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IN THE MATTER OF AN ARBITRATION

BETWEEN:

WHONNOCK FOREST PRODUCTS LIMITED
(BAY FOREST PRODUCTS DIVISION)

AND:

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 1-217

CLIVE MCKEE
WEST VANCOUVER, B.C.
FEBRUARY 5, 1980.



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BETWEEN:

WHONNOCK FOREST PRODUCTS LIMITED
(BAY FOREST PRODUCTS DIVISION)

AND:

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 1-217

ARBITRATOR:

CLIVE MCKEE

FOR THE COMPANY:

J. RON PARROTT, ESQ.

FOR THE UNION:

D. G. EVANS, ESQ.

DATE OF AWARD:

FEBRUARY 5, 1980.

GRIEVORS:

ANSELMO AND SANDHU.

A W A R D

At this arbitration held in Vancouver, B.C., on January 30, 1980, it was agreed that the Board was properly constituted and had jurisdiction to hear and rule on the matter in dispute. Counsel for the Company stated, however, that the jurisdiction of the Arbitrator would be questioned if it were found necessary to interpret the collective agreement.

In summary, the dispute arose when the Company, having failed to comply with the collective agreement in regard to union membership and dues checkoff for certain employees, made retroactive lump sum deductions. The Union argues that such deductions

cannot be made until authorization is received from the Union and, in any event, the Company was in default in respect of the collective agreement and it and not the employees should make the payment.

Witnesses were called, sworn, and subject to examination.

EVIDENCE

There is no dispute between the parties on the facts.

" ARTICLE III - UNION SECURITY

Section 1: Co-operation

The Company will co-operate with the Union in obtaining and retaining as members the employees as defined in this Agreement, and to this end will present to new employees and to all supervisors and foremen the policy herein expressed.

Section 2: Union Shop

All employees who entered the employment of the Company on or after the 15th day of June, 1954, and all new employees shall, within thirty (30) calendar days after the execution of this Agreement, or thirty (30) calendar days after entering employment, whichever date last occurs, become members of the Union and maintain membership therein throughout the term of this Agreement, as a condition of continued employment.

Section 3: Maintenance of Membership

Any employee who is a member in good standing, or is reinstated as a member of the Union shall as a condition of continued employment maintain such membership in good standing throughout the term of this Agreement.

" Section 4: Discharge of Non-members

Any employee who fails to maintain his membership in the Union as prescribed herein by reason of refusal to pay dues and assessments shall be subject to discharge after seven (7) days' written notice to the Company of the said employee's refusal to maintain his membership.

Section 5: Union Membership

- (a) No employee shall be subject to any penalties against his application for membership or reinstatement, except as may be provided for in the I.W.A. International Constitution, as revised November, 1971, and September, 1973, and in accordance with the By-Laws of the following Local Unions, as of November, 1971: Nos. 1-71, 1-80, 1-85, 1-118, 1-217, 1-288, 1-357, 1-363, 1-367, which the Local Unions have certified as being correct as of November, 1971.
- (b) Any employee who applies to join the Union pursuant to the provision herein and whose application is rejected by the Union, shall not be subject to discharge from employment.

Section 6: Check-off

The Company shall require all new employees at the time of hiring to execute the following assignment of wages in duplicate, the forms to be supplied by the Union, said forms to be forwarded to the Union not later than fifteen (15) calendar days following the date of hiring.

INTERNATIONAL WOODWORKERS
OF AMERICA

CHECK-OFF

Date _____ 19 ____

Name of Employer

Name of Employee

Operation _____

Address _____
Phone _____
(Please Print)
Social Insurance
Number _____

Are you a member of the I.W.A.? _____

In what operation were you last employed? _____

Local Union _____

I HEREBY AUTHORIZE AND INSTRUCT YOU TO DEDUCT FROM MY WAGES AND REMIT TO LOCAL 1- _____ THE FOLLOWING IN PAYMENT OF THE AMOUNT SET OUT BELOW:

- 1. Union Initiation Fees in the amount of \$ _____
- 2. Union Back Dues in the amount of \$ _____
- 3. Union Dues \$ _____ per month, commencing _____
_____ 19 _____

4. Union Assessments in the amount and at the time stated in notice received by you from the Local Union designated above.

Clock No. _____

APPLICATION FOR MEMBERSHIP

I hereby request and accept membership in the International Woodworkers of America, Local No. 1-_____, and agree to abide by the constitution and by-laws of the organization. In case of misstatement of qualifications for membership I agree to forfeit all rights, privileges and monies paid.

Signature of Applicant-Employee

" This assignment in the case of employees already members of the Union shall be effective immediately, and for those employees not previously members of the Union, it shall become effective thirty (30) calendar days from the date of execution.

The Local Union shall notify the Company by letter of the amount of back dues owed by new employees and copies of such letter shall be furnished to the employee and the Shop Committee.

The Company shall remit the dues deducted pursuant to such assignment (until and unless said assignment is revoked by the employee) to the Local Union named therein not less often than once each month, with a written statement of names of the employees for whom the deductions were made and the amount of each deduction. "

The Company agrees that it neglected to carry out its obligations under the collective agreement. When the Company made the appropriate deductions, it did so in a retroactive lump sum from each employee. It is argued that such deductions had little impact upon the employees as it was made in nearly every case from a retroactive payment of monies to which the employees were entitled.

The Company stated before the Arbitrator that henceforth it will comply with the collective agreement.

The Union, in its presentation, appeared frustrated with the conduct of this matter and is not satisfied either with the Company's past actions or its promises for the future. This frustration is clearly demonstrated by the Union's demands that the Arbitrator make a mandatory order that the Company failed to comply with the Union's security article in the collective agreement and that the Arbitrator compel compliance by the Company in the future.

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The Union claims that the Company not only violated the first part of Section 6 of Article III but also the second part by making dues deductions without authorization from the Union. The Arbitrator is requested to order the Company to refund the back dues to the employees concerned. The Arbitrator is also asked to find that the Company is in violation of the collective agreement and therefore it is responsible for making the payment to the Union and not the employees.

The Union argues that the Company by its action or lack of action has defrauded the Union of monies it is entitled to have, both under the Certification and the collective agreement. The Union argues that the Company is defrauding the employee of his Union rights, his ability to attend Union meetings, to vote on Union matters, and his ability to post for jobs. The Union argues that the failure to deduct dues, as the Company has stated that the employees were covered for medical and other purposes, appears to be an anti-union action and an attempt to influence employees against the Union.

The Union argues that the Company cannot deduct dues unless authorized by the Union and in this regard seeks support for its statement in Article III - Union Security, Section 6: Check-off:

" The Local Union shall notify the Company by letter of the amount of back dues owed by new employees and copies of such letter shall be furnished to the employee and the Shop Committee. "

The Union argues that such a letter was not sent and in any event the Union had not discussed nor was it aware of the Company's decision in advance to make a lump sum deduction from the employees.

Counsel for the Company argues that it is unnecessary for the Arbitrator to make a declaration that the Company failed to comply with the collective agreement or that the Company must do so in the future, as the Company has admitted its failure and has given an undertaking before the Arbitrator to comply in the future.

Counsel argues that there has been no evidence of bad faith. In fact, the evidence shows that as soon as Mr. Neil, the General Manager of the Company, was aware of the situation corrective steps were taken.

Counsel concedes that the Arbitrator, in accordance with the Labour Code of British Columbia, can award damages. However, for such an award to be made there must be evidence that someone suffered damage and there is no evidence of such in this case.

Counsel argues that the Union demand that the Company, rather than the employees, should pay the Union is unlawful. In accordance with Section 3 (2) of the Labour Code of B.C., "No employer ... shall... contribute financial or other support" to a trade-union, and it is also contrary to Section 10 of the Code. Section 98 of the Code could be the only basis for remedy and there is no evidence that anyone was damaged or suffered an injury. Counsel argues that the Arbitrator is not authorized to interpret the collective agreement and should not do so in regard to Article III.

Counsel argues that if a company has deducted dues in some manner not satisfactory to the union, it is the union which should refuse to accept them.

DISCUSSION

1. Examination of Article III of the collective agreement clearly sets out the responsibilities of any company in regard to the hiring of new employees as well as new or old members of the Union. In Article III, Section 6, it is clear that the Company shall "... require all new employees at the time of hiring to execute the following assignment of wages in duplicate"

2. In this case, evidence shows that the matter had been drawn to the attention of the Company on several occasions by the Plant Committee Chairman, without any action being taken. It was not until Mr. Evans, Financial Secretary of the Local, contacted Mr. Neil that any corrective steps were taken. In a letter to Evans, Neil states, "Upon investigation, there is absolutely no question that our check-off procedures were in an unwholly [sic] mess. The person in charge has been instructed to sign new employees at the date of hiring and to straighten up the back dues owing."

3. It is clear from the evidence that this problem had existed for some time prior to the Chairman of the Plant Committee becoming aware of the situation by a close check of dues check-off and seniority lists. In some instances, no deductions had been made at all and in others, only after an employee had been at work for several months.

4. While I understand and concur with the Union's frustration and concern with the Company's action or lack of it in this regard, I cannot agree to the Union's demands, for these reasons:

(a) The Company has admitted its error and took immediate steps to redress the situation once it was brought to the attention of the General Manager.

(b) The Company has given an undertaking quite freely before this Arbitrator that it will comply with the collective agreement in future.

(c) Without interpreting the collective agreement, it is clear upon examination of Article III, particularly in regard to the forms set out for the authorization by the employee of deductions from wages, that an employee in signing such form authorizes and instructs the Company to deduct from his wages and remit such deductions to the specific Local concerned.

(d) The size of some of the deductions were of a relatively large amount, going as high as \$65, with the majority of them in the \$34 range. Such deductions coming as a "surprise" would not be welcome by the employees particularly, I am sure, as they did not consider the non-payment to have been due to any fault of theirs. However, I see no reason to penalize the Company for its error in not making the appropriate deductions. In the circumstances, it would have been preferable if the method of deduction had been discussed with the Union prior to the retro-active deductions being made. No evidence was led to show that either the employees or the Union had suffered any definable injury.

AWARD

After examination of evidence, argument, and references, I find as follows:

1. The Company violated the collective agreement, does not deny this, and states that it will comply with the collective agreement henceforth.

2. I understand and concur with the Union's frustration and concern and the problems that such non-conformity with the collective agreement can cause for both an employee and the Union. I understand the construction that may be placed by the Union on such a violation in certain circumstances. However, in this case there is no evidence of a deliberate intent by the Company; there is no evidence of gain -- financial or otherwise -- to the Company; and, other than possibly a transitory annoyance and budgetary imbalance, there is no evidence of any loss by the employees. It appears that in nearly every case the deductions when at last made were taken from a retroactive wage adjustment payment. Moreover, while the rightful payment to the Union was delayed, it was eventually made and the Union lost nothing by the Company's error.

3. I answer the questions posed by the Union as follows:

(i) Is Bay Forest Products Division of Whonnock Forest Products Limited in violation of Article III, Section 6 of the collective agreement in failing to sign the following members, that is, S. Anselmo and S. Sandhu et al, to check-off at the date of hiring and failure to deduct and remit dues to the Local Union?

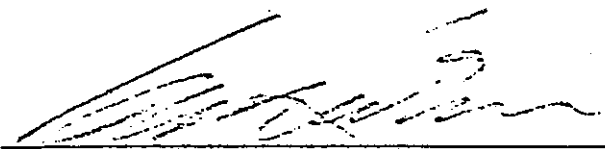
The answer is "Yes".

(ii) If the answer to Question No. 1 is "Yes", is Bay Forest Products Division of Whonnock Forest Products Limited responsible for back dues owing to the Local Union?

The answer is "No". At this time, there are no back dues owing to the Local Union. Initially, the

responsibility for the payment of Union dues rests with an employee. A company is responsible in accordance with Article III to the extent that it is the Union's agent for the collection and remittance of such dues. Nowhere in the collective agreement, however, is there any support for the demand that because of a company error and the consequent delay in remittance should a company be fined for, in effect, the total amount of dues that had not been collected. I find no evidence of any injury upon which damages could be so claimed or awarded.

SIGNED at West Vancouver, B.C., this 5th day of February, 1980.



Clive McKee

