

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
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In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-004-009
United Steelworkers of America :	:	
Local 5724 and Local 5760 :	:	
(Local 5724 and Local 5760) :	:	
	:	
Union/Claimants :	:	Hearing Officer:
	:	Jim Bubutiev
and :	:	
	:	Dates of Hearing:
Ormet Corporation :	:	December 14,2004
(Ormet) :	:	December 17,2004
	:	
Employer :	:	Date of Issuance:
	:	December 27,2004

Appearances

Timothy F. Cogan, Attorney at Law, represented Local 5724 and Local 5760. Charles E. Ballard, President of Local 5760, was a witness for Local 5724 and Local 5760. Loren Lee Hartshorn, President of Local 5724, was also a witness for Local 5724 and Local 5760.

John C. Artz, Attorney at Law, represented Ormet. Ruth E. Ford, Principal of X Roads Solution Group, was a witness for Ormet. Lisa D. Riedel, Director of Human Resources, was also a witness for Ormet.

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 Ohio Department of Job and Family Services has received approximately 664 claims for unemployment benefits that relate to a labor dispute between Ormet and Local 5724 and Local 5760.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held in Marietta, Ohio, on December 14, 2004, and a continuance was granted to Ormet until December 17, 2004, due to a claimed lack of receipt of notice of the original hearing date. The hearing was completed and the record was closed on December 17, 2004.

FINDINGS OF FACT:

The claimants in this matter are members of Local 5724 and Local 5760 and are employed by Ormet at two facilities in Hannibal, Ohio. Specifically, the members of Local 5724 work at a Reduction Plant and the members of Local 5760 work at a Rolling Mill (12-14-2004 Transcript Pages 17-18).

Ormet is a producer of alumina and aluminum (12-14-2004 Transcript Pages 17-18/12-17-2004 Transcript Page 82).

Ormet employs approximately 1,700 individuals and about 900 of those individuals are also members of Local 5724 and another about 500 of those individuals are also members of Local 5760 (12-14-2004 Transcript Pages 19-20, 54-55/12-17-2004 Transcript Pages 83, 123).

Local 5724 had a collective bargaining labor agreement with Ormet which was effective through August 31, 2003 (12-14-2004 Transcript Pages 28, 56-57/12-17-2004 Transcript Pages 84, 121/Union Exhibit D).

There were three (3) written extensions made to the collective bargaining labor agreement between Local 5724 and Ormet which continued the agreement until July 31, 2004 (12-14-2004 Transcript Page 58/12-17-2004 Transcript Pages 57-59,84-85,122-123/Union Exhibits H,I,J).

Negotiation sessions for a new collective bargaining labor agreement were held between representatives for Local 5724 and Ormet beginning about May of 2003, and have continued since then. No impasse in negotiations has occurred between the parties (12-14-2004 Transcript Pages 28-29,57-58,65-66/12-17-2004 Transcript Pages 17,121,127-128).

Local 5760 had a collective bargaining labor agreement with Ormet which was effective through August 31, 2004 (12-14-2004 Transcript Pages 21-22/12-17-2004 Transcript Pages 84,128/Union Exhibit A).

A mutually agreed upon verbal day-to-day extension of the collective bargaining agreement occurred between Local 5760 and Ormet after August 31, 2004 (12-14-2004 Transcript Pages 22-26).

Negotiation sessions for a new collective bargaining labor agreement were held between representatives for Local 5760 and Ormet beginning about April of 2004, and have continued since then. No impasse in negotiations has occurred between the parties (12-14-2004 Transcript Pages 28-29,57-58,65-66/12-17-2004 Transcript Pages 17,127-128).

Ormet stopped paying Medicare Part B Premiums for retirees prior to the expiration of the respective collective bargaining agreements. Ormet stopped paying the \$400.00 per month or \$10,000.00 lump sum "pension supplements" to retirees after the respective collective bargaining agreements expired. Ormet stopped allowing for "vacation slotting" based upon seniority when a known vacation period became open as the result of an employee leaving active employment after the expiration of the collective bargaining labor agreement with Local 5724. Ormet asserts that the stopped payment of Medicare Part B Premiums, prior to the expiration of the respective collective bargaining labor agreements, only applies to retirees that retired prior to June 1, 1999, and therefore, there was no change to the terms and conditions of employment for any of the claimants or retirees under the respective collective bargaining agreements. Ormet asserts that the change that stopped the payment of the "pension supplements" to retirees retiring on or after June 1, 1999, and that stopped the allowance of "vacation slotting" after the respective collective bargaining labor agreements expired occurred because those terms and conditions of employment expired when the respective agreements expired. Nevertheless, the members of both Locals continued to work at Ormet's two facilities in Hannibal, Ohio until November 22,

2004 (12-14-2004 Transcript Pages 22-28,60-62/12-17-2004 Transcript Pages 19-22,38-40,68-69,76-77,123-130,138-142/Union Exhibits A,D).

Ormet filed for a bankruptcy reorganization under Chapter 11 of the Bankruptcy Code on January 30, 2004. On March 11, 2004, Ormet submitted Bankruptcy Code Chapter 11 Section 1113 proposals to Local 5760. On September 20, 2004, Ormet filed the Section 1113 proposals with the Bankruptcy Court. A three (3) day evidentiary hearing was held October 13-15, 2004, regarding the Section 1113 proposals. On November 2, 2004, the Bankruptcy Court approved the Section 1113 proposals. On November 23, 2004, there was a confirmation hearing with the Bankruptcy Court regarding Ormet's Plan of Reorganization. On December 15, 2004, the Bankruptcy Court approved Ormet's Plan of Reorganization (12-14-2004 Transcript Pages 31-36,38,45-46/12-17-2004 Transcript Pages 95-98,110-111/Union Exhibit B).

Both Locals voted to authorize a work stoppage on November 18, 2004. A work stoppage began on November 22, 2004. Continuous picketing started at Ormet's two facilities in Hannibal, Ohio on November 22, 2004, and has continued since then. Both Locals assert the work stoppage would not have occurred beginning on November 22, 2004, if Ormet had agreed to postpone a November 23, 2004, Confirmation Hearing dealing with Ormet's Bankruptcy Chapter 11 Plan of Reorganization and if Ormet had agreed not to implement the Bankruptcy Code Chapter 11 Section 1113 proposals. Ormet would not agree to postpone the November 23, 2004, Confirmation Hearing. Ormet had not implemented the Section 1113 proposals when the work stoppage began on November 22, 2004. Ormet indicated that if a work stoppage did occur then the Section 1113 proposals would be implemented (12-14-2004 Transcript Pages 26,40-41,44,46-48,62,64-65/12-17-2004 Transcript Pages 27-30,32-34,36-37,40-41,50-52,66-68,89-90,94,106,123,130,134,137,143,147-149/Employer Exhibit 1/Union Exhibits B,C-1,C-2,G).

Ormet has remained open since the work stoppage began on November 22, 2004, and is operating using some 300 nonunion salaried employees, and their friends and family members. Ormet has not hired replacement workers (12-14-2004 Transcript Pages 42-43,63-64/12-17-2004 Transcript Pages 64-65,93,106-107,133).

Approximately 300 members of Local 5724 were laid off due to lack of work prior to the work stoppage (12-14-2004 Transcript Pages 37-38/12-17-2004 Transcript Pages 131-132,147-148).

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 central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment from Ormet?
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 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 key issue to be resolved is whether the reason for the claimants' unemployment from Ormet 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 employer implemented a 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 Ohio Supreme Court defined a lockout as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." *Id.* at 351,354. The Ohio Supreme Court held that the 10% wage reduction was reasonable under the circumstances and did not manifest a purpose on the part of the company to coerce the employees into accepting it.

Therefore, since the employer's conduct did not inevitably lead to unemployment "in the sense that the employees could not reasonably be expected to accept it, it did not constitute a lockout . . ." *Id.* at 356.

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 pre-existing terms and

conditions of employment, while negotiations continue, then the employer is deviating from the status quo.

Thus, the Ohio 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 134-135.

The Ohio Supreme Court in *Bays, supra*, also provided the definition of a lockout as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." *Id.* at 133.

In this matter, a review of all the evidence and testimony in the record indicates that the members of Local 5724 and Local 5760 became unemployed when they decided to commence with a work stoppage on November 22, 2004.

A review of Union Exhibit D, and the testimony of all the witnesses, considering the change Ormet imposed regarding Medicare Part B Premiums indicates it was a change impacting retirees that had retired prior to June 1, 1999. Therefore, it was not a change to the terms and conditions of employment under the respective agreements for any of the members of Local 5724 and Local 5760 that are claimants in this matter.

The record demonstrates that the members of Local 5724 and Local 5760 were the first to refuse to continue working while negotiations

continued for new collective bargaining labor agreements. Ormet did make changes to the terms and conditions of employment for the members of Local 5724 after the final extension of the collective bargaining agreement expired on July 31, 2004. Specifically, Ormet made changes regarding the "pension supplements" and the "vacation slotting." However, the members of Local 5724 continued working until November 22, 2004. Ormet also made a change to the terms and conditions of employment for the members of Local 5760 after the collective bargaining agreement expired on August 31, 2004. Specifically, Ormet changed the "pension supplements." However, the members of Local 5724 continued working until November 22, 2004.

Clearly, the members of Local 5724 and Local 5760 did not find the changed terms and conditions of employment so unreasonable that they could not be expected to continue working, and the only course of action was to leave their employment, because they did continue working until November 22, 2004, even though the respective collective bargaining agreements had expired on July 31, 2004, and August 31, 2004, and the changes were implemented by Ormet after those respective expirations.

The actions of the members of both Locals, by continuing to work, indicate it was reasonable to continue working while negotiations for new agreements continue.

Instead, the members of Local 5724 and Local 5760 decided to begin a work stoppage on November 22, 2004, and to continuously picket at Ormet's Hannibal, Ohio facilities. The reason members of both Locals decided to conduct a work stoppage is clear based upon a review of Union Exhibits C-1 and C-2, and the testimony of all the witnesses.

The work stoppage resulted because the members of both Locals wanted Ormet to postpone the November 23, 2004, confirmation hearing and for Ormet not to implement the Section 1113 proposals. While the record indicates that on November 17, 2004, Ormet made both Locals aware that the confirmation hearing would not be postponed there is no evidence that Ormet had imposed the Section 1113 proposals at the time the work stoppage began. The failure to postpone a confirmation hearing does not constitute a lockout.

The record clearly shows that the direct cause of the claimants' unemployment was due to the work stoppage conducted by the members of Local 5724 and Local 5760.

Thus, by applying the holdings of the *Zanesville* and the *Bays* decisions, this Hearing Officer finds, based upon a review of all the evidence, exhibits, and testimony in the record, that the members of Local 5724 and Local 5760 became unemployed when they decided not to continue working on November 22, 2004, and thereafter.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case are unemployed due to a labor dispute other than a lockout which began on November 22, 2004, and which is continuing.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a labor dispute other than a lockout which began on November 22, 2004, and which is continuing. The claimants are disqualified from receiving

unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes November 22, 2004, and which is continuing, 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 then you may appeal it. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION MAY BE FILED BY ANY INTERESTED PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THIS DECISION BY MAIL TO 145 SOUTH FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299; OR BY FAX TO (614) 752-8862. 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.

