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International Longshore and Warehouse Union, Local 12, and Southport Lumber Co., LLC. Case 19–CD–144202

October 11, 2018

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The Employer, Southport Lumber Co., LLC, filed a charge on January 12, 2015, alleging that the Respondent, International Longshore and Warehouse Union, Local 12 (the Union), violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to the Employer’s unrepresented employees. On April 8 and 9, 2015, a hearing was held before Hearing Officer Rachel Harvey. At the hearing, the Union orally moved to quash the notice of hearing. The hearing officer referred the Union’s motion to the Board. Thereafter, the Employer and the Union filed posthearing briefs.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer’s rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is an Oregon limited liability corporation engaged in the manufacture of lumber and wood products at its facility in North Bend, Oregon, and that during the year preceding the filing of the charge, it derived gross revenues in excess of \$500,000 and purchased and received at its North Bend facility goods valued in excess of \$50,000 directly from points outside the State of Oregon. The parties also stipulated,

¹ On February 10, 2016, the Union filed a motion requesting that the Board take administrative notice of the Sec. 8(b)(4)(B) charge filed by the Employer against the Union in Case 19-CC-156772, alleging unlawful picketing in May and July 2015, and the General Counsel’s letter sustaining the dismissal of the charge. The Employer filed an opposition to the motion. We grant the Union’s motion because the documents are official records of the Board. However, they do not affect this decision and determination of dispute. See *Independent Stave Co.*, 278 NLRB 593, 593 fn. 1 (1986). On March 1, 2016, the Union filed a second motion to take administrative notice of the underlying Advice Memo in Case 19-CC-156772. We deny the motion because advice memos have no precedential value or dispositive effect before the Board.

² The Employer and SFP are subsidiaries of Southport Investments. Jason Smith and Jim Lyons own the three companies. Smith manages

and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer manufactures and sells lumber and wood products at its sawmill and barge slip facilities in North Bend, Oregon. In 2004, the Employer’s sister company, Southport Forest Products (SFP), purchased 32 acres of industrial land and a dilapidated barge slip on Coos Bay in the city of North Bend.² SFP built a sawmill on the property, which the Employer operates. SFP and the Port of Coos Bay jointly applied for and received a grant to renovate the barge slip.³ In the spring of 2012, the renovated barge slip became operational for inbound logs and outbound lumber. That same year, the Employer began constructing a radial stacking chip conveyor for loading chip barges. The chip conveyor became operational in February 2013.

The Employer currently receives and unloads logs shipped in on barges and loads wood chips onto barges at the slip.⁴ To accomplish the chip loading, bulldozers or “chipdozers” push wood chips from the sawmill into a large concrete hole with a hopper that feeds the conveyor. A series of belts moves the chips up the conveyor, and the barges are loaded through a chute at the top of the conveyor. The position of the chute is controlled by a push-button remote control device. With respect to unloading logs, most barges have on-board cranes, operated only by barge personnel. When a log barge comes into the slip, barge personnel off-load the logs, placing them dockside. The Employer’s employees then use special forklifts, called LeTourneau machines, to move the logs from dockside to the log yard at the sawmill.⁵ As used here, “log unloading” refers to moving logs from the dock to the log yard.

In early 2012, the Employer arranged to export logs by barge for Weyerhaeuser Company. The Union learned of

the day-to-day operations of the Employer and SFP. Neither the Employer’s nor SFP’s employees are represented by a union.

³ The joint application stated that the rehabilitation of the slip would create jobs for the Employer’s employees and would provide “additional work opportunities for the local longshore labor force and for other persons employed in marine trades in the Coos Bay harbor.” Martin Callery, Chief Commercial Officer for the Port, testified that he was involved in filing the joint application and that he understood the term “longshore labor” as a generic term that applies equally to members of the Union and “anyone who handles cargo on the waterfront.”

⁴ The Employer planned to load logs and lumber for shipping by barges but had not done so as of the date of the hearing in this matter.

⁵ Operators maneuver the LeTourneau machines using toggles rather than levers.

the arrangement and met with the Employer to discuss using union labor to perform loading and unloading work at the Employer's slip. The Employer contacted the Pacific Maritime Association (PMA) and ultimately invited PMA member Jones Stevedoring Company to attend the meetings with the Union.⁶ The parties discussed work involving pushing the remote buttons that control the chip conveyor chute, operating the LeTourneau machines to move logs from dockside to the log yard of the sawmill or to an interim point, and operating cranes to load and unload logs. The Employer, the Union, and Jones Stevedoring failed to reach an agreement, and Weyerhaeuser decided to transport the logs by truck instead of by barge from the Employer's slip.

Afterwards, the Employer again attempted to reach an agreement with the Union on manning. In a May 7, 2012 letter to the Union, the Employer's co-owner Smith wrote in relevant part:

We would like your consideration of the following manning scenarios:

- Wood Chip Loading – 2 Button Pushers
- Inbound and Outbound Logs – 2 Crane Operators
- Lumber Barge Loading and Unloading – 4 Forklift Operators and 2 Extra Men

As to others, we suggest working out the details through your employers when opportunities come up.

On May 14, 2012, the Union responded that its membership unanimously approved the following:

- Wood Chip Loading – 2 Button Pushers
- Inbound and Outbound Log Barges – 2 Crane Operators and 2 Log Loader Operators
- Lumber Barge Loading and Unloading – On the coastal barges: 1 Working Foreman, 4 Fork Lift Drivers, and 1 Extra Man; 2 Fork Lift Drivers or more as needed on face. On Hawaiian barges: 4 Fork Lift Drivers and 2 Hold Men; (1 Walking Boss

⁶ The PMA is a multiemployer association of stevedoring companies that has a collective-bargaining agreement with the Union. The Employer is not a member of the PMA nor signatory to any agreement between the PMA and the Union.

⁷ Around this time, the Employer was also pursuing an opportunity to acquire log-unloading work at a Canadian company's slip. Upon hearing the news, the Union picketed the Employer's slip. Subsequently, the Employer informed the Union that it was no longer seeking this work and that it had entered into an agreement with Ports America, a PMA member, to create a mutually beneficial working arrangement with the Union.

⁸ A February 27, 2013 news release by the Port of Coos Bay stated that the Port's partnership with the Employer "is expected to increase

– Local 92, and 1 Super Cargo – Local 40); 2 Fork Lift Drivers or more as needed on face.

By letter dated June 4, 2012, the Employer responded that the Union's letter foreclosed the possibility of reaching an agreement. The letter also stated that as the Employer had no collective-bargaining agreement with the Union, it would use nonunion personnel in its future work except where its customers elected to contract with Jones Stevedoring.⁷

In February 2013, the barge slip became operational for loading chip barges, and Weyerhaeuser, Georgia-Pacific, and Capstone Paper began purchasing wood chips from the Employer.⁸ The arrangement with Weyerhaeuser and Georgia-Pacific, which purchased the chips "free alongside" (FAS),⁹ was that they would hire a barge company, and they had the option to use or not use union labor to operate the Employer's chip chute. The arrangement with Capstone was for chips and delivery, or "free on board" (FOB), so the Employer contracted with Dunlap Towing, a barge company that in turn contracted for union stevedores through Ports America. For approximately 14 months, two employees represented by the Union and supplied by Ports America performed the push-button work involved in loading chips onto barges. Each employee worked 2 hours on and 2 hours off during a shift. Richard Coleman, the Employer's sawmill yard manager, supervised their work, and millwright Mike Puls, a sawmill employee, assisted Coleman with the chip-loading operation.

In September 2014, the Employer imported its first shipment of logs by barge. It initially arranged with Brusco Tug & Barge to bring the logs to the slip and planned to use its own employees to unload them. Brusco bowed out of that arrangement after the Union advised that it had a dispute with the Employer and that "there could be a picket line." On September 4, 2014, another company, Boyer Towing, brought the logs into the slip with Knutson Towboat providing barge assistance, and the Employer's employees unloaded the logs. The Union picketed at the front gate of the Employer's facility and near

employment in Southport's local operations, and in maritime services and the longshore labor sectors." The news release also quoted Union President Marvin Caldera saying, "We appreciate the fact that the Port was able to partner with [the Employer] to get these funds for the barge slip and create much-needed family wage jobs locally."

⁹ "Free alongside" (FAS) is a commercial term used in the shipping industry and means the seller is responsible for transporting goods to the boarding area next to a ship, and the buyer is responsible for ensuring that the goods are loaded onto the ship and conveyed from there. The counterpart of FAS is "free on board" (FOB), which means the seller is responsible for transporting and loading the goods onto the ship and delivering them to the buyer's destination. See <https://www.law.cornell.edu/ucc/2/2-319> (last accessed on September 12, 2018).

the barge with signs reading, “Shame on Southport” and “Barge slip ILWU Local 12 jurisdiction.”¹⁰

Thereafter, the Employer’s employees, rather than Ports America’s union stevedores, began loading wood chips. The reason for the change is disputed: the Employer asserts that the Union refused to supply Ports America with button pushers because the log-unloading work was not given to employees it represented; the Union asserts that the Employer stopped working with Ports America.¹¹ In any event, on December 4, 2014, the Employer engaged Island Tug & Barge and Pacific Tug to provide towing and ship assistance for Capstone Paper’s inbound chip barges. The Employer’s yard manager, Coleman, operated both the chip conveyor and chip chute. Millwright Puls relieved Coleman when he took breaks and for 2 hours on one occasion when Coleman left work early. The Union picketed the Employer’s barge and sawmill. Subsequently, the Employer handled four additional chip barges, and each time the Union engaged in picketing.¹²

B. Work in Dispute

The notice of hearing describes the disputed work as “the loading and unloading of logs and wood products at the barge slip operated by [the Employer] in North Bend, Oregon.” At the hearing, the Union asserted that this description is overly broad and that the disputed work is limited to the control of the spout during chip loading and operating the LeTourneau machines for log unloading. The Employer asserted that the use of crane operators in log unloading is also at issue because the Union had demanded that work in the past and had not withdrawn its claim, but it later agreed to the Union’s description of the disputed work. Indeed, in its posthearing brief, the Employer asserts that button pushing (to control the spout during chip loading) and the operation of the LeTourneau machines should be awarded to its employees, without mentioning other work.¹³

However, the Union argues that the Employer’s yard manager Coleman is a statutory supervisor, and as stated above, Coleman did the lion’s share of the button-pushing work involved in loading chips. Jurisdictional disputes under Section 10(k) of the Act do not include disputes over work performed by statutory supervisors.

¹⁰ After the picketing, Union Officer Gene Sundet asked Knutson Towboat “if there was any chance that [Knutson Towboat] would not be willing to work for” the Employer. Sundet also told Dunlap Towing that the Union had a labor dispute with the Employer and that there could be a picket line. As a result, Knutson Towboat and Dunlap Towing declined to provide further services for the Employer.

¹¹ No representative from Ports America testified.

¹² On January 12, 2015, the Employer filed the charge in this case.

¹³ In its posthearing brief, the Union seeks to further specify the scope of the disputed work, in part, as “the operation of on-dock heavy equipment to transport logs from the dock to the first place of rest (i.e., the

Accordingly, we find that the work in dispute consists of button pushing for chip loading and operation of LeTourneau machines in log unloading at the Employer’s barge slip in North Bend, Oregon, excluding those times, if any, when the button-pushing work is performed by an individual who is a supervisor under the Act.¹⁴

C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that the Union violated Section 8(b)(4)(D) of the Act because it demanded the chip-loading and log-unloading work, picketed the Employer and its customers, and threatened the Employer’s customers with similar conduct at other locations where they do business, all in furtherance of its claim to the disputed work.¹⁵ It also contends that the Union refused to supply employees to Ports America to perform chip-loading work in order to pressure the Employer to accept its terms for providing union labor to unload logs from barges. On the merits, the Employer contends that the work in dispute should be awarded to its employees based on the factors of employer preference, relative skills, and economy and efficiency of operations.

The Union contends that the Board should quash the notice of hearing. It argues that there is no valid jurisdictional dispute because the Employer effectively created the dispute by reassigning the chip-loading work previously performed by union personnel to its own employees. In this connection, the Union contends that its picketing was a lawful effort to preserve chip-loading work that the employees it represents previously performed and to get the Employer to follow through on commitments to use union labor to unload logs. Finally, the Union contends that if the Board does not quash the notice of hearing, the work in dispute should be awarded to employees it represents based on the factors of past practice, area and industry practice, relative skills, economy and efficiency of operations, and job impact.

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is

decks in the yard).” Because the record establishes that the operation of LeTourneau machines is at issue, we decline to adopt that description. Nonetheless, we note that the Employer’s LeTourneau operators move logs from the dock to log decks in the yard, and that one of the Union’s manning proposals covered that work.

¹⁴ See *Teamsters Local Union 525 (Tiger Stripers, Inc.)*, 241 NLRB 306, 307 (1979); *Building Material & Dump Truck Drivers Local 420 (All American Asphalt, Inc.)*, 238 NLRB 934, 935 (1978).

¹⁵ The Employer also relies on the Union’s attempt to secure log-loading work in 2012; however, this conduct occurred well before the Sec. 10(b) period.

reasonable cause to believe that there are competing claims to the disputed work, and that a party has used prescribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). As explained below, we find that these requirements have been met.

1. Competing claims for work

We find reasonable cause to believe that there are competing claims for the work in dispute. The Union admits that it has claimed the disputed work. As discussed below, the Employer's employees also claimed the disputed work by performing that work.¹⁶ To begin, no party disputes, and we find, that the Employer's employees were performing the log-unloading work. Also, contrary to the Union's contention, we find that the Employer's employee(s) were performing the chip-loading work. The record establishes that although alleged statutory supervisor Coleman did the lion's share of the button-pushing work involved in loading chips beginning in December 2014, employee Puls relieved Coleman during Coleman's breaks and once substituted for him when he had to leave early. The record does not quantify how often and for what period of time Puls relieved Coleman. The Union challenges Coleman's veracity, arguing that his testimony regarding the frequency of Puls' button-pushing work is not worthy of belief, but it does not challenge Puls' status as a statutory employee.¹⁷

We reject the Union's argument that this is a work-preservation dispute outside the scope of Section 10(k) of the Act. As discussed above, the instant dispute arose after the Union's efforts to obtain the log-unloading work, and its members have never performed that work at the Employer's barge slip. See *Longshoremen ILWU Local 14 (Sierra Pacific Industries)*, 314 NLRB 834, 836 (1994) (rejecting work-preservation claim where union never previously performed chip-loading work at employer's new location but rather was seeking to acquire new work), *affd.*

¹⁶ See *Seafarers District NMU (Luedtke Engineering Co.)*, 355 NLRB 302, 303 (2010); *Operating Engineers Local 513 (Thomas Industrial Coatings)*, 345 NLRB 990, 992 fn. 6 (2005).

¹⁷ The Board does not make credibility findings in a Sec. 10(k) proceeding. However, a conflict in testimony does not prevent the Board from proceeding with a determination of the dispute. "In this regard, the Board is not charged with finding that a [Sec. 8(b)(4)(D)] violation did in fact occur, but only that reasonable cause exists for finding such a violation." *Bricklayers Local 5 (Jersey Panel Corp.)*, 337 NLRB 168, 169 fn. 7 (2001) (citing *Laborers Local 334 (C. H. Heist Co.)*, 175 NLRB 608, 609 (1969)). In any event, Employer co-owner Jason Smith's testimony corroborates Coleman's testimony that a statutory employee, Puls, occasionally performed the button-pushing work. Moreover, circumstantial evidence further supports Coleman's testimony. The record

318 NLRB 462 (1995), *enfd.* 85 F.3d 646 (D.C. Cir. 1996). Where, as here, a union is claiming work that has not previously been performed by employees it represents, the "objective is not work preservation, but work acquisition," and the Board will resolve the dispute through a 10(k) proceeding. *Laborers Local 310 (KMU Trucking & Excavating)*, 361 NLRB 381, 383 (2014); *Electrical Workers, Local 48 (Kinder Morgan Terminals)*, 357 NLRB 2217, 2219 (2011), and cases cited therein.

Highway Truckdrivers & Helpers, Local 167, etc. (Safe-way Stores, Inc.), 134 NLRB 1320, 1323 (1961), and its progeny, cited by the Union, is distinguishable. There, the Board quashed the notice of hearing where a union was "attempting, in essence, to enforce a clear and indisputable contract claim to the work in dispute." *Teamsters Local 107 (Reber-Friel Co.)*, 336 NLRB 518, 520–521 (2001). Here, however, no such contract claim exists. The Union contends otherwise, citing its correspondence with the Employer and a press release from the Port of Coos Bay regarding the joint application for funding to renovate the barge slip. But the Employer's June 4, 2012 letter clearly rejected the Union's counterproposal for a manning agreement and stated that the Employer would use nonunion personnel except where its customers elected to contract with Jones Stevedoring. Similarly, the joint application and the press release also do not establish an agreement between the Employer and the Union, as both refer to increased employment opportunities for local "longshore labor," which, according to Chief Commercial Officer for the Port of Coos Bay Callery, is a generic term that does not distinguish between represented and unrepresented longshore workers.¹⁸

We further reject the Union's contention that the dispute is of the Employer's own making because it unilaterally reassigned the disputed work at its barge slip to its own employees. As discussed above, the Employer did not create the dispute by reassigning existing work. Rather, the dispute was precipitated by the Union's attempt to acquire the log-unloading work—in the absence of any agreement that mandated assigning that work to employees

indicates that the chip-loading process can take anywhere from 6 hours and 45 minutes to 10 hours, and prior to December 2014, two button pushers supplied by the Union took turns performing the work.

¹⁸ We recognize that union-represented employees previously performed the button-pushing work, and this may, in certain circumstances, support a valid work-preservation claim for that work. However, the Board looks to the "real nature and origin of the dispute" in determining whether a jurisdictional dispute exists. *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820 (1986), *affd. sub nom. USCP-Wesco, Inc. v. NLRB*, 827 F.2d 581 (9th Cir. 1987). As discussed above, the instant dispute arose only after the Union attempted to expand its work jurisdiction by obtaining the log-unloading work—work that went beyond the button-pushing work that its members had been performing.

represented by the Union—when that work first became available at the Employer’s barge slip.

The Union’s reliance on *Longshoremen ILWU Local 62-B (Alaska Timber Corporation) v. NLRB*, 781 F.2d 919, 924-925 (D.C. Cir. 1986), is likewise misplaced with respect to the chip-loading work. In that case, the court found that the Board erred in failing to quash a 10(k) notice of hearing because, the court reasoned, the employer had created the dispute by changing from selling timber FAS to purchasers, who in turn contracted for loading with a union stevedoring company, to FOB services using its own employees to load the timber. 781 F.2d at 925. The court found that the employer changed its business model by reassigning the work from the stevedoring company to its own employees, and that it was not a disinterested party because it admitted that it made the change to retain its mill employees who otherwise faced layoff. *Id.* Here, in contrast, the parties dispute which one is responsible for discontinuing the use of union-represented button pushers supplied by Ports America. It is not clear on this record whether the Employer stopped working with Ports America despite the Union’s willingness to continue supplying union labor for the chip-loading operation, as the Union contends, or whether the Union informed Ports America that it would stop supplying Ports America with labor, as the Employer contends.¹⁹ Thus, unlike in *Alaska Timber*, the record evidence is insufficient to establish that the Employer changed its business practice in order to avoid hiring union-represented stevedores for the button-pushing work. Based on the foregoing, we find that there are competing claims for the work in dispute, and we decline to quash the notice of hearing.

2. Use of proscribed means

We find reasonable cause to believe that the Union used proscribed means to enforce its claims to the disputed work. The Union admits that, in furtherance of its claim to the disputed work, it picketed the Employer on September 4, 2014, when the Employer imported its first shipment of logs by barge, and on December 4, 2014, and other dates thereafter, when the Employer loaded chip barges without union-represented labor.²⁰ See, e.g.,

¹⁹ The Union argues that Smith’s “double hearsay” testimony about his conversation with Ports America regarding the Union’s unwillingness to provide button-pushers for the Employer’s next chip barge should be disregarded on the ground that it was directly denied by Union President Sundet. We find that Smith’s testimony, albeit hearsay on which we do not rely for the truth of the assertion, sheds some light on his motivation for having the Employer’s employees perform the button-pushing work rather than waiting for union labor referred and supplied by Ports America. See *Continental Can Co.*, 291 NLRB 290, 294 (1988). Further, recall that the Employer secured union-represented operators of the remote-control chip-loading device by contracting with Dunlap

Longshoremen Local 19 (Seattle Tunnel Partners), 361 NLRB 1031, 1034 (2014).

3. No voluntary method for adjustment of dispute

The parties stipulated that there is no agreed-upon method for the voluntary adjustment of the work in dispute that would bind them.

Based on the foregoing, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that there is no agreed-upon method for the voluntary adjustment of the dispute. We accordingly find that the dispute is properly before the Board for determination, and we deny the Union’s motion to quash the notice of hearing.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. See *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. See *Int’l Association of Machinists, Lodge No. 1743 (J. A. Jones Construction Company)*, 135 NLRB 1402, 1410–1411 (1962). We have considered the following factors, which we find relevant, and, for the reasons set forth more fully below, we conclude that the Employer’s employees are entitled to perform the work in dispute.

1. Board certifications and collective-bargaining agreements

The Board has not certified any union as the collective-bargaining representative of the Employer’s employees involved here, and the Employer is not a party to any collective-bargaining agreement covering those employees. For the reasons stated above, we reject the Union’s contentions that the parties reached agreement on loading logs and that the Coos Bay press release and joint application constituted an agreement. Accordingly, these factors are neutral in determining the dispute.²¹

Towing, which in turn contracted for union stevedores through Ports America, and that Sundet told Dunlap Towing that the Union had a labor dispute with the Employer and that there could be a picket line, after which Dunlap Towing declined to provide further services for the Employer. We find Smith’s testimony consistent with this evidence.

²⁰ In light of the Union’s acknowledged picketing, we find it unnecessary in assessing proscribed conduct to rely on testimony that the Union also threatened barge and assist boat operators with picketing.

²¹ See *Carpenters (Overhead Door)*, 277 NLRB 1385, 1386 (1985) (no Board awards or collective-bargaining agreements).

2. Employer preference, current assignment, and past practice

“The factor of employer preference is generally entitled to substantial weight.” *Laborers Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB 819, 824 (2014). The Employer’s owner Smith steadfastly testified that the Employer prefers that its own employees perform the work in dispute, and those employees are currently performing this work. See *Laborers Local 265 (AMS Construction)*, 356 NLRB 306, 310 (2010) (according weight to employer’s stated preference and also considering its current assignment of work in dispute).²²

We reject the Union’s contention that the Employer’s preference should be disregarded because it is inconsistent with its past practice. In support of this claim, the Union cites *Plumbers Local 412 (Zia Co.)*, 168 NLRB 494 (1967), and *Carpenters Local 690 (Walter Corp.)*, 151 NLRB 741 (1965). In those cases, the Board accorded little weight to employer preference where that preference was not supported by any other legitimate, traditional factors. Here, in contrast, although the Employer’s preference is inconsistent with its past practice of assigning the chip-loading work to union labor,²³ we find that the Employer’s preference is supported by consideration of relative skills and economy and efficiency of operations, which are legitimate, traditional factors relevant to awarding work in dispute, as discussed below. Cf., e.g., *Graphic Communications Workers Local 508M (Jos. Berning Printing)*, 331 NLRB 846, 848 (2000) (declining to assign substantial weight to the employer’s preference based on preference for “a stronger union” rather than traditional factors); *Steelworkers Local 3-U (Greyhound Exposition)*, 302 NLRB 416, 420 & fn. 8 (1991) (declining to give substantial weight to the employer’s preference where it was not supported by traditional factors). Accordingly, we find that this factor favors awarding the disputed work to the Employer’s unrepresented employees.

3. Industry and area practice

The Union contends that its members perform the work in dispute locally and along the Pacific Coast. The Employer acknowledges that employees represented by the Union perform chip loading and log unloading at various

ports along the Pacific Coast from Eureka, California to Longview, Washington. The Employer points out, however, that not all coastal log, lumber, and wood product companies employ union labor, citing Sierra Pacific Industries as an example. The Employer also asserts that there had been no log unloading and loading operations work in Coos Bay for 25 years prior to the work at issue and that it was the first company locally to use the LeTourneau machines for log unloading.²⁴

Accordingly, although area practice is inconclusive with respect to unloading logs, we find that industry practice favors awarding the button pushing for chip loading and log unloading to employees represented by the Union.

4. Relative skills

The Employer argues that its employees are more adept at operating the chip conveyor and chute and that it employs several employees who are skilled at operating the LeTourneau machines, including one with 25 years of experience. It cites Coleman’s testimony that, on an unspecified number of occasions, union-represented employees supplied to Ports America jammed the chute and dumped chips into the bay.²⁵

Smith testified that he worked with an engineer to design the chip loader and that Coleman and Puls were “in on” its construction and helped with design changes and alterations. The Employer also emphasizes that its LeTourneau machines are unique and require training and experience to operate properly and that the Union acknowledged it would have to train employees or bring them in from outside the geographical region to operate the machines.

The Union asserts that its members along the Pacific coast have the requisite button-pushing experience to operate chip conveyors and chutes. The Union dismisses the Employer’s assertions that the LeTourneau machines are specialized and require more training than other log transport machines that its members are adept at operating. The Union states that its members are adept at communicating by radio with barge crews during chip loading. The Union also contends that its members are trained in the use of safety equipment during these operations.

The record establishes that millwright Puls and union-supplied stevedores are skilled at operating the push-

²² For the reasons discussed above, we find no merit in the Union’s contention that the Employer preferred using its members for the disputed work, which the Union supports by citing the parties’ correspondence and the press release regarding the joint application for funding to renovate the barge slip.

²³ The Union cites testimony of the Employer’s co-owner Lyons that as late as 2011, members of the Union unloaded logs at the Ocean Terminals’ dock as evidence of the Employer’s past practice of using employees represented by the Union to unload logs. While Lyons has some ownership interest in Ocean Terminals along with his three siblings, the

Union does not argue, nor does the record suggest, that Ocean Terminals and the Employer constitute a single employer. Therefore, we give no weight to the Union’s argument in this regard.

²⁴ The Employer appears to be mistaken with respect to log unloading. Lyons testified that, as recently as 2011, log barges were unloaded at Ocean Terminals, which is also on Coos Bay.

²⁵ The Employer’s witnesses also testified that workers supplied by the Union frequently failed to wear appropriate safety gear, such as life vests and hard hats.

button controls for the chip conveyor. However, Puls' knowledge of the conveyor's construction and participation in fine-tuning that machine militates in favor of awarding the work to the Employer's employees. The record also establishes that the Employer's employees have experience operating the LeTourneau machines used in log unloading, and that union-supplied labor lacks that experience. Accordingly, we find that this factor favors awarding the disputed work to the employees of the Employer.

5. Economy and efficiency of operations

The Employer characterizes the use of union-supplied button pushers to load chips as wasteful and inefficient because the Union insists on supplying two employees at a time who alternate working 2 hours on and 2 hours off during a shift. Moreover, the record shows that Coleman has to be available to oversee and supervise the chip loading by union labor.²⁶ Generally, upon advance notice, the Union supplies button pushers in three shifts—day, evening, and graveyard—but with little flexibility in starting and ending times, according to the Employer. This arrangement adversely affects chip loading if a barge arrives early or late owing to weather or water conditions, or if loading has to be paused during periods of strong seasonal winds that blow chips from the chute into the bay.

The Union asserts that its members work more efficiently and economically and cites evidence showing that union labor loaded 40 chip barges in 14 months, while Coleman loaded 5 chip barges in approximately 4 months. The Union also asserts that the chip loading takes Coleman away from his duties managing the sawmill yard. Finally, the Union contends that it based its manning requirements on the Employer's insistence on continuous operations and the Union's attempts to ensure the Employer's compliance with wage and hour laws.

Only one employee is needed to load chips onto barges. Although employees represented by the Union are skilled at button pushing, Puls can do that work and also has the capacity to make mechanical adjustments to the chip conveyor. Coleman oversees the union-supplied button pushers, but can attend to other tasks when Puls performs this work. Significantly, scheduling is easier when the Employer uses its own employee to load chips.

Accordingly, we find that this factor favors awarding the button-pushing and log-unloading work to the employees of the Employer. See, e.g., *Luedtke Engineering Co.*, 355 NLRB at 305 (finding economy and efficiency favors

awarding work to employees who can perform all aspects of work in dispute over employees who can perform only one aspect); *R&D Thiel*, 345 NLRB at 1141 (considering additional costs associated with one group of employees sitting idle while another group works); *Laborers Local 113 (Michels Pipeline Construction)*, 338 NLRB 480, 484 (2002) (observing that “[h]aving fewer employees accomplishing the same task . . . reduces costs in time, money, and personal safety”).

6. Job impact

Citing *Laborers Local 681 (Elmhurst-Chicago Stone Co.)*, 263 NLRB 980, 982-983 (1982), the Union asserts that the Board should consider job impact in making its determination. The Union contends that prior to September 2014, its employees unloaded log barges at the Ocean Terminals' dock on Coos Bay. It contends that its members have lost this work because the log barges now go to the Employer's slip to be unloaded. The Union also points out that its members lost chip-loading work when Coleman began performing that function. Further, it points to co-owner Smith's testimony that the Employer uses employees who were already at the mill yard to unload logs and that these employees will not lose their jobs if that work is assigned to union-represented employees.

The Employer's co-owner Lyons, whose family also owns the Ocean Terminals docks, testified that Ocean Terminals last received a load of logs in 2011 and that, in July 2013, it leased its facility to Merrill and Ring Corporation. Despite some common ownership of the Employer and Ocean Terminals, there is no evidence that the two companies' operations are intertwined. Accordingly, the fact that employees represented by the Union may have lost jobs when Ocean Terminals leased its facility to Merrill and Ring Corporation does not favor awarding the work to those employees.

Conclusion

After considering all of the relevant factors, we conclude that employees of the Employer are entitled to perform button pushing in the chip-loading process²⁷ and to move logs from dockside to the sawmill yard in the log-unloading process. We reach this conclusion relying on the factors of employer preference and past practice, relative skills, and economy and efficiency of operations. Our determination is limited to the controversy that gave rise to this proceeding.

²⁶ Again, the record indicates that Coleman does the most of the button-pushing work. Whether he is or is not a statutory supervisor cannot be clearly determined on the record before us, but we reiterate that it need not be: the dispute we resolve here does not include chip loading when it is performed by supervisors under Sec. 2(11) of the Act.

²⁷ As noted above, our award does not apply to the work involved when the button-pushing work is performed by an individual who is a statutory supervisor.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Southport Lumber Co., LLC are entitled to perform log-unloading work and button pushing for chip-loading work at the Employer's barge slip on Coos Bay in North Bend, Oregon.

2. International Longshore and Warehouse Union, Local 12 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Southport Lumber Co., LLC to assign the disputed work to the employees it represents.

3. Within 14 days from this date, International Longshore and Warehouse Union, Local 12 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing Southport Lumber Co., LLC, by means proscribed by Section 8(b)(4)(D), to assign the

disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. October 11, 2018

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD