IN THE MATTER AN ARBITRATION BETWEEN

Northwood Pulp & Timber Limited (the "Company")

And

Canadian Paperworkers' Union, Local 603 (the "Union")

Heard: (Prince George, B.C.) January 4 and 5, 1990
Award: January 25, 1990

(Contracting Out Grievance)

Arbitrator: David H. Vickers

Counsel: Thomas A. Roper for the Company
Hans Suhr for the Union

As a Single Grievance Arbitrator, I am asked to provide my opinion on two issues arising under the Collective Agreement between the parties. The issues are:

1. Was the Company in breach of the Collective Agreement when it contracted out certain work on March 27, 1989, a statutory holiday?

2. Was appropriate notice given by the Company of the work to be contracted out on that date?

The parties agreed that this Board was properly constituted and had jurisdiction to hear the issues.

There are two sections of the Collective Agreement to be considered, as follows:

"Article XVII, Section 3: Holiday Work

a) Production and/or maintenance may be performed on any statutory holiday excluding those outlined in Section 3(b) below.

   The Company will provide the Union with not less than thirty (30) days notice of the general scope of operating and/or maintenance plans on statutory holidays. Unanticipated weather conditions or maintenance requirements may alter those plans.

b) On Christmas Eve, Christmas Day, Boxing Day, and one of the other recognized twenty-four (24)-hour statutory holidays, which will be designated by the Company with a minimum of sixty (60) days notice, no work shall be done except as follows:

   1) Any work necessary in the protection of life and property.

   2) Any major maintenance or repair work, not including machine clothing and wires, which is necessary in order to prevent material subsequent curtailment of employment of a substantial number of employees; provided that no machine or equipment involved in production shall be operated for production purposes during the holiday shutdown period.

Any preparatory work which would result in the resumption of production as early as possible following the end of the holiday; it being understood that:

i) early start-up will be limited to the last four (4) hours of the holiday;

ii) start-up crews will be limited to the minimum number and will be filled on a volunteer basis, or scheduled as necessary;

iii) the four (4)-hour limitation does not apply to employees whose regular duties require them to work on recognized holidays.

Article XXV - Contracting

a) The Company will notify the Union of work to be performed by contractors in the mill, and will, emergencies excepted, afford the Union the opportunity to review it with the Company prior to work being commenced.

b) The Company will not bring a contractor into the mill:

i) which directly results in the layoff of employees, or
ii) to do the job of employees on layoff, or
iii) to do the job of a displaced tradesman or apprentice working in a category outside his trade.

c) It is not the intent of the Company to replace its regular maintenance work force through the use of contract maintenance firms in the mill."

The Company scheduled its 1989 spring maintenance shutdown from March 28 to March 31, 1989. As the Mill was to be closed for the Easter statutory holiday on March 27, 1989, the Company advised the Union that some maintenance employees would be asked to work as early as March 26, 1989. Commencing March 28, maintenance crews were asked to work 12-hour shifts until the shutdown was completed.

The Minutes of Standing Committee Meeting held March 9, 1989, record the fact that the Company informed the Local that the Easter statutory holiday would be from 8:00 a.m., March 27 to 8:00 a.m., March 28, 1989. The Union inquired if the Company was going to have any contractors working in the Mill during the statutory holiday and were advised by the Company that contractors would be working on three different jobs that day. The Union took the position this was in violation of the Collective Agreement and the Company asserted that the work to be performed by contractors did not fall under the labour agreement.

As early as February 24, 1989, members of the Union's Contracting Out Committee received notice that certain work was to be performed during the spring maintenance shut down. This work was discussed at a meeting of the committee on March 2, 1989. When the Local was informed on March 2 that a contractor would be performing certain work, it had not occurred to the Company that the work would, in fact, be performed on the statutory holiday. The contractor was hired and it was then learned that work on the statutory holiday was essential if the tasks were to be completed. The Contracting Out. Committee was then advised prior to March 9, 1989, that some of the work previously discussed would be performed on the statutory holiday.

It is to be noted that "no work shall done" on statutory holidays except that type of work enumerated in Subsections (i) to (iii) inclusive of Section 3(b). In fact, work was performed on the statutory holiday (March 27) by various contractors. There is no dispute that the work performed was not what has been called exception work, meaning work which can be performed pursuant to Article XYII, Section 3(b) of the Collective Agreement.

As is so often the case, the parties both argued that a proper interpretation of the Collective Agreement did not require consideration of any extrinsic evidence. The language of the provisions was clear and unambiguous. The difficulty was that the "clear meaning" sought by one party was directly opposite that sought by the other party.

On the first issue, the Union argued that when the provisions of Article XVII and Article XXV were read together, there was a clear prohibition against the contracting out of work on a statutory holiday when the work contracted out was not exception work. The work performed on March 27, 1989, was not exception work and, consequently, the Company was in breach of the Collective Agreement.

On the second question, the Union concedes that notice had been received to the effect that the work would be performed on a statutory holiday. But it says that when such notice was given, the work had already been contracted out and any opportunity for Union members to perform the work had been lost.

The Company's position on the first issue was that there was simply no prohibition to contracting out work on a statutory holiday. Alternatively, the Union was estopped from arguing the interpretation it now advanced by virtue of past practice and the history of collective bargaining.

As to the question of notice, the Company argued that Article XXV required them to provide notice of the work to be performed and there was no requirement to say when the work would be performed.

In my opinion, there is a heavy burden on the Union if it is to succeed in its interpretation of Article XVII.

In *Re Wire Rope Industries Ltd. and United Steelworkers, Local 3910* (1982), 4 L.A.C. (3d) 323, the Board said, at page 328:

> "We are of the view that the union carries the same kind of burden as it would have when it attempts to assert a right to a monetary benefit and to impose an obligation on an employer to pay the same. When a union asserts that a provision in the collective agreement has taken away a fundamental management right to organize and reorganize its work-force for bona fide business reasons, the same kind of precise language must be found as arbitrators have held is necessary when a union attempts to impose an obligation on an employer to pay a benefit.
>
> We are of the view that arbitrators ought not to impose a monetary obligation on an employer that he clearly did not bargain to pay. We believe that same principle is applicable in the kind of situation we are faced with in this dispute. We ought not to impose upon an employer any restrictions in its right to organize and reorganize its work force unless it clearly and unequivocally bargained so to do. It is obvious in the case before us that the ramifications of the position taken by the union go further than this particular grievance."

I begin my review of Article XVII with a statement of the obvious. The provisions of the Collective Agreement are binding upon the Company, the Union and its member employees. The provisions are intended to apply to employees.

Specifically, Article XVII - Statutory Holidays, addresses the question of statutory holidays, for employees and not for others whose services may be retained to do specific jobs at the mill. The Article was not intended, in my opinion, to apply to contractors or to the employees of contractors who are called in from time to time to perform specific tasks.

The words "production and/or maintenance work" found in Section 3(a) refers to production and maintenance work performed by employees. Similarly, the work referred to in Subsection (b) of Section 3 refers to work which would be performed by employees.

The foregoing interpretation is reinforced by a reading of Section 4 and Section 5 of Article XVII which makes specific reference to the pay to which employees are entitled for holiday work. The word "employee" is referred to throughout Section 5 of Article XVII. When the Article is looked at in its entirely, there is simply nothing in Section 3 which would allow me to conclude that its provisions would apply in any way to work that is to be contracted out.

The limits on contracting out are found in Article XXV. Subsection (a) requires notice and the opportunity of review. Subsection (b) prohibits contracting out in particular circumstances. There is no evidence that such circumstances existed in this case. Similarly, there is nothing that would lead one to conclude that the Company sought to replace its regular maintenance work-force through the use of contract maintenance firms, contrary to the expression of intent found in Subsection (b)(iii) of Article XXV.

I believe that the clear meaning of Article XVII does not support the interpretation sought by the Union.

I have reviewed each of the Minutes of Standing Committee placed before me in evidence. Apart from the Minutes of March 9, 1989, there is nothing to indicate that the Union has ever taken the position that Article XVII applied to work that would be performed by a contractor on a statutory holiday. On a reading of the Minutes, I conclude that work, other than exception work, has been performed in the past by outside contractors and the Union has never asserted that this was a breach of the Collective Agreement. Indeed, there is some evidence to conclude that on at least one occasion, the Union urged the Company to contract out certain work it considered to be non-essential (fire patrol) rather than have employees do the work on an Easter statutory holiday (1983).

Because of the view I have taken on the clear meaning of Article XVII, I do not propose to review all of the extrinsic evidence called relating to past practice and collective bargaining history. Suffice it to say that if I had not found the language of Article XVII to be clear and unambiguous, the evidence of past practice supports the finding of estoppel. As well, the collective bargaining history leads me to conclude that the Union has never considered the Collective Agreement to prohibit contracting out of exception work on a statutory holiday.

Accordingly, my answer to the first issue is in the negative.

The answer to the second issue raised is to be found in the language of Articles XXV and XVII. Under Article XXV, the burden on the Company is to notify the Union of any work to be performed by contractors and afford the Union the opportunity to review it with the Company. There is no obligation on the Company to say when that work will be performed. In this case, I am satisfied that the Company discharged its obligation under Subsection (a) of Article XXV.

That is not an end of the matter because Section 3 of Article XVII requires the Company to provide the Union not less than 30 days' notice of "maintenance plans on statutory holidays". In my opinion, for the reasons previously stated, a clear reading of this Article leads to the conclusion that the work referred to in this section is work to be performed by employees. In my view, "maintenance plans" refers to such plans for Company employees and not third party contractors.

There is an additional reason why I would hold against the Union with respect to this second issue. It is clear from the evidence that the scope of the work undertaken by outside contractors was so large that the Company's employees would have simply been unable to perform what was required. Apart from the statutory holiday, March 27, 1989, they were fully engaged in carrying out other maintenance work. While the employees undoubtedly had the skills to do the work performed by outside contractors, there was simply not sufficient time to allow them to have completed it within the time allocated.

Finally, I am satisfied that the Union and its members, as a matter of policy, preferred to have the day off on March 27, 1989. There was no evidence which would allow me to conclude that any employees would have elected to do the work performed by outside contractors on March 27, 1989.

Accordingly, my answer to the second issue is in the affirmative.

The grievance is dismissed.

January 25, 1990 Victoria, British Columbia