

Since the earnings outlined immediately above cannot properly be considered interim earnings within the meaning of the Act because said income did not interfere with his availability for employment, Respondent's contention with respect thereto is without merit.

CONCLUSIONS AND RECOMMENDATIONS

Upon the foregoing findings of fact and upon the record as a whole, I conclude that Essary is entitled to backpay as follows:

4th quarter 1961-----	\$1, 503
1st quarter 1962-----	1, 230
2nd quarter 1962-----	110
Total-----	2, 843
Plus insurance benefits-----	120
Gross total due-----	2, 963

I further find that Respondent is obligated to make Essary whole by payment to him of the sum of \$2,963, minus whatever Federal and State taxes are due on the sum of \$2,843, plus interest at the rate of 6 percent per annum beginning on the sum of \$2,963 5 days after the receipt by Respondent of this Supplemental Decision.

It is recommended that the Board adopt the foregoing findings and conclusions.

Amalgamated Lithographers of America, Local 33 and The Standard Register Company. Case No. 9-CD-71. August 28, 1964

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, following a charge filed by The Standard Register Company, herein called the Company, alleging that Amalgamated Lithographers of America, Local 33, herein called the Lithographers, had violated Section 8(b)(4)(D) of the Act. Pursuant to notice, a hearing was held on March 24, 25, and 26, 1964, before Hearing Officer Donald G. Logsdon. All parties 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. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Briefs have been filed by the Company, by the Lithographers, and by Dayton Printing Pressmen and Assistants' Union, Local 54, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, herein called the Pressmen, which appeared at the hearing as a party to the dispute.

Upon the entire record in the case, the Board¹ makes the following findings:

1. The business of the Company

The Company is engaged in the manufacture of printed business forms. It has a plant in Dayton, Ohio, which is the subject of the

¹ 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 Leedom and Jenkins].

present dispute. During the past year, the Company made sales in excess of \$50,000 to customers located outside the State of Ohio. During the same period it made purchases valued at more than \$50,000 from suppliers located outside the State.

The parties stipulated, and we find, that the Company is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations involved

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

3. The dispute

A. Statement of facts

The present dispute relates to the operation of a Hamilton transfer letterpress installed in the Company's Building No. 1 on or about November 27, 1963.

The Company has about 59 printing presses, almost evenly divided between lithographic presses and letterpresses. Operators of the lithographic presses are represented by the Lithographers; operators of the letterpresses are represented by the Pressmen. Both unions were certified in their respective units by the Board, following elections.

In 1960, the Company purchased five Hamilton transfer letterpresses and installed them in its Building No. 7. These were not replacements for any of the existing presses but were additions to the total press capacity of the Company. The Company assigned employees represented by the Pressmen to the operation of these presses, rejecting the claim of the Lithographers that its members were entitled to this work. In November 1963, the Company purchased another Hamilton transfer press which it installed in Building No. 1 as a replacement for a letterpress. The Lithographers claimed jurisdiction over this press and demanded that its members be assigned to its operation. The Company rejected the demand. At the time of the hearing, the Company had replaced two more letterpresses in Building No. 1 with Hamilton presses.

B. Evidence of conduct violative of Section 8(b)(4)(D)

On or about October 26, 1963, at a regular monthly meeting between the Company and the Lithographers, the parties discussed the future installation of the new transfer letterpress in Building No. 1. The Lithographers demanded the work of operating this press for its members. The Company rejected the demand upon the ground that

the work belonged to members of the Pressmen under the certification of, and collective-bargaining contract with, that Union. On November 7, 1963, the Lithographers repeated its demand for the work and the Company again rejected the demand. On November 26, the Lithographers sent the Company a letter claiming that its members had the right to operate the new press and stating that it would take all steps necessary to protect its jurisdiction. Although the new press was installed and ready for operation by December 3, the Company refrained from starting it up because of widespread talk that lithographers would strike if operation was assigned to pressmen. At a meeting held on December 11, 1963, a company representative asked Gus Petrakis, an International vice president of the Lithographers, what would happen if the new transfer letterpress was placed in operation. Petrakis replied that the Lithographers would not condone or authorize a strike, but that if its members walked out, it would support them. Until after the filing of the present unfair labor practice charge on January 21, 1964, the Company refrained from operating the new press because of strike fears even though it had a heavy production schedule. After the charge was filed, the Company called representatives of the Lithographers to a meeting, notified them of the filing of the charge, and explained that nothing could now be gained by a strike if the new press was placed in operation. The president of the Lithographers then asked for time to explain to his members that the dispute was now before the Board which would decide the jurisdictional issue, and that they should not strike if the new press was placed in operation. On the following day, the press began operating with members of the Pressmen in charge. No work stoppages have occurred.

C. Contentions of the parties

The Lithographers contends that the Hamilton press uses the offset principle of printing and that traditionally offset is synonymous with lithography whether dry or wet methods are utilized. It also contends that the skills used in dry offset operations are closer to the skills of pressmen engaged in standard lithography than to those of pressmen operating a letterpress. Finally, it asserts that its certification entitles it to the disputed work.

The Pressmen contends that the Hamilton press, although an offset press, uses the letterpress rather than the lithographic principle of printing, that the new press is a direct replacement for a letterpress previously manned by members of the Pressmen, and that its certification and collective-bargaining contract with the Company cover the work in issue.

The Company agrees with the position and arguments of the Pressmen. In addition, it asserts that its assignment should be upheld because members of the Pressmen have been operating transfer letter-

presses since 1961, that the assignment of lithographer pressmen to the new press would require additional training which has already been received by the present operators, and that the efficient operation of its business requires the assignment of the work to members of the Pressmen.

D. *Applicability of the statute*

The Board must be satisfied that there is reasonable cause to believe that Section 8(b) (4) (D) of the Act was violated before it may proceed with a determination of dispute pursuant to Section 10(k) of the Act.

As noted above, on November 26, 1963, the Lithographers wrote the Company making a "formal claim" to exclusive jurisdiction over the entire "dry offset process" and threatening "to take any and all steps" necessary to protect its claimed legal rights. Against the widespread talk that the Lithographers would strike if the Company assigned the disputed work to members of the Pressmen, the press was not put into operation on December 3, 1963, as planned. At a meeting on December 11, a representative of the Lithographers said, in reply to a query, that if its members walked out in a strike, it would support them, although it would not authorize or condone a strike.

We find, upon the basis of the foregoing, that there is reasonable cause to believe that Section 8(b) (4) (D) has been violated. Although, after the filing of unfair labor practice charges, the Lithographers dissuaded its members from striking, this did not nullify the earlier threats or render moot the present proceeding. We further find that the dispute is properly before the Board for determination under Section 10(k) of the Act.²

E. *Merits of the Dispute*

There appear to be three main types of printing which use the offset method: lithographic offset,³ letterpress or dry offset,⁴ and

² In its brief to the Board, the Lithographers contends that it is seeking not to oust the incumbent operators of the transfer letterpress from their jobs, but only to represent them, and that, therefore, no jurisdictional dispute within the meaning of Section 8(b) (4) (D) exists. However, the history of the disagreement among the parties shows that in origin and in the contemporaneous understanding of the parties, the dispute was over which group of employees should operate the new press, and not merely over which union should represent the employees assigned to the operation of the press by the Company. Accordingly, we reject the contention of the Lithographers that no jurisdictional dispute exists. Cf. *Danville Printing Pressmen & Assistants Union No 257 etc. (Recording & Statistical Company, Division of Sperry Rand Corporation)*, 147 NLRB 1619

³ "Lithography is a chemical reproduction process in which the image to be reproduced is transferred from a flat surface metal plate to an intermediate rubber blanket. The rubber blanket, after picking up the impression 'offsets' it on the paper." *Pacific Press, Inc.*, 66 NLRB 458, 461; see also *Con P. Curran Printing Company*, 57 NLRB 185, 188.

⁴ Dry offset is "offset printing in which the inked impression from letterpress or relief is etched on a thin metal surface, then printed on an intermediate rubber surface (as a blanket), and then offset onto the paper." Webster's Third New International Dictionary, Unabridged, G. & C. Merriam Company (1961)

gravure offset. Although the commonest form of offset printing is lithographic offset, the latter does not include dry offset.⁵

In routinely including offset pressmen in lithographic units, the Board has been concerned with offset pressmen engaged in the traditional lithographic process. But, as the Board has recognized, recent technological changes in the printing industry require reevaluation of its unit policies.⁶ In keeping with this reevaluation, the Board in *Packaging Corporation of America*⁷ recognized that the accepted distinction between lithographic offset and letterpress printing is gradually being weakened by the use of mixed techniques. The Board described two of the new processes, letterset and direct contact, as follows:

These processes . . . involve the use, on a standard lithographic press, of metal, plastic (Dycril), or rubber plates which contain a raised surface for that portion which is to be imprinted. In the letterset process, ink is applied to the raised portion of the plate, and from there is transferred to the intermediate rubber blanket which, in turn, "offsets" it onto the paper. In the direct contact process, the image is transferred directly from the raised surface plate to the material being printed. Thus, it appears that the letterset and direct contact processes, while performed on lithographic presses, are similar to the letterpress technique in that all three processes involve printing from plates containing a raised surface for that portion to be printed. On the other hand, unlike letterpress where the impression is made by the raised surface directly on the material to be printed, in letterset the ink is transferred to the rubber blanket, as is the case in offset printing.

In that case, the Board refused to find that employees engaged in these new mixed offset processes belong in the traditional lithographic unit.⁸ Accordingly, we reject the Lithographers' claim that offset means lithography and lithography means offset thus entitling members of the Lithographers to do dry offset.

The Lithographers was certified by the Board in 1943 as bargaining representative for all the Company's "lithographers, pressmen, press assistants, production workers in the lithograph division. . ."

⁵ "It should here be said that lithographic claims for jurisdiction over dry offset printing are without basis. The process does not require the simultaneous presence of both ink and moisture on a printing surface at the time of taking impressions therefrom, and therefore cannot be deemed 'lithograph' in the accepted sense of the term. Lithographers do not 'own' either the offset principle or offset presses, and since dry offset printing must perforce be carried out from relief surfaces, it is nothing more than transfer letterpress." J. S. Mertle, *Photomechanics and Printing* (1957), at p. 175.

⁶ *Allen, Lane & Scott*, 137 NLRB 223, 225.

⁷ 146 NLRB 1620 (Members Leedom and Fanning dissenting).

⁸ See also *Weyerhaeuser Company*, 142 NLRB 1169.

Its 1960 collective-bargaining contract with the Company defined the unit as "all lithographic pressmen, press assistants, camera operators, negative assemblers, plate makers instructors, and other workers in the Lithographic Division. . . ."

The Pressmen was certified by the Board in 1946 as bargaining representative of employees in the "letterpress room, including instructors, pressmen, and apprentice pressmen. . . ."⁹ Its 1960 collective-bargaining contract with the Company covered "all employees in the Letterpress Room (Web Letterpress Division) as certified by the Board. . . ." However, its 1962 contract added to the coverage clause "all employees operating transfer letterpresses used in production (including Building #7)."

Both certificates were issued long before the installation of the Hamilton presses and neither professes to include operators of those presses. The contracts between the Company and the two unions were equally silent about such employees until 1962, when operators of the Hamilton presses were specifically included in the coverage of the Pressmen's contract.

The certifications favor the assignment of the disputed work to neither contending group. The skill factor is also neutral inasmuch as both groups have the basic skills necessary to operate the new presses, although some additional training is required which, it should be noted, has already been received by the present operators of the presses who are members of the Pressmen. With these two important factors in balance, we look to other elements to determine the dispute. Members of the Pressmen are presently operating Hamilton presses at the Company's Bedford and York, Pennsylvania, plants and in Building No. 7 at the Dayton plant. The new press is a replacement for a letterpress. If the operation of this press is assigned to members of the Pressmen, the work of the members of the Lithographers will not be diminished, whereas if the work should be assigned to the latter, jobs will be lost by the former.¹⁰ The 1962 collective-bargaining contract between the Company and the Pressmen specifically includes operators of the new press.

CONCLUSIONS AS TO THE MERITS OF THE DISPUTE

Weighing all the pertinent factors considered above, we believe that in the circumstances of this case members of the Pressmen are entitled to perform the work in dispute. We have given controlling weight to the evidence that members of the Pressmen are presently performing work identical to that in dispute at this and other plants

⁹ *The Standard Register Company*, 67 NLRB 322.

¹⁰ *The Denver Photo-Engravers' Union No. 18 etc. (The Denver Publishing Company)*, 144 NLRB 1408.

of the Company, that the new presses replace letterpresses which are operated by pressmen, that the work if assigned to pressmen will not cost lithographers any jobs, and that the current bargaining contract between the Pressmen and the Company covers operators of the new press. We shall, accordingly, determine the existing jurisdictional dispute by awarding the disputed work to pressmen represented by the Pressmen rather than to lithographers represented by the Lithographers. In making this determination, we are assigning the disputed work to the employees of the Company who are represented by the Pressmen but not to that union or its members.

DETERMINATION OF DISPUTE

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

(1) Pressmen currently represented by Dayton Printing Pressmen and Assistants' Union, Local 54, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, are entitled to operate the Company's transfer letterpresses at its plant in Dayton, Ohio.

(2) Amalgamated Lithographers of America, Local 33, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require The Standard Register Company to assign the above work to lithographers who are currently represented by it.

(3) Within 10 days from the date of this Decision and Determination of Dispute, Amalgamated Lithographers of America, Local 33, shall notify the Regional Director for Region 9, in writing, whether or not it will refrain from forcing or requiring the Company, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to lithographers rather than to pressmen.

H. L. Klion, Inc. and Local 945, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 22-RC-2466. August 28, 1964*

DECISION AND ORDER

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