

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

JFS-83000 03/13/2015



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<b>UC EXPRESS PO BOX 182366 COLUMBUS, OH 43218-2366</b>	Date Issued 07/11/2016
	Determination Identification Number
	ODJFS Office  Bureau of UC Program Services
Employer's Name INTERNATIONAL PAPER 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  
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**In The Matter Of A Labor Dispute Between**

<b>Union:</b> Teamsters Local 284	<b>Employer:</b> INTERNATIONAL PAPER COMPANY (INC.)
<b>Docket No:</b> 000000001600003	<b>Hearing Officer:</b> Jim Bubutiev
<b>Date of Hearing:</b> 06/14/2016	<b>Date of Issuance:</b> 07/11/2016

**APPEARANCES**

John Doll, Attorney at Law, represented Local 284. Donald Mann was a witness for Local 284.

James Stone and Karina Kendrick, Attorneys at Law, represented International Paper. James Robison, Richmond Harris, and Douglas Lovas were witnesses for International Paper.

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 25 or more individuals relates to a labor dispute. The Department of Job and Family Services has currently received approximately 106 unemployment compensation benefits claims that relate to a labor dispute between Local 284 and International Paper.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on June 14, 2016, in Delaware, Ohio.

#### FINDINGS OF FACT

International Paper owns and operates a corrugated box plant and warehouse in Delaware, Ohio (Transcript Pages 15-16).

The claimants in this matter are members of Local 284. International Paper employs approximately 140 individuals at the Delaware, Ohio location, and about 116 of them are members of Local 284 (Transcript Pages 17-18).

Local 284 had a collective bargaining labor agreement with International Paper that was effective from June 6, 2011 through June 5, 2015. Pursuant to the terms of the agreement a member of Local 284 could not be required to work more than 12 hours of overtime during any week, unless on a voluntary basis or unless someone on the opposite work shift was on vacation, and then the required overtime could be up to 20 hours during any work excluding Saturday work. Furthermore, under the agreement, members of Local 284 could be made to work no more than two Saturday shifts of 8 hours a month, unless there was an emergency, and then it could be a third Saturday shift a month not to exceed 24 Saturdays in a calendar year. The agreement was silent on Sunday voluntary or mandatory overtime restrictions (Transcript Pages 19-20,124/Employer Exhibit 17/Union Exhibit A).

International Paper allowed Local 284 members to continue working under the terms and conditions of the collective bargaining labor agreement after it expired, and members of Local 284 did continue to work under the expired agreement, after June 5, 2015 to April 4, 2016, a time period of roughly 10 months in which the status quo was maintained by both parties.

More than a dozen negotiation sessions for a new agreement have been held between the parties beginning on or about May 13, 2015 through May 6, 2016. International Paper asserts there had been an impasse in negotiations between the parties for many months and, therefore, on March 28, 2016 indicated it would implement its best and final offer effective April 5, 2016, if it was not ratified by the members of Local 284 by April 4, 2016. The best and final offer was not ratified and International paper implemented it on April 5, 2016. The implemented best and final offer gives International Paper much greater flexibility to require mandatory overtime and, beginning January 1, 2019, virtually an unfettered ability to require mandatory overtime with the exception that members of Local 284 would not be required to work more than 12 hours in a day. International Paper asserts its main objective was to modify the mandatory overtime provisions in a new agreement in order to meet customer needs at peak times which, in turn, could impact the success and viability of the Delaware, Ohio location. However, Local 284 asserts there is no impasse to negotiations between the parties (Transcript Pages 21, 28-29, 41-42, 50-51, 54, 56, 63, 67-68, 74, 80-82, 87, 107, 140-141, 152, 156,167,171,174,181-182,228/Employer Exhibits 3,4,5,6,10,11,14,16,17,18,19).

Local 284 members worked for roughly 5 weeks under the implemented best and final offer, and 3 members of Local 284 were required to work extra mandatory overtime pursuant to the implemented best and final offer (Transcript Pages 29,83,85,98-99,127,140-141,228-229/EmployerExhibits 10,14).

Local 284 was concerned that the implemented best and final offer would lead to its members working 12 hour days 7 days a week and made counterproposals dealing with the mandatory overtime issue which were at all times rejected by International Paper (Transcript Pages 52-53, 64-65,80-81,152-153,157,217-218/EmployerExhibits 4,9).

International Paper asserts that was not its intent and presented data indicating that did not happen at other locations it owns with agreements containing the same kind of mandatory overtime provisions (Transcript Pages 52-53,62,74,169,176/EmployerExhibit 19).

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On May 8, 2016, the members of Local 284 commenced with a work stoppage, after meeting on May 7, 2016 to discuss the results of the May 6, 2016 negotiation session in which International Paper rejected Local 284 efforts to have the implemented best and final offer reversed.

The major issue between the parties deals with mandatory overtime (Transcript Pages 22-24,45,88-89).

International Paper has continued operating using management and/or nonunion employees. There have been no temporary or permanent replacement workers hired.

## 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 Paper?
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 issue to be resolved is whether the reason for the unemployment of the claimants from the International Paper 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.

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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 conduct of the employer 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 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.

In this matter, the testimony and evidence indicate that the members of Local 284 became unemployed when they began a work stoppage on May 8, 2016, in response to International Paper having implemented its best and final offer on April 5, 2016. Local 284 was unable to persuade International Paper to reverse its implementation of the best and final offer at the May 6, 2016 negotiation session and took the only course of action it had available in response, which was to begin a work stoppage.

The parties do not agree an impasse to further negotiations has occurred. International Paper asserts there is an impasse while Local 284 there is not an impasse.

This Hearing Officer finds that one party cannot unilaterally decide there is an impasse and, therefore, since negotiations can continue that the *Bays* decision and the status quo test is applicable to this matter. However, this Hearing Officer will begin with an analysis of the Zanesville decision standard of reasonableness, for the sake of the legal argument that impasse has been reached, because the end result is the same using either the *Bays* decision or the Zanesville decision.

Applying the Zanesville decision, it is not reasonable for the members of Local 284 to have continued working under the provisions of the implemented best and final offer for very long after April 5, 2016.

A member of Local 284 could be required to work up 72 hours in a week. That is six consecutive days at 12 hours per day. Starting January 1, 2019, it could be an 84 hour work week at 7 consecutive days at 12 hours a day (Transcript Pages 58-60,124-125).

Any reasonable person, and using a reasonable person legal standard, would not work under the provisions of the best and final offer implemented by International Paper.

The International Paper arguments are that it is not its intent, that the data from other International Paper locations with the same mandatory overtime provisions shows it doesn't happen, and it is for compelling business reasons/meeting customer needs, are all unpersuasive. If International Paper does not intend to impose 72 hour or 84 hour work weeks, and its internal data supports it does not do that, then there is no legitimate reason to impose such provisions and to be unwilling to modify such a stance. Furthermore, as an example of how unpersuasive the International Paper arguments are, the totality of the testimony shows that International Paper concedes there are several other factors in play and not just customer needs. Factors such as equipment maintenance or understaffing issues caused by its hiring philosophy, and vacations, medical leaves of absence, and resignations (Transcript Pages 85,228-229).

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There is nothing unreasonable about continuing to work for about 5 weeks under the implemented best and final offer. This Hearing Officer has handled labor dispute hearings and decisions on behalf of the Director of the Ohio Department of Job and Family Services for nearly 17 years, and the closest case factually to this matter on the reasonableness of continuing to work under changed terms and conditions of employment was in *Buchanan v. Ohio Dept of Job & Family Servs.*, 2014-Ohio-1001 (Ohio Ct. App., Lucas County Mar. 7, 2014). In *Buchanan* the claimants were made aware of the health insurance coverage changes at an informational meeting with the employer nearly 3 months in advance of the changes and then they worked under the changes nearly 3 months after the changes went into effect. This Hearing Officer made the finding that the changes must have been reasonable since the claimants knew the changes were coming for about 3 months ahead of time, and then worked under the changes for almost 3 months. However, the Lucas County Court of Common Pleas Court and the Sixth District Court of Appeals reversed the decision of this Hearing Officer and found that the Bays decision status quo test applies.

Applying the Bays decision, if there actually is no impasse to further negotiations between the parties, Local 284 members would have continued working under the terms and conditions of the expired contract while negotiations for a new contract continued. There was no indication ever made that Local 284 would not and, in fact, they had already done so for nearly 10 months. Local 284 was maintaining the status quo while negotiations continued. It was International Paper that broke the status quo by taking the action of implementing its best and final offer on April 5, 2016 and refusing to shift from that stance in the time since then.

## DECISION

It is the decision of this Hearing Officer that the underlying work stoppage did not result from a labor dispute other than a lockout and does not disqualify the claimants from receiving unemployment compensation benefits under Section 4141.29(D)(1)(a) of the Ohio Revised Code by applying the Bays decision status quo test. In the alternative, should the Bays decision status quo test be found not to be applicable, then it is the decision of this Hearing Officer that the underlying work stoppage did not result from a labor dispute other than a lockout so as to disqualify the claimants from unemployment compensation benefits under Section 4141.29(D)(1)(a) of the Ohio Revised Code by applying the Zanesville decision standard of reasonableness.

The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes May 8, 2016.

It is also the decision of this Hearing Officer that this labor dispute matter between International Paper and Local 284 which began on May 8, 2016, 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 weekly claims for benefits while under appeal.

This decision was mailed on **07/11/2016**.

The twenty-one day appeal period ends on **08/01/2016**.

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