

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

JFS-83000 03/13/2015



A35214134B0075675001

UC EXPRESS PO BOX 182366 COLUMBUS, OH 43218	Date Issued 05/14/2015
	Determination Identification Number
	ODJFS Office Bureau of UC Program Services
Employer's Name A.P. GREEN REFRACTORIES, INC.	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
Telephone: (614) 752-8419
Web Page: <http://jfs.ohio.gov/labordisputes>

In The Matter Of A Labor Dispute Between

Union: **United Steelworkers Local 2324** Employer: **A.P. GREEN REFRACTORIES, INC.**
Docket No: **000000001500012** Hearing Officer: **Jim Bubutiev**
Date of Hearing: **05/04/2015** Date of Issuance: **05/14/2015**

Appearances

Randy Basham, Staff Representative for the United Steelworkers, was a witness for Local 2324-05. Thomas Kircher, Attorney At Law, represented Local 2324-05.

Jeff Smith, Office Manager, was a witness for A.P. Green. John Pierce, Plant Manager, represented A.P. Green.

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.

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

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 25 or more individuals relates to a labor dispute. The Department has received approximately 38 claims for unemployment compensation benefits relating to this matter.

All interested parties were duly notified of this hearing pursuant to Ohio law. This hearing was held on May 4, 2015, in Chillicothe, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 2324-05 and are employed by A.P. Green at a facility in Oak Hill, Ohio (Transcript Pages 12-13).

A.P. Green employs approximately 62 people and about 43 are members of Local 2324-05 (Transcript Pages 14,28).

Local 2324-05 had a five year collective bargaining labor agreement with A.P. Green that expired at midnight on April 15, 2015 (Transcript Pages 15-16,29-30,49,51/UnionExhibit G).

Negotiations for a new collective bargaining agreement began on April 1, 2015 and continued through April 15, 2015. The parties agree an impasse to negotiations has not been reached. Local 2324-05 asserts the main issues between the parties include wages, a pension cap, and the 401(k) plan (Transcript Pages 16-17,19-20,47-50,52/UnionExhibit C).

The parties agreed to an extension of the collective bargaining agreement until 2:00 PM on April 16, 2015 to allow Local 2324-05 members to vote on A.P. Green s Final For Settlement offer for a new collective bargaining agreement. The members of Local 2324-05 voted 28 to 14 to reject A.P. Green s Final For Settlement offer (Transcript Pages 16,21-22,28-29,31-32,34,37-38,46/UnionExhibits A,E).

A.P. Green locked out the members of Local 2324-05 sometime between 6:30 PM and 11:00 PM on April 15, 2015. A.P. Green was aware that Local 2324-05 members were willing to continue working under the terms and conditions of the expired agreement while negotiations continued (Transcript Pages 17-19,22-23,25,32-36,39-40,42-44,48-49,54/UniorExhibits B,C,F).

A.P. Green has not hired any replacement workers during the lockout (Transcript Pages 23,30-31).

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 can be stated thus:

1. What is the reason for the claimants' unemployment from A.P. Green?
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

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



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 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 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 first issue to be resolved is whether the reason for the unemployment of the claimants from A.P. Green 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 *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.

Furthermore, the more recent Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discussed *Bays*.

In this matter the evidence and testimony indicate the claimants became unemployed when A.P. Green made the decision to lock them out beginning April 15, 2015.

Applying the Zanesville definition of a lockout, the facts show that a lockout was caused by A.P. Green in an attempt to gain more favorable terms in a new agreement.

Applying the Bays legal standard, this Hearing Officer finds, based upon a review of the testimony and evidence, that A.P. Green changed the status quo when the decision was made to lockout the members of Local 2324-05, beginning on April 15, 2015, rather than allowing them to continue working while negotiations continued. The members of Local 2324-05 at all times indicated a willingness to maintain the status quo while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began on April 15, 2015 and which is continuing.

DECISION:

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



A35214134B0075675002

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at A.P. Green. The claimants are not disqualified from receiving unemployment compensation benefits beginning April 15, 2015 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 between Local 2324-05 and A.P. Green is 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, Ohio Dept. Of Job And Family Services, PO Box 182299, 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. If unemployed, claimants should continue to file weekly claims for benefits while under appeal.

This decision was mailed on **05/14/2015**.

The twenty-one day appeal period ends on **06/04/2015**.



A35214134B0075675002

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