

IN THE MATTER OF THE ARBITRATION BETWEEN

GRAPHIC COMMUNICATIONS)	FEDERAL MEDIATION AND
CONFERENCE OF THE)	CONCILIATION SERVICE
INTERNATIONAL BROTHERHOOD)	CASE NO. 08-52994
OF TEAMSTERS,)	
LOCAL 1M,)	
)	
)	
Union,)	
)	
and)	
)	
R.R. DONNELLY & SONS COMPANY,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

Michael L. Blazek
Business Representative
Robert Dean Stanton
Secretary-Treasurer
Graphic Communications
Conference of Teamsters,
Local 1M
684 Transfer Road
St. Paul, MN 55114

For the Employer:

Edward C. Jepson, Jr.
Vedder Price, P.C.
Attorneys at Law
Suite 2600
222 North LaSalle Street
Chicago, IL 60601

On April 15, 2008, in Roseville, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the

Employer violated the labor agreement between the parties by filling three newly created jobs with personnel not in the Union's bargaining unit and by failing to assign to those jobs three employees who had recall rights to jobs with the same duties. Post-hearing briefs were received by the Arbitrator on June 18, 2008.

FACTS

The Employer operates a commercial printing business at several locations in the United States. In January of 2007, it acquired printing plants owned by Banta Corporation, including one at Long Prairie, Minnesota, and one at Liberty, Missouri, a suburb of Kansas City. The present grievance arose at the Long Prairie plant.

At the Long Prairie plant (hereafter, the "Plant"), the Employer produces short-run specialty magazines and newsletters for customers who serve business and professional subscribers. The Employer organizes the Plant into several departments -- Pre-Press, Press, Bindery, Distribution, Shipping-Receiving and Maintenance. Usually, the Employer operates the Plant in three eight-hour shifts.

Two local affiliates, Local 1M and Local 1B, of the Graphic Communications Conference of the Teamsters Union are the collective bargaining representatives of about 400 non-supervisory employees of the Employer who work at the Plant. Local 1M represents employees who do press production work -- those in the Pre-Press and Press Departments. Local 1B represents employees who work in the other departments of the plant -- those in the

Bindery, Distribution, Shipping-Receiving and Maintenance Departments.

The terms and conditions of employment of all of these employees are established by a single labor agreement with a duration from July 1, 2006, through October 31, 2009, which was jointly negotiated by Banta Corporation as their employer and the two local Unions as their collective bargaining representatives. Distinctions between the Employer and Banta Corporation are generally not relevant to the present grievance, and, for that reason, unless otherwise noted, my references hereafter to the Employer include Banta Corporation for events preceding the Employer's acquisition of the Plant in January of 2007. Because the present grievance is brought by Local 1M, I may refer to it as the "Union" or as "Local 1M." I do not include Local 1B when I refer to the "Union."

In recent years, the printing industry has undergone substantial technological change that has made production more efficient through digitization of text and graphics and through the internet exchange of source documents and interim documents used during the process of production. About ten years ago, the Plant's Pre-Press Department used twelve employees classified as Proofreaders to perform proofreading tasks -- reading for accuracy source documents received from customers in hard copy and reading documents as printed in several Pre-Press stages before a final press run. As new processes in computer and internet technology became available, the Employer began to reduce the number of Proofreaders employed at the Plant.

In about 2000, customers began to send source materials by disc in "pdf" format, and in about 2003, they began to send these materials by the internet. Because the accuracy of these digitized source materials was determined in advance by the customer, the Employer reduced the number of Proofreaders employed at the Plant from twelve to nine.

In 2005, the Employer began to transfer most of the Pre-Press functions previously performed at several of its plants to its plant at Liberty, Missouri, and it completed that transfer in August of 2006. The Employer bargained with the Union regarding that transfer of work and reached an agreement about the elimination of jobs at the Plant. The parties refer to that agreement as the "Effects Bargaining Agreement." As a result of the transfer of Pre-Press functions to the Liberty plant, the number of Proofreaders employed at the Plant was reduced from nine to one, and only about 40% of the work done by that employee was proofreading. In May of 2007, the Employer eliminated the last position in the Proofreader's classification.

Medimedia Corporation ("Medimedia") is one of the Employer's customers. It contracts to have the Employer produce and distribute magazines for use by physicians, hospitals and patients -- work that is done at several of the Employer's plants. In January of 2007, the Plant began to receive a substantial increase in the work ordered by Medimedia, and it became the Plant's largest customer. For all of 2007, about 8% to 9% of the Plant's production was done for Medimedia.

During the second quarter of 2007, the Employer began to receive complaints from Medimedia about the quality of the magazines produced at the Plant. Alan Duncan, the Plant's Vice President for Manufacturing, testified that in July of 2007 he met with representatives of Medimedia in Chicago to hear their complaints about the quality of the work being produced for them at the Plant. They had several complaints about the quality of the magazines produced there -- that the wrong inserts were being placed in the magazines, that magazines were not being correctly paginated, that the pages of magazines were not being squarely trimmed, that staples were being installed loosely, and that rubbing and scuffing of magazines damaged their appearance. In addition, Medimedia complained that the Plant was addressing magazines improperly, causing them to be sent to the wrong subscribers. Duncan testified that Medimedia put the Employer on notice that these deficiencies in quality must be corrected or the Plant might lose Medimedia's work.

The Employer's efforts to correct these deficiencies improved quality, but in late October or early November of 2007, Medimedia complained about several errors that had appeared in work done at the Plant and about more serious deficiencies in work done at other plants of the Employer. Representatives of Medimedia participated in a conference telephone call with Duncan and the Manufacturing Vice Presidents at the Employer's other plants doing Medimedia work. The Medimedia representatives said some of its customers were threatening to leave because of the poor quality of magazines. They said that the problems with

the quality of the Employer's production must be corrected and that, if not corrected, Medimedia would begin to reduce the work ordered from the Employer. Some Medimedia press runs total from several hundred thousand copies to three or four million copies, but the Medimedia representatives said that they were most concerned about the quality of "checker" or "office" copies -- magazines that are sent to the chief executives of hospitals or to the heads of clinics for their personal use.

At the end of the conference call, the participants agreed that the plants producing work for Medimedia would use employees to inspect the checker copies of magazines for quality after they were bound, just before they were sent to subscribers. Duncan testified that he agreed to have employees engage in this process of inspection for a short time, until the end of 2007, so that Medimedia could ease the concern of its customers.

Duncan discussed the agreement to provide extra inspection of Medimedia checker copies with Cindy Wojtkiewicz, Pressroom Manager, and David Kalina, Bindery Manufacturing Manager. They decided that most of the errors that Medimedia was concerned about were errors that arose in the Bindery as the magazines were bound and addressed, and that accordingly, the employees doing the inspection should be Bindery employees who would inspect bound "finished book" copies in the Bindery. Eventually, three employees, one for each shift, who were called "Multimedia Quality Inspectors" were selected by Kalina to perform the work without use of the bidding process established by the labor agreement. All three had been classified as Bindery Journey

Production Workers ("JPW"), and, as such, they were members of Local 1B rather than of Local 1M. The labor agreement does not list a classification, "Medimedia Quality Inspector."

Kalina testified that he selected two long-term Bindery employees whom he considered to have good performance and attendance records to be the Medimedia Quality Inspectors (hereafter, merely "Medimedia Inspectors") on the first shift and the second shift. For the third shift, he selected a Bindery employee who had worked for the Employer for only a short time, less than thirty days according to the Union, because she had asked to be considered for that kind of work soon after she was hired and because she had a good performance and attendance record. Kalina testified that he selected Bindery employees to be the Medimedia Inspectors because most of the errors they would be looking for would only show up after the Bindery process, including addressing, was finished. Kalina conceded, though, that some of the errors Medimedia was concerned about would show up in the Press Department, after the press run. As I discuss below, the Union argues that many of the errors would be discoverable in the Press Department, after the press run, and that inspection for those errors was work that Proofreaders performed before their jobs were eliminated or transferred to the Liberty plant.

On November 8, 2007, the Employer posted the following notice to Pressroom and Bindery Crews and Supervisors:

As many of you are aware, the quality expectations for Medimedia are elevated in comparison to the average work we do. In an effort to give operators additional tools to meet these expectations there will be an additional

resource added to each shift to inspect office copy product in the Pressroom and Bindery during production of Medimedia work. These positions are temporary and are on a trial basis. We all know that there are numerous things going on during production and defects are missed. The purpose of the inspectors is to be an extra set of eyes to assist the crews in defect detection as early in the process as possible to reduce costly rerun-rework activities and ultimately provide a product that meets or exceeds customer expectations. These people are here to help you, please accept their help.

In order to alert the inspectors on your shift that you are running checkers we ask that you page checkers for all Medimedia work in the pressroom and in the bindery.

Pressroom, please page slightly before checkers are pulled. We have instructed the inspectors to mark up a sheet with circled defects and give it to the pressmen. They have also been told to alert a supervisor to any defects that are not or cannot be fixed.

We realize that expecting every book/form to be inspected may not be a realistic expectation, but the goal of the inspectors is to see as much as possible during their shift. Their workload priority will be 1) checkers running on the stitcher & binder, 2) Pressroom checkers.

The inspectors will start working on shift starting Sunday night November 12th. Please help me welcome [names omitted] into their new temporary roles. . . .

The three employees Kalina selected to be the Medimedia Inspectors began to perform that function on November 12, 2007, after they had been trained for parts of three days. On December 31, 2007, they stopped acting as Medimedia Inspectors and returned to the work they had done before November 12 -- as Bindery JPWs. Kalina testified that, during the time they worked as Medimedia Inspectors, about 20% to 25% of the work they did was not quality inspection of Medimedia products, but was work of their permanent Bindery Department classification, JPW. Kalina also testified that, of the work they did inspecting the quality of Medimedia products, about 20% to 25% consisted of checking for errors that would appear in the

Press Department, after the press run, and that some of the training they received before November 12 had occurred in the Press Department, under the direction of Wojtkiewicz.

On November 26, 2007, Robert Dean Stanton, Secretary Treasurer of Local 1M, sent a letter to Duncan, grieving the assignment of Local 1B employees to the three Medimedia Inspector positions. The grievance is set out below:

After extensive inquiries it is my determination that the duties assigned to the newly formed Quality Assurance Team are fundamentally the same duties as performed by Proofreaders in the past. The Proofreading Classification is clearly defined in the current contract along with the appropriate wage and work conditions. This classification falls within the jurisdiction of [Local 1M].

After laying off all Proofreading employees forcing them to resign, retire, or accept positions in lower paying classifications, the employer unilaterally assigned three (3) employees to the Quality Assurance team who are neither Proofreaders nor members of Local 1M. This is in direct violation of Article 14, Exhibit A, the letter of understanding regarding Proofreaders for overtime, the letter of understanding concerning posting procedures and any and all other pertinent portions of the contract.

In order to rectify this issue, the company must reinstate the three (3) senior Proofreading employees who are still employed at the plant and make them whole in every way, including wages, benefits and working conditions. . . .

Article 14, Section 14.01, of the labor agreement is set out below:

14.01. Seniority shall be for the purpose of layoff and recall from layoff within each Union's bargaining unit (Locals 1B and 1M). Employees may exercise their seniority within their respective Union (Locals 1B and 1M) to displace other employees, provided, however, employees must be qualified to perform the work of the employees they displace in a capable manner with a minimum of training.

On March 17, 2006, the Employer and the Union executed an agreement entitled, "Effects Bargaining Agreement," part of which is set out below:

The following Agreement has been reached due to significant staffing reductions in the Prepress department caused by the transfer of Prepress jobs to Banta Publication's facility in [Liberty, Missouri].

. . . .

Prepress employees who have been laid off or transferred due to the staffing reduction will retain recall rights by seniority should positions become available in the remaining Prepress department.

In November and December of 2007 -- during the time that the three Bindery JPWs were acting as Medimedia Inspectors -- the three most senior employees who were on the Proofreaders' seniority list dated October 1, 2005, and were still employed by the Employer, though in other classifications, were Wendy M. Skillings, Mary Johnson and Mary Gallagher. Because the parties presented no evidence contradicting its rankings, I accept that list as showing the order of recall into a Proofreader's position that would be effective if the Union prevails in this dispute.

The two letters of understanding, alleged by the grievance to have been violated, are entitled, "Proofreaders for Overtime," and "Posting Procedures Within Banta Publication Group." The "Proofreaders for Overtime" letter of understanding provides:

After reviewing the issue, the following is a recommended procedure to help in improving overtime within the Proofreader function of the Production Coordinator position.

1. All Proofreaders must be asked first for overtime. Failure of the manager to ask the proper person will result in pay for the person not asked.

The remainder of the Proofreaders for Overtime letter of understanding establishes priorities for voluntary overtime "within the Proofreader function."

The letter of understanding entitled, "Posting Procedures Within Banta Publication Group" provides:

1. All employees who desire transfer to other jobs when permanent vacancies occur, and who are qualified to perform the work, shall indicate their desire to Management and shall receive consideration for transfer on the basis of seniority standing.

[Paragraph 2 establishes a procedure for posting vacancy notices.]

3. When new jobs are created, employees desiring a transfer to such new assignment shall indicate their desires to the Employer. Notices shall be posted by the Employer at least seven (7) working days before the new assignment is filled. Said posting shall be dated, and shall also include what shift the job is on and the number of people required to fill the posting.
4. The filling of either permanent vacancies or assignments shall be on the basis of qualifications and seniority. Furthermore, Local 1B employees who bid for a permanent vacancy or new assignment and are accepted may do so only once in any one (1) year. This 1-year bid restriction is applicable only to Local 1B; there is no such restriction for Local 1M positions.
5. The Employer shall not fill any vacancy/new assignment without first giving the opportunity for the vacant job to senior employees. Provided, however, that if the Company requires a fully-qualified employee for a skilled job and employees with seniority are given the opportunity to bid but are not qualified to perform such job or do not bid therefor, then the Employer may, without regard to seniority, hire a fully-qualified person in such a job upon payment of the top progression wage rate for the job to such employee, without regard to length of service.

[Paragraph 6 establishes the rate of pay for employees who transfer to "other classifications."]

7. During the period where the selection for permanent vacancy or new assignment is being made, the Company shall have the right to make temporary assignments to fill said vacancies. . . .

DECISION

The Union argues that the Employer violated the Effects Bargaining Agreement by failing to recall the three most senior Proofreaders to the three Medimedia Inspectors' positions. According to the Union, most of the work performed by the Medimedia Inspectors was work that Proofreaders had performed before the Employer reassigned their work to the Liberty plant. The Union argues, therefore, that the positions filled by the Medimedia Inspectors should be considered Proofreaders' positions in the Pre-Press Department, thus giving rise to their recall rights, as secured by the following provision of the Effects Bargaining Agreement:

Prepress employees who have been laid off or transferred due to the staffing reduction will retain recall rights by seniority should positions become available in the remaining Prepress department.

The Employer rejects this argument, urging that most of the work performed by the Medimedia Inspectors was different from the work that Proofreaders had performed and that, therefore, the condition required to trigger the Proofreaders' recall rights -- that "positions become available in the remaining Prepress Department" -- did not occur. The Employer urges that most of the work the Medimedia Inspectors did was work that had to be performed in the Bindery Department, inspecting magazines for quality after the binding process, or in the Distribution Department, inspecting addresses for accuracy.

The Union also argues that the Employer violated Section 14.01 of the labor agreement, which protects the jurisdiction of

Local 1M, by failing to recall the senior Proofreaders to fill the positions that were filled by the Medimedia Inspectors, urging again that most of the work done by the Medimedia Inspectors was work that Proofreaders had done and was thus, within the jurisdiction of Local 1M.

The Employer rejects this argument as well, arguing again that most of the work performed by the Medimedia Inspectors was different from the work that Proofreaders had performed. The Employer argues that most of the work done by the Medimedia Inspectors had to be performed in the Bindery Department or in the Distribution Department, where Local 1B has jurisdiction.

A substantial part of the evidence presented by both parties sought to compare the tasks performed by the Medimedia Inspectors to the tasks that Proofreaders had performed before the Employer eliminated the work of that classification. The primary witnesses making this comparison were Skillings, testifying for the Union, and Kalina and Theresa A. Petermeier, testifying for the Employer. As noted above, Skillings is one of the three senior employees on the Proofreaders' seniority list. She has worked at the Plant for twenty-four years, the first six in the Bindery and then fifteen years in the Pre-Press Department as a Proofreader, till the Employer began to eliminate the work of that classification. She worked briefly in the Bindery again and then moved to the Press Department where she has worked as a Pressroom Helper for the past two and one-half years. Petermeier has worked at the Plant for fourteen years. In 1998, she became the Electronic Pre-Press Supervisor, and in

2000, she became a Technical Service Representative. From 2002 till 2007, she was the Manager of the Pre-Press Department.

The testimony of other witnesses also related to the comparison between the work of the Medimedia Inspectors and the Proofreaders. The following summary of the evidence is taken primarily from the testimony of Skillings, Kalina and Petermeier, though I note that the testimony of the other witnesses is generally consistent with that of these three witnesses.

Parts of the last job description for Proofreaders are set out below:

Summary. The incumbent is primarily responsible for proofreading print production copy documents generated by the Electronic Pre-Press Department, or documents generated from outside the company for spelling, punctuation, diction and syntax and for making corrections to print copy prior to production.

Essential Duties And Responsibilities.

1. Proofread documents for spelling, punctuation and grammatical errors.
2. Use standard proofreading marks to show what changes must be made on a document.
3. Compare original documents with revised documents to ensure that requested revisions were performed.
4. Communicate with other employees and customers regarding specific requests and deadlines.
5. Interact with Electronic Pre-Press Document Processing Specialists regarding edits to be made.
6. Use the Personal Computer to log in work and to run comparisons on documents.
7. Participate in regularly scheduled staff meetings.
8. Participate in and satisfactorily complete all required training requirements for the assigned position.
9. Perform a variety of miscellaneous tasks as requested from time to time by management representatives.

Below, I set out the "Medimedia Checklist," which gives a short description of the defects that Medimedia Inspectors looked for when they inspected magazines produced for Medimedia:

Hickeys	Wrinkles
Needle Marks	Scratches
Lip Ids Match	Rub Marks
Wires Correct	M Code on Book and Ink Jet
Trim Size	Ink Jet Code Matches
Pagination Including Inserts	Insert Codes
Fold	Inserts Correct
Book Square	Color Bars
Clipping Type or Image	Other

As the name of the Pre-Press Department implies, most of the work done by the employees in the several classifications who work there consists of the preparation of copy for printing by the Press Department. Before computer and internet technology began to change the way in which copy was prepared for printing, a substantial part of that work was done by Proofreaders, who checked copy for accuracy. Much of that checking occurred in communication between the customer and the Proofreader, but Proofreaders also checked documents after the Press Department had first printed them in "first-off" copies. The inspection of first-off copies for accuracy was done by Proofreaders, and as they did so, they also noted defects that occurred as the result of printing (hereafter, "Production Defects"), such as wrinkles in the paper or scratches on the metal plate that leave marks printed on the paper.

The evidence shows that Proofreaders and non-Proofreaders -- primarily production employees in the Press Department had a shared responsibility for finding Production Defects. Excerpts from a checklist for Proofreaders, dated April 19, 2004, show that they checked not only for the accuracy of copy, but for Production Defects, such as "scratches, smashed blankets, correct PMS, hot spots, low resolution, halos and hickies." The Proofreaders' checklist of April 19, 2004, also lists "pagination,

trim size, bleeds," but Skillings testified that those responsibilities were eliminated in October of 2004. A similar checklist for Pressroom personnel, dated September 1, 2004, shows that they also had responsibility for finding Production Defects -- e.g., for color match, cross alignment, scratches, unwanted perforations, cracked plates, smashed blankets, pagination, trim, paper size and weight, bleed, hangers, dog ears, wrinkles and lip Ids.

Neither Proofreaders nor Press Department personnel were responsible for inspecting for defects that occurred after printed documents left the Press Department and went to the Bindery -- defects that occurred in the Bindery and Distribution Departments as the result of the process of assembling the magazines with staples or glue and addressing them to the appropriate subscribers (hereafter, "Post-Production Defects"). Because Post-Production Defects occurred after the processes performed in the Bindery and Distribution Departments, they were detected only by Local 1B personnel.

Some defects, such as "rub marks" and "trim size," can result from the Pressroom printing process or from the assembly process in the Bindery. Because it would be inefficient to check for such defects in the Press Department and again in the Bindery, when one inspection performed after completion of the Bindery process will detect all such defects, I consider them to be Post-Production Defects. So considered, the evidence shows that the following checks listed on the Medimedia Checklist are checks for Post-Production Defects:

Rub Marks	Wires Correct
M Code on Book and Ink Jet	Trim Size
Ink Jet Code Matches	Fold
Pagination Including Inserts	Insert Codes
Inserts Correct	Book Square
Color Bars	Clipping Type or Image

Thus, this evidence is consistent with Kalina's estimate that 75% to 80% of the Medimedia inspection work done by the Medimedia Inspectors was done in the Bindery with the other 20% to 25% done in the Press Department, presumably looking for Production Defects, such as hickeys, wrinkles and scratches.*

Though the evidence shows that some of the work done by the Medimedia Inspectors had been done by Proofreaders, most of it was not. Accordingly, I conclude that the Employer did not violate the Effects Bargaining Agreement by failing to assign the three senior Proofreaders on the seniority list to do the work performed by the Medimedia Inspectors. The evidence shows that the amount of work the Medimedia Inspectors performed that had previously been performed sometimes by Proofreaders and sometimes by others was not sufficient to create "positions [that] become available in the remaining Prepress Department," the pre-requisite condition to trigger the Proofreaders' recall rights under the Effects Bargaining Agreement.

Similarly, I rule that the assignment of the Medimedia inspection work to Local 1B employees did not violate Section 14.01 of the labor agreement, which protects the jurisdiction of Local 1M, because most of the available work was Bindery

* In the past, Bindery employees also discovered Production Defects of this kind, if they were missed earlier by Proofreaders or Pressroom personnel.

Department or Distribution Department work that fell within the jurisdiction of Local 1B.

The Union also argues that the Employer violated the letter of understanding entitled, "Posting Procedures Within Banta Publication Group (the "Posting Procedures Letter" or the "Letter"), which requires vacant positions to be filled by seniority bidding after posting. The Employer argues that the posting and bidding requirements of the Posting Procedures Letter apply only "when permanent vacancies occur," as Paragraph 1 of the Letter states. The Employer argues that because the Medimedia Inspector positions were never intended to be permanent positions and, as intended, they lasted only from November 12, 2007, through December 31, 2007, it did not violate the Letter by assigning personnel to the three Medimedia Inspectors' positions without using a bidding process.

In response to the Employer's argument, the Union argues that the word "permanent" in Paragraph 1 of the Letter should be interpreted in conjunction with the word "permanent," as used in Paragraph 7 of the Letter and that the Employer has only a very limited right to make temporary assignments, i.e., "during the the period where the selection for permanent vacancy or new assignment is being made."

I interpret the Posting Procedures Letter as requiring posting and bidding when an available vacancy is "permanent," a word that should be interpreted reasonably, not as setting a time limit of a particular number of days, but by giving reasonable consideration to relevant facts. Here, it is clear

that the Medimedia Inspectors' positions were not permanent positions. The reason for their existence was not permanent; they were not intended to be permanent; they were announced as not permanent; and they were discontinued in accord with that announcement.

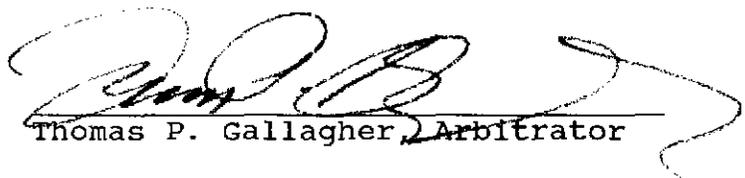
As I interpret Paragraph 7 of the Letter, it does not address what the rest of the Letter addresses, the procedural requirements for posting and bidding. Rather, it provides that during the time when the Employer is engaged in, but has not completed, that process, it may make short-term assignments of personnel rather than leave tasks unperformed.

I conclude that the assignment of the temporary Medimedia inspection work to Local 1B personnel without posting and bidding did not violate the Effects Bargaining Agreement, the labor agreement's jurisdictional protections of Local 1M or the Posting Procedures Letter. Finally, there is no indication that that assignment violated the Proofreaders for Overtime letter of Understanding.

AWARD

The grievance is denied.

September 5, 2008


Thomas P. Gallagher, Arbitrator