

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

JFS-83000 03/13/2009

U.S. TSUBAKI INC. 1010 EDGEWATER AVE SANDUSKY, OH 44870-1601 	Date Issued 03/24/2011
	Determination Identification Number 222612176-1
	ODJFS Office Bureau of UC Program Services
0567539008	
Employer's Name U.S. TSUBAKI INC.	UC Account Number 0567539008

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

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In The Matter Of A Labor Dispute Between

Union: **IAM & AW** Employer: **U.S. TSUBAKI INC.**
Docket No: **00000001100003** Hearing Officer: **Jim Bubutiev**
Date of Hearing: **03/14/2011** Date of Issuance: **03/24/2011**

Appearances

Jack Baker, Business Representative, represented IAMAW District 54/Local 2159.

Robert Dezort, Attorney at Law, represented U.S. Tsubaki. Thomas Barton, ESQ., Senior Vice President Finance, Legal and Administration was a witness for U.S. Tsubaki.

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 March 14, 2011, in Bowling Green, Ohio.

FINDINGS OF FACT:

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.



The claimants in this matter are members of IAMAW District 54/Local 2159 and were employed by U.S. Tsubaki in Sandusky, Ohio.

U.S. Tsubaki is a power transmission products and engineering class chains manufacturer. The labor dispute is only at the facility located in Sandusky, Ohio (Transcript pages 16-17).

U.S. Tsubaki employs an estimated 125 individuals, and approximately 94 are members of IAMAW District 54/Local 2159 (Transcript Page 17).

IAMAW District 54/Local 2159 had a collective bargaining labor agreement with U.S. Tsubaki that was effective for 3 years and expired at midnight January 30, 2011. The parties did not discuss extensions to the agreement (Transcript Page 19).

A work stoppage began on January 31, 2011 when the members of IAMAW District 54/Local 2159 decided not to continue working under the terms and conditions of the expired agreement (Transcript Pages 20,43-46,66).

Negotiations for a new agreement began between the parties on January 12, 2011 and continued through March 3, 2011, with a future negotiation scheduled on a date after the date of this hearing. The main issues that have kept the parties from reaching a new agreement include wages, health insurance coverage, overtime language, and job classifications (Transcript Pages 21-22,26,46-48,67).

The negotiators for the parties reached a tentative agreement on January 27, 2011 but it was rejected by the members of IAMAW District 54/Local 2159 in a ratification vote taken on January 29, 2011. The members of IAMAW District 54/Local 2159 then voted separately for a work stoppage to begin after the existing agreement expired (Transcript Pages 38-43/Employer Exhibit 1).

The members of IAMAW District 54/Local 2159 set up a picket line and started picketing at U.S. Tsubaki s Sandusky facility beginning on January 31, 2011, after the existing collective bargaining labor agreement expired. The picketing is continuing (Transcript Pages 34,45,66).

A second tentative agreement was reached between the negotiators for the parties on February 10, 2011. The members of IAMAW District 54/Local 2159 voted to reject it on February 11, 2011 (Transcript Pages 49-60/Employer Exhibit 2).

IAMAW District 54/Local 2159 asserts the rejected tentative agreements are concessionary when compared to the previous and now expired agreement. U.S. Tsubaki asserts the rejected tentative agreements are fair offers that meet the need to be competitive in the marketplace (Transcript Pages 23-25,74-76).

U.S. Tsubaki asserts that work would have continued under all the terms and conditions of the now expired agreement had the members of IAMAW District 54/Local 2159 remained on the job. However, any extension of the now expired agreement or a discussion of continuing to work never came up between the parties during negotiations. U.S. Tsubaki asserts that a new agreement has not been implemented (Transcript Pages 26-29,46,66-68).

If the members of IAMAW District 54/Local 2159 offered to return to work now under the terms and conditions of the expired agreement, while negotiations continued, work would be available for those individuals that have not been permanently replaced. As of March 11, 2011 there are 72 permanent replacements that have been hired leaving approximately 16 positions available. The members of IAMAW District 54/Local 2159 have not offered to return to work and no one has crossed the picket line as of the date of hearing (Transcript Pages 27-31,46,66-68/Employer Exhibit 3).

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U.S. Tsubaki has continued operating since the prior collective bargaining labor agreement expired, at first using the remaining non-IAMAW District 54/Local 2159 employees at the Sandusky facility and employees from other locations, but then it began hiring permanent replacement workers on February 18, 2011. U.S. Tsubaki has hired 72 permanent replacement workers as of March 11, 2011. This hearing officer takes official notice that U.S. Tsubaki placed employment opportunity advertisements with the Sandusky Register newspaper in the days just prior to the hiring of permanent replacement workers on February 18, 2011 (Transcript Pages 30-34,68-71,74,76-77/Employer Exhibit 3/Exhibit 4 the employment opportunity advertisement).

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 U.S. Tsubaki?
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 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 U.S. Tsubaki was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when, following a vote to not ratify the first tentative agreement and a separate vote to strike, they chose not to continue working under the expired collective bargaining labor agreement with U.S. Tsubaki at the Sandusky facility beginning on January 31, 2011. The claimants, in fact, set up a picket line and, thereby, started a labor dispute other than a lockout.

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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 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 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 and, therefore, was not a lockout.

In *Leach v. Republic Steel Corp.*, (1964), 176 Ohio St. 221, the Ohio Supreme Court stated that a work stoppage is an effort by employees to obtain more desirable terms with respect to wages, working conditions, etc., while a labor dispute is broader in scope and also includes an employer-employee controversy concerning wages, working conditions or terms of employment.

The court found there was a labor dispute that led to a work stoppage. The work stoppage forced the employer to close its plants for a time period and the work stoppage caused the plant closings for that time period. The court ruled that in such a situation employees were not entitled to unemployment compensation benefits during any week that unemployment was due to the labor dispute.

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 *Baugh v. United Telephone Co.*, (1978), 54 Ohio St. 2d 419, the employer notified the striking employees, in writing, that they had been permanently replaced. The Ohio Supreme Court held that when the employer terminates the employer-employee relationship by replacing a striking employee, the employer has thereby removed the labor dispute as the proximate cause of unemployment. The Court stated that the employer's action of permanent replacement prevented any volition on the part of the workers to return to work and since it severed the labor dispute as the cause of the unemployment, the statutory disqualification provision of section 4141.29 of the Ohio Revised Code did not apply and was not a bar to the appellants' right to receive unemployment compensation benefits.

Hi-State Beverage Co., v. Ohio Bureau of Employment Services (1991), 77 Ohio App. 3d 633, and *Moriarity v. Elyria United Methodist Home* (1993) 86 Ohio App. 3d 502, both distinguish the *Baugh* case. However, in *Hi-State* and in *Moriarity* the unemployed workers were never informed by their employer that they had been permanently replaced.

Furthermore, the Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discussed *Bays* and *Baugh*.

In the instant case the totality of the evidence and testimony leads to only one reasonable conclusion. The members of IMAAW District 54/Local 2159 rejected the tentative offers, voted to strike after the existing agreement expired on January 30, 2011, and then commenced with a labor dispute other than a lockout.

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In fact, they did begin picketing U.S. Tsubaki on January 31, 2011, and have continued to do so.

The testimony demonstrated that the main issues in controversy between the parties deal with wages, health insurance coverage, overtime language, and job classifications. These kinds of issues clearly fall within the Leach definition of a labor dispute.

The testimony also demonstrated that IAMAW District 54/Local 2159 began picketing because it desired better terms from U.S. Tsubaki. Again, this clearly falls within the Leach definition of a work stoppage.

IAMAW District 54/Local 2159 and U.S. Tsubaki were involved in a labor dispute that led to IAMAW District 54/Local 2159 conducting a work stoppage in an effort to obtain the terms it desired from U.S. Tsubaki.

Using the Bays standard, this Hearing Officer finds, based upon the testimony and evidence, that IAMAW District 54/Local 2159 first changed the status quo when members of IAMAW District 54/Local 2159 decided to picket U.S. Tsubaki instead of reporting to work beginning on January 31, 2011. U.S. Tsubaki's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

While the facts in one case are never identical to the facts of another case, the facts in this case are significantly more consistent with Baugh than they are with the facts in Hi-State and in Moriarity.

The testimony and evidence indicates U.S. Tsubaki ended the employer-employee relationship with the members of IAMAW District 54/Local 2159 by replacing them beginning February 18, 2011, and thereby severed the labor dispute as the proximate cause of unemployment.

U.S. Tsubaki placed employment opportunity advertisements in the local newspaper in the days prior to February 18, 2011 and then began hiring permanent replacements on February 18, 2011. This constitutes notice to the public at large and coupled with employer exhibit 3, which was presented at hearing and testified to in the presence of nearly two dozen observing claimants, makes this case akin to Baugh. Any other interpretation would be tantamount to approval of a legal fiction. The Ohio Department of Job and Family Services, as mandated by federal law under the guidance of the United States Department of Labor, determines eligibility for unemployment benefits. Perhaps the public notice was vague but the intent was made clear at this hearing. The intent was to permanently replace the claimants beginning February 18, 2011.

U.S. Tsubaki has, in fact, already hired 72 individuals as permanent replacements as of March 11, 2011 and has been hiring them since February 18, 2011.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a labor dispute other than a lockout which ended when U.S. Tsubaki made the decision to hire permanent replacement workers on February 18, 2011.

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 U.S. Tsubaki. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which January 31, 2011 occurred 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 between IAMAW District 54/Local 2159 and U.S. Tsubaki began on January 31, 2011 and ended on February 18, 2011, when U.S. Tsubaki began hiring permanent replacements.





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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 **03/24/2011**.

The twenty-one day appeal period ends on **04/14/2011**.

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