

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LOCAL NO. 1406 OF THE	:	
INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE	:	
WORKERS, AFL-CIO,	:	
	:	
Complainant,	:	Case VIII
	:	No. 23471 Ce-1794
vs.	:	Decision No. 16548-D
	:	
EVCO PLASTICS,	:	
	:	
Respondent.	:	
	:	
	:	

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Appearances:

Kelly & Haus, Attorneys at Law, Suite 202, 302 E. Washington Avenue, Madison, Wisconsin 53703, by Mr. William Haus, on behalf of the Complainant.  
Boardman, Suhr, Curry & Field, Attorneys at Law, Suite 410, One S. Pinckney St., P. O. Box 927, Madison, Wisconsin 53701, by Mr. Paul A. Hahn, on behalf of the Respondent.

REVISED FINDINGS OF FACT, REVISED CONCLUSIONS OF  
LAW AND REVISED ORDER

Examiner Amedeo Greco having on November 6, 1979 issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter, wherein he concluded that the above named Respondent Company had committed unfair labor practices within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act, by failing to timely recall employees to active employment in violation of a strike settlement agreement existing between the Respondent Company and the above named Complainant Union, and wherein said Examiner ordered the Respondent Company to cease and desist from such activity and to take certain affirmative action with regard thereto; and the Respondent Company having timely filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to review the decision of the Examiner, and a brief in support thereof; 1/ and a supplemental hearing having been conducted in the matter on June 24, 1981 at Madison, Wisconsin, before Commissioner Morris Slavney; and the Commission, having reviewed the entire record, the decision of the Examiner, the petition for review, and the brief in support thereof, makes and issues the following

REVISED FINDINGS OF FACT

1. That Local No. 1406 of the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 2021 Atwood Avenue, Madison, Wisconsin.

2. That Evco Plastics, hereinafter referred to as the Company, has its principal place of business and offices at 100 West North Street, De Forest, Wisconsin, wherein it is engaged in the business of manufacturing plastic mold products, and that in said regard the Company has an annual gross volume of business in excess of \$500,000.00, and a dollar volume of annual sales in excess of \$50,000.00 to customers located outside the State of Wisconsin.

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1/ Complainant's brief in response to the petition for review has not been filed within the time period agreed upon by the parties.

3. That on June 3, 1974, following an election conducted by it, the National Labor Relations Board, by its Regional Director of Region 30, Milwaukee, Wisconsin, certified that the Union, pursuant to the National Labor Relations Act, had been selected as the exclusive collective bargaining representative of all regular full-time and regular part-time employees of the Company, excluding office clerical employees, casual employees, professional employees, guards and supervisors, as defined in the National Labor Relations Act; and that thereafter, and in said relationship, the Union and Company entered into a series of collective bargaining agreements covering the wages, hours and conditions of employment of said employees represented by the Union; that said agreements continued until at least June 3, 1977; that on June 4, 1977 the Union commenced an economic strike involving the employees represented by it; and that in said regard approximately fifty employees in the collective bargaining unit engaged in such strike action, and that some ten employees returned to work during the period of the strike.

4. That said strike continued into December, 1977 and on or about December 14, 1977 the Union proposed a settlement agreement which was rejected by the Company; that the Company submitted its proposal for a settlement of the strike, which the Union rejected; that the parties continued their efforts to resolve the issues involved, and in that regard the Company mailed the following proposed settlement agreement to Vernon Zitlow, the Union's Business Representative, who received same on December 27, 1977:

STRIKE SETTLEMENT AGREEMENT

1. The Company will furnish the Union with a list of employees who were terminated by the Company during the course of the strike and employees who notified the Company they were terminating their employment. The Company will make reasonable attempts by letter to notify all employees who did not return to work during the strike notifying them of the settlement of the strike and advising these employees of the establishment of a preferential hiring list. A copy of the letter is attached.
2. Employees who notify the Company of their desire to return to work will be recalled and receive any accrued benefits pursuant to the labor agreement and NLRA.
3. The Company and the Union agree to withdraw any current legal actions, including any charges before the National Labor Relations Board. Neither the Company nor the Union will bring charges or suit against the other for occurrences or activities arising during the strike and known to the parties as of the date of execution of this strike settlement.

The aforementioned three paragraphs, inclusive, comprise the total strike settlement agreement between the parties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

EVCO PLASTICS  
By \_\_\_\_\_

INTERNATIONAL ASSOCIATION (sic)  
OF MACHINISTS AND AEROSPACE  
WORKERS LODGE 1406  
By \_\_\_\_\_

5. That Zitlow affixed his signature to the above agreement on January 7, 1978, and inserted said date in the space set forth therein; that on or about January 8, 1978 Zitlow telephonically advised Paul Hahn, the Company's attorney, that the Union had accepted such strike settlement agreement, and that on the following day Zitlow placed said signed agreement in the mail for delivery to Hahn; that, however Hahn did not receive same until January 17, 1978, and on said date Hahn executed same on behalf of the Company, and advised the Company's General Manager, Dean Bartelt, that he had done so.

6. That on January 17, 1978 Hahn mailed the following letter, along with the executed strike settlement agreement, to Bartelt:

Enclosed is an executed Strike Settlement agreement. Although dated by the Union on January 7, 1978, I did not receive the Strike Settlement Agreement until January 17, 1978, at which time I signed it. I have also enclosed the letter to be forwarded to all employees who did not return to work during the strike. I believe the letter should be dated, insofar as the date of Strike Settlement Agreement, on the 17th day of January, 1978. Please do not deviate at all from the letter. I believe the letter should be sent out as soon as is reasonably possible.

I would also appreciate it if you would begin to develop the list of employees who were terminated by the Company during the course of the strike, etc., pursuant to paragraph 1 of the Strike Settlement Agreement. If you have any questions, please call me.

The Union has also signed the labor agreement, and I will be forwarding copies to Don for his signature.

8. That on January 23, 1978 the Company mailed the following letter to striking employees:

Dear \_\_\_\_\_ :

Re: Strike Settlement - Evco Plastics  
DeForest, Wisconsin

On the 17th day of January, 1978, Evco Plastics and Lodge 1406 of the International Association of Machinists signed a document settling the strike at Evco, based on the Company's final offer.

If you desire to return to work you must notify the Company within seven (7) days from the date of this letter in writing whether you wish to return to work. You must inform the Company of when you will be available to work, your shift and job preference. You will then be recalled as needed. You should be aware that there are currently only a possible six vacancies that may become available. If you cannot return to work when called because of illness, the Company may fill that vacancy, but you will remain on the hiring list. Also, if the Company does not have available your first choice job or shift, you will be asked if you wish to remain on the hiring list.

You will receive only those accrued benefits due you under the labor agreement. For example, anyone who did not receive their personal holiday before the strike will not receive a personal holiday for calendar year 1977. Any vacation pay due you will depend on whether you worked 1600 hours in your current anniversary year.

Any questions you may have should be directed only to Dean Bartelt. Mr. Bartelt has the only authority to speak on this particular matter for Evco Plastics.

9. That twelve of the striking employees responded to the Company's letter of January 23, in writing, within the time limit set forth there, as follows:

<u>Employee - Classification - Seniority Date</u>	<u>Nature of Response</u>
Wilma Mayr - Machine Operator - 7/27/71	"I am available for work now. Since I worked days the first shift is my preference."
Neil McLaughlin - Set Up Man - 11/15/72	"I understand that Evco Plastics has no certified apprentice in the tool room. If you decide to have an apprentice study in the tool room, I would like to be him. Any shift would be o.k. If you have any questions, please feel free to call at the number above."
Paul Kozlowski - Machinist - 4/3/73	"I would like to return to work. I would be available now, any shift. Job preference as mold maker."
Catherine Maher - Machine Operator - 2/25/74	". . . I have listed below my shift preference and I am available immediately as a production worker. (1) second shift . . . 3 p.m.-11 p.m. (2) first shift . . . 8 a.m.-4:30 p.m. (3) third shift . . . 10:30 p.m.-6:30 a.m."
Cindy Quamme - Machine Operator - 8/6/74	"I can return to work with a three to five day notice. Job preference: 1st choice: 1st shift assembly. 2nd choice: 1st shift production machine operator."
Sadie Butzen - Machine Operator - 9/4/74	"I would like to return to work and will be available whenever I am called. My job preference is production machine operator. My shift preference is first shift. I also like second shift 2 p.m. to 10:30 p.m. If nothing is available for me, at this time, I would like to remain on the hiring list."
Marilyn Tyrer - Machine Operator - 9/4/74	". . . yes I would be interested in returning to Evco as a machine operator. I would prefer any time on first shift. I would be able to start immediately."
Steven Maher - Material Handler - 3/11/76	"I am available as of January 30, 1978. My job and shift preferences are as follows: 1. Hopper filler 2. Assembly production 3. Machine operator 1. Third Shift 2. Second Shift 3. First Shift"
Greg Larson - Material Handler - 4/19/76	"I would like first or second shift hopper filler job. If neither of these shifts are open I will take third shift hopper filler position."
Mary Jo Bambrough - Machine Operator - 7/12/76	". . . yes, I will return to work, and available as soon as I am

notified. As stated in your letter of choice of 1st shift and as a machine operator. If there are no openings would you please keep me remained on the hiring list."

Barbara Nellen - Machine Operator -  
7/15/76

". . . yes I will be available to return to work as soon as am notified. As stated in your letter asking of any choice of shift, as machine operator on first shift. If there are no openings on first shift yes I will remain on the hiring list."

Pat Leverentz - (Not Established)

". . . This is to inform interested parties that I do not wish to return to work at Evco."

10. That at least by February 10, 1978 none of the above named employees who had indicated a desire to return to work had been recalled by the Company; and that on said date Zitlow sent the following letter to Hahn:

I have been advised by members of the Union - employees of the company on the Preferential List, that the Company hired and put to work on first and other shifts six new employees right off of the street after the Company's offer was ratified on January 7, 1978, after the Company's offer given the Union at the December 14, 1977 negotiating meeting that there would be up to six jobs to be filled by returning Union member strikers with further vacancies or openings to be filled in accordance with the "Strike Settlement" agreement proffered and agreed to at the December 14, 1977 meeting of the parties.

The Company is in violation of the Strike Settlement agreement and its word and offer given the Union at the December 14, 1977 negotiating meeting which was accepted by the Union when it hired the six new employees instead of bringing back the senior employees of the Preferential List interested in returning to the shifts and jobs the new employees were hired onto.

I did not receive copies of the letters sent to strikers, nor copies of any responses to those letters, etc., that I was supposed to get in order to be able to determine if the Strike Settlement and/or Labor Agreement is being lived up to.

I request the names of all bargaining unit employees, their addresses, the job employed on, the shift employed on, the dates of hire for each as of the dates of your response in order that I can make an intelligent determination whether or not the Company's December 14, 1977 offer, the Strike Settlement, and/or the Labor Agreement is being adhered to.

11. That by letter dated March 24, 1978 Mary Jo Bambaugh advised the company that she was quitting her employment (although she had not been recalled); that on April 10, 1978 Neil McLaughlin was recalled to active employment as an apprentice foreman; that McLaughlin quit his employment on or about August 13, 1978, and prior to the latter date McLaughlin turned down a position as a maintenance mechanic.

12. That on April 10, 1978 Hahn, in response to Zitlow's letter of February 10, sent the following letter to Zitlow:

In reference to your letter of February 10, 1978, regarding the establishment of a preferential hiring list and

other matters, I must first of all express disagreement with several of the points in your letter.

At no time during the negotiation session on December 14, 1977, did the Company offer or guarantee that any striking employees would be offered positions at any time. Company counsel made this point clear, both to Mediator Calloway and to the Union. All Company counsel stated was that the Company thought in January possibly there would be six positions that would need to be filled. Further, at no time did the Company state that it would stop hiring employees to fill any vacancies, which was and is its legal right.

You are also mistaken as to your point that the parties agreed at the December 14, 1977, meeting to a strike settlement agreement. Midway through the meeting on December 14 the Union offered a strike settlement proposal. This proposal was rejected by the Company and this rejection was clearly stated to Mediator Calloway. Both Mediator Calloway and Company counsel expressed to the Union that the Company would not agree to the Union proposal for a strike settlement. At the conclusion of the meeting, the Company stated that it would submit a strike settlement counter-proposal to the Union, which the Company subsequently forwarded to your office. Our records show that the strike settlement agreement was not signed by the Union until January 7, 1978, was not received by Company counsel until January 17, 1978, at which time it was executed by counsel for the Company. It is the position of the Company that an agreement is not binding on either party until it is entered into, and this did not transpire until January 17, 1978.

Company counsel takes strong exception to the Union's allegation that the Company, as represented by counsel, is in violation of the strike agreement and its word and alleged offer given to the Union on December 14, 1977. Certainly, after a strike of seven months, it might be worthwhile recognizing that such charges will do nothing to improve the relationship between the Company and the Union. Furthermore, the evidently wild allegations being made by employees or former employees might very well be the frustrations of people who realize they made a mistake. However, we would remind them that going out on strike was the employees' choice and not the Employer's.

We have enclosed a list dated March 3, 1978, setting forth the names of the individuals hired since January 1, 1978, their dates of hire and hours of work. You will note these employees were all hired prior to the establishment of a preferential hiring list. We have also enclosed a list of terminated employees and those employees who quit their employment. We are enclosing a copy of a letter that was sent on January 23, 1978, to the striking employees. The Company sent this letter out within five days after the strike settlement was received from the Union by counsel for the Company. As you also requested, we are enclosing a list of people who did not respond to the Company's letter of January 23, 1978, and, therefore, pursuant to the strike settlement letter of January 23, 1978, will not be placed on a preferential hiring list. Lastly, we are enclosing the list of employees who responded to the Company's January 23, 1978, letter establishing them as members of a preferential hiring list. We think you will note that the employees have set themselves, with one or two exceptions, rather limited opportunities for return to employment unless a vacancy becomes available on the first shift.

It is the position of the Company that it is and has been in compliance with the strike settlement agreement, the labor agreement and the discussions between the parties before Mediator Calloway.

We believe this letter responds in essence to the requests of your letter of February 10, 1978.

13. That the attachments to the above letter consisted of the following lists:

- (a) A list of employees who had been hired between January 12 and January 23, 1978, and the shifts to which they had been assigned;
- (b) A list of striking employees who responded to the Company's letter of January 23, as indicated in para. 9, supra;
- (c) A list of 12 former employees who had not responded to the Company's January 23 letter; and
- (d) A list of some 14 employees who had been terminated or who had quit their employment.

14. That on May 7, 1978 the Company placed a newspaper ad seeking to fill a moldmaker position; that the Company did not offer said position to Kozlowski, who, as noted above, sought reemployment as a moldmaker; that Kozlowski had commenced his employment with the Company on April 3, 1973, as a moldmaker, and continued in such classification until December 13, 1974 on which date he was laid off; that on February 24, 1975, Kozlowski was recalled to active employment as a machinist; and that he continued to be employed in such classification until June 4, 1977 when he participated in the strike; and that at no time after January 23, 1978 has the Company filled any "machinist" position.

15. That between January 23, 1978 and September 11, 1978 the Company hired approximately 44 new employees in the "production/assembly" classification for positions on the second and third shifts, with one new employee being assigned to the first shift; and that nine of such employees hired were hired on the dates noted and assigned to the shift indicated:

<u>Date of Hire</u>	<u>Employee</u>	<u>Shift</u>
3/13/78	Mary Hrejsa	3rd
3/20/78	Janet Sokowlowski	3rd
3/20/78	P. Gamer	2nd
3/29/78	Debra Levins	2nd
4/3/78	Deborah Nelson	3rd
4/3/78	Gerald Schott, Jr.	3rd
4/3/78	Maureen Lynch	2nd
4/3/78	Betty Hillestad	2nd
6/14/78	Christine Lauder	1st

16. That, pursuant to the strike settlement agreement, and the Company's letter of January 23, 1978, the following employees should have been offered active employment on the dates indicated, rather than such employment being assigned to new employees as set forth in para. 15, supra:

Wilma Mayr	-	3/13/78
Catherine Maher	-	3/20/78
Cindy Quamme	-	3/20/78
Sadie Butzen	-	3/29/78
Marilyn Tyrer	-	4/3/78
Steven Maher	-	4/3/78
Greg Larson	-	4/3/78
Mary Jo Bambrough	-	4/3/78
Barbara Nellen	-	6/14/78

17. That on September 11, 1978 the Company sent the following letter to certain striking employees, including those noted immediately above:

This letter is to advise you of the current shift openings at EVCO Plastics. We presently have the following openings for production.

1st shift (3) three openings

2nd shift (3) three openings

3rd shift (3) three openings

If you desire to return to work you must notify the company within (7) seven days from the date of this letter in writing whether you wish to return to work.

You must inform the company of when you will be available to work and your shift preferences. If you cannot return to work when called because of illness, the company may fill that vacancy, but you will remain on the hiring list.

If you do not wish to accept any of these job openings, please advise us if you wish to remain on the preferential hiring list.

18. That following the receipt of said letter, and after indicating a desire to return to employment, Wilma Mayr was returned to active employment on September 25, 1978, and Catherine Maher and Sadie Butzen both returned to active employment on September 20, 1978; that following the receipt of the letter of September 11, Cindy Quamme advised the Company that she had obtained employment elsewhere on August 14, 1978 and did not desire to return to the Company's employment; that Marilyn Tyrer did not respond to the Company's letter of September 11 on the basis that she did not wish to return to said employment as of said date; that Steven Maher did not seek a return to employment in September, 1978 since he had obtained employment elsewhere on July 3, 1978; that Greg Larson, on a about May 29, 1978, joined the United States Air Force, and therefore was deemed to have forfeited his opportunity for reemployment, at least during the term of his enlistment; that Mary Jo Bambrough, as previously indicated in para. 11, supra, quit her employment on March 24, 1978; and that following receipt of the September 11 letter, Barbara Nellen notified the Company that she did not desire to return to employment.

19. That the following tabulation reflects the sums of money received by the individuals indicated, as unemployment compensation and earnings from other employers, from January 23, 1978 to the date indicated:

<u>Employee</u>	<u>From January 23, 1978 To</u>	<u>Unemployment Compensation</u>	<u>Earnings from Other Employers</u>
Wilma Mayr	9/25/78	\$ 1,761.00	\$ 331.00
Catherine Maher	9/20/78	1,215.50	-
Cindy Quamme	8/14/78	1,602.00	390.35
Sadie Butzen	9/20/78	862.50	1,355.45
Marilyn Tyrer	9/11/78	2,036.00	594.40
Steven Maher	7/3/78	864.00	-
Greg Larson	5/20/78	418.50	1,122.92
Mary Jo Bambrough	3/24/78	Not disclosed	Not disclosed
Barbara Nellen	9/11/78	915.00	-
Paul Kozlowski	12/31/80	-	46,375.37

20. That in its complaint initiating the instant proceeding the Union alleged that the Company violated the terms of the strike settlement agreement with respect to the failure of the Company to recall the employees named in para. 16, supra, on the dates noted therein, as well as the Company's failure to offer



Paul Kozlowski the moldmaker position on May 7, 1978; and that in addition the Union alleged that by failing to timely recall said employees the Company also discriminated against them because of their participation in lawful concerted activities, namely by engaging in the strike.

Upon the basis of the above and foregoing Revised Findings of Fact, the Commission makes and issues the following

REVISED CONCLUSIONS OF LAW

1. That Evco Plastics is engaged in a business having an effect on interstate commerce, and that its volume of business is such that the National Labor Relations Board would exercise its jurisdiction to determine whether Evco Plastics committed an unfair labor practice within the meaning of the National Labor Relations Act by discriminating against employees because of the exercise of their right to engage in lawful concerted activities, and, therefore, the Wisconsin Employment Relations Commission has no jurisdiction to determine whether in said regard, Evco Plastics committed unfair labor practices within the meaning of Sec. 111.06(1)(c)1 of the Wisconsin Employment Peace Act.

2. That the strike settlement agreement executed by the representative of International Association of Machinists and Aerospace Workers Lodge 1406, on January 7, 1978, and by Counsel for Evco Plastics, on January 17, 1978, constitutes a binding collective bargaining agreement within the meaning of the provisions of the Wisconsin Employment Peace Act.

3. That the Wisconsin Employment Relations Commission has jurisdiction to determine whether Evco Plastics failed to comply with said strike settlement agreement by failing to timely offer employment to certain of its employees who had engaged in a strike, and to determine whether such failure constituted an unfair labor practice within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

4. That Evco Plastics, by failing to notify the following employees to return to active employment on the dates indicated, violated the terms of the strike settlement agreement between it and International Association of Machinists and Aerospace Workers Lodge 1406, and thereby Evco Plastics committed unfair labor practices within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act:

Wilma Mayr	-	3/13/78
Catherine Maher	-	3/20/78
Cindy Quamme	-	3/20/78
Sadie Butzen	-	3/29/78
Marilyn Tyrer	-	4/3/78
Steven Maher	-	4/3/78
Greg Larson	-	4/3/78
Barbara Nellen	-	6/14/78

5. That Evco Plastics, by failing to notify Paul Kozlowski to return to active employment any time after January 23, 1978, has not violated, and is not violating the terms of the strike settlement agreement, since no machinist position became available since the above date, and therefore, in said regard, Evco Plastics has not committed an unfair labor practice within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

6. That Evco Plastics, by failing to notify Mary Jo Bambrough to return to active employment on April 3, 1978, did not violate the terms of the strike settlement agreement, for the reason that said individual had terminated her employment status as of March 24, 1978, and therefore, in said regard, Evco Plastics, has not committed an unfair labor practice within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Revised Findings of Fact and Revised Conclusions of Law, the Commission makes and issues the following

REVISED ORDER

IT IS ORDERED that Evco Plastics, its officers, agents, successors and assigns, shall immediately:

1. Cease and desist from violating the terms of the strike settlement agreement executed by it and International Association of Machinists and Aerospace Workers Lodge 1406 in January, 1978.
2. Take the following affirmative action which will effectuate the policies expressed in the Wisconsin Employment Peace Act:
  - (a) Reimburse the following named employees and make them whole for any loss of wages, and other benefits, if any, they may have suffered by reason of the Company's failure to recall them to active employment, by payment to each of them wages and other benefits they would have received between the dates opposite the names of each of them, less any unemployment compensation or moneys earned in other employment during the dates noted:

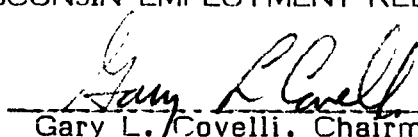
<u>Employee</u>	<u>From</u>	<u>To</u>
Wilma Mayr	3/13/78	9/25/78
Catherine Maher	3/20/78	9/20/78
Cindy Quamme	3/20/78	8/14/78
Sadie Butzen	3/29/78	9/20/78
Marilyn Tyrer	4/3/78	9/11/78
Steven Maher	4/3/78	7/8/78
Greg Larson	4/3/78	5/21/78
Barbara Nellen	6/14/78	9/11/78

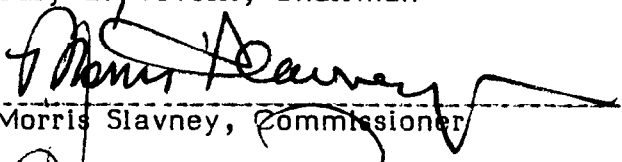
- (b) Notify all employees by posting in conspicuous places on its premises where employees are employed, copies of the notice attached hereto and marked Appendix "A". That notice shall be signed by the Company and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Company to ensure that said notices are not altered, defaced or covered by other material.
  - (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.


Given under our hands and seal at the City of  
Madison, Wisconsin this 28<sup>th</sup> day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary L. Covelli, Chairman

  
\_\_\_\_\_  
Morris Slavney, Commissioner

  
\_\_\_\_\_  
Herman Torosian, Commissioner

APPENDIX A  
NOTICE TO ALL EMPLOYEES

Pursuant to an Order issued by the Wisconsin Employment Relations Commission, and in order to effectuate the policies expressed in the Wisconsin Employment Peace Act, we hereby notify our employees that:

We will reimburse the following named employees and former employees and make them whole for any loss of wages, and other benefits, if any, they may have suffered by reason of our failure to recall them to active employment on the dates indicated in the first column below, by payment to each of them wages and other benefits they would have received between the dates noted opposite the names of each of them, less any unemployment compensation or moneys earned in other employment during the dates noted:

<u>Employee</u>	<u>From</u>	<u>To</u>
Wilma Mayr	3/13/78	9/25/78
Catherine Maher	3/20/78	9/20/78
Cindy Quamme	3/20/78	8/14/78
Sadie Butzen	3/29/78	9/20/78
Marilyn Tyrer	4/3/78	9/11/78
Steven Maher	4/3/78	7/8/78
Greg Larson	4/3/78	7/9/78
Barbara Nellen	6/14/78	9/11/78

By \_\_\_\_\_

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING  
REVISED FINDINGS OF FACT, REVISED CONCLUSIONS  
OF LAW AND REVISED ORDER

The Pleadings

The Union, in its complaint initiating the instant proceeding, alleged that the Company committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act (WEPA) by not complying with the terms of a strike settlement agreement entered into by the parties in failing to recall certain striking employees who had notified the Company of their desire to return to employment, 2/ and further, that the Company discriminated against employees for engaging in protected concerted activity, namely the strike, by denying said employees reemployment and preferential hiring in accordance with the terms of the strike settlement agreement. 3/

The Company filed its answer on September 22, 1978, wherein it alleged, in material part, that it did not violate the strike settlement agreement in that employees who had indicated a desire to return to employment had, in fact, been so returned when openings existed in the job and shift preferences indicated by said employees, that some of the employees had indicated that they had resigned from employment, and that there was no opening in the position desired by a remaining employee. Further, the Company alleged that it was engaged in a business, the volume of which met the standards established by the National Labor Relations Board for the exercise of said agency's jurisdiction, and that, therefore the Wisconsin Employment Relations Commission was without jurisdiction to determine the matters alleged in the complaint. On September 27, 1978, the Company also filed a motion to dismiss the complaint on the basis that the NLRB had jurisdiction over the matter.

On October 2, 1978 the Union responded to the Company's motion to dismiss, wherein it contended that although the Company was generally subject to the jurisdiction of the NLRB, the Commission, nevertheless, had jurisdiction with respect to the allegations alleged in the complaint, by virtue of the fact that the National Labor Relations Act does not regulate violations of agreements between a union and an employer relating to wages, hours and working conditions.

Summary of the Facts

The Union, in 1974, was certified as the exclusive collective bargaining representative of the production and maintenance employees in the employ of the Company, and thereafter the parties entered into yearly collective bargaining agreements covering the wages, hours and working conditions of said employees. In the spring of 1977 the parties were engaged in collective bargaining on a new agreement, and on or about June 4, 1977, having been unable to reach an accord on a new agreement, the Union commenced a strike. Approximately fifty employees engaged in such strike activity, during the course of which ten employees voluntarily returned to active employment. The parties reached an accord on a strike settlement agreement in January, 1978, 4/ and said agreement was signed by the Union representative on January 7, and upon the signing thereof by the Company's attorney on January 17, said agreement became effective as of the latter date. At the same time the parties also reached an accord on a new collective bargaining agreement, which by its terms was to be retroactive to June 3, 1977.

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2/ Sec. 111.06(1)(f).

3/ Sec. 111.06(1)(c) and (a).

4/ All dates set forth hereinafter refer to the year 1978, unless otherwise noted.

On January 23 the Company, pursuant to the strike settlement agreement, directed letters to employees who had gone on strike and who had not advised the Company that they had quit their employment. Twelve employees responded. One indicated that he did not desire to return to employment. Another, who had been a machinist at the commencement of the strike, stated that he would like to return as a mold maker. Still another, who had been classified as a set-up man, indicated a desire to be an apprentice in the tool room. The remaining nine employees indicated a desire to return to active employment, indicating their preferences as jobs and shifts. The Company either hired new employees or transferred employees, having less seniority than those former striking employees who had indicated a desire to return to employment, before reemploying, or tendering employment to nine employees. The Examiner concluded that the Company committed an unfair labor practice in said regard, on the basis that such action violated the strike settlement agreement between the parties. The Examiner ordered that said employees be made whole for the earnings and other benefits lost by them in failing to be recalled earlier.

#### The Petition for Review

The Company timely filed a petition requesting the Commission to review the decision of the Examiner, contending that the Examiner erred in certain of his Findings of Fact, and in his Conclusions of Law, in concluding that the strike settlement agreement constituted a collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act, and in any event the Company did not violate said strike settlement agreement. The Company further contends that the Commission has no jurisdiction to determine the merits of the issues involved herein since the Company is subject to the jurisdiction of the National Labor Relations Board. The Company further argues that should the Commission modify the Examiner's decision it should require further hearing to determine the amounts of back pay due and owing the employees affected. Counsel for the Company filed a brief in support of its petition, while counsel for the Union filed a brief urging the Commission to sustain the Examiner in full.

#### Discussion

We have revised the Examiner's Findings of Fact primarily to set forth the material facts in the sequence in which they occurred, and in addition we have eliminated some of the Examiner's Findings, either because they are not material to the issues which the Commission must determine herein or because we disagree with a particular Finding made by the Examiner. For example, the fact that the Union and Company were parties to a collective bargaining agreement, which by its terms was to be in effect from June 3, 1977 to June 2, 1980, which agreement contained a provision with respect to "recall from layoff", 5/ is immaterial for the reason that the employees involved in the instant matter were not "laid-off" by the Company, but rather their active employment status was interrupted as a result of their participation in an economic strike. Their right to recall after the strike settlement resulted from the latter agreement, rather than from the 1977-1980 collective bargaining agreement. Further, the Examiner found that "the strikers were qualified to perform jobs which arose after their requests for reinstatement". 6/ We agree to such Finding as to all the employees involved with the exception of Kozlowski. The only reference in the record as to Kozlowski's qualifications to perform duties as a moldmaker was the fact that he was originally employed in such classification. However, he was employed as a machinist from February, 1975 to June 4, 1977, on which date he went on strike. Under such circumstances we conclude that the Company had no obligation to offer him the moldmaker position when it became available in May, 1978.

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5/ Examiner's Finding of Fact, para. (33).

6/ Examiner's Finding of Fact, para. (35).

We have also revised the Examiner's Conclusions of Law to indicate more fully that the Commission will not exercise its jurisdiction to determine whether the Company discriminated against employees by their late recall, since the jurisdiction to determine such an unfair labor practice lies with the National Labor Relations Board and not this State agency. Further, we have concluded, and specifically set forth that the strike settlement agreement constitutes a collective bargaining agreement within the meaning of the Wisconsin Employment Peace Act, and we have specifically concluded that the failure of the Company to offer Kozlowski reemployment was not violative of said strike settlement agreement. It should be noted that in his decision the Examiner indicated that a supplemental hearing might be necessary to determine the amounts of back pay due and owing the employees involved, and as noted in the preface to our decision, the Commission conducted such a supplemental hearing on June 24, 1981 for said purposes. We have also revised the Order to conform with our Conclusions of Law.

We agree and adopt a substantial portion of the Examiner's Memorandum Accompanying and made part of his decision, except as to those matters noted hereinafter.

A. The Strike Settlement Agreement

The Examiner, on page 15, describes a strike settlement agreement as being "part of a collective bargaining agreement". In this case it constituted a collective bargaining agreement separate and apart from any existing collective bargaining agreement.

B. Recall Rights of Economic Strikers

On pages 17 and 18 the Examiner discusses the recall rights of economic strikers. The right of recall in the instant matter was not predicated as a result of an unconditional offer of the employees to return to employment on the cessation of the strike, but rather on a strike settlement agreement executed by the Union and the Company which terminated the strike and provides a procedure for the possible reemployment of striking employees who would be willing to return to active employment.

C. Failure to Reemploy Kozlowski

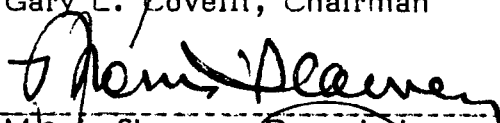
Contrary to the Examiner, we have concluded that Kozlowski was not entitled to be recalled to employment as a moldmaker, and therefore we disagree with that portion of the Examiner's memorandum supporting his conclusion to the contrary.


Dated at Madison, Wisconsin this 24<sup>th</sup> day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner