

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

JFS-83000 09/14/2013

PSC METALS, INC. 5875 LANDERBROOK DR STE 200 MAYFIELD HEIGHTS, OH 44124-4069	Date Issued 02/12/2014
	Determination Identification Number
	ODJFS Office  Bureau of UC Program Services
Employer's Name PSC METALS, 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  
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**In The Matter Of A Labor Dispute Between**

Union: **Steelworkers Local 3610-02**      Employer: **PSC METALS, INC.**  
Docket No: **000000001400005**      Hearing Officer: **Jim Bubutiev**  
Date of Hearing: **02/18/2014**      Date of Issuance: **02/12/2014**

**INTRODUCTION**

On February 10, 2014 the Department of Job and Family Services received credible and reliable information from PSC Metals so that this matter could be decided without a hearing pursuant to Ohio Administrative Code Rule 4141-28-04(A).

This matter was decided 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 decision is to determine the reason for the unemployment of certain individuals who have filed claims for unemployment compensation benefits.

The Department of Job and Family Services has received 54 unemployment compensation benefits claims that relate to a labor dispute between Local 3610-02 and PSC Metals.

**FINDINGS OF FACT**

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PSC Metals operates a recycling facility in Canton, Ohio that processes all types and grades of industrial, dealer and retail ferrous and nonferrous metal and scrap metal (Information taken from the internet website of PSC Metals at <http://www.pscmetals.com/>).

This decision involves only the PSC Metals facility located at 3101 Varley Avenue S.W. in Canton, Ohio.

The claimants in this matter are members of Local 3610-02. PSC Metals employs approximately 62 members of Local 3610-02 that were working for PSC Metals when the labor dispute began (Department Exhibit A).

Local 3610-02 offered to continue working for PSC Metals under the terms and conditions of the then existing collective bargaining agreement while negotiations for a new agreement continued. PSC Metals declined to accept this offer to continue working under the then existing agreement (Department Exhibit A).

PSC Metals has not permanently replaced any members of Local 3610-02 (Department Exhibit A).

PSC Metals acknowledges that the members of Local 3610-02 were locked out effective February 1, 2014 and that their unemployment benefits claims are not being contested (Department Exhibit B).

## 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 PSC Metals Incorporated?
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 PSC Metals Incorporated 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.

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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, applying the status quo test from the Bays decision, the evidence indicates that the members of Local 3610-02 became unemployed when they were locked out by PSC Metals effective February 1, 2014.

**DECISION:**

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a lockout which began on February 1, 2014. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which starts with Sunday, February 2, 2014.

It is also the decision of this Hearing Officer that the lockout between PSC Metals and Local 3610-02 which began on February 1, 2014, 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 **02/12/2014**.

The twenty-one day appeal period ends on **03/05/2014**.



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