

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

JFS-83000 03/13/2015

UC EXPRESS  
PO BOX 182366  
COLUMBUS, OH 43218

Date Issued  
03/19/2015

Determination Identification Number

ODJFS Office

Bureau of UC Program Services

Employer's Name  
BP PRODUCTS NORTH AMERICA, 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  
Columbus, OH 43218-2830  
Telephone: (614) 752-8419  
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**In The Matter Of A Labor Dispute Between**

Union: **United Steelworkers Local 1-346**

Employer: **BP PRODUCTS NORTH AMERICA, INC.**

Docket No: **000000001500001**

Hearing Officer: **Jim Bubutiev**

Date of Hearing: **03/09/2015**

Date of Issuance: **03/19/2015**

**APPEARANCES**

Dawn Christen, Attorney at Law, represented the Northwest Ohio Building and Construction Trades Council (NWOBTC). Dana Samlour represented and was a witness for SEIU Local 1 (SEIU). Bobbie Strayel, Alan Raven, Robert Dezierzak, Dan Vandervlucht, and Rick Wallace represented and were witnesses for employers ancillary to the labor dispute. Mark Felgner, Chuck McCune, James Peppers, Tim Barker, and Dave Fleetwood represented and were witnesses for unions/claimants secondary to the labor dispute.

Timothy Gallagher, Attorney at Law, represented USW Local 346. Daniel Voorhees was a witness for USW Local 346.

Gregory Lodge, Attorney at Law, represented BP. Clay Bishop was a witness for BP.

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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 Department of Job and Family Services has received approximately 176 unemployment compensation benefits claims that relate to a labor dispute between USW Local 346 and BP.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on March 9, 2015, in Bowling Green, Ohio.

#### FINDINGS OF FACT

BP operates an oil refinery located in Oregon, Ohio. And the labor dispute between USW Local 346 and BP at issue in this decision involves only that Oregon, Ohio refinery. BP employs approximately 600 individuals and about 330 of them are also members of USW Local 346 (Transcript Pages 80-82,116).

There was a three (3) year collective bargaining labor agreement between USW Local 346 and BP which was expiring on January 31, 2015. Negotiation sessions for a new collective bargaining labor agreement began on December 15, 2014 and continued until February 6, 2015. USW Local 346 offered a written day-to-day rolling 24 hour extension to the expiring agreement on February 1, 2015 and BP accepted it. On February 6, 2015 USW Local 346 notified BP in writing that a work stoppage would commence at midnight on February 8, 2015. On February 8, 2015, the work stoppage began and members of USW Local 346 began picketing at BP in Oregon, Ohio and continue to do so. The main issues between the parties deal with the use of contractors, terms of agreement, wages, fatigue & staffing, recognition as a union shop, contracting out, health care, and no retrogression. Both parties continue to negotiate for a new agreement and were scheduled to reconvene on March 12 (Transcript Pages 83-87,91,93-98,104-106,121-122,127-128,130-136,143,148-150,155-157/EmployeExhibits 1, 2, 3, and 5).

BP has at all times been willing to have the members of USW Local 346 continue to work while negotiations continue. BP conducted emergency operations, directly caused by the work stoppage, which delayed an open gate policy for any USW Local 346 member that chose to return to work until March 3, 2015. In fact, two USW Local 346 members did return to work on or about March 3, 2015 (Transcript Pages 87-90,98-102,107-108/EmployerExhibit 4).

BP has continued to operate the oil refinery during the work stoppage using salaried employees and returning former salaried employees. BP has not hired any permanent replacement employees during the work stoppage (Transcript Pages 91-93,126,154).

All the claimants not members of USW Local 346, whom are employees of employers contracted by BP to provide services at the Oregon, Ohio oil refinery, became unemployed for various time periods ranging from a few days to a few weeks as a direct result of the labor dispute between BP and the members of USW Local 346 and through no fault of their own.

#### 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 claimants' unemployment from BP?
2. Are the claimants disqualified from receiving unemployment compensation benefits?

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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 were found to be a lockout.

The issue to be resolved is whether the reason for the claimants' unemployment from BP 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.

In addition, the more recent 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 testimony, written documentation, and evidence in this case clearly indicate the members of USW Local 346 became unemployed when they began a work stoppage and started picketing on February 8, 2015.

It is clear that BP did not withhold work from the members USW Local 346 in an effort to obtain more desirable terms in a new collective bargaining labor agreement.



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Using the Bays case standard, this Hearing Officer finds, based upon a review of all the testimony and evidence, that the members of USW Local 346 were the first to change the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on February 8, 2015. The actions and conduct of BP at all times indicated a willingness to maintain the status quo while negotiations continued.

Therefore, the members of USW Local 346 were unemployed due to a labor dispute other than a lockout that began February 8, 2015, and which is continuing.

## DECISION

It is the decision of this Hearing Officer that all of the USW Local 346 claimants herein were unemployed due to a labor dispute other than a lockout beginning February 8, 2015. The USW Local 346 claimants are disqualified from receiving unemployment compensation benefits for the week which includes February 8, 2015, and which is continuing pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that all the claimants not members of USW Local 346, and working for employers other than BP, are not disqualified from receiving unemployment compensation benefits during the continuing labor dispute other than a lockout, pursuant to the statutory exception provided for in Section 4141.29(D)(1)(a)(ii).

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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 **03/19/2015**.

The twenty-one day appeal period ends on **04/09/2015**.

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