

(c) Notify said Regional Director for Region 26, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.⁴¹

⁴¹ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 26, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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 notify our employees that:

WE WILL NOT impose on Virginia Clark, Frances Carolyn Bridges, Gladys Adamson, Sharon Whitehurst, or any other employee, discriminatory rules or practices with respect to absence from work, or otherwise discriminate against employees in regard to their hire or tenure of employment or terms or conditions of employment, because they join or assist International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization.

WE WILL NOT threaten to take away any privileges from our employees if they designate the IUE or any other labor organization as their bargaining representative.

WE WILL NOT maintain or enforce any regulation or sign prohibiting employees from distributing literature on behalf of the IUE or any other labor organization in our parking lot or in any other nonwork area of our premises.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL expunge from the personnel records of Sharon Whitehurst and Frances Carolyn Bridges the notations indicating that they were absent without notice on November 29, 1965, and will enter thereon notations indicating that they were absent that day after proper notice and with permission.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the IUE or any other labor organization.

GENERAL INDUSTRIES
ELECTRONICS COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, Telephone 534-3161.

New York Printing Pressmen's Union No. 51,¹ International Printing Pressmen and Assistants Union of North America, AFL-CIO and New York Press Assistants' Union No. 23,² International Printing Pressmen and Assistants Union of North America, AFL-CIO and The Great Atlantic & Pacific Tea Co., Inc.,³ and New York Paper Cutters' & Bookbinders'⁴ Union No. 119, International Brotherhood of Bookbinders, AFL-CIO. Case 29-CD-30.

February 20, 1967

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by The Great Atlantic & Pacific Tea Co., Inc., alleging a violation of Section 8(b)(4)(D) of the Act by the Press Assistants. 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 Press Assistants rather than to employees represented by Local 119. Pursuant to notice, a hearing was held before Hearing Officer Jordan Ziprin on September 12 and 13, 1966. All parties appeared at the hearing and were afforded full opportunity to be heard, to 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 Employer, the Press Assistants, and Local 119 have 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.

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

¹ Herein called the Pressmen.

² Herein called the Press Assistants.

³ Herein called the Employer.

⁴ Herein called the Local 119. 119-A is an auxiliary of Local 119.

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Maryland corporation engaged in the business of selling groceries and produce, and that during the past 12-month period it had sales in excess of \$50,000 to customers located outside the State of Maryland, and that during this same period it had a gross volume of business in excess of \$500,000. The parties further stipulated, and we find, that the Charging Party is engaged in interstate commerce within the meaning of the Act, and we also find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Press Assistants, Local 23, the Pressmen, Local 51, and Local 119 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Controversy*

The work in dispute is the job of assisting the pressmen in the operation of the Cadet Rotogravure Press, herein called the Cadet press, which prints can and glass goods labels at the Employer's Brooklyn, New York, plant.

B. *The Basic Facts*

The record indicates that, for approximately 25 years, the Employer has operated a four-color Weiss rotogravure press manned by a pressman and a Local 119 flyboy for the printing of various labels. In 1964, as a result of breakdowns on the Weiss press the Employer ordered the five-color Cadet press. In June 1966 the Cadet press first commenced operation on a noncommercial basis; the Employer transferred the Local 51 pressmen and the Local 119 flyboy from the Weiss press to operate the Cadet press. At this juncture a round of discussions between representatives of the Local 51 Pressmen, the Local 23 Press Assistants, and the Employer (whose bargaining representative was the Printers League) began. The Employer alleges that William Cenera, president of Local 51, asserted on several occasions that, "The press would not run unless there was a press assistant on that press." Cenera denied making this statement.

In a 1964 decision⁵ the Board resolved a dispute involving the same parties, but concerning the operation of a different type of press, the Champlain six-color press. The Board assigned the work of assisting the pressmen to a Local 119 flyboy, and in so doing relied on the fact that a Local 119 flyboy

had performed similar functions for a substantial period of time on the Weiss press.

Both the Weiss and Cadet presses produce labels for the Employer's can and glass goods. The Employer alleges that the Cadet press is a direct replacement for the Weiss press and points to the fact that the Cadet press uses the same paper and ink, the same cylinders (valued at \$80,000) as were used on the Weiss press, and produces a four-color label indistinguishable from that produced on the Weiss press. On the other hand, the Cadet press is capable of producing a five-color label while the Weiss press can produce only a four-color label. To date only four-color labels have been produced on the Cadet press, but it is believed that its full capacity will be utilized in the future. In addition, the Cadet press when operating properly can produce more labels per hour and is designed in such a way as to minimize manual adjustments.

There were three Local 119 flyboys assigned to the Weiss press, one for each of three shifts. The flyboys assisted in the "make ready" operations, a process consuming some 4 hours on the Weiss press, during which the flyboy assisted the pressmen in putting on a new roll of paper, washing the ink pots, obtaining what ink or solvent might be necessary, removing the skid of printed labels from the previous run and sweeping up. While the press was in operation the Local 119 flyboy's major task was scooping up the printed labels in bundles of 1000 and placing them on a skid after which the labels were transported to another portion of the plant for finishing operations. The Local 119 flyboy's functions on the Cadet press are substantially the same as on the Weiss press.

C. *Contentions of the Parties*

Both the Employer and Local 119 claim that the factors of plant practice acquiesced in by the Press Assistants and supported by the Board's determination in 146 NLRB 1101, *supra*, avoidance of loss of jobs inasmuch as the Cadet press is a direct replacement for the Weiss press, economy, and efficiency of operation militate in favor of assigning the work in dispute to the Local 119 flyboys.

The Press Assistants contends that past practice, area practice, and contract interpretation support an assignment of the work to it.

D. *Applicability of the Statute*

The charge herein alleges a violation of Section 8(b)(4)(D) of the Act. The Employer alleges that William Cenera, president of Local 51, stated on several occasions that "The press would not run unless there was a press assistant on that press." Two representatives of the Printers League so testified. Cenera denies making such statement. The record is clear, and no contrary contention is made,

⁵ *N Y Paper Cutters & Bookbinders Union No 119 (The Great Atlantic & Pacific Tea Co.)*, 146 NLRB 1101.

that Cenera acted as the spokesman not only for his own union, Local 51, but for Local 23 as well.

Despite Cenera's denial, 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.

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

1. Collective-bargaining agreements

Section 71 of Local 23's contract with the Employer contains the following language which the Press Assistants argues requires an assignment of the work in dispute to it.

Rotogravure presses up to and including five units shall be run by one pressman and one assistant.

The Cadet press is a five-unit and the Weiss press a four-unit press. However, this language was part of Local 23's contract with the Employer as far back as May 1964, at which time the Weiss press was being operated by one pressman and one Local 119 flyboy. No grievance was at that time filed, or other attempt made to alter the crew on the Weiss press, although the record is clear that the Local 23 officials were aware of the complement on that press. It is also undisputed that a pressman and a Local 119 flyboy have operated the Weiss press for approximately 25 years.

2. Company and industry practice

It is undisputed that members of Local 119 have assisted the pressmen in the operation of the Weiss press for a substantial number of years. Local 119 and the Employer assert that the Cadet press is nothing more than a replacement for the Weiss press inasmuch as it produces labels indistinguishable from those produced on the Weiss press, uses the same cylinders as were used on the Weiss press (valued at some \$80,000), the same ink, paper, etc. The Press Assistants contends that the Weiss and Cadet presses are two different presses and that the Cadet press is not simply a replacement for the Weiss press. They point out that the Weiss press is only a four-color press, while the Cadet press is a five-color press, the fifth unit of which can be used either to produce labels with an additional color or to perform the varnishing operation, which, if a four-color label were printed on the Weiss press, would have involved an additional operation. The Employer acknowledges that it will ultimately utilize the Cadet press to its full capacity.

In the 1964 case, *supra*, involving the Champlain six-color press and the same parties, the Board, in

assigning the work on that press to a pressman and a Local 119 flyboy, noted that a Local 119 flyboy had been engaged in assisting the pressman on the Weiss press for a substantial period of time. The Press Assistants contends that the Board was in error in that case; that while the lifting-off operation is clearly the province of the Local 119 flyboys, other work performed on and around the press is work that should belong to the Press Assistants. Thus the Press Assistants asserts in its brief that, if necessary, the complement on the Cadet press should include a Pressman, assistant pressman, and a Local 119 flyboy. Mitigating against any such resolution of this dispute is the fact that the Weiss press was operated successfully with a complement of only two workers, a pressman and a Local 119 flyboy, and the Cadet press, although it represents an improvement over the Weiss press, is essentially a replacement for it.

Although the Press Assistants contends that the industry practice is that Local 119 flyboys perform no other work on presses other than the lifting-off of printed material, and provided evidence to support this contention, we do not find this factor in this case to favor an assignment to the Press Assistants. Only five of the Weiss presses were ever manufactured, one in the Employer's plant, three which cannot be located, and one which is inoperable. The Cadet press was manufactured to the Employer's specifications so as to accommodate the cylinders of the Weiss press and which Mr. Reed, the operating assistant to the general manager at the Employer's printing plant, believes to be unique. In addition, the Board in 146 NLRB 1101, *supra*, was aware that in 1964, as now, the Local 119 flyboy's duties were not limited to the operation of lifting-off of printed material, but included the same activities that the Press Assistants now claims should be performed by them.

In sum, we find the Cadet press to be a replacement for the Weiss press and the factor of prior plant practice to favor an assignment of the work in dispute to employees represented by Local 119.

3. Relative skills, efficiency, and economy

It does not appear that special skills are necessary for performance of the disputed work; either the Local 119 flyboys or the Assistant Pressmen could perform the work equally well.

The record indicates that the Local 119 flyboys whose wage rate is somewhat lower than that of the Press Assistants can and do perform other tasks about the plant when the press is idle, but that the Assistant Pressmen would not perform such work.

It is of considerable importance that assignment of the work in dispute to the Assistant Pressmen would result in a loss of jobs of those Local 119 flyboys who were assigned to the Weiss press. On the other hand, assignment of the disputed work to the Local 119 flyboys would not cause a loss of any

work previously performed by the Assistant Pressmen.

CONCLUSION

Upon consideration of all pertinent factors, we shall assign the work in dispute to the employees represented by Local 119. They have performed almost identical work on the Weiss press, for which the Cadet press is a substitute, for a number of years. Removing them from this work would cause a loss of their jobs, whereas the Assistant Pressmen would not be so affected by an assignment of the disputed work to the Local 119 flyboys. The Assistant Pressmen's reliance upon its contract with the Employer is not persuasive in light of its continued acquiescence to the work complement on the Weiss press and the Board's acceptance of the correctness of that assignment in 146 NLRB 1101. In addition, we find the Employer's assignment of the work in dispute to the Local 119 flyboys to be more economical and more efficient. We therefore assign the job of assisting the pressmen in the operation of the Cadet Rotogravure Press, located in the Employer's printing plant, to those employees represented by Local 119, but not to that Union or its members. This determination is limited to the particular controversy giving rise to this dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the Act 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 the dispute.

1. Employees who are represented by New York Paper Cutters' & Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, are entitled to perform the job of assisting the pressmen in the operation of the Cadet Rotogravure Press, which prints can and glass goods labels at the Employer's Brooklyn, New York, plant.

2. Neither New York Printing Pressmen's Union No. 51, International Printing Pressmen and Assistants Union of North America, AFL-CIO, nor New York Press Assistants' Union No. 23, International Printing Pressmen and Assistants Union of North America, AFL-CIO, are entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the work described above to members of New York Press Assistants' Union No. 23, International Printing Pressmen and Assistants Union of North America, AFL-CIO.

3. Within 10 days from the date of this Decision and Determination of Dispute, New York Printing Pressmen's Union No. 51, International Printing Pressmen and Assistants Union of North America, AFL-CIO, and New York Press Assistants' Union No. 23, International Printing Pressmen and Assistants Union of North America, AFL-CIO, shall

notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to members of New York Press Assistants' Union No. 23, International Printing Pressmen and Assistants Union of North America, AFL-CIO, rather than to employees represented by New York Paper Cutters' & Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO.

Barnwell Garment Company, Inc., a Subsidiary of Colonial Corporation of America and International Ladies' Garment Workers' Union, AFL-CIO and Elizabeth Sine, an Individual. Case 26-CA-1941-1, -2.

February 21, 1967

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On March 16, 1966, Trial Examiner Thomas F. Maher 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and dismissed the complaint with respect to these allegations. Thereafter, the Respondent and the General Counsel filed timely exceptions to the Trial Examiner's Decision, with supporting briefs. The General Counsel also filed a motion to reopen the record for the receipt of additional evidence and moved that the Board remand the cases to the Trial Examiner for the purpose of receiving additional evidence pertaining to the alleged unfair labor practices which were dismissed by the Trial Examiner. The Respondent filed an answering brief and a brief in opposition to the motion. The Board granted the motion to reopen the hearing and upon the completion of the reopened hearing, the Trial Examiner issued a supplemental decision on September 29, 1966, reaffirming the recommendations contained in his original decision,¹ as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, the General Counsel and Charging Parties filed exceptions to the Trial Examiner's Supplemental

¹ Although the evidence obtained in the reopened hearing may in our opinion be relevant to the issues involved in this case the findings and conclusions herein are not based upon the evidence obtained in that hearing, because of the Trial Examiner's failure to make credibility determinations as to the testimony.