IN THE MATTER OF AN ARBITRATION

BETWEEN:

FEDERATED CO-OPERATIVES LIMITED

(EMPLOYER)

AND:

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 1-417

(UNION)

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SHIFT SCHEDULING GRIEVANCE

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| ARBITRATOR: | PAUL D.K. FRASER, Q.C. |
| COUNSEL FOR THE EMPLOYER: | GARY CATHERWOOD |
| COUNSEL FOR THE UNION: | J. MIRIAM GROPPER |
| DATE OF HEARING: | JANUARY 16, 1990 |
| PLACE OF HEARING: | SALMON ARM, B.C. |

The issue in this policy grievance is the Employer's unilateral right to decide to swing two shifts for millwrights in its plywood plant.

The Union's position is that the Employer required its agreement before the shift changes could be implemented. The Union says that the Employer's decision violated the terms of the Collective Agreement. Alternatively, the Union says that the Employer took a decision that was contrary to the past practice followed by the parties.

The Employer's position is that the decisions taken were neither in breach of the collective Agreement, nor contrary to past practice in the operation of the plywood plant.

The shifts involved are a day shift which operated Tuesday to Saturday and the graveyard shift. The former change was introduced on a trial basis by the Employer in early 1988 and later confirmed. The latter change was implemented in May, 1989. Although the Employer has taken the position that this grievance properly relates only to its May, 1989 decision, I consider that both shift change decisions are properly before me in these proceedings.

Some history is necessary to put the grievances into context: The employer operates a sawmill and plywood facility. The predecessor of the Employer (HK Lumber Co. Ltd.) opened the plywood plant in 1965. The plant operated on a continuous three shift basis. The day and afternoon shifts were swung, the graveyard shift was permanent. The shifts were established and implemented by the Employer. The only discussion that took place was with respect to the starting and finishing times of the graveyard shift in 1966. The junior millwright in the plant was assigned to the graveyard shift.

In 1983, a fourth shift was established for millwrights on days from Tuesday to Saturday.

In 1984, the millwrights in the sawmill operation rotated through the different shifts. The Employer indicated that it proposed to rotate the millwrights through the various shifts in the plywood operation and swing the graveyard shift. The Union resisted this change. The issue was resolved by the parties coming to an agreement that saw Union members volunteering to relieve on the graveyard shift.

In November, 1987, the Employer considered that the voluntary relief system had not been successful. It again proposed a rotation of the millwrights, swinging all shifts. The Union "rejected" this "proposal". In early 1988, the Employer introduced the change on a "trial basis" that was supposed to last until July, 1988. By early 1989, the trial was still continuing and the Union's grievance ultimately resulted when the Employer refused to abandon the shift change.

In May, 1989, the Employer decided to rotate all four shifts and gave the Union the option of two rotation schedules. The Union was not prepared to discuss the options and grieved. The Employer then decided to rotate all four shifts on an "equal basis".

All of the shifts for millwrights have always been scheduled for 8 hours per day, 40 hours per week.

After the Employer swung the day shift and before its decision was made to swing the graveyard shift, a new provision appeared in the British Columbia Southern Interior Master Agreement that operates as the Collective Agreement governing these parties. The Union's position is that the new provisions of the Collective

Agreement were violated by the Employer in deciding to swing the graveyard shift. Counsel are agreed that the existing Collective Agreement was reached on October 24, 1988 and that the term of the Agreement is July 1, 1988 to June 30, 1991.

The relevant provisions of the Collective Agreement that have been in effect for some time are:

ARTICLE II - EMPLOYER'S RIGHTS

Section 1: Management and Direction

The Management of the operation and the direction and promotion of the Employees are vested exclusively in the Management; provided, however, that this will not be used for the purpose of discrimination against Employees.

...

ARTICLE VII - HOURS OF WORK

Section 1: Hours and Overtime

(a) The regular hours of work in all the Forest Products operations shall be eight (8) hours per day and forty (40) hours per week with rate and one-half for any hours worked over eight (8) hours per day and forty (40) hours per week...

Section 7: Three Shift Operations

(a) The Employer shall have the right to operate his plant or any part thereof on a three-shift basis and all Employees working under this arrangement shall receive eight (8) hours' pay upon completion of the full hours established as their regular shift. Details of shifts shall be varied at the Employer's option.
(b) It is agreed that Clause (a) above shall only apply to those Employees actually working on a three-shift basis;
(c) The Employer shall have the right to determine the number of shifts operated in any unit or department of the operation;

(d) Where less than three (3) shifts are worked, Clause (a) above shall not apply;
(e) The working force on the day shift shall alternate with the working force on the afternoon shift on a regular basis, not to exceed four (4) week intervals.

The new provision that was negotiated into the Collective Agreement was:

ARTICLE VII - HOURS OF WORK

Section 2: Alternate Shift Scheduling

(a) Management, Plant or Camp Committees and Local Unions shall have the right under the terms of the Collective Agreement to agree upon and implement other schedules which, except for production shifts in manufacturing operations, may include Sundays, without overtime penalty, provided the principle of the forty (40) hour week is maintained over an averaging period. Rate and one-half shall be paid for hours worked on Sunday;
(b) Any variation(s) to Section 1 above shall be implemented only upon completion of the following steps:
    (i) Negotiated agreement between the Local Union and Local Management;
    (ii) Majority approval by the employees in the proposed variations.
(c) When alternative schedules have been implemented in accordance with (a) and (b) above, the following overtime provisions shall apply:
    1. Rate and one-half shall be paid for the following:
        (i) The first three (3) hours worked in a day in excess of the normal daily hours of the established schedule.
        (ii) Hours worked in excess of forty (40) hours per week or forty (40) hours average when there is an averaging period.
        (iii) All hours worked on an employee's scheduled rest day, unless a change in rest day has been agreed to between the employee and the Company;
        (iv) All hours worked on Sunday except those excluded in the casual section.

2. Double straight time rate shall be paid for the following... .
3. Supplement No. 8 - Alternate Shift Scheduling, contains the agreed upon general principles and parameters for the establishment, implementation or discontinuance of alternate shift schedules.

(emphasis added)

The material provisions of Supplement No. 8 are as follows:

SUPPLEMENT NO. 8

ALTERNATE SHIFT SCHEDULING

A. FLEXIBILITY OF HOURS OF WORK

The Parties recognize the need for flexibility of hours other than those outlined in Article VII - Hours of Work, Section 1, for the express purpose of better utilization of manpower and capital such as:

Balancing of production
Maintenance

...

B. SHIFT SCHEDULING

The Parties agree that the following shift schedules will provide the flexibility required to meet the needs expressed above.

...

3. Maintenance

(a) shifts of up to 10 hours per day, 40 hours per week, Monday to Sunday inclusive;
(b) three shifts per week, not exceeding 12 hours per day.

C. IMPLEMENTATION

Any variation(s) to Article VII - Hours of Work, Section 1, shall be implemented only upon completion of the following steps.

1. The Company and the Local Union will meet to discuss proposed shift schedules within the terms of Article VII, Section 2. It is anticipated that Local Unions will make sincere attempts to assist the companies wishing to introduce alternate shift schedules. The parties must mutually agree on the resolution of issues such as:

   (a) Details of shift;
   (b) Details of Statutory Holidays, Floating Holiday, Bereavement Leave and Jury Duty;
   (c) Maximum lengths of shifts for physically demanding work. Accident prevention is a factor to be taken into account in determining shift lengths;
   (d) The loss of hours/employment as a direct result of the implementation of alternate shift schedules;
   (e) The use of employees for supplementary production work.

2. The Camp or Plant Committee and the crew will be actively consulted by the parties during this process.

   (emphasis added)

I come now to apply the provisions of the Collective Agreement to the dispute before me. I am sitting as a general arbitrator under Article XVII, Section 2, dealing with "a dispute arising regarding the application, operation or any alleged violation" of the Collective Agreement.

It is well settled that an Employer has the unfettered right to direct the workforce subject only to express restrictions contained in a Collective Agreement.

The Employer's right to direct the workforce has been enshrined by these parties in Article II, Section 1, set forth above. It generally includes the power to schedule. However, the

Collective Agreement restricts, in Article VII - Section 1, the regular hours of work scheduled to 8 hours per day and 40 hours per week. Any additional hours of work attract an overtime premium. Section 2 of Article VII also limits the Employer's right to direct the workforce.

Article VII, Section 7, gives the Employer the right to operate the plant on a three-shift basis and the option to vary "details of shifts". Under the same section, the Employer has the right to decide the number of shifts in any unit or department of the operation.

Counsel for the Union submits that the option given the Employer to vary the "details of shifts" does not extend to swinging a shift. She submits that swinging a shift represents a substantial change and not a mere "detail".

Section 7 has been interpreted in Various Forest Products Industries (Coast Region) represented by Forest Industrial Relations Limited and International Woodworkers of America, A.F.L. - C.I.O. and C.L.C., Lysyk, J., September 16, 1985, to mean that a change in duration of a shift is not a detail which can be varied at the Employer's option. The rationale was as follows:

> A change requiring an Employee to work longer than before, without pay for the additional time worked, could not readily be characterized as a "detail" in any circumstances. The express safeguarding of established shift lengths by the first sentence of S. 8(a) [now S. 7(a)], in my view rules out such characterization here.

However, counsel for the Employer submits that the Employer's decision to swing existing shifts was not a decision that it needed to take on the basis of having the option to vary details

of shifts under Article VII, Section 7. Rather, it was a decision taken by the Employer relying on its general right to manage its plant. Counsel for the Employer submits that it was simply exercising its right to have as many shift schedules as it thought appropriate. It was argued that the only constraint in the Collective Agreement upon the Employer's right to schedule, is the requirement in Article VII, Section (1)(a) that the hours of work shall be eight hours per day and forty hours per week. As Article VII, Section 2 records, any "other schedules" which involve "variation(s)" to Section 1, require the agreement of the Local Union and Local Management and a majority of the affected employees.

The Employer submits that the swinging of the existing shifts in question did not amount to the implementation or creation of an "other schedule" as that term is used in the context of Article VII, Section (2). By swinging the shift in question, there was no departure from the hours of work provided in Article VII, Section (1).

The position advanced by the Union is that the Employer's decisions had the effect of setting up a new shift. The Employer's position is that no new shift was created and the effect of the Employer's decision was simply to move employees within existing shifts. On the whole of the evidence, I find that no new shifts were created by the Employer and that the substance of what occurred was a reassignment of personnel within existing shifts.

I accept the Employer's submissions on the appliction of the Collective Agreement to the decisions taken by the Employer. In my view, the Employer's decisions to swing the shifts did not involve the implementation of "other schedules" described as "alternate shift scheduling" in Section 2 of Article VII, whose general principles and

parameters are set out in Supplement No. 8 of the Collective Agreement. It is clear from the language of Article VII, when read alone and in the light of the whole Agreement, that Section 2 of Article VII has application only in circumstances where the Employer wants to implement a shift that results in more or less than the 8 hours per shift, 40 hours a week, mandated by Section 1. In these circumstances, the Employer's right to schedule is fettered to such an extent that it must fulfill three requirements: First, it must negotiate an Agreement with the local union and a majority of the employees affected; second, it must maintain the principle of the 40 hour work week over an averaging period and third, it must pay (except in manufacturing operations) rate and one-half for hours worked on Sunday.

The provisions of Article VII speak clearly and, in my view, the provisions of Section 2 do not constrain or prevent the Employer from making the decision to swing the shifts that lead to the filing of this grievance.

Prior to the insertion of Section 2, Article VII, into the Collective Agreement, the Union was unable to point to any language in the Agreement to support its interpretation that the Employer was prevented from swinging shifts. For the reasons I have already mentioned, I find that the language of Section 2 did not contrain the Employer in manner urged by the Union.

That brings me to the Union's further submission that the past practice followed by the parties was that agreement was reached between them before a decision would be made to swing shifts. The Union submits that it can, therefore, hold the Employer to observe the practice that it has followed in the past.

Counsel for the Union submitted that the evidence showed that the Company felt constrained through many years to reach agreement with the Local Union before making the type of decision that has lead to this grievance. Reference is made to the fact that in the course of dealings between the parties, the Employer made what it called various "proposals" with respect to changes in shift schedules. Reference is also made to the fact that the Employer introduced changes in 1987 for a "trial period". These facts and the evidence of past joint consultations in 1984 and 1987 were said by the Union to be evidence that the Employer considered that it was constrained in its application of the Collective Agreement to obtain the Local Union's consent before implementing shift changes.

In my view, a consideration of the whole of the evidence cannot support the conclusion sought by the Union. While it is clear from the evidence that the Employer did discuss shift changes with the Local Union and members of the crew who would be affected, I am satisfied that these discussions were held simply in an effort to assist the Employer in operating its plant in a sensible and productive manner. On the whole of the evidence I find that the Employer's use of the term "proposal" was as a term of convenience and not as a term of art. Similarly, the fact that the Employer introduced a shift change for a trial period did not, in my view, amount to an acknowledgment of any uncertainty about the Employer's right to decide a shift change. Instead, the use of these terms was part of an effort by the Employer to stimulate consideration by the Local Union and a discussion among crew members. Certainly their usage by the Employer did not convert what was nothing more than a sensible discussion between the parties into anything that could be characterized as a negotiation between them on the question of shift change.

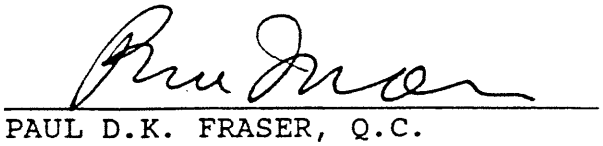
Further, the documentary evidence before me clearly records that the parties had a long standing difference of opinion as to the extent to which the Employer's right to schedule was constrained by the Collective Agreement. The Union's position was clearly set out in the correspondence and the Union's own notes of meetings with the Employer clearly recorded that the "Company's position is that they have the right to schedule shifts any time. They manage the plant". (See Exhibit 2 Tab 15)

I am not prepared to come to a conclusion on the evidence that would find a past practice established between the parties on the basis of placing a premium on the fact that the Employer made attempts with the Local Union to come to sensible operating arrangements within the plywood plant. Equally, I would not have been prepared to conclude that the Union had acquiesed in the interpretation of the Collective Agreement contended for by the Employer, simply because the Union made an arrangement with the Employer in 1984 and tacitly agreed to a trial period in 1987 instead of filing a grievance.

It follows that I am unable to find in the evidence the kind of consistent application by the parties of a past practice that is necessary to give effect to the submissions made on behalf of the Union (See John Bertram and Sons Co. Ltd. (1967), 18 L.A.C. 362 (Weiler) at p. 368).

In the result, this grievance must be dismissed and it is so awarded.

DATED at Vancouver, B.C., this 14th day of January, 1991.



PAUL D.K. FRASER, Q.C.