific date, during the entire course of negotiations (Transcript Pages 137-139,142-143,160-161).

The main issues between the parties included the pension plan and retiree medical/health insurance coverage (Transcript Pages 21-22,54-56,59-61).

On August 25, 2006, the members of USW Local 1-00639-01 rejected the last, best and final offer made by Eramet. Later that day the members of USW Local 1-00639-01 offered, in writing, to continue working under the terms and conditions of the expiring collective bargaining labor agreement while negotiations continued on a new agreement. The offer included a 48-hour notice of intent to strike should the members of USW Local 1-00639-01 later decide to strike. The offer was consistent with Article XV Section 2 of the expiring collective bargaining labor agreement. On August 26, 2006, Eramet verbally rejected the offer asserting that the 48 hour notice of intent to strike was unacceptable and unreasonable (Transcript Pages 23-25,29-31,36-49,64-66,69,78-95,104-107,121,137,139-140,147-150/Employer Exhibits 1-4/Union Exhibits 1-2).

On August 26, 2006, at approximately 11:30 p.m., some members of USW Local 1-00639-01 showed up at the Eramet facility in Marietta, Ohio and offered to work under the terms and conditions of the expiring agreement. Eramet informed them that they would be working under the terms and conditions of the last, best and final offer made by Eramet. A work stoppage then began after midnight on August 27, 2006 (Transcript Pages 19,31-34,37,41-49,64-65,116,150-151/Union Exhibit 1).

Eramet has not offered the members of USW Local 1-00639-01 the opportunity to continue working under the terms and conditions of the expired collective bargaining labor agreement during the entire course of negotiations between the parties. Eramet has indicated that changes to the expired agreement are necessary and the major reason is financial. Eramet describes the necessary changes in a new agreement as major concessions for the members of USW Local 1-00639-01. Eramet has rejected all offers by the members of USW Local 1-00639-01 to continue working under the terms and conditions of the expired agreement (Transcript Pages 25,48-50,52-53,63,95-96,98,108,123,125,134,141-142,152-154).

USW Local 1-00639-01 has made various verbal offers to work under the terms and conditions of the expired collective bargaining agreement on September 20, 2006, and on October 11, 2006, and all those verbal offers have been rejected by Eramet (Transcript Pages 50-53,66-68,108,120,122-123,130-133,148-149,151-154,157-158).

Eramet has continued operating since the start of the work stoppage with salaried employees, temporary replacement workers, and retired salaried employees (Transcript Pages 25-27,102-104,154).

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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 are:

1. What is the reason for the unemployment of the claimants from Eramet?
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 reach 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 is found to be a lockout.

The issue to be resolved is whether the reason for the claimants' unemployment from Eramet was due to a lockout or a labor dispute other than 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.

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Furthermore, 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.

The evidence and testimony indicate the members of USW Local 1-00639-01 became unemployed when Eramet locked them out on August 27, 2006. Eramet was the first party to refuse to allow work to continue for a reasonable time under the terms and conditions of the expired collective bargaining labor agreement while negotiations continued. Instead, Eramet would only allow the members of USW Local 1-00639-01 to continue working under the terms and conditions of the last, best and final offer made by Eramet.

Specifically, the August 25, 2006, written offer to continue working made by USW Local 1-00639-01 is entirely consistent with Article XV Section 2, which governs a stoppage of work, of the expired contract. Article XV Section 2 contemplates what will occur when the agreement expires and says in pertinent part as follows:

...or upon the expiration thereof, the Union agrees to give the Company forty-eight (48) hours notice in advance of such stoppage (See Employer Exhibit 1 and pages 41-42 of Union Exhibit 2).

Furthermore, when asked by this Hearing Officer if he was aware of the 48-hour notice provision in the expiring agreement, Jerry Jenkins, an Eramet witness, explained as follows:

Well I've always been aware that the 48 hour notice has been in the contract and the way it's been used is during negotiations the union usually notifies us sometime during that process that they're exercising a 48 hour notice when we're reaching expiration (see pages 30-31 of the transcript).

Using the Bays standard, this Hearing Officer finds, based upon the totality of the testimony and evidence, that it was Eramet that first changed the status quo, while negotiations were ongoing, by refusing to allow the members of USW Local 1-00639-01 to continue working under the terms and conditions of the expired agreement on August 27, 2006, and thereafter.

Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a lockout which began August 27, 2006, and the lockout is continuing.

DECISION

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout which started on August 27, 2006. The claimants are not disqualified from receiving unemployment compensation benefits beginning with the week which includes August 27, 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 lockout involving USW Local 1-00639-01 and Eramet is continuing.



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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, 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 **10/26/2006**.

The twenty-one day appeal period ends on **11/16/2006**.



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