

Graphic Communications International Union, Local 14-M AFL-CIO-CLC and American Bank Note Company and Local 25, Steel and Copper Plate Engravers League of Philadelphia a/w International Plate Printers', Die Stampers', and Engravers' Union of North America, AFL-CIO. Case 4-CD-887

January 30, 1995

DECISION AND DETERMINATION OF DISPUTE

CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

The charge in this Section 10(k) proceeding was filed on March 15, 1994, by the Employer, alleging that the Respondent Graphics Communications International Union, Local 14-M, AFL-CIO-CLC (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 the employees represented by Local 25, Steel and Copper Plate Engravers League of Philadelphia a/w International Plate Printers', Die Stampers' and Engravers' Union of North America, AFL-CIO (Local 25). The hearing was held June 15, 1994, before Hearing Officer David Faye.

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.¹

I. JURISDICTION

The Employer, a Delaware corporation, is engaged in the production of food stamps for the U.S. Government, traveler's checks, stock and bond certificates, passports, and postage panels at its Horsham, Pennsylvania facility, where, during the past year preceding the hearing, it purchased and received goods and materials in excess of \$50,000 directly from points located outside of the Commonwealth of Pennsylvania. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the GCIU and Local 25 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer produces printed security documents at its Horsham, Pennsylvania facility, including food

coupons for the U.S. Department of Agriculture, postal panels for the U.S. Postal Service, travelers checks for American Express, passports, currency designs, and stock and bond certificates for foreign governments. The Employer employs approximately 495 employees at its Horsham facility, including 382 production employees of which 333 are covered by one of the collective-bargaining agreements between the Employer and the GCIU: GCIU 14-M Litho covering 61 employees; GCIU 14-M Composition covering 16 employees; and GCIU 2B Bindery covering 256 employees. The Employer also is party to several other contracts covering various categories of employees: Plate Printers Local 1 covering 26 employees; Local 25 covering 22 employees; and Teamsters Local 107 covering 1 truckdriver.

In early 1992, the Employer began to consider purchasing a desktop publishing system to replace the traditional lithographic printing process. In September 1993, the Employer installed the AGFA desktop publishing system. The AGFA system is an integrated desk top publishing system consisting of various hardware equipment and software applications. All component pieces of the AGFA system are located in a single room at the Employer's facility. The single integrated AGFA system is designed to combine and replace several separate steps used in the lithographic process, including design composition, stripping, camera, and platemaking. The system can produce both film to create lithographic plates or the plates themselves. Thus, the AGFA system performs all of these previously separate functions as one integrated process.

Initially, the Employer sent 16 employees, 1 represented by Local 25 and 15 represented by the GCIU, for training on the AGFA system at the AGFA school located near Boston, Massachusetts. At the time of the hearing in this matter, a total of 27 employees worked on the AGFA system: 4 employees represented by Local 25 and 23 represented by the GCIU. The 23 employees represented by the GCIU use all of the AGFA equipment. The four employees represented by Local 25 use only the Macintosh computer component of the system.

On November 4, 1993, Local 25 filed a grievance against the Employer demanding that all intaglio process work on the AGFA equipment be performed by the employees that it represents. Shortly thereafter, the GCIU made an oral claim for jurisdiction over the AGFA system to the Employer. This claim was subsequently relayed to Local 25 in a letter dated February 28, 1994, from the Employer's acting general manager, Eric Binns, to Local 25's president, Daniel George. On March 8, 1994, the GCIU informed the Employer, by letter, that it claimed jurisdiction over the AGFA system and stated that it would take all necessary action to ensure the assignment of jurisdiction to it rather than Local 25, including refusing to permit other em-

¹The Employer's motion to correct the transcript is granted.

ployees of the Employer represented by the GCIU (i.e., those covered under the bindery contract) to process the products of the AGFA system.² The parties stipulated that both the GCIU and Local 25 claim the work in dispute, although, at the hearing, Local 25 stated that it claims the work in dispute as defined in the notice of hearing only to the extent that the work involved the intaglio process.

B. *Work in Dispute*

The disputed work involves the assignment of the "AGFA computerized image processing system," including computerized design, camera, stripping, platemaking, typesetting, and proofreading functions for American Bank Note Company at its facility in Horsham, Pennsylvania.

C. *Contention of the Parties*

The Employer contends that a jurisdictional dispute is properly before the Board, noting, *inter alia*, that the GCIU's threat to refuse to permit other employees of the Employer that it represents to process products of the AGFA system would make it impossible for the Employer to meet its delivery deadlines. Accordingly, it argues that this threat of a work stoppage provides a basis for reasonable cause to believe that Section 8(b)(4)(D) has been violated. The Employer further contends that the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, relative skills and the work involved, efficiency of operations, and loss of jobs compel an award of the work to the employees represented by the GCIU.

The GCIU also contends that the dispute is properly before the Board and that its threat of a work stoppage provides reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The GCIU argues that the disputed work must be awarded to the employees that it represents on the basis of the following factors: Board certifications and collective-bargaining agreements, employer preference and past practice, area and industry practice, relative skills, economy and efficiency of operations, and potential employment impact.

Local 25 contends that there is no dispute properly before the Board. It argues that it does not seek to displace any of the employees represented by the GCIU but, rather, seeks to continue the assignment of design work on the AGFA system to the employees that it represents. It contends that both the GCIU and Local 25 employees are performing the same work that they had performed prior to the installation of the AGFA system. Further, it contends that it appears that the Employer is not seeking to assign the AGFA design

work to the GCIU represented employees but, rather, expects that those employees currently represented by Local 25 will simply join the GCIU. Local 25 thus argues that the dispute here is not over the assignment of work to one group of employees over another but, rather, which union will represent the employees currently performing the work. Local 25 maintains that the Employer is attempting to unilaterally impose GCIU representation on design employees and that such action does not constitute a dispute within the meaning of Section 10(k), citing *Communication Workers Local 915 (Newsday)*, 306 NLRB 874, 875 (1992). Finally, Local 25 contends that, assuming *arguenda* a Section 10(k) dispute is presented, the computerized design work on the AGFA system should be awarded to it, based on the following factors: collective-bargaining agreements, employer preference and past practice, area practice, relative skills, economy and efficiency of operations, and job impact.

D. *Applicability of the Statute*

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

As noted above, Local 25 contends that no jurisdictional dispute is properly before the Board because it is only seeking to continue the assignment of design work (one piece of the overall work in dispute) to the employees that it represents and not to displace any other employees. We note, however, that at the hearing Local 25 stipulated that the work in dispute was as described in the notice of hearing (i.e., all functions of the integrated AGFA system) and stipulated that it claimed that work. Having so stipulated, Local 25 cannot now seek to have the Board dissect the description of the work in dispute so as to limit its inquiry to the work that Local 25 now describes.

Local 25 also argues that no jurisdictional dispute exists because, according to the testimony of the Employer's acting general manager, Eric Binns, if the GCIU is awarded the work in dispute, the Employer expects that the employees represented by Local 25 will join the GCIU. It contends that the dispute here, then, is not over the assignment of work to one group of employees over another, but rather is a question of which union will represent the employees performing the work. Thus, it concludes, citing *Communications Workers Local 915 (Newsday)*, *supra*, the other parties to the proceeding are simply attempting to impose GCIU representation on the design employees, rather and that therefore this is not a jurisdictional dispute

²Although not explicitly set forth in the record, it appears that the GCIU is claiming the work in dispute for the employees it represents under the litho and composition contracts.

within the meaning of Section 10(k), but rather a recognition dispute.

We find, however, that *Communications Workers Local 915 (Newsday)*, supra,³ is distinguishable from the facts here. In that case, the employer assigned a new process in its operations to a newly created unstaffed department. It then entered into an accretion agreement with one union to represent the then unselected employees for that new department. There, the Board found that there were no competing groups of employees (only two unions seeking to represent the newly constituted group of employees in the new department) and, therefore, no jurisdictional dispute. Here, there is no question that there are two separate groups of employees claiming the disputed work and that the Employer has assigned this work to one group. Therefore, the facts here involve a traditional jurisdictional dispute within the meaning of Section 10(k).⁴

Moreover, as described above, the GCIU, by letter, informed the Employer that if the disputed work were not assigned to the employees that it represents, it would not permit other employees that it represents to process the products of the AGFA system. This action would effectively shut down the Employer's operation. There is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred if a labor organization that represents employees who are assigned the disputed work threatens to strike or otherwise coerces an employer to continue such an assignment.⁵

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as stipulated by the parties, that there are competing claims to the disputed work, and there exists no agreed method for voluntary adjustment of the dispute within the meaning of the Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

³See also *Commercial Workers Local 1222 (FedMart Stores)*, 262 NLRB 817, 818-819 (1982), in which one union demanded recognition as bargaining representative for employees who were already represented by another union and already performing the work in dispute. There, the Board found no competing claims for the disputed work within the meaning of Sec. 10(k) and, thus, no jurisdictional dispute properly before the Board. Here, neither union is seeking to represent employees represented by the other union.

⁴The testimony of the Employer's acting general manager, Eric Binns, cited by Local 25, does not establish the contrary. When asked on cross-examination to speculate what would happen to the design employees in the event that the GCIU was awarded the disputed work, Binns testified that these employees would be asked to join the GCIU or be laid off, but that this matter would be determined by "their Union." We find that this statement merely speculates that if Local 25 consented these employees, as a separate group, could join the existing GCIU group. We further note that there is no record evidence that the GCIU is seeking to represent these four design employees or that it has taken any position regarding these employees.

⁵*Laborers (O'Connell's Sons)*, 288 NLRB 53 (1988); *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200 (1985); *Carpenters Local 1207 (Carlton, Inc.)*, 313 NLRB 71 (1993).

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of the 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 this dispute.

1. Certification and collective-bargaining agreements

The GCIU relies on a certification by the Board in 1989 involving certain composition employees of the United States Banknote Company. When the Employer merged with the United States Banknote Company, the composition employees were moved to the Horsham plant. Thus, the GCIU claims that the certification includes part of the work in dispute. Absent any showing that the Employer's employees were certified by the Board, we find that the evidence bearing on this factor does not weigh in favor of either group's claim to the work in dispute.

The Employer is party to collective-bargaining agreements with both the GCIU and Local 25. The litho collective-bargaining agreement with the GCIU covers "Lithographing, Offset (including dry or wet), Letterpress (windmill and numbering machines), Photograving, Intaglio, Gravure and all other methods or techniques of printing, or otherwise reproducing images of all kinds, or the computerization of the above, or any other purpose, including, without limitation, any technological or other change, evolution of or substitution for any work, process, operation or product now or hereinafter utilized." The composition collective-bargaining agreement with the GCIU covers "type composition and the proofreading and editing thereof, the computerization of the above, including, without limitation, any technological or other change, evolution of or substitution for any work, process, operation or product now or hereinafter utilized." The collective-bargaining agreement with Local 25 covers "vignette engravers, square letter engravers, script engravers, designers, geometric lathe pantographic machine operators, die finishers, chromers and any operations or operators used in the production of intaglio processes or design to and including all operations in the process necessary until the plates are ready for the printing press" and "in the event of new or improved machines or processes for work covered in the jurisdiction provisions of this agreement, such machines or processes must be operated by employees covered under

this Agreement.” Thus, the language of each of these collective-bargaining agreements covers aspects of the work in dispute. We find that this factor does not favor either employees represented by the GCIU or those represented by Local 25.

2. Employer preference and past practice

The preference of the Employer is to assign exclusive jurisdiction over the work in dispute to employees represented by the GCIU. Consistent with this preference, the Employer has previously assigned AGFA work at its Bedford Park, Illinois facility to employees represented by the GCIU.⁶

By contrast, Local 25 contends that since 1899 the Employer has preferred to have Local 25 represented employees perform design work. Local 25 also contends that because the Employer expects that employees currently represented by Local 25 will join the GCIU and continue to perform design work, the Employer prefers that these employees perform the design work. Design work, however, constitutes only a portion of the work in dispute. Therefore, in sum, this factor favors an award of the disputed work to the employees represented by the GCIU.

3. Area and industry practice

The GCIU president, Andrew Douglas, presented a list of 21 employers in the Philadelphia area which utilize either the AGFA or a similar desktop publishing system and which have assigned jurisdiction to GCIU represented employees over those systems pursuant to their collective-bargaining agreements. The Employer’s acting general manager, Eric Binns, testified that prior to making the assignment to the GCIU, he made inquiries on behalf of the Employer to both the national employers association and the Graphic Arts Association of the Delaware Valley and was advised by both that the GCIU has jurisdiction over this type of work.

By contrast, Local 25 contends that among the few employers in the country that produce computerized security sensitive documents, the design work for such documents is performed by Local 25’s parent organization. Design work, however, constitutes only a portion of the work in dispute. Therefore, we find that this factor favors an award of the disputed work to the employees represented by the GCIU.

4. Relative skills

The stipulated work in dispute consists of several duties, including, “design, camera, stripping, platemaking, typesetting and proofreading.” The Employer’s production manager, Mark McNamee, testified

that only the GCIU represented employees covered under the litho contract ever performed camera, stripping and platemaking functions and that only the GCIU represented employees under the composition contract ever performed typesetting and proofreading functions. Both Binns and McNamee testified that the GCIU represented employees are qualified to perform computer design work. Binns also testified that Local 25 represented employees are only qualified to perform design work and do not possess the skills to perform the other work functions set forth in the stipulated work in dispute. Binns, McNamee and George also testified that the AGFA system is a highly integrated system. Local 25 contends that the employees that it represents are more skilled at design work than the GCIU represented employees. Again, we note that design work constitutes only a portion of the work in dispute and only the GCIU represented employees possess the skills to perform all of the work in dispute. Accordingly, this factor favors an award of the disputed work to the employees represented by the GCIU.

5. Economy and efficiency of operations

As noted above, Binns and McNamee testified that the AGFA system is a highly integrated system and that the GCIU represented employees possess the skills to perform all of the work on that system. They also testified that it is more efficient for employees to be able to perform all of the different functions on the AGFA system. Local 25 contends that the work should be split between the two unions and that both are currently working on the AGFA system with no negative impact on production. Binns further testified that employees operating the system at the Employer’s Horsham facility will be working with GCIU represented employees at its Bedford Park, Illinois facility. Finally, Binns testified that, pursuant to the collective-bargaining agreement between the Employer and the GCIU, the Employer contributes to a training school for GCIU represented employees and that this school offers courses in the AGFA and similar systems. Binns testified that there is no training school for Local 25 represented employees and that the availability of the training school for the GCIU represented employees influenced the Employer’s decision to assign the work to those employees. We find that in sum, this factor favors an award of the disputed work to the employees represented by the GCIU.

6. Loss of jobs

Binns testified that if the work in dispute were assigned to Local 25, as many as 23 employees could be laid off. If, however, the work in dispute were assigned to the GCIU, Binns testified there would be no employment impact. Local 25 contends that because it does not seek to displace any GCIU represented em-

⁶See *Graphic Communications Local 458-3M (American Bank Note Co.)*, 314 NLRB 897 (1994) (disputed work on AGFA system awarded to employees represented by the GCIU rather than those represented by the Typographical Union).

ployees, Binns' testimony regarding potential job loss is unfounded. Further, Local 25 contends that if the work in dispute were assigned to the GCIU represented employees, the four design employees that it represents would be laid off if they did not join the GCIU. Even assuming Local 25's assertion to be true, the potential loss of employment for the GCIU represented employees is greater than the potential loss for the Local 25 represented employees. Accordingly, we find that this factor favors an award of the disputed work to the employees represented by the GCIU.

Conclusions

After considering the relevant factors, we conclude that employees represented by the GCIU are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and past practice, area and industry practice, relative skills, economy and effi-

ciency of operations, and loss of jobs. In making this determination, we are awarding the work to employees represented by the 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 represented by Graphic Communications International Union, Local 14-M, AFL-CIO-CLC are entitled to perform the operations of the "AGFA computerized image processing system," including computerized design, camera, stripping, platemaking, typesetting, and proofreading functions for American Bank Note Company at its facility in Horsham, Pennsylvania.