

**Graphic Communications International Union,
Local 79L, AFL-CIO and Butterick Company,
Inc. and Amalgamated Clothing and Textile
Workers Union, Local 1071T, AFL-CIO.** Case
6-CD-879

January 17, 1991

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

The charge in this Section 10(k) proceeding was filed on May 16, 1990,¹ by the Employer, alleging that the Respondent, Graphic Communications International Union, Local 79L, AFL-CIO (Local 79L), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Amalgamated Clothing and Textile Workers Union, Local 1071T, AFL-CIO (ACTWU). The hearing was held on July 17 before Hearing Officer Janice Anne Sauchin.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.²

On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a Delaware corporation, is engaged in the manufacture and distribution of paper patterns for home sewing with an office and plants on Beale Avenue and Kissell Street in Altoona, Pennsylvania. During the 12-month period ending April 30, the Employer, in the course and conduct of its operations, purchased and received products, goods, and materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Pennsylvania. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 79L and ACTWU are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has collective-bargaining agreements with both ACTWU and Local 79L. The ACTWU was

certified in 1949 to represent a unit of production and maintenance employees at its bindery, including pattern manufacturing, pattern stock, shipping department, duplicating, and inventory schedule clerks. The bargaining agreements negotiated between the Employer and ACTWU have included recognition articles which conform to ACTWU's initial certification. A year or two later, the Employer recognized and contracted with Local 79L. The Jurisdiction Article of Local 79L's contract encompasses:

all work, processes, operations, and products directly associated with or *related to lithographic offset* (including dry or wet), photoengraving, itaglio, gravure, bookbinding, finishing, or reproducing images of all kinds or any other purpose including without limitation any computerization, and all other methods of printing including without any limitation *any technological* or other *change, evolution of, or substitution for any work process*, operation, or product now or hereinafter utilized in any of the methods or for any of the purposes described above. Only members of this bargaining unit shall perform work under the jurisdiction of the Union. *It is further agreed that the above described work now being performed under contract with other unions may continue to be performed.* [Emphasis added.]

The Employer's Beale Avenue plant produces catalogs and three brands of fashion patterns—See and Sew, Vogue, and Butterick—for sale to retailers in the paper pattern business, fabric shops, and department stores throughout the world.³ The fashion patterns, with instructions describing how homemade garments are to be cut and sewn, are inserted into brightly colored package envelopes that are imprinted with graphics and sizes on the outside for customers to inspect in the store. All original, or "issue," production runs of patterns and envelopes are imprinted with graphics on the Schriber Press, a high-speed, sophisticated press capable of making 12,000 impressions an hour and printing multicolors in a single pass. The highly complex Schriber Press is operated by a three-man crew of journeymen printers represented by Local 79L. Issue runs usually involve production of 40 to 60 thousand printed patterns and envelopes, with the tailend of the run, consisting of approximately 6000 pieces, held in inventory for reorders by retailers who have run out of particular sizes.⁴ Historically, the envelopes retained in inventory have been left blank as to size, and are imprinted at the time of reorder by employees represented by ACTWU with an ink jet imprinter that operates like

¹All dates refer to 1990.

²Local 79L's president appeared at the hearing, but left after presenting a motion to quash the notice of hearing to the hearing officer, who referred the motion to the Board for ruling.

³New styles of Vogue and Butterick patterns are issued 10 times a year, primarily for paper pattern retailers; See and Sew patterns, which are for children or beginner sewers, are introduced only 4 times a year.

⁴Because retailers typically stock only one copy of each size per style of a pattern, they reorder periodically to replace sold out pattern sizes.

a rubber stamp machine. There is evidence that ACTWU-represented employees have also printed such information on envelopes by using a CF-4 convertor, a piece of equipment used to cut and package the printed material. Plant Manager Knab testified that the Employer's decision to imprint sizes on envelopes by the Schriber Press on the bulk of the initial runs and by the ink jet imprinters, or CF-4 convertors, on subsequent short runs is predicated on the economies involved.⁵

In 1979 or 1980, the Employer began to imprint universal pricing codes, or bar codes, on production runs of See and Sew patterns. Then, in February 1990, in response to greater customer demand for machine readable bar codes, the Employer altered its See and Sew manufacturing scheme to include a style size bar code⁶ on all envelopes, including reorder envelopes to be placed in inventory. The Employer also extended the production of a style size bar code to its Vogue and Butterick lines, and also purchased two offset duplicators, lithographic equipment capable of printing machine readable bar codes, to replace the 30-year-old ink jet imprinters. The Employer continued, for production efficiency, to have the Schriber Press imprint bar codes on production runs of 40,000 or more Vogue or Butterick patterns for immediate delivery, and it began to phase in the new offset duplicators for imprinting the style size bar codes on short runs of reorder envelopes.

On about April 10, the Employer informed the ACTWU that it was assigning the work of operating the new offset duplicators to employees represented by the ACTWU. On the same day, Local 79L President Caracciolo made a jurisdictional claim in a letter to Personnel Manager Orsulak for that work and, on May 10, Caracciolo met with Orsulak and Knab to discuss the work assignment. Thereafter, by letter of May 15, Caracciolo notified the Employer that if the new equipment was not manned by Local 79L's "members," it would terminate its contract. In a subsequent conversation with Orsulak on the same day, Caracciolo said that by terminating the contract he meant walk out and strike. On May 16, ACTWU President Galant threatened to terminate its contract with Butterick if the disputed work was taken away from employees represented by ACTWU.

On May 21, Local 79L filed a grievance against Butterick alleging that the work assignment violated several provisions of its collective-bargaining agreement and, on May 26, filed a charge against ACTWU

⁵Knab testified that use of the Schriber Press for short runs is uneconomical, indicating that a typical reorder of 600 envelopes would take only 45 seconds on the Schriber Press but that setup time for that press is 7 minutes for each run. The other equipment is able to print reorders in less total time because setup time for that equipment is significantly shorter.

⁶A price bar code can be scanned by a store computer only for price, but a style size bar code can be scanned for price and inventory data.

under the AFL-CIO's "no-raid" procedure.⁷ On July 3, the AFL-CIO's Impartial Umpire (Umpire) issued a decision, dismissing the charge because of lack of evidence of a raid by ACTWU of Local 79L's jurisdiction, but not reaching the question of who is entitled to the disputed work.

Following the Regional Director's issuance of the notice of hearing, he received a letter dated June 12 from Local 79L's president and a similar one dated July 13 from Local 79L's attorney. Both letters advised that Local 79L "will not threaten to terminate its collective bargaining agreement with Butterick Co., Inc., or take any other economic action . . . including exercising the right to strike, or engage in a work stoppage" because of the Employer's work assignment. The attorney's letter further stated:

GCIU Local 79-L may avail itself of its right to appeal from the Impartial Umpire's decision to the Executive Council of the AFL-CIO. The Local also intends under the contract to proceed to arbitration with the company of its grievance over the assignment of work. Neither constitute a threat within the meaning of Section 8(b)(4)(ii)(D) of the Act. Therefore, no hearing should be held in the above-entitled case on July 17, 1990.

B. *Work in Dispute*

The disputed work involves the operation of the two offset duplicators at the Employer's Beale Avenue facility in Altoona, Pennsylvania.⁸

C. *Contentions of the Parties*

Local 79L has moved to quash the notice of hearing, based on the letters withdrawing its threat of economic action, and its contention that pursuit of its grievance and appeal of the Umpire's decision are lawful exercises of its contractual remedies and independent procedures, rather than threats within the meaning of Section 8(b)(4)(D).

The Employer opposes the motion to quash on the grounds that neither of Local 79L's letters effectively withdrew its threat of economic action or disclaimed its interest in the work at issue. The Employer further asserts that because it is not a party to the AFL-CIO's "no-raid" procedure, and ACTWU is not a party to the Butterick-Local 79L contractual grievance procedure, neither procedure can qualify as an agreed-on method for settlement within the meaning of Section 10(k) of the Act. On the merits, the Employer and ACTWU both contend that collective-bargaining agree-

⁷Sec. 3, art. XX of the AFL-CIO's constitution.

⁸This is the description of the disputed work as set forth in the 8(b)(4)(D) charge filed by the Employer; however, it appears from the Umpire's decision in evidence that Local 79L contested only the imprinting of the bar codes on the offset duplicators by employees represented by the ACTWU. Our decision here would not be affected by this narrower description of the work in dispute.

ments, company past practice, relevant skills, economy and efficiency of operations, and employer preference support the Employer's award of the disputed work to employees represented by ACTWU.

D. *Applicability of the Statute*

Before the National Labor Relations Board may proceed with a determination of the dispute pursuant to Section 10(k), it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated and that the parties have not agreed on a method for the voluntary settlement of their dispute.

As noted above, Local 79L President Caracciolo made a written claim for the disputed work, which he backed up with an oral threat of strike action on May 15. We find that Local 79L's threat constitutes reasonable cause to believe that an object of its conduct was to force the Employer to reassign the disputed work to employees represented by it, in violation of Section 8(b)(4)(D). Local 79L, however, essentially argues that that basis for finding reasonable cause no longer exists because it has disavowed its strike threat and any other form of economic action by virtue of the above-noted letters to the Regional Director in which it stated that it would forgo all such conduct against the Employer in connection with the disputed work. It further argues that its plan to pursue its claim to the work through arbitration of its earlier filed contract grievance and appeal of the Umpire's "no-raid" decision, therefore, is not proscribed by Section 8(b)(4)(D) of the Act. We reject that argument and thus deny Local 79L's motion to quash the instant 10(k) notice of hearing.

The disavowal or withdrawal of a strike threat, in the absence of an effective disclaimer of the work, does not dispose of the jurisdictional dispute that the threat triggered. Nor does it negate the consequences that flowed from the threatened action and create, as if from the beginning, a situation like one in which a union seeking work assigned another group of employees abstains entirely from conduct proscribed by Section 8(b)(4)(D) and merely files a grievance or invokes the AFL-CIO "no raid" procedures, or does both. That situation and the one before us are not analogous.

When a union in the first instance simply resorts to available grievance or no-raid procedures, there is no coercion and thus no basis for finding the existence of a jurisdictional dispute within the meaning of Section 8(b)(4)(D) of the Act.⁹ When, as here, however, the union first threatens strike action to achieve its objective of obtaining the disputed work, and as a result of that threat an 8(b)(4)(D) charge is filed and a 10(k) no-

tice of hearing issues, the threat cannot subsequently be "recaptured" or erased by a gesture of attempted repudiation. Such a gesture, even if made in good faith, does not eliminate the effects of the threat or the events that it produced.

Once the Board's processes have been invoked by proscribed conduct, only a renunciation of the disputed work by the offending union can restore the status quo ante and resolve the jurisdictional dispute that its unlawful conduct initiated. Without such an effective disclaimer of the work, a work dispute cognizable before the Board still exists.

Here, Local 79L has made no such disclaimer. To the contrary, in both its letters Local 79L has stated its intention to pursue its claim to the work through recourse to grievance-arbitration and AFL-CIO procedures that may be available to it. In these circumstances, we find that Local 79L's disavowal of coercive conduct is entitled to no more weight than a hollow disclaimer of the work, that is, a disclaimer presented for the purpose of avoiding the Board's determination of a jurisdictional dispute.¹⁰

The record shows that an agreed-on method for voluntary adjustment of this dispute does not exist to which all parties are bound. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

ACTWU is the only party whose claim to the disputed work is supported by a Board certification. With respect to collective-bargaining agreements, ACTWU's agreement expressly describes a unit including duplicating clerks, while Local 79L's contract work jurisdiction covers all lithographic offset and all other methods of printing, as well as any change, evolution, or substitution for any work process. The Local 79L contract expressly provides, however, that "work now

⁹ See *Georgia Pacific Corp.*, 291 NLRB 89 (1988), in which the Board disagreed with the Board's earlier finding that it was unlawful to file arguably meritorious work assignment grievances before a 10(k) determination and, instead, announced its adherence to Board precedent that the mere finding of such a grievance does not constitute coercion under Sec. 8(b)(4)(ii)(D).

¹⁰ *Plumbers Local 201 (Shaker, Travis)*, 271 NLRB 650, 652 (1985). See also *Teamsters Local 952 (Westside Material)*, 275 NLRB 1001, 1003 fn. 5 (1985).

being performed under contract with other unions may continue to be performed.”

We find that the factor of collective-bargaining agreements is inconclusive. Although the imprinting of sizes on reorder envelopes by duplicators may be excluded from Local 79L’s work jurisdiction as “work now being performed under contract with other unions,” Local 79L’s contract also may apply because the offset duplicators appear to be lithographic presses and the imprinting of style size bar codes on those presses may well constitute a new process. Thus, the operation of these presses is arguably covered by both the ACTWU and Local 79L contracts.

Although the collective-bargaining agreements are inconclusive, we find that the factor of Board certification favors the Employer’s assignment to ACTWU-represented employees.

2. Company preference and past practice

The Employer has assigned to ACTWU-represented employees the work of operating the two new offset duplicators which are replacing the old, obsolete ink jet imprinters. The evidence reveals that the Employer’s established practice was to have ACTWU-represented employees perform the work of imprinting sizes on short, reorder runs of envelopes using simple duplicating equipment, and that Local 79L-represented employees have never operated that type of equipment.¹¹ We find that the factor of employer preference and past practice supports the Employer’s assignment of this work.

3. Area and industry practice

There is no evidence of either area or industry practice on this record. Accordingly, we find that this factor favors neither group of employees.

4. Relative skills

Employees represented by Local 79L have completed 4-year apprenticeship programs to acquire the skills to operate platemaking equipment and complex presses. ACTWU-represented employees received 1 week of on-the-job training and a second week of “as needed” help, after which they were fully qualified to operate the offset duplicator. Because the journeymen printers represented by Local 79L as well as employ-

¹¹ Although Local 79L-represented employees never operated simple duplicating equipment, it appears that in the period just prior to the assignment of the work in dispute (February to April 1990), style size bar codes were sometimes imprinted by the Schriber Press on the large, initial production runs operated by Local 79L-represented employees. We find this evidence of limited value in assessing the Employer’s past practice regarding work assignments for equipment such as offset duplicators.

ees represented by ACTWU appear adequately qualified to operate the duplicating equipment in question, we find that this factor favors neither group of employees.

5. Economy and efficiency of operation

As shown above, the Employer’s decision to use simple duplicating equipment, such as ink jet imprinters or offset duplicators, as opposed to the Schriber Press, was predicated primarily on economy and efficiency of operation. However, the work in dispute involves which group of employees should be assigned to operate the Offset Duplicators. There is no evidence to indicate whether greater economy and efficiency of operation would result from awarding such work to one or the other of these two competing groups. Accordingly, we find that this factor favors neither group of employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by ACTWU are entitled to perform the work in dispute. We reach this conclusion relying on that Union’s certification and employer preference and past practice. In making this determination, we are awarding the work in dispute to employees represented by ACTWU but not to that Union or its members. The present determination is limited to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Butterick Company, Inc., who are represented by Amalgamated Clothing and Textile Workers Union, Local 1071T, AFL–CIO, are entitled to perform the work of operating the offset duplicator at the Employer’s Altoona, Pennsylvania facilities.

2. Graphic Communications International Union, Local 79L, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Butterick Company, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days of this Decision and Determination of Dispute, Graphic Communications International Union, Local 79L, AFL–CIO shall notify the Regional Director for Region 6, in writing, whether it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with this determination.