

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

JFS-83000 09/14/2013

ADP INC. AND TALX UCM SERVICES INC. PO BOX 66744 SAINT LOUIS, MO 63166	Date Issued 08/21/2014
	Determination Identification Number
	ODJFS Office Bureau of UC Program Services
Employer's Name ALLIANCE TUBULAR PRODUCTS LLC	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
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Web Page: <http://jfs.ohio.gov/labordisputes>

In The Matter Of A Labor Dispute Between

Union: **USW Sub-District 2** Employer: **ALLIANCE TUBULAR PRODUCTS LLC**
Docket No: **000000001400011** Hearing Officer: **Jim Bubutiev**
Date of Hearing: **08/11/2014** Date of Issuance: **08/21/2014**

APPEARANCES:

Frank Buzaki, Staff Representative for the United Steelworkers, represented and was a witness for Local 3059.

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.

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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 has received approximately 196 claims for unemployment compensation benefits relating to this matter.

All interested parties were duly notified of this hearing pursuant to Ohio law. This hearing was held on August 11, 2014, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 3059 and are employed by Alliance Tubular at a facility in Alliance, Ohio (Transcript Page 8).

Alliance Tubular employs an estimated 350 people and 244 are members of Local 3059. Four individuals are on probationary status and are not yet counted as members of Local 3059 (Transcript Page 9).

Local 3059 had a four year collective bargaining labor agreement with Alliance Tubular that expired July 28, 2014 (Transcript Page 10).

Negotiations for a new agreement began approximately six weeks before the agreement expired (Transcript Page 14/Union Exhibit A).

The main issues between the parties included maintaining a monthly health insurance coverage reimbursement payment made by the employer, instead of receiving a signing bonus, and getting enhanced vacation allotment and pay for second tier employee members of Local 3059 (Transcript Pages 18-20).

On July 25, 2014, Local 3059 members rejected a tentative agreement by a vote of 174 to 34. On July 27, 2014, a new offer was rejected by Local 3059 members by a vote of 152 to 64. Alliance Tubular formally locked out the members of Local 3059 on July 28, 2014, at 12:01 AM. Alliance Tubular was aware that Local 3059 members were willing to continue working under the terms and conditions of the expired agreement while negotiations continued (Transcript Pages 10-16/Union Exhibits A,B).

Alliance Tubular did not hire any permanent replacement workers during the lockout (Transcript Pages 15-17).

On August 3, 2014, the parties reached a new agreement and Local 3059 members returned to work at 11:00 PM (Transcript Pages 17-18).

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 Alliance Tubular?
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:

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(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 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 unemployment of the claimants from Alliance Tubular 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 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 *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 recent Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discussed *Bays*.

In this matter the evidence and testimony indicate the claimants became unemployed when Alliance Tubular made the decision to lock them out beginning July 28, 2014.

Applying the *Zanesville* definition of a lockout, the facts indicate a lockout was caused by Alliance Tubular in an attempt to gain more favorable terms in a new agreement.

Applying the *Bays* legal standard, this Hearing Officer finds, based upon a review of the testimony and evidence, that Alliance Tubular changed the status quo when the decision was made to lockout the members of Local 3059, beginning on July 28, 2014, rather than allowing them to continue working while negotiations continued. The members of Local 3059 had indicated a willingness to maintain the status quo while negotiations continued.

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Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began on July 28, 2014 and which ended on August 3, 2014, when a new agreement was reached between the parties and the members of Local 3059 returned to work.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at Alliance Tubular. The claimants are not disqualified from receiving unemployment compensation benefits beginning July 28, 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 lockout between Local 3059 and Alliance Tubular ended on August 3, 2014.

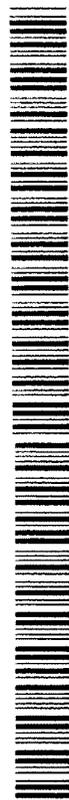
APPEAL RIGHTS: If you disagree with this decision, you have the right to appeal. The following paragraph provides a detailed explanation of your appeal rights:

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 **08/21/2014**.

The twenty-one day appeal period ends on **09/11/2014**.

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