

**International Longshoremen's and Warehousemen's Union, Local No. 51 and Port Townsend Paper Corporation and Local No. 175, Association of Western Pulp and Paper Workers. Case 19-CD-427**

23 July 1984

**DECISION AND DETERMINATION OF DISPUTE**

**BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS**

The charge in this Section 10(k) proceeding was filed 9 February 1984 by the Employer, alleging that the Respondent, ILWU, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by AWPPW. The hearing was held 13 and 14 March 1984 before Hearing Officer Shellie R. Hoffer. All parties except for AWPPW<sup>1</sup> appeared and were offered full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter the Employer and ILWU filed briefs.

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, and we find, that the Employer, a State of Washington corporation, is engaged in the manufacture of paper and paper products at its facility in Port Townsend, Washington. The Employer commenced operations on 21 December 1983 after purchasing the facility from Crown Zellerbach. By the time of the hearing, the Employer had already received revenues in excess of \$50,000 from the sale of its products directly to enterprises located outside the State of Washington. On the above facts, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that ILWU and AWPPW are labor organizations within the meaning of Section 2(5) of the Act.

<sup>1</sup> AWPPW did not enter an appearance or otherwise participate in the hearing, although it was duly served with a copy of the Board's notice of hearing.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The Employer has owned and operated a pulp and paper mill in Port Townsend, Washington, since December 1983. Prior to December 1983 the mill was owned by Crown Zellerbach whose employees were represented by AWPPW. On acquiring the mill, the Employer hired a majority of Crown Zellerbach's employees and voluntarily recognized AWPPW as the collective-bargaining representative of its employees. It did not, however, assume Crown Zellerbach's collective-bargaining agreement with AWPPW. The Employer and AWPPW were engaged in negotiations for a new contract at the time of the hearing.

Products manufactured at the mill are exported from a private industrial dock located adjacent to the production facility. Ordinarily, when a shipment is scheduled, the mill owner contacts a steamship line which will arrange for a vessel to call at the dock and for a stevedore company to provide the longshoremen to load the vessel. The stevedore companies operating in the Puget Sound area are members of the Pacific Maritime Association (PMA), and the longshoremen they employ are represented by ILWU. The PMA and ILWU are parties to the Pacific Coast Longshore Contract Document (PCLCD) and jointly operate a dispatching hall. The Employer is not a member of the PMA nor a party to the PCLCD.

For a typical loading operation, the stevedore company will contact the dispatch hall and place an order for longshoremen. Longshoremen are dispatched in "gangs," such as the minimum basic "10.2 gang" which consists of two crane operators, two "front men," and four "hold men." Crane operators work in the hold of the vessel and maneuver their cranes to a position over the cargo on the dock, where front men stand on platforms and attach the cargo to the ship's tackle or "hook." Cranes then lift the cargo and release it into the hold of the vessel where hold men driving forklift trucks move the cargo to its proper place on the vessel. The minimum basic gang can be supplemented by the stevedore company as needed. Moreover, if certain contract procedures are followed, "T-letter" gangs consisting of less than the minimum number of longshoremen may be used. Disputes which arise between ILWU and employer-members of the PMA regarding manning requirements are subject to resolution by "Joint Labor Relations Committees" under the PCLCD's grievance-arbitration procedure.

Under Crown Zellerbach's ownership, mill employees driving forklift trucks were responsible for

moving cargo from the last place of rest on the mill premises to shipside on the dock where the front men attach the cargo to the hook. This "bull-driving" work of moving cargo "to the hook" was assigned to shipping department employees on a volunteer basis.

The first vessel to call at the dock under the Employer's ownership was the *Rio Chico*, which was due in on 8 February 1984.<sup>2</sup> On 2 February ILWU Secretary-Treasurer Archie Smith wrote a letter to PMA Area Manager Johnson stating that it was ILWU's "understanding" that, for the *Rio Chico*, "bull-driving from place of rest . . . to shipside will be performed by ILWU bulldrivers. If this is not the case then we will request a Joint Labor Relations Committee meeting on the start of the ship, and have the Arbitrator alerted in case he is needed."

On 7 February representatives of the Employer and ILWU held a meeting pursuant to an earlier request by ILWU "to discuss the change over [sic] to a new owner operation." At that meeting, according to Employer Relations Manager D'Agostino, ILWU representative Smith stated that the Union wanted to talk about the possibility of a local agreement on who could take the cargo from the place of rest to the hook. D'Agostino also testified that Smith stated that, under past arbitration decisions and the PCLCD, ILWU members were entitled to that work. Smith, although denying telling the Employer that the Union wanted to talk about a local agreement, testified that he stated he wanted to discuss the "manpower needs of the local."

D'Agostino and Smith both testified that the Employer raised the question of longshore manning requirements for the various loading devices used at the dock. According to D'Agostino, the ILWU representatives stated that, if ILWU personnel moved the cargo from the place of rest to the hook, then six longshoremen would be needed at the dock, but that if ILWU personnel did not move the cargo to the hook then eight longshoremen would be needed at the dock. According to Smith, however, employer officials asked him to describe the different kinds of gangs and he responded that "any manning was agreed to manning under the PCLCD." Smith acknowledged that there was discussion of certain arbitration awards under which the stevedore companies are obligated to hire bulldrivers if a 10.2 gang is not used.

On 8 February about 1 p.m., Stevedoring Services of America (SSA) called the dispatch hall and ordered two "T-145" gangs, consisting of two

frontmen, two holdmen, and two crane operators, for the next day's loading operations on the *Rio Chico*. The ILWU dispatcher asked the SSA caller, Woods, if ILWU dock bulldrivers were going to be hired also. When Woods said no, the dispatcher informed him that, by ordering the T-letter manning without the dock bulldrivers, SSA would be in violation of Arbitrator's Award W-48-82. About a half hour later, ILWU notified PMA that the Union was requesting a Joint Port Labor Relations Committee (LRC) meeting on two issues: (1) the alleged violation of the above-mentioned arbitration award, and (2) the use of a "new method of operation" by SSA. Later that afternoon, however, after SSA called the dispatch hall and ordered four "witness" bulldrivers, the LRC meeting scheduled for that evening was canceled. The next day, the four "witness" drivers stood around on the dock while the Employer's service operators driving forklift trucks moved the cargo from the place of rest to the hook.

Meanwhile, after ordering the four bulldrivers on 8 February, SSA President Rick Smith spoke on the telephone to ILWU International representative Wise. Smith informed Wise that SSA had hired the bulldrivers and said, "I hope we don't have any problems on the ship. We don't want a work stoppage, we've ordered the men." According to Smith's affidavit, Wise responded, "I agree with you if you hire the forklift operators there should not be a work stoppage." At the hearing, however, Smith testified that he was not sure if he or Wise had used the words "work stoppage," but he was sure that Wise stated, "you've ordered the four bulldrivers. . . . I don't believe we're going to have any problems."<sup>3</sup>

#### B. Work in Dispute

The work in dispute involves the moving of goods from the last place of rest on the Employer's premises out onto the dock to the ship's hook.

#### C. Contentions of the Parties

The Employer contends that reasonable cause exists to believe that ILWU has violated Section 8(b)(4)(D) of the Act. It argues that ILWU engaged in direct threats and coercion at the 7 February meeting by demanding the disputed work and making it clear that, if the Employer failed to assign the disputed work to longshoremen, ILWU would retaliate by forcing the stevedore company to employ extra unnecessary longshoremen. It fur-

<sup>2</sup> All dates hereinafter are in 1984 unless otherwise indicated.

<sup>3</sup> Smith testified that at the time he called Wise he was aware of a work stoppage by a different ILWU local 10 days earlier in Aberdeen, Washington, over the issue of which employees would service the hook.

ther contends that there was an implied threat of a work stoppage in ILWU representative Wise's statements to SSA's Smith that if the bulldrivers were ordered there would not be a work stoppage. The Employer also contends that, by threatening to invoke and by invoking its grievance procedure with SSA, ILWU was applying economic pressure on SSA with an object of forcing the Employer's reassignment of the disputed work to employees represented by ILWU. Regarding the merits of the dispute, the Employer contends that the disputed work should be awarded to its own employees represented by AWPPW based on the factors of employer preference; employer and industry practice; relative knowledge and skills; and economy and efficiency of operations.

ILWU contends that its conduct did not give rise to a jurisdictional dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act; and at the hearing and in its brief has moved that the notice of 10(k) hearing be quashed. In support of its contention that it has engaged in no threatening or coercive conduct within the meaning of the Act, ILWU argues that its request for an LRC meeting was the agreed-upon method of resolving disputes arising under the PCLCD, and that its purpose in requesting the LRC meeting was to preserve its members' right to a remedy for breach of the PCLCD. ILWU therefore argues that its dispute was solely with SSA and the PMA, and not with the Employer. ILWU further contends, however, that if its conduct in requesting the LRC meeting is deemed coercive because it was directed at the Employer, ILWU was protesting the Employer's use of T-letter gangs and was seeking to preserve work which traditionally had been performed by its members in the larger 10.2 gangs. ILWU also contends that its request for an LRC meeting was a prerequisite to the filing of a Section 301 action and therefore could not be enjoined as an unfair labor practice. Alternatively, ILWU contends that, even if a jurisdictional dispute exists, its members should be awarded the disputed work based on the factors of its collective-bargaining agreement with PMA; a prior Board certification; industry and area practice; skills and safety; and efficiency and economy of operations.

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

We find reasonable cause to believe that ILWU has violated Section 8(b)(4)(D) of the Act. As indicated above, on 8 February 1984 ILWU notified PMA that it was requesting an LRC meeting as a result of SSA's failure to order dock bulldrivers for the loading of the *Rio Chico*. When SSA agreed later that day to hire four "witness" bulldrivers from the dispatch hall, the LRC meeting scheduled for that evening was called off. The next day, while the Employer's service operators performed the work in dispute, the four bulldrivers ordered by SSA stood around on the dock.

This sequence of events gives rise to the implication that an object of ILWU's conduct in requesting the LRC meeting was to force or to require the assignment of the disputed work to employees represented by ILWU rather than to employees represented by AWPPW. The record indicates that SSA had no control over the work in dispute and that the only way it could satisfy ILWU's demands was to order "witness" bulldrivers whom SSA would have to pay merely for standing around the dock. Moreover, it appears that ILWU knew that SSA had no control over the disputed work based on the evidence that SSA employees had not previously performed work identical to that in dispute at the dock and that ILWU told the Employer on 7 February that it wanted to talk about who would take the cargo from the place of rest to the hook. In view of the above, we reject ILWU's contention that its dispute was solely with SSA and PMA and not with the Employer. Thus, by asserting its contractual claim under the PCLCD that SSA was obligated to hire dock bulldrivers, ILWU was in effect applying pressure on SSA as well as applying indirect pressure on the Employer to affect the assignment of the work in dispute. It appears, therefore, that ILWU's requesting of the LRC meeting was designed to satisfy its jurisdictional claims.<sup>4</sup>

Moreover, we note that ILWU informed the Employer on 7 February that if ILWU members were used to haul the cargo to the hook then six longshoremen would be needed for the loading operation, whereas if ILWU members were not used to haul cargo to the hook then eight longshoremen would be necessary. The following day, after SSA had hired the additional bulldrivers, ILWU's International representative stated to SSA: "You've hired the 4 bulldrivers . . . I don't believe we're going to have any problems." Based on the foregoing, we find that ILWU made implied threats in support of its jurisdictional claims.

<sup>4</sup> See *Pulp & Paper Workers Local 194 (Georgia-Pacific Corp.)*, 267 NLRB 26, 28 (1983).

Finally, we are not persuaded by ILWU's "work preservation" defense. It is undisputed that ILWU-represented employees had never performed the work in dispute when the mill was owned by Crown Zellerbach and the Employer merely continued the practice of Crown Zellerbach in assigning the disputed work to mill employees. Therefore, it is evident that ILWU's objective was to gain work which it had not previously performed.<sup>5</sup>

On the basis of the entire record, we conclude, in the particular circumstances herein, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Further, there is no evidence that an agreed-upon method for the voluntary adjustment of this dispute exists to which all parties are bound. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act and we deny ILWU'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. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (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. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

##### 1. Board certification and collective-bargaining agreements

Neither of the labor organizations involved in this dispute has been certified by the Board as the collective-bargaining representative of the Employer's employees. The parties stipulated that there is no collective-bargaining relationship between the Employer and ILWU and that the Employer is not a member of the PMA nor a party to the PMA's collective-bargaining agreement with ILWU. The record indicates that following the Employer's acquisition of the mill from Crown Zellerbach in December 1983 the Employer voluntarily recognized AWPPW, which had represented a millwide bargaining unit for many years. Although the Employer did not assume AWPPW's collective-bargaining agreement with Crown Zellerbach, it was engaged in negotiations for a new collective-bargaining

agreement with AWPPW at the time of the hearing.

ILWU, in its brief, relies on *Shipowners' Assn. of the Pacific Coast*, 7 NLRB 1002 (1938), to show that it was certified to represent a multiemployer unit of employees engaged "in longshore work in the Pacific Coast ports of the United States." ILWU also contends that under section 1 of the PCLCD the movement of cargo to or from a vessel is to be assigned to longshoremen, and therefore employees represented by ILWU are contractually entitled to the disputed work. As ILWU acknowledges, however, the 1938 Board certification covered employees of employer-members of associations which were the predecessors of the PMA and, as indicated above, the Employer is not a member of the PMA. Moreover, as the Employer points out, the PCLCD may not apply to the instant dispute in view of section 1.11, which provides for coverage of "the movement of outbound cargo only from the time it enters a dock and comes under the control of any terminal, stevedore, agent or vessel operator covered by this Contract Document . . . ." We therefore find that the factors of Board certifications and collective-bargaining agreements favor neither group of employees.

##### 2. Employer assignment, practice, and preference

The parties stipulated that since taking over the mill in December 1983 the Employer has assigned the work in dispute to its own employees who are represented by AWPPW. They further stipulated that in assigning the disputed work to mill employees the Employer is continuing the practice of the former owner of the mill, Crown Zellerbach. We find, therefore, that the factors of the Employer's assignment and practice favor an award to the Employer's AWPPW-represented employees.

At the hearing and in its brief the Employer expressed its preference that the disputed work continue to be assigned to its own employees based on their familiarity with the Employer's products and their skill in handling them. Accordingly, while we do not afford controlling weight to this factor, we find that it favors an award to the employees represented by AWPPW.

##### 3. Area and industry practice

The Employer presented testimony that Crown Zellerbach, its predecessor at the mill, always assigned the disputed work to its AWPPW-represented employees. The Employer also presented testimony that mill employees, as opposed to longshoremen, currently haul cargo to the hook at two

<sup>5</sup> See *Lumber & Workers Local 2592 (Louisiana-Pacific)*, 268 NLRB 126 (1983).

other mills sold by Crown Zellerbach the year before in California and Canada.

The parties stipulated that at all public commercial docks in the following ports in the State of Washington members of ILWU locals move cargo from the point of rest to the ship's tackle: Port Gamble, Port Angeles, Everett, Aberdeen, Seattle, Bellingham, Olympia, and Anacortes. ILWU also presented testimony that longshoremen haul products to the hook at private industrial docks (i.e., like the Employer's) in Aberdeen, Seattle, Bellingham, and Tacoma. Although we agree with the Employer that public dock practices are irrelevant to the instant dispute, we find that the factor of area practice tends to favor an award to employees represented by ILWU. We further find that the factor of industry practice is inconclusive.

#### 4. Relative knowledge and skills

According to the Employer's shipping superintendent, the employees who perform the disputed work are classified as service operators and regularly work in the shipping department. Service operators are required to know the mill's safety rules and to know how to identify and handle the various products; they are familiar with the mill's specialized forklift equipment; they have received on-the-job and classroom training on material handling; and they attend monthly safety meetings. At the time of the hearing, although some were new hires, 9 of the 14 service operators working for the Employer were former employees of Crown Zellerbach with many years of experience performing the work in dispute at this dock.

ILWU presented testimony to show that the employees it represents possess the requisite knowledge, training, and experience to perform the work in dispute. ILWU-represented employees are familiar with the Employer's product identification system as a result of having to stow the various products in different areas of a ship. ILWU-represented employees also have experience driving forklifts on docks as well as on ships in Port Gamble, Tacoma, Seattle, and Aberdeen. Training for driving forklifts is done through the local: Members on the A list, all of whom are qualified bulldrivers, train members on the B list during slack periods, and new drivers are not sent out on jobs until the dispatcher decides they are qualified, which takes at least a year. At the time of the hearing, there were 19 members on the A list.

Based on the foregoing, the relative skills of the two groups of employees appear to be similar. However, based on the service operators' knowledge of the Employer's products, which comes from handling such products on a daily basis in the

shipping department, and on their experience in performing the disputed work at this dock, we find that the factors of relative knowledge and skills favor an award to the Employer's AWPPW-represented employees.

#### 5. Economy and efficiency of operations

The Employer presented undisputed testimony that, when there are breakdowns in the ship's gear or other delays during loading, the service operators who are performing the disputed work are re-assigned to perform other work in the mill until the delay is over, whereas the longshoremen must wait for the crane to be repaired. Furthermore, as noted above, employees represented by AWPPW possess greater knowledge and experience in the Employer's procedures and in handling its products than the employees represented by ILWU who have not previously performed the work in dispute. Accordingly, and because we find that ILWU presented no evidence showing that it would be as efficient or economical to utilize employees represented by it to perform the disputed work, we find that the factor of economy and efficiency of operations favors an award to the Employer's AWPPW-represented employees.

#### Conclusions

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by AWPPW are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer assignment, practice, and preference; relative knowledge and skills; and economy and efficiency of operations. In making this determination, we are awarding the work in dispute to employees who are represented by AWPPW, but not to that Union or its members. The determination is limited to the controversy which gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

1. Employees of Port Townsend Paper Corporation represented by Local No. 175, Association of Western Pulp and Paper Workers, are entitled to perform the moving of goods from the last place of rest on the PTPC premises out onto the dock to the ship's hook.

2. International Longshoremen's and Warehousemen's Union, Local No. 51, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Port Townsend Paper Corporation to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from this date, International Longshoremen's and Warehousemen's Union, Local No. 51, shall notify the Regional Director for Region 19 in writing whether it will refrain

from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with this determination.