

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan, Telephone No. 963-9330, if they have any question concerning this notice or compliance with its provisions.

The Denver Photo-Engravers' Union No. 18, International Photo-Engravers Union of North America, AFL-CIO and The Denver Publishing Company. Case No. 27-CD-39. June 18, 1964

DECISION AND ORDER

On April 22, 1964, Trial Examiner Fannie M. Boyls issued her Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices violative of Section 8(b) (4) (ii) (D) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as recommended in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 [Chairman McCulloch and Members Fanning and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondent, The Denver Photo-Engravers' Union No. 18, International Photo-Engravers Union of North America, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹ Respondent's exceptions relate to findings originally made in the Board's Decision and Determination of Dispute issued on November 7, 1963 (144 NLRB 1408). We have examined these exceptions and find no warrant therein for a reconsideration of our determination in the earlier proceeding or a dismissal of this complaint as urged by Respondent.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Following the filing of a charge on December 20 and an amended charge on December 21, 1962, by The Denver Publishing Company, herein called the Employer, alleging that The Denver Photo-Engravers' Union No. 18, International Photo-Engravers Union of North America, AFL-CIO, herein called the Respondent, had violated Section 8(b)(4)(ii)(D) of the Act in connection with a work assignment jurisdictional dispute, the Board, pursuant to Section 10(k) of the National Labor Relations Act, as amended, conducted a hearing at Denver, Colorado, on February 26 and 27, 1963, to determine the dispute.

On November 7, 1963, the Board handed down its Decision and Determination of Dispute which is reported in 144 NLRB 1408. Preliminarily, it found, on the basis of undisputed facts, "that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that the dispute is properly before the Board for determination under Section 10(k) of the Act." It then proceeded to determine the merits of the dispute and found that typographers employed by the Employer, who are represented by Denver Typographical Union, Local No. 49, International Typographical Union, AFL-CIO, herein called the ITU, are entitled to perform the disputed work consisting of "the operation of the Kenro camera and the work processes involved in the use of that camera to enlarge or reduce the size of photo-positives made by the Fotosetter, to make type reverses, to make screened Velox prints, to make negatives for paper offset plates, and to produce paper offset plates," and that Respondent is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign such work to the photoengravers, who are represented by Respondent.

Thereafter, by letter dated November 14, 1963, Respondent and its International notified the Board's Regional Director that they did not concur in the findings, conclusions, and determinations of the Board; that they believed the Board's determination to be unsupported by the record and without reasonable warrant in the law; that they would therefore not act in accordance therewith and would "take such action as they deem best necessary to require the Employer to assign the disputed work to the members represented by them"

Accordingly, the Board, on the basis of the charges previously filed, issued a complaint on December 17, 1963, alleging that Respondent, on specified dates in October, November, and December 1962, by threatening to picket the Employer and refusing to work or permit its members to work on copy prepared by employees other than its members, had threatened, coerced, and restrained the Employer, an object being to force or require the Employer to assign the disputed work to employees who were members of or represented by Respondent rather than to employees who were members of or represented by the ITU, or who are not members of or represented by Respondent, and that Respondent had thereby violated Section 8(b)(4)(ii)(D) of the Act. Respondent filed an answer denying that it had engaged in the unfair labor practice alleged. A hearing on said complaint was held before Trial Examiner Fannie M. Boyls on January 27, 1964, at Denver, Colorado.

At the hearing, the General Counsel introduced in evidence, without objection, the pleadings, the Board's Decision and Determination of Dispute, Respondent's letter of November 14, 1963, and the record, including the transcript of testimony in the underlying Section 10(k) proceeding. It was agreed that the transcript of testimony presented no credibility issues. Respondent introduced, without objection, what it described as "true and correct copies" of the current contract between Respondent and the Employer, effective from October 2, 1962, to October 1, 1964, for the purpose of showing the correct language of article II thereof entitled "Jurisdiction"—the language in one part being slightly different from that in the draft of contract covering the same period which was introduced in evidence in the Section 10(k) proceeding as Employer's Exhibit No. 2-g. After the conclusion of the hearing, the General Counsel and Respondent submitted briefs which I have carefully considered.

Upon the record thus made, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Upon the basis of the facts alleged in the complaint, admitted by Respondent, and found by the Board in the Section 10(k) proceeding—which need not here be repeated—it is found that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

As found by the Board in the Section 10(k) proceeding and admitted by Respondent, both Respondent and the ITU are labor organizations within the meaning of Section 2(5) of the Act.

III. SCOPE OF THE ISSUES TO BE DETERMINED

In proceedings pursuant to Section 10(k) of the Act, the Board must determine, at the outset, whether there exists reasonable cause to believe that a violation of Section 8(b)(4)(D) of the Act has occurred. If it satisfies itself that such reasonable cause does exist and that the parties have not settled or agreed upon a method for settling their dispute, then it must, under the statute, proceed to determine the dispute. If, after the Board issues its Decision and Determination of Dispute, the parties do not comply with the Board's determination, a complaint is issued upon the unfair labor practice charge. Section 102.91 of the National Labor Relations Board Rules and Regulations, and Section 101.36 of Statements of Procedure, Series 8, as amended.

It appears settled by a long line of Board decisions, and with court approval, that at least in the absence of material newly discovered or previously unavailable evidence,¹ an award of disputed work made by the Board in a Decision and Determination of Dispute is not open to review by a Trial Examiner in a proceeding on a Section 8(b)(4)(D) complaint.² Respondent, though not accepting this thesis, has cited no authority to the contrary, and I am aware of none. Accordingly, the findings of the Board as to who is entitled to perform the work in controversy are adopted as a part of the findings herein.

The only issues before the Trial Examiner in this case, therefore, are whether the parties have complied with the Board's determination and whether the Respondent Union has violated Section 8(b)(4)(ii)(D) of the Act, that is, whether it has threatened, coerced, or restrained the Employer, a purpose being to force or require it to assign the disputed work to employees represented by Respondent rather than to employees represented by the ITU. The latter issue, although considered preliminarily in the Section 10(k) proceeding, may be tried *de novo* in the unfair labor practice proceeding because the standard of proof as to the restraint and coercion aspects in the unfair labor practice proceeding is not "reasonable cause to believe," as in the Section 10(k) proceeding, but "preponderance of the evidence," as required in any other unfair labor practice case.

¹ As already noted, Respondent in the unfair labor practice hearing introduced, without objection, a copy of a contract (effective between October 2, 1962, and October 1, 1964, but apparently signed in March 1963, subsequent to the Section 10(k) hearing) between Respondent and a group of publishers, including the Employer, for the asserted purpose of showing the correct language in the "Jurisdiction" section of the contract, apparently to distinguish it from the language of a draft copy introduced in the Section 10(k) proceeding. A comparison of the two copies shows that the "Jurisdiction" sections are identical except that the draft copy in the third paragraph refers to the method "past and presently practiced" whereas the copy introduced in this proceeding refers to the method "as presently practiced." Neither at the hearing nor in its brief has Respondent contended that this particular contract is material to any issue in this case, and I perceive no such materiality.

² *N.L.R.B. v. Local 450, International Union of Operating Engineers (Sline Industrial Painters)*, 275 F. 2d 408, 413 (C.A. 5), enfg. 123 NLRB 1, 6; *Local 1291, International Longshoremen's Association, etc. (Pennsylvania Sugar Division, National Sugar Refining Company)*, 142 NLRB 257; *Chicago Typographical Union No. 16, AFL-CIO (Central Typesetting and Electrotyping Company)*, 138 NLRB 231, 236, and cases cited therein; *Local 1291, International Longshoremen's Association (Northern Metal Company)*, 142 NLRB 1451; *Local 46, Wood, Wire and Metal Lathers, AFL-CIO, et al. (Precrete, Inc.)*, 140 NLRB 1, 6; *International Typographical Union, AFL-CIO, et al. (Worcester Telegram Publishing Company, Inc.)*, 125 NLRB 759, 761. Cf. *N.L.R.B. v. Local 450 International Union of Operating Engineers (Hunote Electrical Co.)*, 275 F. 2d 420, 421 (C.A. 5), wherein the court, rejecting the union's contention that the Board was required in the complaint hearing to reopen the question whether there had been an adjustment of the dispute prior to the Section 10(k) hearing, said: "We agree with the Board that this rule of the Board is analogous to the rule that the Board is not required to relitigate in unfair labor practice proceedings determinations made in representation proceedings. Cf. *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 158, 161."

IV. RESPONDENT'S FAILURE TO COMPLY WITH THE BOARD'S DETERMINATION OF DISPUTE

In its Decision and Determination of Dispute, issued on November 7, 1963, the Board directed Respondent to notify the Regional Director for the Twenty-seventh Region, in writing, within 10 days from the date of its determination whether Respondent would refrain from forcing or requiring the Employer by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to photoengravers rather than to typographers. Respondent, as already noted, informed the Regional Director by letter dated November 14, that it would not accept the Board's determination and would take such action as it deemed necessary to require the Employer to assign the disputed work to employees represented by Respondent. I find that Respondent has failed to comply with the Board's Determination of Dispute and that the unfair labor practice case is properly before me for a decision. *International Typographical Union, AFL-CIO and Members of its Executive Council, International Typographical Union, AFL-CIO, Local 165, and its Scale Committee (Worcester Telegram Publishing Company, Inc.)*, 125 NLRB 759, 760-761.

V. THE UNFAIR LABOR PRACTICE

The record shows that in August 1962, the employer notified both Respondent and the ITU of its intention to assign the work in controversy involving the operation of the Kenro camera to the typographers. Respondent thereafter asserted the right of employees represented by it to perform the work. Through its attorney, Charles A. Graham, it told the Employer's personnel manager, Edward Estlow, about October 15, 1962, that Respondent "would throw up a picket line" if necessary to protect its claim to the work. In a letter dated October 25, 1962, to the Employer, Respondent, also through its counsel, Graham, again asserted its claim under "its contract and recognized jurisdiction" to the disputed work and stated that it was "prepared to take all action necessary to protect said contract and jurisdiction." Shortly thereafter, about November 1 or 2, 1962, in a conversation between Fred M. Winner, counsel for the Employer, and Graham, when Winner informed Graham that the Employer was adhering to its decision with respect to the assignment of the work in controversy, Graham replied to the effect that "in that event, I guess we'll have to have a strike."

On November 2, when ITU members produced the first work on the new equipment involved in the dispute, Respondent's business agent, Norman Paradis, announced that the photoengravers, who were represented by Respondent, were not going to handle the copy. Respondent's members, including its president, upon this occasion engaged in a work stoppage of about 10 or 15 minutes' duration.

Thereafter between December 13 and 19, in separate conversations with the Employer's personnel manager, Estlow, and its counsel, Winner, Respondent's counsel, Graham, reiterated Respondent's position that there would be a picket line or strike by Respondent, if necessary, to protect its claim to jurisdiction over the work in controversy.

On the basis of the above uncontroverted facts, I find that Respondent on or about October 15, 1962, and thereafter, threatened a strike or a picket line at the Employer's premises, and on November 2, engaged in a work stoppage, an object of all this conduct being to force or require the Employer to assign the work in dispute to photoengravers, who are represented by it, rather than to typographers, who are represented by the ITU, despite the fact that the Employer was not failing to conform to any order or certification of the Board determining the bargaining representative for employees performing such work. I further find that by such conduct Respondent violated Section 8(b)(4)(ii)(D) of the Act.

CONCLUSIONS OF LAW

1. By threatening, coercing, and restraining the Employer, an object being to force or require it to assign the work of operating the Kenro camera in its composing room to photoengravers, who are represented by Respondent, rather than to typographers, who are represented by the ITU, Respondent has violated Section 8(b)(4)(ii)(D) of the Act.

2. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(ii)(D) of the Act, my Recommended Order will require it to cease and desist therefrom and to take the conventional type of affirmative action designed to remedy an unfair labor practice of this nature.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following:

RECOMMENDED ORDER

Respondent, The Denver Photo-Engravers' Union No. 18, International Photo-Engravers Union of North America, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from threatening, coercing, or restraining The Denver Publishing Company where an object thereof is to force or require said Employer to assign the work of operating the Kenro camera in said Employer's composing room to photoengravers, who are represented by Respondent, rather than to typographers, who are represented by Denver Typographical Union, Local No. 49, International Typographical Union, AFL-CIO.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its business office and meeting hall in Denver, Colorado, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being duly signed by an authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for the Twenty-seventh Region for posting by The Denver Publishing Company, it being willing, at all locations where notices to its employees are customarily posted.

(c) Notify said Regional Director, in writing, within 20 days from the date hereof, what steps Respondent has taken to comply herewith.⁴

³In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals; Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁴In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-seventh Region, in writing, within 10 days from the date of this Order; what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF THE DENVER PHOTO-ENGRAVERS' UNION NO. 18, INTERNATIONAL PHOTO-ENGRAVERS UNION OF NORTH AMERICA, AFL-CIO, AND TO ALL EMPLOYEES OF THE DENVER PUBLISHING COMPANY

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby give notice that:

WE WILL NOT threaten, coerce, or restrain The Denver Publishing Company where an object thereof is to force or require The Denver Publishing Company to assign the work of operating the Kenro camera in its composing room to photoengravers, who are represented by us, rather than to typographers, who are represented by Denver Typographical Union, Local No. 49, International Typographical Union, AFL-CIO.

THE DENVER PHOTO-ENGRAVERS' UNION NO. 18,
INTERNATIONAL PHOTO-ENGRAVERS UNION OF
NORTH AMERICA, AFL-CIO,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

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Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 534-4151, Extension 513, if they have any questions concerning this notice or compliance with its provisions.

Trent Tube Company, Subsidiary of Crucible Steel Company of America and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 13-RC-9279. June 19, 1964*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to the provisions of a stipulation for certification upon consent election, an election by secret ballot was conducted by the Regional Director for the Thirteenth Region on April 25, 1963, among the employees in the stipulated unit. After the election the Regional Director served upon the parties a tally of ballots which showed that of approximately 235 eligible voters, 229 votes were cast, of which 104 were for, and 12 were against, the Petitioner, 1 ballot was void, and 1 ballot was challenged. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and, on June 10, 1963, issued and duly served upon the parties his report on objections, in which he found merit in the Petitioner's objection No. 7 and recommended that the election be set aside and a new election held.¹ The Employer filed timely exceptions to the Regional Director's report and recommendations.

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

1. 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.
2. The Petitioner is a labor organization claiming 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.
4. The parties stipulated, and we find, that all production and maintenance employees employed at the Employer's East Troy, Wisconsin, plant, including shop clerical employees and laboratory technicians, but excluding office clerical employees, guards, professional

¹ In the absence of exceptions thereto, we shall adopt *pro forma* the Regional Director's recommendation that objections Nos. 1 through 6 be overruled.