IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
	)	
Between	)	RONALD F. TALARICO, ESQ.
	)	ARBITRATOR
CLEVELAND-CLIFFS STEEL LLC, INDIANA HARBOR	)	
	)	
and	)	Case 119
	)	
UNITED STEELWORKERS LOCAL UNION 1011	)	
	)	

GRIEVANT

Group Grievance

ISSUE

Contracted Out HVAC Work

VIDEO HEARING

March 30, 2021

POST-HEARING BRIEFS

Received by April 23, 2021

APPEARANCES

For the Employer
Christopher W. Kimbrough, Esq.
Representative Labor Relations
Cleveland-Cliffs Steel, LLC – Indiana Harbor

For the Union
Alfredo Cadena, Jr.,
Grievance Committee Secretary

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 March 30, 2021 by way of Video Conferencing, 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 April 23, 2021 at which time the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

Article Two – Union Security

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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.

a. Work Performed In or Around the Plant

(1) New Construction Work

New Construction Work is that portion of the work associated with significant (in the context of the facility) capital projects involving the installation, replacement or reconstruction of any equipment or productive facilities which (a) is not primarily maintenance; (b) does not involve bundling the work of separate projects which could be done separately; (c) does not involve any work not directly related to the project in question, and (d) is not regular, normal, routine, day-to-day or ongoing. The Company may use Outside Entities to perform New Construction Work.

(2) Surge Maintenance Work

Surge Maintenance Work is that portion of maintenance and repair work which is require by bona fide operational needs performed on equipment where the Company temporarily uses Outside Entities to supplement bargaining unit forces and where: (a) the use of Outside Entities would materially reduce the downtime of the equipment; and (b) the work cannot reasonably be performed by bargaining unit forces.

The Company may use Outside Entities to perform Surge Maintenance Work provided that the Company has offered all reasonable and appropriate requested overtime to all qualified Employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities in an efficient manner.

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3. Commitment

In addition to the understandings described in Paragraphs 1 and 2 above, the Company agrees that:

a. Where total hours worked by employees of Outside Entities in or outside the plant reach or exceed the equivalent of one (1) full time employee, defined as forty (40) hours per week over a period of time sufficient to indicate that the work is full time, the work performed by Outside Entities will be assigned to Employees and the number of Employees will be appropriately increased if necessary, unless the Company is able to clearly demonstrate that

the work cannot be performed by the addition of an Employee(s), or that assignment of the work to Employees would not be economically feasible. In determining whether the assignment of the work to Employees is or is not economically feasible, the lower wage rates, if any, of an Outside Entity shall not be a factor.

b. The parties agree that the Union may at any time enforce the obligations described above, irrespective of the Company's compliance with any other obligation in this Section or any other part of the Agreement, and that an arbitrator shall specifically require the Company to meet the above Commitment, including imposing hiring orders and penalties.

c. The Company shall supply the Bargaining Unit Work Committee (as defined below) with all requested information regarding compliance with the Commitment.

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.

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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.

8. Quarterly Review

a. Not less than quarterly, the Bargaining Unit Work Committee shall meet with the Local Union President/Unit Chair and the General Manager of the plant, for the purpose of reviewing all work for which the Company anticipates utilizing Outside Entities at some time during the next or subsequent quarters. The Union shall be entitled to review any current or proposed contracts concerning such work and shall keep such information confidential.

b. During the review, the Bargaining Unit Work Committee may (1) agree on items of work that should be performed by Outside Entities for which Notice under Paragraph 5 above is therefore not required; or (2) disagree on which times of work should be performed by Employees and which should be performed by Outside Entities for which notice under Paragraph 5 is therefore required.

c. During the quarterly review, the Company will provide to the Bargaining Unit Work Committee a detailed report showing work performed by Outside Entities since the last such report. Fore ach item of work the report shall include the date and shift the work was performed; a description of the work; the trade, craft or occupation of the individual performing the work; and the total number of hours worked by each individual.

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 Cleveland-Cliffs Steel LLC – Indiana Harbor ("Company"). The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and USW Local 1011 ("Union"), is the sole and exclusive representative for collective bargaining for the employees at the Indiana Harbor West Plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years, the most recent of which is effective September 1, 2018 through September 1, 2022 ("BLA").

The Union invoked the Expedited Procedure in this case based on the premise that the Company violated Article Two, Section F of the labor agreement with regard to both notice and in contracting out work identified in notice RQN1144472. The work pertains to HVAC maintenance work that the Company contends urgently needed to be completed on Thursday, March 25, 2021 during a planned outage. The Union requests a make whole remedy as well as a special remedy based on repeat and willful violations. The Union also raised an issue that the Company's notice was inadequate under Article 2, Section F.5. of the BLA. The Union asserted that the notice contained inaccuracies such that the notice did not comport with the requirements of Article 2, Section F.5.

The relevant factual record can be summarized as follows. The Company's Indiana Harbor complex, located in East Chicago, Indiana, is the largest integrated steelmaking facility in North America. 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 complex is divided into Indiana Harbor East. represented by USW Local 1010, and Indiana Harbor West, represented by USW Local 1011.

The steel producing facility at Indiana Harbor West is called #3 Steel Producing ("#3SP"). #3SP is a facility that molds hot, liquid steel into slabs. The #3SP runs twenty-four hours a day, seven days a week, and three hundred sixty-five days a year, unless there is an equipment break down or a planned outage. The #3SP department usually produces 2.9-3.2 million tons of steel annually. At current steel prices, this amounts to a revenue stream of approximately ten million dollars per day. While I will not belabor the process of liquid steel becoming rolled steel, it's important to have a basic understanding to understand the HVAC work that is at issue in this case and the importance of the same.

There are two casters at #3SP. Each caster is comprised of a mold and segments. The hot liquid steel is poured into the mold at the top of the caster and works its way through each segment with a water-cooling process that solidifies the steel from the outside in. Eventually the steel ends up a "slab" at the end of the caster. The slabs have a temperature of 1,900 degrees Fahrenheit. There are two slab cranes that remove the hot slabs from the caster so that they can cool. These cranes are located twenty feet above the end of the caster. Each crane has two HVAC units in order to keep the cab cool so that the bargaining unit employees can safely perform their jobs in a comfortable environment. Without these HVAC units running properly, the slab crane would not be usable and would have to be taken out of service for repairs, severely slowing operations and production at #3SP.

The Company has a team of maintenance and electrical technicians that provide repair services to all the departments located at Indiana Harbor West. The team is called the Crane Repair Crew. The Crane Repair crew is lead by a bargaining unit employee named John Pearson. Pearson is responsible to plan the work that the Crane Repair crew performs at Indiana Harbor West. Pearson also prioritizes the tasks that are to be completed by the Crane Repair crew and lets the departments know whether the crews will be able to perform certain work. Pearson has fulfilled these duties since the implementation of the Indiana Harbor West HVAC process in October of 2012.

Since October of 2012 the Company has followed the same process for contracting out HVAC work. The Indiana Harbor West HVAC Process begins when the Company initiates a requisition/work order for HVAC work that needs to be performed. The #3SP department's

maintenance and electrical technicians investigate to determine whether they can complete the work. If they can make the repairs, the work is not contracted out. If they cannot make the repairs, the Crane Repair Crew is contacted to see if they can perform the work. Pearson has been the contact person since the process was first implemented in October 2012. If the Crane Repair crew can make the repairs, then the work is not contracted out. If the Crane Repair crew is already fully utilized or cannot make the repairs, the work is contracted out. According to the Company, for the last four and a half years the Union has not challenged the work that is being contracted out so long as the Company offers unlimited overtime for the maintenance and electrical employees in the #3SP department.

The Company engaged in several discussions with the Union regarding contracting out work at #3SP in February and March of 2021 because the Company was limiting overtime hours. On March 3, 2021, the parties met and agreed that issues with contracting out work should be handled at the local level between Tim Halls, Division Manager of #3SP, and David Franco, the #3SP Griever.

On March 11, 2021, the bargaining unit employees who operate the cranes and remove hot slabs from the caster notified the Company that the employees were too hot in the cab and the HVAC needed to be serviced. That same day, Pearson called an Outside Entity to service the HVAC units on the crane. That Outside Entity was already onsite and worked to repair the HVAC on the cranes on that same day. While performing the service, the Outside Entity noticed that additional service was needed on the HVAC units. Specifically, the HVAC unit evaporator and the condenser coils needed to be cleaned. That work was estimated to take between five and six hours for each crane. The Outside Entity told the Company that the work needed to be completed during the next planned outage, scheduled for March 25, 2021.

On March 16, 2021 the Company entered a work order into the online system to contract out the HVAC work during the March 25th planned outage. The next day, March 17th, the Union requested a meeting to discuss the work. On March 18th, the parties met to discuss the work to be contracted out but were unable to reach an agreement.

At the March 18th meeting, the Company expressed the need to have a contractor perform the work during the March 25th planned outage. The Union asked the Company to wait until the next planned outage scheduled for April 7-8th, 2021 to perform the work because the Union characterized the work as preventative maintenance work. The Company disagreed with the

Union's characterization. The Company explained that this was not preventative maintenance done on a planned schedule, rather it was repair work that needed to be completed urgently after it was discovered during the March 11th servicing of the HVAC units. The Company explained to the Union that the slab cranes are critical to the production of steel at #3SP and that the Company was not willing to delay work when the equipment could break down in the interim. There was also no guarantee that the Crane Repair crew would be available to perform the work during the April 7-8 outage, and in addition the planned outage could always be postponed, delayed or cancelled due to operational needs. The Company was not willing to take the risk to delay the work when bargaining unit employees operating the equipment were complaining about the temperature and a known problem had been identified to the Company.

In response to the parties being unable to work out the contracting out issue on March 18th, the Company decided to offer unlimited overtime to all maintenance and electrical employees in #3SP on March 19th. At approximately noon on March 19th, Halls called Franco to inform him that the Company would offer unlimited overtime to resolve the contracting out issues for the week. The Company then undertook contacting the affected bargaining unit employees to offer them unlimited overtime. Shortly after noon (after Halls called Franco) on March 19th, the Union filed an expedited arbitration request alleging that the Company violated of Article 2, Section F of the BLA by contracting out the work identified in notice RQN1144472.

The Company contends that the HVAC work in question urgently needed to be completed on Thursday, March 25, 2021 during a planned outage. The HVAC work was, indeed, completed on March 25, 2021 by Outside Entities. The Outside Entities took a total of ten hours to complete the HVAC work in question, five hours for each HVAC unit.

The hearing in this matter was held on March 30, 2021. At the hearing, the Union raised the issue that the Company committed a notice violation by failing to comply with Article 2, Section F.5. of the BLA. Notice RQN1144472 erroneously listed "not capable" as the reason for the Company to utilize Outside Entities to perform the work. The Company explained that the clerical error on the notice was committed by a bargaining unit employee, who was instructed not to use the "not capable" language without the permission of management.

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, a cease and desist order, and a

special remedy on the basis that the Company violated the BLA by utilizing Outside Entities to perform the HVAC work. The Company maintains that the parties had an agreement to utilize the Outside Entities to perform the work, but that in any event the Company is able to meet the Surge Maintenance Exception to the Guiding Principles, and there is no violation of the BLA.

ISSUE

Whether the Company violated Article 2, Section F of the Basic Labor Agreement by having Outside Entities complete the HVAC maintenance work? If so, what should be the appropriate remedy?

POSITION OF THE UNION

The Union's position is primarily based on the Company manipulating and deviating from the BLA in order to violate the Guiding Principle. In this manner, the Company committed a willful violation of the Guiding Principle by having the Outside Entities perform the HVAC maintenance work at issue in this case.

There are very few exceptions to the Guiding Principle which would allow for the Company to utilize Outside Entities to perform bargaining unit work. Contrary to the Company's position, the parties did not have a verbal agreement to allow the Company to utilize Outside Entities to perform the work at issue.

During the arbitration hearing, the Union met its burden to prove that the Company did not comply with all requirements in order to utilize the Surge Maintenance Exception to the Guiding Principle. Specifically, the Company failed to comply with the Surge Maintenance Exception in the following ways. First, the Company failed to offer all reasonable and appropriate requested overtime to all qualified employees before allowing Outside Entities to perform the Surge Maintenance work. Second, the work was not required by a bona fide operational need to reduce downtime – the HVAC units were operable, and were not causing downtime. The Company previously repaired the HVAC units, and the work at issue in this case was preventative maintenance without the requisite urgency. Third, there was sufficient time and opportunity for the bargaining unit to perform the work at issue.

Despite the fact that there was sufficient time and opportunity for the bargaining unit to complete the work at issue, and despite the fact that the Union appealed the work in question –

the Company chose to contract out the work without waiting for the conclusion of the expedited procedure and the Arbitrator's decision.

The Company's case was based in hypotheticals, which were inaccurate and skewed in the Company's favor. The Company had Outside Entities perform the bargaining unit work and it was unconcerned with abiding by the provisions of the BLA. The Union provided evidence that showed the Company's willful violations of the collective bargaining agreement, specifically in listing "Not-Capable" seventy-seven times during a sixteen-day period from March 11th-March 26th. The listing of "Not Capable" seventy-seven times equated to over half of the Notices as exceptions to the Guiding Principle during this period. Each time the Company lists "Not-Capable" it violates the BLA and deprives the bargaining unit of work. Because the Company willfully and repeatedly violated the BLA by listing "Non-Capable" as an exception to the Guiding Principle, the Union is requesting a cease and desist order as well as an appropriate make-whole remedy to put a halt to these violations. If the Company is allowed to continue to blatantly disregard the terms of the BLA, it will have a devastating effect on all bargaining unit employees, the Union and the community.

In addition, the Union is requesting special remedies of Global Overtime Solicitation. When the Company fails to offer all qualified employees all reasonable and appropriate requested overtime it violates Article Five, Section J of the BLA, and this special remedy is the only way to counter this violation.

The Union also provided evidence of nine notices for Surge Maintenance work that the Company entered into the system in a nine-day period. The above-requested special remedy of Global Overtime Solicitation would reduce contractor usage and force the Company to abide by the BLA. The special remedy would not put undue hardship on the Company, but will help the Union enforce the BLA and reduce the Company's reliance on contractors. Several job descriptions in the bargaining unit have similar qualifications and skill sets, which means that far more work can be done in a timely fashion by the bargaining unit than the Company will admit or allow.

The Union offered Arbitration Case #59 to show the sister plant (Eastside of Cleveland-Cliffs) has a Global Overtime Solicitation to enforce the Surge Maintenance Work exception.

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's position is that the parties had reached a verbal agreement for the HVAC work identified in RQN1144472 to be performed by Outside Entities. The verbal agreement was made between the Company and David Franco, the #3SP Griever. The Union failed to rebut the testimony that Franco had been empowered to make those types of agreements, and had done so on several occasions over the last four and a half years, by the President of USW Local 1011, Jaime Quiroz, and Richard Barron, Chairperson of USW Local 1011. The Union also failed to address the testimony provided by Tim Halls, Division Manager of #3SP, wherein he questioned Franco about why the Union filed an expedited arbitration demand over the previously resolved contracting out issue. When questioned by Halls, Franco indicated that he would speak to James Hemphill, a member of the Bargaining Unit Work Committee and the Assistant Griever of #3SP, about the matter.

In the alternative, if the Arbitrator finds that the verbal agreement to have Outside Entities perform the HVAC work was not valid, the Company asserts that the work was properly contracted out under Article 2, Section F.2.a.(2) of the BLA.

At the hearing, the Union attempted (for the first time) to allege that the Company committed a notice violation by failing to provide the information requested in Article 2, Section F.5. of the BLA. However, the Union did not ask for the Company to provide it with any additional information it may have needed during the March 18, 2021 meeting, nor did the Union ask for any additional information leading up to the expedited arbitration. As the Company explained at the March 18th meeting between the parties and again at the March 30th Arbitration hearing, the listing of "not capable" on the notice was a clerical error committed by a bargaining unit employee. The bargaining unit employee in question was reinstructed not to use the "not capable" language again without the permission of management.

Based on the testimony and the evidence entered at the hearing, the Company proved that the parties had a verbal agreement that the Company could contract out the HVAC work as long as it offered unlimited overtime to the maintenance and electrical employees in #3SP. The work at issue was maintenance repair work that the Company had an operational need to complete during a planned outage. The Company asked the bargaining unit employees who normally perform this work if they could complete the task, and they could not. Accordingly, the only way

to have the work completed within the allotted outage time by bargaining unit personnel was to extend the outage. On that basis, it was necessary to use an Outside Entity to supplement the bargaining unit forces so that the outage did not have to be extended.

The work performed by the Outside Entity could not be broken up to allow other qualified employees to work alongside the Outside Entity to complete the work. The Union should be equitably estopped from claiming that employees outside the department should have been offered the work because the Parties had a verbal agreement and the Union did not allege that the bargaining unit employees in other departments should have been offered the work, nor did the Union provide the Company with its list of employees outside of the department until the day of the expedited arbitration, almost a week after the work had been completed.

Since Halls took over as Division Manager for #3SP four and a half years ago, he and Franco had a verbal agreement that the Company could contract out work so long as the affected areas in #3SP were fully utilized for the week that contracting out work was to be performed by Outside Entities. So long as the impacted #3SP employees were offered unlimited overtime, the Union agreed that the work could be contracted out. In addition to this verbal agreement, since October of 2012 the Company has followed the same process for contracting out HVAC work. Per the verbal agreement in place between the parties for the past four and a half years, the Union has not challenged the work that is being contracted out so long as the Company offers unlimited overtime to the maintenance and electrical work in the #3SP department.

If the Arbitrator finds there was no verbal agreement to have Outside Entities perform the HVAC work, the Company still properly contracted out this HVAC work under Article 2, Section F.2.a.(2) of the BLA. The timely completion of those repairs was done for a bona fide operational need and the Company was able to demonstrate that there was a reduction in the downtime of the equipment by supplementing the bargaining unit work forces with contractors, that the bargaining unit work forces normally performing this work were fully utilized during the March 25th outage, and that the #3SP maintenance and electrical employees were offered unlimited overtime during the outage.

The Union's position must be rejected. The Union presented no evidence to dispute or disprove the Company's evidence. The Union failed to show that the work performed by Outside Entities was improper. The Company presented credible, specific evidence to establish a verbal agreement existed, and if it did not have a verbal agreement, that the HVAC work needed to be

performed during the next outage to make sure that the slab cranes were at a reasonable temperature for the bargaining unit employees to safely perform their job assignment. The Union's claim for a special remedy is not warranted by the facts of this case and should be denied.

The Union has the burden of proof as to whether the work performed by Outside entities was in violation of the BLA. The Union failed to meet its burden of proving the work at issue in this dispute was improperly performed by Outside Entities. While it is true that the Company has the burden of presenting evidence to support its position that a portion of the work in question falls under the applicable exception, once the Company meets its burden (as it has here), the Union must produce evidence that supports a different conclusion. The Union has failed to do so.

The Union failed to rebut or disprove any of the testimony presented regarding the verbal agreement to contract out the work. For whatever unknown reason, the Union chose to challenge the March 25, 2021 HVAC contracting out issue, when they had not done so for several years. Accordingly, the Parties reached an agreement to resolve the HVAC contracting out work; as such, the Union's claim and relief sought should be denied.

In the alternative, the HVAC work performed by outside entities is permitted under the Surge Maintenance exception found in the Guiding Principle of the BLA. The Company may contract out the portion of maintenance and repair work which is required by bona fide operational needs performed on equipment. The Company can temporarily use outside entities to supplement the bargaining unit forces where: (a) the use of Outside Entities would materially reduce the downtime of the equipment; and (b) the work cannot reasonably be performed by bargaining unit forces. The Company can also only use Outside Entities to perform Surge Maintenance work if it has offered all reasonable and appropriate requested overtime to all qualified employees who, by working such overtime, could reduce the amount of Surge Maintenance work to be performed by Outside Entities in an appropriate manner.

The Surge Maintenance exception does not expressly refer to all maintenance and repair work, neither does it expressly exclude any type of maintenance and repair work. Arbitrators have interpreted this exception as being generally applicable to maintenance and repair work which otherwise satisfies the remainder of the Surge Maintenance exception. While day-to-day maintenance and repair work is not excluded from the Surge Maintenance work exception, it does not permit the Company to lump together day to day maintenance and repair work that

normally would be done by the bargaining unit at a future date, unless there is a bona fide operational need to perform the work at the time. The work at issue was not routine maintenance work that is done by the bargaining unit.

As the Company's witnesses testified, had the work at issue been routine maintenance or purely preventative maintenance work, and had the Company not been made aware of any issues with the slab cranes, the Company would not have had an issue with postponing the work until the next outage scheduled for April 7-8, 2021. That was not the situation the Company was faced with, however. There were issues brought to the attention of the Company with the HVAC unit that, had something gone wrong, could have jeopardized the health and safety of the bargaining unit employees performing the job assignment, and it surely would have hurt the productivity of the plant. If the HVAC units had stopped functioning, the Company would have either had to shut down the operation until it could be repaired or use a pinch crane. Shutting down operations would cost the Company a lot in production and money, and using the pinch crane is hugely inefficient.

In order for work to be an operational need, it does not need to be an emergency. There is nothing in the Surge Maintenance exception language that would suggest emergencies are the only kind of work covered. A failure of the HVAC units would make it difficult for bargaining unit employees to perform their jobs safely and would disrupt operations. The work was clearly an operational need. Since #3SP was not operating during the March 25, 2021 outage when this work was performed, this satisfies the operational need prong of the Surge Maintenance exception. Because outages are rescheduled and moved (which the Union did not rebut), and because there was no guarantee that the Crane Repair Crew would be available to perform the work even if it were pushed off into April, waiting was not a guaranteed solution. Most importantly, the Company was alerted to a problem with the equipment – and the Union's solution of waiting was asking the Company to take a risk that could jeopardize the safety of the employees working the slab crane equipment or could have caused the equipment to malfunction.

In this case, the use of Outside Entities would materially reduce the downtime of the equipment because the work was performed during an outage. The bargaining unit employees who would normally perform that work and the Crane Repair Crew were both asked to perform the work at issue, in accordance with the HVAC Workflow Process. They both declined the

work. The employees were also scheduled, or offered, unlimited overtime during the March 25th outage and the entire week, which was not rebutted by the Union.

The work at issue could not be reasonably performed by bargaining unit forces without delaying other work necessary to the plant's operations. As explained in the downtime prong above, the employees capable of performing the HVAC work were fully utilized performing other critical projects during the downtime. The only way the work could have been performed by the bargaining unit during the outage would be to extend the outage. The entire purpose of the Surge Maintenance exception is to supplement the bargaining unit employees with Outside Entities to reduce the downtime of the equipment, which is exactly what occurred in this case. The bargaining unit forces could not reasonably perform this work during the March 25th outage, and the Company could not take the risk of pushing the work to a later date.

The Company offered all reasonable and appropriately requested overtime to all qualified employees. The requirement that "all qualified employees" must be offered appropriate overtime on Surge Maintenance work should be an analysis of whether, in the circumstances, such an assignment would be suitable and fitting. Prior arbitrators have found that the past practice between the parties for contracting out work is instructive to determining whether offering overtime to all qualified employees is necessary.

The work at issue is a one-person job, with limited space. The work would either be performed by one bargaining unit employee or one outside entity - the bargaining unit employees could not work with the outside entities on this work, because it was a one-person job.

The Union should be equitably estopped from arguing that the overtime should have been offered outside of the #3SP maintenance and electrical employees. As the Union even acknowledged, for at least sixteen years, the Company has not offered overtime outside of the host department. The Union did not request that the Company offer overtime to employees outside of the department at the time that it filed for expedited arbitration or at any time prior to the performance of the HVAC work. The first time the Company heard that claim was at the March 30th expedited arbitration, when the Union provided seventy-seven contracting out notices to argue. The Company was not provided with these notices prior to the arbitration hearing, and because the information was not provided to the Company before the work was performed (or even before the arbitration), the Company was unable to assess the credentials of the employees to see if they actually could perform the work. Had the Union made the request to have

employees outside of the department perform the HVAC work, the Company could have had the opportunity to evaluate the Union's position prior to the arbitration hearing. The Union should not be able to use the expedited procedure as an end around to open dialogue between the Parties on a matter of this magnitude. There is absolutely no basis to say that the Company committed willful or repeated violations of Article 2, Section F of the BLA. A special remedy is not warranted.

The Company requests that the remedies requested by the Union in this expedited arbitration be denied in their 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 issue raised by the Union. The Union asserts that the Company violated Article 2, Section F.5. by utilizing the "Not Capable" designation on the notice. On that basis, the Union asserts that the Company's notice was insufficient.

On the question of the sufficiency of the Company's notice, I credit the Company's witness where he explained that the classification of "not capable" was a clerical error. 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 Surge Maintenance work that would be performed inside the plant and that the parties knew that the bargaining unit was capable of performing the work. The Company asked the bargaining unit members whether they could perform the work within the requisite timeframe, a clear signal that there was no confusion over whether the bargaining unit could perform the work. Accordingly, I find that the Company, by making an inadvertent clerical error on the notice, did not, in this case, violate Article 2, Section F.5. However, I do want to make clear that the notice requirement is of extreme importance and not to be lightly disregarded. The Company must make good faith efforts to provide full and accurate notice information to the Union as is required by the BLA.

Once the procedural issue is resolved, the analysis must focus on the circumstances under which the Company can rightfully utilize an Outside Entity to perform the work in question. The BLA authorizes the Company to utilize 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 2, Section F.2.

The Company's first position is that the parties had reached a verbal agreement for this work to be performed by Outside Entities. According to the Company, the agreement was reached with David Franco, the #3SP Griever. The Company contends that the President of the Union, Jaime Quiroz and the Chairperson of the Union, Richard Barron, empowered Franco to resolve contracting out issues in #3SP. According to the Company, the Union failed to rebut the testimony presented by the Company that Franco was so empowered. The Company asserts that Franco had resolved contracting out issues on several occasions over the prior four and a half years, further bolstering its position that Franco had the authority to enter into an agreement on behalf of the Union.

In the event that the Arbitrator finds that there was no verbal agreement, the Company asserts that it properly contracted out the work under Article 2, Section F.2.a.(2) of the BLA. This section refers to an exception to the guiding principle of Surge Maintenance Work.

It appears that the parties have been working out the issues surrounding contracting out work on an informal basis, and that is to their credit. On that basis, I am persuaded that Franco

was empowered to resolve certain issues at #3SP. However, in this case the Company's characterization of the verbal agreement is simply a description of the Union not challenging the Company's actions in similar situations over the past four and a half years. The decision not to challenge other situations is not the equivalent of an agreement between the parties, and declining to challenge the Company's action in this case does not constitute a verbal agreement. Moreover, a decision not to challenge a particular action does not waive any right of the Union to challenge the Company's actions at a later point in time.

It seems to me that the Company assumed that its decision would be acceptable because the Union had not challenged that type of decision when presented with it in the past, and that Franco did not vehemently challenge the Company's decision when he learned of it. On that basis, I am sympathetic that the Company believed it had a verbal agreement with the Union. However, I am not persuaded that the parties did, in fact, have a verbal agreement that covered the work at issue. The contractual language contemplates an actual agreement between the parties and not an assumption by one party that the other has acquiesced to a particular situation. The Company would need to have actual evidence of an agreement in order to prove that a verbal agreement exists, especially when the Union argues so strongly to the contrary.

Having concluded that there was no agreement between the parties, I must, therefore, turn my attention to resolving whether the Company is able to meet one of the Exceptions 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 2, Section F.2.a.). Despite the Company's clerical error on the notice, as explained above, there does not appear to be any dispute that the bargaining unit was capable of performing the work. At the hearing, the Company stipulated that the work in question meets the Guiding Principle in that the bargaining unit employees are capable of performing said work. Accordingly, the burden then shifts 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 Surge Maintenance Work Exception outlined in Article 2, Section F.2.b.(2) of the BLA. Specifically, the Company maintains that it was permitted to temporarily use Outside Entities to supplement bargaining unit

forces and perform the maintenance and repair work that was required by bona fide operational needs performed on equipment. The HVAC work at issue was generated due to complaints by bargaining unit members over the temperature in the crane cab. While that issue was being repaired, the Outside Entity found that the unit evaporator and condenser coils needed to be cleaned. The working order of the unit evaporator and condenser coils are fundamental to the functioning of the HVAC unit, which is fundamental to both the health and safety of the employees working in the crane cab and to the plant being able to produce steel efficiently.

In order for the Company to be able to rely on the Surge Maintenance Exception, the two-prong contractual test must be satisfied. The two-prong test is as follows: 1. "the use of Outside Entities would materially reduce the downtime of the equipment," and, 2. "the work cannot reasonably be performed by bargaining unit forces." If the two-prong test is satisfied, the Company must then offer "all reasonable and appropriate requested overtime to all qualified employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities in an efficient manner." The parties have certainly devoted a tremendous amount of effort and resources in crafting the parameters of what is involved in this test. The extensive history provided in the voluminous arbitration awards provided by the parties speaks to those efforts. Unquestionably, the test is plainly intended to impose a substantial burden on the Company to be able to utilize Outside Entities to perform work that the bargaining unit is capable of performing.

The Company presented evidence to meet its burden on each of the two prongs of the Surge Maintenance Exception. On the first prong, the Company was able to prove that the use of Outside Entities would materially reduce the downtime of the slab crane. The bargaining unit employees who normally perform the work at issue are the qualified maintenance and electrical bargaining unit employees at #3SP and Crane Repair. All of those employees were assigned to perform other work in the plant during the outage that was critical to the operations of the department. The Crane Repair Crew was also asked to perform the work done by the Outside Entity in accordance with the HVAC Workflow Process, and the Crane Repair crew declined the work. In order to have bargaining unit employees perform the work during the outage, the Company would have had to extend the outage. By using the Outside Entities, the Company avoided extending the outage, which in turn absolutely reduced the downtime of the slab crane, thereby satisfying the first prong of the Surge Maintenance Exception.

The Union asserts that the slab crane HVAC unit never actually went down, and therefore the Company did not experience any downtime, which means that the Company failed to meet the first prong of the test. The Union's argument in this regard fits right in with its argument that the HVAC work was preventative maintenance and not as urgent as the Company made it seem. The problem with this argument is that it assumes that the Company must wait until the unit fails before the repair becomes urgent. Unfortunately, the health and safety risk of the failure for the critical HVAC component is so great that the Company cannot reasonably be expected to refrain from repairs unless and until the unit fails. The Company concluded that the repair could not wait until the next outage, the bargaining unit personnel were not available unless the earlier outage was extended (as noted below), and extending the first outage would have resulted in downtime. On this basis, the Company met its burden under the first prong. On that basis, the Union's argument about the first prong of the Surge Maintenance Exception must fail.

On the second prong of the Surge Maintenance Exception, the Company was able to prove that the bargaining unit members could not reasonably perform the work during the planned outage on March 25th when it needed to be performed. I credit the Company's witnesses and the testimony concerning the critical projects that needed to be completed during the March 25th outage, as well as the testimony concerning the qualified employees being offered and declining the work. The Company was within its right in this specific situation to refuse to push the work off to a later date in view of the risk of a failure of the HVAC system in the meantime.

Prior to contracting out the work, the Company asked the bargaining unit employees who normally perform this work if they could perform the work. Those bargaining unit employees could not perform the work at issue because they were fully utilized completing other critical tasks in the plant. The Company established why the work had to be completed during the March 25th outage, and the fact that bargaining unit employees could not do so during that outage meant the only way to have the work completed within the allotted outage was to have an Outside Entity complete the work. In addition, the record established that the work performed by the Outside Entity could not be broken up to allow other qualified employees to work alongside the Outside Entity because the work was a one-person job.

Once the Company satisfied the two prongs of the Surge Maintenance Exception test, the final requirement for the Company to be able to utilize the Surge Maintenance Exception is that the Company first had to offer all reasonable and appropriate requested overtime on the Surge

Maintenance Work to "all qualified employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities in an efficient manner."

The Company did offer unlimited overtime to the #3SP electrical and maintenance employees for the week of March 25th. The Union asserts that the Company failed to offer all reasonable and appropriate requested overtime to qualified employees outside of #3SP, and in support of this contention the Union provided a list of qualified employees outside of #3SP at the arbitration hearing. This evidence would have been more appropriate in this case to the second prong of the analysis, wherein the Union could argue that the bargaining unit could reasonably perform the work by utilizing qualified employees outside of #3SP. However, I credit the Union's witness who testified that the Company has not offered overtime in any department to employees outside of that department in over sixteen years. On that basis, it does not appear likely that the parties intended the overtime mandate to be plant-wide prior to the utilization of any Outside Entity for a Surge Maintenance Exception. Thus, I cannot accept the Union's argument that the Company's failure to offer all reasonable and appropriate requested overtime to qualified employees outside of #3SP constitutes a failure to meet the final requirement under the Surge Maintenance Exception.

The Union contends the Company did not meet the first prong of the Surge Maintenance Exception test because the work was not required to be performed in the timeframe asserted by the Company and could have been completed by bargaining unit employees at a later date. I disagree as explained above and find that on this record the Company established by a narrow margin that the HVAC work was critical maintenance work required by bona fide operational needs.

On the one hand, the BLA provides strong language that makes clear the parties intended for the Company to use bargaining unit personnel and limit contractors as much as possible in the Plant. The obvious intention behind this language is a hugely important interest of the Union and must be honored. The Union has devoted years of bargaining and contract enforcement efforts to protect this fundamental interest on behalf of its members.

On the other hand, the twin interests of production and safety are of the utmost importance to the Company. The crane cabs operate approximately twenty feet over hot slabs that are 1,900 degrees Fahrenheit – a tremendous health and safety hazard for the employees in the crane if the HVAC unit in the cab was to fail. In addition, the Company faced potentially

serious negative effects on production if the cranes went down due to the HVAC units. Ultimately, the safety implications if the HVAC unit were to fail combined with the production needs of the plant dictated that the Company had to act swiftly in repairing the HVAC units as soon as practicable. I credit the Company's decision that this work was critical maintenance/repairs. I further credit the Company that there were significant risks in delaying the work until April, among which were the equipment might have failed in the meantime or the possibility that the April outage might have been delayed. In balancing the interests of the parties, the potential risks identified on this record outweigh the Union's interest in delaying the work in the hope that the work could be performed by bargaining unit personnel. The health and safety risk to the bargaining unit members and potential economic impact of losing production if the HVAC unit failed while the parties waited until April when unit employees would hopefully be able to perform the work undercut the interest in delaying the repair.

I find significant that the need for this repair was discovered in the course of another repair which leans very much in favor of the Company's position that there was a critical, inherent risk of the unit's failing during any delay. Had the Company simply scheduled this HVAC work in the manner that they did in this case without that underlying fact, I would be much less persuaded in the Company's position of urgency. Once the Company discovered the need for this additional repair work, the potential delay simply became much riskier. It is only because of these compelling circumstances that I find that the interest of the Company predominates here; in less compelling circumstances, the contractual emphasis on having bargaining unit employees perform the work whenever possible would win out.

The Company provided testimony and evidence to meet each prong of the Surge Maintenance exception, and the Company met the final requirement to establish its entitlement to rely on the Surge Maintenance exception outlined in Article 2, Section F.2.b.(2) of the BLA. Although this was a very close case on the facts, the Union was not able to successfully rebut the Company's evidence.

The Union raised the additional point that special remedies would be applicable in this case. The Union cites ArcelorMittal Case No. 59 to support its assertion that an order for a Global Overtime Solicitation is appropriate in this case. In Case No. 59, Arbitrator Terry Bethel found that the Company failed to meet the criteria for the Surge Maintenance Exception. In particular, Arbitrator Bethel found that the bargaining unit employees reasonably could have

performed the work. The instant case is distinguishable from Case No. 59, in that the Company satisfied the Surge Maintenance exception. Special remedies are contractually guaranteed only in very specific circumstances, none of which exist here.

Accordingly, the claim advanced by the Union in this case must be denied.

AWARD

The grievance is denied.

Date: 6-2-21
Pittsburgh, PA

Ronald F Talarico, Esq.
Arbitrator