

for the purposes of collective bargaining. If a majority of the employees in the voting group vote for neither, they will be deemed to have expressed their desire to remain unrepresented.

[The Board dismissed the petition in Case No. 28-RC-1101.]

[Text of Direction of Election omitted from publication.]

Photype, Inc., Petitioner and Detroit Typographical Union No. 18, International Typographical Union, AFL-CIO.¹ *Case No. 7-RM-446. January 27, 1964*

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer James R. McCormick. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Jenkins].

Upon the entire record in the case the Board finds:

1. Photype, Inc., the Employer-Petitioner herein, was formed approximately 7 years ago. At that time, it occupied an addition to the George Willens & Company plant. George Willens & Company, herein called Willens, is a typographical establishment, employing approximately 100 persons. Unlike Willens, which produces traditional "hot metal" typography, Photype is engaged in a newer method of typesetting involving pasteup lettering and various photographic processes. The parties agree that Willens is engaged in interstate commerce, but the ITU refused to stipulate that Photype was likewise engaged in interstate commerce. The record discloses that Photype sells typesetting and reproduction services to various retail companies and that during the past year Photype purchased and received in excess of \$50,000 worth of goods and materials which originated outside the State of Michigan. As described more fully below Photype's and Willens' operations are integrated in a number of important respects. Moreover, the record discloses that Harvey Willens is president, a majority stockholder, and a director of both Photype and Willens, and that he is also engaged in the active management of both these integrated companies and handles their labor

¹ Herein called the ITU.

relations. We find, therefore, that for jurisdictional and unit purposes the two companies constitute a single employer and that it will effectuate the policies of the Act to assert jurisdiction herein.²

2. The Union involved is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

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 Employer-Petitioner, Phototype, alleging that the ITU has demanded recognition as the representative of its employees,³ seeks an election in a unit composed of all Phototype employees engaged in operating modification cameras (Fotomaster), other film cameras (Miller-Trojan), employees engaged in film make up, and employees operating phototypesetting machines (Filmatype), excluding office clerical employees, and all other employees,⁴ guards, and supervisors as defined in the Act.

The ITU's basic contention is that since Phototype employees are performing essentially the same type work as the Willens' composing-room employees, which it represents, the Phototype employees are an accretion to the contract unit⁵ and accordingly the contract is a bar to the petition.

The Employer-Petitioner contends that Phototype employees are not an accretion to the Willens' typographical unit on the ground that Phototype is an entirely separate corporate entity, that its product is entirely different from that produced in a traditional hot-metal typesetting plant, and that its employees utilize mechanical and artistic skills not possessed by composingroom employees of Willens.

Willens is basically a hot-metal typesetting plant. Advertising proofs are produced by the traditional or "hot-type" process in which

² *Pentagon Plaza, Inc., et al.*, 143 NLRB 1280.

³ The ITU does not deny that it has demanded recognition as the representative of the Phototype employees.

⁴ Contrary to the Employer-Petitioner, the ITU would also include employees who work in the darkroom and artists in the unit. This issue is discussed below.

⁵ Willens, through the Typographical Union Employer's Section of the Graphic Arts Association of Michigan, and the ITU are parties to a contract, covering Willens' typographical employees, effective from September 24, 1962, to October 31, 1965. The jurisdictional clause of the ITU's present contract with Willens was inserted for the first time in 1956, about the same time that Phototype was established. This clause reads in part as follows:

The jurisdiction of the Union and the appropriate unit for collective-bargaining is defined as including . . . operators of all photo-typesetting machines (such as Fotosetter, Photon, Linofilm, Monophoto and Hadego) . . . employees engaged in proofing, waxing and paste-makeup with reproduction proofs, employees processing the product of phototypesetting machines including photoproofing, development and waxing; employees handling paste-makeup of all type, hand lettered, illustrative, border, and decorative material constituting a part of the copy; correction, alteration and the imposition of the paste-makeup serving as the completed copy for the camera used in the plate making process, and employees doing ruling for the finished paste-makeup of film.

lines of print or slugs are cast in molten metal on a Linotype machine operated by a typographer. The Linotype, however, is limited to the production of letter print in standard sizes. When letter print of unusual size is required in the hot-metal process, it is produced on a Ludlow or Monotype machine which, like the Linotype, are metal-casting devices operated by typographers. Thus, the principal product of Willens is the resulting metal form which provides a printing surface from which a paper proof is made. This paper proof is known as a "repro-proof," which is ordinarily sent to the customer who sends it elsewhere to be made into a plate. Willens also utilizes the metal form to print quantities of materials on its presses. This represents approximately 15 percent of Willens' business. In producing a hot-metal form, there are three basic operations involved. First, is the actual setting of the metal type, whether by hand or machine. Second, is what is known as "makeup" work which involves spacing, positioning of letters, illustrations, display lines, and borders into a final form. The third stage is the locking up of the type which is done for the purpose of making a plate or printing directly from the form by letterpress process.

Photype is engaged in a newer method of typesetting for advertising proofs involving various photographic processes. It employs approximately 20 employees, including 8 who operate cameras and Filmatype machine and handle film makeup; 3 photographic darkroom employees who develop film and perform other darkroom functions; and 5 artists who do hand lettering and fit together predesigned film alphabets to simulate hand lettering. Approximately one-half of Photype's income is derived from the processing of artwork, reproduction proofs of metal type, or photographs for its customers. The other half of its work relates to Headliners' alphabets, discussed below. The artwork and other work of this nature are put through various cameras to reverse the image, to enlarge, stretch, curve, squat, or otherwise modify the image.

The first photographic typesetting machine used in the industry was the Fotosetter which operates on the same principle as a Linotype machine, but utilizes a camera unit instead of a hot-metal pot, thus making it possible to set type on either film or paper in addition to, or instead of, utilizing the hot-metal process of typesetting. Paper paste makeup work (sometimes called keylining or stripping) refers to the making up of a form paper or film type rather than the conventional method of making up a lead type form. This work involves taking lines of film or paper type, or lines of type set in hot metal, illustrations, and borders and positioning them into a form from which a proof may be obtained by photographing the pasted up form.

Whether or not the type has been set in metal, paper, or film, or a combination of both hot and cold type, the result is a form (metal, paper, or film) from which a proof may be made.

The Fotomaster camera, also known as a modi-graphic or distortion camera, is used to modify the shape and appearance of hot or cold type letters. By use of the Fotomaster, cold or hot type may be enlarged, reduced, stretched, or curved. Photype has two such cameras, the first of which was purchased by Willens and operated by Willens' employees in 1954, and the second of which was purchased in 1960. Prior to 1960, the Fotomaster camera was used almost exclusively in connection with the modification of metal type faces. The Fotomaster may also be used to satisfy customers of Willens who request a size of metal type which is unavailable at Willens, by modifying an available metal type face to meet the customer's requirements.

The Miller-Trojan camera is a simple photographic camera used mostly for the making of negatives used in platemaking.

Filmatype is comparable to a Ludlow hot metal machine in that it is designed for the setting of large display lines. It operates with the use of photographic paper resulting in a photographic print of a headline. Photype is 1 of the 19 companies throughout the United States which hold franchises from Headliners International, a New York firm which creates and sells exclusive, specialized, artistically drawn alphabets for use with photographic typesetting. Photype's artists assemble predesigned film alphabets obtained from Headliners International (a convenient substitute for hand lettering by artists) to form words and other effects not obtainable through metal typesetting. Individual letters are lined up, joined together, or touched up by the artists and the entire job is then passed through the camera and a finished print is furnished to the customer.

The two companies are kept entirely separate in terms of internal recordkeeping, income-tax reports, and similar matters. However, for public relations purposes, Photype generally goes under the assumed name of Headliners of Detroit, and Willens, in turn, associates itself with the Headliners name. Approximately 75 percent of Photype's jobs include type set in hot metal by Willens, and between 20 and 33 percent of Willens' hot metal jobs include some Photype camera or artists' work. As previously indicated, Photype occupies an addition to the Willens plant, and the employees of both companies, though under separate immediate supervision, enjoy the use of common facilities such as coffee-vending machines, parking lot, bulletin boards, joint yearly banquets, health insurance, and other mutual benefits. Ultimate authority for the hire or discharge of employees of either company resides in Harvey Willens, the president of both companies. Except for two camera employees (not previously included in the ITU unit) who were transferred from Willens to the

Photype operation when it was first established, there has been little interchange of employees between the two companies, and there has been no interchange between the Willens typographers and the employees sought in the instant petition. Certain services such as janitorial and messenger work are performed by Willens for Photype who has no such employees on its payroll. The two companies have separate telephone listings but a common telephone number.

As noted above, the Photype operation was established in 1956, at a time when ITU was currently representing a unit of employees of Willens. Thus, the Photype employees have been excluded from the ITU unit for approximately 7 years. The first 3 years of this exclusion was apparently by the agreement of the parties since, so far as appears from the record, the ITU, although presumably knowing of the existence of the Photype unit, did not request the inclusion of Photype employees in the contract unit until 1959. After 1959, however, the ITU on a number of occasions has unsuccessfully requested recognition as representative of Photype employees.

The foregoing facts establish, we believe, that the Photype operation is, in effect, a new photographic method of performing functions previously performed solely by the "hot metal" process. Thus, more specifically, the camera and Filmatype machines produce a photographic print of large type theretofore produced only on the Ludlow machine by typographers. Likewise, the film makeup of type performed by these employees may be considered a substitute for the arranging of the metal slugs in the form in the hot-metal process. Further, the other photographic and artistic processes utilized by Photype are designed to substitute for the hot-metal method of producing advertising proofs; additionally, they make it possible to provide more elaborate effects.⁶ In these circumstances, and in view of the integration of the operations between Willens and Photype, we find that employees of Photype have employment interests closely allied with employees in the Willens contract unit and may appropriately be added to such unit. However, we conclude that the Photype employees are not an accretion to the Willens typographical unit,⁷ and are therefore entitled to a self-determination election before being added to the existing bargaining unit.⁸ In reaching this conclusion,

⁶ In the recent *Philadelphia Inquirer* case, 142 NLRB 36, a jurisdictional dispute case, the Board (Members Leedom and Brown dissenting on other grounds) recognized that photographic work similar to that involved in the present case was in large measure a substitute for certain hot metal work previously performed solely by typographical employees. See also *Denver Publishing Company*, 144 NLRB 1408.

⁷ Cf. *Chrysler Corporation (Mo-Par Building)*, 134 NLRB 454, 457.

⁸ *The Zia Company*, 108 NLRB 1134. In *D.V. Displays Corp.*, 134 NLRB 568 (Members Rodgers and Leedom dissenting), the Board modified *Zia* and directed an election among all employees in the unit found to be appropriate. However, in that case, the petitioning union raised a question concerning representation in the overall group, while here, the Employer-Petitioner raised a question concerning representation only among the Photype employees. See *Cincinnati Transit Company*, 121 NLRB 765. Member Leedom would direct an election in the Photype unit on the basis of his views stated in his dissent in *D.V. Displays*.

we rely on the following factors: (1) Although both Willens and Photype employees perform the same functions, namely, the production of the advertising proof, the Willens employees produce the proof through a hot-metal process while Photype employees utilize photographic processes; (2) Willens employees possess typographical and composition skills while Photype employees possess photographic and artistic skills; (3) Willens and Photype employees are separately supervised; (4) Willens and Photype employees work in different portions of the Employer-Petitioner's building; (5) there is little employee interchange between Willens and Photype; and (6) the two groups of employees are in a different line of progression. We rely particularly on the fact that the Photype employees have been excluded for 7 years from the ITU contract unit and that, in 3 of those 7 years, this exclusion was not objected to by the ITU.⁹ As no union seeks to represent these employees in a separate unit, we do not pass upon the appropriateness of such a unit.

There remains for consideration the inclusion or exclusion from the unit of artists and darkroom employees. Contrary to the ITU, the Employer-Petitioner contends that these employees should be excluded, apparently on the ground that they have no community of interest with cameramen.¹⁰ Artists do hand lettering to a small extent, fit together predesigned film alphabets to simulate hand lettering, and touch up letters to achieve certain artistic effects before the job is turned over to the cameramen for a finished print. Approximately 95 percent of the artists' work involves film and paste makeup work and the touching up of letters. They use such equipment as easels, T-squares, brushes, water paints, and light tables, and work in a separate room under the immediate supervision of Dick Isbell, a commercial artist. According to the Employer-Petitioner, each artist has some training or experience in commercial art before he is hired and must submit portfolios of his work including hand lettering and examples of keylining or paste makeup. The Employer-Petitioner further contends that the functions of the artists are most nearly comparable to those of artists in commercial art studios. The record, however, discloses that at least two of the artists are former messengers at Willens who have had some art in high school, and that artists receive considerably less pay than cameramen.

The three employees in the darkroom are engaged primarily in developing films. They operate washers and dryers which wash the

⁹ We also rely on the fact that, prior to the establishment of Photype, the two camera employees employed by Willens were not represented by ITU.

¹⁰ There is no contention that artists or darkroom employees are professional employees and the record establishes that they are not professionals. In addition to cameramen, the parties have agreed to include in the unit employees engaged in film makeup work and employees operating phototypesetting machines.

prints and dry the resulting film or paper. They utilize developing solutions, photographic papers, and similar materials and equipment. Occasionally, they assist camera room employees by operating the Ozalid or photostat camera machines. They have less training and experience than cameramen and receive less compensation.

Although the artists and darkroom employees are engaged in somewhat different processes from the cameramen and film-make-up employees, we find that they have a community of interest with such employees and should therefore be included in the voting group hereinafter set forth. Thus, the work of artists, cameramen, and darkroom employees is functionally interrelated since they all perform tasks at different stages on the same ultimate product, the advertising proof. Moreover, as indicated above, the Employer operates a small plant, and all Phototype employees work in close proximity to one another, and share the same working conditions and the same overall supervision. Finally, there is no history of bargaining for these employees and no union seeks to represent the artists and darkroom employees separately. Accordingly, we shall include the artists and darkroom employees in this voting group.¹¹

4. In accordance with Board policy, we believe that the employees sought to be added to the ITU unit should be given an opportunity by a self-determination election to express their desires with respect to being included in the existing bargaining unit currently represented by the ITU. Accordingly, we shall direct an election in the following voting group:

All Phototype employees engaged in operating modification cameras (Fotomaster), all film cameras (Miller-Trojan), employees engaged in film makeup, employees operating phototypesetting machines (Filmo-type), darkroom employees, and artists, but excluding office clerical employees, guards, and supervisors¹² as defined in the Act.

If a majority of the employees in the above voting group cast their ballots for the ITU, they will be taken to have indicated their desire to constitute a part of the existing unit currently represented by the ITU, and the ITU may bargain for such employees as part of that unit. If a majority of them vote against the ITU, they will be taken to have indicated their desire to remain outside the existing unit, and the Regional Director will issue a certification of results of election to that effect.

[Text of Direction of Election omitted from publication.]

¹¹ See *Berea Publishing Company*, 140 NLRB 516.

¹² As the record discloses that Gustafson, who is in charge of the camera department, and Isbell, who is in charge of the artists, have authority to hire and discharge in their respective departments, we find that they are supervisors within the meaning of the Act and we shall exclude them from the voting group.