IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
CLEVELAND PLANT

And ArcelorMittal Case No. 105

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 979, USW

OPINION AND AWARD

Background

This expedited contracting out case from the Cleveland Plant concerns the Union's claim that the Company improperly contracted out service and repair work on certain Company vehicles. The case was tried in Independence, Ohio on February 27, 2020. Richard Samson represented the Company and Timothy Buxton presented the Union's case. I denied the Company's request to submit post-hearing briefs, and the parties submitted the case on final argument.

Before 2002, the Cleveland plant was operated by LTV. That company shut down in November 2001 and, in February 2002, LTV's assets, including those in Cleveland, were purchased by WL Ross and Co., which formed International Steel Group (ISG). ISG began operations in Cleveland in late 2002. In 2005, ISG merged with Mittal Steel, which became ArcelorMittal Steel in 2006. Mark Granakis was President of the Local Union at LTV and at the time of the ISG began operations in 2002. He testified that in February or March of, 2002, shortly after it purchased the assets, ISG eliminated and shut down the shops that had operated at

LTV, including the mobile equipment repair shop. Granakis and David McCall, then the International Union's District 1 Director, were in talks with ISG, and they protested selling the equipment and closing the shops. But, Granakis said, there was no contract with the Union at that time so there was no official way to protest the closure of the shops. The parties reached an agreement in late 2002. On cross examination, Granakis said he believed most of the shops' work had been contracted out. He also said there had been talks with the Company about reopening some of the shops. Some LTV employees were recalled to ISG when it started up, but not the employees who had worked in the mobile equipment repair shop. Granakis acknowledged that in talks with Rodney Mott, CEO of ISG, Mott said the Company's philosophy was that the plants should just make steel.

Granakis said he did not realize until 2018 that the Company was contracting out its mobile equipment repair work to Kelley Steel Erectors, which has a repair facility near the Cleveland plant. He said he believed ISG leased a lot of its mobile equipment, though he was aware since 2002 that ISG owned some of the mobile equipment in the plant. Granakis said he never looked into who was doing the repair work while he was president (until 2015) because no one ever raised the issue with him. He also said the Company never notified him that Kelly was doing the service and repair work. Granakis agreed that the equipment from the mobile equipment repair shop was sold, as was the building itself. He believed the building had been torn down. A few of the shops have reopened, but not the mobile equipment repair shop.

Tony Panza, Chairman of the Grievance Committee, testified that he learned about mobile equipment repair and service work being contracted out while investigating another grievance in May 2018. Before that, he said, he assumed most of the equipment was leased and it simply did not occur to him to question who was servicing the Company-owned equipment.

After he learned Kelly was doing the work, Panza said he made multiple requests for information about the work. The Union filed a grievance protesting the contracting out on June 19, 2018. The parties discussed the issue throughout most of the year, which coincided with 2018 contract negotiations. In November 2018, after discussions failed to yield any resolution, the Union requested expedited arbitration. Panza said he believes bargaining unit employees are capable of performing the work. Much of the routine service work could be performed by MTMs. There are also qualified diesel mechanics in the bargaining unit working in the locomotive shop and other employees who have experience or training working on gasoline engines. On cross examination, Panza agreed that there was no line of progression (LOP) for mobile equipment repairmen. Panza said he knew there were as many as 100 vehicles in use at the Cleveland plant, but he simply did not think about who was doing the repair work. He agreed that bargaining unit employees sometimes drove vehicles to the nearby Kelly facility for repair. He said he believed none of them were Union officials from 2015 to the present, but some might have been before 2015. Panza said there is a building near the locomotive shop previously used for sanding that he thought could be used as a truck shop.

Janet Jordan has been the Company's Manager of Labor Relations since April 2002. She also worked at the facility under LTV ownership. Jordan said when ISG purchased the assets of LTV and restarted the plant, it did not reopen the shops, including the mobile equipment repair shop. ISG recalled employees as if there had been a layoff, so it did not recall the mobile equipment repairmen. The land under the mobile equipment repair building was sold to the Cleveland Port Authority, which sold it to another concern. The building was torn down. Jordan said there was a shops LOP when LTV owned the plant, but that there has never been one for mobile equipment repairment since ISG bought the facility in 2002. Jordan said she was

surprised to hear Union officials deny knowing that Kelly was doing the repair and service work. The Kelly facility is quite close to the plant, and bargaining unit employees routinely drive equipment there for repair. Jordan testified that she has been in four national and local contract negotiations and the Union has never claimed that mobile equipment repair was bargaining unit work in any of them.

James Diver, Vice President of Operations for Kelly Steel Erectors, testified about the repair and service work it performs for ArcelorMittal at its Eggers Avenue facility. He said the employees work one shift and described the work as "sporadic." One to five employees work in the shop at any one time, depending on the workload. They do not work weekends and they work very little overtime. He said Kelly can bring in welders or other employees from other work crews – like those who work on cranes or structural projects – to help in the repair shop. The employees assigned to the shop go through a four-year master mechanics apprenticeship program. The workload can range from changing windshield wipers to repairs of significant complexity. The routine service work accounts for about 20% of the shop's activities. He described the equipment needed in the shop and said Kelly stocks parts for the equipment. When mobile equipment breaks down in the mill, Kelly employees respond and service the equipment in the plant. They drive trucks that have a Kelly Steel Erectors logo.

Gary Anderson is the Company's Manager of Plant Services and Logistics and Contract Administrator. He said ever since he assumed a management position in 2005, he has had conversations with Union committeemen about work being performed on Company vehicles by Kelly. He named four committeemen and current Union President Dan Boone. All of these conversations occurred before the grievance was filed in 2018.

Russ Sirochman is Division Manager of Plant Services, Logistics, and the Railroad. He said Kelly's facility on Eggers Avenue is about 10,000 square feet, and that Kelly works on the Company's light equipment, including pick-up trucks, vans, SUVs, and Kubotas. Kelly also works on the Company's snow plows, tractor trailer units, carryalls, and lowboy trailers. There are more than 176 vehicles, trailers, and other equipment. About 90% of the time, Sirochman said, bargaining unit employees take the vehicles to Kelly for service or repair. Like Diver, Sirochman described the work as sporadic. On some days there will be multiple vehicles and on some none. Also, some work is routine and other jobs require extensive repair. Sirochman said the Company does not have any empty buildings that could be used as a repair and service facility. Even if there were, the Company would still have to buy equipment, tools, and contend with environmental and safety considerations. He also disputed the Union's claim that there is room to repair vehicles in the locomotive shop. He said it is 100% dedicated to locomotive work.

Sirochman discussed a feasibility study he conducted concerning having the work done in-house. According to his estimates, the cost of preparing the site, constructing and outfitting a building, and employee recruitment would exceed $1.8 million. The total compensation cost (excluding wages) of two employees in the shop would be about $284,000; three employees would be over $349,000; and five employees would be over $424,000. This is compared to the Kelly costs of $126,410. Added to employee costs would be the yearly cost of a full-time supervisor. By Sirochman's calculations, the total annual cost disadvantage of doing the work in-house would be between $200,000 and $300,000. Mike Madar, Vice President and General Manager of the Cleveland plant, testified that the plant has far more capital needs than there are funds available. A mobile equipment repair shop would not be approved if it were submitted as

a project. If one is required as a result of this case, a far more important project or projects would have to be deferred.

Positions of the Parties

The Union cites the language from the Guiding Principle in Article 2.F.1.a. that says the Company will use bargaining unit employees "to perform any and all work they are or could be capable (in terms of skill and ability) of performing" unless the Company can establish one of the exceptions detailed in Article 2.F.2. The Union insists that bargaining unit employees are capable of performing the work at issue, and it says none of the exceptions apply. The fact that the work was performed by a contractor for 16 years is not an exception, the Union says. Nor is the fact that performing the work in-house would require a Company investment. The Union also asserts that the Company raised arguments in arbitration that had not been advanced in the grievance procedure.

The Company points out that the Union's witnesses did not question the fact that the mobile equipment repair work that had been performed by LTV was not performed by any ISG employee when operations resumed in late 2002. In fact, the Union acknowledges that the shops were closed, the equipment was sold, and the building was torn down. No mobile equipment repair work has been performed on site since LTV closed the facility, either by ISG, Mittal, or ArcelorMittal. The Company argues that the Union's claim it did not know the work was being performed by contractors was not credible. Kelly's repair and service work was open and notorious. Bargaining unit employees – including some committeemen – regularly delivered equipment to the Kelly facility for repair, and Kelly employees performed some repairs on Company property, arriving in service trucks with the Kelly logo. Moreover, a Company

witness said Local Union President Dan Boone and Contract Coordinator Joe Venere were aware Kelly was performing the work. Both men were present at the hearing, but did not rebut that testimony. Former Union President Granakis also said he knew the Company owned some of the mobile equipment operated in the mill and he knew no one had been recalled to perform that work. Thus, the Company contends, the Union knew the work was performed by a contractor and did nothing to contest that assignment for 16 years. The parties recognized, the Company insists, that this was not bargaining unit work.

Even if it was bargaining unit work, the Company points out that the grievance was filed 16 years too late. And, even if it were to be seen as a continuing violation, the Company urges that the grievance is barred by the equitable doctrine of laches. The Union sat on its rights, if any existed, and abandoned this work. The Company said its rights have been prejudiced by the Union's long delay. It has operated the plant and planned budgets and capital projects as if the parties understood it was appropriate to have Kelly perform the work. Any change in this understanding now would be inequitable.

The Company also argues that bargaining unit employees are not capable of performing the work because there is no place for them to do it. The Union gave up the work when they recognized and accepted the demise of most of the shops. And, even if the capability argument were limited to whether employees had the skill and ability to perform the work, the Company argues that the Union still did not carry its burden. The Union presented some evidence of checklists and credentials, but that was not direct evidence of capability. The Company says the Union did not show that bargaining unit employees have the skills necessary for a mobile equipment repair shop. The Kelly employees go through a four-year apprenticeship program. There was no showing of comparable training for any bargaining unit employees; and, while the

locomotive shop employees are skilled workers, there was evidence that they are working on vehicles made in the 1970s and are not trained in the computer-driven work necessary for the Company's mobile equipment.

If there is a finding that the work at issue is bargaining unit work that bargaining unit employees are capable of performing, then the Company relies on the exception found at Article 2.F.2.b.1., which reads, in relevant part:

> Fabrication and repair work may be performed by Outside Entities only where the location of the work's performance is for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity.
>
> In determining whether a meaningful sustainable economic advantage exists, neither lower wage rates, if any, of the Outside Entity, nor the lack of necessary equipment (unless the purchase, lease, or use of such equipment would not be economically feasible) shall be a factor.

The Company points out that it has no building in which to perform the work, no equipment, and no store of parts. A conservative estimate of a new building and necessary equipment and supplies, the Company says, is $1.8 million. There are also significant recurring costs that would prevent the Company from ever securing a return on its investment. The Company, citing the sporadic nature of the work, asserts that it is not economically feasible to have the work performed by bargaining unit employees. It is both infeasible and unreasonable to expect the Company to construct and outfit a new building, staff it with employees and a supervisor, and sacrifice more important capital projects. The Company relies, in part, on *ArcelorMittal Case #26*.

Finally, the Company rejects the Union's claim that it committed ethical violations by advancing arguments that were not presented in the grievance procedure. The Company says it

did not act in bad faith, noting that it provided the information to the Union upon which its arbitration exhibits were based.

Findings and Discussion

Under Article 2, Section A.1, the bargaining unit consists of "production, maintenance, office, technical, clerical and railroad employees of the Company...." The language is broad enough to cover employees who perform the kind of work at issue. Nevertheless, there are factors that convince me that maintenance and repair work on the Company's mobile equipment is not work that falls within the scope of the bargaining unit. It is true, as the Union claims, that bargaining unit employees performed that work in LTV's mobile equipment repair shop. Moreover, there was an LOP covering such employees negotiated between the parties. But ISG, ArcelorMittal's predecessor, did not simply buy LTV as a going concern and assume its collective bargaining agreement with the Union. LTV went bankrupt and ISG purchased certain of its assets.

Before ISG began operations and recognized the Union, it closed many of the former LTV shops, including the mobile equipment repair shop. It also sold the equipment and land on which the building sat. Ultimately, the building was demolished, although apparently not by ISG. When operations began, ISG did not have the facilities to perform mobile equipment maintenance, so it gave the work to Kelly. Initially, at least, employees who formerly worked at the mobile equipment repair shop were not recalled. And, the parties did not negotiate an LOP for mobile equipment repairmen. I have no reason to question that then-Local Union President Granakis did not actually know – or, perhaps more accurately, did not contemplate – the fact that mobile equipment repair had been given to Kelly. This is certainly understandable when the

facility was restarting, when there would have been substantial demands on the time and attention of Company and Union officials alike. But the relationship with Kelly was not limited to the start-up.

I need not speculate about how this case might have been decided if the Union had filed its grievance within a year or so of the restart. The facts at issue involve having Kelly do the work without protest from the Union for 16 years. This was not done secretly or with any attempt at deception. The Kelly facility is located near the plant and is quite close to the Company's offices on Eggers Avenue. There was unrebutted testimony that bargaining unit employees routinely drove mobile equipment to the Kelly facility for servicing, and that at least some of those employees were Union Committeemen. There was also testimony that Local Union President Boone was aware of the activity before he became president, as was Contract Coordinator Venere. Both men were present at the hearing, but neither testified. But even without knowledge on their part, it is simply unreasonable to believe that the Union was unaware of subcontracting that had been done openly for a period of 16 years. Yet the Union did not grieve or even raise the issue with the Company.

These factors convince me that when the Cleveland plant reopened, neither party believed that the repair of mobile equipment was work that would be considered within the scope of the bargaining unit. It was no longer work for which the Company had facilities, and neither side expected that it would be performed on the plant's premises by Company employees. Thus, the employees who formerly performed the work were not recalled, no LOP covering them was negotiated, and the Union did not complain even though it had to know that work performed by the LTV bargaining unit was being done off site, the former mobile equipment repair shop having been liquidated and disposed of. A mutual decision to regard certain work as outside the

purview of the Company's Cleveland plant operations is not affected by a later determination from changed Union leadership that the same work could be performed by the bargaining unit. The parties' determination that work is outside the scope of the bargaining unit can be reversed only through bargaining. In the circumstances at issue here, it is not a result that can be achieved in arbitration.

The Company presented substantial evidence in its effort to establish that there was a meaningful sustainable economic advantage to having the work performed by Kelly. It may be that this argument could prevail, even if the Union had been able to establish the applicability of the contracting out language to this case. I am persuaded, however, on the basis of the factors explained above, that the work at issue is not within the scope of the bargaining unit. Therefore, the contracting out language has no application.

There are two other matters that warrant mention in this opinion. During the hearing, the Union objected to the testimony of Kelly employee James Diver, relying on Article 2.F.9.b:

> No testimony offered by an individual associated with an Outside Entity may be considered in any proceeding unless the party calling the outsider provides the other party with a copy of each Outside Entity document to be offered in connection with such testimony at least forty-eight (48) hours ... before commencement of that hearing.

The objection, as I understood it, was that Diver's testimony was not admissible because the Company did not intend to introduce documents through Diver or, at least, had not given the Union any Outside Entity document 48 hours in advance of the hearing. But, contrary to the Union's claim, this provision does not say that a representative of an outside entity can testify *only* when they plan to identify documents. It says if the Company plans to *have* the witness identify documents, the documents must be given to the Union at least 48 hours in advance. But nothing in the language can reasonably be read to preclude a representative from offering

relevant testimony that does not involve documents, which is what happened here. Thus, I overruled the Union's objection to Diver's testimony.

Over the Union's objection, I also allowed the Company to offer argument through documents it prepared that were based on information the Union had been given during the pendency of the grievance. I did not understand these documents to represent new facts, even though they were presented in a different format. Moreover, the language in the regular grievance procedure does not say that each document must be exchanged prior to arbitration. It says a party cannot offer in arbitration facts, contract provisions, and remedies not disclosed in the grievance procedure. This does not mean it is appropriate to surprise the opposing party with arguments not previously advanced, but in my view that is not what happened in this case. I also mentioned at the hearing that, despite the substantial delay, the case was processed through the expedited procedure, which does not make provision for the kind of grievance records assembled in the regular grievance procedure. In sum, the Company did not act improperly by offering the documents

AWARD

The grievance is denied.

Terry A. Bethel

Terry A. Bethel, Arbitrator
March 20, 2020