20TH CENTURY PRESS[1] *and* AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL NO. 45, C.I.O., Petitioner. Case No. 19-RC-1375. December 4, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William G. Nowell, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.[3]

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Intervenor contends, contrary to the Petitioner and the Employer, that its contract of February 6, 1952, with the Tacoma Industrial Conference Board, covering lithographic and letterpress employees of all members of the Conference Board, constitutes a bar to the instant petition, filed on August 19, 1953. At the time of execution of that agreement, the Conference Board was authorized to execute collective-bargaining agreements for the Employer. That agreement provides that it "shall be in effect from February 1, 1952 until July 31, 1953, provided that it shall be subject to change or termination sixty (60) days after the date on which written notice is given by either party to the other party of any desire to change or terminate this agreement, provided that the earliest date of change or termination of this agreement shall not be before August 1, 1953." On June 1, 1953, the Intervenor sent the Conference Board a letter requesting negotiations for changes in its existing agreement, with a proposed contract to be effective from August 1, 1953, to July 31, 1954, in which a number of changes from the former agreement were set forth. It is clear that by this letter Intervenor gave notice of its desire to terminate the existing agreement on its earliest expiration date, August 1, 1953. As a new agreement had not been reached before the petition in this case was filed, there was no contract in existence at the time the petition was filed and there is no contract bar.

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[1] The Employer's name appears as amended at the hearing.

[2] At the close of the hearing the Intervenor moved to dismiss the petition because the unit requested is inappropriate, because the Employer's withdrawal from multiemployer bargaining was not timely, and because there was a contract bar. The hearing officer referred the Intervenor's motion to the Board. For reasons contained in the decision below, the motion is denied.

[3] Tacoma Printing Pressmen and Assistants' Union, No. 44, International Printing Pressmen and Assistants Union of North America, AFL, intervened at the hearing on the basis of a showing of interest.

4. The Petitioner seeks a unit of all lithographic production employees employed by the Employer. The Employer agrees that these employees constitute an appropriate unit, but the Intervenor contends that the only appropriate unit for these employees is a multiemployer unit including both lithographic employees and letterpressmen. As a secondary position, the Intervenor contends that a unit comprising the Employer's letterpress and lithographic employees is alone appropriate.

For over 8 years the Employer was a member of the Tacoma Industrial Conference Board which negotiated collective-bargaining agreements with the Intervenor for the Employer and other printing establishments covering their offset (lithographic) and letterpress employees. In 1950, the Board found appropriate a unit of all cylinder (letterpress) and offset (lithographic) pressmen and apprentices, cylinder and offset assistants, platen feeders, and pressmen "foremen" employed by 8 members of the Tacoma Industrial Conference Board, including the Employer in the instant case. [4]

The bylaws of the Tacoma Industrial Conference Board provide that any member may resign by notice in writing delivered at least 30 days prior to the effective date of resignation and payment of assessments and dues to that date. In May 1953, the Employer notified the Conference Board orally that it wished to resign. On July 10, 1953, the Employer sent written notice of resignation from the Board in which it stated: "Consider this letter as cancelling any authority to represent us in labor negotiations with the various unions in the graphic arts industry." On August 4, 1953, the Conference Board sent a letter to the Intervenor naming the members whom it was representing in current negotiations. The name of the Employer was not included. On August 5, 1953, the Intervenor sent the Employer a letter, identical to that sent the Conference Board on June 1, containing the new contract proposals.

The Intervenor contends that the Employer did not give timely notice of withdrawal from the multiemployer group. We do not agree. Withdrawal in the instant case occurred after the expiration of the most recent multiemployer agreement. This is precisely the time at which the Board will permit withdrawal from multiemployer bargaining. [5]

The Intervenor also contends that the Employer's withdrawal in this case is not unequivocal, but was intended to apply only to lithographic employees. The evidence discloses no such restriction upon the Employer's withdrawal from the Association. The Employer's letter to the Conference Board

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[4] Pioneer, Incorporated, 90 NLRB 1848.

[5] Stamford Wall Paper, Inc., 92 NLRB 1173. The cases cited by the Intervenor in its brief are not in point. In W. S Ponton of N. J. Inc., 93 NLRB 924, the Employer attempted to withdraw from multiemployer bargaining during the contract term Continental Baking Company, 99 NLRB 777, does not involve the issue of withdrawal from multiemployer bargaining by an employer. Other cases cited pertain to qualified or partial withdrawal and not to the timing of withdrawal.

canceled all authority of that Board to represent it in negotiations with various graphic arts unions, including the Intervenor, which were the only unions with which the Conference Board had bargained for the Employer. The Employer has since engaged in no conduct inconsistent with complete withdrawal. Accordingly, we find that the Employer intended to, and did, withdraw completely from multiemployer bargaining.[6]

The Intervenor further contends that even if a single employer unit is appropriate, the proposed unit is inappropriate because of the similar interests, duties, and wages of the lithographic employees and letterpressmen, the alleged bargaining history for a combined lithographic and letterpress unit, and because 1 of the 2 lithographic employees is a supervisor leaving only 1 employee in the proposed unit.

The lithographic employees sought by the Petitioner were first employed in July 1953. Prior to that the Employer engaged in no lithographic operations. There are presently 2 employees in the lithographic department. They perform all the lithographic duties in the Employer's shop and work in a separate location from other employees in the letterpress, typography, and bindery departments. There is no interchange of employees between the lithographic department and other departments. The employees in the letterpress department, typography department, and bindery department have been separately represented in the past on a departmental basis and the Employer has bargained with the representative of each department through the Conference Board.[7] The multiemployer contracts covering letterpress and lithographic employees in a single unit were executed, and the Board decision finding such a unit appropriate[8] was issued, at a time when the Employer was a member of the multiemployer group, but before it employed any lithographic employees. There is, therefore, no bargaining history for the Employer's lithographic employees, with the possible exception of the brief period between the date of commencement of the Employer's lithographic operations in July 1953 and the expiration of the multiemployer contract on August 1, 1953.

The Board has frequently held that separate units of lithographic employees in combination shops, such as the Employer's, are appropriate.[9] In Pacific Press, Inc.,[10] cited by the Intervenor in support of its first contention, unique

[6] Stamford Wall Paper, Inc., supra The cases cited by the Intervenor are distinguishable. In Pioneer, Inc , supra, the Employer indicated its intention to withdraw only as to some of its employees in the multiemployer unit. In Carnation Company, 90 NLRB 1808, the Employer was still a member of the multiemployer group and indicated its intention to accept a multiemployer contract unless it contained certain welfare clauses, objectionable to the Employer.

[7] The employees in the typography department are represented by the International Typographical Union. The employees in the bindery department are represented by the Tacoma Bookbinders Union

[8] Pioneer, Inc., supra.

[9] The Wilson H. Lee Company, 97 NLRB 1023; Court Square Press, Inc., 92 NLRB 1516

[10] 66 NLRB 458.

operating conditions, including interchange among offset pressmen and letterpressmen and lack of segregation of lithographic employees, were relied upon by the Board in departing from its usual policy of permitting such separate units. Neither of those factors is present in the instant case, nor are there any other factors present which would warrant a departure from that policy here.

Of the 2 employees in the lithographic department, one Pearson, has more skill and experience than the other and is paid $20 more per week than the other. Pearson handles all the plate packing, stripping, and helps operate the press. No one else in the shop knows as much about lithography as he does, and he is substantially responsible for the proper operation of the lithographic department in the performance of his duties. Pearson has no authority to hire or discharge employees, to discipline them, or effectively to recommend such action. The Employer employs 3 typographers, 2 letterpressmen, and 2 bindery employees in its other departments. One employee in each of these departments acts in the same relation to the other employees in the same department as does Pearson to the other lithographic employee. In the Pioneer case,[11] the parties stipulated that such employees in the letterpress and lithographic classifications were not supervisors within the meaning of the Act. We find that Pearson is not a supervisor within the meaning of the Act, but is merely in the position of a highly skilled employee advising and instructing a less skilled employee working with him.[12]

Accordingly, we find appropriate a unit of all lithographic employees at the Employer's Tacoma, Washington, plant, excluding all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[11] Pioneer, Inc., supra.

[12] Hodgdon Brothers-Goudy & Stevens, 106 NLRB No. 211; Danner Press of Canton, Inc., 91 NLRB 239.

AVCO MANUFACTURING CORPORATION, APPLIANCE AND ELECTRONICS DIVISION[1] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO. Case No. 35-RC-938. December 4, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John W. Hines,

[1] The Employer's name appears as corrected at the hearing.