OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

DECISION ON LABOR DISPUTE ISSUE

JFS-83000 09/08/2011

A352006 03B0031878001

COOPER TIRE & RUBBER COMPANY (INC.) 701 LIMA AVE FINDLAY, OH 45840-2315 0046689004	Date Issued 12/21/2011 Determination Identification Number 223915273-1 ODJFS Office Bureau of UC Program Services
Employer's Name COOPER TIRE & RUBBER COMPANY (INC.)	UC Account Number 0046689004

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

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In The Matter Of A Labor Dispute Between

Union:	**United SteelWorkers Local 207L**	Employer:	**COOPER TIRE & RUBBER COMPANY (INC.)**
Docket No:	**000000001100015**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**12/12/2011**	Date of Issuance:	**12/21/2011**

Appearances

Timothy Gallagher, Attorney at Law, represented United Steelworkers Local 207L (Local 207L). Patrick Gallagher, Director of United Steelworkers District 1 Sub-District 4, was a witness for Local 207L.

Cooper Tire did not make an appearance. However, Cooper Tire did submit an official statement which was read into and accepted into the record as Employer Exhibit A.

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.

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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 has received over 1,000 claims for unemployment compensation benefits relating to this matter.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 12, 2011, in Bowling Green, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 207L and are employed by Cooper Tire in Findlay, Ohio.

Cooper Tire is a producer of passenger truck tires. The labor dispute is only at the facility located in Findlay, Ohio (Transcript Page 17).

Cooper Tire employs an estimated 1,200 individuals, and approximately 1,050 are members of Local 207L (Transcript Page 17).

Local 207L had a collective bargaining labor agreement with Cooper Tire that was adopted December 8, 2008 and expired at midnight October 31, 2011 (Transcript Pages 19,32,57/Union Exhibit 4).

On September 7, 2011 the parties began negotiations for a new agreement. Approximately 45 negotiation sessions were held through November 28, 2011. The main issues keeping the parties from reaching a new agreement include matters pertaining to wages, a new work performance standards proposal, medical and health care coverage benefit costs, pension matters, and a proposed bonus and profit sharing plan (Transcript Pages 21-24,37,50-52).

Local 207L asserts that on November 23, 2011 Cooper Tire made it clear that unless a new agreement was in place a lockout would occur. Therefore, the Local 207L negotiating committee decided to take the Cooper Tire offer to the membership for a vote. On November 27, 2011 the members of Local 207L voted to reject an offer for a new agreement made by Cooper Tire (Transcript Pages 21,28-29,32-33,44-45).

Three (3) negotiation sessions were held after November 28, 2011 through December 5, 2011. Another negotiation session was scheduled to occur on December 13, 2011, the day after this hearing (Transcript Page 25).

During the entire course of negotiations Local 207L has not had members vote to authorize a strike. Neither the United Steelworkers nor Local 207L have authorized a strike (Transcript Pages 31,40,49-50).

Local 207L asserts that profits at Cooper Tire have increased since January 1, 2009 and that Cooper Tire has never asserted the business is losing money during the entire course of negotiations (Transcript Pages 42-43,51).

Local 207L asserts that on October 18, 2011 Cooper Tire indicated no extensions to the soon to expire agreement would be granted. On October 31, 2011 Local 207L brought up the possibility of a thirty (30) day extension but Cooper Tire did not indicate any interest in an extension. The members of Local 207L have always been willing to continue working under all the terms of the expired agreement and communicated that intention to Cooper Tire via electronic mail. There have never been any formal extensions agreed to between the parties (Transcript Pages 19-20,26-27,34,37-38,41-42).

Although the parties made no formal agreement to extend the expired collective bargaining agreement, the members of Local 207L continued working for Cooper Tire under all the terms and conditions of the expired agreement from November 1, 2011 through November 21, 2011 (Transcript Pages 35-36).

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Local 207L asserts that on November 22, 2011 Cooper Tire escorted a licensed boiler operator, and member of Local 207L, out of the Findlay facility and instructed another licensed boiler operator, also a member of Local 207L, not to report to work that day (Transcript Pages 36-37).

November 21, 2011 was the last day the members of Local 207L actually worked for Cooper Tire at the Findlay facility. Cooper Tire deemed the days from November 22, 2011 through November 27, 2011 to be inventory days. Cooper Tire decided to lock out the members of Local 207L on November 28, 2011 (Transcript Pages 20-21,45-49/Union Exhibit 1 and 2).

Local 207L asserts that on November 28, 2011 Cooper Tire offered a new one (1) year agreement. Cooper Tire asserts that on November 28, 2011 a one (1) year extension of the expired agreement was offered (Transcript Pages 27-28,33-34,53-54/EmployerExhibit A/Union Exhibit 1 and 2).

Cooper Tire has continued operating since the lockout began on November 28, 2011 using nonunion personnel and replacement workers. Local 207L has no knowledge about if the replacement workers are considered temporary or permanent in nature (Transcript Pages 29-30).

Local 207L is picketing at the Cooper Tire facility in Findlay. The signs being carried by the picketers say a lockout is occurring (Transcript Pages 30,55-56/Union Exhibit 3).

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 Cooper Tire?

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:

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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 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 first issue to be resolved is whether the reason for the unemployment of the claimants from Cooper Tire was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when Cooper Tire made the decision to lock them out of the Findlay facility beginning on November 28, 2011.

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

In the instant case the evidence and testimony leads to only one conclusion. The members of Local 207L were locked out beginning November 28, 2011.

Whether the legal standard of the Zanesville definition of a lockout is used or the legal standard of the Bays status quo test is used the end result remains the same.

Using the Zanesville definition of a lockout, the facts indicate that this is a physical lockout by Cooper Tire to gain more favorable economic terms in a new agreement. This is a clear example of a lockout as defined in Zanesville. These facts are not in dispute. See Employer Exhibit A and Union Exhibit 2.

Using the Bays standard, this Hearing Officer finds, based upon a complete review of the testimony and evidence, that Cooper Tire was the first to change the status quo when it decided to lockout the members of Local 207L, beginning on November 28, 2011, instead of allowing the claimants to continue working while negotiations continue. The conduct of Local 207L indicates a continuing willingness to maintain the status quo while negotiations continued.

Clearly, the November 28, 2011 Cooper Tire Memorandum of Agreement included changes to the terms and conditions of the expired collective bargaining labor agreement. Thus, it proposed a change to the status quo.

Specifically, the Cooper Tire Memorandum of Agreement explicitly included all agreed upon non-economic tentative agreements that were reached between the parties during negotiations in 2011. See Union Exhibit 1.

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Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case are unemployed due to a lockout which began on November 28, 2011, 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 at Cooper Tire in Findlay. The claimants are not disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which November 28, 2011 occurred 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 207L and Cooper Tire began on November 28, 2011 and it 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 weeky claims for benefits while under appeal.

This decision was mailed on **12/21/2011**.

The twenty-one day appeal period ends on **01/11/2012**.

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