ARBITRATOR'S AWARD

In the Matter of the Arbitration
Between

United Steelworkers of America International Union,
and its Local 6787.

and

Cleveland Cliffs, Inc.,
Burns Harbor, Indiana

Case 151

Grievance No. 23-7094
Rai-Jon Hampton, Grievant

May 8, 2025

David A. Dilts
Arbitrator

APPEARANCES:

For the Union:

Michael P. Young, Union Staff Representative, District 7

For the Company:

Nath Kilander, Company Advocate

Hearings in the above cited matter were conducted on Tuesday, April 22, 2025 at the Offices of Local 6787 of the United Steelworkers, 1100 North Max Mochal Highway, Chesterton, Indiana. The parties stipulated that the matter is properly before the Arbitrator pursuant to Article Five, Section I of their 2022 Collective Bargaining Agreement. The record in this matter was closed upon completion of the arbitration hearing on April 22, 2025.

ISSUE

Did the Company violate Article 5, Section D; Article 9, Section D and/or the Payroll Guidelines Letter, dated September 1, 2022 when it did not pay the Grievant at the overtime rate for four hours worked on Saturday, October 15, 2023? If so, what is the proper remedy?

INTRODUCTION

The grievance before this Arbitrator is a contract interpretation matter arising out of Rai-Jon Hampton's (herein the Grievant) work during the week of October 15, 2023. The facts and circumstances concerning this grievance are not in substantial dispute. The parties basically agree on the events giving rise to this grievance. The dispute focuses on their competing interpretation of the Payroll Guidelines and their application to these facts and circumstances.

Joint exhibit 3 is the grievance record concerning this matter. In this particular case, the parties' Step 2 statement of the facts provides an accurate and succinct description of the factual record in the matter before this Arbitrator. That Step 2 Statement of Facts, in pertinent part states (Joint exhibit 2, p. 16):

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> The Grievant works a 12-hour AWS schedule, which is 4 shifts on and 4 shifts off. He was scheduled during the week of October 15, 2023, to work a 3-day 36-hour AWS schedule rotation. This AWS schedule had the Grievant working

Thursday October 19, 2023, Friday October 20, 2023, and Saturday October 21, 2023. He also was scheduled to work Sunday October 22, 2023, based on the AWS rotation schedule for the week of October 22, 2023.

Additionally, the Grievant picked up a 12-hour Sunday shift October 15, 2023 outside of his AWS schedule rotation.

The Grievant was paid the following for the week of October 15, 2023:

- Sunday October 15, 2023: 12 hours at the Sunday premium rate
- Thursday October 19, 2023: 12 hours at the regular rate
- Friday October 20, 2023: 12 hours at the regular rate
- Saturday October 21, 2023: 4 hours at the regular rate and 8 hours at the overtime rate.

A Step One grievance was filed and denied on November 1, 2023 . . .

The Union stated the Grievant was owed 4 hours at the overtime rate for hours paid at the regular rate on Saturday October 21, 2023, due to working 12 hours on Sunday October 15, 2023, which puts the hours on October 21, 2023, in excess of the normal agreed to Alternative Work Schedule (AWS) hours (36 hours) in a payroll week. The Union also stated due to this, all hours worked on Saturday October 21, should have been paid at overtime.

The Company stated the Grievant was correctly paid for the 4 hours, in question, on Saturday October 21, 2023. The Company stated the agreed to AWS hours fall during the AWS schedule rotation. Meaning the agree to 36 hours, for the week in question, would fall during Thursday October 19, 2023, Friday October 20, 2023, and Saturday October 21, 2023, based on the AWS schedule rotation put in place at the beginning of the year. Therefore, the first 4 hours on Saturday October 21, 2023, cannot be paid at the overtime rate because they are part of the agreed to AWS schedule rotation. Additionally, all Sunday hours on October 15, 2023, were paid at the Sunday premium rate, and due to working on this date, the remaining 8 hours on Saturday October 21, 2023 were paid at the overtime rate due to being over 40 hours in a payroll week.

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The parties were unable to resolve this grievance through their negotiated grievance procedure and the matter was appealed to arbitration.

This dispute focuses on the proper interpretation and application of the language of the parties' Payroll Guidelines found in the Basic Labor Agreement (Joint exhibit 1, pp. 133-36). Also entered into this record was the award of Arbitrator Andrew Strongin in Grievance 0959, issued on June 30, 2022 which dealt with some of the same issues before this Arbitrator in the present matter, albeit it arose out of a different location and has a different set of facts and circumstances.

Hearings in this matter were conducted on Tuesday, April 22, 2025 at the Offices of Local 6787 of the United Steelworkers, 1100 North Max Mochal Highway, Chesterton, Indiana. The parties stipulated that the matter is properly before the Arbitrator pursuant to Article Five, Section I of their 2022 Collective Bargaining Agreement. The record in this matter was closed upon completion of the arbitration hearing on April 22, 2025.

UNION'S POSITION

The Union's position is simple and straightforward, the Company has violated the Basic Labor Agreement by not paying the Grievant for all hours worked in excess of the normal agreed upon AWS shift. The Union asks that the Arbitrator to order the Company to cease and desist this violation and requests that the Grievant in this matter be made whole for the lost overtime premium pay he should have received for the relevant hours worked during the week of October 15, 2023.

In the way of background, employees on an Alternative Work Schedule (AWS) work 12 hour shifts. The normal rotation in a two week span is 36 hours for their short week and 48

hours in their long work week. There are many ways to achieve overtime rates for an employee working on an AWS schedule.

There are several provisions of the Basic Labor Agreement that cover the methods of paying overtime on an AWS schedule. The first is in Article 5, Section D Overtime, which describes how overtime is calculated and for what hours. The second is the "Payroll Guidelines" letter signed by the parties and dated September 1, 2022, pp. 133-136 of the 2022 Basic Labor Agreement.

In dispute in this grievance is bullet point number three under "Overtime" in the Payroll Guidelines" which states: "*All hours worked in excess of normal agreed to AWS hours in a payroll week, provided the employee worked as scheduled.*" This cited language is the applicable language n this dispute. This is clear and unambiguous language which was agreed to by the parties to provide clarity to the Basic Labor Agreement's provisions. It is this language which should have been applied by the Company, rather that the second bullet point language of that same paragraph which resulted in the Grievant not receiving the overtime premium wage rate for four hours of his work on Saturday, October 21, 2023. It is those four hours of overtime premium that are required to make this Grievat whole for the Company's violation of the Payroll Guidelines.

In the week in question, the Grievant was scheduled a total of 36 hours which consisted of three 12 hour shifts on Thursday, Friday and Saturday (October 19 through 21). The Grievant had worked a additional 12 hour shift on Sunday October 15 at the beginning of the payroll week. The Company paid the Grievant Sunday at the Sunday premium rate, as required the Sunday Premium, Article 9, Section D of the Basic Labor Agreement: "*All hours worked by an*

Employee on Sunday, shall be paid for on the basis of and one-half times the Employee's Regular Rate of Pay. For the purpose of this Section, Sunday shall be deemed to be the twenty-four (24) hours beginning with the shift change hour nearest to 12:01 a.m. on Sunday."

The Company acknowledged that the Grievant had reached 40 hours worked (second bullet point of "Overtime" at the top of the Alternative Work Schedule parts of the payroll guidelines appearing on p. 135 of the Basic Labor Agreement). Where the difference between the parties arises is in the third bullet point of that language which required time and one half be paid for: *"All hours worked in excess of normal agreed to AWS hours in a payroll week provided the employee has worked as scheduled."* There is no dispute that the Grievant worked in excess of his "normal agreed to" AWS hours, and that he had worked as he had been scheduled to do during that payroll week. Therefore, it is that third bullet point that should have been applied in determining the overtime premium due in this matter, and not the second bullet point as the Company incorrectly did.

The Grievant had 36 hours in by Friday of the week of October 15. In this instance, all hours on Saturday became "in excess" of his agreed to 36 hours and should have been paid at the overtime rate of one and one-half times his regular hourly rate. This the Company failed to do, paying him only eight hours at the over time rate, claiming that was due because he exceeded the 40 hours in that week, but leaving 4 hours at the straight time rate. The Union claims that these hours worked on Saturday should also to be paid at the overtime rate because his AWS shift beginning October 15 was scheduled for 36 hours and he worked twelve hours in excess of that scheduled amount of work. Therefore he which should have been compensated at time and one-half his normal rate for the entire twelve hours he worked on Saturday.

The Union respectfully requests that the Arbitrator find that the Grievant was not properly paid in this case. The Union asks that the Grievant be made whole in all regards for this improper calculation of the overtime pay he was due for working his regularly scheduled schedule in addition to Sunday, October 15. The Union also asks that the Company correct its payroll errors going forward.

COMPANY'S POSITION

This case involves the interpretation and proper application of one specific provision of the parties Payroll Guidelines concerning overtime pay for those working an Alternative Work Schedule (AWS). On page 135 of Joint exhibit 1 (Basic Labor Agreement) there appears language, to which the parties agreed, which governs the payment of an overtime premium. It is the third bullet point in the overtime paragraph, which states: *"All hours workerd in excess of normal agreed to AWS hours in a payroll week, provided the employee has worked as scheduled."* It is the Company's belief that this is the sole provision of the Payroll Guidelines that are in dispute in this case.

Because this is a contract interpretation case, the Union bears the burden to prove the Company violated the Basic Labor Agreement and the Payroll Guidelines. The Union has failed to shoulder that burden and record of evidence in this matter supports the Company's theory of the case. Therefore, this grievance should be denied in total as being without merit.

The facts in this matter are not in substantial dispute. The payroll week of October 15, 2023 was a 36 hour schedule for this Grievant working on Thursday, Friday and Saturday

(October 19-21). At the beginning of that week the Grievant picked up a Sunday 12-hour shift on October 15, 2023 for which he received the required Sunday premium of time and a half (Article 9, Section D of the Basic Labor Agreement).

It is the Company's position that the language is clear and unambiguous. The context of this case is the Alternative Work Schedule, which is a rotation that the employees voted for and involve 36 and 48 hour weeks scheduled 12 hours at a time and rotated through specific days of the pay week (pp. 23-24, Joint exhibit 2).

The Company maintains that it is continuing to follow the Payroll Guidelines as it has for many years, which was never an issue until this grievance. Even if the provision was somehow deemed unclear, the Company's position is the more logical and reasonable of the two forwarded by the parties in this matter. At hearing, the Union did not dispute that this had been the practice followed by the Company, and that it was not grieved until this matter because this was the first time a member had stepped up and protested.

The Company paid this Grievant the Sunday premium as required under the second paragraph of the Alternative Work Schedule paragraph of the Payroll Guidelines (Joint exhibit 1, p. 134) and the overtime premium for hours worked in excess of 40 hours in the payroll week, second bulletin point in the overtime language of the Alternative Work Schedule, overtime paragraph requiring overtime pay: *"For hours worked after reaching forty (40) hours in a payroll week."* (Joint exhibit 1, p. 15).

There is one critical piece of evidence introduced at the hearing. That was the 2007 letter signed by David McCall of the Steelworkers and Tom Woods for the Company (Company exhibit 3) on page three of that letter is found the relevant language of the Payroll Guidelines at

p. 135 of the Basic Labor Agreement, unchanged for the fifteen intervening years. During this period hundreds, if not thousands of these AWS schedules have been worked, with untold numbers involving overtime, and many the exact days that are in dispute here. In those cases, over that period of time this issue was not the subject of a grievance until this one. In other words, the record shows the Union accepted Management's application of the second bullet point and its practice of using the 40 hour standard in determining overtime pay under these facts and circumstances.

There is one arbitration award that was entered for the Arbitrator's consideration. That award was by Arbitrator Strongin, who offered an interpretation of the relevant language under a different AWS schedule, one in which there was also vacation time involved. It is the Company position that Mr. Strongin's award actually put that aggrieved employee in a less well compensated position than what this Grievant obtained. The position that the Union has taken in this grievance appears to be the exact opposite of what it contended before Arbitrator Strongin. The Union argues that the normal agreed to hours were 36 weekly hours dispersed over three shifts. Strongin found that a Tuesday and Wednesday shift were the extra-normal shifts and should be compensated at the overtime rate – while here the Union is arguing for a scheduled Saturday was deserving of the overtime rate. It is there for the reading, the parties highlighted different aspects of Arbitrator Strongin's opinion, but in totality provides little concrete guidance relevant to the issue raised in this particular case before this Arbitrator.

The Company believes that the preponderance of the evidence in this case supports its position and that the Union failed to prove any contractual violation in this matter. For all of these reasons, the Company asks that the Arbitrator deny the Union's grievance as being without

merit.

ARBITRATOR'S OPINION

The controversy before this Arbitrator is a contract interpretation matter concerning overtime. Two specific provisions of the Basic Labor Agreement were cited by the Union, these are Article 5, Section D and Article 9, Section D. Both parties focused the preponderance of their case on two particular sections of the Payroll Guidelines which are also contained in the parties' Basic Labor Agreement (Joint exhibit 1, pp. 133-36). It is the reading of these negotiated provisions that determine the merits of the parties' respective positions.

Article 5, Section D is entitled "Overtime" and th relevant part of Article 9, Section D is entitled "Sunday Premium." These two provisions will be analyzed together in the following paragraphs of this Opinion.

ARTICLE 5, Section D and ARTICLE 9, Section D

Article 5, Section D is entitled Overtime (p. 41 Basic Labor Agreement) and states:

Section D. Overtime

1. Definitions

   a. The payroll week shall consist of seven (7) consecutive days beginning at 12:01a.m. Sunday or at the changing hour nearest to that time.

   b. The workday for the purposes of this Section s the twenty-four (24)

hour period beginning with the time the Employee is scheduled to begin work.

c. The Regular Rate of Pay as used in Paragraph 2 below (and in this Agreement) shall mean the Base Rate of Pay plus incentive earnings for the job on which the overtime hours are worked.

d. For the purposes of determining hours which are subject to the non-duplication of overtime hours provision, hours worked on Sunday in excess of normal (or AWS) hours will not be used for the purposes of calculating overtime premiums.

2. Conditions Under Which Overtime Rates Shall Be Paid

Unless worked pursuant to an agreed upon Alternative Work Schedule, overtime at the rate of one-and-one-half time (1 ½) the Regular Rate of Pay shall be paid for:

a. hours worked in excess of eight (8) hours in a workday;

b. hours worked in excess of forty (40) hours in a workweek;

c. hours worked on the sixth or seventh workday of a seven (7 day period during which five (5) days were worked, whether or not all such days fall within a single payroll week; and

d. hours worked on a second reporting in the same workday where the Employee has been recalled or required to report to work after working eight (8) hours.

Article 5, Section D, paragraph 1, subparagraph d specifically mentions AWS and the handling of Sunday work in calculating overtime premiums: *"hours worked on Sunday in excess of normal (or AWS) hours will not be used for the purposes of calculating overtime premiums."* In rather clear language the parties exclude Sunday hours worked on an AWS from the purposes of calculating overtime premiums. Yet that is not what transpired here. The Company included the hours worked on Sunday by this Grievant on October 15 to arrive at his

having worked 40 hours at a point during his Saturday (October 21) shift.

Article 5, Section D, paragraph 2 states that unless worked pursuant to an agreed upon Alternative Work Schedule, which appears to exclude the language contained in subparagraph b. which states: *hours worked in excess of forty (40) hours in a workweek.* This Arbitrator finds that puzzling because this Grievant received overtime premium pay, according to the Company (to which the Union apparently agrees) because he worked in excess of 40 hours. The record shows and the parties agree that he worked a total of 48 hours in the workweek of October 15, and received Sunday premium for twelve of those hours and overtime for eight hours worked on Saturday.

The normal and plain meaning of the relevant two subparagraphs quoted above would seem inconsistent with the events that transpired concerning the Grievant's pay for the week of October 15. The language says "hours worked in excess of normal (or AWS) hours will not be used for calculating overtime premiums, yet to get from 36 hours to 48 hours, Management had to have used the 12 hour shift worked by the Grievant. In reading Article 9, Section D entitled "Sunday Premium" is says: *"All hours worked by an Employee on Sunday, shall be paid for on he basis on one and one-half (1 ½) times the Employee's Regular Rate of Pay. For purposes of this Section Sunday shall be deemed to be the twenty-four (24) Hours beginning with he shift change nearest to 12:01 a.m. Sunday.* Albeit it is never explicitly stated in either Article 5, Section D or Article 9, Section D, the Sunday premium is the equivalent of the overtime premium calculated on other bases elsewhere in those sections of the Basic Labor Agreement. From this equivalency and the fact that the Sunday hours on AWS are already paid at time and a half, the Company would have the Arbitrator infer that the reason Sunday hours are not used to

calculate overtime is that they are already being paid at overtime rate. Explicit language so stating would have repaired a serious ambiguity in the language[1] of the Basic Labor Agreement, however there is more and it is the parties' Payroll Guidelines. It is those Guidelines that form the core of the respective cases argued before this Arbitrator.

Payroll Guidelines

The Company cites Company exhibit 1, a letter dated February 7, 2007 in which the following provisions of the Payroll Guidelines first appear (p. 3). The Payroll Guidelines relevant to this case appear on pages 134 and 135 of Joint exhibit 1 (Basic Labor Agreement) and state:

> Alternative Work Schedule (AWS)
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> Definition of AWS - In order for a schedule to be considered an Alternative Work Schedule it must be a schedule other than the Normal Workday and Work Week as defined in Article Five Section C. If the schedule does not meet the criteria then it must follow the rules of a normal workday and workweek, and the overtime rules of Article Five- Section D will apply.
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[1] The language appearing in Article Five, Section D, 1 proscribes duplication of overtime hours and using Sunday hours to calculate overtime, which is not what happened here. Article Five, Section D 2 states: *Unless worked pursuant to an agreed upon Alternative Work Schedule, overtime at the rate of one-and-one-half time* and then states hours in excess of 40 will be paid at the overtime rate, which is what happened here, and that is contrary to this proscription. All of this is then dealt with again in the Payroll Guidelines, a *prima facie* ambiguity, in fact, downright contradictory language between the BLA and the Payroll Guidelines as applied.

Overtime (paid at 1.5)

- For hours worked in excess of the agreed to (ten (10) or twelve (12) hours) in a workday.
- For hours worked after reaching forty (40) hours in a payroll week.
- All hours worked in excess of normal agreed to AWS hours in a payroll week, provided he employees has worked as scheduled.

The preamble to this section of the Payroll Guidelines clarifies the relationship of Article 5 to the "Overtime" part of the AWS section of the Payroll Guidelines. Albeit there on parts of Article Five's language that specifically mention and apply to AWS schedules, the preamble to AWS language in the Payroll Guidelines requires that non-AWS schedules and overtime thereunder fall under the rules of Article Five, Section D.

Therein is the opening for the parties to each develop their independent understanding of the language and its requirements. ***The Company*** used bullet point two to determine that the Grievant was due overtime for hours worked in excess of forty, and the language of the preamble to focus solely on the Payroll Guidelines without consideration of Article 5, Section D. On the other hand, ***The Union*** used bullet point three as the basis of its claim that the overtime the Grievant worked as an entire twelve hour shift on Saturday because he had already worked his 6 hours when he reported for work on Saturday.

Ambiguous Language

There is nothing complicated about this matter. The Company focused on one part of the

language and arrived at a logical, consistent theory of the case. The Union, on the other hand, focused on another part of the Payroll Guidelines language and arrived at a logical, consistent theory of the case. The problem is the Company is right if confining it's actions to the chosen part of the Payroll Guidelines (Bullet point two), and the Union is correct if using its chosen part of the Guidelines (Bullet point three). There is nothing to be found in the language to provide guidance as to which bullet point applies under what set of circumstances. This is a textbook case of ambiguous language.[2] Ambiguous language is "*It is only where the document contains conflicting and inconsistent provisions on a given subject that it is ambiguous and extrinsic circumstances can be availed of in ascertaining the interpretation of the partes.*"[3]

It is this Arbitrator's considered opinion that the under the facts and circumstances of this specific case, the language of the AWS Overtime provisions of the Payroll Guidelines are ambiguous.

Extrinsic Evidence

Extrinsic evidence was offered by the parties and was argued concerning its applicability here. The Company raised the February 2007 letter (Company exhibit 3) and the parties' Basic Labor Agreements from 2008, 2012, and 2018 were entered into this record which show the subject language's consistent lineage over this period of time.

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[2] See *City of Highland Park*, 76LA 811, 816 (McDonald, 1981)

[3] *Williams Meat Co.*, 8 LA 524 (Cheney) cited in Owen Fairweather *Practice ad Pocdure in Labor Abitration, fourth edition.* Washington, D.C.: Bureau of National Affairs, Inc., 1999, pp244-245.

The Company has argued that there is a long established past practice which gave breath to its interpretation and application of the relevant language of the Payroll Guidelines. An argument that the Union suggested was perhaps true, but in no way precluded it from filing its grievance and pursuing a remedy for what it believed was an inappropriate application of the Payroll Guidelines. Again, a position which is entirely appropriate and reasonable. However, the record of evidence in this matter shows that th parties have had this language in their Payroll Guidelines since 2007 and that these Guidelines found their way into the Basic Labor Agreement as a side letter since at least 2008. The Company claims without rebuttal that it has interpreted and administered these Guidelines as it has described them for that entire period of time without protest or grievance from the Union.[4] Therefore, the Company would have the Arbitrator sustain their use of bullet point two and its interpretation and application for these several years including this grievance.[5]

The Union does not dispute that the Company has done as it claimed, but it was not until this Grievant stepped forward to complain that the Union became aware of these practices and filed the present grievance. This Arbitrator has no cause not to accept the Union's current challenge as anything but accurate. However, for an extended period since 2007, the Union did not challenge Management's actions and allowed the establishment of an interpretation under these circumstances that by the passage of time has become binding. The Union for over fifteen

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[4] The Company entered numerous payroll records and other documents in support of its assertion that an established past practice had been administered including Company exhibits 4 though 8.

[5] See Elkouri and Elkouri, *How Arbitration Works, eighth edition.* Arlington, VA: BloomergBNA, pp. 9-13 to 9-19 for further discussion.

years was aware of how its members were being paid, and what the language was under which they were being paid. It is therefore this Arbitrator's considered opinion that the practice exists[6] and that the manner in which to challenge such a practice is not through the grievance procedure but through negotiations.

Strongin's Award

Arbitrator Strongin was asked to resolve a grievance at a different location of Cleveland Cliffs, involving different facts and circumstances, not the least of which was the AWS schedule of the grievant. The Company and Union both referred this Arbitrator to Mr. Strongin's award, and each would have the Arbitrator rely on various and separate parts of that award.[7] It is interesting to note that Arbitrator Strongin's lead paragraph in his Discussion was in pertinent part: (p. 9):

> At issue in this proceeding is the narrow question whether grievant is entitled to overtime payment for his "hours worked" on Tuesday and Wednesday of the workweek in question. That question must be answered in light of the overlapping patchwork of provisions addressing the payment of overtime for employees working both normal and AWS schedules, found both in the main provisions of the BLA and the appended Guidelines, together with evidence that historic understanding of the relevant provisions at the Cleveland Works is

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[6] Elkouri and Elkouri, p. 9-15 state: "*Another source of ambiguity arises from the inclusion of inconsistent provisions in a contract or conflicting language within a particular term.*" (*Butte Water Co. v. Butte,* 138 P. 195, 197 (Mont. 1914). That is the fundamental problem in this dispute.

[7] The Company relies on language on page 12, and the Union cites arts of page 9. Both pulled citations from different parts of page 11 and different parts of page 14.

countered by a contrary understanding at other location covered by e BLA. . . .

Arbitrator Strongin apparently had evidence before him that persuaded him that the issue of overtime payment was handled variously under the exact same language: . . *historic understanding of the relevant provisions at the Cleveland Works is countered by a contrary understanding at other locations covered by e BLA.* . . . He also recognized the contract language was an "*overlapping patchwork of provisions addressing the payment of overtime for employees working both normal and AWS schedules.*" Although he doesn't call the language ambiguous in this paragraph; he arrives at the same conclusion there as this Arbitrator does here. On page 14 of the Strongin Award, the last paragraph states:

> Finally, it bears note that this dispute arises at the Cleveland Works, where the parties agree they always provide overtime as the Union seeks under the circumstances of this case prior to the Company's unilateral determination in November of 2021, without notice to the Union, that such previously shared understanding of the requirements of the Guidelines is inconsistent with what is described but not proved to be the pay practice at other facilities covered by the BLA. This Award holds only that, for the above-discussed reasons, the BLA and the Guidelines require that grievant, who worked as scheduled at the Cleveland Works during the disputed workweek, be paid overtime for all 24 hours that he worked in excess of his normally agreed to AWS hours.

Mr. Strongin's reason was clear and specific: *Company's unilateral determination. . . . without notice to the Union, that such previously shared understanding of the requirements of the Guidelines is inconsistent with what is described but not proved to be the pay practice at other facilities covered by the BLA.* If the language of Articles 5 and 9, and the Payroll Guidelines were clear, then practices would not have been an issue – the issue would have been

the clear language and its application to the specific facts and circumstances. The clearly established practice and its consistent application puts an ends to the controversy. Had there been clear language sit would have been that language which would have been determinative if otherwise fully understood by the parties.

CONCLUSION

The Arbitrator is persuaded that the parties took care in penning the language of Article Five, Section D concerning overtime and made reference to the Payroll Guidelines. Those Payroll Guidelines concerning AWS Overtime contain three bullet points, the last two suffer a tension, and that is one requires overtime for hours worked in excess of 40 hours (Bullet point two) and the other requires overtime be paid for hours worked in excess of normal agreed to AWS hours in a payroll weeks provided the employee has worked as scheduled (Bullet point three). These are the respective positions taken by the parties. There is extrinsic evidence, not at controversy between the parties. The practice has been for the Company, under these facts and circumstances, to pay for hours worked in excess of forty when the extra shift was Sunday premium eligible; as is the circumstance here.

Therefore, this Arbitrator is left with little recourse save to find that the Company choose to base their overtime pay determination on Bullet point two. The Arbitrator finds that the clear preponderance of the evidence in this case confirms that has been the Company's long-standing practice concerning this overtime pay determination;and hence this grievance must be denied as being without merit.

AWARD

The grievance is denied.

At Fort Wayne, Indiana
May 8, 2025:

David A. Dilts
Arbitrator