# OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

## OFFICE OF UNEMPLOYMENT COMPENSATION

# DECISION ON LABOR DISPUTE ISSUE

JFS-83000 03/13/2009

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| SHEAKLEY UNISERVICE<br>1 SHEAKLEY WAY<br>CINCINNATI, OH 45246-3778<br>1270988003 | Date Issued<br>05/27/2011<br>Determination Identification Number<br>222948817-1<br>ODJFS Office<br>Bureau of UC Program Services |
| Employer's Name<br>INTERNATIONAL FIBER CORPORATION | UC Account Number<br>1270988003 |

**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**
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**In The Matter Of A Labor Dispute Between**

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| Union: | **Teamsters Local 957** | Employer: | **INTERNATIONAL FIBER CORPORATION** |
| Docket No: | **000000001100007** | Hearing Officer: | **Jim Bubutiev** |
| Date of Hearing: | **05/17/2011** | Date of Issuance: | **05/27/2011** |

Appearances

John Doll, Attorney at Law, represented General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees Local 957 (Local 957). Donald Minton, Jeffrey Armstrong, and Nathan Snapp were witnesses for Local 957.

Felix Wade, Attorney at Law, represented IFC. Kirsten Lenartowich was a witness for IFC.

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. 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.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on May 17, 2011, in Springfield, 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 Local 957 and are employed by IFC in Urbana, Ohio.

IFC manufactures a cellulose fiber ingredient used in food, pharmaceutical, and industrial products. The labor dispute is only at the facility located in Urbana, Ohio (Transcript Page 18).

IFC employs an estimated 115 individuals, and approximately 94 are members of Local 957 (Transcript Page 19).

Local 957 had a collective bargaining labor agreement with IFC that was effective for 4 ½ years and expired at midnight February 12, 2011. Local 957 offered a written extension of the soon to expire agreement but it was rejected by IFC. From February 13, 2011 through April 30, 2011 the members of Local 957 continued to work for IFC on a day to day basis under all the terms and conditions of the expired agreement with the exception that IFC was no longer deducting union dues from the paychecks of Local 957 members (Transcript Pages 20-22,37,101-104/UnionExhibit A).

A work stoppage began in the early afternoon of April 30, 2011 when IFC walked out the members of Local 957 working that day at the Urbana facility and put all the members of Local 957 on paid furlough. On the afternoon of May 3, 2011 IFC decided to commence with a lockout of all the members of Local 957 without pay. IFC hired uniformed officers of the local County Sheriff s Office to be at the Urbana facility 24 hours a day starting on April 30, 2011 for security coverage purposes and to stop any member of Local 957 from attempting to return to work (Transcript Pages 29-31,34-35,69-70,135,137-141/EmployerExhibit 6 and 7).

Negotiations began for a new agreement between the parties on December 20, 2010 and continued through April 27, 2011. No further negotiations had been scheduled between the parties as of the date of this hearing. The main issues that have kept the parties from reaching a new agreement include matters pertaining to wages, health care coverage benefit costs, overtime and premium rates, and what IFC terms toll processing and Local 957 terms the subcontracting of work (Transcript Pages 23-24,37,50-51,53,122-125,158).

IFC considers what it terms a final proposal of a new agreement to be superior to the expired agreement while Local 957 considers it to be concessionary when compared to the expired agreement (Transcript Pages 26-29,120).

IFC asserts impasse had been reached after the April 27, 2011 negotiation session. Local 957 asserts impasse has not been reached and that it is willing to continue working under the terms and conditions of the expired agreement while negotiations for a new agreement continue. IFC asserts the paid furlough starting on April 30, 2011 and the unpaid lockout beginning on May 3, 2011 was done because the stance taken by Local 957 during negotiations had become unresponsive and unreasonable. Further, IFC asserts that on April 27, 2011 a comment was made by a member of the Local 957 negotiating committee to the effect that if IFC is not respecting the employees then how can the employees respect the product which IFC considered to be a threat to sabotage or tamper with the quality of the manufactured product. Finally, IFC asserts the paid furlough followed by the unpaid lockout would give the members of Local 957 time to review and vote on the final proposal of a new agreement (Transcript Pages 33-34,64-66,72-74,152-157/EmployerExhibits 6,7, and 8).

The individual that allegedly made the threatening comment at the April 27, 2011 negotiation session asserts that his comment was part of a discussion on what his thoughts were on improving product quality, and that what he said was something to the effect of if morale was improved and people were encouraged to take pride in their job that would boost the quality of the product (Transcript Page 260).

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The alleged threat made on April 27, 2011, as is asserted by IFC, is never referenced or even mentioned as a reason or factor for the subsequent paid furlough, and then the unpaid lockout, in any written correspondence presented by IFC as an exhibit at hearing. The individual alleged to have uttered the threatening comment was never warned or disciplined verbally or in writing. Furthermore, that same individual actually worked on April 30, 2011 which is a date after the offending comment was made. In fact, IFC concedes that had Local 957 voted to accept the final proposal offer on May 5, 2011 that the members of Local 957 would be back to work including the individual that made the offending comment (Transcript Pages 125-128,144-146,264).

Local 957 has never taken the position during negotiations that its members would not continue to work unless a new agreement were reached. In fact, Local 957 has at all times actually taken the position that its members would continue to work under the terms and conditions of the expired agreement while negotiations continue on a new agreement (Transcript Pages 37-38,107,171-172/EmployerExhibit 11).

Local 957 members did vote to authorize a strike but Local 957 has never notified IFC that a strike action would commence.

IFC has taken the position during negotiations that the members of Local 957 would not be allowed to continue working under the terms and conditions of the expired agreement, has refused the offer to return to work while continuing to negotiate on a new agreement, and would allow the members of Local 957 to return to work only when a new agreement is reached (Transcript Pages 44-46,151-152).

IFC has continued operating since April 30, 2011 using about 40 nonunion employees and supplementing them with temporary replacement workers from a third party temporary employment agency/employer (Transcript Pages 41-43,45/150-151).

On May 5, 2011 the members of Local 957 voted to reject the final proposal offered by IFC.

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 IFC?
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 claimants' unemployment from IFC was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when IFC made the decision to put them on paid furlough on April 30, 2011 and then on an unpaid lockout at the Urbana facility beginning on May 3, 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 totality of the evidence and testimony leads to a clear conclusion. The members of Local 957 were locked out beginning April 30, 2011.

The facts indicate that this is a classic case of a physical lockout by IFC to gain more favorable economic terms in a new agreement and is a textbook example of the definition of a lockout as defined in Zanesville.

Using the Bays standard, this Hearing Officer finds, based upon a review of the testimony and evidence, that IFC first changed the status quo when it decided to lockout the members of Local 957 beginning on April 30, 2011 instead of allowing the claimants to continue to work while negotiations continue. The conduct of Local 957 did not indicate it was ever unwilling to maintain the status quo while negotiations continued and IFC could not reasonably unilaterally declare an impasse had been reached under these circumstances.

The testimony and exhibits in the record indicate that the IFC assertion that a verbal threat was made on April 27, 2011 and helped cause the lockout to occur is wholly unsupported, lacking in credibility, and is merely being used as an after the lockout rationalization for why the lockout was commenced. The clear cut reason for the lockout by IFC is for economic reasons.

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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 30, 2011, 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 at IFC in Urbana. The claimants are not disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which April 30, 2011 occurred pursuant to Section 4141.29 (D) (1) (a) of the Ohio Revised Code. However, this Hearing Officer notes that the claimants were put on paid furlough on April 30, 2011, but that an unpaid lockout actually commenced on May 3, 2011. Therefore, the Department will need to review eligibility requirement issues for each claimant for the paid furlough time period as this decision only pertains to the labor dispute disqualification issue.

It is also the decision of this Hearing Officer that the lockout between Local 957 and IFC began on April 30, 2011 and is continuing.

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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, 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 **05/27/2011**.

The twenty-one day appeal period ends on **06/17/2011**.

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