

Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO and Williams Press, Inc. Case 3-CD-176

June 30, 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 Williams Press, Inc., herein called Williams or the Company, alleging a violation of Section 8(b)(4)(D) of the Act by Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, herein called the Pressmen. Pursuant to notice, a hearing was held on December 13 and 14, 1966, and January 3, 4, and 5 and February 14 and 15, 1967, before Hearing Officer Nelson G. Ross. The Company, the Pressmen, Albany Typographical Union No 4, AFL-CIO, herein called the Typographers, the International Typographical Union, and Albany, Troy and Vicinity Stereotypers' and Electrotypers' Union Local No. 28, AFL-CIO, herein called the Stereotypers, 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, all parties filed briefs which have been duly considered by the National Labor Relations Board.

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.

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

I. THE BUSINESS OF THE COMPANY

The parties stipulated, and we find, that the Company, a New York corporation with its principal office and business establishment located in Albany, New York, is engaged in the business of commercial and periodical printing, including the printing of magazines, directories, and periodicals, all for other firms. During the past 12 months, the Company received a gross revenue from the sale of products valued in excess of \$12 million. In the same period, the Company has purchased materials, sup-

plies, and/or merchandise valued in excess of \$2,550,000, which were shipped directly to the Company from outside the State of New York, and has sold goods and/or merchandise valued in excess of \$8 million, which were shipped to points outside the State of New York.

Consistent with a prior finding of the Board,² the parties further stipulated, and we find, that Williams Press, Inc., and Capital Electrotype Company, Inc., herein called Capital or the Company, constitute a single employer for the purposes of the hearing in this case.

We find that the Company 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

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

III. THE DISPUTE

A. Background

Prior to 1963, the Company operated exclusively as a conventional letterpress printing house. Employees represented by the Typographers performed the traditional composing room work, ending with the production of chases containing locked-up type. Employees represented by the Stereotypers prepared these chases for the making of electrotype plates, made the plates, and then turned them over to members of the Respondent Pressmen, who put the plates on the presses prior to operating them.

In the latter part of 1963, the Company purchased a press from the Meahley, Goss, and Decker Company. At the same time, the Company began producing dycril plates on a limited basis for use on the Meahley press. Members of the Typographers and the Stereotypers worked on the manufacture of the dycril plates.³ Sometime during 1965, the Company abandoned the dycril platemaking process and converted the Meahley press from a letterset to an offset press. The press became operative as an offset press in January 1966. Members of the Typographers performed the preparatory work prior to the making of the offset plates, which work was substantially the same as that performed by

¹ The Typographers and the Stereotypers are parties to the dispute. The International Typographical Union, AFL-CIO, herein called ITU, intervened on the basis of its local's being a party to the dispute and participated jointly with the local.

² Local 28, *International Stereotypers' and Electrotypers' Union of North America, AFL-CIO (Capital Electrotype Company, Inc.)*, 137 NLRB 1467

³ The Company asserts that this work was undertaken on an experimental basis, but concedes that in the 2-year period it used this process, which it calls "letterset," some of the plates were used in the production and printing of magazines for its customers

them in connection with the manufacture of the dycril plates. However, as the Company lacked the facilities to make the offset plates and perform the work incidental thereto, this work was contracted out to another firm. Approximately 50 percent of the plates produced by this operation were used in publications.

By the summer of 1966, however, the Company had decided to replace the Meahley press with new offset presses and to create a separate offset preparatory section containing approximately 26 employees. This new section, which will also make the offset plates, will supplement and not replace the older letterpress operation.

During this period, the Company also reviewed its work assignments to determine which of its employees would be transferred to the new section. It is the work of this section which is here in dispute.

Following conferences between the Company and the several unions lasting through the summer of 1966, the Company, on September 7, 1966, awarded substantially all of the work in dispute, hereinafter described, to members of Respondent Pressmen. Thereafter, the Typographers requested that the Company arbitrate its failure to assign the disputed work to them. The Company agreed to arbitrate. The Respondent Pressmen informed the Company that if it proceeded to arbitration with the Typographers the Pressmen would call a strike. On the following day, the Company filed a charge in this case against the Pressmen alleging violations of Section 8(b)(4)(D).

The Company and the Typographers did arbitrate the grievance and an award was made on March 23, 1967, declaring that the assignment by the Company of a substantial amount of the work in dispute was in violation of the Company's contract with the Typographers.⁴ Although the other unions here involved received notice of the arbitration proceeding, only the Typographers and the Company were parties to that proceeding.⁵

B. *The Work in Dispute*

The dispute which gives rise to this proceeding concerns certain of the work involved in converting hot type to a film negative, the positioning, stripping, and opaquing of these negatives onto completed flats, as well as the tasks involved in transferring the images contained on the completed flats to aluminum plates used on the offset presses.

⁴ On March 24, 1967, the Typographers moved to reopen the instant record to receive into evidence the arbitrator's award. Copies of said motion were duly served on all of the parties herein, but no opposition to such motion has been filed. Accordingly, the aforesaid documents are hereby received into evidence and made a part of the record herein.

⁵ Because neither the Stereotypers nor the Pressmen consented to or participated in the arbitration proceeding, the award cannot bind them. We have considered the arbitration award only for the limited purpose of

The Company assigned to its employees represented by the Typographers all the work which is performed in advance of the camera, including the operation of the chronopress. The operation of this machine results in a film negative. Under the Company's assignment, these employees are also assigned the operation of the scotch-print-proof press, up to and including the removal of the print sheet from the press. All other offset preparatory work, including platemaking, was assigned by the Company to its employees represented by the Pressmen. The Typographers, however, claim all camera and darkroom work and the Stereotypers claim the platemaking.⁶

C. *The Contentions of the Parties*

The Company contends that its contract with the Pressmen compels the assignment of the work here in dispute to the employees represented by that Union. In support of this contention, the Company relies on the *Condon* case in which identical contract language was interpreted by the Board.⁷ It also contends that its work assignment is supported by custom and practice in the area. It contends further that greater efficiency in its operation will result if both platemaking and printing are performed by a single unit of employees. Referring to its original assignment of certain offset preparatory work to employees represented by the Typographers, the Company claims that such work was performed on an experimental basis and that the arrangement did not prove satisfactory.

The Pressmen contends that its contract with the Company contains express language covering the assignment of the disputed work; that employees whom it represents have the necessary skills to satisfy the Company's requirements; and that the Company's assignment reflects Board policy in grouping the employees who perform offset preparatory work and who operate the offset presses into a single bargaining unit.

The Typographers also relies on its contract in support of its claim to the disputed work. It contends, moreover, that the Company's original assignment of the disputed work reflects the correct interpretation of its contract. The Typographers also claims that industrial practice supports assignment of the disputed work to the employees whom it represents.

The Stereotypers maintains that platemaking traditionally belongs to the Stereotypers and,

interpreting the Typographers' contract with the Company *International Printing Pressmen and Assistants' Union of North America (J. R. Condon & Sons, Inc.)*, 148 NLRB 356.

⁶ At the hearing, the Stereotypers apparently claimed the operation of the camera and the work following. However, in its brief to the Board, it has restricted the scope of its claim to platemaking.

⁷ *J. R. Condon & Sons, Inc.*, 148 NLRB 356.

further, that the similarity between the work involved in the preparation of offset plates and dycril plates, which work was previously done by its members, compels the assignment of offset platemaking to the employees it represents. The Union also relies on its contract in support of its jurisdictional claim.

IV. THE APPLICABILITY OF THE STATUTE

The charge, which was duly investigated by the Regional Director, alleges a violation of Section 8(b)(4)(D) of the Act. The Regional Director was satisfied upon the basis of such investigation that there was reasonable cause to believe that a violation had been committed and therefore directed that a hearing be held in accordance with Section 10(k) of the Act. On the basis of the entire record, including the Pressmen's threat to strike over any application of the arbitration provisions of the contract between the Company and the Typographers, we find that there is reasonable cause to believe that a violation of the Act has occurred and that the dispute is properly before the board for determination.

V. THE MERITS OF THE DISPUTE

Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various relevant factors.⁸ 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.⁹ In this case, we consider

the following factors to be determinative of the issues here involved:

A. Provisions of the Collective-Bargaining Agreement

As we have said in the *Condon* case,¹⁰ it is clear that the Pressmen's contract with the Company is intended to cover offset preparatory work. This contract provides that:

It is understood that the jurisdiction of this contract extends over all printing presses including offset and letterpress printing presses and associated devices, *all work in connection with offset platemaking, including camera operation, all darkroom work, opaquing and platemaking.* [Emphasis supplied.]

This contract, effective October 1, 1965, and continuing to the present time, constitutes a specific assignment of the disputed work to the Pressmen prior to the occasion of the dispute herein. Again, for the reasons stated in the *Condon* case (*supra*), we find no merit in the contention of the Typographers that its contract, which is identical to the one previously considered, entitles that Union to the work which it claims.¹¹ Although the Stereotypers' contract differs from the one considered in *Condon*, it contains no language which can be construed as specifically assigning offset platemaking to the Stereotypers.¹² It is noteworthy, in this respect, that the Stereotypers has on occasion specifically included offset platemaking in the jurisdictional provisions of contracts negotiated with other firms.

⁸ *NLRB v Radio and Television Broadcasting Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U S 573

⁹ *International Association of Machinists, Lodge No 1743 (J A Jones Construction Company)*, 135 NLRB 1402

¹⁰ *J. R Condon & Sons, Inc*, 148 NLRB 356

¹¹ The Typographers' contract provides in relevant part

Jurisdiction of the Union and the appropriate unit for collective bargaining is defined as including all composing room work and includes operators of all photo-typesetting machines . employees engaged in processing the product (either paper or film) of photo-typesetting machines including development, proofing, correcting, waxing, and makeup, *and employees engaged in paste-makeup with reproduction proofs* and/or the product of photo-typesetting machines *Paste-makeup is the assembly and makeup of the completed copy for the camera used in the plate-making process, including waxing or pasting into position on flats of all type, reproduction proofs, art work, photostats, product of photo-typesetting machines, photographs, illustrations, and hand-lettered illustrative border and decorative material, pen-ruling, photoproofing, correction, alteration and imposition of the completed copy for said camera. The aforementioned photostats, [sic] photographs will be used in paste-makeup when they can be so used without sacrifice of quality or duplication of effort- Paste-makeup copy must be complete and ready for the camera used in the platemaking process before being sent to any other department*

No employer shall make any other contract covering any of the above work, especially no contract using the word "stripping" to cover any of the work above-mentioned [Emphasis supplied]

¹² The aforementioned contract provides in material part

The jurisdiction of this Union shall include all branches of Stereotyping Electrotyping and all methods of printing plate making and processing (including, but not limited to, rubber and plastic), 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.

All work that is required for any photosensitive process for the manufacture of *relief* printing plates for printing presses, viz Dycril, Photopolymer, Nylon, Magnesium, Fairchild, Aluminum, etc . and the manning of all machines required to produce all photosensitive and relief printing plates shall be the work of the members of this Union The [Company] shall not execute a contract at any time granting jurisdiction of the aforementioned work and processes to any other group or Labor Union

[A]ll work in the handling and conditioning of photosensitive materials in the Dycril platemaking process or similar processes, exposing such materials to any type of light, the etching of such exposed materials, and curing, all related operations pertaining to platemaking shall be done by Electrotpe molders. . [Emphasis supplied]

B. Other Considerations

Other factors usually considered by the Board in jurisdictional dispute cases provide little assistance in determining the instant dispute. None of the unions involved in this case has been certified. While the parties concede a similarity between the disputed work and the work previously done by the Typographers and the Stereotypers, it appears that the original assignment did not prove satisfactory to the Company. The record is inconclusive with respect to area practice, industrial practice, and the degree of competence and skill held by the competing groups of employees.

In view of the foregoing, particularly the evidence pertaining to the provisions of the contract between the Company and the Pressmen which explicitly grants jurisdiction over the disputed work to employees represented by that Union and the fact that the Company bases its assignment on what it believes to be a more desirable assignment of work and desires no change, we find that the employees represented by the Pressmen are entitled to the disputed work and we shall determine the dispute

in their favor. In making this determination, we are assigning the disputed work to employees who are represented by the Pressmen and not to the Pressmen or its members. Our present determination is limited to the particular dispute which gave rise to this proceeding.

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 hereby makes the following Determination of Dispute:

Employees employed by the Company who are represented by Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, are entitled to perform the offset preparatory work of camera operation, darkroom work, stripping, opaquing, and platemaking which is performed in connection with the Company's operation at its plant in Albany, New York.