

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD (Sacramento, California)

SMURFIT PACKAGING CORPORATION d/b/a
AMERICAN LITHOGRAPHERS 1/

Employer

and

TRACI RETTICH, an Individual 2/

Petitioner

and

GRAPHIC COMMUNICATIONS UNION, DISTRICT COUNCIL
NO. 2, LOCAL 338M, AFL-CIO 3/

Union

20-RD-2285

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 4/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 5/
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 6/

ORDER

IT IS HERBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **August 11, 1999**.

Dated _____

at San Francisco, California _____

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The Employer's name is in accord with the stipulation of the parties.
- 2/ The Petitioner's name appears as corrected at the hearing.
- 3/ The Union's name is in accord with the stipulation of the parties.
- 4/ The parties stipulated, and I find, that the Employer is a Delaware corporation with a place of business in Sacramento, California where it is engaged in the printing industry. During the 12-month period ending June 30, 1999, the Employer performed services valued in excess of \$50,000 directly for customers located outside the State of California. Based on the parties' stipulation to such facts and the record evidence, it is concluded that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.
- 5/ The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.
- 6/ The Petitioner seeks a decertification election in the following unit: All full-time and regular part-time press room employees, pre-press employees, bindery employees, shipping and receiving employees, truck drivers and janitors employed by the Employer at its 2629 Fifth Street, Sacramento, California, facility; excluding quality control employees, office clerical employees, sales employees, guards and supervisors as defined in the Act. The parties stipulated that the petitioned-for unit is the appropriate unit and I have taken administrative notice of the certification of representative issued on April 23, 1998 in Case 20-RC-17396 wherein the Union was certified as the exclusive bargaining representative in said unit.

The Union asserts that petition herein must be dismissed as there is a contract bar to this proceeding. The Petitioner asserts to the contrary. The Employer has taken no formal position as to this issue. The Employer was represented at the hearing by its general manager.

Stephen Northup, Vice President of Operations of Graphic Communications Union, District Council No. 2 testified that he participated in collective-bargaining negotiations with the Employer on behalf of the Union, along with several other Union bargaining representatives, including three bargaining delegates elected by the employees and David Grabhorn, the Union's attorney. According to Northup, the Employer was represented in the bargaining negotiations by Sharon Burd, whose title was not disclosed, Employer Vice President and General Manager Derry Hobson, and an unidentified attorney. Negotiations commenced about June 11, 1998.

The instant petition was filed on June 17, 1999. Northup testified that the Union and the Employer reached agreement for a collective-bargaining agreement covering the unit employees on October 22, 1998, and that this agreement was incorporated into

a writing. The record contains a one-page handwritten document dated October 22, 1998 entitled "Company's Final Acceptance Offer." This document contains terms covering wages, health and welfare, pension, 401K and vacation benefits and bears Northup's initials and those of the Employer's bargaining representative, Derry Hobson. The record also contains a photo-copy of a 27-page typed document dated June 12, 1998 entitled "Collective Bargaining Agreement between Smurfit Packaging Corporation d/b/a American Lithographers and Graphic Communications Union District Council Local 388M." This document contains numerous handwritten notations. According to Northup, these two documents together constitute the collective-bargaining agreement reached between the Employer and the Union on October 22, 1998.

Northup testified that the one-page handwritten document is in the handwriting of the Employer's bargaining representative, Derry Hobson and contains the economic terms the Employer and the Union agreed to. According to Northup, Hobson gave this document to him at the end of the bargaining session on October 22, 1998. Northup testified that upon receiving the document, he initialed and dated it to indicate the acceptance of these terms by the Union.

Northup testified that the 27-page document contains the side-by-side proposals of the Employer and the Union. The various pages of this document contain handwritten notations which include, among others, "TA" (for tentative agreement) next to either the Employer's or the Union's version of each contract section, the date the tentative agreement was reached and the initials of the representatives of the Employer ("DH" for Derry Hobson) and the Union ("SN" for Stephen Northup). This document reflects that on or before October 22, 1998, the parties had reached tentative agreements on provisions relating to the bargaining unit; recognition of the Union by the Employer; a grievance and arbitration procedure; overtime; hours of work; shift hours and preference; management rights; union security; seniority; temporary transfers; safety committee; vacation scheduling; holidays; pension plans; tardiness and absenteeism; illness or accident benefits; job benefits and protection; jury duty; company rules; discharge and discipline; and drug and alcohol policy.

The duration of the agreed upon contract is set forth in the 27-page document as from October 25, 1998, through December 15, 2000. The document does not contain a final signature page where the parties executed the agreement. However, the final page of the document, where the provision indicating the duration of the agreement is set forth, bears the initials of the Employer's and the Union's representatives and the date October 22, 1998. Northup testified that the Employer had informed him that it possessed the original of this document that contains the Employer's full signature and a notation setting forth the term and a cover page with full signatures of both the Union's and the Employer's representative. The Employer's representative at the hearing did not dispute Northup's assertion in this regard.

According to Northup, there were two issues that the parties agreed to resolve after signing off on the agreement embodied in the above document. One issue involved progression scales, also referred to as apprenticeship steps; the other involved an alternative work week or work schedule. Northup testified that the parties agreed that they would meet expeditiously (within 30 days of ratification of the contract) to address both of these issues in good faith. Their agreement in this regard was not written but the Employer's representative at the hearing, General Manager Kenneth Bittner, confirmed that there was a verbal agreement between Hobson and Northup to continue discussions on these two issues at a future date. According to Northup, the parties have since met to discuss these issues on several occasions and have reached agreement on the issue relating to alternative work schedules. As of the date of the hearing, however, they had not reached agreement on the issue involving apprenticeship steps. Northup testified that the Union's membership ratified the contract on approximately November 1, 1998.

Northup testified that since the parties reached agreement on October 22, 1998, they have exchanged five drafts of the agreement in an attempt to get the contract into a final form. The fifth draft is included in the record. However, this document does not contain the final provision regarding alternative work schedules. Northup further testified that since the agreement was reached, the Employer and the Union have been abiding by the terms of the agreement.

According to Northup, since ratification of the agreement, the Union has processed two grievances through the grievance procedure established thereunder. One grievance involved the interpretation of the weekend work provision of the contract. The other involved the Employer's contributions to the pension fund.

Analysis. It is well established that in order to act as a bar, a collective-bargaining agreement must be reduced to writing; signed by the parties; clearly encompass the employees involved in the petition; cover an appropriate unit; and contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. Appalachian Shale Products Co., 121 NLRB 1160 (1958). NLRB v. Cooper Tank and Welding Corp., and Cooper Truck Corp., 328 NLRB No. 97 (June 18, 1999). Contracts which fulfill these requirements will bar petitions for a period of up to 3 years. See General Dynamics Corp., 175 NLRB 1035 (1965); General Cable Corp., 139 NLRB 1123 (1962). "Although the Board does not require that a contract be embodied in a formal document to serve as a bar, if it is to meet minimal bar standards, it must be at least signed by the parties and must contain terms and conditions of employment sufficiently substantial to stabilize the bargaining relationship." Hotel Employers Association of San Francisco, 159 NLRB 143 (1966). Further, the Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. USM Corp., 256 NLRB 996 fn. 18 (1981) Thus, an agreement has been held to constitute a bar where the parties had agreed to all matters except economic

conditions and had agreed to interest arbitration on those matters. Stur-Dee Health Products, 248 NLRB 1100 (1980)

As noted above, the instant petition was filed on June 17, 1999. I find that the documents presented by the Union as the contract reached with the Employer on October 22, 1998, satisfy the requirements to serve as a bar to the petition herein. Although there are multiple documents, each of the documents is in writing and the various provisions of the documents are initialed and dated by the parties. The initials of the parties satisfies the signature requirement. See Gaylord Broadcasting, 250 NLRB 198 (1980). Further, the documents reflect that the agreement reached by the parties clearly encompasses the employees involved in the instant petition and covers an appropriate unit which has been certified by the Board as such. Finally, the agreement contains substantial terms and conditions of employment, including provisions dealing with the description of the bargaining unit; recognition of the Union by the Employer; grievance and arbitration procedure; overtime; hours of work; shift hours and preference; wages and benefits; management rights; union security; seniority; temporary transfers; safety committee; vacation scheduling; holidays; pension plans; tardiness and absenteeism; illness or accident benefits; job benefits and protection; jury duty; company rules; discharge and discipline; and a drug and alcohol policy. Considering the extensiveness of the agreement, the fact that it does not include the terms as to apprenticeship steps and alternative work week does not remove it as a bar to the instant petition. See Cooper Tank and Welding Corp, supra; Stur-Dee Health Products, 248 NLRB 1100 (1980); Spartan Aircraft Co., 98 NLRB 73 (1952).

Accordingly, I find that the agreement reached by the parties bars the petition herein. Accordingly, the petition will be dismissed.

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