

Ferry Cap puts legal screws to union

Lawsuit alleges some employees have refused overtime in protest of relocation

By MICHELLE PARK

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Facing what it calls "dire" financial impact if it cannot fulfill orders in a timely manner, a Lakewood manufacturer has sued some of its employees and their union over claims the employees are refusing to work overtime because they oppose a relocation.

According to the lawsuit filed in U.S. District Court last Tuesday, Feb. 5, Ferry Cap & Set Screw Co. is seeking an injunction against "an illegal strike being waged" by employees in violation of a collective bargaining agreement that contains a no-strike clause and provides for arbitration of grievances.

Named as defendants are the union, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 54; union district representative Jack K. Baker; and 12 men who are employed by Ferry Cap as operators of its heading equipment, which is used to form the heads of fasteners such as screws.

Those men, Ferry Cap alleges in its complaint, "have been engaged in a concerted refusal to work overtime to protest the company's decision to transfer its heading equipment to a different facility."

Ferry Cap makes critical strength fasteners used primarily in the heavy equipment and automotive industries and employs an estimated 56 hourly production and maintenance employees at its Lakewood operations, according to the lawsuit.

The company's website says Ferry Cap was founded in 1906 and is a supplier for companies such as Caterpillar, Mack Trucks and John Deere.

Ferry Cap's lawsuit states that the header operators' refusal to work overtime "jeopardizes the company's ability to fulfill customer orders in a timely manner." It adds that an inability to fulfill orders in a timely manner "will result in Ferry Cap incurring significant financial penalties under supply contracts with customers, the loss of goodwill and the loss of customers."

"The potential overall financial impact of the work stoppage on the company is dire and could affect the company's ability to continue business operations altogether," the lawsuit maintains.

An attorney for Ferry Cap declined comment for this story, and two phone messages left for the company's director of operations were not returned by *Crain's* deadline last Friday, Feb. 8.

Root of the dispute

About a year ago, on Feb. 16, 2012, Ferry Cap announced to the union its intention to move its heading equipment to the Nelson Stud Welding plant in Elyria, which is owned by Doncasters, the same parent company of Ferry Cap.

Shortly thereafter, on March 9, 2012, two union members wrote a letter to the parent company protesting the move of that equipment, Ferry Cap's lawsuit says.

A copy of that letter reveals the authors of the letter worried that moving the header group would not achieve cost savings for the parent company, but instead would cost Doncasters profits. They also wrote that if any of the experienced workers who set up and run header machines were to decline to relocate to Nelson Stud, "we have more than 50% chance of losing our main customer base ... due to lateness from lack of experienced people."

"We as a whole just hope that this is not being done to enhance another companies [sic] bottom line that does not perform as well as Ferry Cap," the letter read. "Something just doesn't smell right to us."

In August 2012, the union filed a grievance protesting the announced transfer of the heading equipment.

Ferry Cap, the company says in its lawsuit, has been and is now ready and willing to process the disagreement between the parties through the grievance procedure. Indeed, its lawyers wrote, the grievance is scheduled for arbitration this March.

In support of the union's grievance, Ferry Cap alleges, the header operators "began to refuse to work any overtime ... to pressure the company outside the scope of the grievance/arbitration procedure."

Ferry Cap responded on Jan. 18 by sending a letter to Mr. Baker, the union representative, protesting what it calls a "work stoppage." It also asked the union to inform the header operators that the union does not condone or support their activity and that their "strike" violated the collective bargaining agreement, the lawsuit says.

"The union should instruct the header operators to resume their normal work habits and accept overtime in accordance with their usual practice," Ferry Cap's letter to Mr. Baker read.

Despite the letter, "the union has refused to take any action to stop the concerted refusal of the header operators to work overtime, thereby condoning this work stoppage," the company's lawsuit alleges.

Ferry Cap warned the union that it could face liability — and monetary damages — for a breach of the collective bargaining agreement.

According to the lawsuit, the collective bargaining agreement provides that there shall be no strikes,

stoppages or slowdowns of work by the union so long as the agreement is in effect. The agreement is effective through Feb. 21, 2016.

The lawsuit also notes: "No provision of the agreement limits the company's ability to require employees to work overtime."

Legal experts weigh in

One local labor and employment attorney thinks Ferry Cap has a strong case, provided that the facts in the company's complaint are true.

"The employer seems to have all their ducks in a row," said **Vincent T. Norwillo**, a partner in the Cleveland office of Gonzalez Saggio & Harlan LLP out of Milwaukee. "They would seem to have a legitimate shot at convincing the court to issue at least a temporary restraining order."

To obtain what Mr. Norwillo said is "very rare relief" from the court, Ferry Cap must show — and seems to have shown — that a no-strike clause exists, that its contract provides for the mandatory arbitration of contract disputes and that employees' refusal to work overtime is damaging or will damage the company irreparably.

"This doesn't happen every day," Mr. Norwillo said. "The right to strike is the single most powerful economic bargaining tool available to a labor organization, and courts have been loath to restrict the right of unions. But since *Boys Markets* (a 1970 lawsuit), they've recognized this rare exception."

Another local labor and employment attorney, David A. Campbell, said he's surprised Ferry Cap took to suing the employees rather than disciplining — and even firing — them. He also said he was surprised the collective bargaining agreement may not require mandatory overtime because most union contracts do.

"I would simply handle it at the plant and discharge for subordination," said Mr. Campbell, a partner in the Cleveland office of Columbus-based Vorys, Sater, Seymour and Pease LLP. "Either this company doesn't have the appropriate contract ... or they're just simply not responding the way a typical employer would."

In the company's letter to union rep Mr. Baker, Ferry Cap's director of operations wrote that the company is considering discipline of the header operators up to and including termination.

One possible reason for Ferry Cap's decision to sue, rather than terminate: Header operator jobs are skilled jobs, and the manufacturing work force is not exactly robust right now.

"Companies like this — screw companies — typically have rather sophisticated machinery that requires some complex skill sets, things like setting up the machine, reading blueprints," said Judith Crocker, director of work force and talent development for MAGNET, the Manufacturing Advocacy and Growth Network of Cleveland.

"Those people are not out there, and the ones who are, are people who used to work for less sophisticated companies (and) need training," Ms. Crocker. "If they had vacancies to fill and they were on a tight deadline, they would have a challenging time finding qualified workers to come in and immediately be able to do the job."