IN THE MATTER OF THE ARBITRATION	)	<u>OPINION AND AWARD</u>
	)	
Between	)	**<u>RONALD F. TALARICO, ESQ.</u>**
	)	**<u>ARBITRATOR</u>**
ARCELORMITTAL USA, LLC	)	
INDIANA HARBOR	)	
	)	Case 114
and	)	
	)	
UNITED STEELWORKERS LOCAL 1010	)	

<u>GRIEVANT</u>

Group Grievance

<u>ISSUE</u>

Contracting Out

<u>VIDEO HEARING</u>

October 13, 2020

<u>POST-HEARING BRIEFS</u>

Received by October 26, 2020

<u>APPEARANCES</u>

<u>For the Employer</u>
Christopher M. Melnyczenko, Esq.
Labor Relations Lead Representative
ArcelorMittal Indiana Harbor

<u>For the Union</u>
John D. Wilkerson
Vice-Chair Grievance Committee
United Steelworkers Local 1010

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on October 13, 2020 in East Chicago, Indiana, with the Arbitrator participating remotely, at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. Post-hearing briefs were received from both parties by October 26, 2020 at which time the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE TWO – UNION SECURITY

Section F. Bargaining Unit Work

1. **Guiding Principle**

    a. **The Guiding Principle is that the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and ability) of performing (Bargaining Unit Work), unless the work meets one (1) of the exceptions outlined in Paragraph 2 below.**

    b. **Any individual or entity other than an Employee who performs Bargaining Unit Work shall be referred to herein as an Outside Entity.**

2. **Exceptions**

    In order for work to qualify as an exception to the Guiding Principle, such work must meet all aspects of one (1) of the definitions outlined below and the Company must be in full compliance with all of the

requirements of the particular exception as outlined below.

. . .

b. Work Performed Outside the Plant or its Environs

(1) Fabrication and Repair Work

Fabrication Work is the creation outside of the plant or its environs of items or parts used in the Company's business which are not themselves, either directly or after additional work is performed on them, sold to customers. Repair Work is the repair, renovation or reconstruction of those items.

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.

. . .

4. Bargaining Unit Work Committee

At each plant a committee consisting of four (4) individuals, two (2) individuals designated by each of the parties, shall be constituted to serve as the Bargaining Unit Work Committee. The Committee shall meet as required but not less than monthly to:

a. Review bargaining unit force levels for the plant;

b. **Review historical contractor utilization by the plant;**

c. **Review projections for contractor utilization by the plant;**

d. **Monitor the implementation of new programs or hiring to reduce contractor utilization; and**

e. **Develop new ideas and implementation plans to effectively reduce contractor usage as per the terms of this Section.**

5. Notice and Information

a. **Prior to the Company entering into any agreement or arrangement to use Outside Entities to perform Bargaining Unit Work, the Company will provide written notice to the Bargaining Unit Work Committee in sufficient time to permit a final determination, using the Expedited Procedure, of whether or not the proposed use of Outside Entities is permitted. Such notice shall include the following:**

(1) **Location, type, duration and detailed description of the work;**

(2) **Occupations involved and anticipated utilization of bargaining unit forces;**

(3) **Effect on operations if the work is not completed in a timely fashion; and**

(4) **Copies of any bids from Outside Entities and any internal estimating done by or on behalf of the Company regarding the use of the Outside Entities.**

b. **Should the Union believe a meeting to be necessary, a written request shall be made within five (5) days (excluding Saturdays, Sundays and holidays) after receipt of such notice. The meeting shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. At**

such meeting, the parties shall review in detail the plans for the work to be performed and the reasons for using Outside Entities. The Union shall be provided with all information available to the Company concerning the use of Outside Entities at issue.

c. Should the Company fail to give notice as provided above, then not later than thirty (30) days from the later of the date of the commencement of the work or when the Union becomes aware of the work, a grievance relating to such matter may be filed.

6. Mutual Agreement

...

b. In the event the Bargaining Unit Work Committee resolves a matter in a fashion which in any way permits the use of Outside Entities, such resolution shall be final and binding only as to the matter under consideration and shall not affect future determinations under this Section.

...

7. Expedited Procedure

In the event the Union requests an expedited resolution of any dispute arising under this Section, it shall be submitted to the Expedited Procedure in accordance with the following:

a. Within three (3) days (excluding Saturdays, Sundays and holidays) after the Union determines that the Bargaining Unit Work Committee cannot resolve the dispute, the Union may advise the Company in writing that it is invoking this Expedited Procedure.

b. An expedited arbitration must be scheduled within three (3) days (excluding Saturdays, Sundays and holidays) of such notice and heard at a hearing commencing within five (5) days

(excluding Saturdays, Sundays and holidays) thereafter.

c. The arbitrator shall render a decision within forty -eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing.

d. Notwithstanding any other provision of this Agreement, any case heard in the Expedited Procedure before the work in dispute was performed may be reopened by the Union if such work, as actually performed, varied in any substantial respect from the description provided in arbitration. The requested to reopen the case must be submitted within seven (7) days of the date on which the Union knew or should have known of the variance.

. . .

9. General Provisions

a. Special Remedies

(1) Where it is found that the Company (a) engaged in conduct which constitutes willful or repeated violations of this Section or (b) violated a cease and desist order previously issued by an arbitrator, the arbitrator shall fashion a remedy or penalty specifically designed to deter the Company's behavior.

(2) With respect to any instance of the use of an Outside Entity, where it is found that notice or information was not provided as required under Paragraph 5 above, and that such failure was willful or repeated and deprived the Union of a reasonable opportunity to suggest and discuss practical alternatives to the use of an Outside Entity, the arbitrator shall fashion a remedy which includes earnings and benefits to Employees who otherwise may have performed the work.

BACKGROUND

The Employer is ArcelorMittal USA LLC Indiana Harbor ("Company"). The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and USW Local 1010 ("Union"), is the sole and exclusive representative for collective bargaining for, inter alia, production and maintenance employees at the Indiana Harbor East Plant. The Company and the Union have been parties to a series of basic labor agreements over the years, the most recent of which is effective September 1, 2018.

The Union invoked the Expedited Procedure in this case based on the premise that the Company violated the basic labor agreement provisions in regard to both notice and in contracting out bargaining unit work. The Union requests a make whole remedy as well as a special remedy based on repeat and willful violations. The Union raised an issue that the Company's notice was inadequate under Article Two, Section F.5. of the basic labor agreement. The Union asserted that the notice contained inaccuracies and lacked certain components such that the notice did not comport with the requirements of Article Two, Section F.5. The Union also raised the issue of the Company failing to conduct a hearing within the timeframe prescribed by the Expedited Procedure under Article Two, Section 7 of the basic labor agreement. In response, the Company raised a procedural objection citing the language of Article Two, Section F.5.c. of the basic labor agreement, which provides that the Union may file a grievance should they allege that the Company failed to provide notice per Article Two, Section F.5. of the basic labor agreement. On this procedural issue, the Company contends that the Union's decision to demand expedited arbitration is not the proper course of action to challenge the sufficiency of the Company's notice.

The relevant factual record can be summarized as follows. Indiana Harbor is a steelmaking facility capable of making a full range of flat products including advanced high strength steels, API pipe skelp, motor-laminations, automotive exposed, martensitic grades and aluminized. The steel producing facility at Indiana Harbor East can be found at 4SP, which is a department that is expected to produce 2.3 to 2.5 million tons of steel annually. The caster at 4SP has two strands, with each strand being comprised of a mold and ten segments. The process is as fascinating as it is involved but suffice to say liquid steel is poured into the mold at the top of the caster and flows down through each segment as it is quenched with water. The water-cooling process solidifies the steel. The segments are removable precision-engineered housings and have to be maintained due to wear and tear. The segments are between 12'-15' in length and weigh between 30 and 40 tons.

When liquid steel overflows out or over the caster, the segments may require repair. These events are called "breakouts" and are unplanned, unpredictable and are dangerous. The goal for the steel producing department is to have zero breakouts per year, and the department once went three and a half years without any breakouts.

The Caster Maintenance Aisle is a satellite department that performs maintenance on segments and molds (among other things) for the caster at 4SP. The Caster Maintenance Aisle is staffed by bargaining unit members and is quite an impressive operation. It is clear from the record that the workers who man the Caster Maintenance Aisle are highly skilled and have a track record of being able to perform work faster and cheaper than could be performed using contractors. In fact, the last time the Caster Maintenance Aisle utilized an Outside Entity (contractor) to repair a segment was on April 4, 2019 – over a year before the instant dispute.

In August of 2020 there were two separate breakouts which affected the caster at F4SP. First, on August 2, 2020 there was a double breakout which occurred at the top of the caster and wiped out all spare segments. Three total segments were impacted by this breakout. In response to this breakout, the Caster Maintenance Aisle opened unlimited overtime for all of its employees to repair these segments. Then, on August 26, 2020, a second breakout occurred on strand one which affected the mold through segment six. All six of those segments were covered in steel and were no longer functional. In response to this second breakout, the Employer brought other bargaining unit personnel in to help the Caster Maintenance Aisle quickly repair the segments and bring the inventory back to sufficient levels. Overtime was also offered to other mechanical maintenance technicians throughout the Plant to provide further support to the Caster Maintenance Aisle.

On August 27, 2020, Wendall Carter, Vice President/General Manager of the Plant, discussed the situation with the Union. John Wilkerson, Vice-Chairman of the Grievance Committee, agreed with Carter that segment 2.3-1 needed to be send out for repair. That segment was sent out under notice EM080548 on August 28, 2020 and is not in dispute.

On September 1, 2020, the Caster Maintenance Aisle management met with the Bargaining Unit Work Committee regarding the issues related to repairing the segments impacted by the breakouts and replenishing the spares inventory. The Caster Maintenance Aisle maintains at least one spare segment per position but strives to carry at least two spares. The Caster Maintenance Aisle has two stands that it can use to rebuild a segment. When a segment needs repair, it takes the Caster Maintenance Aisle approximately six weeks to restore one segment into service (or into its spares inventory). The segment repair process is a process that occurs on a continuous basis to ensure that the caster runs efficiently. As of July 27, 2020, the Caster Maintenance Aisle's internal tracking of inventory reflected sufficient segment inventory levels. The September 1, 2020 meeting is where the crux of this dispute began between the parties. Specifically, at this meeting the parties discussed staffing issues and the Company's want to send additional segments out to Outside Entities for repair. The two segments which are the subject of the instant dispute – 2.3-7 and I-1-8 – were named on notices EM080610 and EM080614. The Company left this meeting believing that the parties had an agreement to move forward with contracting out the additional segment repair work. The Union contends that the parties had no agreement, and that the Company sent the work out to Outside Entities in violation of the basic labor agreement. The parties had a second meeting on September 3, 2020.

The Company provided notice to the Union on September 10, 2020 and the Union submitted its demand for expedited arbitration on September 11, 2020. The parties were unable to schedule a hearing prior to October 13, 2020, by which point the work had already been completed by the Outside Entities and returned. Since the work was completed by the Outside Entities prior to the time the hearing was held before this Arbitrator, it is worth noting the status of the two segments which were sent out for repair. The first segment was returned from being repaired by Outside Entities in one week and the second was returned from being repaired by Outside Entities the week following.

At the outset of the hearing, the parties stipulated both that the work in question had been sent to Outside Entities and that capability of the bargaining unit to perform the work was not at issue in this case. The Union is seeking a make whole remedy, cease and desist and special remedy on the basis that the Company violated the basic labor agreement by sending the additional segment repair work to the Outside Entities. The Company maintains that the parties had an agreement to send out the work, but that in any event the Company is able to meet the Fabrication and Repair Work Exception to the Guiding Principles and there is no violation of the basic labor agreement.

ISSUES

Whether the Company violated Article Two, Section F.5. of the Basic Labor Agreement by sending out the additional segment repair work to outside entities. If so, what shall be the appropriate remedy?

POSITION OF THE UNION

The Company did not notify the Union of the intent to use Outside Entities with all the information in a timely manner as is required by Article Two, Section F.5. The Company also did not meet its burden to prove that the disputed work met one of the exceptions to the Guiding Principles. The Arbitrator should find in favor of the Union and special remedies should be granted against the Company.

As a procedural matter, the Union filed an Expedited Arbitration Request with the Company on September 11, 2020. The Union attempted to schedule a hearing for September 18, 2020, but the Company refused. The parties then agreed to the hearing date of October 13, 2020 before this Arbitrator.

Local 1010 has historically been one of the most aggressive Local Unions in protecting bargaining unit work identified in the basic labor agreement, especially when it comes to skilled maintenance work. This is not the first instance in which the Company has attempted to diminish the employees' capabilities to perform the skilled craft work by central maintenance groups and shop work. Every attempt made by the Company to diminish the ability of the bargaining unit to perform this skilled work was challenged by the Union in bargaining or arbitration. This effort resulted in this facility having a fully operational Central Machine Shop, Fabrication Shop, Roll Reclamation Shop. Cylinder Repair Shop, Electric Motor Repair Shop, Mobile Equipment Shop with satellite locations throughout the facility, Central Maintenance or Field Forces, and the Caster Maintenance Aisle, providing us with more capabilities in terms of skilled maintenance work than any other facility identified in the current basic labor agreement.

Inland Steel Award No. 772 provides some historical insight needed for this dispute. A company witness testified that he was certain that this "Maintenance Aisle is the finest such facility in the world, staffed with the most able employees" and "no one else can do the work as well or as inexpensively as the Maintenance Aisle employees." He went on to say that "the Maintenance Aisle can do that work better and at one-half that cost" when discussing employees versus outside entities performing segment repair work.

The Company began the process of shutting down different facilities, including 2 Steel Producing ("2SP") in 2016. The parties agreed that the segment repair work in service of 4 Steel Producing ("4SP") would continue to be done by the 2SP maintenance box. The Company then created a standalone maintenance shop in the 2SP building. The Caster Maintenance Aisle was located in 2SP prior but there were also renovations of the area now that the area only had to service 4SP.

Article Two, Section F.1. speaks to the Guiding Principle that the Company will use bargaining unit employees to perform any and all work which is bargaining unit work and which they would be capable of performing unless that work meets one of the exceptions outlined. This case involves the 2SP maintenance box, which performs the repair work of segments in service of 4SP. The parties stipulated that the Employees of 2SP are capable and regularly perform the work in dispute. One of the exceptions to the guiding principle is Surge Maintenance work. The Company notified the Union citing Surge Maintenance as an exception to the Guiding Principle. On the date of the hearing the Company abandoned that Exception. Company witness Joe Lampert stated that the use of Surge Maintenance was a typo.

The Union has advanced several arguments that the Company violated the basic labor agreement pertaining to the timing and the description of the work pursuant to Article Two, Section F.5. which explains the Company's obligations regarding notice and information prior to utilizing Outside Entities to perform bargaining unit work. The Union also took the position that a special remedy was appropriate based on the facts of this case as well as past arbitration awards. Article Two, Section F.9(a) speaks to special remedies.

This dispute began much earlier than August, but for the hearing the Union primarily focused on events in August and September. On August 2nd, the Company stated that there was a breakout causing damage to several segments. On August 25th there was another breakout. In the hearing three segments were discussed which were repaired by Outside Entities. The first time was on August 26th and the other two times were September 10th and 11th. The August 26th segment was sent out by agreement with the Union. The other two segments are the current dispute. Meetings were held on September 1st and 3rd. The meeting on September 1 was with the members of the Bargaining Unit Work Committee, department level management, and the shop steward. On September 3rd, the meeting was with the Plant Manager (the Company's 3rd step representative), Union Chair of the Bargaining Unit Work Committee and the Vice-Chair of the Grievance Committee. The Company provided notice to the Union on September 10, 2020 and the Union provided its expedited arbitration demand on September 11, 2020. The Union attempted to schedule a hearing on September 18, 2020. Several calls and emails took place throughout the dispute. The last communication between the parties was October 12, 2020.

The burden of proof falls on the Company to prove that the work being performed by Outside Entities meets all aspects of the listed Exception to the Guiding Principle, based on Article Two, Section F.2. The Company also has the burden to prove that the Union was notified with all information required prior to entering into any agreement or arrangement to use an Outside Entity per Article Two, Section F.5. The Union has the burden in this case to show that the violation was willful, repeated, violated a previous arbitrator's ruling or where notice was not given in a timely manner. The Union must only prove that one of the listed tests can be met for a requested Special Remedy under Article Two, Section F.9.

At the hearing the Company's position was (1) that it has the right to manage the work; and (2) that the potential for a production loss is enough to meet both tests (bona fide business purpose and meaningful sustainable economic advantage). On the surface it seems simple enough, but one must look at what the Company is really saying in this case. Article Five, Section J provides that in the exercise of its prerogatives "the Company shall not deprive an Employee of any rights under any agreement with the Union." The Company says that if the work in dispute had not been performed by an Outside Entity that there is a potential that it would have suffered economic harm. Lampert testified that one hypothetical event that could cause economic harm is enough to meet the sustainable economic advantage. From the Company's perspective, it met its burden.

The Company does have the right to run the business, but the Company cannot make business choices that violate the basic labor agreement. The Company cannot make business choices and use those choices as the basis to prove a bona fide business purpose and as the basis for meaningful sustainable economic advantage. This case is much bigger than the repair work done on segments at 2SP in the service of 4SP. If the Company has the ability to create, by choice, a bona fide business purpose and meaningful sustainable economic advantage, using a vague hypothetical situation, it would render the entire Bargaining Unit Work section of the basic labor agreement meaningless.

The main focus for the Union in this dispute is that the bargaining unit members could have and should have performed the work. The Union wanted the work returned to the Plant so the bargaining unit members could do it, which is why the Union attempted to get a hearing scheduled within five business days of the work being sent out. The work was sent out on September 11th and the Union attempted to have a hearing conducted over the dispute with this arbitrator on

September 18th. The Company rejected that and would only agree to a date more than a month later to make sure there was no possibility of the work being returned.

The Company admitted to violating Article Two, Section F. They did not provide any of the information required in accordance with Article Two, Section F. The Company then changed the exception that it used from Surge Maintenance inside the plant to Fabrication and Repair Work outside of the plant on the date of the hearing – which is a violation of the basic labor agreement. That alone justifies a granted cease and desist, make whole remedy and special remedy.

In addition, the Company did not provide the information while the work was being performed, after the work was completed or on the date of the hearing. Company witness Dan Mikels did not know how many people were performing the work, the hours of work, or the time it took them to complete the work. He also admitted that overall staffing issues of the Caster Maintenance Aisle were above his pay grade. All of this information must be given to the Union prior. Both Company witnesses testified that they believed there was an agreement with the Union to use Outside Entities. Lampert testified he believed that he and Adam Govert, Union Chair of the Bargaining Unit Work Committee, had an agreement. He also said that he believed that Wendell Carter, Plant Manager, and John Wilkerson, Vice-Chair of the Grievance Committee, had an agreement for the disputed work. When questioned, Lampert stated that he was not aware of any discussions taking place over the work in dispute. Lampert also stated that Surge Maintenance was cited in error and that the listed Exception should have been Fabrication and Repair. He admitted the Union had never been notified of that Exception and that no documentation was provided to the Union to support the use of that Exception. Both witnesses also stated a general need to use Outside Entities based on a potential situation that could happen.

Mikels said that he was getting pressure from 4SP management on September 1st to send work out at a meeting with the Union. He admitted that Caster Maintenance Aisle Employees had been displaced as recently as the month of August and that later in August they attempted to bring a limited number of extra employees to support the Caster Maintenance Aisle. When asked why he limited the amount he said it was because people would be working on top of each other but did not explain why they were not using 24-hour coverage.

When asked why the Plant One machine shop location and employees were not used to supplement the Caster Maintenance Aisle, Lampert said that he was told by an unknown person that the crane capacity was too low to handle the work. That claim is erroneous, but the Union could not disprove it at the hearing because the Company never provided the documentation to support the Exception of Fabrication and Repair work. Award 772 establishes the Plant One Machine Shop is capable and has completed segment repair in the past. Lampert also testified that a phone call was notification so long as written notice came in by the end of the week. That is how the committee has worked for a long time. In emergency breakdown type situations, a call is made and is then followed by a discussion between the parties. At that point, the parties may have a potential agreement and written notice follows. This only means that the Union will not challenge the notification language if there is a real emergency.

All three Union witnesses denied that an agreement was made for the two segments in dispute. John Wilkerson testified that there was an agreement to use Outside Entities around August 26th, when one of the breakouts actually occurred. This was because a breakout had just taken place, a slab was frozen to the Caster and 4SP was shut down. Additional help was needed to expedite start up. The Union agreed that it would not challenge that segment being repaired by Outside Entities with the caveat that the manpower and equipment issues need to be addressed at the Caster Maintenance Aisle. The phone call took place at 7pm which led Wilkerson to believe that this was a genuine emergency, and that segment is not involved in this dispute.

The Company conceded that the segments in dispute were not involved in the verbal agreement between Wendell Carter and Wilkerson. This shows a real lack of knowledge of the details of the dispute on the part of the Company's advocate. Neither the Company's witnesses nor its advocate had a complete understanding of the scope of work involved in this dispute. Bizarrely, the Division Manager for Labor Relations, Nick Pappas, was present for many of the discussions after the September 1st meeting, but he was not called to testify nor was he the advocate.

Govert testified that when he said "I am not going to make you shut the shop down" that was in relation to using Outside Entities to take out and install a segment at 4SP during a shutdown period, not in repairing a segment. Even if a part of the facility is down the Company is not absolved from following the basic labor agreement. The Company's attempt to stretch his words shows how deteriorated the relationships are on that committee. Govert also made suggestions of alternatives to sending the work outside the plant, but those suggestions were rejected by the Company.

The Union has two justifications for its desire to keep the work inside the plant even if all or part of the work is performed by the Outside Entities. First, the Exceptions listed in the basic labor agreement are different if the work is inside the plant or outside the plant. Second, if the work is inside the plant the Union can monitor the scope of the work, number of people working and hours of work, which makes it much harder for the Company to avoid the language in Article Five, Section F.2. The Union's position was that it could have completed the repair work with employees if given the opportunity.

Jesus Zamora, Union Steward Caster Maintenance Aisle, testified extensively regarding the work that goes into repairing a segment in order to justify the hours that the Union stated were appropriate and to illustrate that the Outside Entities work completion time frame is not an apples to apples comparison. The Outside Entities could not have performed the work in that same time frame if they were given the same number of people, equipment to perform the work, or had to live up to the quality standards set by the Caster Maintenance Aisle. Zamora testified that Mikels told him that 12 or more people could be working on one segment at a time over there. He also said that there was not any steel on the segments repaired by the Outside Entity which means that these segments were not involved in the two breakouts cited by the Company. The Union and the Company argued in testimony that a minimum of three segments had steel damage them. The segments sent out were the first and second position which takes the most damage. This proves that when the Union said that these were not the segments damaged in the breakouts the Union was correct. There was no triggering event that took place between August 25th and September 10th to change the need associated with using Outside entities other than a manager from 4SP being afraid. The Union believes that it could have and should have performed the work.

The Union submits that its witnesses were more credible and that the arbitrator should use the timeline as the judge. It does not make sense that the Union would request a meeting on September 1st, agree to contract out work, then set up a meeting with the Plant Manager two days later and demand arbitration for a date five days after the work was sent out. There was not an agreement and the Company was not confused on the dispute. Ultimately, it does not matter which side was more credible in testimony. The basic labor agreement does not rely on witness testimony for the use of Outside Entities. The Union submits that the arbitrator should make his ruling based on the language in the basic labor agreement and the past precedent set by similar cases.

In order to be able to utilize Outside Entities to perform Fabrication and Repair work outside of the Plant, the Company must prove bona fide business purpose and meaningful sustainable economic advantage. Award 26 concerns a dispute between the parties over the repair and proof testing of chains by an Outside Entity. The arbitrator found that the Company did not have the right to use Outside Entities for the repair work, stating that "there is no evidence that the outside contractor performs superior repair work or offers something that cannot be done in house, either of which might constitute a bona fide business purpose for having the contractor do the work." The Arbitrator continued, explaining that using the contractor eliminated the backlog of chain repair work, but the Company created the backlog when it assigned a chain repair employee to other duties. In this case the Company did say that the backlog could delay if an unplanned event took place, but the Company did not go into any detail about how it would affect the day to day operation. In the Award 26 case the Company provided analysis which proved that it would take over 12 years to get a return on the investment of the necessary equipment, which showed both a bona fide business purpose and meaningful sustainable economic advantage. The Company has provided no such analysis for the segment repair work.

Two disputes have been arbitrated at this facility where the Company attempted to use Outside Entities to perform fabrication and repair work outside the plant. The first case, Award 34, took three days of hearing because of the detailed analyses of the bona fide business purposes and meaningful sustainable economic advantage. In that case, however, the Company made the choice to stop overtime based on current business conditions. In this case overtime was stopped leading up to the dispute and Employees were displaced to other departments and on layoff. In this case, just like in Award 34, the Company made the choice to delay the repair of equipment. In Award 34 the company argued that they had a fundamental management right to decide who performed the work. In this case, the Company did not use that language, but they are aiming to gain that from this dispute. In Award 34, the Company provided documentation of the meaningful sustainable economic advantage prior to starting the work. In this case, the Company did not present any documentation of the meaningful sustainable economic advantage to the Union, they had not even cited the appropriate exception until the date of the hearing.

The repair of a caster segment is far more in depth than the repair work on a belt wrapper, which is the work from Award 34. Based on the detail used by the Company to contract out the belt wrapper versus the detail used to contract out the segments in the current dispute, the Company did not intend or should not have intended to use this Exception at the outset of its decision to use Outside Entities. In Award 34 the arbitrator pointed out that the lack of information about the meaningful sustainable economic advantage prior to the decision was significant because the

Company was relying on an exception that had not been mentioned in the original notice. The arbitrator continued to say that "where conditions had changed radically between the original notice and the time the Company decided to proceed, and where the Company opted to change the justification for its decision, the Union was entitled to notice and… information justifying its claim of an SEA before the decision was made." In this case there was no evidence provided before or during the hearing to support the SEA exception.

The second case, Award 33, is a case in which the Company tried to advance the idea of sending out work based on business exigency. The similarities between this case and Award 33 are striking: (1) The Company claimed that they had a good business reason to justify using an Outside Entity: the need to build up spares; (2) There were outside economic considerations leading up to the dispute; and (3) The Company initially used employees to perform the work but then made the choice to send the work out based on a moving target of spare level – a hypothetical event, not because of an event relating to the work that took place. The only difference between the current dispute and Award 33 is that the Company knew they could not meet both tests under the exception of Fabrication and Repair Work. In Award 33 the Company was cognizant that spare levels are a moving target set by the Company and that the hypothetical cost of an unplanned event cannot be used to either establish a bona fide business purpose or to establish a meaningful sustainable economic advantage. In Award 33 the Union was awarded the remedy for the willful violation of the basic labor agreement, but not the special remedy.

The Company, by failing to call witnesses like the Plant Manager or Senior Division Managers who have both the tenure on the job and the experience of being on the job during these earlier awards, is evading its obligations under the basic labor agreement. The Company put on lower level managers who say that they are fearful that if the Outside Entities do not do the repair work that there will be some consequence in the future that will be detrimental to us all. The Company intentionally put up witnesses who do not understand the basic labor agreement so that those witnesses could rightfully claim that the real answers are above their pay grade.

Company Witness Mikels asserted that the Caster Maintenance Aisle's capabilities were limited by the stands available. However, the Company failed to prove that building or purchasing more stands was economically infeasible as is required by the basic labor agreement. In addition, the current stands were not being used on midnights – and the lack of information provided by the Company harmed the Union's ability to truly suggest alternatives or explore the Company's economic argument. It is worth pointing out Award 92, and noting that the Company has had three separate bargaining opportunities since Awards 26, 33 and 34. If the Company did not like the interpretation of the basic labor agreement from those Awards, the Company has had ample time to propose changes. The Company cannot rely on an arbitrator to change that which it did not seek or achieve in bargaining.

The Union is requesting as a remedy to be paid the 900 hours at straight time which would compensate for the Company denying the Union the right to perform this work. The Company provided no evidence about the number of hours spent to perform the work toe ither the Union or the arbitrator, so the arbitrator is constrained to use the Union's estimate of 900 hours. The Union is also requesting a special remedy based on the Company violating each aspect of the special remedy language. The Company's violation was willful: the Company refused to conduct a hearing in a timely manner and notified the Union under the Surge Maintenance exception knowing that the work did not meet that definition. The violation was repetitive if you look to Award numbers 59, 33, 26, and 34. Finally, the Awards do not specifically state a cease a desist, but the Company has been put on notice by the arbitrators that their actions violate the basic labor agreement. The Union need only show one of the three tests for a special remedy was met and the Company met each of the three tests. Based on the Company delaying the hearing intentionally to make sure the work could not be brought back to the shop, the appropriate special remedy is to double the requested remedy and award a payout of 1800 hours at straight time.

The Union requests that the Arbitrator find in the Union's favor, grant a cease and desist and award a special remedy in addition to the remedy for the violations.

POSITION OF THE COMPANY

The Company submitted an initial procedural dispute at the outset of this arbitration. Specifically, the Expedited Procedure found in Article Two, Section F.7. of the basic labor agreement is inappropriate in light of its purpose and the circumstances of this dispute. The expedited arbitration demand cites a notice violation under Article Two, Section F.5. of the basic labor agreement. With no grievance record to rely on, the Company cannot be expected to defend a moving target. Despite the issues with this claim, the Company maintains that it had an agreement from the Union's Bargaining Unit Work Committee representative to freely contract out segment repair work. Therefore, this dispute must contemplate the authority of the Union's Bargaining Unit Work Committee representative to make an agreement to allow the Company to utilize Outside

Entities. The Union admitted that their Bargaining Unit Work Committee representative does have that authority at the hearing and the language found in Article Two, Section F.6.b. of the basic labor agreement reaffirms that authority.

In the alternative, if no such agreement from the Bargaining Unit Work Committee existed to allow the Company to send out the affected segments, the Company was still proper in doing so under Article Two, Section F.2.b.(1) ("Fabrication and Repair Work") of the basic labor agreement. The timely completion of those repairs was for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage by having the work performed by an Outside Entity.

The Union's position that the Company did not validly send out this work must be rejected. The Union presented no evidence to dispute or disprove the Company's evidence and failed to show that the work performed by outside contractors was improper pursuant to the subcontracting restrictions in the basic labor agreement. The Company presented credible specific evidence to establish that an agreement existed, and that even if it had not, the two unexpected breakouts at 4SP created a situation which, if not addressed immediately, would have ceased the Company's very business of steel making for a period of six weeks. Lastly, pursuant to the requirements of the basic labor agreement, the Union's claim for a special remedy is not warranted and must be denied.

Expedited arbitration for this matter is inappropriate. With no grievance record, no hearings, and no minutes, the Union is attempting to use a short cut to bypass a good faith effort to properly resolve a potential dispute between the parties. Neither party has had the ability to flush out the issue on the record, nor to offer evidence to support its position. The parties should not engage in arbitration by ambush, especially where there is no need for an expedited decision. The grievance procedure negotiated by the parties is the process by which the parties agreed to settle differences that may arise.

Article Two, Section F.7. ("Expedited Procedure") of the basic labor agreement establishes specific criteria and timeframes for hearing matters which require an expedited resolution. The expedited process is appropriate if the Bargaining Unit Work Committee cannot resolve a dispute and if it is demanded before the work in dispute was performed. Alleged violations of Article Two, Section F.5. of the Basic Labor Agreement – as the Union has alleged in this case – specifically provide that the Union may file a grievance if the Company fails to provide notice. In fact, this provision is the only part of Article Two, Section F. of the basic labor agreement that dictates that filing a grievance is the proper method for dispute resolution.

Here, the Bargaining Unit Work Committee reached an agreement regarding this work, so the Company was not subject to the time allotment necessary to permit a final determination using the Expedited Procedure prior to entering into an arrangement to use Outside Entities for the segment repair. If the Bargaining Unit Work Committee had not reached an agreement, the arbitration date of October 13, 2020 agreed to by the Union was well after the work had already been sent out. This case was not heard until after the work had been completed and returned by the contractor. The Union did not request that the arbitrator render a decision within forty-eight hours following the conclusion of the hearing because the timeframes described in Article Two, Section F.7. of the Basic Labor Agreement are intended for the purpose of holding a hearing and obtaining a decision before work is contracted out. Finally, during the Union's opening statement it reversed course and said no grievance was filed in this matter because the Company had not failed to provide notice. This sudden shift from the Union's arbitration demand letter creates a moving target for the Company to defend. Accordingly, expedited arbitration is inappropriate in this matter.

The Union has the burden of proof as to whether the work performed by outside contractors was in violation of the basic labor agreement. The Union has failed to meet its burden of providing the work at issue in this dispute was improperly contracted out. While it is true that the Company has a burden of presenting evidence to support its position that a portion of the work in question falls under the applicable exception, once it has done that (as it has here) the Union must produce some evidence that supports a different conclusion. The Union did not do so.

The Bargaining Unit Work Committee reached an agreement to contract out this work. Article Two, Section F.6.b. of the basic labor agreement confirms the Bargaining Unit Work Committee's ability to enter into agreements to permit one-time uses of Outside Entities. The Union acknowledged during cross examination of the Union's advocate that the Bargaining Unit Work Committee had such authority to enter into those agreements. Joe Lampert, Company Bargaining Unit Work Committee Representative, testified credibly when he detailed the meeting between the Caster Maintenance Aisle and the Bargaining Unit Work Committee on September 1, 2020. Lampert explained how management from the Caster Maintenance Aisle attended, in addition to members of the Bargaining Unit Work Committee and the bargaining unit planner of the Caster Maintenance Aisle. The attendees discussed several topics at the meeting, including manpower, the department's line of progression, and the need for replenishing segment inventory. Lampert asserted that the parties had an agreement in place to contract out the segment repair, reaching a resolution much like they had done on numerous previous occasions. Adam Govert specifically told Lampart that "I will not stop you from sending them out." Caster Maintenance Aisle Maintenance Manager Dan Mikels also testified credibly and affirmed Lampert's understanding that the parties left that meeting with an agreement. The Union failed to offer any evidence or credible testimony to contest the existence of an agreement to contract out the repair of segments 2.3-7 and I-1-8. It was not until after the work had been sent out that the expedited arbitration demand letter was issued by the Union. As soon as that arbitration demand letter was received by Lampert, he testified he was shocked and immediately called Govert. Lampert testified that Govert had no explanation other than he was told to file that letter. The Bargaining Unit Work Committee reached an agreement to contract out this work; as such, the Union's claim must be denied.

The Fabrication and Repair Work exception permits the contracting out of this work. In the alternative, if there had not been a valid agreement between the parties to contract out the repair of the segments at issue, the work contracted out in this circumstance falls within the Fabrication and Repair Work exception to the Guiding Principle. According to Article Two, Section F.2.b.(1) of the basic labor agreement, the Company may contract out the repair, renovation or reconstruction of those items or parts use in the Company's business, which are not sold to customers. This 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. Lack of necessary equipment shall not be a factor, unless the purchase, lease or use of such equipment is not economically feasible.

In August 2020, two separate breakouts affected the caster at 4SP. Those breakouts are unpredictable, catastrophic, and potentially serious safety events that the Company cannot anticipate or plan on. The steel producing department maintains a goal of zero breakouts per year and can go long periods of time without experiencing a loss in containment. The first event took place on August 2, 2020. It was a double breakout that occurred at the top of the caster, it wiped out all spares, and three total segments were impacted by this first breakout. On August 26, 2020, a second breakout on strand one affected the mold throughout segment six. All of those segments were covered in steel and no longer functional. Six total segments were impacted by the second breakout.

This chain of events in August 2020 caused the inventory of spares to drop below levels that were sufficient, as evidenced by the Caster Maintenance Aisle's executive sheet at the end of July compared with the executive sheet at the end of August. As a result of these breakouts, strand one was down for five days. During those five days, the Company lost approximately twenty heats per day, at 250 tons per heat, at an estimated $200 per ton, for an estimated total of $1 million in lost production per day. This was a $5 million loss over five days. Without these segments, the Company could not produce steel and make money. The Company needed to repair the segments as quickly as possible by sending the work to Outside Entities. The Company here is not attempting to establish a bona fide business purpose by implying the contractor is cheaper. Instead, a bona fide business purpose exists to stop the hemorrhaging of production loss. The Company's business – the production of steel – was directly impacted by these events. It would have taken six weeks for the bargaining unit employees to repair the segments. In that scenario, the Company would have lost $30 million in production instead of $5 million in production.

The Caster Maintenance Aisle has two stands upon which to repair segments, which can be between 12'-15' in length and weigh between 30-40 tons each. The acquisition of additional assets – in terms of space, stands, or equipment to accommodate an unplanned breakout, would be unreasonable for the Company. The last time the Caster Maintenance Aisle sought the assistance of Outside Entities for the repair of segments was in April 2019. The Caster Maintenance Aisle is the right size for day in and day out usage. The rare frequency at which additional work needs to be performed does not create an ongoing situation which would warrant costly expansion of the Caster Maintenance Aisle and would be cost prohibitive for the Company to do so when these breakouts rarely occur.

The written notification provided to the Union for EM080610 and EM080614 did erroneously cite "Surge" as the contracting out exception for this situation. As Lampert clarified in his testimony, that was entered by a clerk via a drop-down selection box on a website form. The Union appears to base its argument on that fact. However, surge clearly does not apply, as this was work sent outside the plant, per Article Two, Section F.2.b. of the basic labor agreement. The Union provided testimony at arbitration that said they would have been ok with contractors performing the repairs had they come into the plant to do so. The Company questions the integrity of the Union's claim and what it is seeking – because also during arbitration, the Union clarified that this was not a manpower issue or demand.

A special remedy is not appropriate in this case. Remedies for contractual violations are intended to put the parties in the same position, absent the violation, and to make employees who have been monetarily impacted by the violation whole. Anything other than such an award or a cease and desist order would be punitive and beyond the scope of an arbitrator's authority. The basic labor agreement authorized a special remedy for subcontracting violations. That provision is the only source for such a remedy the Arbitrator may rely on. A special remedy is only available in very limited circumstances that are not present here. The issuance of a special remedy is permitted if it is found that the Company acted willfully, engaged in repeated violations, or violated a cease and desist order previously issued by an arbitrator, and only then for the purpose of deterring the Company's behavior. Unless one of these factors is present, an arbitrator may not fashion a special remedy. As the evidence demonstrates, there is absolutely no basis, nor did the Union present any evidence, to demonstrate that the Company acted in willful, repeated violations or that it violated a previously issued cease and desist order.

The Company provided credible testimony to establish that it held a good faith belief that the emergency work sent out to Outside Entities was done by agreement. In addition, the one-time use of Outside Entities in this circumstance was for a bona fide business purpose, and their usage provided a meaningful sustainable economic advantage. Accordingly, the Arbitrator should find that the Company is not liable for any damages and deny the Union's claim in its entirety.

FINDINGS AND DISCUSSION

The essential underlying facts in the within grievance are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

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As a threshold matter, I must first resolve the procedural issues raised by both parties. The procedural issue raised by the Union focuses on the alleged failure of the Company to cooperate in having the dispute addressed under the Expedited Procedure in the basic labor agreement. As I read the Union's issue, the Union does not claim that this procedural deficiency should, on its own, result in a forfeiture by the Company. It appears that the thrust of the Union's argument on this point is that the Company acted in bad faith. The Union further posits that the Company acted in bad faith in other steps in this dispute, thereby undermining the legitimacy of the Company's defense and meeting the requirement for Special Remedy.

The Union relies on Article Two, Section F.7. to support its position that the Company had an obligation to process this dispute through the Expedited Procedure expressly outlined in the basic labor agreement. Specifically, the basic labor agreement provides that if "the Union requests an expedited resolution of any dispute arising under this Section" the Union may advise the Company in writing, within three days (excluding Saturdays, Sundays and holidays) after the Union determines that the Bargaining Unit Work Committee cannot resolve the dispute, that it is invoking the Expedited Procedure. An expedited arbitration must then be scheduled within three days (excluding Saturdays, Sundays and holidays) of such notice and heard within five days (excluding Saturdays, Sundays and holidays) thereafter. The Union complied with those timelines and attempted to get an expedited arbitration scheduled within that appropriate amount of time. The Company was unavailable for a hearing in that time frame. For whatever reason, the parties were not able to hold a hearing according to the terms of the Expedited Arbitration Procedure.

Unfortunately, the timeline has indeed passed, the work has already been completed, and at this juncture the parties are in a position that the dispute is being heard on a non-expedited basis. Whether the Company put a good faith effort into allowing this case to be heard according to Article Two, Section F.7., I cannot say for sure. However, there is enough confusion in the record surrounding the positions of the parties (namely, the Company's belief that the parties had an agreement to send this work to Outside Entities) that I do not believe that a penalty is warranted on the failure to schedule the hearing in time. If there was evidence that the Company exhibited bad faith in an effort to avoid its obligations under the basic labor agreement, such evidence would likely yield a different result. Notwithstanding the outcome in this case, the Company has an overriding obligation to act in good faith and participate in an expedited arbitration according to the procedure outlined in the basic labor agreement in every case where the use of that procedure is warranted.

As I understand the Company's procedural issue, the Company appears to be arguing that the Union acted improperly by attempting to place this dispute in the Expedited procedure. The Company argues that one prerequisite to utilizing the Expedited Procedure is that a dispute exists that the Bargaining Unit Work Committee cannot resolve. In this case, according to the Company, the Bargaining Unit Work Committee agreed to send the work out, so that the Union had no right to invoke the expedited procedure. Separately, the Company asserts that in a case where the Union is claiming a failure to provide notice the Union has a contractual obligation to file a grievance over that issue instead of invoking the expedited procedure. The Company argues that the Union did not file a grievance, and therefore for this separate reason the Union cannot meet the requirements of Article Two, Section F.7. to utilize the expedited procedure.

Having noted the procedural issues raised by the Company, I am not able to ascertain how those issues would impact the dispute before me. Even though I am unable to parse what the Company's position would ultimately entail, I find the issue as a whole to be moot. It is undisputed that the work went out the door prior to the hearing on October 13, 2020. Rightly or wrongly, events have superseded the expedited procedure and have rendered the Company's procedural issue moot. Accordingly, there is no reason to resolve this issue.

The parties have agreed in Article Two, Section F.7. to an expedited procedure in cases involving the possibility of having work performed by Outside Entities. The obvious reason for the expedited procedure in that context is to allow for a quick and final decision in a meaningful time in relation to the performance of the work. In other words, the parties want and need a prompt decision before the work goes out the door. I read that language to give the Union a broad grant of authority when confronted with such a time sensitive problem to be able to invoke the expedited procedure at its discretion, especially within the context of a dispute such as this one.

Although I have decided that the procedural issues will not affect the outcome of the case, there is one further point to address before reaching the merits. On the question of the sufficiency of the Company's notice, I credit Company witness Lampert where he explained that the Surge

Maintenance Exception was a typographical error on a drop-down menu. I certainly was not presented with any evidence that this inadvertent mistake was intentional or the product of bad faith. Although the notice was technically incorrect, I find that the Company acted in good faith to comply with the notice requirement. An inadvertent mistake of this nature did not render the notice inadequate. After hearing the testimony from both sides, I am satisfied that the parties understood that this was not Surge Maintenance work that would be performed inside the plant. There is no question that the Union understood that the work was being sent out of the plant, a point that was fundamental to the Union's position in this dispute. Regardless of the possible misclassification of this work on that notice, the work as described to the Union meets the definition of the fabrication and repair work as that phrase is defined in the basic labor agreement. In the same breath, this work does not fit the definition of Surge Maintenance as that phrase is defined in the basic labor agreement. Accordingly, I find that the Company, by making an inadvertent data entry error on the notice, did not, in this case, violate Article Two, Section F.5.

Once the procedural issues are resolved, the analysis must focus on the circumstances under which the Company can rightfully send the work to Outside Entities. The basic labor agreement authorizes the Company to send work to Outside Entities in only two instances. Either the parties can agree to send the work to Outside Entities, or the work in question must meet one of the Exceptions outlined in Article Two, Section F.2.

Based on my review of the testimony presented at the hearing, it appears as a threshold matter that there was an agreement between the parties for the Company to send the work to Outside Entities. Even if there is some basis to argue in hindsight that there was no agreement, the Company certainly had a good-faith belief at the time that there was an agreement to send the work to Outside Entities. The existence of a dispute on this fundamental point, involving a subject that is so important to both parties, underscores the need for clearer communication between the parties. At almost every level of this dispute, better communication could have prevented the situation from escalating to this point and ultimately undermining the relationship between the parties. Ultimately, the dispute is not resolved on the basis of whether there was an agreement to send out the work. Even accepting the Union's argument that there was not an agreement, this case is resolved under the Fabrication and Repair Work Exception to the Guiding Principle.

In this contract interpretation dispute, the Union has the burden of proof to show that the bargaining unit was capable of performing the work (namely, that the work meets the Guiding

Principle outlined in Article Two, Section F.2.a.). At the hearing, the parties stipulated that the work in question meets the Guiding Principle in that the bargaining unit employees are capable of performing said work. The burden then shifted to the Company to show as an affirmative defense that the work qualified as an exception to the Guiding Principle. The Company's affirmative defense is the heart of this case.

The Company contends that the work in question falls under the Fabrication and Repair Work Exception outlined in Article Two, Section F.2.b.1. of the basic labor agreement. Specifically, the Company maintains that it may contract out the repair, renovation or reconstruction of those items or parts used in the Company's business that are not sold to customers. There is no dispute that the segments used in the caster at 4SP are parts used in the Company's business that are not sold to customers.

In order for the Company to be able to rely on the Fabrication and Repair Work Exception, the two-prong contractual test must be satisfied. The two-prong test is as follows: 1. "the location of the work's performance [must be] for a bona fide business purpose," and, 2. "the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity." In determining whether the Company can demonstrate the meaningful sustainable economic advantage, "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 parties have certainly devoted a tremendous amount of effort in crafting the parameters of what is involved in this test. The extensive history provided in the voluminous arbitration awards provided by the parties sheds a tremendous amount of light as well. Unquestionably, the language is plainly intended to impose a substantial burden on the Company to send any work to an Outside Entity.

As more fully discussed below the Company has presented evidence to meet its burden on each of the two prongs of the Fabrication and Repair Work Exception. First, the Company illustrated why the work had to be sent out of the plant. In this regard, the Company witnesses noted that it was critically important to recognize the context within which the work in question arose. In order to deal with the scope of the repairs required by these multiple breakouts, whoever was going to do the repairs would not have had sufficient room within the plant. In addition, the evidence showed that repairs could have only been affected on two segments at a time because of the limited capacity of stands within the plant. The Union offered an argument that the available stands were not being utilized on all three shifts, thereby suggesting that there were sufficient stands available. However, the evidence clearly pointed to the fact that more stands were required for this magnitude of repair in addition to the normal requirements for utilizing those stands. Overall, the Company's evidence established that there was insufficient space within the plant to effectively perform this work without expensive overhauls and additional delays. Simply put, the Union's evidence, while potentially compelling in a more routine set of circumstances, could not overcome the compelling evidence resulting from this truly abnormal situation.

Next, the Company demonstrated why it was essential to assign the work to an Outside Entity. After the two separate breakouts occurred in August of 2020, a total of nine segments were impacted between the two events. The first breakout on August 2nd had three segments impacted, and the second breakout on August 26th had six total segments that ended up covered in steel and were no longer functional. During the five days that strand one was down, the Company lost one million dollars per day because the loss of those segments halted steel production. The Company presented credible evidence that losses of this magnitude would have continued for as long as it took to repair the segments regardless of who repaired segments. The credible evidence further showed that the Outside Entity was able to turn the work around within one week for the first segment and an additional week for the second, whereas the same work if performed by the bargaining unit inside the plant would have required a minimum of six weeks. The estimated cost of the lost production during those six weeks would have approached thirty million dollars. It is entirely reasonable to conclude from that evidence that the Company would have sustained additional losses in the magnitude of thirty million dollars by having the work performed by bargaining unit personnel within the plant. Given the credible evidence of the huge economic disparity in the choices facing the Company, it is almost self-evident that the path of sending this work to an Outside Entity (and avoiding a loss of $30,000,000) was for a meaningful, sustainable economic advantage.

The Union contended in part that the Company could have dealt with the nonfunctional segments by replacing them with inventory spares. The Union also argued that if there were insufficient spares in the inventory that was a problem attributable to the Company and should not be a justification for sending the repair work out. However, as noted above, the combined effect of the two August 2020 breakouts caused the inventory of spares to drop below sufficient levels, because those spares had to be used to fix the effects of the breakouts.

The Company never claimed that a bona fide business purpose for sending these segments out for repair was that the contractor could do the work more cheaply. Rather, the Company was compelled to conclude that the work had to be performed out of the plant with the Outside Entities as the only way to "stop the hemorrhaging of the production loss." Here again, the Company offered credible evidence as to why the work simply could not have been performed within the time constraints if that work was performed inside the plant.

The Union disputed the Company's economic claims on the basis that the Company's claims were purely hypothetical at the time the decision was made to send the work out. The Union's point seems to be that the Company should not be able to qualify for this exception by inflated or exaggerated estimates. It is possible to imagine situations where the numbers used by the Company to justify the decision would be so inflated or so speculative that the exception would not and should not apply. In this case, where we have the benefit of hindsight, the costs do not appear to have been inflated or exaggerated. For this reason, I find that the Union's argument has to fail in these very narrow circumstances. The Union expressed a concern that a decision to send work to an outside entity would be driven by a largely speculative scenario that seems to be a well taken concern, however in that case that is not what happened. The concern that was rooted in the crisis of the moment was borne out by subsequent events.

The Union argued extensively that the Company's actions demonstrated bad faith. I find contrary to the Union's assertions, that there was not any evidence of bad faith on this record. No employee was laid off at any time as a result of the Company's decision, and in fact the record indicated that employees worked extensive amounts of overtime. I have scoured the record for any other evidence that would suggest bad faith on the part of the Company but there is no such evidence. Had the record disclosed evidence of bad faith, this case might have turned out very differently. I conclude on the record before me that there was no bad faith on the part of the Company.

The Union raised the additional point that special remedies would be applicable. Special remedies are contractually guaranteed only in very specific circumstances, none of which exist here.

Accordingly, for all of the above reasons the grievance must be denied.

AWARD

The grievance is denied.

Date: Dec. 8, 2020
Pittsburgh, PA

Ronald F. Talarico, Esq.
Arbitrator