JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

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RUBBER ASSOCIATES INC. 1522 W TURKEYFOOT LAKE RD BARBERTON, OH 44203 0178684003	Date Issued 06/13/2008 Determination Identification Number 215650840-1 ODJFS Office Bureau of UC Program Services
Employer's Name RUBBER ASSOCIATES INC.	UC Account Number 0178684003

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:	**Schwarzwald & McNair LLP**	Employer:	**RUBBER ASSOCIATES INC.**
Docket No:	**000000000800005**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**06/03/2008**	Date of Issuance:	**06/13/2008**

Appearances

Timothy Gallagher, Attorney At Law, represented Local 880. Barbara J. Caruso, Linda Cheryl Richards, and Brian Schweihart were witnesses for Local 880.

Scott A. Lefelar, Attorney At Law, represented Rubber Associates. Kip Fiocca, was a witness for Rubber Associates.

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 51 claims for unemployment benefits that relate to a labor dispute between Local 880 and Rubber Associates.

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 June 3, 2008, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 880 and were employed by Rubber Associates at a facility located in Barberton, Ohio (Transcript Pages 13-14).

Rubber Associates is a custom rubber molder. The Rubber Associates facility in Barberton, Ohio is the only location involved in this matter (Transcript Pages 13-15).

Rubber Associates employed about 96 individuals. Approximately 57-65 of them are also members of Local 880 (Transcript Pages 14,126).

Local 880 had a three (3) year collective bargaining labor agreement with Rubber Associates that expired on January 31, 2007 (Transcript Pages 16,126-127,150/Union Exhibit 1).

Negotiation sessions for a new collective bargaining labor agreement between the parties began on December 11, 2006, and continued through May 5, 2008. Rubber Associates asserts that negotiations have reached an impasse. Local 880 asserts that negotiation sessions have not reached an impasse. Presently, there are no further negotiation sessions scheduled between the parties and neither party has contacted the other to schedule any. The main issues between the parties deal with wages and health care coverage costs (Transcript Pages 18-22,41-42,53,60-77,88-111,123,125-126,143-148/Employer Exhibits A-H,M-U/Union Exhibits 4-5,7).

Rubber Associates provided a final offer to Local 880, at the request of Local 880, on July 24, 2007. Local 880 voted to reject the final offer and to authorize a work stoppage on or about August 18, 2007.

However, Local 880 did not actually conduct a work stoppage at that time (Transcript Pages 26-28,80-86,133-134,187-188/Employer Exhibit J,K).

The parties did not agree to any formal extensions of the expiring collective bargaining labor agreement while negotiations continued but work continued under the terms and conditions of the expired collective bargaining labor agreement through May 11, 2008. Local 880 offered formal written extensions twice during negotiations but Rubber Associates declined to sign the extensions. On May 11, 2008, Rubber Associates implemented a new collective bargaining labor agreement which included concessionary changes in the terms and conditions of employment as compared to the expired collective bargaining labor agreement. On May 17, 2008, Local 880 voted to reject the implemented agreement and notified Rubber Associates that a work stoppage would begin on May 18, 2008. On May 18, 2008, a work stoppage began and has continued since then (Transcript Pages 17-18,31-37,113-116,127-129,134-136,143,151,237/Employer Exhibit V-X/Union Exhibits 2-3,6).

Rubber Associates has continued operating by using approximately 70 temporary replacement workers, since the work stoppage began on May 18, 2008, and with 2 or 3 individuals that have crossed the picket line, did not participate in the work stoppage at all, and are working under the implemented agreement (Transcript Pages 37-40,140-142).

Rubber Associates has not ever indicated, during the course of negotiations, that the business is or has been operating at a loss. Rubber Associates asserts that the implemented agreement is needed to stay competitive in the marketplace due to increased fuel and raw material costs and an inability to pass those costs to customers (Transcript Pages 47-52,118-121/Employer Exhibit Y).

ISSUES:

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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 Rubber Associates?

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. . .

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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 Rubber Associates 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 cessation of the

furnishing of work to employees or withholding of work from them in an

effort to get more desirable terms for the employer. The Court

further explained that the definition of a lockout did not circumscribe

all the manifestations of an alleged lockout situation and does not

confine a lockout to an actual physical closing of the place of

employment. Rather, The Court, quoting from Almada v. Administrator,

Unemployment Compensation Act, 137 Conn., 380 said that for there to be a lockout the conditions of further employment announced by the employer must be such that the employees could not reasonably be expected to accept them and they must manifest a purpose on the part of the employer to coerce his employees into accepting them or some other terms. The point is that, in order to constitute a lockout, the conduct of the employer in laying down terms must lead to unemployment inevitably in the sense that the employees could not reasonably be expected to accept the terms and, in reason, there was no alternative for them but to leave their work.

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 Oriti v. Board of Review (1983), 7 Ohio App. 3d 311, a collective bargaining contract between management and labor expired and the employees offered to continue working under the terms of the old contract while a new contract continued to be negotiated. The employer refused to allow the employees to continue working on this basis and a work stoppage began at the expiration of the old contract. The Court of Appeals held that where employees offer to continue working under the terms of a preexisting collective bargaining agreement, pending a final settlement of the labor dispute, then the failure of the employer to accept such an offer constitutes a lockout unless the employer demonstrates it had a compelling reason for failing to agree to such an extension of the contract. The compelling reason must be of a nature that to require the employer to agree to the extension would be unreasonable under the circumstances.

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. The Supreme Court, in a direct reference to Oriti, also noted that an employer would need to have a compelling reason to refuse to maintain 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.

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

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

In this matter, a review of the testimony and exhibits indicates the members of Local 880 became unemployed when they were locked out beginning May 18, 2008, after voting to reject Rubber Associates implemented agreement which had been made effective May 11, 2008.

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 Rubber Associates locked out the members of Local 880, while negotiations were ongoing, on May 18, 2008, and that the lockout is continuing.

A reasonable person could not be expected to continue working under the terms and conditions of employment implemented by Rubber Associates on May 11, 2008. The only alternative Local 880 had was to leave work.

Although Rubber Associates most certainly did maintain the status quo for a reasonable period of time while negotiations continued, more than 15 months beyond the expiration of the original collective bargaining agreement, one party can not declare an impasse unilaterally.

Furthermore, applying the holding from the Oriti decision, this Hearing Officer finds that Rubber Associates did not provide a compelling reason to deviate from the status quo.

Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter are unemployed due to a lockout which began May 18, 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 Rubber Associates which began on May 18, 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 **06/13/2008**.

The twenty-one day appeal period ends on **07/07/2008**.

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