

In the Matter of MIDWEST PRINTING Co. and AMALGAMATED LITHOGRAPHERS OF AMERICA, TWIN CITY LOCAL No. 10, A. F. OF L.

Case No. 18-R-1039.—Decided September 30, 1944

Mr. P. J. Ocken, of Minneapolis, Minn., for the Company.

Mr. Fred W. Rose, of St. Louis, Mo., *Mr. Abner A. Larson*, of St. Paul, Minn., and *Mr. Benjamin M. Robinson*, of New York City, for the Amalgamated.

Messrs. John A. Goldie and *Abel O. Norbeck*, of Minneapolis, Minn., for the Pressmen.

Mr. Sidney Grossman, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Lithographers of America, Twin City Local No. 10, A. F. of L., herein called the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Midwest Printing Co., Minneapolis, Minnesota, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clyde F. Waers, Trial Examiner. Said hearing was held at Minneapolis, Minnesota, on July 11 and 12 and August 8, 1944. At the commencement of the hearing, the Trial Examiner granted a motion of Minneapolis Printing Pressmen and Assistants' Union No. 20, A. F. of L., herein called the Pressmen, to intervene. All parties appeared and participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing the Pressmen moved to dismiss the petition, alleging in support thereof the inappropriateness of the unit requested therein, the jurisdictional dispute between the Pressmen and the Amalgamated, and the existence of a contract between the Company and the Pressmen. Ruling on the motion was reserved for the Board. For the reasons set forth in Sections III and IV, this motion is hereby denied. Sub-

58 N. L. R. B., No. 133.

sequent to the hearing, the Pressmen moved to reopen the hearing for the purpose of introducing additional evidence in support of its request that the eligibility date for the election be not later than the date of the hearing. The motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Midwest Printing Co., a Minnesota corporation, with its principal office and place of business at Minneapolis, Minnesota, is engaged in commercial and advertising printing of all varieties. Its annual purchases from sources outside the State of Minnesota are in excess of \$50,000. Its annual sales of finished products to points outside the State of Minnesota are in excess of \$50,000.

The Company concedes that it is engaged in interstate commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Lithographers of America, Twin City Local No. 10, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Minneapolis Printing Pressmen and Assistants' Union No. 20, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In May 1944 the Amalgamated requested recognition as the exclusive bargaining representative of the employees in the Company's offset printing department. The Company refused to recognize the Amalgamated until certified by the Board. The Pressmen contends that an existing contract between the Company and the Pressmen serves as a bar to this proceeding, and maintains that the Board should not accept jurisdiction in a dispute involving unions affiliated with the same parent organization.

We have held in numerous cases that where the question at issue resolved itself into a jurisdictional dispute between unions, both of which are affiliated with the same parent body, and the parent organization is incapable of adjudicating the controversy, which is of long standing, and effective resolution of the existing conflict cannot be had

without resort to the administrative processes of the Act, we will accept jurisdiction and proceed to a determination of the question concerning representation.¹

Since 1940 the Pressmen has maintained collective bargaining relations with the Company, under separate contracts for each of the following groups: the employees of the web press department, the paper handlers of the web press paper room, and the employees of the job press department who operate platen and cylinder presses. In the fall of 1943, the Pressmen requested the Company to enter into negotiations with respect to the offset or lithographic department, and submitted detailed proposals in connection therewith. On January 31, 1944, the Pressmen and the Company renewed the written agreement affecting the employees of the job press department; the agreement specifically referred to employees who operate platen and cylinder presses, and did not incorporate therein any provisions with respect to the offset or lithographic department as outlined in the proposals which the Pressmen had previously submitted to the Company. In May 1944, the Pressmen again submitted detailed proposals with respect to the offset or lithographic department, but failed to effectuate any agreement with regard thereto.

The Pressmen contends that the contract relating to the job press department, and the renewal thereof executed in January 1944, embraced the employees of the offset or lithographic department, and that the proposals submitted to the Company were intended to supplement the provisions of such contract. In support of its contention, the Pressmen maintains that Section 3 of the contract, relating to the closed-shop provision, when read in conjunction with Section 6, paragraph 4,² reveals that the Company and the Pressmen intended to give the Pressmen jurisdiction as to all forms of presses, including presses in the offset or lithographic department. We do not agree with the contention of the Pressmen. The Company denies that it ever entered into contractual relations with the Pressmen with respect to the offset or lithographic department, and specifically denies that the contract of January 1944 was intended to embrace such department. It is clear that the contract of January 1944 does not, in any of its

¹ *Matter of Con P. Curran Printing Company*, 56 N. L. R. B. 159; *Matter of The W. H. Kistler Stationery Company*, 51 N. L. R. B. 978.

² Section 3 reads: "Coverage of Contract During the entire period of this contract, the employer binds itself to the employment in its press room departments, mechanics and workmen only who are members of the International Printing Pressmen and Assistants' Union of North America."

Section 6, paragraph 4, reads: "In the event of the installation of any press machines which are not covered by this contract, it is understood and agreed by the parties hereto that the question of working conditions and scale of wages for such press machines shall be referred to the joint standing committee, and if no satisfactory conclusion can be reached, the matter may be referred for final settlement to the aforesaid Board of Arbitration."

provisions, refer to employees engaged in the offset or lithographic process. Moreover, the proposals relating to the offset or lithographic department which the Pressmen submitted to the Company both before and after the execution of the contract of January 1944, and the discussions relating thereto between the Pressmen and the Company, reveal that it had not been the intention of the parties to include this department within the scope of the 1944 contract. In addition, the record discloses that the contract of January 1944 is typical of contracts that the Pressmen has with other establishments that also have contracts with the Amalgamated covering lithographic employees. We are therefore of the opinion that the contract of January 1944 does not include the offset or lithographic department; and accordingly find that such contract does not operate as a bar to this proceeding.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Amalgamated and the Pressmen each represents a substantial number of employees in the unit which it claims to be appropriate.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE ALLEGED APPROPRIATE UNIT

The Amalgamated requests a unit composed of all employees engaged in the offset or lithographic process, including the offset press, camera and platemaking departments, and working foremen, but excluding full-time supervisors, office and clerical employees. The Pressmen contends that a separate unit of employees engaged in the offset or lithographic process is inappropriate, and that, in substance, the appropriate unit should include all employees in the press-room departments, including the employees in the unit sought by the Amalgamated. The Company took no position as to the appropriate unit, indicating that it would favor whatever determination is made as a result of this proceeding.

The Company employs approximately eight persons in the unit the Amalgamated seeks to establish. They are engaged in the operation of the large offset press located on the ground floor of the establishment and in the platemaking department. One of these employees, Adolph Vervalle, is a part-time employee, who works only 1 day a

³ The Field Examiner reported that the Amalgamated submitted six authorization cards, all of which bore apparently genuine original signatures; that the names of six persons appearing on the cards were listed on the Company's pay roll of June 11, 1944, and that five cards were dated May 1944, and one card was dated June 1944. There are nine persons in the unit alleged to be appropriate by the Amalgamated.

The Field Examiner further reported that the Pressmen submitted one authorization card and dues records containing the names of four persons. Of the designations, all appear to be persons whose names appear on the above-mentioned pay roll in the unit claimed to be appropriate by the Amalgamated. The Pressmen also relies on its contract.

week. The record discloses that the duties, responsibilities, and functions of the employees engaged in the offset or lithographic process, with two exceptions hereinafter discussed, are confined to the lithographic department, and that the interchange of employees between this and other departments is negligible. In view of the difference in skill and duties between lithographic employees and those engaged in other types of printing, it is apparent that employees engaged in the offset or lithographic process constitute a distinct group possessing a community of interest such as to warrant our finding that they constitute a separate appropriate unit for the purposes of collective bargaining.⁴

We find that all employees engaged in the offset or lithographic process, including the offset press, camera and platemaking departments, and working foremen,⁵ but excluding full-time supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company has a small offset press located on the second floor of the plant which, although idle 80 percent of the time, is generally operated by lithographic employees, but on infrequent occasions may also be operated by Raymond Nelson, an employee regularly employed in the job press department. Another employee, Raymond Burge, is regularly employed in the circulation department and also works infrequently in the lithographic department. Since these employees are regularly employed and spend the major portion of their time in other departments of the Company, we find that they are ineligible to vote. However, Adolph Vervalle, the regular part-time employee referred to above, is eligible to vote.

The Pressmen requests that eligibility be established as of a date no later than the date of the hearing. We see no reason, however, to depart from our usual practice; we shall therefore deny the Pressmen's request.

⁴ *Matter of Con P; Curran Printing Company, supra.*

⁵ In accordance with the custom in the printing trades, we have established the policy of including working foremen, when such inclusion is desired by the parties. See footnote 4, *supra*.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Midwest Printing Co., Minneapolis, Minnesota, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including persons in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Amalgamated Lithographers of America, Twin City Local No. 10, or by Minneapolis Printing Pressmen and Assistants' Union No. 20, both affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.