JFS-83000 06/26/2008

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

SIG ACQUISITION CORP. 197 W MARKET ST STE 2B WARREN, OH 44481 1433996006	Date Issued 12/04/2008 Determination Identification Number 216426938-1 ODJFS Office Bureau of UC Program Services
Employer's Name SIG ACQUISITION CORP.	UC Account Number 1433996006

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

In The Matter Of A Labor Dispute Between

Union:	**United Steel Workers Local 2243**	Employer:	**SIG ACQUISITION CORP.**
Docket No:	**000000000800018**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**11/24/2008**	Date of Issuance:	**12/04/2008**

APPEARANCES

James Roberts and Elizabeth Farbman, Attorneys at Law, represented Concord Steel. David Gruber, Plant Operations Manager, and Caney Fluharty, Maintenance Manager, were witnesses for Concord Steel.

Kirk Davies, Staff Representative for the United Steelworkers of America District 1, represented USW Local 2243-04. Russell Fusselman, Claimant, and Henry Hurst, President of USW Local 2243, were witnesses for USW Local 2243-04.

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 86 unemployment compensation benefits claims that relate to a labor dispute between USW Local 2243-04 and Concord Steel. All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 24, 2008, in Akron, 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 USW Local 2243-04 and are employed by Concord Steel in Warren, Ohio.

Concord Steel is in the steel processing business and is mainly a producer of counter weights for the mobile crane, mobile lift, and elevator industries (Transcript Page 13).

Concord Steel employs approximately 108 individuals and about 100 of them are members of USW Local 2243-04 (Transcript Pages 13-14,105).

USW Local 2243-04 had a three year collective bargaining labor agreement with Concord Steel that was effective through August 31, 2008. The parties agreed to a sixty day extension of the agreement through October 31, 2008 (Transcript Pages 15-16,26-27,112,114-115/EmployerExhibit A).

Approximately seven negotiation sessions were held between the parties in an effort to agree to a new collective bargaining labor agreement. The negotiation sessions began in August of 2008, a couple of weeks before the agreement was to expire, through October 31, 2008, when the extension of the agreement expired. A negotiation session which included a federal mediator was held on or about November 13, 2008, and another was scheduled for December 2, 2008 (Transcript Pages 16-17,21-22,94-95,97,103,108-109).

The main issues between the parties include contract language dealing with outsourcing, health insurance costs, and attendance policy (Transcript Pages 16-17,97).

A work stoppage began on October 31, 2008, at about 10:45 p.m., after Concord Steel made the following announcement:

The Collective Bargaining Agreement with the United Steelworkers has expired. There is no new agreement. As a result, the Company has decided to secure the plant and lockout the union workforce until further notice. You should not report for work on Monday, November 3rd. Contact your Union Representative for additional information.

Concord Steel asserts the members of USW Local 2243-04 were locked out because the parties had reached the end of the agreed upon extension, absence percentages had increased in October of 2008, and that equipment in the plant was being intentionally damaged and/or threatened to be tampered with. Specifically, an air compressor was damaged due to an intentional plugging of the water drain pipe, graffiti had been spray painted on a bathroom wall, and alarm system sensors had been deliberately smashed. However, Concord Steel acknowledges no police reports were ever filed regarding the damages or the graffiti, and Union representatives were never told anything about the damages or graffiti prior to the lockout. In addition, Concord Steel did not inform Union representatives that the increased absence percentages were the reason for the lockout. Also, concerned Union members informed Concord Steel about the damages, and it was not being condoned or sanctioned by the Union (Transcript Pages 17-21,32-33,36-43,47-52,56-63,67-71,74-76,85-86,88-90,102-104,108-109/Employer Exhibits D-J/Union Exhibit III).

During the entire course of negotiations all Concord Steel offers for a new agreement have been concessionary, as compared to the expired agreement, while all USW Local 2243-04 offers have been improvements (Transcript Pages 44-47,97-98).

The last three years have been some of the better years in company history in terms of profitability. However, at the time of the work stoppage business was slow (Transcript Pages 45,77-78).

Concord Steel has a few supervisors taking year end inventory at the Warren, Ohio location but there is no production work going on and no replacement workers have been hired. Any production work has been transferred to locations in Illinois and Pennsylvania (Transcript Pages 20,34-35,106).

The members of USW Local 2243-04 voted to authorize a strike sometime prior to the expiration of the collective bargaining labor agreement. However, USW Local 2243-04 has never informed Concord Steel that a strike would actually occur, or communicated an intent to strike on some specific date, during the entire course of negotiations (Transcript Pages 24,90-92,110-112).

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On October 31, 2008, USW Local 2243-04 offered to continue working under the terms and conditions of the expiring collective bargaining labor agreement while negotiations continued on a new agreement. The offer included a 72-hour notice of intent to strike should the members of USW Local 2243-04 later decide to strike. Concord Steel verbally rejected the offer asserting that the 72-hour notice of intent to strike was unacceptable and unreasonable. USW Local 2243-04 asserts Concord Steel simply imposed a lockout and never offered any further extension of the expiring agreement past October 31, 2008, and that USW Local 2243-04 has always been willing to continue working under the terms and conditions of the expired agreement while negotiations continue (Transcript Pages 28-32,99-102,105-106,116-117/EmployerExhibit C,J/Union Exhibit III).

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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 unemployment of the claimants

from Concord Steel?

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 their unemployment is due to a labor dispute other than a lockout.

Thus, in order to reach 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 issue to be resolved is whether the reason for the claimants' unemployment from Concord Steel was due to a lockout or a labor dispute other than 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 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 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.

The evidence and testimony indicate the members of USW Local 2243-04 became unemployed when Concord Steel locked them out on October 31, 2008. Concord Steel was the first party to refuse to allow work to continue for a reasonable time under the terms and conditions of the expired collective bargaining labor agreement while negotiations continued.

Using the Bays standard, this Hearing Officer finds, based upon the totality of the testimony and evidence, that it was Concord Steel that first changed the status quo, while negotiations were ongoing, by refusing to allow the members of USW Local 2243-04 to continue working under the terms and conditions of the expired agreement on October 31, 2008, and thereafter. USW Local 2243-04 indicated a willingness to maintain the status quo and Concord Steel did not. If the 72-hour notice of intent to strike that Local 2243-04 attached to its offer to continue working under the status quo was truly unacceptable and unreasonable then Concord Steel had the ability to offer a reasonable and set time period to maintain the status quo. Instead, Concord Steel decided to lockout USW Local 2243-04.

Using the Oriti standard, the assertion by Concord Steel that there was a compelling reason for failing to agree to extend the status quo because of equipment damage, graffiti, and increased absence percentages, simply lacks merit. If equipment damage, graffiti, and increased absence percentages were truly the reason for the lockout then USW Local 2243-04 would have been informed of those reasons when the lockout was announced on October 31, 2008. Concord Steel acknowledged at hearing that what occurred was based upon the random acts of a few and was not being orchestrated or approved of by USW Local 2243-04.

Additionally, if the damage and graffiti was of such a magnitude that a lockout was truly necessary then surely Concord Steel would have contacted local authorities about it and, at minimum, filed police reports.

Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a lockout which began October 31, 2008, 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 which started on October 31, 2008. The claimants are not disqualified from receiving unemployment compensation benefits 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 involving USW Local 2243-04 and Concord Steel is continuing.

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

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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 **12/04/2008**.

The twenty-one day appeal period ends on **12/26/2008**.

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