

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE**

JFS-83000 09/14/2013



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ONESOURCE EMPLOYEE MANAGEMENT LLC 10690 LOVELAND MADEIRA RD LOVELAND, OH 45140-8964	Date Issued 06/26/2014
	Determination Identification Number
	ODJFS Office Bureau of UC Program Services
Employer's Name CLIFTON STEEL COMPANY (INC.)	UC Account Number

**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
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In The Matter Of A Labor Dispute Between

Union:	Teamsters Local 507	Employer:	CLIFTON STEEL COMPANY (INC.)
Docket No:	000000001400007	Hearing Officer:	Jim Bubutiev
Date of Hearing:	06/02/2014	Date of Issuance:	06/26/2014

APPEARANCES

Seth Briskin, Attorney At Law, represented Clifton Steel. William Bernay, Plant Manager, was a witness for Clifton Steel. Joseph Hoffman, Attorney At Law, represented Local 507. Albert Mixon, Teamsters Vice President At-Large and Principal Officer of Local 507, was a witness for Local 507.

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 (25) or more individuals relates to a labor dispute. The Department of Job and Family Services has received approximately 28 unemployment compensation benefits claims that relate to a labor dispute between Local 507 and Clifton Steel in Maple Heights, Ohio.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on June 2, 2014, in Akron, Ohio. The record has been held open for cause beyond the control of the Director and this Hearing Officer, to allow for the receipt and review of the hearing transcript and exhibits. Consequently, the statutory deadline for issuance of this decision was stayed pursuant to Ohio Revised Code Section 4141.283(D)(3).

FINDINGS OF FACT

The claimants in this matter are members of Local 507 and are employed by Clifton Steel in Maple Heights, Ohio.

Clifton Steel manufactures heavy steel products at a facility located in Maple Heights, Ohio (Transcript Page 14).

Clifton Steel employs approximately 80 individuals and about 32 of them are also members of Local 507 (Transcript Pages 15,119).

Local 507 had a collective bargaining labor agreement with Clifton Steel that was effective until July 1, 2013. There was no formalized extension of the agreement between the parties but the members of Local 507 continued working under the same terms and conditions of the expired agreement until April 24, 2014 (Transcript Pages 13,17-18,27-28,74,173/UnionExhibit A).

There were approximately eleven (11) negotiation sessions held between the parties in an effort to agree on a new collective bargaining labor agreement. The sessions began in May of 2013 and another session was scheduled to occur after the date of this hearing (Transcript Pages 12,18-19,22-23,94,130,148).

The main issues between the parties include a so called successor clause in any new agreement which governs a health, welfare and pension fund, a so called radius clause in any new agreement, and how overtime is calculated (Transcript Pages 23-25,54,130-136).

The members of Local 507 gave notice of a work stoppage on April 8, 2014, commenced with the work stoppage on April 24, 2014, and have set up a picket line at the Clifton Steel facility. The picketing is ongoing (Transcript Pages 18-21,37,40-41,47,52,55,62-71/EmployerExhibit 1,4-6).

On April 30, 2014, Local 507 offered, in writing, to unconditionally return to work immediately. On May 5, 2014, Legal Counsel for Clifton Steel requested, in writing, a clarification of the Local 507 offer. On or about May 7, 2014, Legal Counsel for Local 507 clarified that the offer was to return to work immediately under the terms and conditions of the expired agreement. However, Legal Counsel for Clifton Steel rejected this offer and explained a return to work would need to be made under a ratified contract based upon the last, best contract offer previously made by Clifton Steel. Since then Local 507 has unsuccessfully tried to negotiate for a mutually agreeable new contract while continuing to offer to return to work immediately under the terms and conditions of the expired agreement. Consequently, the work stoppage has continued (Transcript Pages 28,35-37,55-60,62,72-80,87,92-97,106-110,113-116,121-122,127-129,141,147-150,160-168,173,184-191,195/EmployerExhibit 2,3/Union Exhibit B).

Clifton Steel has continued operating using management, seasonal, and temporary employees, as well as nine (9) permanent replacement employees that were hired by April 30, 2014. Clifton Steel first explicitly acknowledged the hiring of these permanent replacement workers to Local 507 on the date of this hearing (Transcript Pages 28-34,/Union Exhibit B).

ISSUES

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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 Clifton 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 first issue to be resolved is whether the reason for the claimants' unemployment from Clifton Steel 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, 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 Local 507 became unemployed when they began a work stoppage on April 24, 2014, and chose not to continue working under the terms and conditions of the expired collective bargaining labor agreement. Instead, the claimants set up a picket line on that day and started a labor dispute other than a lockout.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 507 that first changed the status quo, while negotiations were ongoing, when members of Local 507 decided to take the action of picketing at Clifton Steel instead of reporting to work on April 24, 2014.

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However, once the members of Local 507 offered, on April 30, 2014, to unconditionally return to work immediately, and then, on or about May 7, 2014, to clarify that the offer was to return to work immediately under the terms and conditions of the expired agreement; they ended the labor dispute other than a lockout.

The decision by Clifton Steel not to accept the Local 507 unconditional offer to return to work immediately under the terms and conditions of the expired agreement, and instead to take the position that a return to work would need to be made under a ratified contract based on the last, best contract offer previously made by Clifton Steel, converted the labor dispute into a lockout on or about May 7, 2014.

Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a labor dispute other than a lockout which began April 24, 2014, and ended when the members of Local 507 clearly offered to unconditionally return to work immediately on or about May 7, 2014. Consequently, a lockout began on or about May 7, 2014.

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 at Clifton Steel beginning on April 24, 2014. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes April 24, 2014, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between Local 507 and Clifton Steel became a lockout starting May 7, 2014, when Clifton Steel did not accept the unconditional offer by Local 507 to return to work immediately. Therefore, all of the claimants herein became unemployed due to a lockout at Clifton Steel and are not disqualified from eligibility for unemployment compensation benefits due to a labor dispute beginning with the first full week after May 7, 2014.

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 weekly claims for benefits while under appeal.

This decision was mailed on **06/26/2014**.

The twenty-one day appeal period ends on **07/17/2014**.

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