

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

JFS-83000 11/10/2016

<b>ADP INC. AND TALX UCM SERVICES INC. PO BOX 66744 SAINT LOUIS, MO 63166-6744</b>	Date Issued <b>11/17/2017</b>	Determination Identification Number
	ODJFS Office  <b>Bureau of UC Program Services</b>	
Employer's Name <b>ALLIANCE TUBULAR PRODUCTS LLC</b>	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  
Web Page: <http://jfs.ohio.gov/labordisputes>**

**In The Matter Of A Labor Dispute Between**

Union: **United Steel Workers Local #305**    Employer: **ALLIANCE TUBULAR PRODUCTS LLC**  
Docket No: **000000001700003**    Hearing Officer: **Jim Bubutiev**  
Date of Hearing: **10/24/2017**    Date of Issuance: **11/17/2017**

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 at least 94 unemployment compensation benefits claims that relate to a labor dispute between USW Local 3059-01 and Alliance Tubular.

Pursuant to Section 4141.283 of the Ohio Revised Code and paragraph (A) of Rule 4141-28-04 of the Ohio Administrative Code, the parties in this matter agreed to submit stipulations respecting all of the facts involved in this matter and to waive a hearing.

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.

**APPEARANCES**

Alliance Tubular makes welded and cold drawn mechanical steel tubing and tubular shapes, fabricated parts,

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precision components and chrome-plated rod.

## FINDINGS OF FACT

The labor dispute between USW Local 3059-01 and Alliance Tubular involved only the facility located in Alliance, Ohio. Alliance Tubular employs approximately 220 members of USW Local 3059-01 at the Alliance, Ohio facility.

There was a collective bargaining labor agreement between the parties effective from July 29, 2014 through 12:01 AM on July 31, 2017 which governed the terms and conditions of employment. A total of eight (8) negotiation sessions for a successor collective bargaining agreement were held between the middle of July 2017 and July 31, 2017.

On July 29, 2017, USW Local 3059-01 voted to reject a contract offer from Alliance Tubular, and also voted to authorize a strike.

When a successor collective bargaining agreement could not be agreed upon the parties agreed to an extension of the soon to expire collective bargaining agreement subject to a forty-eight (48) hour notice by either party of its intent to terminate the extension agreement.

The primary issues in dispute between the parties in the negotiations were health care, wages, gainshare, and the length of any successor collective bargaining agreement.

The parties held two (2) additional negotiation sessions on August 11 and 15, 2017 while under the extension agreement.

A Federal Mediator became involved in the negotiations beginning on August 11, 2017 by the mutual request of the parties. The Federal Mediator was involved in negotiations between the parties on August 11, 15, 30, September 15, and October 5 and 16, 2017. The parties also negotiated on October 21, 2017.

At 12:45 AM on August 16, 2017, USW Local 3059-01 gave Alliance Tubular a forty-eight (48) hour notice that they were terminating the extension agreement and would begin a work stoppage as of 11:00 PM on August 18, 2017 (Exhibit A).

A work stoppage began at 11:00 PM on August 18, 2017, and USW Local 3059-01 began picketing outside of Alliance Tubular s Alliance, Ohio facility.

Prior to and when the work stoppage began, Alliance Tubular had not made any changes to the terms and conditions of employment under the collective bargaining agreement.

Alliance Tubular continued to operate during the work stoppage using temporary replacement employees. Alliance Tubular did not hire any permanent replacement employees during the work stoppage.

On October 14, 2017, USW Local 3059-01 voted to reject Alliance Tubular s last, best and final offer dated September 19, 2017. Also on October 14, 2017, USW Local 3059-01 notified Alliance Tubular the work stoppage was ending, they were ready to return to work effective immediately, and were prepared to continue to negotiate (Exhibit B).

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Alliance Tubular initially responded to USW Local 3059-01 that October 17, 2017 was the earliest possible return to work date. However, the parties ultimately agreed upon October 22, 2017 at 11:00 PM as the actual return to work date (Exhibit C). USW Local 3059-01 represented employees began returning to work on October 22, 2017.

On October 22, 2017 the parties entered into a revised extension agreement which continues the terms and conditions of the expired collective bargaining agreement through 11:59:59 PM on September 30, 2018 or upon the ratification of a successor agreement, whichever occurs sooner.

At no time did Alliance Tubular implement any changes to the terms and conditions of employment governed by the collective bargaining agreement or subsequent extension agreements.

### 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 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:

(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 unemployment of the individual 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 unemployment of the claimants from Alliance Tubular was due to a lockout or a labor dispute other than a lockout.

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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.

A review of the stipulations and exhibits respecting all of the facts involved in this matter, as submitted by and agreed upon by the parties, indicates the members of USW Local 3059-01 became unemployed when they began a work stoppage and started picketing at 11:00 PM on August 18, 2017.

Alliance Tubular did not withhold work from the members of USW Local 3059-01 in an effort to obtain more desirable terms in a new collective bargaining labor agreement.

Using the *Bays* case standard, this Hearing Officer finds, based upon the review of the stipulations and exhibits, that the members of USW Local 3059-01 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 August 18, 2017. The conduct and actions of Alliance Tubular at all times indicated a willingness to maintain the status quo while negotiations continued.

Therefore, the members of USW Local 3059-01 were unemployed due to a labor dispute other than a lockout that began August 18, 2017, and which ended on October 22, 2017, when they returned to work under a revised extension agreement which continues the terms and conditions of the expired collective bargaining agreement through 11:59:59 PM on September 30, 2018, or upon the ratification of a successor agreement, whichever occurs sooner.

## 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 beginning August 18, 2017. The claimants are disqualified from receiving unemployment compensation benefits from August 18, 2017, through October 22, 2017, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

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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 **11/17/2017**.

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