

Graphic Communications International Union, Local 160-M and Lancaster Press, Inc. and Lancaster Typographical Union No. 70, Printing, Publishing and Media Workers Sector, Communications Workers of America, AFL-CIO. Case 4-CD-796

July 31, 1991

DECISION AND DETERMINATION OF
DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The charge and amended charge in this Section 10(k) proceeding were filed October 31, 1990, and January 3, 1991, respectively, by the Employer, alleging that the Respondent, Graphic Communications International Union, Local 160-M (GCIU), 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 Lancaster Typographical Union No. 70, Printing, Publishing and Media Workers Sector, Communications Workers of America, AFL-CIO (CWA). The hearing was held February 6, 1991, before Hearing Officer Carolyn Shaw. Thereafter, the Employer and CWA filed briefs in support of their positions.

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

I. JURISDICTION

The Company is a Delaware corporation with an office and place of business in Lancaster, Pennsylvania, where it is engaged in the printing of medical and scientific publications. It annually derives gross revenues in excess of \$1 million and purchases and receives 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 Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that GCIU and CWA are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is engaged in the printing of scientific, medical and technical short-run journals. It also makes reprints of articles that appear in those journals. Both GCIU and CWA-represented employees perform work in the Employer's offset preparatory department.

There are approximately 52 employees in the CWA bargaining unit, and approximately 70 employees in the GCIU bargaining unit. As specified in its contract with the Employer, GCIU-represented employees have exclusive jurisdiction over platemaking and are responsible for exposing and developing plates by using two pieces of equipment called the vacuum frame and plate processor. A plate is used to reproduce an image. The contract between the Employer and CWA provides that CWA-represented employees shall have exclusive jurisdiction over the opti-copy imposer camera and plate processors which are used to expose film.

Paul Kroekel, the Employer's vice president of manufacturing services, testified that prior to September 1990, all plates produced at the Employer's facility were aluminum plates. In September 1990, the Employer purchased a new Ryobi press for printing reprints, a plate processor for making onyx plates for that press, and a bored collator to do the postpress part of the operation. An onyx plate is made of polyester material. It is put on a press to reproduce a printing image, the same way that aluminum plates are used on the press. The onyx plate requires the use of only two steps in the production process compared to the four steps required in producing the traditional metal plates. The use of onyx plates eliminates the need to use film and the required steps of exposing and developing the film. The new equipment was set up in the reprint department on the third floor.

Kroekel also testified that CWA-represented employees operate the opti-copy machine where camera copy is used and exposed directly to the onyx plate on the fourth floor. Thereafter, the onyx plate is developed by passing it through the new disputed plate processor operated by GCIU-represented employees on the third floor. GCIU-represented employees also punch the onyx plates just as they have always punched the metal plates. The onyx plate goes directly from the plate processor to be put on the plates for printing in the pressroom by the presses which are operated by employees represented by GCIU. The pressroom is located next to the reprint department. The film processor used by CWA-represented employees on the fourth floor is used exclusively to develop film, whereas the film processor operated by GCIU-represented employees on the third floor does not use film and is used exclusively to develop onyx plates.

According to Kroekel's testimony, the Employer decided to use the onyx plate to print reprints rather than continue to use the metal plates to shorten the time required to produce reprints because its customers wanted faster delivery. It takes approximately 3-1/2 minutes per page to produce a metal plate, and approximately 2 minutes to produce an onyx plate page. CWA-represented employees operate the five other processors on the fourth floor because they all process film,

which is under the jurisdiction of CWA. Kroekel stated that employees represented by GCIU as well as CWA have the required skills and they can be trained to operate the plate processor.

Employees represented by CWA were assigned to the new, disputed processor before it became operational. Thereafter, GCIU-represented employees finished the setting up, and did all the experimentation and the actual running of the new plate processor. On September 26, 1990, CWA filed a grievance with the American Arbitration Association claiming jurisdiction over the new plate processor.¹ Thereafter, on October 25, Kroekel received a letter from GCIU President Shinn stating that he understood that there was a jurisdictional dispute between CWA and GCIU concerning the operation of the new plate processor. Shinn indicated that GCIU had jurisdiction over the onyx plates and stated that "severe repercussions" would follow if another union were given jurisdiction over the equipment. Following the receipt of Shinn's letter, Kroekel called GCIU Vice President Meier into his office and told him he had received Shinn's letter concerning jurisdiction over the onyx plates. According to Kroekel, Meier indicated that the Union was concerned about the possibility of losing jurisdiction over the processing of onyx plates, and that it felt that work was within its jurisdiction. Meier further stated that if the Union were to lose jurisdiction, it would refuse to handle or print with the onyx plates.

B. *Work in Dispute*

The work in dispute is defined by the Employer and GCIU as developing onyx plates using a plate processor for Lancaster Press, Inc., at the Prince and Lemon Streets, Lancaster, Pennsylvania facility.

CWA defines the disputed work as developing onyx plates using a processor on the third floor at the Employer's facility.

C. *Contentions of the Parties*

CWA contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. It further contends that GCIU never threatened a strike or work stoppage and that GCIU's warning of "severe repercussions" is vague and insubstantial and is a sham to establish reasonable cause. Also, it argues that this matter is improperly before the Board and should be dismissed. In the alternative, CWA contends that if reasonable cause exists, the work should be assigned to employees it represents.

The Employer contends that there is reasonable cause to believe the GCIU violated Section 8(b)(4)(D) and that the proceeding is properly before the Board for determination of the dispute, notwithstanding that

¹That grievance is now pending the outcome of the present 10(k) proceeding.

the union which made the threat was the union performing the disputed work. Additionally, the Employer contends that the work in dispute should be awarded to employees represented by GCIU on the basis of efficient operation of the Employer's business, GCIU's contract, and the Employer's assignment and prior practice.

GCIU did not file a brief.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, GCIU President Shinn wrote a letter to Vice President of Manufacturing Kroekel claiming jurisdiction over the onyx plates and stating that "severe repercussions would be taken" if another union were given jurisdiction over the equipment. Following receipt of Shinn's letter, GCIU Vice President Meier told Kroekel that if the Union were to lose jurisdiction over the processing the onyx plates, it would refuse to handle or print with those plates.

We find that the foregoing facts establish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as there is no claim of an agreed method of voluntary adjustment, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 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 the 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

The parties stipulated that there is no Board order covering the disputed work or Board certification determining the bargaining representative of the Employer's employees.

The Employer is a party to current contracts with both GCIU and CWA. Both contracts have identical attachments setting forth a December 13, 1974 agreement between GCIU and CWA granting CWA exclusive jurisdiction over all preparatory work before imposition, including art work, paste makeup, reproduc-

tion proofs, camera work, contacting work, and opaquing negatives. GCIU received exclusive jurisdiction over the presses and platemaking. All imposition work is to be performed jointly by members of either Union. Any additional opaquing necessary during imposition or just prior to platemaking is to be performed jointly by members of either Union. The agreement was amended June 17, 1983, giving exclusive jurisdiction over the opti-copy imposer camera to CWA.

The attachments to both the GCIU contract and the CWA contract grant exclusive jurisdiction over the presses and platemaking, as well as all work in connection with offset platemaking, to GCIU. Additionally, Company Vice President Kroekel testified that the new processor makes onyx plates for the Ryobi press which prints reprints. The onyx plate is used in the same way that aluminum plates are used on the press. Prior to September 1990, all plates produced at Lancaster Press were aluminum plates. Kroekel also testified that the onyx plate is a direct image plate, that the film processor used by CWA-represented employees on the fourth floor is used exclusively to develop film, but that there is no film involved in the processor on the third floor, which is operated by employees represented by GCIU and is used exclusively to develop onyx plates.² We conclude that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by the GCIU.

2. Company preference and past practice

Vice President Kroekel testified that when the disputed automatic processing machine was purchased in September 1990, CWA-represented employees were assigned to "debug" the machine. This occurred for a period not in excess of 4 or 5 days, until the Employer assigned the disputed work to employees represented by GCIU. Kroekel testified that the initial assignment to CWA-represented employees was a mistake, a result of a miscommunication. Employees represented by GCIU finished setting up the machine and did all the experimentation and the actual running of the new plate processor. Although the onyx plate is made of polyester fiber, the Employer has traditionally assigned all platemaking, whether made from metal, plastic, or paper, to employees represented by GCIU. Finally, the Employer prefers to have employees represented by GCIU perform the disputed work. Thus, the factors of company preference and past practice favor award of the disputed work to employees represented by GCIU.

²In its brief, CWA contends that the operation of the new processor involves film developing, rather than platemaking, and that it may reasonably be concluded that the work in dispute is an extension of the opti-copy imposer camera. As noted above, however, at the hearing CWA defined the work in dispute as developing onyx plates using a processor.

3. Relative skills

There is no evidence in the record, or contention by the parties, that the employees represented by either Union are deficient in the skills required to perform the work in dispute. Because employees represented by either Union are qualified to perform the work in dispute, this factor favors neither group of employees.

4. Economy and efficiency of operation

The disputed processor which produces onyx plates is located on the third floor of the Employer's facility, the same floor where GCIU has traditionally had jurisdiction over the processing of press plates. The onyx plate can be used to reproduce reprints more rapidly than metal plates in order to meet customer requirements. The new processor was placed in the newly created reprint department, which is located next to the press department. The first step in producing the onyx plate is exposure of the plate on the opti-copy machine located on the fourth floor. Employees represented by GCIU take the plate exposed by CWA-represented employees down to be developed on the disputed plate processor in the reprint department on the third floor. Employees represented by GCIU also punch holes in the onyx plates as they have always punched the metal plates. The onyx plate goes directly from the plate processor to be put on the plates for printing in the nearby pressroom by the presses which are operated by GCIU-represented employees.

In these circumstances, including the convenience and smoothness of work flow of having GCIU-represented employees continue to develop the onyx plate on the plate processor located near the presses which they also operate, and the efficiency of assigning all platemaking, whether of metal, paper, or polyester, to the same group, we find that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by GCIU.

Conclusions

After considering all the relevant factors, we conclude that employees represented by GCIU are entitled to perform the disputed work. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by GCIU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

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

Employees of Lancaster Press, Inc., represented by Graphics Communications International Union, Local

160-M, are entitled to perform the developing of onyx plates using a plate processor for Lancaster Press, Inc., at the Prince and Lemon Streets, Lancaster, Pennsylvania facility.