

All our employees are free to become, or refrain from becoming, members of the above-named or any other labor organization.

STINSON MANUFACTURING COMPANY,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE.—We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces

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, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone No. 682-3300, if they have any question concerning this notice or compliance with its provisions.

Wilkes-Barre Typographical Union No. 187 and Llewellyn & McKane, Inc.

Wilkes-Barre Printing Pressmen and Assistants Union No. 137, and International Printing Pressmen and Assistants Union of North America and Payne Printery, Inc.

Wilkes-Barre Printing Pressmen and Assistants Union No. 137 and Llewellyn Brothers, Inc. Cases Nos. 4-CD-99, 4-CD-100, and 4-CD-102. August 10, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act following charges filed by Llewellyn & McKane, Inc., Llewellyn Brothers, Inc., and Payne Printery, Inc., alleging that Wilkes-Barre Typographical Union No. 187, hereinafter referred to as ITU, and Wilkes-Barre Printing Pressmen and Assistants Union No. 137, and International Printing Pressmen and Assistants Union of North America, hereinafter referred to as Pressmen, had violated Section 8(b)(4)(D) of the Act. The charges allege, in substance, that Respondent Unions threatened to engage in a strike or refusal to work with an object of forcing or requiring the Employers to assign particular work to employees represented by their respective unions. A consolidated hearing was held before Hearing Officer William J. Davis on April 6 and 7, 1964. The Employers, the Pressmen, and ITU appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.¹ The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Pressmen and the ITU filed briefs.

¹ At the hearing the parties stipulated to incorporate in the record herein by reference the testimony of certain named witnesses given in other 10(k) proceedings before the Board. Such testimony accordingly is made part of the record herein and has been considered by the Board in reaching its determination.

Upon the entire record in this case, the Board ² makes the following findings:

1. The business of the Employers

The parties stipulated that all three companies are Pennsylvania corporations located at or near Wilkes-Barre, Pennsylvania and are engaged in the operation of commercial printing shops. In the operation of their businesses, Llewellyn & McKane and Payne Printery each annually purchases goods and materials originating outside the State of Pennsylvania valued at in-excess of \$50,000 per annum. Llewellyn Brothers annually purchases goods and materials valued in excess of \$50,000 directly from points outside the State of Pennsylvania. We find that the Employers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations involved

The Pressmen and ITU are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

A. *The basic facts*

The Employers are members of the Employing Pressmen of Wilkes-Barre, an organization of employers who operate commercial printing establishments. The Employers have bargained on a multiemployer basis with the ITU and Pressmen for a substantial period of time. The current agreement between the Pressmen and the Association entered into November 1, 1963, stipulated that the Pressmen shall have jurisdiction over ". . . all work in connection with offset platemaking, including camera operation, all dark room work, stripping, layout, opaquing and platemaking." The current agreement between the ITU and the Association provides, in material part that the ITU shall represent all:

. . . employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing paste-makeup of all type, hand-lettered, illustrative border and decorative material constituting a part of the copy; ruling; photo-proofing; correction, alteration and imposition of the paste-makeup in the platemaking process. Paste-makeup for the camera as used in this paragraph includes all photostats and prints

² 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 Brown].

used in offset or letterpress work and includes all photostats and positive proofs of illustrations (such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of efforts.

The Employers have executed respectively identical contracts with the Unions involved.

At each Employer's plant, composing room employees are represented by the ITU and pressroom employees by the Pressmen. The Employers now operate both letterpress and offset press equipment although at one time they printed by letterpress process alone.

Llewellyn Brothers, Inc.: In 1953 Llewellyn Brothers installed its first offset press; in 1960 through 1963 three more presses were added. Offset preparatory and platemaking equipment, that did not include an offset camera were installed in 1953 at the time the first offset press was purchased. It is not disputed that the Pressmen performed all of the preparatory work in the making of offset plates. The negatives were purchased by the Employer.

In 1962 Llewellyn Brothers purchased an offset camera which was installed on the second floor of the plant apparently in proximity to the composing room. At the same time, the Employer hired one Gerald Nash to operate the camera. Nash's duties also included offset stripping. In early February 1964, the Pressmen first made their demand of Llewellyn Brothers for the assignment of the work of operating the offset camera and it is undisputed that on February 13, the Pressmen threatened to strike the plant unless Nash who was then operating the camera joined the Pressmen.

Payne Printery, Inc.: As in the case of Llewellyn Brothers, it is not disputed that after the acquisition of offset presses the offset preparatory work was performed by the Pressmen. At present Payne employs three letterpress operators, three offset pressmen, and three compositors. Payne however acquired an offset camera some 6 years before the present dispute arose. During that interval of time one of the pressmen, who was then also occupied in making the offset plates, was given the task of operating the camera. On November 18, 1963, Payne employed one Frey mainly to operate the camera, but also to make offset plates. Frey was informed by an officer of the firm of the presence of the Unions in the plant, and ultimately elected to join the ITU, although the work he was performing was work previously performed by one of the pressmen.

During the month of December the Pressmen represented by Williams, local president, and by International Representative Tufo and by Thennes, another union official, approached an officer of Payne and demanded that Frey join the Pressmen. On another occasion during the same month the ITU, represented by Local President Smith, made a similar demand of the Employer. Apparently the representatives

of each union threatened to strike unless Frey joined his union. Such threat was specifically made on January 23, 1964, after the Pressmen had learned that Frey had filed a membership application with the ITU.

Llewellyn & McKane, Inc.: Llewellyn & McKane acquired its offset camera in September 1963. Here, too, the Pressmen had before this performed all offset preparatory work. Sometime before December 10, 1963, Llewellyn & McKane hired one Storz to operate the camera. Storz had been hired from a nonunion shop, but at some unspecified time after his hire joined the Pressmen. Apparently in early December both the ITU and the Pressmen approached the Employer and claimed jurisdiction over the new employee.

Although the ITU denies that it at any time threatened to strike the Employer unless jurisdiction over the offset camera was given to the ITU, the evidence fairly establishes that the ITU representative, Smith, showed the Employer a letter received from its International in which the local was instructed to take a firm position concerning the ITU's jurisdiction over the offset camera work. Smith then added that if Storz did not join the Union he (Smith) "was going to pull ITU members." Smith denied that he made such remark but admitted that "Of course, I told him he was letting himself open for more drastic action . . . we just told him we didn't anticipate any strike but it was possible we could take our men and make them refuse to handle any work"

B. Contentions of the parties

The Pressmen assert jurisdiction with respect to the work of operating the photo offset camera on the ground that their contract specifically covers the work in dispute, that the work is a normal part of offset preparatory work, that the Pressmen have operated the offset camera at Payne Printery for the past 6 years before the work was assigned to a newly hired employee, that the employee represented by the Pressmen now operates the offset camera at Llewellyn & McKane, and that as a matter of employer practice pressmen regularly perform all other offset preparatory work and the making of the finished plate. Furthermore, the Pressmen contend that industry and area practice, as well as considerations of skill and efficiency of operation, favor the assignment of this work to the Pressmen.

With respect to the disputes affecting Llewellyn Brothers and Payne Printery, the ITU claims that the photo offset camera is a substitute process for tasks previously performed by the composing room employees. They also contend that the traditional line of demarcation between the composing room and press operations is that the composing room prepares matter for running on the presses and the pressmen

run the presses. The ITU also relies on contract coverage, industry practice, skill, and efficiency of operations. As to the alleged dispute at Llewellyn & McKane, the ITU argues that the evidence fails to show that it had threatened any violation of Section 8(b) (4) (D) and hence that in the absence of such showing that the Board should not proceed to a determination of the dispute in that case.

The Employers take neutral positions.

Applicability of the Statute

The charges, which were duly investigated by the Regional Director, allege a violation of Section 8(b) (4) (D) of the Act. The Regional Director was satisfied upon the basis of investigations that there was reasonable cause to believe that violations had been committed and directed that a consolidated hearing be held in accordance with Section 10(k) of the Act.

The record is clear and it is not disputed that after Llewellyn Brothers and Payne Printery hired the new employees to operate the offset cameras the Pressmen threatened to strike their plants unless the new employees joined the Pressmen's Union.

As to Llewellyn & McKane, ITU Representative Smith's remark to the Employer that although he did not anticipate a strike "it was possible we could take our men and make them refuse to handle any work," explaining that his remark at the time had reference to the camera, is reasonably subject to the interpretation that unless the Employer assigned the particular work to the ITU, the employees represented by the ITU would walk off their job. We find therefore on the entire record that there is reasonable cause to believe that violations of Section 8(b) (4) (D) have occurred in all three cases, and the dispute is properly before the Board for determination under Section 10(k) of the Act.³

Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors; and the Board has held that its determination in a jurisdictional dispute case is an act of judgment based upon common-sense and experience and a balancing of such factors.⁴

³ Although certain of the claims refer to the union membership of the employees performing the disputed work, we find on the entire record that in each instance the underlying dispute concerns an issue of work jurisdiction.

⁴ *N.L.R.B. v Radio & Television Broadcast Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U S 573; *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402.

1. Skills involved

In the case of Payne Printery, the evidence establishes that for a period of some 6 years after the Employer acquired its own photo offset camera, a member of the Pressmen operated the camera and there is neither evidence nor contention that he was not qualified to perform this particular task. Furthermore, a representative of the Pressmen testified that the Pressmen maintain a technical trade school in Tennessee where special courses are offered in the operation of the photo offset camera, and that a study of offset camera operation as well as platemaking is part of the study of the operation of the offset press. However, the record makes equally clear that the ITU also maintains a training school where courses are offered in the operation of the offset camera and other preparatory work.⁵

While the record shows that a member of the Pressmen in one case actually possessed and exercised the skills necessary for the operation of the offset camera, and that pressmen were generally the ones who performed all other offset preparatory work, we cannot say on the evidence in the record as a whole that employees represented by the ITU are not equally skilled in the operation of the photo offset camera. Therefore we find that the factor of employee skill favors neither Union.

2. Area practice

As noted above, the Employers involved in the instant matter are members of the Employing Printers of Wilkes-Barre, an employer association that engages in collective bargaining on a multiemployer basis with the ITU and the Pressmen.

While the evidence is far from clear on this point, the record indicates that there are nine commercial printing establishments in the area, and that eight of them use the offset printing process as well as letterpress process. Without exception, all offset preparatory work, other than the camera work, is performed by pressmen. Three of the firms, other than the Employers here involved, do their own offset camera work, and in each instance, such camera work is regularly performed by members of the Pressmen. With the possible exception of one firm, whose president is an ITU member, and who "may" on occasion operate the camera, no firm employs an ITU member for camera work. Although the evidence on area practice is not overly persuasive, it does appear to favor the Pressmen.

⁵ *Newspaper Web Pressmen Local 6, International Printing Pressmen and Assistants Union of North America, AFL-CIO (Labor Cooperative Educational and Publishing Society, Inc.)*, 147 NLRB 660.

3: Contractual claim

There is no reference in the record to any contracts which antedated the acquisition of the photo offset cameras and thus the record fails to establish either on behalf of the ITU or the Pressmen a contractual claim to the particular work before the execution of the current contracts. While the ITU claims jurisdiction over the particular work on the basis of its current agreement, such jurisdiction is far from clearly spelled out in its agreement. The Pressmen's contract, on the other hand, specifically refers to the work under the jurisdiction of the Pressmen as including "all work in connection with offset platemaking including camera operation." We note however that none of the Employers assigned the work in dispute to the Pressmen but apparently hired nonunion employees who were free to join either Union and that two of them elected to join the ITU.

Although the current agreements were entered into after the acquisition and installation of the cameras, and thus are not a controlling consideration, yet it is clear from the language of the agreements that it was the intent of the contracting parties that the operation of the photo offset camera, part of offset preparatory work, and the making of the offset plates was to be a function of the Pressmen's unit. We find therefore that the provisions of the parties' contracts favor the Pressmen.

4. Employers' past practice

As indicated, the offset camera at Llewellyn Brothers has been operated by a member of the ITU since 1962.⁶ At Llewellyn & McKane the camera has been operated by a member of the Pressmen since September 1963. Although the camera at Payne Printery has been operated by a member of the ITU since approximately January 1964, when employee Frey elected to join the ITU, we note that for the 6 years prior to that time the offset camera was operated by employee Carter, a member of the Pressmen. Thus, while individual Employer practice does not point convincingly in either direction insofar as Llewellyn Brothers and Llewellyn & McKane are concerned, we are disposed to weigh the balance in favor of the Pressmen at Payne Printery since it is clear that for a period of 6 years Carter, a member of the Pressmen, was assigned the duties not only of operating the camera but of platemaking as well, and when the new employee Frey replaced Carter he also was assigned the additional duty of platemaking, a function that is clearly part of the Pressmen's job.

⁶ The Pressmen maintain that before Nash was hired the offset camera was operated by a member of the Pressmen. The Employer disputes this testimony. Even if the testimony of the Pressmen is to be credited it is obvious that if any such operation took place it was of such short duration as to be of no significance.

5. Efficiency of operation

Neither union challenges the skills of the employees who are at present performing the disputed work although each claims that its members can perform the work more efficiently. The Employers do not contend that members of one union can perform the work more efficiently than those of the other.

Although the offset camera at Llewellyn Brothers is located in an area near the composing room there is no evidence that the work of operating the camera is intimately tied in with other work performed in the composing room. On the other hand, it is stated on the record that Frey, the camera operator at Payne Printery, is also engaged in platemaking, a function, we have observed, that is within the province of the Pressmen. However, we cannot say on the record before us that the factor of efficiency of operation favors one union more than another.

CONCLUSIONS AS TO THE MERITS OF THE DISPUTE

In view of the foregoing, particularly the evidence pertaining to area practice, the contract provisions between the Employers and the Pressmen which explicitly give jurisdiction over the disputed work to the Pressmen, the exercise of jurisdiction over the disputed work by the Pressmen in the case of at least one employer, the fact that the established area and employer practice shows, without exception, that the Pressmen exercise jurisdiction over all other offset preparatory work, and the fact that the Board normally includes offset cameramen in the same unit as other offset preparatory employees,⁷ we find that pressroom employees represented by the Pressmen's Union are entitled to the disputed work of operating the photo.offset camera, and shall determine the dispute in their favor. In making this determination, we are assigning the disputed work to employees represented by the Pressmen, but not to the Pressmen or its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Upon the basis of the foregoing findings, and the entire record in this proceeding, the Board makes the following determination of dispute, pursuant to Section 10(k) of the Act:

1. Employees, employed by the Employers, who are represented by Wilkes-Barre Printing Pressmen and Assistants Union No. 137, and International Printing Pressmen and Assistants Union of North

⁷ E.g., *The Plimpton Press*, 140 NLRB 975, 977.

America, are entitled to perform the operation of the photo offset camera at the Employers' Wilkes-Barre, Pennsylvania, plants.

2. Wilkes-Barre Typographical Union No. 187, affiliated with International Typographical Union, AFL-CIO, is not and has not been lawfully entitled to force or require Llewellyn & McKane, Inc., to assign the above work to employees who are currently represented by Wilkes-Barre Typographical Union No. 187, affiliated with International Typographical Union, AFL-CIO.

3. Within 10 days from the date of this Decision and Determination of Dispute, Wilkes-Barre Typographical Union No. 187, affiliated with International Typographical Union, AFL-CIO, shall notify the Regional Director for Region 4, in writing, whether or not it will refrain from forcing or requiring Llewellyn & McKane, Inc., by means proscribed by Section 8(b) (4) (D), to assign the work in dispute to compositors rather than to pressmen.

**Caribe Lumber and Trading Corporation and Virgin Islands
Labor Union. Case No. AO-79. August 10, 1964**

ADVISORY OPINION

This is a petition filed on July 13, 1964, by Caribe Lumber and Trading Corporation, herein called the Employer, for an Advisory Opinion in conformity with Sections 102.98 and 102.99 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended.

In pertinent part, the petition alleges as follows:

1. There is pending before the Department of Agriculture and Labor, Virgin Islands of the United States at Christiansted, St. Croix, herein called Territorial Department, a proceeding filed by the Virgin Islands Labor Union, herein called the Union, and docketed as Case No. 1-1965, charging the Employer and two of its officers with the commission of an unfair labor practice in the dismissal of Vincente Rosa from its employ.

2. The Employer, a Virgin Islands corporation, is engaged in the retail and wholesale sale of building materials and supplies and in general hardware merchandising. Its principal office and store are located in the Commonwealth of Puerto Rico, while its branch office and store are located in St. Croix, Virgin Islands. The Employer's annual gross volume of business in St. Croix is over \$500,000.

3. The Territorial Department has made no findings with respect to the aforementioned commerce data.

4. There is no representation proceeding involving the Employer and the Union presently pending before the Board or the Territorial Department.