

Offset Workers, Printing Pressmen and Assistants' Local Union No. 40, International Printing Pressmen and Assistants' Union of North America, AFL-CIO¹ and Bell Press, Inc., d/b/a Golden Bell Press, Inc.² and Denver Typographical Union No. 49, affiliated with International Typographical Union, AFL-CIO.³ Case No. 27-CD-74. May 9, 1966

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, following a charge filed by Bell Press, Inc., d/b/a Golden Bell Press, Inc., alleging a violation of Section 8(b) (4) (D) of the Act by the Pressmen. The charge alleges, in substance, that the Pressmen threatened, coerced, and restrained the Employer with an object of forcing or requiring the Employer to assign particular work to employees represented by the Pressmen rather than to employees represented by the ITU. Pursuant to notice, a hearing was held before Hearing Officer Allison E. Nutt on January 11, 1966. 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. The Pressmen and the ITU filed briefs, which have been duly considered.

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 [Chairman McCulloch and Members Fanning and Jenkins].

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

I. THE BUSINESS OF THE COMPANY

Bell Press, Inc., d/b/a Golden Bell Press, Inc., is a Colorado corporation which operates a printing plant in Denver, Colorado. *Inter alia*, it produces trade journals and magazines. It annually ships goods valued in excess of \$50,000 directly to points outside Colorado, and its annual gross volume of business exceeds \$500,000. We find that Bell Press, Inc., d/b/a Golden Bell Press, Inc., is 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.

II. THE LABOR ORGANIZATIONS INVOLVED

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

¹ Herein called the Pressmen.

² The name of the Employer appears as amended at the hearing.

³ Herein called the ITU; its name appears as amended at the hearing.

III THE DISPUTE

A *The work in dispute*

The work in dispute is the stripping, masking, opaquing, and imposition of negatives, and the burning and preparing of plates to be used on the Employer's offset presses

B *The basic facts*

The Employer has been in business for approximately 55 years. For many years, the Employer's composing room employees have been represented by the ITU, and its pressroom employees have been represented by the Pressmen

Prior to October 15, 1965, all of its printing was done by the "letterpress" process. In this process, after the "copy" of the work to be printed is received, the composing room employees (typographers) "mark up" the copy, set up a page or pages of print by casting lines of type in molten metal on a Linotype machine, and assemble all the lines of type and other components⁴ of the page or pages⁵ in a metal makeup frame known as a "chase" or "galley." A proof is then made or "pulled" on a proof press for the foreman's or customer's approval, necessary changes are made, and the chase is "locked up." The locked-up chase is then either itself used on the presses to print from directly, or else it is sent to a stereotyper, who makes a mat or matrix and casts a plate (either flat or cylindrical) which can be attached to the type of press the job calls for. Pressroom employees have never performed any of these functions.

In October 1965, the Employer decided to use offset printing for at least some of its jobs, it purchased an offset press⁶ and additional equipment⁷ needed to make offset plates. Various methods may be used in the offset process to obtain a final proof ready for the plate-making process. However, proofs may be made in the same manner employed in the letterpress process⁸. The final proofs, in whatever manner produced, are then photographed or "shot" by a camera,

⁴ The Linotype machine casts only standard size letter print. Materials such as illustrations which cannot be cast on the Linotype or other typesetting machines are etched by a stereotyper on zinc plates, and returned to the composing room.

⁵ Two page and four page forms are common.

⁶ The Employer has for approximately 10 years had a small Multilith (offset) press in its composing room. It has been used only about three times and on each of those occasions the Employer had the plates made by a trade shop. The press it purchased in October is substantially larger, and the equipment it purchased is designed for use with this larger press.

⁷ A vacuum frame and a carbon arc lamp.

⁸ The Employer, at least up to the time of the hearing, apparently used the same method it uses in the letterpress process, because the record does not mention the ownership or purchase of any phototypesetting machines, and also shows that the Employer has no cameras of any sort. It also appears that in the few jobs performed employing the offset process, the customers' copy was "clean" enough for use as a final proof.

negatives are made, opaqued,⁹ and assembled, positioned, or "imposed" on "masking" paper in a page form, called a flat.¹⁰ The flat is put in a "vacuum frame" with a thin sensitized metal plate, and the flat is exposed by use of an "arc lamp," which burns the image of the flat into the plate. The plate is then treated or "developed" by a chemical process, coated with lacquer and "arabic gums," and is ready to be placed on the press.

It is clear that the Employer has no cameras, and that, even before the instant dispute arose, it had its negatives made outside the shop. Neither of the unions herein claims to be entitled to camera work or the making of negatives. The work in dispute is the work which is performed in the offset process after negatives are received from an outside trade shop, i.e., preparing the flat (stripping, masking, opaquing, and imposition or assembly) and making the plate (by using the vacuum frame, arc light, and chemicals). After the Employer received the offset equipment in October, it assigned the work now in dispute to a composing room employee represented by the ITU. The Pressmen immediately protested the assignment, and threatened to strike, if necessary, to obtain the work for pressroom employees represented by it. The ITU advised the Employer that if the assignment were changed, the ITU would take any necessary action to retain the work for its members. The parties then agreed that, until the Board decided the dispute, the work would be sent out. It is presently being performed by an outside trade shop.

C. Contentions of the parties

Both the ITU and the Pressmen claim that the elements of skill, training, area and industry practice, and efficiency of operation militate in their favor, and, with the distinction noted below as to the ITU, claim that their respective contracts with the Employer cover the work. The Employer takes no position and states no preference.

The ITU states that the Pressmen misconstrues the description of the disputed work, because "platemaking" itself is not in dispute. The ITU appears to argue that the final step in the offset process, the burning of the plate, is the only part of the offset process properly referred to as "platemaking." The Pressmen seems to define "platemaking" as stripping, masking, opaquing, imposition of negatives, and burning of the plates; it clearly describes the work in dispute as including the burning of the plates. In any event, the ITU does not claim the burning of the plates under the terms of its contract. It does claim that the work of stripping, masking, opaquing, and imposition of negatives

⁹ I.e., light spots on the negatives are painted with a special opaquing paint so the spots will not show up on the plate.

¹⁰ This part of the process of preparing the flat is also called stripping and masking.

(i.e., the preparation of the flat which is put into the vacuum frame) is covered by its contract. Furthermore, it argues that the Board should not separate the "quite simple task" of burning the plates from the remainder of the work in dispute.¹¹

D. *Applicability of the statute*

The charge herein alleges a violation of Section 8(b)(4)(D) of the Act. The record shows that, on or about October 16, 1965, and again on November 24, 1965, the Pressmen threatened to strike if the Employer did not assign the disputed work to employees represented by it.

We find 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.¹²

E. *Merits of the dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work, after giving due consideration of all relevant factors. The following factors are asserted in support of the claims of the parties herein:

1. Collective-bargaining agreements

For several years prior to 1964, the Employer was a member of the Mountain States Employers' Council. Although not a dues-paying member in 1964, the Employer nevertheless authorized the Council to bargain for it in the negotiations that resulted in the current contracts between the Employer and the Pressmen and the Employer and the ITU. The contract with the Pressmen provides, in pertinent part, the following:

The Employer recognizes the Union as the sole bargaining agency for all production and maintenance employees in its Press Room, including, but not limited to gravure, offset and letterpress printing presses, specifically including all pressmen, apprentice pressmen, press assistants and helpers on offset and letterpresses, all work in connection with offset plate making, including camera

¹¹ In its brief, the Pressmen repeatedly refers to the disputed work as "offset platemaking and preparatory work." The ITU's brief argues that this description is inaccurate. However, the Pressmen's brief correctly sets forth in detail the specific job functions in dispute. The record leaves no doubt that the Pressmen is not claiming any work performed before the point at which the negatives are returned to the shop and that the work in dispute is as described herein.

¹² The parties stipulated that there is no agreed-upon method for the voluntary adjustment of the dispute herein, and that there have been no Board certifications bearing on the work in dispute.

operation, all darkroom work, stripping, lay out, opaquing and platemaking, and associated devices producing printing by the offset process. This provision shall not apply in cases where the Employer has such work under an existing collective-bargaining agreement with another labor organization.

The contract with the ITU provides, in pertinent part, the following:

Jurisdiction of the Union and appropriate unit for collective bargaining is defined as including all composing room work and includes classifications such as (examples given) on all mechanical devices which cast or compose type or slugs, or film, operators of tape perforating machines and recutter units for use in composing or producing type, operators of all phototypesetting machines (examples given), employees performing any work on the Brightype process prior to the making of the plate, and 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, photoproofing, correction, alteration and imposition of the paste-makeup serving as the completed copy for the camera used in the platemaking process. Paste-makeup for the camera as used in this paragraph includes all photostats and prints 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 effort. The employers shall make no other contract covering such work, especially no contract using the word "stripping" to cover any of the work above mentioned.

It is significant to note in the ITU contract that nowhere does the jurisdiction clause speak of the use of "negatives." Nor does it speak of "stripping, masking, opaquing, and imposition of negatives." The ITU's contract spells out in detail the types of machines, preparatory processes, and components employed in making ready a final proof "for the camera", it goes no further than the camera.¹³

On the other hand, the Pressmen's contract clearly and specifically states that "all work in connection with offset plate making, including camera operation, all darkroom work, stripping, lay out, opaquing and

¹³ The provision that the Employer shall not make any contract using the word "stripping" to cover any of the work described in the ITU's jurisdictional clause refers to the confusion of terms in the industry which occurs because the word "stripping" is occasionally used to mean the pasteup operation which takes place before the final proof is sent to the camera. "Paste up" should properly refer only to composition before the camera and "stripping" should properly refer only to the imposition of negatives in preparation of the flat.

platemaking” are within the jurisdiction of the Pressmen. The language of the contracts leaves little room for doubt.

2. Company, area, and industry practice

Prior to October 1965 the Employer did not perform any of the work in dispute, so its practice is limited to the assignment to employees represented by the ITU, who performed the work for only 2 or 3 days before the Pressmen first challenged their right to the work.¹⁴ The practice throughout the industry is not consistent. The work in dispute is performed in some shops by typographers, in others by pressmen, and in still others by lithographers, stereotypers, or photo-engravers. Although in the Denver area it seems that pressmen perform the work in many more shops than do composing room employees, the practice is nevertheless as diverse in the area as in the industry. Neither party's claim is substantially favored by company, area, or industry practice.

3. Relative skills and efficiency of operation

Both Unions claim that their members possess sufficient skill to perform the work in dispute, and both claim it is more efficient to assign the work to the employees they represent.

The ITU argues that the work in dispute requires skills peculiar to typographers, such as a knowledge of type faces, type measurements, and composition and justification of pages. We agree these skills are peculiar to typographers, but they are skills employed in the markup of copy, the paste makeup, and the making of a final proof ready for the camera; they are not skills necessary to the job of stripping, masking, opaquing, imposition of negatives, and the burning and preparing of plates.

Both the ITU and the Pressmen have schools throughout the country for the training of members. While it may be true that the ITU's system of schools is more extensive, nevertheless the record shows that each has a school located in the Denver area, and the schools of each prepare some of their members for the performance of work such as that in dispute herein. While it also appears that in the

¹⁴ On April 28, 1966, the Pressmen filed with the Board a motion to reopen record, which states that, following the hearing herein, the Employer assigned a portion of the disputed work to typographers and a portion to pressmen, and on April 25, 1966, assigned all portions of the disputed work to pressmen. On May 2, 1966, the ITU filed with the Board a motion in opposition to respondent's motion to reopen record, in which it states that the Employer has not assigned the disputed work to either party since the hearing, but rather has allowed the work to be performed alternately by typographers and pressmen while awaiting a decision by the Board. We find it unnecessary to resolve this conflict. Whichever statement of events we assume to be true, we still would conclude that the Employer's practice favors the claim of neither party. Accordingly, we hereby deny the motion to reopen the record.

Denver area the ITU may claim more members who have been thus trained, this is not a significant factor herein. The job at this Employer's shop was being performed by one employee, and there is no indication that the Employer expects to expand its offset work. It suffices to say the record shows that approximately 12 of the 18 employees in the composing room and 4 of the 7 in the pressroom are capable of performing the work with sufficient skill.

The Employer located the offset equipment it had purchased in an area adjacent to the composing room on the second floor of its shop. The work was performed under the general supervision of Andrew Fridlund, plant superintendent of printing operations. The ITU argues that it is more efficient to locate the work in or near the composing room because the work in dispute is the next step in the process after the final proof, and because it is easier for Fridlund to supervise the work if located nearby. Furthermore, it argues that it would be less economical to assign the work to pressmen, because it would necessitate hiring an additional pressman, and presses may possibly have to be shut down in order to have a man leave to make a plate.

If it is more efficient to have the work in dispute located on the second floor because it follows the proof-making process and because of overall supervision, it would be most efficient to have the entire shop located on the same floor, for both the pressroom and composing room are supervised by Fridlund. We agree that it would be more efficient to locate the work near the composing room *if* it were to be performed by composing room employees; but *only* in that event. In the instant case, the final proof is sent out of the shop for the camera and negative work. It is no more inefficient to have it returned to the first floor than the second. There is no showing that it would not be feasible to leave the equipment where it is, even if a pressman were to perform the work, and the record shows that, in any event, it would be a simple task to place it in the pressroom area. The record does not support the contention that assignment of the work to pressmen would necessitate hiring an additional pressman. It shows, on the other hand, that there is sufficient work in the shop to keep an additional pressman busy if one be hired. Testimony to the effect that pressmen could perform the work in dispute without interruption of the running of the presses was not effectively refuted, and, as the pressroom often works while the composing room employees are not on duty, it may be more efficient to have present at all times an employee who can make the necessary plates in the event one is ruined on the presses (a not unlikely prospect, as the record shows).

In sum, the skills of both the pressroom and composing room employees are substantially equal, and neither efficiency nor economy of operation demands an assignment to one rather than the other.

4. Conclusion as to the merits of the dispute

Upon consideration of all pertinent factors, we shall assign the work in dispute to pressmen.¹⁵ They are at least as skilled in the performance of the work as composing room employees, and it will be at least efficient to employ them in the work as it would to employ composing room employees. The assignment of the disputed work to them is not inconsistent with area or industry practice, or with any firmly established practice on the part of the Employer. The Employer remains neutral with respect to the assignment, and assigning the work to pressmen will not result in loss of work to the composing room. The contract of the Pressmen clearly covers the work in dispute, while the contract of the ITU clearly does not.

The ITU urges that applying a substitution of functions test to the functions in dispute demands a conclusion that the work, at least up to the burning of the plate, be assigned to composing room employees. We do not agree.¹⁶ Under the letterpress process, the "locked-up" chase itself is sent either to the pressroom to be locked on the presses, or to the stereotyper, who prepares a stereotype plate for use on the presses. In either case, the work of the composing room employees ceases not at the point that a plate is sent to the pressroom, as contended by the ITU, but rather when a final proof is made or pulled, and the chase is finally locked up.

The work in dispute is more truly a substitute for the functions of the stereotyper than for those of the composing room employees. It is the stereotyper in the letterpress process who prepares whatever plates are necessary. The stereotype work in the instant shop has always been performed by an independent stereotyper, not by any employee of the Employer, and no one other than the Pressmen and the ITU seeks the work. Thus, the work in dispute, in our view, does not substitute for functions which in the past have been performed by any of the Employer's employees.

This award is limited to the work of stripping,¹⁷ masking, opaquing, imposition of negatives, and burning¹⁸ and preparing of plates for use on the Employer's offset presses; i.e., all the work performed in the offset platemaking process in this Employer's shop after negatives

¹⁵ Cf. *International Printing Pressmen (J. R. Condon & Sons, Inc.)*, 148 NLRB 356; *Long Island Typographical Union No. 915 (Sinclair Mansfold Products, Inc.)*, 149 NLRB 1596; *New York Printing Pressmen's Union No. 51 (Stuyvesant Press Corporation)*, 143 NLRB 167.

¹⁶ We do agree with the ITU that there is no valid reason to split the work at the point where the flat is ready for the vacuum frame.

¹⁷ The term "stripping" is used here, and throughout our decision, to refer to the stripping or imposition of negatives made from a final proof onto a flat which will be placed in the vacuum frame. It is not used to refer to any work which comes "before the camera."

¹⁸ The placing of the flats and sensitized plates in the vacuum frame and employing the arc lamp to "burn" the image of the negatives onto the plates.

made from final proofs have been returned to the shop from the outside trade shop or shops who make them. This is the only dispute before us.

We shall, accordingly, determine the existing jurisdictional dispute by awarding the disputed work to pressmen represented by the Pressmen rather than to typographers (composing room employees) represented by the ITU. In making this determination, we are assigning the disputed work to the employees of Bell Press, Inc., d/b/a Golden Bell Press, Inc., who are represented by the 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 this proceeding, the National Labor Relations Board makes the following determination of dispute

Pressmen employed by Bell Press, Inc., d/b/a Golden Bell Press, Inc., who are represented by Offset Workers, Printing Pressmen and Assistants' Local Union No. 40, International Printing Pressmen and Assistant's Union of North America, AFL-CIO, are entitled to perform the work of stripping, masking, opaquing, and imposition of negatives, and the burning and preparing of plates for use on the Employer's offset presses.

Harrah's Club and International Alliance of Theatrical Stage Employees & Motion Picture Operators of the United States and Canada, Local 363, AFL-CIO

Harrah's Club and Donald W. Rux. *Cases Nos. 20-CA-3009, 20-CA-3009-2, and 20-CA-3338. May 10, 1966*

DECISION AND ORDER

On October 21, 1965, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions and the General Counsel cross-exceptions to the Trial Examiner's Decision together with supporting briefs. Respondent also filed a brief in answer to the General Counsel's cross-exceptions.