

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
(614)752-8418

In The Matter Of A Labor Dispute
Between:

AK Steel Corporation	:	
(AK Steel)	:	
	:	
Employer	:	
	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
	:	Date of Hearing:
Armco Employees Independent	:	March 20, 2006
Federation, Inc.	:	
(AEIF)	:	
	:	Date of Issuance:
Union/Claimants	:	March 30, 2006

APPEARANCES

Robert Mitchell and Emily Supinger, Attorneys At Law, represented AEIF. Brian Daley, President of the AEIF, was a witness for AEIF. George Yund, Attorney At Law, represented AK Steel.

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 2,401 unemployment compensation benefits claims that relate to a labor dispute between the AEIF and AK Steel in Middletown, Ohio.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on March 20, 2006, in Springdale, Ohio.

FINDINGS OF FACT

AK Steel operates a fully integrated steel mill in Middletown, Ohio. Finished product from the mill is used mostly in the automotive and appliance industries (Transcript Page 12).

AK Steel employs approximately 3,500 people at the Middletown mill and about 2,650 to 2,687 of them are also members of the AEIF. The claimants in this matter are members of the AEIF and work for AK Steel in the Middletown mill (Transcript Pages 12-13,33-35/Union Exhibit 2).

The AEIF had a collective bargaining labor agreement with AK Steel that was effective from November 01, 1999, through February 28, 2006 (Transcript Pages 15,33/Union Exhibit 1).

Negotiation sessions for a new collective bargaining labor agreement began on November 27, 2005, and have continued through March 10, 2006. A total of about thirty-six (36) negotiation sessions have been held between the parties during that time (Transcript Pages 18-19,20,26-28).

The members of AEIF voted to authorize a strike in a vote taken on February 17 and 18, 2006. However, the AEIF negotiation committee did not call upon the AEIF members to conduct a strike against AK Steel and AK Steel was not notified that a strike action was imminent. The AEIF

did not conduct a strike against AK Steel (Transcript Pages 28-30,37,44).

The parties did not agree to extend the terms and conditions of the then existing collective bargaining labor agreement beyond February 28, 2006. On February 28, 2006, the AEIF verbally offered to continue to work under the terms and conditions of the expiring agreement while negotiations continued. Furthermore, the AEIF continues to make that same offer to continue to work during negotiations. However, AK Steel has declined to accept the AEIF offer (Transcript Pages 15,23-24,32,41-43).

The main issues between the parties deal with several economic and non-economic matters. Specifically, grievance procedures, contracting work out, health insurance benefits, wages, safety and health at work, and pensions are all at issue (Transcript Pages 20-21).

There is no factual dispute that AK Steel locked out the members of the AEIF beginning on March 01, 2006. The AEIF members were verbally told by AK Steel supervisory staff not to enter upon AK Steel property after February 28, 2006, and those members of the AEIF working late into the evening on that day were escorted off the premises (Transcript Pages 15-18,21-24,36-43/Union Exhibit 3).

AK Steel has continued to operate, since February 28, 2006, with salaried personnel, outside contractors, and temporary replacement workers (Transcript Pages 24-25,30-31).

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 are:

1. What is the reason for the claimants' unemployment from AK 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 the individual's 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 first issue to be resolved is whether the reason for the claimants' unemployment from AK Steel 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 *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 *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.

The recent 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 testimony and evidence in this case indicate the claimants became unemployed when they were locked out by AK Steel on March 01, 2006.

The testimony and evidence establish that AK Steel is withholding work from the members of AEIF in an effort to obtain more desirable terms in a new collective bargaining labor agreement. The AEIF members are willing to continue working under the terms and conditions of the

collective bargaining labor agreement that expired after February 28, 2006. This was demonstrated when the AEIF verbally offered to continue working under the terms and conditions of the expiring collective bargaining labor agreement on February 28, 2006, as negotiations continued. AK Steel did not accept the offer.

The AEIF and AK Steel are involved in a labor dispute that has resulted in AK Steel locking out the AEIF members in an effort to obtain terms that are more desirable in a new collective bargaining labor agreement.

Therefore, by applying the holding of the Zanesville case, it is clear that AK Steel locked out the members of AEIF on March 01, 2006.

Using the *Bays* case standard, this Hearing Officer finds, based upon the testimony and evidence, that AK Steel changed the status quo, while negotiations were ongoing, when AK Steel decided to lockout the AEIF on March 01, 2006. The AEIF's conduct did not indicate an unwillingness to maintain the status quo while negotiations continue.

Therefore, the AEIF members are unemployed due to a lockout which began March 01, 2006, and which is continuing.

DECISION

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout which began March 01, 2006, and which is continuing. The claimants are not disqualified from receiving unemployment compensation benefits pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

THIS DECISION APPLIES TO THE INDIVIDUAL WHOSE NAME AND ADDRESS APPEARS ON THE ENVELOPE CONTAINING THIS DECISION.

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, BY MAIL TO 145 SOUTH FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299, OR BY FAX TO (614) 752-8862, MAY BE FILED BY ANY INTERESTED PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THIS 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 IS 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 MARCH 30, 2006.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS APRIL 20, 2006.