

In the Matter of Arbitration Between

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UNITED STEELWORKERS OF AMERICA, LOCAL 1165	:	
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"Union"	:	
AND	:	OPINION AND AWARD
MITTAL STEEL USA - COATESVILLE	:	
	:	
"Employer"	:	
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At issue in this case is whether a group of employees ("Grievants") are properly compensated at the Labor Grade 3 rate of pay. The Union contends that the Grievants are performing duties which entitle them to be paid at Labor Grade 5. The Employer asserts that the Grievants are properly classified and compensated and that the grievance is untimely.

The arbitration hearing in this matter took place in Coatesville, Pennsylvania. The Union was represented by Lewis Dopson, Staff Representative. Patrick D. Parker, Manager of Labor Relations, presented the Employer's case.

CONTRACT PROVISIONS

Article V - Workplace Procedures  
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Section B - New or Changed Jobs  
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2. In the event the Company chooses to modify the duties of an existing job or create a new job, it shall follow the procedure outlined below.

\* \* \*

Section E - Seniority

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2. Determination of Seniority Units

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b. The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the Effective Date shall remain in effect unless modified by a local written agreement signed by the Grievance Chair.

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Appendix A

Wages

Labor Grade	Jobs
1	Utilityperson
2	Service Technician
	Plant Transportation Specialist
3	Operating Technician
4	Maintenance Technician - Mechanical
	Maintenance Technician - Electrical
5	Senior Operating Technician

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FACTS

The Coatesville facility ("Coatesville") involved in this proceeding has a long history. It was formerly part of Lukens Steel and later owned by the Bethlehem Steel Corporation ("Bethlehem"). In 2001, Bethlehem filed for bankruptcy. In 2003, the International Steel Group, Inc. ("ISG") purchased the assets of Bethlehem and took over operation of Coatesville. In 2005, the current Employer (Mittal Steel) acquired ISG.

The Union has for many years represented employees at Coatesville. Upon ISG assuming Bethlehem assets in 2003, the Union bargained with ISG for a new Collective Bargaining Agreement ("CBA") covering the former Bethlehem facilities.

On or about June 16, 2003, the Union and ISG reached agreement on a labor Contract, the terms of which covered Coatesville. The new CBA dramatically changed the lines of progression for employees. More specifically, the parties agreed to reduce greatly the number of jobs and pay ranges/labor grades which had existed under Bethlehem. Under the new Contract there were only seven jobs (Senior Operating Technician, Maintenance Technician - Electrical, Maintenance Technician - Mechanical, Operating Technician, Plant Transportation Specialist, Service Technician, Utility person), and five Labor Grades, i.e., pay grades. The parties also agreed to assign the previously existing jobs to one of the five Labor Grades.

In the fall of 2003, local management and Union officials at Coatesville entered into a written local agreement. This local agreement was signed by the General Manager on behalf of management and the Local Union President on behalf of the Union. Pursuant to this local agreement, the parties agreed there would be five departmental seniority units in effect at Coatesville, and that one of those units would be the steelmaking unit. This document further stated that "the parties also agree that the attached department seniority units and accompanying lines of progression would be used in the application of seniority factors at the

Coatesville plant during the term of the ISG/Union Agreement." An attached Organizational Chart, which had previously been used in the ISG/Union negotiations, showed that in the Strand Cast area the Senior Operating Technicians, at Labor Grade 5, would include Caster Operator (old No. 1). The Chart further revealed that Operating Technicians, at Labor Grade 3, would include Assistant Caster Operator (old No. 2).

The Grievants work in the Strand Cast unit of the steelmaking unit. After the parties reached agreement on the new jobs and labor grades, the Employer designated them as Operating Technicians and compensated them at Labor Grade 3.

Local Union and management officials subsequently engaged in an ongoing dialogue involving jobs and labor grades of those assigned to the Strand Cast unit. The Union was attempting to resolve these matters without the need to file a formal grievance.

On or about September 1, 2004, the instant grievance was signed by the Grievants and submitted. It was contended therein that "the Company violated the Contract by not paying the present No. 1 Operator the wages of the Senior Operating Technician position". As to remedy, the grievance specified that "we ask the Company to cease and desist and pay the No. 1 Operator the Senior Operating Technician rate for the year or make a Lead Senior Operating Technician and give the No. 1 Operator the Senior Operating Technician position."

On March 6, 2005, the arbitration hearing in this matter took place. At the commencement of the hearing, each party set forth

its proposal concerning the issue to be decided by the Arbitrator. The Employer proposed that the issue be "(w)hether or not the Operating Technicians assigned to the Casting Deck should be promoted to Senior Operating Technician?" The Union proposed the issue to be "(d)id the Company violate the provisions of the basic labor Agreement between the parties when it paid employees performing the duties of the old No. 1 Operator position at Labor Grade 3?" Upon hearing the Union's proposed issue, the Employer took the position, for the first time, that the instant grievance was untimely in addition to being without merit.

#### OPINION

I reject the Employer's contention that the instant grievance is untimely. Whatever merits this procedural defense would have had if it had been raised during the grievance process, the reality is that the claim of untimeliness was not raised until the arbitration hearing. While the Employer contends that it was properly raised at that time in response to the issue which the Union sought to put before the Arbitrator, this grievance had been discussed and considered extensively during the grievance procedure without any claim of non-arbitrability being raised. In these circumstances, the Employer's remedy for what it perceived to be the Union's improper framing of the issue was not to raise a claim of non-arbitrability, but rather to dispute the Union's proposed issue and put forth its own statement of the issue. Indeed, the

Employer did do that.

As to the merits of the grievance, the Union is correct that no matter how the issue is framed, the heart of the dispute is whether the Grievants are being paid properly at Labor Grade 3 or should be paid at Labor Grade 5. After careful consideration, I conclude that there exists insufficient evidence upon which the Union can carry its burden of establishing that the Grievants are entitled to be compensated at Labor Grade 5, the highest level of compensation available under the CBA.

The starting point of analysis is the job descriptions set forth in the CBA for Senior Operating Technician and Operating Technician. They state as follows:

Position Title: Senior Operating Technician  
Labor Grade 5

Operates and is responsible for the performance of all functions on a producing unit as a member of the operating team. Directs other operating crew members and service areas, and communicates with maintenance, as required, to maximize production. Performs and assists in production and maintenance tasks and functions necessary to assure maximum production, quality, and inspection. Performs or leads maintenance activities as required with operating crew members and coordinates and works in conjunction with maintenance technicians.

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Position Title: Operating Technician  
Labor Grade 3

Operates and assists Senior Operating Technician and other crew members in tasks on producing units necessary to assure maximum production, quality, inspection and maintenance of material and equipment. Performs and assists in maintenance tasks as directed by Senior Operating Technicians and Maintenance Technicians as required.

Consideration of these descriptions reveals that while there is overlap between the Senior Operating Technician and Operating

Technician jobs, there are also substantial differences. Most notably, the Senior Operating Technician "is responsible for the performance of all functions on a producing unit". The Operating Technician, by contrast, "assists Senior Operating Technician" in performing various tasks.

Although I do not doubt that the witnesses produced by the Union at the arbitration hearing honestly believe that the Grievants are entitled to be compensated at Labor Grade 5, the evidence does not establish that the Grievants have the overall responsibilities envisioned for the Senior Operating Technician job. As stressed by the Employer, the Grievants do not routinely and normally have responsibility for the performance of all functions on their producing unit. Rather, on the caster operation this sweeping responsibility normally falls to a Senior Operating Technician assigned to the shift. While the Grievants may in some circumstances also have directional responsibilities, this is not inconsistent with the specified responsibility of the Operating Technician to assist the Senior Operating Technician.

While the Union contends that the Grievants are entitled to be compensated at Labor Grade 5 because they are now performing the duties of the No. 1 Operator job as it existed pre-ISG, and that the parties agreed during bargaining for their current agreement that the No. 1 Operator job would be compensated at Labor Grade 5, I do not find this to be a sufficient basis upon which to sustain the grievance. According to the written job specifications for the No. 1 Operator, the position had "responsibility for maximum

production from a major producing unit", while the No. 2 Operators had "high responsibility for continuity of operations on a large producing unit". Notably, the rating on this factor for the No. 1 Operator was 6.5, while the rating for the No. 2 Operator was only 4.0. The fact that the old No. 1 Operator had a rating on this factor so much higher than the No. 2 Operator demonstrates that old No. 1 Operator had a high level of responsibility for operations. The evidence does not establish that the Grievants in the instant case now have such a high level of responsibility in the caster operations.

In the final analysis, it is completely understandable why the Grievants, and the Union on their behalf, believe they should receive greater compensation than that provided by Labor Grade 3. The Grievants do have a responsible position. Indeed, they have some of the same responsibilities as a Senior Operating Technician, yet receive considerably lower compensation. The distinction in the responsibilities of the Senior Operating Technicians and Grievants may not seem so great as to justify the distinction in compensation received by the Senior Operating Technicians and Grievants. Nonetheless, when it was agreed to reduce the 32 pay ranges which existed pre-ISG to the five Pay Grades which exist in the current Contract, it was inevitable that relatively small differences in work and responsibility between jobs would in some instances result in relatively large differences in compensation between jobs.

The Grievants are in such a situation. More specifically,



once it is determined that their responsibilities do not entitle them to be placed into Labor Grade 5, it follows that they will be receiving a significantly lower level of compensation, namely that provided by Labor Grade 3. This is because, pursuant to the terms of the CBA, the only jobs to be placed at Labor Grade 4 are Maintenance Technicians, either mechanical or electrical. The work of the Grievants does not enable them to be considered Maintenance Technicians.

Accordingly, notwithstanding the Union making every possible argument to the contrary, I find that the Employer has not violated the CBA by designating the Grievants as Operating Technicians and compensating them at Labor Grade 3. The grievance must therefore be denied.

AWARD

The grievance is denied.

Signed this *2nd* day of June, 2006.



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SCOTT E. BUCHHEIT, ARBITRATOR