JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION

DECISION ON LABOR DISPUTE ISSUE

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ADP/UC EXPRESS PO BOX 66744 ST LOUIS, MO 63166-6744 0015833015	Date Issued 12/07/2007 Determination Identification Number 214945025-1 ODJFS Office Bureau of UC Program Services
Employer's Name INTERNATIONAL TRUCK & ENGINE CORPORATION	UC Account Number 0015833015

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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In The Matter Of A Labor Dispute Between

Union:	**United Auto Workers Local 402**	Employer:	**INTERNATIONAL TRUCK & ENGINE CORPORATION**
Docket No:	**000000000700026**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**11/27/2007**	Date of Issuance:	**12/07/2007**

APPEARANCES

Kyle B. Johansen, Attorney at Law, represented International. Carey George, Supervisor of Employment, was a witness for International.

William J. Steele, Attorney At Law, represented the UAW Locals. John H. Eblin, Elected Bargaining Chairman for UAW Local 402, and Steve Overture, President of Local 658, were witnesses for the UAW Locals.

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

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 164 unemployment compensation benefits claims that relate to a labor dispute between the UAW Locals and International in Springfield, Ohio. All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 27, 2007, in Springfield, Ohio.

FINDINGS OF FACT

The claimants in this matter are members of the UAW Locals and are employed by International in Springfield, Ohio.

International is a manufacturer of medium duty trucks and has numerous locations outside of Ohio and one location in Ohio which is known as the Springfield Assembly Plant. This decision covers only the Ohio location and only approximately 210 to 220 claimants that are members of the UAW Locals that were working for International through October 23, 2007, at which time a work stoppage began (Transcript Pages 23,26,30-32,40,98,106-109/EmployerExhibit 2).

International employs approximately 1,300 to 1,400 individuals and about 1,000 of them are members of UAW Local 402, and about 100 of them are members of Local 658 (Transcript Pages 26-27,99,141-142).

The UAW Locals had a national collective bargaining labor agreement with International that was effective until 12:01 a.m. on October 1, 2007 (Transcript Pages 24-25,28-29,46-47,100,145,149-150/UnionExhibit J).

The parties did not agree to any extensions of the agreement prior to expiration on 12:01 a.m. on October 1, 2007. The UAW Locals proposed an extension after expiration which was not accepted by International. There were approximately 210 to 220 members of the UAW Locals that continued to work under the general rules of the expired agreement after October 1, 2007, through October 23, 2007. These general rules included such things as wages, benefits, and hours of work. However, these 210 to 220 members of the UAW Locals that continued working after October 1, 2007, through October 23, 2007, were not working under all the terms and conditions of the expired agreement including such things as the Navistar Employment Target Program (NET) and the Supplemental Unemployment Benefit Plan (SUB) (Transcript Pages 29-32,37-38,40,44,48-51-53,61-65,67-71,89-90,102-104,118-119,129-133,138,142-145/EmployeExhibit 2/Union Exhibits B,C,D,I).

Negotiation sessions were held between the parties in an effort to agree to a new national collective bargaining labor agreement. The sessions were held during April and May of 2006 and resulted in a tentative agreement which was rejected by a vote of UAW members from across the nation. Further negotiations were then held beginning August 27, 2007, through October 23, 2007, without any agreement being reached. A new round of negotiations began November 26, 2007, and are continuing as of the date of this hearing (Transcript Pages 32-33,35-37,101-102,114,135-136).

The members of the UAW Locals voted to authorize a strike June 25, 2007, and notified International of the authorization. The members of the UAW Locals then working for International began a work stoppage on October 23, 2007. The UAW Locals assert the work stoppage began because of the issues surrounding the lack of NET and SUB on October 1, 2007, and after, outsourcing issues, and because International has not provided all information requested by the UAW at negotiation sessions (Transcript Pages 106-114,124).

The main issues between the parties include work rules, wages, and benefits which include supplemental unemployment benefits, health and life insurance benefits, and other various types of benefits (Transcript Pages 33-37,101).

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International has continued operating since the start of the work stoppage with management employees and contract management employees. International has not hired any replacement workers (Transcript Pages 42,115).

The UAW Locals assert the claimants did not work under all the terms and conditions of the expired agreement from October 1 2007, through October 23, 2007. This assertion is made because NET and SUB was not available to anyone on and after October 1, 2007, and because outsourcing of work to International locations in Texas and Mexico was being done in a way that did not follow the usual process (Transcript Pages 58-61,71-

72,87,104-106,119-120,131-133,142,144-145/UniorExhibits A,B,C,D,I).

The UAW Locals assert that they would continue to work under all the terms and conditions of the expired agreement (Transcript Page 136/Union Exhibit I).

International asserts NET and SUB expired when and because the agreement expired on October 1, 2007, by the terms of the agreement itself (Transcript Pages 68-71,126-128/EmployerExhibit J).

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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 International?

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:

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 International was due to a lockout or a labor dispute other than 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 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, last year the Ohio Supreme Court case of M. Conley Co. v. Anderson (2006) 108 Ohio St. 3d 252, favorably discussed the Bays case and the status quo test.

A review of all the evidence, exhibits, and testimony indicates that the claimants became unemployed when International effectively locked them out on October 23, 2007, because of the ongoing change in the terms and conditions of employment instituted on October 1, 2007, and thereafter.

International 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. Instead, International was the first party to break the status quo by only allowing the members of UAW Locals to continue working without NET and SUB (see Union Exhibits B,C,D). Specifically, International s assertion that NET and SUB ended on their own terms when the agreement expired on October 1, 2007, is an unconvincing argument since it contradicts the spirit and the letter of the status quo test first articulated in the Bays decision.

Furthermore, the expired agreement allows International to continue to provide NET and SUB if International would choose to do so (see Union Exhibit J Blue Book Page 41 VII Duration which says the parties can extend the terms of the Contract and the NET Program; and Green Book Page 413 Paragraph 7 which includes, in part, the following language: this contract may be. . . continued, and Page 413 Paragraph 8 which states: termination of this Contract shall not have the effect of automatically terminating the Plan, and Page 479 Paragraph 312 where it states in part: Upon the termination of the Main Labor Contract, the Company shall have the right to continue the Plan in effect. . .).

Additionally, it is undisputed in all the witness testimony from both parties that members of UAW Locals laid off by International on and after October 1, 2007, do not receive NET and SUB while anyone laid off prior to October 1, 2007 does receive NET and SUB. This constitutes a clear change of essential and important terms and conditions of employment which, thereby, violates the status quo test.

Using the Bays standard, this Hearing Officer finds that it was International that first changed the status quo, while negotiations were ongoing, by refusing to allow the members of UAW Locals to continue working under the terms and conditions of the expired agreement on October 1, 2007, and thereafter.

Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a lockout which began October 23, 2007, and the lockout is continuing.

DECISION

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It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout which started on October 23, 2007. The claimants are not disqualified from receiving unemployment compensation benefits beginning with the week which includes October 28, 2007, 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 the UAW Locals and International 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, 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 **12/07/2007**.

The twenty-one day appeal period ends on **12/28/2007**.

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