

Cal-Central Press and Sacramento Lithograph Sales and News Publishing of Sacramento¹ and Lithographers & Photoengravers International Union, Local 17-L, AFL-CIO,² Petitioner. Case 20-UC-27

October 15, 1969

DECISION AND ORDER GRANTING PETITION TO CLARIFY UNCERTIFIED BARGAINING UNIT

BY CHAIRMAN McCULLOCH AND MEMBERS JENKINS AND ZAGORIA

Upon a petition of Lithographers & Photoengravers International Union, Local 17-L, AFL-CIO, for clarification of unit duly filed on March 13, 1969, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on March 26, 1969, before Hearing Officer Francis W. Hoerber. On March 26, 1969, the Regional Director issued an Order transferring the case to the Board. Thereafter, the Employer, Petitioner, and Intervenor³ 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 this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The companies designated in the caption constitute a single employer engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner and the Intervenor are labor organizations within the meaning of the Act, and both claim to represent certain employees of the Employer.

3. The LPIU filed the petition herein, to seek clarification as to whether two employees referred to as lithographic preparatory employees should properly be included in the unit of lithographic preparatory employees it currently represents under a collective-bargaining agreement between itself and

Sacramento Lithograph Sales.⁴ Petitioner takes the position that the two lithographic preparatory employees it seeks have become *de facto* a part of the lithographic preparatory employees unit it now represents, and that their inclusion in that unit is proper, both for functional reasons and because of their close community of interests with the other employees in the unit. The Employer in all respects agrees with the Petitioner's position. The appropriateness of this unit clarification proceeding is questioned by ITU, which contends that, at most, a question concerning representation exists among the employees sought by LPIU. It further contends that these employees, because of their historic inclusion therein properly belong in the unit of all mechanical employees currently represented by ITU under a collective-bargaining contract with News Publishing of Sacramento.⁵ The ITU argues in addition that its current contract with News Publishing, executed September 1, 1968, includes language identical to that of prior contracts pursuant to which the disputed employees were represented by it.

The three companies named in the caption in the instant proceeding are an outgrowth through merger and physical consolidation of four separate corporations in 1961, and now function in practically all respects as a single integrated enterprise engaged in the commercial printing business in the Sacramento, California, area. While maintaining separate corporate identities,⁶ separate complement of employees and separate books and records, these companies operate in one location,⁷ and have a single directorate and management, as well as, for the most part, common stock holders. They contract with customers under the name of Cal-Central Press.⁸ The separate corporation designated as Cal-Central, however, is not a publishing company but a sales company, employing only a complement of salesmen for its two operating sisters, News Publishing and Sacramento Litho.

News Publishing is the successor of News Publishing Company, Inc., and took over that company's employees and contracts at the time of the 1961 merger.⁹ For more than half a century, News Publishing Company, Inc., was engaged in the commercial printing business. Though News Publishing Company, Inc., traditionally employed the hot metal process in its operation, it branched

¹Hereinafter called Sacramento Litho

²Hereinafter called News Publishing

³Testimony taken at the hearing establishes that this is done for purposes of taxation and federal security clearance for employees of Sacramento Litho working on aerojet contracts

⁴This will be discussed *infra*

⁵Hereinafter called Cal-Central

⁶Its present complement consists of (a) lithographic and letterpress bindery employees, represented by the International Bookbinders and Bindery Women's Union, (b) lithograph press and letterpress operators (hot type) preparatory employees and two lithographic preparatory employees (sometimes hereinafter called "litho preparatory" or "litho prep" employees) who are the subject of the dispute

¹Hereinafter collectively called the Employer

²Hereinafter called LPIU or Petitioner.

³Sacramento Typographical Union No 46, hereinafter called ITU, was permitted to intervene on the basis of a contractual interest. Following the hearing, Sacramento Printing Pressmen and Assistants Union, Local 60, filed a letter with the Board, protesting the fact that the Regional Director had not granted a request it had made to postpone the hearing in the instant case. Local 60 represents other employees of the Employer. We find the Regional Director acted within his discretion in refusing to grant the requested postponement. Local 60 has not otherwise moved to intervene in this proceeding.

out during the 1950's into offset printing, and for a number of years employed offset printing to produce color printing and business forms printed in multiples known as the "pegboard" system, the mainstay of its offset printing work. The pegboard system was sold by News Publishing in 1964 with a resultant transfer of camera and equipment out of the plant. News Publishing, however, had contracted with the purchaser, Safeguard, to continue to perform a certain amount of the pegboard system's work because Safeguard was not prepared, following the purchase, to handle all of it. After these short term contracts ended in about 1966, some of the regular commercial work in offset printing done by Sacramento Litho was funnelled into the offset printing section of News Publishing. This kept the litho preparatory employees of News Publishing busy until their physical consolidation in 1968 with the litho preparatory employees of Sacramento Litho. In the meantime, however, the number of litho preparatory employees on the payroll of News Publishing had decreased from about 5 in 1961 to only 2 at the time of the consolidation in 1968, mainly due to the elimination of the pegboard system's work.

There has been a long history of bargaining between News Publishing and ITU. A series of collective-bargaining agreements between ITU and News Publishing and its predecessor have contained language covering employees performing cold type process printing; such language, in the understanding of the contracting parties, has covered lithographic preparatory employees employed by News Publishing. These contracts have been negotiated and administered on a multiemployer basis with the Sacramento Printers Board of Trade acting on behalf of News Publishing and several other employers in the Sacramento area. This association of employer printers signs the labor contracts on behalf of its members, and such signatures bind all of the members. The sister corporation of News Publishing, Sacramento Litho, is not a member of the Sacramento Printers Board of Trade, and contracts between this corporation and LPIU are adopted by letters of agreement between it and the union directly after negotiations between the parties.

At the time the pegboard system was sold in 1964, discussions took place between News Publishing and ITU concerning the future jurisdiction of ITU to represent litho preparatory employees. The ITU maintained that the level of work for litho prep employees should be continued and News Publishing at that time so agreed. Consequently, the following special language was contained in the 1964 contract, and was continued in the 1966 and 1968 agreement:

It is recognized that prior to the consolidation of the physical properties of News Publishing Company and Sacramento Lithograph Company, all work in the offset and lithographic process up

to the completion of a printing surface for the News Publishing Company pressroom has been performed by employees covered by this agreement. It is further recognized that after the consolidation, and the installation of the equipment formerly operated by Sacramento Lithograph Company at another location and the continued employment of employees of the Sacramento Lithograph Company, it may not be possible to continue this practice on a 100% basis as some of such employees are not represented by the Union. However, it is understood and agreed that the volume of such work performed by employees covered by this agreement shall not be reduced and in the event of an increase in the volume of such work recognized by the parties as duplication, employees covered by this agreement shall be entitled to and shall be assigned a fair share of the increased volume.

It may be noted that the language in the 1964 and subsequent agreements had not limited the ITU's representation to hot metal process employees — a restriction now insisted upon by News Publishing — but had covered all categories of printing employees in the plant. The 1964 contract in toto was, by mutual agreement of the parties, continued in effect from day to day during the 1968 negotiations and the 1968 contract did not change the jurisdictional language of the prior agreements as quoted above.

During the 1968 negotiations, however, information came to the ITU concerning the pending physical consolidation of the remaining litho prep employees into the litho prep employees' unit of Sacramento Litho (represented by LPIU), and the ITU orally reasserted its jurisdictional claim. News Publishing thereupon, for the first time during negotiations, contended that ITU's jurisdiction should be restricted to hot metal process employees. The terms of the 1968 contract simply left the matter of contract violation to be handled under the grievance procedure of the contract. Contemporaneously with the execution of the 1968 contract, however, the parties became signatories to a special letter of agreement providing that the contract in all respects, except as to its union-security clause, shall be applicable to the litho prep employees pending the outcome of the instant proceeding; and that, if and when a determination is made that the employees affected are properly a part of the ITU's bargaining unit, the newly negotiated union-security clause shall take effect as to the remaining two litho prep employees of News Publishing. During this period the transfer of the remaining two News Publishing litho prep employees to the physical location utilized by the litho prep employees of Sacramento Litho took place.

As previously indicated, in the years following the 1961 merger the three corporations comprising this Employer moved into a single building housing News Publishing, and all now occupy these

premises. The lithographic preparatory work is located in the central area of the building where, since the aforementioned transfer of the disputed employees, all 11 of the lithographic preparatory employees function. This unit, otherwise represented by LPIU in a series of collective bargaining agreements since the years prior to the merger, is presently composed of six strippers, one day shift cameraman, two platemakers, one night shift cameraman, and one night shift platemaker.

Though Sacramento Litho now employs only offset printing personnel, prior to the 1961 merger it employed personnel in both lithographic preparatory and hot metal process printing. Its hot metal process personnel were principally typesetters and a few letter pressmen who apparently were unrepresented. During the period of physical consolidation of Sacramento Litho into the News Publishing building, those employees of Sacramento Litho who were not represented by LPIU, namely typesetters and letter pressmen, immediately upon their relocation joined the two unions representing the units into which they were merged, and were covered by ITU and Printing Pressmen contracts respectively.⁹

As for the two litho prep employees, though they continued to be carried on the News Publishing payroll, work is assigned to them in the same manner as to the other litho prep unit employees, by the same supervisor, and without regard to the corporation employing them or the records in which the job is listed. These two and other litho prep employees perform identical functions and use the same skills, though the disputed employees do not have the security clearance required by the United States for work on the Aerojet contract. Hence special pains are taken by management to screen this classified work away from these two employees. This means that the disputed employees are separated from other unit employees by curtains when the latter are performing Aerojet work, and they cannot be assigned to overtime work because of the lack of adequate security measures to screen them at that time.

⁹Similarly, though it is not a determinative fact, upon their consolidation into the litho prep unit in 1968 the two litho prep employees of News Publishing joined the LPIU and, apparently, remain dues paying members of that organization.

The provisions of the LPIU contract have been applied to the disputed litho prep employees in all respects except as to pension and welfare, with the result that they enjoy the same rates of pay, hours, and other working conditions which are applicable to the lithographic unit employees. This also means that their rate of pay is higher than that of other employees on the payroll of News Publishing who remained under the coverage of the ITU contract provisions. Likewise, the skills employed by the disputed employees are wholly different from the skills of the other News Publishing employees, all of whom are now engaged in the hot metal process as contrasted with the cold metal or offset printing employed by these two and other employees in the litho prep unit.

In light of the foregoing facts, and particularly the new physical location of the two litho prep employees, their identical community of interests with the other litho prep unit employees, their common supervision, the fact that their skills are wholly different from other employees of News Publishing represented by ITU, and their functional integration into the litho prep unit, we find that they are properly within the unit of lithographic preparatory employees represented by LPIU. We see no justification for perpetuating their historical inclusion in ITU's unit of mechanical employees simply for history's sake, when the subsequent course of events has obliterated whatever appropriateness once attached to their inclusion in that unit. Accordingly,¹⁰ we find that the Board's procedures for clarifying units are properly brought into play in this case, and we shall clarify the unit represented by LPIU.

ORDER

It is hereby ordered that the existing unit represented by Lithographers & Photoengravers International Union Local 17-L, AFL-CIO be, and it hereby is, clarified by specifically including the lithographic preparatory employees previously included in the unit represented by Sacramento Typographical Union, No. 46, International Typographical Union, AFL-CIO.

¹⁰See, e.g., *Libby, McNeill and Libby*, 159 NLRB 677, 681