IN THE MATTER OF THE ARBITRATION BETWEEN

CLEVELAND CLIFFS, INC.
INDIANA HARBOR EAST

And

Grievance. No. 34-2024-009
Tanika Parker Grievance

Case 150

UNITED STEELWORKERS USW
LOCAL 1010-06

OPINION AND AWARD

Background

This case from the Indiana Harbor-East plant concerns the Union's claim that the Company improperly refused to allow Grievant Tanika Parker to work global craft overtime as a Maintenance Technician-Electrical (MTE), even though she was qualified to perform the work. The case was tried via Zoom on March 13, 2025. Stephon Smith represented the Company, and Jacob Cole presented the Union's case. Grievant was present in the Union's hearing room throughout the hearing. The parties agreed that there were no procedural arbitrability issues and that the case was properly in arbitration. The issue on the merits will be discussed below. The parties submitted the case for decision on final argument.

Grievant was hired initially in 2019 into the production and maintenance (P&M) bargaining unit represented by USW Local Union 1010. She was subsequently terminated or laid off due to COVID, but was rehired (or reinstated) and, later, entered into the training program to become an MTE. Grievant finished the training program on August 22, 2022, and

began working as an MTE at the 80" hot strip mill in October 2022. She remained there until February 2023, when she bid across bargaining unit lines to an Information Technician (Info Tech) position in the Office and Technical (O&T) employees bargaining unit, represented by Local Union 1010-06. Despite having become an office worker, Grievant signed up for global craft overtime as an MTE on various occasions, and was permitted to work. Other members of the O&T bargaining unit complained that they did not have the same opportunity as Grievant, which caused the Company to reevaluate whether Grievant should be eligible to work global craft overtime. Management's decision that she was ineligible is what led to this grievance.

There is no dispute that the Company has offered employees global overtime for an extended period of time. Global overtime for work in the P&M bargaining unit occurs when the Company has offered the overtime (using the applicable overtime agreement) to all members of the P&M bargaining unit, but has failed to secure sufficient employees for the available work. There are two types of global overtime, labor and craft. The labor work is mostly unskilled work that non-P&M employees can perform. There is no dispute that members of the O&T bargaining unit have been offered global labor overtime work for years. Nor is there any claim that the Company has wrongfully denied Grievant global labor overtime. Unlike labor work, global craft overtime involves skilled work typically performed by an MTM or MTE. Both parties say that, to the best of their knowledge, no one from the O&T bargaining unit had claimed the right to work global craft overtime before Grievant. There is no dispute, however, that Process Automation Technicians represented by USW Local Union 1010-27 have been allowed to work P&M global craft overtime for many years. The beginning date is not in the record, although the Union witness said, without rebuttal, that it began prior to 2004.

The Union contends that the use of non-bargaining unit employees to perform global craft work is a recognized local working condition (past practice) under the Agreement. The language at issue in Article 5, Section 2 reads as follows:

> The term "local working conditions" as used herein means specific practices or customs which reflect detailed application of the subject matter within the scope of wages, hours of work, or other conditions of employment and includes local agreements, written or oral, on such matters. It is recognized that it is impracticable to set forth in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in this Agreement which of these matters should be changed or eliminated. The following provisions provide general principles and procedures which explain the status of these matters and furnish necessary guideposts for the parties hereto and the impartial arbitrator.
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> ...
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> E. No local working condition shall hereafter be established or agreed to which changes or modifies any of the provisions of this Agreement, except as it is approved in writing by an International Officer of the Union and the Manager of Union Relations of the Company.

The Union acknowledges that there is no written agreement about global overtime and, in particular, no writing approved by an International Officer of the Union and the Manager of Union Relations, as required by Paragraph E of the Local Working Condition language, above. But that language was not added to the Agreement until around 2004, and the Company's practice of using PA-ETs to perform MTE global craft overtime work was in existence some years before that.

The Union says the Company has consistently offered global craft overtime to electrical technicians in the PA bargaining unit. The Union acknowledges that the PA-ETs are qualified to perform the kind of work at issue. Thus, the Union says the issue is not simply that Grievant cannot work global craft overtime because she is in a different bargaining unit. The PA-ETs are not in the P&M bargaining unit, but the Company has allowed them to work global craft

overtime for years. Grievant, a qualified MTE, should be allowed those same rights, the Union says.

There was some testimony at the hearing about the qualifications of the PA-ETs. Local Union Grievance Chairman Charles Switzer acknowledged on cross examination that the Company sometimes hires PA-ETs off the street. He also agreed that a PA-ET has to have seven years of experience as an MTE, or its equivalent, in order to hold the position. In contrast, Grievant had one year of training and only worked as an MTE for about four months before transferring into the O&T bargaining unit as an Information Technician. The Company says that a PA-ET is much more qualified than Grievant. Moreover, the Company points out that an Information Technician – Grievant's current job title – is not a craftsman. The Company also mentioned Grievant's qualifications in the Second Step Minutes:

> The Grievant is no longer a Craft employee and is not using the Craft skillset on a regular basis. Although Grievant does not lose the designation as an MTE, over time, Grievant's Craft skills will erode as Grievant is not routinely working in the trade or through refresher training.

The Union argued that the Company did not raise the issue of Grievant's qualification in the second step meeting. In addition, the Company's witness, Division Manager of Field Forces Jeremy Kszascowski, acknowledged that there had not been an assessment of Grievant's craft skills. However, he said Grievant's attempt to work global craft overtime was not denied because of qualifications; rather, he said the Company determined that she was not eligible for the assignment because there was no agreement to allow members of Local 1010-06 to work Global craft overtime. He agreed that there was also no agreement to allow them to work global labor overtime, but the Company permits them to do that.

In addition to its local working condition argument, the Union also relies on contracting out language. The Union says the purpose of global overtime is to try and ensure that the Company does not have to contract out the work. All three bargaining units mentioned in this case – Local 1010, Local 1010-06, and Local 1010-27 – have similar contracting out language. Thus, Article 2, Section 3-A of the Agreement between the Company and Local 1010-06 reads as follows:

> **Basic Prohibition**
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> In determining whether work should be contracted out or accomplished by the bargaining unit, the guiding principle is that work capable of being performed by bargaining unit employees shall be performed by such employees. Accordingly, the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions.

There is identical language in Article 2-3-A of the Agreement between the Company and Local 1010-27, and a similar provision in the Agreement covering the P&M bargaining unit, although the terminology Guiding Principle is substituted for Basic Prohibition:

> 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.

There is no contention in this case that any of the exceptions apply. Nor did either party contend that there is a difference in intent or meaning between the terms Basic Prohibition and Guiding Principle. The Company, in fact, says the terminology in the P&M Agreement and the PA Agreement is irrelevant, and that only the O&T Agreement is at issue in the case.

The Company says there is no language in the O&T Agreement that enables Grievant to perform craft work. Unlike other employees who work global craft overtime, Grievant is not a craftsman. When she moved to the O&T bargaining unit, the Company contends, Grievant lost

all rights to P&M overtime. The Company acknowledges that Grievant worked several global craft overtime assignments, but it says those were errors, and were not sufficient to create a past practice. The Company says the Union cannot rely on past practice. The Union acknowledged that prior to Grievant, no one from the O&T bargaining unit ever sought to work global craft overtime. Thus, it says there cannot be a practice that was in existence before 2004 and there is no writing creating a local working condition, as required by the Agreement.

Findings and Discussion

It is reasonable to believe the Union's argument that the purpose of global overtime was to spread available work among bargaining unit employees working at Indiana Harbor-East as a way of reducing the amount of work that could be contracted out. Nevertheless, I cannot find in this case that the Company violated the Basic Prohibition language in the O&T Agreement when it refused to allow Grievant to work global craft overtime. The work at issue would ordinarily have been performed by P&M employees. If there is a contracting out argument to be made about the improper contracting out of P&M work, the grievance must come from that bargaining unit. Nothing said here is intended to indicate how I believe such a grievance should be resolved. My finding is solely that Grievant and the O&T unit have no right to advance a contracting out grievance on behalf of the P&M bargaining unit.

However, there is merit to the Union's local working condition argument. The issue is not whether Grievant has a right to work in a different bargaining unit. Rather, the issue is whether the Company's practice of offering global craft overtime to Company employees in non-P&M bargaining units extends to Grievant. The Company does not deny that it has a practice of offering global craft overtime to PA-ETs in the PA unit. Like Grievant, these employees are not

in the P&M bargaining unit, but unlike Grievant, they have been permitted to perform P&M work on overtime when no one in the P&M unit wanted it. The Company offered the work, obviously, because the PA-ETS were qualified to perform it. And, although the parties did not enter into a written agreement about the matter, Article 5, Section 2 recognizes that not every local working condition was contained in, or even referenced in, the Agreement. This custom, which began prior to 2004, had progressed to the point that the Company had sign-up sheets, complete with a page of procedures about how the system worked. This is evidence that the parties had either agreed orally to the terms of the process, or had repeated the procedure so often that each side understood and accepted the way it worked.

The Company contests the application of the local working condition to employees in the O&T bargaining unit. The Company says no one from the O&T unit had previously signed up for global craft overtime, and the Union does not disagree. Thus, the Company argues that the benefits of any past practice do not extend to O&T employees, and the practice could only encompass them at this point via a written agreement with the required approvals. There is no such agreement.

The fact that no one from the O&T unit had ever signed up for global craft overtime, however, does not mean they were excluded from the solicitation. The solicitation document introduced as Union Exhibit 1 makes it clear that the Company wanted craftsmen to signup for the overtime. But it was, by its express terms, a plant-wide posting that did not exclude other bargaining units. Clearly, what the Company wanted was craftsmen it could trust to do the kind of work available at the plant. Presumably, most – maybe all – of those who signed-up came from the PA unit because of the numbers of PA-ETs who were qualified to do the work. There

was no one in the O&T unit who was qualified for the work until Grievant bid in when she became an Information Technician.

It is true that when she signed up for global craft overtime, Grievant was no longer working as a craftsman. But the Company said it did not exclude her from the work because she was unqualified; rather, the Company would not allow her to perform the work because it believed the practice did not apply to employees in her bargaining unit. But she had recently worked as an MTE in the P&M unit and she had been trained in that craft in the Company's program. In these circumstances, it is hard to understand why Grievant should be excluded from the practice which, after all, sought to employ qualified electrical technicians from other bargaining units. I find that the local working condition described above was not an arrangement that applied only to the PA bargaining unit, but one which sought qualified employees from outside the P&M unit to do work ordinarily performed by P&M employees.

This is not to suggest that anyone who fancies himself as a home-schooled electrician should be eligible to work global craft overtime. The record indicates that the Company has sought qualified MTE employees to perform MTE work, and it is of some importance here that Grievant was certified after completing the Company's training course and working as an MTE in the plant. Nor does this decision mean that the Company is foreclosed from determining whether employees retain the qualifications to perform the necessary work, an issue not raised in the arbitration hearing, and, therefore, not resolved in this decision. In this case, I find that Grievant was improperly excluded from global craft overtime, that she is to be made whole for lost opportunities, and that she is not excluded from global craft (MTE) overtime solicitations going forward. I will retain jurisdiction to resolve any issues with the remedy.

AWARD

The grievance is sustained. There is a local working condition permitting Grievant to work global craft overtime for which she is qualified. Grievant is to be made whole for lost opportunities and not excluded from global craft (MTE) opportunities going forward. I will retain jurisdiction to resolve issues concerning the remedy.

Terry A. Bethel

Terry A. Bethel, Arbitrator
April 11, 2025