

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEVIN KASTEN,

Plaintiff,

v.

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION,

Defendant.

ORDER

07-cv-686-bbc

This civil action brought under the Fair Labor Standards Act is on remand from the Court of Appeals for the Seventh Circuit. Defendant Saint-Gobain Performance Plastics Corporation has filed a motion for summary judgment that has been fully briefed by the parties. However, in conjunction with its reply brief, defendant filed a motion to strike portions of plaintiff Kevin Kasten's brief in opposition to the motion for failure to comply with this court's summary judgment procedures. Under this court's summary judgment procedures, each proposed fact must be followed by a reference to evidence supporting it. Procedure to be Followed on Motions for Summary Judgment I.B.2, attached to Pretrial Conference Order, dkt. #198. Additionally, the court will not consider facts contained only

in a brief. Id. at I.B.3. Defendant contends that plaintiff violated these rules by proposing facts in his brief without citing record evidence and proposing facts contained only in his brief.

Conceding that the facts contained in his brief in opposition to defendant's motion for summary judgment are not identical to those contained in his proposed findings of fact, counsel for plaintiff avers that she inadvertently filed the wrong set of proposed facts. In particular, counsel filed the proposed findings of fact that she had prepared in response to defendant's 2008 motion for summary judgment, rather than filing an amended version corresponding to the new motion. Plaintiff asks that he be permitted to file to the amended proposed findings of fact and that defendant be permitted to respond to them. (These are attached to the affidavit of Adrianna Shannon, dkt. #235.)

I will deny defendant's motion to strike and grant plaintiff's request to file the amended proposed findings of fact. (Defendant filed a motion for leave to file a reply brief in support of its motion to strike. Dkt. #237. I will grant this motion.) Defendant may have two weeks to file a response to plaintiff's amended proposed findings of fact and any supplemental reply brief in support of its motion for summary judgment. Plaintiff's mistake may have been careless, but plaintiff acted promptly to correct the mistake and allowing plaintiff to correct the error at this stage will not cause undue prejudice to defendant. Additionally, there is still plenty of time before the trial, which is scheduled for April 23,

2011.

ORDER

IT IS ORDERED that

1. Defendant Saint-Gobain Performance Plastics Corporation's motion for leave to file a reply brief, dkt. #237, is GRANTED.

2. Defendant's motion to strike, dkt. #232, is DENIED.

3. Plaintiff Kevin Kasten is GRANTED leave to file an amended proposed findings of fact. Plaintiff should file the amended proposed findings of fact as a separate docket entry by November 30, 2011.

3. Defendant may have until December 14, 2011 to respond to plaintiff's amended proposed findings of fact and file a supplemental brief in reply to its motion for summary judgment.

Entered this 30th day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge