

WISCONSIN SUPREME COURT

September 9, 2022

10:45 a.m.

2020AP128

Robert L. Slamka v. General Heating & Air Conditioning

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison) that affirmed the Dane County Circuit Court order, Judge William E. Hanrahan presiding, affirming the Wisconsin Employment Relations Commission's decision dismissing Slamka's complaint and finding that the National Labor Relations Board has exclusive jurisdiction over Slamka's complaint.

In June of 2018 Slamka responded to a job posting by General Heating and Air Conditioning, Inc. ("GHAC") which limited consideration to members of the Sheet Metal Workers Union. Slamka was not a union member. After GHAC rejected his application, Slamka filed an unfair labor practices complaint with the Wisconsin Employment Relations Commission ("WERC") alleging that GHAC violated Wisconsin's Right to Work Act, Wis. Stat. § 111.04(3)(a), by denying Slamka employment based on his lack of union membership. Slamka filed a similar complaint against GHAC with the National Labor Relations Board ("NLRB").

On October 26, 2018, the NLRB dismissed Slamka's complaint; Slamka appealed this decision. In the meantime, on December 18, 2018, WERC held an evidentiary hearing on Slamka's claims. On January 17, 2019, the NLRB denied Slamka's appeal determining that no remedy was required for the advertisement because GHAC had since changed it, and there was insufficient evidence that Slamka's application was rejected because of his non-union status. On March 4, 2019, WERC held a hearing on whether it had jurisdiction to hear Slamka's complaint. Slamka argued that Wisconsin's right to work law is constitutional and that Wisconsin courts have authority to enforce validly enacted state laws. Additionally, he argued that the NLRB does not enforce state laws. The WERC hearing examiner determined that the NLRB had exclusive jurisdiction over Slamka's claims.

Slamka filed a petition for review in the Dane County Circuit Court, and the circuit court affirmed WERC's decision that the NLRB had exclusive jurisdiction over Slamka's claims. Slamka appealed to the Wisconsin Court of Appeals and the Court of Appeals affirmed the circuit court's decision, finding that WERC properly dismissed Slamka's complaint on preemption grounds, and that Slamka failed to establish that WERC erred by dismissing his complaint on presumption grounds.

Slamka filed a petition with this court for review of the Court of Appeals' decision, arguing that his case should not have been dismissed on preemption grounds. He continues to argue that Wisconsin's Right to Work Act would be meaningless if he were not allowed to pursue his claim in a state tribunal.

The issues before this court are:

1. Is Wisconsin's Right to Work Act pre-empted by federal law WERC of jurisdiction to hear and determine cases under the Right to Work Act § 111.06(1) (a) and § 111.04(3)(a) Wis. Stats.?
2. Does Article I, Section 9 of the Wisconsin Constitution provide a remedy before WERC under the Right to Work Act?