2/6/83

IN THE MATTER OF AN ARBITRATION

BETWEEN

MACMILLAN BLOEDEL LIMITED
(ALBERNI PACIFIC DIVISION)

(the employer)

AND

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL NO. 882

(the Operating Engineers)

ARBITRATION BOARD:	Donald R. Munroe Walter Cook P. Neale
FOR THE EMPLOYER:	J. R. Parrott
FOR THE OPERATING ENGINEERS:	D. B. Stevenson
DATE AND PLACE OF HEARING:	January 27, 1983 Parksville, B.C.

The parties agreed that we were properly constituted as an arbitration board under their collective agreement with jurisdiction to resolve the issues in dispute.

The threshold issue is whether the employer instituted a technological change within the meaning of the collective agreement. The employer's operation consists of:

1. A sawmill;
2. a planer mill;
3. a power house;
4. repair and machine shops;
5. warehouse facilities; and
6. office and other support services.

The Operating Engineers represent the employees who work at and from the power house. The other employees are represented by another trade union. The principal function of the power house is to provide steam and compressed air to the production facilities of the operation, as well as to a plywood plant which is situate on an adjacent property. The plywood plant is a "sister division" of the employer, but for present purposes may be regarded as a separate and distinct enterprise.

The steam which is generated in the power house has three main purposes: (a) to "power" certain production equipment; (b) steam cleaning; and (c) heating. The compressed air is also used: (a) to "power" equipment; and (b) for cleaning. The

compressed air cannot be used for heating.

The equipment in the power house consists of two boilers (for the generation of steam), several air compressors, various pumps, etc.

We said above that the employer's operation includes a sawmill. That has been the case for many years. But the old sawmill was replaced commencing in 1978. It is that replacement which is the genesis of the problem at hand. The old sawmill was antiquated and inefficient. As counsel for the employer aknowledged during an exchange with the board, the construction of the new sawmill amounted to "a massive technological change". For purposes of this proceeding, it is only necessary to concentrate on one aspect of the new sawmill facility. Whereas the old sawmill required both steam and compressed air for the operation of the production equipment, the new sawmill was designed and constructed such that it could run on either steam or compressed air. This involved changes in equipment, machinery, piping, etc. -- in and around both the sawmill and the power house.

As we noted earlier, compressed air cannot be used for heating purposes. If the new sawmill is being operated on compressed air, but the weather is such that heat is required, steam must also be generated and fed to the mill, or the system can be switched to steam alone. However, during periods of warmer weather, the sawmill can be operated without any steam.

The opening of the new sawmill in 1980 was transitional. It opened with one shift, then two, then three. The process took 6-8 weeks. During that period, the old mill continued operating. As the new mill absorbed a shift there would be one less shift in the old mill. For the 6-8 week transitional period, the new mill was operated on compressed air, but steam was still being supplied to the old mill. Hence, the re-design features of the new mill did not have a discernible effect on the work or employment of the engineers in the power house. When the old mill was shut down, the new mill was switched from air to steam. The result of that switch was that, again, there was no discernible effect on the engineers.

That is the way things stood until the summer of 1982. We gather from the testimony of the Mechanical Superintendent that one reason for staying on steam for so long was that "the de-bugging" of the new mill was taking longer than expected. Indeed, as the Mechanical Superintendent observed, the process of adjustment and refinement is still not complete.

In any event, in June of 1982, it was decided to test the use of the compressed air system as the sole source of "power" for the sawmill equipment, with a view to moving from steam to air. The test was done on a weekend. It was not entirely satisfactory. In the result, relatively minor modifications were made to the piping and the valve system in and about the power house. Then, on September 1, 1982, the switch was made from

steam to compressed air. For the period September 1 - November 21, the sawmill operated exclusively on compressed air except for one week in each of September and October when steam was used. Since November 21, for reasons connected to the weather and heating requirements, steam has been utilized. It is the employer's intention to use compressed air whenever feasible. The belief is that compressed air is more efficient than steam.

Did a technological change occur? Both counsel devoted a great deal of attention to the relatively minor modifications done in June of 1982. Counsel for the trade union contended that those adjustments amounted to technological change. Counsel for the employer argued that all that occurred at that time was the utilization of unused but existing capacity -- see Forest Industrial Relations Limited [1974] W.L.A.C. 74/207.

In the view we take of the case, as we suggested (and was mooted) during argument, the alterations in June, 1982, should not be the exclusive focal point. It is artificial to segregate the June modifications for microscopic examination. What occurred in June was simply one of a number of terminal steps in the "massive technological change" which began with the first phase of construction back in 1978. And one aspect of the technological change was the capacity to operate the sawmill on either steam or air.

We have no difficulty concluding that the circumstances at hand fall comfortably within the notion of technological change,

regardless of how broadly or narrowly one might care to define that phrase.

It must next be determined whether the technological change was instituted in a manner which did violence to the collective agreement. Article V of the agreement deals comprehensively with technological change. It provides for advance notification if lay offs will result, for retraining, for committee examination, and for rate adjustments. None of the provisions of Article V was implemented or utilized. At the request of the Operating Engineers, meetings were held in June, 1982. But the matter was never brought within the frame of Article V, presumably because of the employer's position that what occurred was not captured by the provisions thereof.

The notification provision is Article V, Section 1. It reads as follows:

> The company shall notify the Shop Committee and the Union not less than six (6) months in advance of intent to institute changes in working methods or facilities which would involve the discharge or laying off of employees.

First of all, did the technological change "involve" any lay offs? Clearly, the answer to that is in the affirmative. The normal complement of operating engineers has been fourteen. Over the years, that has been the number employed when steam has been generated, assuming the operation not only of the employer's facilities but also the facilities of the adjacent plywood plant. If the plywood plant is not operating (as was the case for much

of 1982), the complement is reduced to ten. That reduction is irrelevant to the issues between the parties, as was acknowledged by counsel for the Operating Engineers. But what is not irrelevant is the fact that a switch from steam to compressed air reduces the power house complement from ten to five. In short, the consequence of the technological change on the Operating Engineers' bargaining unit, at times when the change is rendered operational, is the loss of employment for five members. That is what occurred from September 1 - November 21, 1982, apart from the two weeks when steam was used.

No advance notification was given to the Shop Committee or the Operation Engineers. Counsel for the employer submitted that constructive notice existed as long ago as 1978 because everyone could see for themselves that a substantial technological change was under way. However, there was no suggestion to the Operating Engineers of the possibilty of lay offs. Indeed, there was some evidence that the employees were told that their job security would be enhanced.

The grammatical construction and purpose of Article V, Section 1 make it clear that "to institute" a technological change means to render the change operational in a manner which will result in lay offs. The contemplated notice is intended to be as much a notice of lay offs as a notice of the change itself. The overriding reason for the notice provision, as well as the

other parts of Article V, is the spectre of employment insecurity.

We entertain no doubt that the employer was in violation of Article V, Section 1 of the collective agreement.

What remedy should be afforded? In our view, the five employees who were laid off during the period September 1 - November 21, 1982 (except for the two intermittent weeks in September and October) must be made whole in the form of wages and benefits lost. A contrary conclusion would mean a wrong without a remedy.

Counsel for the trade union also asked us to declare that the employer should now have to give the six months notice contemplated by Article V, Section 1 -- i.e., there should now be six months notice before any lay offs would be permissible.

One argument against that requested declaration is that since June or perhaps September, 1982, the Operating Engineers have been on notice that the technological change would involve lay offs. Accordingly, one might argue, the purpose of Article V, Section 1 has been in the process of being satisfied over the past few months. However, an examination of the whole of Article V reveals that Section 1 exists not only for its own sake but also as a trigger for a series of potentially significant steps. For example, Section 2 contemplates the possibilty of retraining programs in co-operation with the provincial government; Section

4 requires the establishment of a joint committee to consider the technological changes and "...make recommendations to the parties to assist them in ameliorating the effect of such changes"; Section 4 also envisages a liason between the joint committee and provincial or federal manpower agencies. In short, what is intended by the scheme of Artcle V is six months of dispassionate, non-litigious consultation with the common goal of introducing the technological change at the least human cost that the parties' joint effort can achieve. While it is impossible for us to know what might have been accomplished if such a process had been followed, it cannot be denied that the Operating Engineers and the power house employees have lost the opportunity to engage in a joint endeavour to "...ameliorate the effect of the changes". We must assume that the parties considered that such an endeavour would be at least potentially productive, otherwise they would not have made it a part of their agreement. That being so, it should be viewed as a matter of substance. Once again, to brush aside this part of the bargain would be to create a wrong without a remedy. We have concluded that the notice contemplated by Article V, Section 1 should be deemed to exist as of the date of this award.

Counsel for the trade union made alternative submissions based on Sections 74 - 78 of the Labour Code. In light of our above dispositions, it is unnecessary to address those submissions.

We remain seized of the matter to make such further directions as may be necessary to ensure the proper implementation of this award.

Dated at Victoria, B.C., this 10 day of February, 1983.

"DONALD R. MUNROE"

Donald R. Munroe
Chairman

"WALTER COOK"

Walter Cook
Nominee

"P. NEALE"

P. Neale
Nominee