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IN THE MATTER OF THE ARBITRATION BETWEEN

GRAPHIC COMMUNICATIONS)	FEDERAL MEDIATION AND
CONFERENCE OF THE)	CONCILIATION SERVICE
INTERNATIONAL BROTHERHOOD)	CASE NO. 10-57680
OF TEAMSTERS, LOCAL 1B,)	
)	
)	
)	
)	
Union,)	
)	
and)	
)	
TURSSO COMPANIES, INC.,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On August 19, 2010, in Minneapolis, 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 assigning employees not represented by the Union to do work that

should have been done by Union members. Post-hearing briefs were received by the arbitrator on September 5, 2010.

FACTS

The Employer operates an offset printing business in St. Paul, Minnesota. The Union is the collective bargaining representative of employees of the Employer, described in Section 2(a) of the parties' labor agreement, which is set out below:

All employees engaged in bindery production work and work incidental and supplemental thereto, including shipping room, shall be covered by this Agreement.

In March of 2010, at the time of the occurrences that led to the present grievance, there were four such employees. Because of adverse business conditions, the number of bargaining unit employees has declined gradually from the twelve who were employed in 2001.

The Employer also employs about twenty-four employees who work in classifications engaged in its printing operations, including Pressmen, Rewinders and Helpers. They are represented by a different local affiliate of the Graphic Communications Conference of the Teamsters Union, Local 29C. The present grievance is brought in behalf of two Local 1B employees, Scott K. Reinke and Shirley McGinn, both of whom are classified as Journey Production Workers, a classification referred to by the parties as "J.P.W." (Hereafter, I sometimes refer to the Union as "Local 1B" and sometimes merely as the "Union.")

In early 2010, the Employer subcontracted the printing of 18,000 copies of a brochure for its customer, a producer of

medical devices. The brochure was to be used by surgeons who performed implants, the nature of which was not described in the evidence. The brochure included a plastic card in an envelope that was attached to its front cover. The card was to be given by the surgeon to the patient to identify the kind of implant the patient had received. When the printing subcontractor delivered the completed job to the Employer, it was discovered, upon complaint received from the Employer's customer, that the color of the plastic card the subcontractor had placed in the envelope was incorrect and had to be replaced with a card of the correct color. In addition, the Employer presented evidence that the brochures had other imperfections -- some smudges and other printing flaws.

On February 17 and 18, 2010, and on March 1, 2, 3, 4 and 5, 2010, the Employer had its employees inspect the brochures and perform needed re-work of the brochures. On March 12, 2010, the Union brought the present grievance. It alleges that "office staff Deanna Dixon and Kathy Thorvaldson [were] doing bindery work" when they participated in the re-work of the brochures, and it asks that the grievants McGinn and Reinke be "made whole."

The evidence shows 1) that the Employer used its Quality Assurance Technicians to perform much of the inspection of the brochures, 2) that it used the two non-grieving Local 1B employees, Clifford Pelto and H. Banks (sp?) to move the boxes of brochures from place to place within the Employer's plant and to do "paperwork" related to shipping, and that it used Dixon

and Thorvaldson, who, as the grievance alleges are "office staff" and are non-union employees, to do at least some of the card replacements. The Employer presented evidence that Pelto did some of that kind of work. The Union estimates that the re-work done by Dixon and Thorvaldson took fifty-six hours, basing its estimate on an industry standard. The Employer presented evidence that, by the estimate of Dixon and Thorvaldson, who did not testify, they did a total of twelve hours of re-work on the job at issue.

Below are set out relevant excerpts from the job descriptions for the J.P.W.'s classification and the Quality Assurance Technician's classification:

J.P.W.

BASIC PURPOSE: These positions involve various duties and responsibilities throughout our bindery. The duties of the positions under this classification include: shipping, receiving, fillbank, materials handling, and slitting.

Note: Individuals in this classification do not necessarily perform all duties listed below. . .

DUTIES AND RESPONSIBILITIES:

- Shipping products in most efficient manner to ensure on time delivery by accurately completing proper paperwork and labeling of product.
- Inventory of stock.
- Checks the accuracy of all receiving and shipping documents. Traces for lost or delayed shipments; inspects incoming product for damage, documents damage and initiates claims for loss or damage.
- To receive products and verify correctness against purchase order.
- Bank inventory control -- complete paperwork -- input and output of computer.
- Delivery of items to proper individuals in a timely manner.
- Delivery of product for releases from Warehouse 3 to shipping area one day prior to shipping.

- Responsibility for clean-up and organization of product in Warehouse 3.
- Helps maintain shipping directories and guides.
- Reports any problems, potential problems, hazardous situations that may exist or other pertinent information that may help the department improve its efficiency and production.
- Maintains good security habits at dock doors.
- Pulling of stock for slitting.
- Material handling/slitting. Slitting of raw materials according to specification to keep presses stocked.
- Operates forklift as needed.
- Uphold/adhere to the rules of ISO.
- Performs other duties as requested.

Quality Assurance Technician

BASIC PURPOSE: To monitor, analyze and audit product and processes to ensure product leaving premises meets the customer specification. Has authority to stop production on any job not being produced according to specifications.

DUTIES AND RESPONSIBILITIES:

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- Perform and document inspections of finished goods to certify conformance to customer specification. . .
- Inspect, rework and provide documentation of nonconforming material.
- Assure proper documentation and identification of nonconforming raw materials as well as in-process and finished product, and the segregation of same in quarantine.
- Assist in monitoring and maintaining calibration system.
- Other duties as assigned.

DECISION

The primary issue raised by the grievance concerns the allegation it makes that the Employer assigned to non-Union employees work that is reserved to members of the Union by Section 2(a) of the labor agreement. Below, I discuss that primary issue and make rulings related to its resolution, but before doing so, I make the following rulings with respect to other issues raised by the parties' arguments.

The Employer argues that the grievant Reinke was motivated to participate in the present grievance because several weeks previous to March, 2010, Thorvaldson had complained about Reinke to the Employer's Human Resources Department after a confrontation between them. Reinke denied that he was so motivated, and Thorvaldson did not testify.

I make the following ruling with respect to this argument. Whether or not Reinke had such a purpose behind his decision to participate in the grievance, as the arbitrator selected by the parties under the labor agreement's grievance procedure, I must still resolve the issue raised by the grievance. I must decide whether, as the grievance alleges, the Employer violated Section 2(a) of the labor agreement, notwithstanding that Reinke's decision to participate in the grievance may or may not have been motivated by a purpose other than recovery for a lost opportunity to do some of the re-work at issue.

The Employer presented the testimony of Dennis J. Turso, the Employer's sole shareholder. He testified that he talked to the grievant McGinn the day before the hearing and that she told him that she had no interest in participating as a grievant in this case, but that the Union forced her to sign her name to the grievance. McGinn did not testify. Marty L. Hallberg, President of the Union, testified that, several days before the hearing, McGinn participated in a meeting held to prepare for the hearing and that McGinn indicated that she supported the grievance. I rule as follows. The testimony about McGinn's willingness to participate as a grievant, whether from Turso or from Hallberg,

is hearsay. In the absence of her testimony or other more probative evidence indicating that she wished to withdraw as a grievant, I do not consider such hearsay evidence. In addition, even if there were probative evidence that McGinn had decided no longer to participate in the grievance, the Union and the Employer, as the parties to the case, are entitled to a resolution of the allegation made by the grievance -- that assignment of the work at issue to non-Union employees was a violation of Section 2(a) of the labor agreement.

The Employer has argued that the job at issue was a fully subcontracted job and that, as such, the Union had no claim on the re-work. The Union concedes that, if the entire job including the re-work had been done by a subcontractor away from the Employer's facility, the Union would have no claim on the work. The Union argues, however, that, because the Employer decided to do the re-work in-house using its employees, Section 2(a) of the labor agreement applied, and thus created a contract right that Union employees do work within its jurisdiction. As I interpret Section 2(a) of the labor agreement, it does not mean that, because part of the work on a particular job has been subcontracted, the Union loses jurisdiction over other work on the same job, which is done in-house by non-Union employees of the Employer -- if such other work is "bindery production work," as described in Section 2(a) of the labor agreement. As I have indicated, I consider below whether the re-work at issue was such bindery production work and, thus, within the Union's jurisdiction under Section 2(a).

The Employer estimates that about 66% of the total re-work on the 18,000 brochures was done by its three Quality Assurance Technicians. The Employer argues that work done by them was outside the jurisdiction of the Union. The Union concedes that the work done by the three Quality Assurance Technicians was properly done by them, making moot any issue concerning the work they performed. The Union argues only that it had jurisdiction under Section 2(a) over the re-work that was done by the two office employees, Dixon and Thorvaldson.

The Union argues that, though it concedes jurisdiction to the Quality Assurance Technicians for quality assurance work they actually perform, it does not concede that they may defeat the Union's jurisdiction as defined in Section 2(a) by assigning bindery production work to other non-Union employees, such as Dixon and Thorvaldson. As I interpret Section 2(a) of the labor agreement, it reserves bindery production work to Local 1B employees, unless, as the Union concedes, the Quality Assurance Technicians actually perform such work as an incident to their quality assurance duties.

The evidence shows that the work done by Dixon and Thorvaldson was primarily the removal of the plastic cards of the wrong color that the subcontractor had placed in the envelope on the cover of the 18,000 brochures and then the replacement of those cards with cards of the correct color. Bruce B. Rankin, the Employer's President, testified that he obtained the estimates of Dixon and Thorvaldson that they had worked a total of twelve hours doing the re-work at issue.

Dixon and Thorvaldson did not testify. Hallberg testified that, by his estimate, using an "industry standard," that work would take fifty-six hours to complete.

During his testimony, Rankin presented a list of seventy-three jobs performed between February 1, 2008, and July 10, 2010. Below, I reproduce ten entries from that list as a representative sample to show the kind of information the list provides:

<u>Date</u>	<u>RA #</u>	<u>Job #</u>	<u>Disposition</u>
2/1/08	2533	25310	Rework and return to customer
2/28/08	2575	26179	Product returned for reinspection
4/22/08	2606	13276	Rewrap and return to customer
10/28/08	2719	35457	Rework and return to customer
11/25/08	2730	31302	Return for inspection
1/14/09	2762	34718	Scrap and issue credit
			Return good product to customer
3/2/09	2798	16518	Remove bad product, return to customer
7/21/09	2872	44803	Issue credit for product destroyed during rework
3/30/10	2983	53491	Product was partially destroyed during reinspection
6/21/10	3024	56714	Return to customer

Rankin testified that the seventy-three jobs on the list are jobs that have come back from customers for "quality returns and reinspections" since February 1, 2008, and that the reasons for the return of these jobs are similar to the reason for the return of the job at issue in the present grievance. He testified that Local 1B employees received the product returned for all of the jobs on the list and shipped the product out again. Brian M. Haglund, a Production Supervisor, testified for the Employer that he thought that all of the work on the list of seventy-three jobs had been performed by non-Local 1B employees.

Hallberg testified that he was not familiar with any of the seventy-three jobs on the list and that the list did not provide sufficient information to determine whether any of the work done after quality inspection was work that was Local 1B bindery production work.

Reinke also testified that he was not familiar with any of the seventy-three jobs on the list, except that he could tell from the information presented on the list that 80% to 85% of the jobs consisted of "flexo" work and, therefore, were within the jurisdiction of Local 29C and not that of Local 1B. Reinke also testified that, with respect to the other 15% to 20% of the jobs on the list, the information provided was insufficient to indicate whether the work was within the jurisdiction of Local 29C or Local 1B. In addition, Reinke testified that he knows of no re-work within the jurisdiction of Local 1B that has been done by non-Local 1B employees.

Hallberg testified that the work done by Dixon and Thorvaldson -- the removal and replacement of the plastic cards from envelopes on the front of the brochures was the kind of "hand work," that bindery production workers do and that it was thus "bindery production work" within the meaning of Section 2(a) of the labor agreement.

Reinke testified that he has worked for the Employer for twenty years. He described the re-work at issue, i.e., the work done by Dixon and Thorvaldson, as consisting of several steps -- 1) taking the brochures out of the boxes they were packed in by the subcontractor, 2) opening the envelope on the face of the

brochure, 3) taking the old card out of the envelope, 4) inserting the new card in the envelope and 5) replacing the brochures in the packing box. He testified that this kind of work is work that has been done in the past by Local 1B employees and thus that it is bindery production work. Reinke also testified that he was not aware of any time previously that the Employer has used office employees or other non-members of Local 1B to do this kind of hand work. In addition, Reinke testified that the work done by Dixon and Thorvaldson was hand re-work for a bindery production job and that the computer used at the Employer's facility is programmed with entries that Local 1B employees use to record time they spend on such work either as billable or non-billable hours.

From the evidence summarized above, I find that the work done by Dixon and Thorvaldson was "bindery production work" within the meaning of Section 2(a) of the labor agreement. This finding is based primarily on the testimony of Reinke, which identified with particularity the hand re-work done by Dixon and Thorvaldson as bindery production work. The evidence concerning the list of seventy-three "quality returns and reinspections" done since February 1, 2008, did not provide sufficient detail to determine what was done after reinspection. Without such information, it cannot be determined if the work on those jobs was similar to the work at issue in this case. It also appears from the testimony of Hallberg and Reinke that, if the work done on these seventy-three jobs was hand re-work similar to the work at issue in this case, that the Union was not aware of that

circumstance. Though, as Rankin testified, Local 1B employees handled the materials received and shipped out on those jobs, the evidence does not show that those employees, engaged as they were in their shipping functions, were aware of the kind of work that those jobs required.

The Employer argues that it had the right to treat Dixon and Thorvaldson as temporary employees within the meaning of Section 25(c) of the labor agreement, which I set out below:

Employees shall be regarded as temporary employees for the first thirty (30) days of their employment. There shall be no responsibility for the re-employment of temporary employees if they are discharged or laid off during this period. After an employee has worked thirty (30) successive shifts, or has worked thirty (30) shifts including Saturdays, Sundays and holidays, in any continuous sixty (60) day period, the name of such employee shall then be placed on the seniority list for their respective classifications in order of date of hiring, and such employees shall then be entitled to all the benefits of the contract.

The Employer argues that, under this provision of the labor agreement, it could treat Dixon and Thorvaldson as temporary employees working in a Union classification, thus eliminating any claim of the Union that Dixon and Thorvaldson did the re-work at issue as non-bargaining unit personnel. The Union responds that such an interpretation of Section 25(c), i.e., to permit the Employer to designate any of its non-Union personnel as temporarily within the Union, would entirely defeat the jurisdictional agreement the Employer has entered into in Section 2(a) of the labor agreement and that, therefore, such an interpretation is clearly not within the parties' intention when they included Section 25(c) in the agreement.

I agree with this response. There is no evidence that the Union and the Employer intended to permit the Employer to designate a non-Union employee of the Employer as temporarily occupying a Union classification, with the result that protection of the Union's jurisdiction, the clear purpose of Section 2(a), could thus be defeated, making Section 2(a) meaningless.

As noted above, the evidence about the number of hours that Dixon and Thorvaldson took to perform the work at issue consists of 1) Hallberg's estimate that, based on industry standards, it should have taken fifty-six hours to replace all the cards and 2) the estimates of Dixon and Thorvaldson, supplied by hearsay, that they worked a total of twelve hours. The evidence gives no detail about how much of the work was done by them. Apparently, Hallberg's estimate assumes that Dixon and Thorvaldson did the card replacements for all 18,000 brochures, though Reinke testified that he did not know how many of the brochures they worked on. In this circumstance, I accept the estimates of Dixon and Thorvaldson as the best evidence that is available.

The labor agreement establishes a normal work day of seven hours, with a work-day limit of twelve hours. The first hour worked by an employee in excess of seven per day is to be paid at the straight time rate, and hours in excess of eight per day are to be paid at time and one-half. Reinke acknowledged that he has provided the Employer with a note from his physician that excuses him from work in excess of eight hours per day. He also testified that he could have done some of the re-work at

issue as overtime work in excess of his eight-hour limitation, but he did not estimate how many hours. Reinke did testify, however, that McGinn could have worked up to twelve hours per day on the days that the re-work at issue was performed.

The Employer presented time records showing hours worked by Reinke and McGinn on the seven days that the re-work at issue was done. For each of them, those records show the total hours worked on the first two days, February 17 and 18, 2010, and the total hours worked on the other five days, March 1, 2, 3, 4, and 5, 2010. The records, however, do not show the hours they worked on each of the seven days -- information I find necessary to determine an award that specifies with particularity how each grievant should be compensated.

Accordingly, the award below is cast in language that requires the parties to determine the specific overtime compensation that each grievant is entitled to recover -- with the proviso that, if the parties are unable to agree, I retain jurisdiction to determine the number of hours of overtime compensation each grievant is entitled to recover upon presentation of further evidence.

AWARD

The grievance is sustained. The Employer shall pay the grievants Reinke and McGinn for overtime hours they could have worked on February 17 and 18, 2010, and on March 1, 2, 3, 4, and 5, 2010 -- subject to the following limitations.

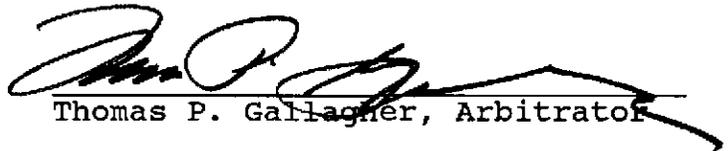
First. Reinke's compensation shall be determined by calculating the time he actually worked on each of these seven

days, including any overtime, with a total daily limit, however, of nine hours, so that the total hours of work upon which his recovery is to be based for each of the seven days cannot exceed the difference between the time he actually worked on each day and nine hours.

Second. McGinn's compensation shall be determined by calculating the time she actually worked on each of these seven days, including any overtime, with a total daily limit, however, of twelve hours, so that the total hours of work upon which her recovery is to be based for each of the seven days cannot exceed the difference between the time she actually worked on each day and twelve hours.

Third. The total hours for which recovery is awarded shall not exceed the twelve hours that Dixon and Thorvaldson spent working on the re-work at issue. If upon calculating the number of hours for which the grievants are to recover, using the first and second limitations set out above, the hours for which recovery is allowable are more than the twelve hours that Dixon and Thorvaldson spent on the re-work at issue, the recovery of Reinke and McGinn shall be pro-rated.

November 8, 2010


Thomas P. Gallagher, Arbitrator