

Crown Cork & Seal Company, Inc., Petitioner and Philadelphia Local 14-L, Graphic Arts International, AFL-CIO-CLC¹ and District Lodge No. 1, International Association of Machinists and Aerospace Workers, AFL-CIO,² Case 4-UC-44

April 25, 1973

DECISION AND ORDER CLARIFYING UNIT

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on September 19 and 20, 1972, before Hearing Officer Morris Mogerman.

Thereafter, Crown Cork & Seal Company, Inc., herein called Employer, and the Philadelphia Local 14-L, Graphic Arts International, AFL-CIO-CLC, herein called Local 14-L, file briefs.

Pursuant to the provisions of Sections 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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. They are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. Crown Cork & Seal Company, Inc., is engaged in the manufacture of containers at its plant in Philadelphia, Pennsylvania. Both Machinists and Local 14-L have long represented employees of the Employer. By its petition herein, the Employer requests that the Board issue a unit clarification which allocates the work performing on a newly installed Drawn and Iron (herein called the D & I) line to the Machinists unit. On the other hand, Local 14-L argues that the petition should be dismissed for reasons discussed hereinafter. On the merits, it alternatively argues that employees performing the work in question belong in its unit.

Since 1939, the Employer has had a contract with Local 14-L and, since 1942, it has also had a contract with the Machinists. Neither union has been certified by the Board. In 1970, the Employer installed a new production line for the manufacture of containers, known as the D & I line.

The printing of the containers on the D & I line has been assigned to the Machinists since the line began operating. On November 7, 1970, Local 14-L wrote the Employer claiming jurisdiction over this work under its contract. The Employer denied Local 14-L's claim and Local 14-L filed a grievance, which led to arbitration. On November 29, 1971, Arbitrator G. Allan Dash sustained the grievance and awarded the work of operating the printing unit on the D & I line to Local 14-L. Only the Employer and Local 14-L were parties to the arbitration proceeding.

In the interim, between Local 14-L's filing of its grievance and the arbitration award, the Machinists instituted proceedings under article XX of the AFL-CIO constitution, complaining that Local 14-L improperly sought the D & I work. Both the Machinists and Local 14-L participated in the hearing. On July 23, 1971, Impartial Umpire David Cole, pursuant to the AFL-CIO Internal Disputes Plan, rendered his determination that Local 14-L was not in violation of article XX.

The Machinists continued to perform the work, irrespective of the Dash arbitration award and the Cole determination. Thereafter, the Machinists filed its own grievance which culminated in another arbitration award. On March 10, 1972, Arbitrator S. Harry Galfand found that the Machinists should have jurisdiction of the work in question.

On March 14, 1972, another hearing was held before Impartial Umpire David Cole. But, before any formal determination was rendered, the Machinists, on March 17, 1972, wrote the Employer, formally withdrawing any claim to the disputed work, and indicating that it would not interfere with Local 14-L's efforts to obtain the work for its members.³

In June 1972, Local 14-L instituted suit in United States District Court seeking enforcement of Arbitrator Dash's award. The Employer filed a motion with the court to dismiss or stay the proceedings. Thereafter, on June 28, 1972, the Employer filed an 8(b)(4)(d) charge and this unit clarification petition. The 8(b)(4)(d) charge was subsequently withdrawn.

Before reaching the merits, we must dispose of the procedural issues raised by the parties. Local 14-L has moved to dismiss the unit clarification petition on the grounds that: The Board does not entertain petitions to clarify units which are not certified; the Board does not clarify units in mid-contract term; the Board should defer to arbitration; and, since Local 14-L has instituted suit in United States District Court to enforce the arbitration award by Dash, the Board should not allow the Company to disrupt the existing contractual relationship and frustrate the arbitration

¹ This reflects the recent name change resulting from a merger between Lithographers and Photoengravers International Union and International Brotherhood of Bookbinders on September 4, 1972.

² Herein called the Machinists.

³ There is not requirement, of course, that there be two competing unions in order for the Board to consider a unit clarification petition.

procedure. These arguments will be treated *seriatim*.

The argument that the Board does not clarify units which are not certified⁴ or in mid-contract may be readily rejected. In the latter connection, there are certain cases⁵ in which the Board refused to clarify in mid-term, but they are distinguishable. For there the effort was to utilize the clarification procedure as a means for changing the composition of agreed-upon units by the exclusion or inclusion of employees. This case involves the question of the unit placement of employees on a new line in one of two existing units.

With respect to Local 14-L's motion to dismiss because of the arbitration awards and the District Court suit, the Board's decision in *Raley's, Inc.*, 143 NLRB 256, deserves mention in the former connection. It was held there that the Board would defer to the arbitral process in a representation proceeding where a question of contract interpretation is in issue, the parties have set up in their agreement arbitration machinery for the settlement of disputes arising under the contract, and an award has been rendered which meets Board requirements applicable to arbitration awards. This suggests an arguable basis for deferral here. But in a later case resembling the instant case, the Board did not defer. Thus in *McDonnell Company*,⁶ the issue presented was whether certain work which arose from an enlargement and extension of production operations should be allocated to one or another of existing units. There, too, two conflicting arbitration awards had issued, and one of the unions had instituted suit in District Court to enforce its award. The Board (Members Brown and Jenkins dissenting) clarified the unit,⁷ finding the work in question to be an accretion to one of the units. In so doing, it gave no weight to the arbitration awards "in view of the *ex parte* nature of those proceedings, the incomplete evidence adduced, and the conflict in the awards." The Board further decided in *McDonnell*⁸ that it would better serve the purposes of the Act for it to clarify where all the parties had fully participated in the proceeding before it than to decline to assert jurisdiction and subject the parties to additional litigation, expense, and delay, and require the court to select one of two *ex parte* arbitration awards for the enforcement without an independent analysis of the

merits. On the basis of such considerations, we will entertain the instant petition and decide this case on its merits.

Comparison of the Lines and Jobs in Question

There are three operations to be considered; the Sprat-tainer line, the D & I line, and the line in the lithographic department. The printing work on the Sprat-tainer line has been performed by the Machinists since the line was first introduced about 30 years ago. A two-piece beverage or aerosol can is produced on the line. Printing or design is applied to the can by a dry offset method of printing. The can has already been shaped by the stamping and drawing equipment before it is printed on the Sprat-tainer line. Accordingly, printing on the Sprat-tainer line is referred to as "printing in the round."

Printing on the D & I line is essentially the same. In fact, before the D & I line was operational, prototypes were run on the Sprat-tainer line. Thus, both lines produce a two-piece can and both lines use the dry offset method of printing. The main difference between the two lines is that the D & I line can print two cans at the same time whereas only one can at a time can be printed on the Sprat-tainer line; and the printing plates, although essentially the same, are larger on the D & I line.

Printing by lithographic unit represented by Local 14-L is basically different from the printing on either the Sprat-tainer or D & I lines. Thus, the printing method primarily employed by the lithographic department is wet offset. The lithographic unit has never operated a printing machine which places the printing directly on the can in the round. It only prints on flat sheets which are then cut into smaller sizes to be formed into a three-piece can.

Structurally, the D & I line is similar to the setup in the lithographic department. Thus, both are Y Hoe offset presses and have similar controls, so the actual mechanics of printing is substantially the same. However, coloring in the lithographic unit is obtained by as many as four printing repetitions each time with a different color. Coloring on the D & I line is performed once, since as many as four colors can be applied in the same process.

The plates used for printing are identical in texture, structure, and method of application on the D & I line and the lithographic presses. The D & I line is adjacent to the press and coater lines of the lithographic department. Both presses are equipped with a "trailing coater" for placement of an overlay of varnish after the completion of the printing, and both presses deliver the printed and varnished products into an oven for drying.

⁴ *Alaska Steamship Company* 172 NLRB 1200

⁵ *Northwest Publications, Inc.*, 200 NLRB No. 20; *Credit Union National Association, Inc.*, 199 NLRB No. 72, *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB 1090

⁶ 173 NLRB 225

⁷ The dissent would have dismissed the proceeding because in their opinion, it involved a work assignment dispute rather than a representation matter, citing *Carey v Westinghouse Corp.*, 375 US 261. We find, as the majority in *McDonnell* did, that what we are concerned with here is essentially a unit placement issue arising from the enlargement and extension of the Employer's production operations. See also *Monsanto Research Corporation, Mound Laboratory*, 195 NLRB 336

⁸ And see *Monsanto Research Corporation, Mound Laboratory*, *supra*

Members of the Machinists are mechanics who are qualified to perform maintenance and repair work on the D & I line. On the Sprat-tainer line, a machinist spends about 70 percent of the time performing printing functions and about 30 percent on mechanical and inspection functions. On the D & I line a machinist spends about 30 percent of the time on printing functions, and the 70 percent on mechanical functions. The explanation for the difference is that the D & I line requires less time on printing because there are fewer changeovers, and the machine is modern. Also, the Sprat-tainer line runs multiple designs which require more time on printing functions.

To operate the Sprat-tainer line, the employee must be a mechanic and trained for 2-3 months. The workers who were selected to operate the printing station on the D & I line had worked on the Sprat-tainer and began on the D & I with as little as 4 days' training. In contrast, the training required to become a journeyman lithographer is quite extensive. The apprenticeship program alone lasts 4 years. The lithographers perform little maintenance or mechanical work. In fact, a machinist is assigned to the lithography department and it is his responsibility to perform maintenance, repair, or overhaul work on the lithographic presses.

There are several other similarities between the Sprat-tainer and the D & I lines which distinguish them from the lithographic presses. Although the Sprat-tainer and D & I now have separate supervisors, once the new line is "debugged" there will be one department manager in charge of both lines. Also, the lower level supervisors will be grouped in central control over both lines. Both lines have the same cost control center. The lithographic department has its own supervisor, and a different cost control center.

The Contracts

Local 14-L's contract provides essentially that it shall represent employees performing printing work.

It expressly provides that it shall not apply to the Sprat-tainer operation. The Machinists contract covers "all employees assigned to classifications as outlined in Appendix A. . . ." Included in Appendix A are mechanic classifications and those pertaining to operation of the Sprat-tainer line.

The printing work on the D & I line resembles that on the Sprat-tainer line. Like the Sprat-tainer printing function, it is dry offset printing in the round. Employees who had worked on the Sprat-tainer line were assigned to the D & I line. And both require a combination of printing and mechanical skills. In all the circumstances, we view the D & I line as essentially an extension of the Sprat-tainer line within the purview of the Machinists contractual unit. Accordingly, we find that the employees on the D & I line are an accretion to the unit represented by the Machinists and we shall clarify the Machinists contractual unit as including the D & I line.

ORDER

It is hereby ordered that the existing contractual unit represented by District Lodge No. 1, International Association of Machinists and Aerospace Workers, AFL-CIO, be, and it hereby is, clarified so as to include therein the employees engaged in the printing work on the Drawn and Iron line.

MEMBER JENKINS, dissenting:

I view the instant proceeding as a work assignment dispute rather than a representational matter and thus would dismiss the unit clarification petition filed by the Employer. *McDonnell Company*, 173 NLRB 225, dissenting opinions; *Carey v. Westinghouse*, 375 U.S. 261.