

Local 421, Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO and A-CMI Michigan Casting Center, a Joint Venture of Alcoa and CMI-International, Inc.¹ and Employees of A-CMI Michigan Casting Center, Metal Mold Division. Case 7-CD-534

October 10, 1997

DECISION AND ORDER QUASHING NOTICE
OF HEARING

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

The charge that resulted in this Section 10(k) proceeding was filed April 1, 1997, alleging that the Respondent, Local 421, Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO (GMP), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing A-CMI Michigan Casting Center, a Joint Venture of Alcoa and CMI-International, Inc. (the Employer), to assign certain work to employees it represents rather than to unrepresented employees of A-CMI Michigan Casting Center, Metal Mold Division (Metal Mold employees). The hearing was held on May 7, 1997, before Hearing Officer Chet H. Byerly Jr.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record,² the Board makes the following findings.

I. JURISDICTION

A-CMI Michigan Casting Center, a Joint Venture of Alcoa and CMI-International, Inc. is engaged in the manufacture and nonretail sale of metal castings at its facility located at 14638 Apple Drive, Fruitport, Michigan. During the calendar year ending December 31, 1996, it sold and shipped goods and materials from its Fruitport, Michigan facility valued in excess of \$50,000 directly to customers located outside the State of Michigan. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that the GMP is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer and its predecessor (CMI-International Inc. (CMI)) have operated the facility in Fruitport, Michigan, for over 30 years. Before April 1, 1995, the Fruitport plant was owned and operated by

CMI. Since April 1, 1995, the Fruitport plant has been owned and operated by A-CMI (the Employer) as a joint venture.³

The Employer is currently composed of four divisions: the foundry division; the prototype, airset division;⁴ the tool and mold division;⁵ and the metal mold division. The Employer testified that each division is run independently of the others.⁶

The foundry division produces aluminum castings for the automotive industry primarily using a molding process called the "green sand" process.⁷ Prior to 1995, all of the manufacture of aluminum castings was done in the foundry division.⁸

The metal mold division was established in April 1995, following the creation of the joint venture between Alcoa and CMI. The joint venture was the result of an agreement to combine CMI's expertise in manufacturing castings for the automotive industry with the proprietary aluminum casting technology developed by Alcoa. As a result of the joint venture, the Employer received patented new production technology from Alcoa known as Vacuum Riserless Casting-Pressure Riserless Casting (VRC-PRC). The Employer established the metal mold division to utilize the new technology in the production of aluminum castings.

Bonga testified that the Employer decided to create the metal mold division rather than place the new technology in an existing division because it is "a different process totally, different technology totally. It's a cleaner process, much cleaner. The properties of casting are totally different than the castings in the green sand area." Because the green sand process is a dirty process and the VRC-PRC process requires a clean environment, Robert Fors, the Employer's plant manager, testified that the VRC-PRC and green sand processes are incompatible. Because of the sensitive and confidential nature of the VRC-PRC proprietary tech-

³ The Fruitport facility was formerly known as CMI-Noren, Inc., a subsidiary of CMI-International, Inc. As a result of the joint venture, the name of the Fruitport facility was changed to A-CMI Michigan Casting Center.

⁴ This division produces experimental components.

⁵ This division produces tooling for the plant and other customers.

⁶ Roger Bonga, the Employer's human resource manager, testified that the Employer's facility consists of one large building segmented into separate facilities. The divisions have separate work forces, and there is no interchange of hourly employees or supervisors and management among the facilities (except for very short durations). The divisions have separate equipment and assets, and if another division uses a division's machines and material, it is charged for those services. The divisions have their own financial documents such as profit and loss. Bonga testified that the divisions are "run as separate companies."

⁷ For the production of certain products, the foundry division also utilizes an "Isecure Core process" which does not involve the use of reusable sand.

⁸ The prototype, airset division also produced low-volume prototype aluminum casting parts for the purpose of obtaining work. In addition, since about 1993, the prototype, airset division has produced the Viper Engine block for Chrysler.

¹ The name of the Employer appears as reflected in the transcript.

² The parties' stipulation to correct the record is granted.

nology, all employees of the metal mold division who have access to the VRC-PRC process, are required to sign a confidentiality agreement as a condition of their employment.

The metal mold division utilizes the VRC-PRC technology to produce high-integrity structural components such as steering knuckles, brackets, rear axle assembly, and front shock mounts for the automotive industry. The foundry division primarily produces automotive engine in-take manifolds and water pumps. The Employer testified that these parts use lower quality aluminum and can tolerate greater imperfections than parts produced in the metal mold division. None of the specific parts produced by the metal mold division were previously produced in the foundry division.

The GMP has represented employees in the foundry division of the Employer's Fruitport facility since the late 1960s. Only the foundry division employees are represented by a union.⁹

Since the metal mold division was established, employment in the foundry division has decreased and employment in the metal mold division has increased. In April 1996, there were 60 to 70 production and maintenance employees employed in the foundry division bargaining unit. However, following a layoff because of lack of work in the foundry division in June 1996, the number of bargaining unit employees in the foundry division was reduced to approximately 35. Over the same period, the number of metal mold division employees has increased from 25-35 production workers in June 1996 to approximately 53 production workers. Of the 34 bargaining unit employees who were laid off or resigned from the foundry division between April and November 1996, 12 were rehired by the Employer as new employees in the metal mold division, 13 were rehired in the prototype, airset division, and 2 were rehired in the tool and mold division. Approximately 25 percent of the employees in the metal mold division at the time of hearing were former bargaining unit employees from the foundry division.

The most recent collective-bargaining agreement between the parties was effective from July 1, 1992, through June 30, 1997.¹⁰ Under the terms of the collective-bargaining agreement, the unit represented by the GMP is:

All full-time, regular part-time, and irregular production and maintenance employees employed by the Company in the Foundry Division at its Fruitport, Michigan Plant . . . but excluding all patternmakers, apprentices, office and plant clerical employees, and guards and supervisors as de-

finied in the National Labor Relations Act as amended.

The agreement includes provisions that prohibit "[s]upervisors and other non-bargaining unit employees" from performing "production or maintenance work included in the classifications covered by [the] Agreement" and govern subcontracting of bargaining unit work. The contract also includes a grievance clause, provisions for final and binding arbitration, and a no-strike clause.

On March 19, 1996, the GMP filed a grievance alleging that a bargaining unit employee was required to unload metal to be used in a nonbargaining unit division of A-CMI. On March 29, 1996, that grievance was resolved, with the Employer agreeing that "[b]argaining Unit employees responsibilities will be limited to work performed for the Foundry Division."

In June 1996, Bruce Smith, an executive officer of the GMP, was informed that aluminum casting production work was being performed by employees not represented by the GMP. Smith toured the plant in order to determine whether the collective-bargaining agreement was being violated. Bonga testified that Smith expressed surprise to company officials that production of aluminum castings for the automotive industry was being done by employees in the metal mold division. Smith indicated that he believed that production of aluminum castings was bargaining unit work, and he requested that the discussion be treated as a step-1 meeting under the contract's grievance procedure. Smith testified that he explained to company officials that he was not seeking to remove any employees from the metal mold division, but that he was making the point that the work was under the jurisdiction of the contract. On June 5, 1996, the GMP filed a written grievance over the issue, claiming that nonbargaining unit personnel were performing bargaining unit production and maintenance work in the metal mold area in violation of the collective-bargaining agreement.¹¹

The parties were unable to resolve the grievance and Smith attempted to schedule a step-4 meeting with Human Resource Manager Bonga. Bonga failed to return Smith's calls. As a result, Smith wrote to the Employer stating that he planned to refer the matter to arbitration. The Employer did not respond, and in October 1996, the Union requested a panel of arbitrators from the Federal Mediation and Conciliation Service (FMCS). On November 6, 1996, FMCS furnished the Union with a panel of arbitrators. The Employer refused to select an arbitrator and on January 15, 1997, the Employer wrote to FMCS requesting that it not proceed further with the case. In order to determine

⁹ There has not been another union at the plant since 1982.

¹⁰ Until 1995, the Union's contracts were with CMI-Noren, Inc. A-CMI, the Employer here, assumed the 1992-1997 collective-bargaining agreement when it took over operation of the Fruitport facility in 1995.

¹¹ The adjustment sought by the GMP was to "[m]ake the bargaining unit whole for any & all losses including wages and benefits, & make the Local whole for any & all lost union dues."

whether a Section 301 suit to compel arbitration would be necessary, the Union, on January 30, 1997, wrote to the Employer requesting clarification of its position concerning the arbitrability of the grievance. There is no evidence that the Employer responded to this letter.

While the Union's grievance was pending, the Employer requested that the parties begin early contract negotiations. The first session was held on March 10, 1997.¹² The Employer's representatives wanted to deal with the outstanding metal mold grievance as a matter to be bargained over as part of the negotiations for a new contract, but Smith stated that the appropriate mechanism for resolving the grievance was the contractual grievance procedure, and that the Union did not want to discuss the grievance during contract negotiations. Bonga testified that Smith became agitated when the metal mold grievance was brought up. According to Bonga, Smith stated that "[m]etal Mold is our work" and it was "not negotiable. If you don't agree, there will be a strike." Smith testified that in discussing why the Union did not want to resolve the grievance in negotiations, he stated that "it would not be fair to the parties to throw a grievance in to where the final resolution process is a strike," as opposed to resolving it through the contractual grievance procedure where "the final resolution process . . . is arbitration."

The parties agreed to meet again on March 26, 1997. On March 17, 1997, Smith wrote to the Employer, requesting certain information and reiterating the Union's position that the "settlement and/or withdraw [sic] of a grievance for which th[e] Union is seeking arbitration," was not a mandatory subject of bargaining and that the Company could not force the Union to bargain over it or insist that it be included as part of any contract settlement. Smith did not receive a written reply to this letter, but he did receive the requested information on May 6. The March 26 meeting was canceled, and the instant unfair labor practice charge was filed by the Employer on April 1, 1997.

B. *Work in Dispute*

The notice of hearing describes the work in dispute as "[t]he manufacture of castings, which work has been assigned by A-CMI to the unrepresented employees of its Metal Mold Division, rather than to employees in the collective bargaining unit who are represented by, and who are members of Local 421, Glass, Molders, Pottery, Plastics and Allied Workers International Union, AFL-CIO."

¹² Bonga's notes of the meeting erroneously contain the date March 10, 1996.

C. *Contentions of the Parties*

The GMP filed a motion to quash the notice of hearing, and offered several alternative arguments in support of its motion. First, the GMP maintains that this case does not involve a jurisdictional dispute between two competing groups of employees, but is a contractual dispute between the GMP and the Employer concerning the diversion of bargaining unit work.¹³ The GMP argues that this dispute should be resolved through the parties' agreed upon arbitration procedure, and that the Employer should not be permitted to manipulate Board processes in order to bypass the contractual arbitration mechanism agreed to by the parties.

Second, the GMP asserts that this dispute is actually a representational dispute concerning the scope of the unit it represents for collective-bargaining purposes, and whether or not the employees in the metal mold division are part of that unit and should be covered by the collective-bargaining agreement with the Employer. The GMP states that it is not seeking to displace any of the unrepresented employees, but is simply seeking to obtain representational rights for those employees performing the work.

Third, the GMP contends that this is a work preservation dispute because the GMP is merely seeking work which it has traditionally performed. The GMP notes that the work in dispute is the manufacture of castings, work which has always been performed by the bargaining unit at the Employer's Fruitport facility. The GMP also notes that almost one-fourth of the employees in the metal mold division are former bargaining unit employees who were laid off or resigned from the foundry division for lack of work and then were rehired by the Company as new employees in the metal mold division.

Fourth, if the Board finds that the case does involve a jurisdictional dispute, the GMP claims that it did not engage in any conduct proscribed by the Act. It never struck, picketed, or otherwise refused to perform any services in response to the Employer's decision to award bargaining unit work to a group of unrepresented employees. With regard to GMP Representative Smith's alleged statement at the March 10 negotiations session concerning a strike, the GMP argues that it was simply a prediction of the logical consequences of the Employer's proposal to treat the GMP's grievance as a part of the negotiation process, i.e., if the parties could not agree, a strike could result.

Alternatively, the GMP argues that if the notice of hearing is not quashed, the disputed work should be awarded to employees it represents based on the factors traditionally considered by the Board in resolving jurisdictional disputes. Specifically, the GMP argues

¹³ The GMP relies, inter alia, on *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986), aff'd. 827 F.2d 581 (9th Cir. 1987).

that the Employer's past practice supports awarding the work to GMP-represented employees because all production of aluminum castings for the automotive industry previously has been performed by bargaining unit employees, and that although the metal mold division uses a different technology, the basic work is identical to work previously performed in the foundry division. Both utilize molding machines, both manufacture castings through the use of molten metal molds, and both involve the use of employees to finish, inspect, and transport these castings once produced. The GMP further maintains that area and industry practice supports an award of the disputed work to employees represented by the GMP because the GMP has represented employees at foundries where multiple production processes are utilized.

The GMP claims that the employees it represents are skilled and experienced in foundry work, and that it was because of their skills and experience that the Employer hired so many of the laid-off foundry division employees to work in the metal mold division. In contrast, the newly hired metal mold employees are inexperienced in foundry work. Thus, it is more efficient to assign the work to bargaining unit employees. The GMP argues that the Employer's assignment of the work to unrepresented Metal Mold employees was not made to promote efficiency but was done in order to undermine the GMP.

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the work in dispute should be awarded to the unrepresented employees in the metal mold division. The Employer argues that GMP Executive Officer Smith's threat at the March 10, 1997 negotiating session that there would be a strike if the Employer refused to assign metal mold division work to GMP-represented employees, constitutes reasonable cause to believe Section 8(b)(4)(D) has been violated. The Employer maintains that Smith's equivocal denial of the threat is inconsequential because the Board must only find that reasonable cause exists to believe that the GMP violated Section 8(b)(4)(D).

The Employer further argues that there are two groups of employees claiming the disputed work, and that no method exists to resolve this dispute voluntarily. In this connection, the Employer asserts that because the unrepresented employees are not a party to the Employer's collective-bargaining agreement with the GMP, they are not subject to its grievance and arbitration procedure. Thus, the Employer argues that any decision reached by an arbitrator would not be controlling on the unrepresented employees.

The Employer contends that the notice of hearing should not be quashed because this is not a work preservation dispute. Because employees represented by the GMP have never performed the disputed work, the

GMP is not attempting to preserve unit work but instead is attempting to extend its jurisdiction and acquire new work. The Employer argues that because the VRC-PRC technology is a patented new process and no one else in the world uses it, the GMP is not attempting to "recapture" work which it used to perform. In support, the Employer notes that in cases where unit employees have never performed the disputed work, the Board has found no work preservation objective and has found that a jurisdictional dispute exists.¹⁴ The Employer further maintains that given the significant differences between foundry division work and metal mold division work, the Employer legitimately exercised its management rights to create a new division for the new work.

The Employer also asserts that the collective-bargaining agreement does not cover the disputed work because that contract only covers the foundry division employees. The Employer notes that the GMP, in its March 1996 grievance, contended that GMP bargaining unit employees should not be required to perform work for other divisions.

The Employer further argues that the dispute is properly before the Board for determination and that the work in dispute should be awarded to the unrepresented employees in the metal mold division. The Employer relies on its preference and past practice. Since the inception of the work in dispute it has always been performed by the unrepresented Metal Mold employees. Because no one else in the world uses the VRC-PRC process, there is no contrary area and industry practice. The Employer also argues that it has invested significant time, effort, and resources to train and develop the skills of the unrepresented Metal Mold employees who are currently performing the work, and that to require the Employer to assign the disputed work to employees represented by the GMP would cause substantial hardship for the Employer.

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 established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there are competing claims to disputed work between rival groups of employees and that there is reasonable cause to believe that a party has used proscribed means to enforce its claim. We cannot find reasonable cause to believe that any violation of Section 8(b)(4)(D) has occurred in this case.

We conclude that the evidence fails to establish a jurisdictional dispute between two groups of employees within the meaning of Section 10(k) of the Act. Instead, we find that this dispute is representational in

¹⁴ See, e.g., *Teamsters Local 282 (Mount Hope Trucking Co.)*, 316 NLRB 305 (1995).

nature, and is not the type of dispute Section 10(k) was designed to address.

The Supreme Court noted in *Carey v. Westinghouse Corp.*, 375 U.S. 261, 268, 269 (1964), that a “blurred line” often exists between work assignment disputes and representational ones and that “disputes are often difficult to classify.”¹⁵ Nevertheless, Board precedent sets forth certain guiding principles. In this connection, it is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups.¹⁶ The Board has 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.¹⁷

We find no attempt by the GMP to take a work assignment away from the unrepresented employees or to obtain the assignment rather than have it given to the unrepresented employees. The GMP is not seeking to displace the unrepresented employees, but is merely seeking to represent those employees who are doing the metal mold work and to apply the collective-bargaining agreement to those employees. The GMP’s posthearing brief states that

it is the Union’s position that the present dispute really constitutes a representation question concerning the scope of the unit of employees it represents for collective bargaining purposes and whether or not employees in the Metal Mold Division are part of that unit. In effect, the Union seeks clarification of its existing unit by a finding that employees performing production work in the Metal Mold Division are really covered by the

¹⁵ See also *Retail Clerks Local 1689 (Market Basket Stores)*, 256 NLRB 548, 549 (1981).

¹⁶ *Laborers Local 1 (Del Construction)*, 285 NLRB 593, 595 (1987).

¹⁷ *Teamsters Local 222 (Jelco, Inc.)*, 206 NLRB 809, 811 (1973), citing *Communications Workers (Mountain States Telephone)*, 118 NLRB 1104, 1107–1108 (1957).

present collective bargaining agreement between the Union and A-CMI.

The GMP’s grievance supports the GMP’s characterization of the dispute. As noted above, the grievance does not seek as a remedy the displacement of the employees currently performing the work. Rather, it seeks a make-whole remedy for unit employees, as well as lost union dues for the GMP. This is consistent with the GMP’s position that those employees performing the work should be considered to be unit employees covered by the collective-bargaining agreement, and reflects a desire to represent those employees who are performing the metal mold work.

Although the GMP has not formally requested recognition as the collective-bargaining representative of the employees in the metal mold division, and has not filed a unit clarification or other representation petition, we find that the real dispute here is not between the employees represented by the GMP and the unrepresented employees, but instead is between the GMP and the Employer concerning whether the employees who perform the metal mold work should be represented by the GMP and/or covered under the collective-bargaining agreement between the Employer and the GMP.

Sections 8(b)(4)(D) and 10(k) were not intended to cover situations such as this one where the dispute is essentially between the union and the employer rather than between rival groups of employees, and where the essence of the dispute is representational rather than jurisdictional. For these reasons, we conclude that the GMP’s alleged conduct does not give rise to a “jurisdictional dispute” within the meaning of Sections 10(k) and 8(b)(4)(D). We shall, therefore, quash the notice of hearing.¹⁸

ORDER

It is ordered that the notice of hearing issued in this case is quashed.

¹⁸In light of our finding that the notice of hearing should be quashed because the dispute is representational in nature, rather than jurisdictional, we find it unnecessary to pass on the validity of the other arguments proffered by the GMP in support of its motion to quash.