JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

UC EXPRESS (TALX) PO BOX 283 ST LOUIS, MO 63166-0283 0013809001	Date Issued 11/22/2006 Determination Identification Number 213741552-1 ODJFS Office Bureau of UC Program Services
Employer's Name THE GOODYEAR TIRE & RUBBER CO., (INC.)	UC Account Number 0013809001

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
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Telephone: (614) 752-8419
Web Page: www.state.oh.us/odjfs/labordispute

In The Matter Of A Labor Dispute Between

Union:	**United Steel Workers Local 2**	Employer:	**THE GOODYEAR TIRE & RUBBER CO., (INC.)**
Union:	**United Steel Workers Local 200**	Employer:	**THE GOODYEAR TIRE & RUBBER CO., (INC.)**
Union:	**United Steel Workers Local 843L**	Employer:	**THE GOODYEAR TIRE & RUBBER CO., (INC.)**
Docket No:	**000000000600033**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**11/13/2006**	Date of Issuance:	**11/22/2006**

APPEARANCES

Timothy Gallagher, Attorney at Law, represented the USW Locals. Peter Stamich, President of USW Local 2L, was a witness for the USW Locals.

Lee J. Hutton and Patrick H. Lewis, Attorneys at law, represented Goodyear. Richard Hense, Manager of Human Resources for Goodyear s Engineered Products Division, was a witness for Goodyear.

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

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 318 unemployment compensation benefits claims that relate to a labor dispute between USW Locals and Goodyear.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 13, 2006, in Akron, Ohio.

FINDINGS OF FACT

Goodyear is a manufacturer of tires, and various rubber applications including belts and hoses, at twelve (12) facilities throughout the United States. Goodyear has three (3) Ohio facilities located in Akron, Marysville, and St. Mary s (Transcript Pages 13,30,64).

The claimants in this matter are members of USW Locals and Goodyear employs approximately 470 of them with USW Local 2L at the Akron facility, approximately 330 of them with USW Local 843L at the Marysville facility, and approximately 310 of them with USW Local 200L at the St. Mary s facility (Transcript Pages 13,31-34).

The USW Locals had a collective bargaining labor agreement with Goodyear that was effective from August 17, 2003, and was set to expire on July 22, 2006 (Transcript Page 11).

At least forty (40) negotiation sessions have been held between the parties beginning on June 9, 2006, and continuing through at least November 14, 2006, as of the date of hearing (Transcript Pages 11,18-19,29,35-37,57-77,86-89,94-96/UnionExhibits A-G).

On July 14, 2006, the parties, in writing, agreed to extend the terms and conditions of the soon to expire collective bargaining labor agreement beyond July 22, 2006, on a day-to-day basis, subject to cancellation by either party upon seventy-two (72) hours written notice to the other party. The members of USW Locals continued to work under the terms and conditions of the expired agreement, while negotiations continued, into October of 2006. In the early afternoon of October 2, 2006, the USW Locals provided Goodyear with seventy-two (72) hours written notice of cancellation of the extension unless a tentative agreement was reached between the parties. Otherwise, the USW Locals would commence with a work stoppage at approximately 1:00 p.m. on October 5, 2006. On October 5, 2006, during the course of the negotiations, the USW Locals rejected Goodyear s proposals regarding a new agreement and commenced with a work stoppage, effective at 1:00 p.m., and began picketing. Goodyear would have allowed the members of the USW Locals to continue working under the terms and conditions of the expired agreement, while negotiations continued, and Goodyear continues to maintain that negotiation position as of the date of hearing (Transcript Pages 12-18,21-27,29,35,37-38,41-42,44-47,72-76,82-89,92-93,95/EmployeExhibits 1-5).

The main issues between the parties deal with the protection of facilities from potential closure during the life of a new agreement, retiree health care and medical coverage benefits, and wage grades (Transcript Pages 38-39,48,50-54,58-77,86-91/UnionExhibits A-G).

Goodyear has continued operating using salaried nonunion employees and temporary replacement workers (Transcript Pages 30,42-44,96).

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 Goodyear?

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 Goodyear 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 1:00 p.m. on October 5, 2006.

The testimony and evidence establish that Goodyear did not withhold work from the members of USW Locals in an effort to obtain more desirable terms in a new collective bargaining labor agreement. In fact, the testimony and evidence establish that Goodyear would allow the members of the USW Locals to continue working under the terms and conditions of the expired collective bargaining labor agreement while negotiations continue. At no time has Goodyear indicated an unwillingness to maintain the status quo.

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

Therefore, by applying the holding of the Zanesville case, it is clear that Goodyear did not lockout the members of USW Locals on October 5, 2006.

Using the Bays case standard, this Hearing Officer finds, based upon the totality of the testimony and evidence, that the members of the USW Locals first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on October 5, 2006. Goodyear s conduct did not indicate it would not maintain the status quo while negotiations continued.

Therefore, the members of USW Locals are unemployed due to a labor dispute other than a lockout that began October 5, 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 October 5, 2006, and it is continuing. The claimants are disqualified from receiving unemployment compensation benefits starting with the week which includes October 5, 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 **11/22/2006**.

The twenty-one day appeal period ends on **12/13/2006**.