



JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



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Table with employer information (KONGSBERG DRIVELINE SYSTEMS I, INC., OPR.), date issued (05/02/2008), determination identification number, ODJFS Office (Bureau of UC Program Services), and UC Account Number.

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
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Web Page: http://jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute Between

Union: United Steelworkers Local 1-524 Employer: KONGSBERG DRIVELINE SYSTEMS I, INC., OPR.
Docket No: 00000000800003 Hearing Officer: Jim Bubutiev
Date of Hearing: 04/28/2008 Date of Issuance: 05/02/2008

Appearances:

Jim Kerns, Staff Representative, represented Local 1-524.

Jeffrey R. Vlasek and Todd A. Dawson, Attorneys At Law, represented Kongsberg. Kellie Sterling, HR Generalist, was a witness for Kongsberg.

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 Ohio Department of Job and Family Services has received, to date, approximately 306 claims for unemployment benefits that relate to a labor dispute between Local 1-524 and Kongsberg.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on April 28, 2008, in Lima, Ohio.

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

FINDINGS OF FACT:

The claimants in this matter are members of Local 1-524 and were employed by Kongsberg in a facility located at 1265 Industrial Avenue in the County of Van Wert in Van Wert, Ohio (Transcript Page 12).

Kongsberg is a manufacturer of automotive parts. The Kongsberg facility in Van Wert, Ohio is the only location involved in this matter (Transcript Page 12).

Kongsberg employed about 370 individuals. Approximately 327 of them are also members of Local 1-524 (Transcript Page 12).

Local 1-524 had a three (3) year collective bargaining labor agreement with Kongsberg that expired on March 31, 2008 (Transcript Pages 17-18).

On or about April 2, 2008, the members of Local 1-524 voted to reject a Kongsberg proposal for a new agreement but were willing to continue working under the terms and conditions of the collective bargaining labor agreement that had expired on March 31, 2008. Although the members of Local 1-524 made an attempt to continue working the night of April 2, 2008, Kongsberg made a decision to lock them out. Kongsberg does not dispute the fact that the members of Local 1-524 have been locked out beginning April 2, 2008, and that the lockout is continuing.

However, Kongsberg asserts certain claimants should not be deemed eligible to receive unemployment compensation benefits for weeks in which they are receiving short-term disability payments or vacation pay. This Hearing Officer explained to legal counsel for Kongsberg that unemployment compensation benefits claim issues by certain claimants are not within the scope of this labor dispute hearing and a particular claimant's determination should be appealed separately from this labor dispute decision if Kongsberg chooses to do so (Transcript Pages 14-16, 18-28/Employer Exhibits 1-4).

Kongsberg has continued operating by using temporary replacement workers since the lockout began on April 2, 2008 (Transcript Pages 16-17).

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 central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment from Kongsberg?
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:

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(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 may be paid benefits for any week during which their 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 key issue to be resolved is whether the reason for the claimants' unemployment from Kongsberg 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 pre-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 134-135.

Furthermore, the Ohio Supreme Court case of *M. Conley Co.*

v. Anderson (2006) 108 Ohio St. 3d 252, favorably discussed *Bays*.

In this matter, the undisputed testimony and evidence indicate the members of Local 1-524 became unemployed when they were locked out beginning April 2, 2008, after voting to reject the Kongsberg proposal for a new agreement.

There was no evidence, documentation, or testimony to indicate that Kongsberg would have allowed the members of Local 1-524 to continue working under the terms and conditions of the expired agreement after April 2, 2008, while negotiations continued.

Therefore, by applying the holding from the *Zanesville* decision and the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the documentation, testimony and evidence, that Kongsberg locked out the members of Local 1-524, while negotiations were ongoing, on April 2, 2008, and that the lockout is continuing.

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Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter are unemployed due to a lockout which began April 2, 2008, and that the lockout is continuing.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a lockout at Kongsberg which began on April 2, 2008, and is continuing. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout pursuant to Section 4141.29 (D)(1)(a) of the Ohio Revised Code.

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 **05/02/2008**.

The twenty-one day appeal period ends on **05/23/2008**.

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