

Long Island Typographical Union, No. 915, Printing, Publishing and Media Workers Sector, Communications Workers of America, AFL-CIO and Newsday, Inc. Case 29-CD-381

March 27, 1992

DECISION AND ORDER QUASHING NOTICE
OF HEARING

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on November 14, 1990,¹ by Newsday, Inc., alleging that the Respondent, Long Island Typographical Union No. 915, Printing, Publishing and Media Workers Sector, Communications Workers of America, AFL-CIO (Local 915), 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 the Graphic Communications International Union, AFL-CIO, Local 406 (Local 406).² The hearing was held on March 20-22 and May 6, 1991, before Hearing Officer Jonathan Leiner. Thereafter, Newsday and Local 915 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

Newsday, a New York corporation with its principal office and place of business in Melville, New York, is engaged in the publication and sale of newspapers. Annually, Newsday derives gross revenue in excess of \$200,000, subscribes to an interstate news service, and purchases and receives goods and materials valued in excess of \$50,000 directly from points located outside the State of New York. The parties stipulate, and we find, that Newsday is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 915 and Local 406 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Newsday's Operations*

At the time of the events that gave rise to this proceeding, Newsday had been using a paper-based method of creating the pages of its newspaper. "Page-mak-

ing" functions, i.e., the steps preceding transfer to the plate room where plates were created for printing the newspaper itself, were performed by employees in the composing room and related departments, and to some extent involved the use of computers. Composing room employees are represented by Local 915.

As part of a newer methodology that Newsday desired to implement, which entailed a greater use of computers, Newsday created the electronic pre-press room (EPR). Under this methodology, as before, the ad publications department receives the incoming advertisement and combines it with an insertion order. The advertisement's artwork and words are then transformed to a print medium using an "ECRM scanner"—use of this scanner eliminates the need for separate machines to convert advertisement components to print medium. Next, an operator assembles the graphics and composition using a "Sun Breeze terminal" and sends the advertisement to the typesetter who creates a complete advertisement on photographic paper that is ready for insertion into the newspaper—the latter step eliminates the pasteup function. The completed advertisement is then sent to ad alley for storage, and later composed as a page, the page photographed, and the negative sent to the plate room.³

B. *The Alleged Unlawful Conduct*

On September 28, at a meeting between Newsday and Local 915 representatives, Newsday officials informed Local 915 of their decision to implement the new methodology described above and to establish the new work area referred to as the EPR. At that time Newsday indicated that the EPR would be a part of the platemaking department, the employees of which are represented by Local 406, and that Newsday would be announcing the job postings for positions in the EPR. Newsday also informed Local 915 that it had entered into an accretion agreement with Local 406 under which EPR employees would be represented by Local 406, rather than by Local 915. The accretion agreement is dated September 5.

After the September 28 meeting, Newsday posted on a companywide basis the EPR positions which were available in the EPR. The posting occurred in the first 2 weeks of October, with the initial hirings occurring apparently shortly thereafter.⁴ The parties stipulated that a total of 16 persons were initially hired to work in the EPR on one of the three shifts. Three of those

³The record indicates that Newsday planned to further simplify the pagemaking process deleting the ad alley and composing page make-up steps, and later to delete the typesetting and page camera functions.

⁴The only specific evidence on the timing of the initial hires in the EPR is based on the testimony of employee Edward Korona, who was stipulated as being one of the initial hires and who testified that after he applied, he was interviewed in mid-October and hired on November 5.

¹Except where otherwise indicated, all dates refer to 1990.

²Local 406 was served notice of the 10(k) hearing and appeared at the hearing, through its representative, as a party in interest.

hired were foremen, who had been supervisory foremen in the composing room.⁵ Of the 13 remaining employees who were initially hired, 7 transferred from the composing room into journeyman positions in the EPR and 4 transferred from other departments⁶ into apprentice positions in the EPR. The record does not specify the EPR positions or origins of the two remaining initial hires.⁷ No employees transferred into EPR from the platemaking room. Thereafter, additional employees were hired in the EPR, and at the time of the hearing in May 1991, the EPR included the 3 foremen, 11 journeymen who had transferred from the composing room, and 18 apprentices who had transferred from a number of departments or areas. None of these employees transferred from the platemaking room.⁸

Immediately following the September 28 announcement, CWA International Representative Arthur Byrns voiced disagreement with Newsday's decision and stated that Local 915 would "look for all means to overturn [it]," including a grievance, a joint standing grievance meeting, and arbitration.⁹ Local 915 Chapel

⁵It does not appear that foremen were represented either by Local 915 or by Local 406.

⁶The four apprentice employees transferred from telecommunications, publications, the mailroom, and transportation.

⁷These two employees returned to their department of origin after working briefly in the EPR.

⁸Local 915 asserts that Newsday screened and assigned EPR positions to 10 other composing room employees but then decided against their transfer, purportedly to avoid the EPR becoming staffed with a majority complement of Local 915-represented employees. The record, however, is insufficient to establish that such assignments were made or retracted.

⁹Sec. 2 of the jurisdiction provision of the collective-bargaining agreement between Local 915 and Newsday states in part:

(a) The jurisdiction of the Union is defined as all work assigned to the Composing Room of the Publisher. The Publisher shall have the right to assign any of the work required by such new or existing technology, equipment or processes to any department of the Publisher, including departments not covered by the agreement; the Union agrees to process copy or material produced in such other departments. The [P]ublisher will assign to the employees covered by this agreement [sic] work of the type traditionally performed in the Composing Room such as paste-up, mark-up, keyboarding, make-up, proofreading, typesetter and camera operations including maintenance, ad composition or variations of those functions as the functions change due to new technology, but this does not mean that all or any portion of any one function must be exclusively performed in the Composing Room. . . . Employees covered by this contract may be assigned on a voluntary basis to work in departments other than the Composing Room to perform the work specified herein provided that they remain covered by this contract. . . . It is mutually agreed that the jurisdiction and production flexibility provided herein does not conflict with the basic concept recognized by the parties in this Agreement of a composing room bargaining unit and that work is to continue to be performed by the composing room unit subject to the rights of the Publisher to assign and reassign work as stated herein.

(b) When existing and new type of equipment or processes are to be introduced into the composing room operation, the Publisher will give the Union as much notice as is reasonable, in order to provide an opportunity for qualified journeymen and ap-

Chairman Ed Ferraiuola read a prepared statement declaring, among other things, that Local 915 would actively pursue all grievances in process, "remove the slipboard [from the composing room] to [Local 915] headquarters to be manned confidentially,"¹⁰ and that Local 915 members would lose their priority standing and situation in the composing room permanently if they moved to the EPR.¹¹ A discussion ensued concerning the slipboard in which Newsday Vice President for Human Resources Alberto Ibarguen accused Local 915 of sabotaging the operation. Ferraiuola responded that he would "in no way jeopardize the newspaper," and Byrns and Local 915 President Dennis O'Rourke stated they had no intention of any sort of sabotage and that if they heard of anybody engaging in sabotage, they would put a stop to it. In response to Newsday's questions, Ferraiuola explained that if Newsday needed a certain number of people to work after removal of the slipboard, it could call the union hall and they would be supplied. The meeting ended with Byrns stating that Local 915 would "resist in legal ways, the new assignment."

Also, on September 28, Local 915 posted a notice to its members advising them that the meeting had taken place and that Local 915 would take "appropriate action" based on "approval of CWA's legal department." Either on the same day or a day later, Ferraiuola reiterated to Newsday Vice President of Operations Jim Norris that he had no intent to disrupt operations. Thereafter, on October 2, Local 915 posted a notice to chapel members asking that they "not take part in Newsday's action to steal work from the Composing Room" by seeking EPR positions. The notice indicated that the CWA International intended to provide legal assistance to move the matter to arbitration,

prentices to train for its operation. When such equipment or processes are introduced, employees [sic] who have demonstrated an aptitude for such work shall be given Local 915 the first opportunity to attain proficiency in its operation.

¹⁰The slipboard, or "subboard" as it is called alternatively, lists the names of substitutes available for work in priority order by the shift they would like to work. It also indicates substitutes' ostensible availability for the next day's shifts. The board is controlled by the chapel chairman, but its accessibility at a glance gives composing room supervisors an idea of how to plan for employees' absences and for extra shifts.

¹¹Local 915 ultimately did grieve Newsday's decision. It also removed the slipboard to headquarters, but it did not cause situation holders to lose their priority or "situation" in the composing room.

At the September 28 meeting, Ferraiuola additionally read portions of the prepared statement indicating that Local 915 would: (1) attempt to obtain an injunction to prevent Newsday from allowing Local 406 to operate the "Markup Room," which it considered to be its work; (2) file suit because of Newsday's secret negotiations with Local 406 for jurisdiction of the "Markup Room"; (3) immediately go to arbitration, including use of appeals if necessary, to go after work removed from its jurisdiction, such as Ad Alley, Classified, and Inputting work, etc.; and (4) institute arbitration in specified unrelated matters, including a medical issue, a sick pay issue, and a Color Lab Training classification.

as quickly as possible “to keep this work in the Chapel, where it belongs.”

Two days later, on October 4, Local 915 replaced the earlier notice with one urging its members to apply for EPR positions. The notice stated:

The International and the Local encourage all members, in light of the present situation, to apply for any positions offered under Newsday’s proposed “Electronic Pre-Press Department.”

Newsday’s attempts to put Local 915 members at a disadvantage, by pitting them against their own union to maintain jobs that they currently perform, will not prove effective.

Local 915 will continue to pursue all avenues in an attempt to ensure that justice will be served—that Local 915 is the bargaining representative for the employees performing this work.

Newsday will, at no time, be compromised by this union in their endeavor to produce a daily paper.

A copy of the second notice, among other things, was sent to Newsday on October 5 in response to a letter from Ibarguen that requested that Local 915 “disavow [the] irresponsible statements and actions” made during the September 28 meeting.

On November 14, Newsday filed the instant 8(b)(4)(D) charge against Local 915, alleging that the Union’s statements at the September 28 meeting violated the Act.¹²

C. Work in Dispute

The work in dispute involves page-making work using a new, largely computer-based methodology as opposed to the current paper-based methodology.

D. Contentions of the Parties

Newsday contends that Local 915 threatened it and its employees and filed a grievance for the explicit purpose of pressuring Newsday to assign the EPR work to Local 915-represented composing room employees. It characterizes the case as one in which the “work assignment in issue . . . was made to the EPR which Newsday has established as a unit of the Platemaking Department and which it views as an accretion to the Local 406 Platemaking bargaining unit.” Newsday further contends that its assignment of the work to employees in the EPR should be “sustained” by the Board because Local 915 has no claim to the work under its collective-bargaining agreement, and because efficiency and economy of operations, em-

ployer preference, and other 10(k) factors support such an award.

Local 915 has moved to quash the notice of hearing. It contends that there is no reasonable cause to believe it violated Section 8(b)(4)(D) for the following reasons: it made no threats and took no action that was intended to interfere with Newsday’s operations, and any statements it made that may have been unlawful were immediately disavowed; the grievance it filed concerning the work is but one of several lawful legal avenues it stated it would pursue based on a reasonable interpretation of its collective-bargaining agreement with Newsday; and, finally, the dispute is not a work-assignment dispute but rather one over who should represent the employees performing the work which was traditionally performed by composing room employees it represented. In the event the Board determines that a dispute exists, however, Local 915 contends that the tasks performed in the EPR should be assigned to employees it represents on the basis of its collective-bargaining agreement, past practice (or what it terms “substitution of functions”), skills, and industry and area practice.

E. Applicability of the Statute

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

Although each union has “claimed” the EPR work for its members, on close inspection we find, as argued by Local 915, that the facts of the case do not constitute a traditional work assignment dispute. To begin with, Newsday assigned the new methodology for pagemaking to an unstaffed, newly created area of its operation, the EPR, and not to a specific group of employees. Newsday entered into an “accretion” agreement with Local 406 recognizing it as the representative of the as-yet-undesignated employees who would be selected for the EPR positions. The employees were selected following companywide posting. Each union now seeks to represent these employees. Accordingly, this case lacks a fundamental prerequisite for a jurisdictional dispute: the existence of competing groups of employees. Although the Board has recognized that a jurisdictional dispute may arise with respect to an employer’s assignment of future work to a defined group of employees,¹³ these cases involve competing claims to the work by separate, identifiable groups of employ-

¹²On or about November 15, Local 915 filed an 8(a)(2) charge against Newsday concerning its recognition of Local 406 as the representative of the EPR employees. A complaint was issued on the charge in Case 29-CA-15350, and we are administratively advised that that matter is pending before an administrative law judge.

¹³Compare *Operating Engineers Local 3 (Schnitzer Steel)*, 303 NLRB 13 fn. 5 (1991), and *Stage Employees IATSE Local 659 (King Broadcasting Co.)*, 216 NLRB 860, 862 (1975).

ees, not just competing claims to be the representative of a single group of employees. In the absence of the actual selection of employees to be assigned the work, we find the facts in this case inadequate to show that there were two groups of employees making competing claims for the work.¹⁴ Further, since *Newsday's* September 28 announcement, Local 915 has variously but consistently protested to *Newsday* that recognition of Local 406 as the representative of EPR employees was premature and violated the Act, a position which is consistent with this being solely a representational issue.¹⁵ In addition, in its October 4 notice to members, Local 915 explained that its goal was representational. The notice stated that "Local 915 will continue to pursue all avenues in an attempt to ensure that justice will be served—that Local 915 is the bargaining representative for the employees performing this work." Finally, we find that the evidence presented in this case principally pertains to Local 915's reaction to *Newsday's* initial September 28 announcement and correspondence relating to this reaction. The record does not establish that Local 915 engaged in further conduct *after* the EPR positions were filled which would establish any basis for finding reasonable cause to believe that a violation of Section 8(b)(4) has occurred.¹⁶ In this regard, there is no evidence that Local 915 made any further claims specifically regarding the EPR work assigned to employees who had transferred from areas other than the composing room¹⁷ and, more importantly, no evidence that any arguably coercive conduct occurred regarding those employees.

Although the precedent in this area is not extensive, it is clear that the Board makes a fundamental distinction between disputes which are purely representational and cases which involve actual jurisdictional disputes.

¹⁴ There is no evidence that Local 915 was informed by *Newsday* at the September 28 meeting as to whom the latter was seeking to fill the EPR positions, other than the general statement to the Union that *Newsday* would be posting such positions. The fact that the majority of the initial EPR hires (and all the journeymen) were employees who transferred from the composing room, where they had been represented by Local 915, but now according to *Newsday's* agreement with Local 406 were to be represented by Local 406, highlights the fact that in the first instance this was a representational matter.

¹⁵ We note that our conclusion in this case is not dependent on, and need not control, the outcome of concurrent unfair labor practice proceeding.

¹⁶ In light of our finding that there were no groups of employees competing for the disputed work, we find it unnecessary to pass on whether any of Local 915's conduct at the September 28 meeting with *Newsday*, and its subsequent related correspondence, constituted conduct proscribed by Sec. 8(b)(4)(i) and (ii)(D) of the Act.

¹⁷ If Local 915 had responded to *Newsday's* actual assignment of non-composing room employees to do EPR work with a request that Local 915 be designated their representative, this request would have been inadequate to transform this proceeding into a jurisdictional dispute case. See *Laborers Local 1 (DEL Construction Co.)*, 285 NLRB 593 (1987).

In *Food & Commercial Workers Local 1222 (Fedmart Stores)*, 262 NLRB 817 (1982), the Board found that a recognition dispute rather than a traditional jurisdictional dispute existed where the employer instituted a new pricemarking and inventory system, selected employees already represented by both UFCW and Teamsters to operate it, and recognized the Teamsters local as the representative of employees performing the work. There, UFCW contested the employer's recognition of Teamsters as the bargaining representative and arbitrated the removal of work traditionally performed by its members and the assignment of it to employees who were then required to join the Teamsters. Quoting *Communications Workers (Mountain States Telephone)*, 118 NLRB 1104, 1107–1108 (1957), the Board stated:

There must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group.

....

A demand for recognition as bargaining representative for employees doing a particular job, or in a particular department, does not to the slightest degree connote a demand for the assignment of work to particular employees rather than to others.

In the instant case, Local 915 similarly has only resisted *Newsday's* ostensibly unilateral decision to impose Local 406 representation on EPR employees even before they had been selected.

For the reasons stated above, we conclude that the dispute herein is not over the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D).¹⁸ Accordingly, because this matter is not a dispute within the meaning of Section 10(k), we shall quash the notice of hearing.¹⁹

ORDER

It is ordered that the notice of hearing in Case 29–CD–381 is quashed.

¹⁸ On June 2, 1991, Local 406 filed a motion to reopen the record to include the May 13, 1991 decision of Impartial Umpire Howard Lesnick in a proceeding between Local 915 and Local 406. In his decision, Lesnick concluded that Local 406 did not violate the AFL–CIO constitution, as charged, by representing employees as to whom an established collective-bargaining relationship exists and by taking or accepting jurisdiction of composing room work. Although we grant the motion, we find that Lesnick's decision does not affect our findings that the 10(k) mechanism is inappropriate for resolving the instant representational dispute.

¹⁹ In view of our holding on the representational nature of the instant dispute, we find it unnecessary to address Local 915's claim that it relied on a lawful, contractually based work-preservation objective regarding traditional composing room work.