

Woodworkers' Local No. 3-536, International Woodworkers of America, AFL-CIO and Weyerhaeuser Company. Case 19-CD-286

April 13, 1978

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Weyerhaeuser Company, herein called the Employer, or Weyerhaeuser, alleging that Woodworkers' Local No. 3-536, International Woodworkers of America, AFL-CIO, herein called Local No. 3-536, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by it in the Woods bargaining unit rather than to other employees, also represented by it, in the Mill bargaining unit.

Pursuant to notice, a hearing was held before Hearing Officer Max D. Hochanadel on December 13, 1977. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The Employer and the Woods bargaining unit thereafter filed briefs with the National Labor Relations Board.

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 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 proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Washington corporation, is engaged in the processing and sale of wood products in several States, including the State of Washington. During the past year, its sales to customers located outside the State of Washington exceeded \$10 million. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Local No. 3-536 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

For many years, Weyerhaeuser has milled logs at several mills located on a 600-700 acre site in Longview, Washington. Each mill is designed to process certain lengths and widths of logs for specific products. Near each, there is a sorting yard or log-handling area at which logs are stacked and stored. When needed, these logs are loaded on trucks and transported to the appropriate mill.

Since 1941, Weyerhaeuser has recognized Local No. 3-536 as the certified collective-bargaining representative for all of its production and maintenance employees at Longview. It has, however, negotiated separate contracts for employees in the Woods and Raw Material Division and those in mill operations at each mill. The first group, therefore, is called the Woods unit, while the latter is the Mill unit. The Woods unit employees generally are responsible for all of the log-handling work. As log handlers, they use a variety of tractors or caterpillars with large forks or grapples. These tractors can carry up to 1,200 pounds of wood and are used to unload and stack the logs coming in, as well as to load the logs on the truck for transportation to each mill. The Mill unit processes the logs at the mill, as discussed below.

The work in dispute is done at Mill A. Mill A is a small log sawmill with eight employees. When the truckloads of logs arrive at Mill A, a Woods unit employee takes the logs from the truck and feeds them into a log deck. From there, a Mill unit employee uses a tonged crane, called a cherry picker, to place the logs on a conveyor belt to cutoff saw #1. The operator at cutoff saw #1 then decides whether the log's dimensions suit it for plywood (called ply blocks) or for regular lumber. If the former, then the ply blocks are kicked back into a storage bin where they are stacked and loaded for transport to the plywood plant located at another section of the Longview site. If the latter, the wood continues along the conveyor belt to cutoff saw #2 for further processing.

Until the summer of 1977, Mill A did not process ply blocks. That summer, Weyerhaeuser decided that some of the logs could be milled as ply blocks. It

thereupon assigned a mill employee to drive a Caterpillar 966, with a Harricana boom,¹ to stack and load the blocks and to clear the outside of wood debris approximately 4-1/2 hours a day, and then to perform manual maintenance, i.e., cleaning offices and restrooms within the mill, the balance of the day.

In July 1977, employees in Local No. 3-536's Woods unit struck in protest of Weyerhaeuser's assignment of the ply blocks work to a Mill unit employee. In response to this work stoppage, the Employer agreed to place a Woods unit employee in that position temporarily. The Employer thereafter reassigned the work to a Mill unit employee, whereupon the Woods unit pursued, and finally exhausted, the grievance procedure of its contract.² On October 12, 1977, Local No. 3-536 wrote the Employer that, unless the Employer assigned the disputed work to a Woods unit employee, it would engage in economic action.

B. *The Work in Dispute*

The work in dispute is the operation of a Caterpillar 966 rubber-tired diesel materials-handling machine with a modified Harricana boom installed thereon.

C. *The Contentions of the Parties*

The Employer contends that the work in dispute should be assigned to the employees in the Mill unit on the basis of Employer preference, economy, and efficiency of operations.

Local No. 3-536 took no position at the hearing with respect to the resolution of the work dispute.

The Mill unit asserts that Weyerhaeuser's assignment of the disputed work to a mill employee should not be overturned, since mill employees have used Cat 966 machines and since the disputed work is an integral part of mill operations.

The Woods unit, on the other hand, argues that the work in dispute is essentially one of stacking logs which work fits within its contract's description of log stacker operator. It also points out that Woods unit employees perform the same kind of work at Mill B with a Cat 966, only with larger logs.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable

cause to believe that Section 8(b)(4)(D) has been violated, and that (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As to (1), the record herein reveals that Woods unit employees struck in protest of Weyerhaeuser's assigning the cleanup/Harricana work to a mill employee; and Local No. 3-536 thereafter processed a grievance and, on October 12, wrote a letter threatening economic action. In view of the temporary work stoppage and Local No. 3-536's activities, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.³

As to (2), we find that there is no agreed-upon method for the voluntary adjustment of this dispute. The Mill and Woods units have separate contracts with the Employer, each containing the same grievance procedure. Neither contract, however, provides for arbitration. Thus, no agreed-upon means for the voluntary settlement of this dispute exists to which all necessary parties are bound.

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.⁴ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁵

The following factors are relevant in making a determination of the dispute before us:

1. *Collective-bargaining agreements*

Neither agreement in question contains a clause defining the respective jurisdiction of the Mill and Woods units. However, in the mill contract, the Employer has recognized Local No. 3-536 as the sole representative of all employees "employed in bargaining unit jobs in its Wood Products Group, Longview, Washington." The Employer recognizes Local 3-536, Woods unit, as the representative of all

¹ The "Cat" 966 Harricana is a small tractor with a front attachment (boom) capable of removing logs from the bins and placing them on a truck. It is also used for cleanup in the yard.

² This contract did not provide for arbitration.

³ See, e.g., *International Association of Bridge, Structural and Ornamental Iron Workers, Local 348, AFL-CIO (Dick Tile and Marble Company, Inc.)*, 193 NLRB 769 (1971). Here, the Woods unit has conceded that the strike was in protest of the work assignment.

⁴ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

⁵ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

employees "in bargaining unit jobs in all its Woods Operations, Longview, Washington . . ." In addition, during the term of the present collective-bargaining agreement, the Employer and Local 3-536, Woods unit, signed an agreement to resolve a dispute over the wages of the log stacker operator. They agreed that the log stacker operator would operate any stacking machine, including those with "forks, blades, tanks, scoops to handle logs (including barked logs), chips, debris and any other material as required" to load and unload trucks, and to "[s]ort marked and unmarked logs by general characteristics, species, length and diameter, as capable from the cab." Other memorandum agreements have established the Woods unit's jurisdiction over the sorting of logs in the log-handling yards.

With respect to the above, the collective-bargaining agreements shed no light on the respective jurisdictions of the two units. The recent side agreement for log-stacker operators defines their duties, but does not give this classification exclusive control of this work, particularly where, as here, the Harricana operator also spends considerable time inside the mill performing maintenance chores. The Employer does not dispute the Woods unit's jurisdiction over the sort yards, but asserts that the work in dispute relates more closely to the mill's regular activities. The agreements do not contradict the Employer's position because they do not define the parameters of the yard or log-handling area. Thus, neither unit's claim to the work is advanced by the agreements. Accordingly, we find that this factor favors neither competing group.

2. Company and industry practice

The evidence establishes no regular practice in the industry regarding the assignment of the disputed work. There is, however, evidence that at one other company (Exeter Lumber, Longview, Washington) mill employees operate rubber-tired log-handling equipment. At Weyerhaeuser, employees in neither unit have heretofore performed the same work as that in dispute. At Mill B, however, Woods unit employees are assigned to pick up ply blocks with a 966 Caterpillar and transport those blocks to a nearby plywood plant. This work differs from that in dispute in that at Mill B the ply blocks are larger; the attachment on the 966 is a log head rather than a Harricana boom; and the employees transport the logs on their tractors, rather than loading them onto a truck. We find, on balance, that the factors of company and industry practice favor neither competing group.

3. Relative skills

The record shows that employees from both units have the skills to perform the disputed work and have worked on somewhat similar machines. Accordingly, we find that this factor also does not favor either competing group.

4. Economy and efficiency of operation

The record shows that the assignment of the disputed work to a mill unit employee would be significantly more efficient. If the work is assigned to a mill employee, the same employee could drive the tractor part of the day, and then spend the remainder performing work inside the mill. Furthermore, the mill employee can do so under the same supervision, while remaining in the same proximate location. On the other hand, if a Woods employee were given the work, such employee would only work outside on the tractor. At present, this work would not be full time. The Employer would then have to hire another part-timer to perform the mill maintenance work. While the record shows that the amount of stacking will increase, the Employer intends to retain the present division of duties. Under these circumstances, we find that the factors of economy and efficiency of operations favor assignment of the work in dispute to employees represented by the Mill unit.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Local No. 3-536 in the Mill unit are entitled to perform the work in dispute. We reach this conclusion relying on Employer preference, economy, and efficiency of operation. In making this determination, we are awarding the work in question to employees who are represented by Local No. 3-536 in the Mill unit, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Weyerhaeuser Company, who are represented by Woodworkers' Local No. 3-536, International Woodworkers of America, AFL-CIO, in the Mill unit are entitled to perform the work in dispute.

2. Woodworkers' Local No. 3-536, International Woodworkers of America, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Weyerhaeuser Company to assign the disputed work to employees represented by it in the Woods unit.

3. Within 10 days from the date of this Decision and Determination of Dispute, Woodworkers' Local

No. 3-536, International Woodworkers of America, AFL-CIO, shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed in Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.