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ANALYSIS

Reversal of NLRB's Certification of 'Craft-Like' Bargaining Unit

DEVELOPMENT: A "craft-like" unit of lithographic production employees is not appropriate for bargaining, the U.S. Court of Appeals at New York holds, finding that the NLRB acted arbitrarily and departed from indistinguishable precedents in making its bargaining-unit ruling. (NLRB v. Meyer Label Co., CA 2, 1979, 101 LRRM 2110)

Employer's Operation

The employer is a specialty printing company located on various floors of three contiguous buildings on East 16th Street in New York City. It employs about 30 persons and is engaged primarily in printing labels and patches on fabrics, using letter presses, offset presses, and cutting and dyeing machines.

The employer's art department is on the seventh floor of 5 East 16th Street. The four art-department employees perform preparatory work, such as designing labels, filming, lithographic stripping, platemaking, and other tasks involved in preparing the product for the offset or letter press.

About seven employees on the third and fourth floor of all three buildings operate machines that cut the fabric for the labels. The cut fabric and lithographic plates then are sent to the printing area, on the third floor of 5 and 7 East 16th Street.

Seventeen employees work in the printing area. It contains seven or eight offset presses, seven letter presses, and seven cutting machines. After the labels have been printed on the fabric, the materials are sent to the shipping department on the fourth floor for handling and packing.

The Board found appropriate a lithographic-production unit of eight employees. Six were lithographic press operators in the 17-person printing operation, and two did lithographic camera work and platemaking in the four-person art department.

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Quoting from George Rice & Sons (NLRB, 1974, 87 LRRM 1114), the Board said it traditionally has found that employees engaged in the lithographic process form a distinct and cohesive unit. The employees involved here operate standard lithographic equipment requiring a degree of skill commensurate with that found in other traditional lithographic craft units, it said. Briefly distinguishing Continental Can Co. (NLRB, 1968, 68 LRRM 1165), it added that the unit employees are engaged in commercial lithographic work, including four-color wet offset printing, which is recognized as requiring greater skill than the dry offset process.

The Board noted that the employer's physical layout does not separate its lithographic employees from the others, that there is a degree of integration of operations, and that there is "limited" interchange. However, it concluded that "the nature of the work performed by these employees and the skills required, which are recognized by the employer as warranting a separate immediate foreman or supervisor, establish that these employees are craft-like" and have a separate community of interest. (Meyer Label Co., NLRB, 1977, 97 LRRM 1131)

Reasoning of Court

The court finds that there is no substantial evidence to support the Board's conclusions and that the Board has departed from its own precedents.

The court discusses Continental Can, supra, Weyerhaeuser Co. (NLRB, 1963, 53 LRRM 1217), and Pacific Press (NLRB, 1946, 17 LRRM 353), in each of which a lithographic unit was found inappropriate. These precedents involve the same factors which militate against a separate lithographic unit here, the court says, citing the absence of separate supervision for the lithographic employees, the substantial amount of time they spend performing non-lithographic duties, the absence of a separate location for the lithographic employees, uniform treatment of all employees with regard to working hours, fringe benefits, and other matters, substantial interchange of jobs between lithographic and non-lithographic employees, and the employer's "specific organizational structure" and "business exigencies" resulting in a substantial interchange of employees between offset and other presses.

The court rejects the Board's finding that interchange between offset operators and other employees is "infrequent" and occurs only in emergencies or when a lithographic run has ended. The Board has failed adequately to consider the employer's specific structure and mode of operations, the court concludes, saying that

the company functions essentially as an integral unit, with its operations organized to enable employees to perform as many different functions as possible, and with constant and extensive job interchanges among all employees.

The court takes note of the centrality of supervision in the employer's small plant. A single plant supervisor directs all employees, it says, and the company's managerial structure and labor relations policy are completely integrated. Moreover, it adds, there is no formal training or apprenticeship program, employees generally are hired without previous experience, and employees hired primarily for one function very frequently are assigned to other functions.

The Board has given insufficient weight to the uniformity of treatment of all company personnel, the court says, and to the close proximity of lithographers and other employees resulting from the employer's physical layout. It finds no support for the Board's placement of two of the art-department employees, saying that the art department functions as a single, integrated, four-person unit. It concludes its opinion with a description of the "sheer havoc" that might result if the unit found appropriate by the Board were permitted to bargain separately; the employer might be forced to reorganize its production, the court says, or to restructure its operations.

BACKGROUND: The NLRB's bargaining-unit policy for craft employees has varied over the years. In American Can Co. (NLRB, 1939, 4 LRRM 392), the Board effectively refused to permit the severance of crafts units from broader established units. General Electric Co. (NLRB, 1944, 15 LRRM 33) permitted craft severance in limited situations, but the Board subsequently decided that there were four industries — basic steel, basic aluminum, lumbering, and wet milling — whose highly integrated natures precluded any craft severance at all. (National Tube Co., NLRB, 1948, 21 LRRM 1292; Permanente Metals Co., NLRB, 1950, 26 LRRM 1039; Corn Products Refining Co., NLRB, 1948, 23 LRRM 1090; Weyerhaeuser Timber Co., NLRB, 1949, 25 LRRM 1173)

In American Potash & Chemical Corp. (NLRB, 1954, 33 LRRM 1380), the Board decided that true craft employees could be severed by a union that traditionally had represented that craft. However, it refused to permit severance in the four favored industries, saying that it was unwilling to upset the pattern of bargaining that had been firmly established there.

In Mallinckrodt Chemical Works (NLRB, 1966, 64 LRRM 1011), the Board abandoned the American Potash and National Tube doctrines and set forth six "areas of inquiry" which it said it would consider in cases where craft severance was involved. These

Mallinckrodt factors also have been held applicable where a union seeks to establish a craft unit at a previously unorganized plant. (Du Pont & Co., NLRB, 1966, 64 LRRM 1021; see also Holmberg, Inc., NLRB, 1966, 64 LRRM 1025)

The Board's decision in the present Meyer case describes the lithographic employees as "craft-like" workers who have skills like those required of "other traditional lithographic craft units." Earlier, the Board had stated that lithographic production employees were not craft workers at all and that it was the "common interests and duties of lithographic employees" that formed the basis for severance of lithographic units. (Allen, Lane & Scott, NLRB, 1962, 50 LRRM 1140)

Second Circuit's Approach

The court's opinion in the present Meyer case takes note of Szabo Food Services v. NLRB (CA 2, 1976, 94 LRRM 2264). There, the court says, it held that "if the 'factors identified and relied on by the Board do not amount to the "substantial justification" required to "fractionate a multi-unit operation whose labor policy is centrally directed and administered," enforcement will be denied." In Szabo, the court rejected a Board finding that a union's requested unit of food service employees at three of the 19 cafeterias serviced by their employer was appropriate.

The statement quoted by the court as its Szabo ruling appears to derive initially from NLRB v. Solis Theatres Corp. (CA 2, 1968, 69 LRRM 2664), involving a Board finding that one theater in a chain constituted an appropriate unit. The court disagreed, but added: "This is not to say that some compelling reason may not justify fractionating an otherwise centrally controlled system of branch units." Later, in upholding a Board finding that single branch-claims offices of an insurance company were appropriate units, the court stated: "The holding of Solis Theatres . . . is that the Board may not, without substantial justification, fractionate a multi-unit operation whose labor policy is centrally directed and administered." (Continental Ins. Co. v. NLRB, CA 2, 1969, 70 LRRM 3406, cert. denied, US SupCt, 1969, 72 LRRM 2658)

SIGNIFICANCE: The Board seems to have regarded this case as a typical craft-type situation. Its brief decision focuses on the skills required of unit employees and on the similarity of their work to traditional lithographic work.

However, the court's decision stresses the integrated nature of the employer's operations and its functioning as an "integral unit." The court apparently feels that the Solis-Continental-Szabo line of cases dealing with the "fractionating" of "multi-unit" operations is applicable even though Meyer has only a "small plant."