COURT OF APPEALS
DECISION
DATED AND RELEASED

JAN 22 1985



No. 83-1653

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

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EVCO PLASTICS,

Petitioner-Appellant,

v.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Respondent.

Decision No.
16548-E

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LOCAL NO. 1406 OF THE
INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO,

Petitioner-Respondent,

v.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Respondent.

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APPEAL from an order of the circuit court for Dane county: ROBERT R. PEKOWSKY, Judge. Affirmed.

Before Cane, P.J., Dean and LaRocque, JJ.

LaROCQUE, J. Evco Plastics appeals an order holding that it violated a strike settlement agreement[1] by failing to rehire former striker Paul Kozlowski as a moldmaker and by failing to timely

rehire six other former strikers. Evco also contends that the Wisconsin Employment Relations Commission lacks jurisdiction to settle the dispute under the Strike Settlement Agreement. We conclude that the agreement is a collective bargaining agreement and that the commission therefore has jurisdiction. Because a reasonable person could not have found that Kozlowski lacked the qualifications for a moldmaker job, we conclude that Evco violated the agreement by failing to offer him a moldmaker position. We therefore affirm that portion of the circuit court order. Because the agreement required Evco to hire qualified former strikers for available jobs, we also affirm that part of the order concluding that Evco violated the agreement by failing to timely rehire six other former strikers.

## JURISDICTION

The National Labor Relations Board has exclusive jurisdiction over labor disputes. William E. Arnold Co. v. Carpenters District Council, 412 U.S. 12, 16 (1974). A limited exception applies if the activity causing the dispute also constitutes a breach of a collective bargaining agreement. Id. In such cases, state tribunals have jurisdiction. Id.

The commission has jurisdiction to determine whether Evco violated the Strike Settlement Agreement because the agreement is a collective bargaining agreement. A collective bargaining agreement

results from the employer and the employees negotiating collectively over "terms and conditions of employment ...." See sec. 111.02(5), Stats. The Strike Settlement Agreement involves terms and conditions of employment because it provides that recalled strikers will receive accrued benefits according to the labor agreement and the National Labor Relations Act. Because the dispute between Evco and the strikers stems from a collective bargaining agreement under sec. 111.06(1)(f), Stats., the commission therefore has jurisdiction. See Madison Teachers, Inc. v. WERC, 115 Wis.2d 623, 627, 340 N.W.2d 571, 574 (Ct. App. 1983).

We reject Evco's argument that the agreement merely specifies the procedure to rehire former strikers before "the event of employment is consummated." The Strike Settlement Agreement refers to "employees." But for the employee-employer relationship immediately before the strike, the strikers would not be entitled to be rehired.

## FAILURE TO REHIRE KOZLOWSKI

The evidence does not support the commission's finding of fact that former striker Kozlowski was unqualified to perform the duties of a moldmaker. Where evidence permits competing reasonable inferences, we will accept the inference drawn by the commission. See Universal Foundry Co. v. DILHR, 86 Wis.2d 582, 589, 273 N.W.2d 324, 327 (1979). We will set aside the commission's finding of fact only if a

reasonable person could not have found the same fact from the evidence and its inferences. See Gibson v. Transportation Commission, 103 Wis.2d 595, 607, 309 N.W.2d 858, 865 (Ct. App. 1981), aff'd, 106 Wis.2d 22, 315 N.W.2d 346 (1982).

A reasonable person could not have found that Kozlowski lacked the qualifications necessary to perform the duties of a moldmaker. The parties agree that Evco hired Kozlowski in April, 1973, as a moldmaker. The record shows that he was laid off in December, 1974, but was recalled and reclassified as a machinist in February, 1975, until the 1977 strike. The record contains uncontroverted evidence that Kozlowski was employed as a moldmaker longer than the probationary period, and that he was a journeyman moldmaker. The commission stated that the record's only reference to Kozlowski's qualifications was evidence that he was originally hired as a moldmaker and that this did not mean that he was qualified to perform moldmaker duties. The uncontroverted evidence that Kozlowski was a journeyman[2] moldmaker renders the commission's inference unreasonable. We therefore affirm the circuit court and conclude that because Kozlowski was qualified for a moldmaker job, Evco violated the Strike Settlement Agreement by failing to offer him a job as a moldmaker.

## FAILURE TO TIMELY REHIRE OTHER STRIKERS

We also conclude that Evco's failure to timely rehire six other former strikers violated the terms of the agreement. The company hired about forty new employees in the eight months following the strike settlement. The former strikers were not offered these jobs, even though they were qualified. The former strikers were eventually rehired eight months after the strike settlement. The circuit court held that the Strike Settlement Agreement required Evco to make a good faith effort to rehire qualified former strikers for available jobs and that Evco violated the agreement by failing to rehire the former strikers earlier. We agree.

The Strike Settlement Agreement incorporates by reference a letter[3] informing the former strikers that the company was establishing a preferential hiring list. We will construe the letter to give effect to its language, rather than to twist a word or clause. See Hammel v. Ziegler Financing Corp., 113 Wis.2d 73, 76, 334 N.W.2d 913, 915 (Ct. App. 1983).

Evco argues that because the letter specified that employees were to be "recalled as needed," it agreed only to rehire qualified former strikers for job positions and shifts that they had requested in their response to the letter. This argument twists the employees' stated preferences into an expression of limited interest in employment.

The letter does not clearly inform the employees that by requesting a first choice on job position and shift, they were precluding Evco from hiring them for other jobs for which they were qualified. We note that the letter was drafted by Evco and that it would have been easy for the company to insert this language into the letter if that had been its intent. See Wilke v. First Federal Savings and Loan Association, 108 Wis.2d 650, 655, 323 N.W.2d 179, 181 (Ct. App. 1982).

This interpretation does not render the balance of the paragraph surplusage. In the balance of the paragraph, Evco asked the employees whether they wished to remain on the preferential hiring list if their first choice was unavailable. An employee could interpret this to mean that if his first choice was unavailable, he was eligible for other jobs and shifts. Evco's request is consistent with the interpretation that the employees were stating a preference, not a restriction.

By the Court.--Order affirmed.

Not recommended for publication in the official reports.

# A P P E N D I X

1 The Strike Settlement Agreement provides in part:

> The Company will furnish the Union 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.
>
> 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.

2 Webster's Third New International Dictionary 1221 (1976) defines journeyman as "a worker who has learned a handicraft or trade and is qualified to work at it usu. for another by the day--distinguished from apprentice and master." Apprentice is defined as "one who is learning by practical experience under skilled workers a trade, art, or calling usu. for a prescribed period of time and at a prescribed rate of pay ...." Id. at 106.

3 The letter states in part:

> 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.