

**Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO and Williams Press, Inc. and Albany Typographical Union No. 4, AFL-CIO.** Cases 3-CD-249 and 3-CD-292

November 27, 1970

## DECISION AND DETERMINATION OF DISPUTES

BY CHAIRMAN MILLER AND MEMBERS  
FANNING AND JENKINS

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed in Case 3-CD-249 by Williams Press, Inc., alleging that Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO,<sup>1</sup> violated Section 8(b)(4)(d) of the Act. A duly scheduled hearing was held before Hearing Officer Arthur E. Neubauer on October 28-31 and November 12-14, 1969. Thereafter Williams Press, Inc., filed additional charges against Pressmen in Case 3-CD-292, and the National Labor Relations Board granted a motion to consolidate. The record was reopened, and a further hearing was held on January 27 and 28, 1970, before Hearing Officer Neubauer. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. Thereafter, Williams Press, Inc., the Pressmen, and the Albany Typographical Union No. 4, AFL-CIO,<sup>2</sup> filed briefs.

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 these cases to a three-member panel.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. Upon the entire record in these cases, including the aforementioned briefs, the Board makes the following findings:

### I. THE BUSINESS OF THE COMPANY

The parties stipulated, and we find, that Williams Press, Inc., is a New York corporation located at Albany, New York, engaged in printing, including the printing of magazines. During the past 12 months Williams Press' gross revenues exceeded \$10 million, and during that time it received materials and supplies valued in excess of \$2-1/2 million which were shipped directly to it from outside New York State, and sold goods valued in excess of \$6 million which were

shipped directly to points outside New York State. The parties stipulated, and we find, that Williams Press, Inc., is an employer engaged in commerce within the meaning of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, and Albany Typographical Union No. 4, AFL-CIO, are labor organizations within the meaning of the Act.

### III. THE DISPUTE

These cases involve certain offset preparatory work described more fully below. The work involved in Case 3-CD-249, referred to for convenience as Case 249, is black and white work; and in Case 3-CD-292, referred to as Case 292, is color work.

#### A. *Background and Facts of the Disputes*

Williams Press, which specializes in the manufacture of weekly magazines, employs approximately 350 employees who are represented by the Pressmen, and about 180 represented by the ATU. Prior to the introduction of the process which gave rise to the present disputes, the Employer was primarily a letterpress shop. Employees represented by the Pressmen performed preparatory work using the hot metal or scotch print conversion method following an award by the Board in a case involving the same parties as herein, 166 NLRB 693. In December 1967, McGraw-Hill, one of the Employer's major customers, informed Williams Press, which was printing its Business Week magazine, that by January 1969 Business Week would have to be produced by the offset process, and that Williams Press would have to convert to offset by the January 1969 deadline. In January 1968 McGraw-Hill informed Williams Press that as a part of the required change, it would have to institute a "cold type" typesetting process using equipment such as the "fototronic" machine which is involved in the disputes here.

In early 1968, according to General Plant Superintendent Mezey, the Employer conferred with the Pressmen and undertook a retraining program because it determined that it did not have enough qualified offset pressmen or offset preparatory people. In August 1968, at which time it was engaged in contract negotiations with the Typographers, the Employer told representatives of that Union of its

<sup>1</sup> APP or Pressmen

<sup>2</sup> ATU or Typographers

plans for the new equipment. Their contract, executed in January 1969, is asserted by Williams Press and ATU in support of an award of the disputed work to ATU. According to Mezey, in January 1969, the Employer first told representatives of the Pressmen of its intent to give work resulting from the introduction of the fototronic machine, including the black and white work involved in Case 249, to the Typographers. Mezey testified that President Moore of the Pressmen said he "wouldn't be accountable for what would happen if we insisted on doing this work with the Typographical Union." This was followed by a letter from the Pressmen in February advising the Employer that the Pressmen would strike if work under its jurisdiction were given to other employees. Thereafter, in April, an "interim" arrangement was agreed on, whereby the Pressmen would perform the black and white and color work involved in both of these cases, as some of the equipment which would have made it practical for the Typographers to do the work was not yet operational.

In October 1969 the Company informed both Unions that its equipment was at hand and that the work here involved would thenceforth be performed by employees represented by the Typographers. On November 19, 1969, the Pressmen allegedly insisted that the color work involved in Case 292 belonged to them and that they would not handle materials at a later stage if this work was not done by them. The Employer acquiesced and reassigned this work to the Pressmen. In January 1970 the U.S. District Court, N.D.N.Y., issued a temporary injunction against the Pressmen, and the ATU members have been performing the work since then.

Although pressmen lost work under the reassignment, none have been laid off at any time due to the new process. On the contrary, there is testimony that the Employer needs more pressmen than the Union has been able to supply. In contrast, there is evidence that between 60 and 100 typographers have been displaced as the result of the changeover to the offset process.

### B. *The Work in Dispute*

The disputed work essentially involves attaching, or "stripping in," illustrations to a pasteup of a page which already contains editorial matter; making a contact negative of the pasted-up page; and making any corrections on contact negative. The editorial matter, the product of the fototronic machine, has previously been processed and pasted to clear acetate sheets by compositors, represented by the Typographers. The illustrations must then be attached to the

<sup>3</sup> If a glossy photograph is received from the customer, the Pressmen make a negative for the compositors. There is no dispute as to this

acetate. This is where the disputes center. Two categories of the work are in dispute. In Case 249, the illustrations to be inserted are black and white; in Case 292, they are of two or more colors, one of which may be black. (Illustrations of "two or more colors" are not to be confused with "four-color process" illustrations, in which the colors are integrated to produce additional colors. The four-color process work is performed by the Pressmen and is not in dispute.)

Compositors, represented by the Typographers, perform the work immediately preceding that involved herein, pasting on the editorial matter, and the assignment of that work to them is not disputed.

The illustrations are pasted in spaces on the page not containing editorial matter. They are usually supplied by the customer in the form of positive or negative film.<sup>3</sup> If in color, they are in the form of one positive for each color, and must be pasted up in the form of an overlay, one for each color. The positive containing black portions of the illustration is positioned in a space on the acetate sheet, then an overlay is pasted up for each additional color. A positive proof is then made of the page and submitted for approval by the customer's representative (the editor) on the Employer's premises. After such approval, a reproduction negative is made of each sheet for the final approval of the customer's representative. All of this work, except the making of the positive proof for the editor's initial approval, which the Pressmen does not claim, is in dispute.

After final approval by the editor, the page negative goes to the Pressmen for stripping in on flats, the first step of the platemaking process. The performance of this work by the Pressmen is not disputed.

### C. *Contentions of the Parties*

The Employer contends that the assignments to the Typographers were compelled by the pertinent collective-bargaining agreements; that this work historically has been done by employees represented by the Typographical Union; that its assignments caused no job loss to employees represented by the Pressmen, and preserved jobs for employees represented by the Typographers; that the prior case involving these parties is not applicable here because a different process is involved; and that efficiency, quality, cost control, customer demands, and the nature of the process in relation to customer demands necessitate the assignments to Typographers. In support of these contentions, the Company notes that the entire purpose for introduction of the new process is to "close" the magazine as quickly as possible to

function.

insure that the news which reaches the public is as current as possible.

The Typographers contends that its contract compels assignment to employees represented by them. Other factors relied on are industry practice, relative skills, customer's requirements and demands, scheduling of production, efficiency, and economy, and effect of the assignment on the employment of the members of the crafts involved, and availability of skilled help.

The Pressmen contends that assignments to its members are supported by practice in the plant. It also urges that the language in its collective-bargaining agreement with the Employer covers the work at issue. In support of this point, it notes that the language in its current contract is identical to that before the Board in the prior case involving these same parties. Its third contention is that the issue is controlled by the Board's decision in the prior case, 166 NLRB 693.

#### D. *Applicability of the Statute*

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

The facts show that the Employer assigned the disputed work to its employees who are members of the Typographers, and that they wish to perform the work.

In Case 249 the record gives reasonable cause to believe that Respondent, by its president, Charles Moore, orally, and by letter dated February 10, 1969, threatened that it would strike if the black and white work in dispute were assigned to employees other than those represented by it.

In Case 292 the record gives reasonable cause to believe that Respondent, by Moore, threatened that its members would not handle materials involved in the platemaking process if the color work here involved were not assigned to employees represented by it.<sup>4</sup>

We therefore find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, and that the disputes are properly before the Board for determination under Section 10(k) of the Act.

#### E. *The Merits of the Disputes*

As the Board stated in *J. A. Jones Construction Company*,<sup>5</sup> we shall determine the appropriate assignment of disputed work in each case presented for resolution under Section 10(k) of the Act only after

taking into account and balancing all relevant factors. In our judgment, the following factors are relevant here:

##### 1. Employer preference

The Employer assigned the work, and prefers an award, in both cases to employees represented by the ATU. This factor therefore favors an award to the typographers.

##### 2. Job losses and availability of craftsmen

The pressmen performed both tasks during the interim period, and the color work for a period thereafter, and lost it as a result of the Employer's permanent assignment of the work to typographers. However, one-third or more of the typographers employed by the Employer have been displaced as a result of the new process. In contrast, no pressmen have lost their jobs. Moreover, the Employer needs more pressmen than are presently available. On the whole, therefore, this factor also favors an award to the typographers.

##### 3. Efficiency, customer demands

Witnesses for the Employer testified that additional handling of the materials resulting from having them passed back and forth between the compositors and the pressmen could damage them; and that time is lost because of the interruption in workflow. The Employer also presented testimony that the main reason for the new system is to shorten the time required to print the magazine. As the Employer's representative, Mezey put it: "[A]ny speedup of the process between the time the story is written and final okay is what the customer is looking for . . . . The customer is continuously looking for a completed page to okay." He emphasized that to be complete, the page must go to the editor with illustrations and pointed out that:

In the previous method, that is the scotch print method, the scotch print went back and forth between the composing room and the prep area; the Pressmen's prep area because they were stripping-in or putting in the halftone negative. On a number of occasions . . . the time element between going to the prep area and coming back into the composing room was so long and the fact that at times the customer did not okay a final proof . . . was very disconcerting to the editor and to the customer. This is one of the reasons why the editors were very, very insistent on our supplying to them a completed proof of the page that was

<sup>4</sup> At the hearing, the Hearing Officer reserved judgment on the Pressmen's motion to dismiss the charges in Case 3-CD-292. The motion is hereby denied.

<sup>5</sup> *International Association of Machinists, Lodge No 1743, AFL-CIO (J A Jones Construction Company)*, 135 NLRB 1402

going to be printed in the magazine. Now, if we went along with the same idea in this fototronic setup, we would not be increasing the speed in which a page would be okayed by the editor, and this was the primary reason for going to the photo composition.

This factor favors an award to employees represented by ATU.

#### 4. Collective-bargaining agreements

The Pressmen's contract with the Employer reads: "the jurisdiction of this contract extends over all printing presses including offset and letter press printing presses and associated devices, all work in connection with offset platemaking, including camera operations, all dark room work, opaquing and platemaking."

The contract, and supplement, entered into by the Employer and the Typographers after the negotiations referred to above, provide in relevant part,

When type is used at Williams Press, Inc., for photo typesetting, employees covered by this agreement will process the product of the photo type setting machine up to and including work prior to the burning of the offset plate.

The supplement defines the jurisdiction of the Typographers to include the following operations:

1. Paste up in page form of the product of the photo type setting machine and/or furnished line copy.
2. Camera work and processing necessary to produce a line negative of the pasted up copy.
3. Completion of page make up by insertion into the page negative of screened halftones and/or line negatives supplied by the customer.
4. Photo proofing of the above referred to page negative.
5. Proof reading of the photo proof against publisher's furnished dummy or layout.
6. Page line up including line up of bleed pages.
7. All corrections that can be accomplished in the operations described above.

It is the intent of the parties that the made up page negative will be as complete as possible before leaving the composing room. Specifically excluded, however, from this operation are:

- (a) the photographing and screening of photographs supplied by the customer, and
- (b) The assembly into the page make up of copy or negatives any component of which is two or more colors.

<sup>6</sup> The other commercial printer assigned the black and white work to compositors. However, there is no Pressmen's Union at that company, and the record is not clear as to whether color work was assigned to compositors.

Both these contracts can be interpreted as covering the black and white work; this factor therefore favors neither Union insofar as the work disputed in Case 249 is concerned. The "two-or-more color work" in dispute in Case 292 arguably is covered by the Pressmen's contract and specifically excluded from the Typographers contract. The Employer and the ATU contend that the exclusion in paragraph (b) of their contract of assembly of copy "any component of which is two or more colors" does not refer to the color work in dispute, but rather to insertion of "process" work which is assigned to the pressmen without dispute. As indicated above, process or "color separation" work involves the use of two or more basic colors to produce a third color by making an overlay of the basic colors. The work in dispute, by way of distinction, involves the use of different colors which, although they may be in close register, stand alone. The president of the ATU Local, an employer witness, testified that the parties to the contract intended and understood the exclusion to refer to only process work. Although the plain language of the contract does not appear to support this interpretation, upon consideration of the entire record we cannot find that this factor clearly favors an award to either group of employees.

#### 5. Skills

There is no contention that either group of craftsmen is more skilled than the other in the performance of the black and white work, and it was conceded by a witness for the Employer that the color work could be performed equally well by the pressmen or the compositors. This factor is therefore of no assistance in resolving the disputes.

#### 6. Other factors

Other factors normally considered as relevant, such as prior awards, area and industry practice, and past practice of the Employer are of little aid in the resolution of these disputes.

The Employer has in the past assigned work of this type to the members of both Unions. The two fototronic machines in use by the Employer appear to be the only ones in the Albany, New York, area. The record contains no information as to the existence of fototronic machines in other commercial printing plants, except in the plant of one other printer who also performs this type of work for Business Week.<sup>6</sup>

In *Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO (Williams Press, Inc.)*, 166 NLRB

Two newspapers were said to use the fototronic machine, with assignment of this type of work to typographers. However, as their procedures are somewhat different from that of magazines, their practices are not helpful in determining these disputes.

693, the Board awarded work similar to that in dispute here, performed by the scotch print method, to the employees represented by the Pressmen rather than to those represented by the Typographers. The Board specifically stated, however, that that award was "limited to the particular dispute which gave rise to this proceeding." Moreover, there are several differences between that case and the instant ones, including the fact that offset printing with the fototronic machine had not been installed and was not involved in that case, the Employer's assignments and preference, the subsequent amendment of the Typographers contract, and the fact that the offset method involved in these cases was instituted because of the customer's dissatisfaction with the scotch print method involved in the prior case.

#### 7. Conclusions as to the merits

On the basis of the foregoing, it is clear that the relevant factors favor award of the work disputed in Case 3-CD-249 to the Typographers. Employer preference, job losses, and availability of craftsmen, and efficiency of operation, and customer demands all indicate such a result. Accordingly, we shall determine the dispute in Case 3-CD-249 by confirming the Employer's assignment to its employees who are represented by the ATU.

In Case 3-CD-292 most of the relevant factors are the same as in Case 3-CD-249, and correspondingly favor an award to compositors. The fact that the color work is arguably covered by the Pressmen's contract, and excluded from the Typographers jurisdiction by their contract, does not outweigh these other factors. This is especially so since the primary basis for the employer's assignment of color work is the need for efficiency, which would be impeded by an award to pressmen. Moreover, an award to pressmen would in this sense be contrary to our award of black and white work. We therefore confirm the Employer's assignment in Case 3-CD-292 to employees who are represented by the ATU.

This award is limited to the work in dispute in these cases.

#### DETERMINATION OF DISPUTES

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 these cases, the National Labor Relations Board hereby makes the following determination of disputes.

1. Employees employed by Williams Press, Inc., as typographers and currently represented by Albany Typographical Union No. 4, AFL-CIO, are entitled to strip in black and white illustrations, make a contact negative of the pasted-up page, and make necessary corrections before the work goes to the pressmen, in connection with offset process work which utilizes the fototronic machine.

2. Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above work to pressmen who are represented by that labor organization.

3. Employees employed by Williams Press, Inc., as typographers and currently represented by Albany Typographical Union No. 4, AFL-CIO, are entitled to paste up mats for two or more color illustrations in the form of overlays on acetate sheets containing editorial matter from the fototronic machines and to make the reproduction negative of the page.

4. Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above work to pressmen who are represented by that labor organization.

5. Within 10 days from the date of this Decision and Determination of Disputes, Albany Printing Pressmen and Assistants' Union No. 23, AFL-CIO, shall notify the Regional Director for Region 3, in writing, whether it will refrain from forcing or requiring the Employer, by means proscribed in Section 8(b)(4)(D), to assign the work in dispute in Case 3-CD-249 and Case 3-CD-292 to employees represented by the APP rather than to those represented by Albany Typographical Union No. 4, AFL-CIO.