Addressograph-Multigraph Corporation *and* Local Lodge 1228 of the International Association of Machinists and Aerospace Workers, AFL–CIO. Case 8–CA–9611

February 4, 1977

DECISION AND ORDER

BY MEMBERS FANNING, PENELLO, AND WALTHER

On September 16, 1976, Administrative Law Judge David S. Davidson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 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 considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge: The charge in this case was filed by the Union on November 17, 1975, and the complaint issued on March 30, 1976. The complaint alleges that Respondent refused to bargain in violation of Section 8(a)(5) of the Act by announcing additional duties for certain employees of Respondent without first notifying or bargaining with the Union and by refusing thereafter to bargain over rates of pay for the proposed job changes upon request by the Union. The complaint also alleges that Respondent discriminated against employees in violation of Section 8(a)(1) and (3) of the Act by suspending them for 2 days because they participated in a concerted protest of Respondent's refusal to bargain with the Union. In its answer Respondent denies the commission of any unfair labor practices.

A hearing in this case was held before me on June 7, 1976, in Cleveland, Ohio. At the conclusion of the hearing, oral argument was waived. The General Counsel and Respondent have filed briefs.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Respondent Addressograph-Multigraph Corporation, a Delaware corporation, operates a facility at 1200 Babbitt Road, Euclid, Ohio, the only facility involved herein, where it manufactures business machines. It annually ships goods valued in excess of $50,000 directly to points located outside the State of Ohio. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local Lodge 1228 of the International Association of Machinists and Aerospace Workers, AFL–CIO, referred to herein as the Union, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

For more than 40 years the Union has represented the production and maintenance employees at Respondent's Euclid plant, and the Union and Respondent have been parties to a series of collective-bargaining agreements covering those employees. The most recent agreement became effective September 11, 1974, and is scheduled to expire on June 6, 1977. Article 28 of that agreement provides, insofar as material herein, as follows:

RATES OF PAY

> 28.1 The established hourly rates or rate ranges for the hourly rated job classifications and the established hourly piecework classification rates and the hourly daywork base rate ranges applicable to said piecework classifications, together with the job descriptions applicable to all job classifications, are those which appear in the Departmental Labor Classification Rate Book for All Factory Departments which is maintained by the Company, and of which the Union is supplied with a copy.
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> 28.2 Whenever a new job classification is created, the job description shall be prepared by the Company and reviewed with the Union, and the rate or rate range applicable thereto shall be negotiated and agreed upon with the Union after which a new rate sheet shall be prepared by the Company, signed by a Company and a Union representative, and then placed in the Rate Book in substitution for the former rate sheet.

Over the years when the Company has sought to alter the duties of employees in any job classification it has followed the procedure set forth in article 28.2 of the contract, and

the parties have treated the change as the creation of a new job classification.[1]

Department 1152 at the plant is the automatic screw machine department. At the times material herein, four classifications of employees worked in that department. Seventeen employees were classified as setup operators whose job it was to load and operate one or more automatic screw machines. They were responsible to see that the machines they operated produced good quality pieces. For each job the setup operator was given a blueprint, and a quantity of stock was delivered to his machine for the job. The setup operator was required to run all the stock delivered to him for each job and before October 29, 1975,[2] he had no responsibility for counting, estimating, or otherwise calculating the amount of stock delivered to him or the number of pieces produced by him on each work order.

The dispute herein arose when, on October 29, the Company informed the Union that it proposed to require the setup operators to make a calculated count of the parts produced by them on each job.

On that date Plant Manager Frank Jelenic and Employee Relations Manager George Naftanail met with the union executive committee. Jelenic told the union committee that he wanted to inform it of a procedure that the Company proposed to institute in department 1152 involving the counting of parts and that he intended to meet with the employees of that department in small groups to explain the procedure to them. Jelenic stated that the union committee members were free to attend the meetings if they desired. Jelenic furnished the committee members copies of the instructions that were to be given to the operators. The union committee questioned whether the counting of parts was part of the job duties of the setup operators and predicted that there would be resistance from the operators because nothing in the job classification required them to do it. In response to a question, Jelenic said there would be no increase in pay with the addition of these duties. The union committee indicated that it was not in a position to take any action with respect to the Company's proposal without first checking with the people in the department and also requested that the Company wait before it took further action until the regular executive committee member who was familiar with department 1152 returned to work from vacation.[3]

Following this meeting, the union committee members met with the employees in department 1152 and showed them their copy of the instructions proposed by the Company.

On November 3, Jelenic, Naftanail, and another company representative again met with the union executive committee, including Santangelo who was familiar with department 1152. Jelenic reviewed what he said at the previous meeting and told the union committee that on the following Wednesday the Company would hold several small meetings with the setup operators in the automatic screw machine department to explain the procedures to them and that the executive committee was welcome to attend. Jelenic said that under no circumstances did he want anyone disobeying an order to attend the meeting.

The Union took the position that the Company could not change the procedures to be followed by the setup operators without first negotiating the change with the Union and that the Company should give the employees more money if it wanted to add to their job duties. The Company took the position that it was not contrary to the contract to put the change in effect without negotiating. Jelenic told the Union that if it disagreed with the Company the Union could grieve. Santangelo protested that the Company could not force the employees to attend a meeting, and Naftanail stressed that the employees would be paid for meeting and that they could grieve if they did not like what they heard. The Company insisted that it had the right to sit down and explain the procedure to the people, but Santangelo predicted that there would be a problem and that the employees would not attend the meetings. The Company told the union committee that, if an employee was ordered to attend a meeting and refused, he would have to be disciplined. Jelenic told the union committee that employees were required to attend the meetings but did not have to say anything or negotiate. Company representatives also indicated that after the employee meetings were held the Company would meet further with the union committee and discuss the procedure with the committee and answer any questions that it might have. However, the Company maintained its position that it was not making a change in classification which required negotiation and that it did not have to negotiate with the Union. According to Naftanail, the Company did not intend to negotiate with the Union after the employee meetings and it intended to implement the procedure after discussing it with the Union without change in the procedure regardless of the Union's position. During the course of the meeting, Jelenic said that the Company intended to put the change in effect on the day after the employee meetings were scheduled to be held regardless of their outcome.[4]

On the morning of November 7, the foremen in department 1152 notified each employee that he was to attend a meeting at 9 o'clock that morning. None of the employees in the department appeared at the meeting, and all remained at their machines working. Thereafter, Department Foreman Orzech told each employee that he was ordered to attend a meeting in the conference room to discuss departmental procedures at 10 o'clock that morning. Again at 10 o'clock, none of the employees appeared for the meeting, and all remained at their machines working. That afternoon each of the employees in the department was notified that he was suspended for the next 2 workdays because "You refused to follow my direct order to attend this meeting. This refusal constitutes a clear act of

[1] Several examples of such changes were described in testimony at the hearing The representation was made by witnesses for the General Counsel and not contradicted that, until the events which gave rise to this case, all changes had been negotiated with the Union pursuant to the procedures set forth in art 28 2 of the contract

[2] All dates which appear hereafter occurred in 1975 unless otherwise indicated

[3] The facts in this case are largely undisputed Unless otherwise indicated, the findings are based on uncontested testimony or minutes of meetings held on October 29 and November 3. Although one witness for the General Counsel testified to the contrary, I find specifically that the Company invited members of the union committee to attend the employee meetings

[4] I have credited the testimony of Santangelo in this respect

insubordination. Refusal to follow instructions and orders cannot and will not be condoned."

Later, on November 3, the Company met with the union committee. At that meeting Naftanail told the union committee that the changes proposed for department 1152 would be negotiated with the Union before they were implemented.[5]

On November 10, the Union filed a written grievance over the suspensions which was denied by the Company. The Union gave a notice of its intention to take the grievance to arbitration, but took no further action thereafter. From November 7 until the date of the hearing, the Company took no further action to implement the proposed change in procedure in department 1152.

B. *Conclusions*

1. The alleged refusal to bargain

The General Counsel contends that Respondent's proposed change in procedure, which would have required the setup operators to make a calculated count of parts produced by them, constituted the creation of a new classification within the meaning of article 28 of the contract. Accordingly, the General Counsel argues, Respondent's attempt to increase the responsibilities of the setup operators unilaterally and its refusal to negotiate with respect to the change in duties or a wage rate violated Section 8(a)(5) of the Act, citing *Beacon Piece Dyeing and Finishing Co., Inc.,* 121 NLRB 953 (1958); *C & S Industries, Inc.,* 158 NLRB 454 (1966); *Willamette Industries, Inc., Lebanon Division,* 220 NLRB 707 (1975).

Assuming *arguendo* that Respondent was required to negotiate with the Union with respect to any change in duties and a wage rate for the classification,[6] I have difficulty accepting the contention that Respondent's attempt to change the duties of the setup operators without negotiation constituted a refusal to bargain.

The cases relied upon by the General Counsel all involved situations in which changes were unilaterally placed in effect by employers without any bargaining. Here the change in procedure was announced to the union committee but never placed in effect. Respondent's officials indicated the intention to place it in effect after explaining it to the affected employees and to do so without bargaining. However, after the refusal of the employees to attend the meeting, the change in procedure was never placed in effect, and Respondent's employee relations manager told Union Representative Jennings that Respondent would negotiate the changes before implementing them.

It may well be that a statement of intention to make unilateral changes can constitute evidence of bad-faith bargaining in a context indicating repudiation of an employer's bargaining obligation. Here, however, the context indicates a long bargaining relationship, with no hint of such repudiation but rather an honest disagreement over the scope of Respondent's bargaining obligation. To be sure, had Respondent implemented the change in the mistaken belief that it had the right to do so, its action nonetheless would have constituted a direct violation of the obligation imposed by Section 8(d) of the Act. But having stopped short of implementing the change, the preliminary steps taken by Respondent in this case do not warrant the inference that Respondent sought to repudiate its bargaining obligation or to undermine the Union's representative status.

Moreover, having set the change in motion, Respondent was not obligated to negotiate whether or not it intended to pursue its plans to implement the change. Respondent had the option of dropping the proposed change, in which case the existing classification and wage rate prevailed, and no negotiation was required. Insofar as the evidence discloses, that option was pursued by Respondent in this case. Accordingly, I find that the General Counsel has failed to establish that Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

2. The suspensions

The General Counsel contends that the disciplinary suspensions of the department 1152 employees for refusing to attend the meeting called by Respondent to explain the proposed change violated Section 8(a)(3) and (1) of the Act because the employees were engaged in a concerted protest of Respondent's refusal to negotiate the change and their wage rate with the Union. The General Counsel contends that the refusal to attend the meeting was analogous to an unfair labor practice strike and that the logic of Board decisions protecting unfair labor practice strikers even in the face of a no-strike clause applies to the refusal of the department 1152 employees to attend the meeting in this case, citing *Kellstone, Inc.,* 206 NLRB 156 (1973).

The analogy urged by the General Counsel is not apt. First, I have concluded above that there was no unfair labor practice committed by Respondent.[7] Moreover, whether or not Respondent had committed unfair labor practices, there was no strike in this case. The employees did not cease work but chose to determine for themselves what they would do while on company time, despite contrary instructions from their employer. Notwithstanding the fact that they produced parts for the period involved and would not have done so if they attended the meeting, it was not in their province to make this choice. "Respondent was at

[5] Union Representative Jennings so testified Naftanail was not questioned specifically about the position taken by him at this meeting, but testified that as of the earlier meetings the Company did not intend to negotiate the proposed change in procedure for the setup operators and that company representatives did not tell the Union at either of the previous two meetings that it would negotiate the change There was no apparent reason for Jennings to attribute to Naftanail the statement to which Jennings testified unless Naftanail made it In the absence of direct contradiction and in view of the fact that the change was never implemented, I credit Jennings in this regard

[6] Respondent does not concede that it had any duty to bargain It contends that it had no duty to bargain because the change in duties had minimal impact on the setup operators and was simply a day-to-day operating decision which Respondent had the perogative to make without bargaining. Respondent contends further that it fulfilled any bargaining obligation it might have had by its willingness to entertain a grievance over the proposed change. For the reasons set forth below, I find it unnecessary to reach these issues

[7] I note further that, even if the General Counsel's contentions as to the refusal to bargain were accepted, the resultant unfair labor practice found would be a far cry from the employer's repudiation of its contract and entire bargaining obligation found in *Kellstone, Inc, supra,* to warrant the conclusion that the contractual no-strike clause had not been breached.

liberty to determine the use to which it wished to put the time for which it was paying the employees, and the employees were not free to make a choice in favor of working."[8] Accordingly, I find that the refusal of the department 1152 employees to attend the meeting called by Respondent was not protected concerted activity and that the suspensions based on that refusal did not violate the Act.

CONCLUSIONS OF LAW

1. Addressograph-Multigraph Corporation is an employer engaged in commerce within the meaning of the Act.

2. Local Lodge 1228 of the International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of the Act.

3. The General Counsel has failed to establish that Respondent has engaged in unfair labor practices as alleged in the complaint.

Upon the basis of the above findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER[9]

The complaint is dismissed in its entirety.

[8] *Daisy Originals Inc., of Miami*, 187 NLRB 251, 255 (1971)

[9] In the event no exceptions are filed as provided by Sec. 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes