STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

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#117-432

SUBORDINATE LODGE NO. 1509 of the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS and HELPERS, BERNARD A. COOK, et al,

Plaintiffs,

-vs-

LADISH COMPANY and INDUSTRIAL COMMISSION OF WISCONSIN,

Defendants.

MEMORANDUM OPINION

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#117-449

LOCAL UNION NO. 85, ASSOCIATED UNIONS OF AMERICA, ROBERT R. RADA, et al,

Plaintiffs,

-vs-

LADISH COMPANY and INDUSTRIAL COMMISSION OF WISCONSIN,

Defendants.

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#117-454

MILWAUKEE DIE SINKERS' LODGE, LOCAL NO. 140, OF THE INTERNATIONAL DIE SINKERS' CONFERENCE and ROBERT W. BULLOCK, et al,

Plaintiffs,

-vs-

LADISH COMPANY and INDUSTRIAL COMMISSION OF WISCONSIN,

Defendants.

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#117-455
ELECTRICAL WORKERS' UNION
LOCAL NO. 494, and FRANK T.
SERAK, et al,

Plaintiffs,

-vs-

LADISH COMPANY and INDUSTRIAL
COMMISSION OF WISCONSIN,

Defendants.

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The issue in this case is whether members of four non-striking unions in one plant are entitled to unemployment benefits during a period in which the employer chose to close down the plant in response to a strike by the fifth union in the same plant.

The employer had 4,700 employes, 3,700 of whom were represented by unions and the Machinist Union represented 1,800. There were several different buildings within the fenced boundary of the plant in which different functions were performed, such as storage of raw steel, production of machined products, the setting of dies, and other related functions.

Quite obviously 1,800 Machinists, or 48% of the production force, must have been accountable for a large measure of the work performed or they wouldn't have been hired. The work of the Machinists was completely intertwined with that of other union members by virtue of jurisdictional agreements. When the raw steel material was brought in for forging, it was cut up into approximate sizes by the blacksmith, but whenever a torch was needed for such cutting the Machinists did it. In the preparation of forgings the heat treating was done by the blacksmith, but in the instance of machine work the heat treating was done by the Machinists. All of the transportation, including the operation of the overhead cranes in moving the material from one production location to another, was done by the Machinists. All inspections as to accuracy and quality of work were made by the Machinists.

The employer responded to the strike by completely closing down its operation, with the exception of shipping out some finished products and this was done only under Writs of Replevin.

The supervisory help spent two weeks mothballing the plant by draining all of the acid tanks, etc., after which it was properly mothballed for a period of one year, but with the strike lasting only three weeks it was again put into production. Some of its work which the company could not handle, such as die casting, had been contracted out to other firms in other communities, and such subcontractors were notified to suspend work on the employer's products.

The Machinists informed the employer that they would not object to other unions crossing the picket lines, but at no time was the employer informed that the Machinists would consent to their work being done either by the other craftsmen or by scabs.

In brief it may be stated that even though it may be the privilege of an employer in the case of a strike to attempt to find strikebreakers or other persons who are willing to violate the jurisdictional agreement the employer had with the Machinists, this employer chose not to court physical combat by this method, but instead to carry out to its fullest extent the spirit of the Wisconsin Peace Employment Act by answering the strike on the economic basis of outwaiting the union. The peaceful method of the Machinists union and of the employer resulted in a settlement within three weeks.

The plaintiffs in this case are asking the Court to either: (1) Legislate in a manner that the Legislature has in the sessions of 1949, 1953 and 1957 refused to do; namely, to reverse the case of <u>Spielmann vs. Ind. Comm.</u> (1940) 236 Wis. 240, 295 NW 1, and instead hold that persons not participating in or financing the strike are entitled to unemployment benefits, or (2) Hold that there is an obligation upon an employer to try to operate as long as possible without the strikers which they contend is established by the 500 pages of testimony in this case would have been easily the three weeks during which the strike lasted.

<u>STATUTE INVOLVED:</u> Sec. 108.04(10), which reads as follows:

> "Labor Dispute. An employe who has left (or partially or totally lost) his employment with an employing unit because of a strike or other bona fide labor dispute shall not be eligible for benefits from such (or any previous) employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed."

(1) The only issue in the Spielmann case, supra, was in regard to the interpretation of the word "establishment." Spielmann clearly holds that a strike by one craft in a single plant bars compensation to a union member of a different craft having a different contract,providing for different wages, working conditions and seniority. Spielmann held that employes in a plant located 40 miles away from the plant in which the strike occurred were barred from unemployment compensation even though different unions were involved, all upon the basis of the functional integrality, general unity, and physical proximity of two plants. These tests were reaffirmed in Schaeffer vs. Ind. Comm. (1960) 11 Wis. 2d 358, 105 NW 2d 762, with the Court pointing out that the difference between Spielmann and Schaeffer was the physical and economic differences with respect to functional integrality. In the Spielmann case the automobile body made in the Milwaukee plant was scheduled to fit a chassis being made in the Kenosha plant, while in the Schaeffer case the paper pulp manufactured at Appleton was not all of it sold for production into paper at Wisconsin Rapids and in fact was salable during the strike to other purchasers.

Nine years after the Spielmann case the Legislature rejected Bill 294A, which proposed an amendment to Sec. 108.04(10) reading as follows: "Provided that this section shall not apply if it is shown that he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute."

The same subject matter was incorporated in Bill 391S which was rejected by the 1953 Legislature and by the 1957 Legislature rejecting Bill 497A which proposed the following amendment to Sec. 108.04(10): "Such ineligibility shall apply only to the members of the local labor organization which initiated the strike or labor dispute and not to the members of other local labor organizations, the members of which are unemployed because of the strike."

Another facet of the Labor Dispute Statute was considered in the cases of Marathon Electric Mfg. Co. vs. Ind. Comm. (1955) 269 Wis. 394, 69 NW 2d 573, 70 NW 2d 576, and Rice Lake Creamery Co. vs. Ind. Comm. (1961) 15 Wis. 2d 177, 112 NW 2d 202. In both of those cases it was held that if the employer fires either a striker or non-striker who is out of work because of the stoppage, that this terminates the basic subsisting relationship of employer and employe and that thereafter the discharged employe is entitled to unemployment benefits. In other words

the Court recognized that in giving full play to the purpose of the Wisconsin Employment Peace Act that even during the time of a strike there is nevertheless a subsisting employer-employe relationship and as long as this subsists the employe is not entitled to unemployment benefits.

The case of Kenneth F. Sullivan vs. Ind. Comm. (1964) 25 Wis. 2d 84, 90, 130 NW 2d 194, is a further application of this same basic principle in that it was held in Sullivan that unemployment benefits are payable when there is no dispute between the employer and any of his employes who are engaged either directly or indirectly in the dispute. In the Sullivan case the employer had to shut down his construction operation due to a lack of ready-mix concrete because of a Teamsters union strike. The employer had no employes who were members of the Teamsters and the Teamsters Union was not a member of the Building Trades Council until two months after the strike was halted. The Trades Council was composed of crafts that had contracts with Sullivan, and which Trades Council president had allegedly made public statements supporting the strike. "Under circumstances such as those in the instant case, it would be manifestly unfair to hold respondents accountable for another union's strike of a wholly different employer when the respondents had absolutely no connection with the strike. To disqualify an employe there must be more of a thread than is present here which connects the employer (in case of a lockout) or the employe (in case of a strike) with the controversy."

(2) The decision as to whether to close the plant down completely, or run the die setting department with a stockpiling of dies that may or may not berequired in the future, having the transportation work ordinarily done by the Machinists performed either by other union members, supervisory help or scabs, all involved a great deal of judgment. As stated by the employer's witness, it would have been catastrophic to have gone on without the Machinists to make the necessary inspections as to accuracy and quality of the product. Although it may have been laudable and morally correct for the employer to encounter these risks for the benefit of the other unions, especially if they did not favor the strike, but there is no statute or any other law that compelled the employer to abandon his management decisions in favor of such moral obligation if it exists.

The Decisions of the Industrial Commission denying Unemployment Benefits must be confirmed, and counsel for the Commission may prepare the appropriate Judgment, submitting same to opposing counsel ten days before presenting it to the Court for signature.

Dated this 15th day of October, 1965.

BY THE COURT:

NORRIS MALONEY,
JUDGE