

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1812

Richard Kurtzeborn,

Appellant,

v.

Allied Gear and Machine Co., Inc.;
International Association of Machinists
and Aerospace Workers, District No. 9,

Appellees.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: January 12, 2005
Filed: January 18, 2005

Before WOLLMAN, McMILLIAN, and FAGG, Circuit Judges.

PER CURIAM.

After Richard Kurtzeborn, a union employee of Allied Gear and Machine Co., Inc., was laid off, he filed a grievance asserting his discharge violated the terms of the collective bargaining agreement (CBA) because more junior employees were retained. Kurtzeborn's grievance was denied, and Kurtzeborn's union declined to pursue the grievance to arbitration. Kurtzeborn then brought this action against Allied Gear asserting breach of the CBA and against the union for breach of its duty

of fair representation. The district court* granted summary judgment to Allied Gear and the union, concluding Allied Gear complied with the seniority provisions of the CBA when laying off Kurtzeborn and thus the union did not breach its duty of fair representation.

On appeal, Kurtzeborn contends summary judgment is improper because there is a genuine issue of material fact—whether Allied Gear breached the CBA when it laid him off. Having carefully reviewed the parties’ briefs, the record, and the applicable law, we conclude the district court properly granted summary judgment to Allied Gear and the union. Because we have nothing to add to the district court’s explanation, we affirm on the basis of the district court’s memorandum and order. See 8th Cir. 47B.

*The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.