

Albany, Troy and Vicinity Stereotypers' and Electrotypers' Union, Local No. 28, International Stereotypers' and Electrotypers' Union of North America and Capital Electrotype Company, Inc.

Albany Printing Pressmen and Assistants' Union, Local No. 23, International Printing Pressmen and Assistants' Union of North America, AFL-CIO¹ and Williams Press, Inc. *Cases Nos. 3-CD-130 and 3-CD-131. May 25, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following separate charges filed by (1) Capital Electrotype Company, Inc., herein called Capital, alleging a violation of Section 8(b) (4) (ii) (D) of the Act by Albany, Troy and Vicinity Stereotypers' and Electrotypers' Union, Local No. 28, International Stereotypers' and Electrotypers' Union of North America, herein called Stereotypers, and (2) Williams Press, Inc., herein called Williams, alleging a violation of Section 8(b) (4) (ii) (D) of the Act by Albany Printing Pressmen and Assistants' Union, Local No. 23, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, herein called Pressmen. Specifically, Capital's charge avers that the Stereotypers threatened to strike Capital in order to force Capital to assign the disputed work to electrotypers employed by it who are represented by Stereotypers, rather than permitting that work to be done by pressmen employed by Williams, who are represented by Pressmen. Conversely, Williams' charge alleges that the Pressmen threatened to strike Williams if the disputed work was performed by Capital's employees who are represented by Stereotypers rather than by Williams' own employees who are represented by Pressmen. The cases were consolidated and a duly scheduled hearing was held before Hearing Officer Arthur E. Neubauer on February 16 and 17, 1965, at Albany, New York. 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 were filed by the Employer,² Pressmen, and Stereotypers, which have been duly considered.

¹ The names of both Unions appear as amended at the hearing

² The parties stipulated that, for the purposes of this proceeding, Capital and Williams are a single employer. We note, in addition, that they were so found in an earlier 10(k) proceeding (137 NLRB 1467). They are jointly referred to herein as the Employer.

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

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

A. The business of the employers

The parties stipulated, and we find, that Capital is engaged in manufacturing printing plates, and Williams in the operation of a printing plant, both in Menands, New York. During the year preceding the hearing, Capital and Williams each purchased goods valued in excess of \$50,000 from sources outside the State of New York. We find that Capital and Williams are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

B. The labor organizations involved

The parties stipulated, and we find, that the Pressmen and the Stereotypers are labor organizations within the meaning of Section 2(5) of the Act.

C. The work in dispute

In June 1964 Williams installed a Miehle Goss double web 6-unit letterset press which, to the time of the dispute, had been used only experimentally. The dycril plates to be used on this press are prepared by Capital, whose employees are represented by Stereotypers. Before being affixed to the press cylinder by Williams' pressmen, the dycril plates are crimped or bent along two sides by a crimping device made exclusively for use in conjunction with the Miehle Goss letterset press. The dispute involves the work of crimping or bending the dycril plates prior to their affixation to the press.

D. The basic facts

As noted above, Capital manufactures printing plates, which are sold almost exclusively to Williams for use in printing presses. The plates thus purchased by Williams are affixed to the presses, and the presses are operated by Williams' employees. Capital and Williams have their plant facilities in different areas of the same building.

In June 1964 Williams purchased and had installed a new Miehle Goss double web 6-unit printing press³ which was first used on an

³ Hereinafter called press No. 53, a shorthand name given it by the Employer.

experimental basis in November 1964⁴ and was still used only experimentally at the time of the hearing. In conjunction with this press, Williams also purchased a crimping or bending device which bends the two ends of the dycril plates, so that the plates may be fastened to the press cylinder by placing the bent ends into a slot on the cylinder. Although the flat dycril plate is a finished product and usable on the new press without prior bending, the crimping makes possible an easier and more accurate placement of the plate to the press cylinder.

On November 4 Williams ordered a dycril plate from Capital for use on press No. 53. Thereupon, Stereotypers' representatives employed by Capital told Williams' Vice President Stiles that Stereotypers intended to have its members bend the dycril plates. Pressmen President Carney joined the conversation and stated that the work was within the Pressmen's jurisdiction and should be done by its members. Following this, Stiles told Capital that Williams wanted the dycril plates delivered flat. On November 11, at a meeting with Capital and Williams officials, Stereotypers' President Cilberti reiterated Stereotypers' jurisdictional claim and stated that "no one else had better touch the plate after it left the electrotyper's hands." Nevertheless, Stiles confirmed that "Williams wanted the dycril plates delivered flat and . . . would accept them in no other way," whereupon Cilberti said that "Williams Press would have to suffer the consequences of . . . asking that the plates be delivered flat." By letter of November 16, 1964, Stereotypers again informed Capital and Williams of its jurisdictional claim and stated that any contrary assignment of the disputed work might result in a strike by the Stereotypers.

A meeting was held on November 27 between representatives of Capital, Williams, and the two Unions at which Stereotypers said they would not permit the pressmen to bend the plates, and the Pressmen stated they would not handle the plates if they were bent by electrotypers. Stereotypers President Cilberti stated that a calculated risk of strike existed if pressmen bent the plates. On November 30 the electrotypers at Capital stopped work after Williams ordered two dycril plates to be delivered flat. At a meeting later that day, Stereotypers' Cilberti said the reason for the stoppage was because the dycril plates were being purchased flat in order that they be bent by Williams' pressmen. Asked what would happen if the order for flat plates were rescinded, Pressmen President Carney said that pressmen would strike if the bending was done by members of Stereotypers. The parties thereafter agreed that, pending a determination by the Board, pressmen and electroplaters would alternate in performing the disputed work.

⁴ Unless otherwise indicated, all dates are in 1964

E. Contentions of the parties

The Employer and the Pressmen contend that the crimping operation falls within the Pressmen's jurisdiction for the following reasons: (1) Pressmen's contract with Williams; (2) Employer's past practice of assigning allegedly similar work; i.e., bending of tympan sheets, to pressmen; (3) Pressmen's traditional jurisdiction over positioning and registration, of which the disputed work is assertedly a part; (4) fact that a flat dycril plate is a finished product which can be affixed to the press without being bent; (5) greater efficiency and economy with which pressmen claim they can do the work as an incident to their other work; (6) adaptability of the bending device to a pin system of registration, which the Board has held to be pressmen's work;⁵ and (7) Employer's assignment.

The Stereotypers' claim for the work is based on the following: (1) Stereotypers' contract with Capital; (2) Employer's past practice; (3) assertion that crimping is part of finishing the plates for the presses; and (4) general industry practice.

F. Applicability of the statute

Before the Board proceeds with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b) (4) (D) has been violated. The record shows that Stereotypers threatened to, and did in fact, induce employees of Capital to cease work with an object of forcing or requiring the Employer to assign the work of bending dycril plates to employees represented by Stereotypers, rather than to Williams' employees represented by Pressmen. Similarly, the record shows that Pressmen threatened to strike Williams if the Employer assigned the disputed work to Capital's employees represented by Stereotypers rather than to Williams' employees represented by Pressmen. Accord- and on the basis of the entire record, we find that there is reasonable cause to believe that a violation has occurred and that the dispute is properly before the Board for determination.

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. The following factors are asserted in support of the claims of the parties herein:

1. Certification; contract

There is no evidence that either Union has been certified by the Board. However, the Pressmen has a collective-bargaining agreement with Williams and the Stereotypers has a contract with Capital.

⁵ *Des Moines Electrotypers' Union No. 84, etc. (Meredith Publishing Company)*, 125 NLRB 391.

The Pressmen seeks to establish its right to the disputed work by relying on the jurisdictional clause in its contract which states:

It is understood that the jurisdiction of this contract extends over all printing presses including offset and letterpress printing presses and associated devices. . . .

The Pressmen contends that the crimping machine is an "associated device" within the meaning of the contract, because: (1) It was purchased as an accessory to press No. 53, (2) it is usable only in conjunction with press No. 53, and, (3) it is located approximately 3½ feet from press No. 53. However, the scope of the term "associated devices" as used in the contract is not spelled out either to include or exclude any definite and recognizable device. As such, the term cannot be considered an assignment of the specific work here involved. Nor is the location of the machine of significance, since it is movable though heavy.

The Stereotypers contends that its contract with Capital⁶ gives it jurisdiction over the work of bending of dycril plates. It asserts that the bending is merely the last step in the making and processing of the dycril plate.

The record clearly shows that the dycril plate constitutes a complete and finished product without first being crimped. For the plate, in its flat form, can be attached to the press cylinder by several means other than crimping. The crimping process merely facilitates and makes more accurate the process of affixing the plate to the presses. Thus, we find no merit in Stereotypers' contention that the process of crimping dycril plates is covered by the contract granting it jurisdiction over "all work . . . required . . . for the manufacture of relief printing plates for printing press, *viz*: Dycril . . ." as well as work connected with the "completion" and "finishing" of such plates. Accordingly, neither the Pressmen's nor the Stereotypers' contract is determinative of the instant dispute.

⁶ Section 3 of the Stereotypers' contract provides as follows:

The jurisdiction of this Union shall include . . . all methods of printing platemaking and processing . . . also all duplication and reproduction processes requiring the use of synthetic and photosensitive materials and their related machinery, regardless of the location of such platemaking equipment in the Williams Press Building

. . . The finishing including all color registration, pre-making ready, pre-registering and every process or operation for the perfecting and completing such plates or reproductions for printing and other purposes shall be done by members of Albany Stereotypers' and Electrotypers Union, Local No. 28.

All work that is required for any photosensitive process for the manufacture of relief printing plates for printing presses, *viz*: Dycril . . . plus the completion and preparation of such work and the manning of all machines required to produce all photo-sensitive and relief printing plates shall be the work of the members of this Union. The Capital Electrotype Company, Inc. shall not execute a contract at any time granting jurisdiction of the aforementioned work and processes to any other group or Labor Union.

. . . [The] finishing . . . and every process for the completion of such plates described in the preceding paragraph shall be done by Electrotype finishers

2. Company, area, and industry practice

The Stereotypers claims the work on the basis of the Company's past practice. The Employer had made use of dycril plates for several years prior to acquiring the press No. 53. These plates were used largely on an experimental basis and were processed and crimped by Capital's electrotypers. The record indicates that over a period of 18 months, only 20 to 25 dycril plates were bent by electrotypers and that the total time consumed in bending all of these plates during this 18-month period amounted to approximately 50 minutes. In these circumstances we are unable to say that an Employer practice of assigning the disputed work to electrotypers has been established.

Both the Employer and the Pressmen contend that the crimping operation here in dispute is similar to that involved in bending tympan sheets, an operation which Williams' pressmen have been performing for some 12 years. While there are obvious physical differences between tympan sheets and dycril plates, the mechanics and the purposes of the bending operation are very similar. Thus the purpose of the bending is to facilitate and insure the more accurate attachment of the plates or sheets to the presses.

3. Efficiency of operation

Both disputants claim to possess the necessary skill in operating the bending machine. The record indicates that both pressmen and electrotypers have been trained in its operation.

The bending machine is located 3½ to 4 feet from press No. 53 and about 225 feet from the area in which Capital's electrotypers work. Representatives of the Employer and Pressmen testified that the bend on dycril plates is easily damaged in handling, making it necessary that they be rebent, and that there is real danger of such damage when the plates are carried between the work area of Capital and Williams. When a plate does not fit properly on the press cylinder because of damage to the crimp, the entire press must be stopped. If a pressman does the bending, he can put the damaged plate on the bending machine adjacent to the press, reocrimp the plate, and replace it on the cylinder; if an electrotyper does the bending, the four pressmen must wait while an electrotyper is summoned to the press from the Capital work area. Williams' Vice President Stiles estimated that the total man-hours required to perform the bending in issue would amount to 24 minutes per day if press No. 53, which uses 12 plates, were plated once a day.

Furthermore, as noted above, the bending operation is not essential to finishing the plates for the presses; it is merely a more accurate and more efficient method of preparing the plate for affixation to the

presses. As such, the bending operation is incidental to the function of attaching the plates to the presses, a function which has been performed traditionally by pressmen. It appears, therefore, that this work can be done more efficiently and economically by pressmen in conjunction with their regular work of operating the presses.

Conclusion

Upon consideration of all pertinent factors in the entire record, we shall assign the work in dispute to Williams' pressmen. They have performed similar work to the satisfaction of the Employer. And, as the work consumes but a very small portion of each workday, it can be performed more efficiently and economically as an incident to the positioning and registration work normally done by pressmen. Under these circumstances, we conclude that the Employer's assignment of the work to the pressmen should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that pressmen, rather than electrotypers, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of Williams who are represented by Pressmen but not to that Union or its members.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in the proceeding, the National Labor Relations Board makes the following Determination of Dispute.

1. Employees engaged as printing pressmen, currently represented by Albany Printing Pressmen and Assistants' Union, Local No. 23, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, are entitled to bend the dycril plates and to operate the machine for bending such plates where the purpose of the bending operation is to facilitate attaching the plates to the presses.

2. Albany, Troy and Vicinity Stereotypers' Union, Local No. 28, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, is not entitled by means proscribed by Section 8(b) (4) (D) to force or require Capital Electrotpe Company, Inc., to assign the work in dispute to employees engaged as electrotypers who are currently represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Albany, Troy and Vicinity Stereotypers' and Electrotypers' Union, Local No. 28, International Stereotypers' and Electrotypers' Union of North America, shall notify the Regional Director

for Region 3, in writing, whether or not it will refrain from forcing or requiring Capital Electrotpe Company, Inc., by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to electrotypers rather than to printing pressmen.

Twin City Carpenters District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO [August Cederstrand Company] and Archie L. Anderson. Case No. 18-CB-230. May 26, 1965

DECISION AND ORDER

On March 15, 1965, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief.

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

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, the exceptions and the brief, and the entire record in the case, 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 National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed in its entirety.

¹ We adopt the Trial Examiner's conclusion that the complaint herein should be dismissed. In our opinion, the evidence on the record falls short of establishing that Williams was in fact acting in his capacity as steward when he engendered the "unrest" among the employees leading to Anderson's discharge.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case, heard in Minneapolis, Minnesota, on January 25 and 26, 1965,¹ before Trial Examiner Frederick U. Reel, pursuant to a charge filed the preceding October 7

¹ All other dates herein refer to the year 1964, unless otherwise noted.