IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL STEEL COMPANY
Lackawanna Plant

And Award No. 15

UNITED STEELWORKERS, USW
LOCAL UNION 2604

OPINION AND AWARD

Introduction

This case from the Lackawanna Plant concerns the Union's claim that the Company improperly eliminated the L Battery floorman on the 11 p.m. to 7 a.m. shift in batch anneal. The case was tried in the Company's offices on October 24, 2007. Patrick Parker represented the Company and Leonard Sauro presented the Union's case. There are no procedural arbitrability issues. The parties submitted the case on closing argument.

Background

The Lackawanna Plant was part of Bethlehem Steel, which went bankrupt in December 2002. ISG purchased the assets of the Lackawanna facility (as well as other Bethlehem properties) in May 2003. Subsequently, the parties negotiated a new Agreement that included significant changes from what until then had been standard steel industry language. The Company stresses that this was an entirely new contract, and not simply an assumption of the old Bethlehem-USWA contract.

There are two annealing batteries in Batch Anneal in the Lackawanna facility, L battery and T battery. During day turn (7 a.m. to 3 p.m.) and afternoon turn (3 p.m. to 11 p.m.), the batteries are manned by a number of employees including a service technician, a craneman and an operating technician. Although the numbers differ between the two batteries, at least one employee is scheduled for each battery on both of those shifts. Historically, the Company has scheduled only a floorman (now called an operating technician) at each of the batteries on the midnight shift. Beginning on October 22, 2006, the Company began scheduling only one floorman to cover both batteries. It is possible – though perhaps not likely – that the one floorman can control both batteries by computer without leaving an office. That change led to the grievance at issue in this arbitration.

There is some work performed on the day and afternoon shifts – when more employees are present – that is not performed on the midnight turn. Nevertheless, there is no disagreement that there is work to do on the midnight turn. Monitoring the furnaces and some changes can be done by computer without leaving the office; but there are also functions that must be performed at the furnaces making up the batteries. This includes taking readings, looking at sand seals, cutting or opening the burners, shutting down a furnace, and unbolting a furnace. Since the change at issue here, there is one floorman to cover both batteries, which are several hundred yards apart. There are no other employees scheduled in the same area on midnight turns. There is a fuel control technician who moves around the plant, and a water control technician. Both employees have radios and the floorman on the batteries can contact them if he has a problem, according to Area Manager Scott Hejmanowski. He also said there is a security guard on duty 24 hours a day, and the floorman assigned to work has Hejmanowski's home and cell telephone numbers. There is also a crew assigned to the galvanized line, Hejmanowski said, "when the line

is operating." He did not say how often the line operates. The line is located about a fourth of a mile from the batteries.

The Union raises several objections to the reduction in staffing, including safety concerns, local working conditions, and an understanding reached about staffing during negotiations over the LOPs. John Ujvari, a floorman, described his duties on the midnight shift, some of which are mentioned above. He said there have been times when he needed to address a problem immediately. For example, he said he reported a fire in 1997 and helped locate its source. There have also been issues with power outages. If the furnaces go out, they have to be relit, which involves lighting 22 burners on each furnace. There are 5 box anneal furnaces on T battery and 7 furnaces on L battery. Ujvari also said it was difficult to rely on the computer for everything. Recently, he said, the computer failed to record that a furnace was out in one of the batteries. If he was at L battery and something happened at T battery, he might not discover the problem, especially if there was something at L battery that demanded his attention. On cross examination, Ujvari agreed that there had been times prior to the change at issue when only one floorman covered both batteries, and at least one occasion when no one had been assigned.

Tim Hartman, Chairman of the Grievance Committee, discussed each of the contract violations alleged by the Union. Article 3-B covers the employees' right to a safe and healthful workplace. Hartman said a lone employee on last shift could fall or otherwise get hurt and there would be no one to find him. At the Union's request, the Company has provided radios since the scheduling change, but, Hartman said, they are unreliable. Article 3-C covers the right to refuse unsafe work, and provides an expedited procedure for resolving the dispute. Hartman said he had advised employees this option is available to them if they thought the work was unsafe. The

Union also cited Article 3-O to inform the Company that it is not liable for any accidents or other health and safety issues.

Hartman also relied on Article 5-E-2-b from the Seniority Article, which says, "The seniority units, [and] lines of progression ... in effect as of the Effective Date shall remain in effect unless modified by a written agreement signed by the Grievance Chair." Local Union President Tony Fortunato testified that in 2003 when the parties were negotiating the lines of progression and trying to reduce the work force by a total of 53 employees, they had an understanding that there would be 12 employees in the Batch Anneal LOP, with four floormen assigned to each battery, T and L. He acknowledged that there was no writing to this effect, but he said this is what the parties understood. He also said a document produced by the Company in 2006 and introduced in the hearing as Union Exhibit 3, recognized that agreement.

The Union also points to Article 5-A, Local Working Conditions, in support of its case. Grievance Chairman Watson said there was a local working condition because the staffing pattern had existed prior to ISG. The elimination of one floorman changed the working conditions of the remaining floorman by giving him increased responsibility. Fortunato said he was aware of language in the Local Working Conditions article that said "future local working conditions must be reduced to writing and signed by the Plant Manager and the Local Union President/Unit Chair." But, he said, this was a pre-existing local working condition, not one that was established by the parties after the effective date of the Agreement. The Union says there was no change justifying the elimination of the local working condition, and that its elimination was not reasonable or equitable, as provided in Article 5-A-4.

The grievance also cited Appendix B-2, which reads as follows:

> Notwithstanding anything in the Agreement to the contrary, Employees who were, on December 19, 2001 incumbents in a job which has subsequently been combined into a

> new or restructured job shall, subject to their seniority and the number of available positions, be provided an opportunity to be placed in such new or restructured job.

Hartman said this means that employees should have the same jobs today that they had under Bethlehem Steel. On cross examination, Hartman acknowledged that this language applies to new or restructured jobs because of changes made under the ISG Agreement.

Hartman also cited Article 2-F-1-a, the Guiding Principle for contracting out decisions, that says the Company will use bargaining unit employees to perform work they are or could become capable of performing. In the instant case, Hartman said, the floormen were capable of performing the work and they should be the ones doing it. On cross examination, he agreed that the Company had not hired contractors to work as floormen, although he said there had been an occasion when the security guard had done work normally performed by a floorman. In addition, Hartman said management employees had sometimes performed floorman duties. Finally, Hartman said the Company had violated the partnership language of Article 6-A-5-a, which requires the Company to take certain steps when there is any plan to make a Workplace Change that could adversely affect bargaining unit employees.

Area Manager Hejmanowski said there had been several times prior to the October 22, 2006 scheduling change when only one floorman had been assigned to cover both batteries. This was the case even though bargaining unit employees in the department prepared the draft schedule that was later approved by Hejmanowski. Nothing about the overnight operation, Hejmanowski said, requires more than one floorman. He agreed with the Union's contention that the equipment is old, but he said it does not require a lot of maintenance. If something does go wrong, then the Company has technicians who can fix it. Hejmanowski said if a furnace goes out overnight and cannot be relit, that is a production issue, not a safety problem. He denied that a lone employee on the midnight turn is in more danger than employees on the other shifts. He

also said that employees on the midnight turn had always worked alone even prior to the change because one was on the L battery and the other on the T battery. They did help each other from time to time, but the risk of getting hurt was the same as it is with only one floorman. In addition, if one of them got hurt away from the office, he did not have a radio to call the other floorman for assistance.

John Swiatkiewicz, Supervisor of Safety and Health, said he investigated the Union's safety concerns by going to the batteries at 5:00 a.m. on three days in early October. He reported that he observed no safety hazards. He also said that after his observations, he met with a group that included the Union Safety Chairman and they came to a consensus that the change had not caused any safety concerns. Swiatkiewicz said there had been no safety issue on night turn since the change was implemented in October 2006. On cross examination, he denied that an employee had injured himself in a fall during the night turn. Larry Sampsell, Manager of Labor Relations and Security, said there had been no agreement to preserve any of the Bethlehem local working conditions. Moreover, he said there is no written agreement appropriately signed that created a crew size local working condition for Batch Anneal, and there was never an oral agreement to that effect. Sampsell also said no bargaining unit employee had invoked the safety relief provision of the contract.

Positions of the Parties

The Union argues that it is unsafe and unreasonable to expect one floorman to cover both batteries on the night turn. The two batteries are not in proximity to each other and making one employee responsible for both takes him outside his circle of control. The Union says lots of things can go wrong, and it is merely fortuitous that no one has been injured so far. The Union

also emphasizes the understanding reached in LOP negotiations that the Company would maintain 8 floormen and would have one assigned to each battery on each turn.

The Company argues that once it purchased the Bethlehem assets, ISG started with a "clean slate," without being hindered by Bethlehem local working conditions. It denies there is any contracting out in the case and says the Company has never contended that the Union would share in the liability for any accident. The Company says there is no merit to the Union's safety argument; it was safe to monitor one battery, and there is no additional risk involved in monitoring two. The Company also reminds me that I cannot add to the contract, which it says would be the effect of a ruling that the Company must maintain a floorman on each battery during the night turn.

Findings and Discussion

Some of the contract provisions cited by the Union have no application to this case. Article 3-O says the Union is not liable for work-related injuries, which the Company does not dispute. Article 2-F-1-a, also known as the Guiding Principle or the basic prohibition, regulates the Company's ability to contract out work. But there is no evidence in this case that the Company has replaced a bargaining unit employee with a contractor or is otherwise using a contractor to perform work bargaining unit employees can do. Hartman testified that managers have sometimes done bargaining unit work, but that is subject to limitations not found in the contracting out language, and is not an issue in this arbitration. And, even if management should not have done the work, that would have no impact on whether the Company must schedule two floormen on the night turn. The Union did not seriously pursue the theory that the Company violated the partnership language in Article 6-a-5, although the Company asserts that most of the

steps were inapplicable and the Union acknowledged that it did have advance notice of this plan. Finally, Appendix B, Paragraph 2 applies to new or restructured jobs, not to manning or scheduling issues.

The Union actually relies on two arguments. First, it says assigning one employee to cover both batteries creates a safety hazard and, second, that the Company agreed to maintain 12 employees in the sequence, and to assign a floorman on each turn. The safety argument is not persuasive. The actual monitoring and adjustment of the furnaces creates the same risks, whether the floorman is assigned to one or two batteries; the kind of work does not differ, although there obviously is more of it. It could be, as a Union witness testified, that monitoring two batteries will increase the likelihood of a breakdown or other operations problems because employees obviously cannot be in two places at once. But there is no evidence that such occurrences subject employees to more hazardous conditions. The new manning arrangement might also cause production problems or inefficiencies, but the Company is entitled to evaluate the financial risk and to decide on the level it is willing to incur.

This is not to say there are no safety concerns. The floorman has to travel several hundred yards to go from one battery to another, and there is always the possibility of a fall. The floorman has a scooter to make the trip, which apparently works most of the time, although a Union witness said credibly that when it fails, fixing it is not a maintenance priority. Employees might also get hurt on the batteries themselves. But these are the kinds of risks that were already inherent in the operation, especially since the Union witnesses said the two floormen sometimes traveled from one battery to the other to help out. In addition, the employees now have radios, which makes it possible for them to call for help, something they could not have done if they had gotten injured outside the office when there was a floorman on each battery. The other floorman

might have discovered an injured coworker, but there was no testimony that they were always aware of each other's position or the work they were doing. I am not persuaded, then, that calling someone outside the area for help creates a more significant hazard. Thus, I reject the Union's argument that Article 3-B prevents the Company from scheduling only one floorman for the 11 p.m. to 7:00 a.m. turn.

The Union also contends that the Company must continue to schedule a floorman on each battery during midnight turns because it agreed to do so during negotiations in 2003. Thus, the Union argues that scheduling two floormen on night turn is a local working condition and there has been no change warranting its elimination, as specified in Article 5-A-4. The Company points principally to Article 5-A-6, which says, "As of the Effective Date, all future Local Working Conditions must be reduced to writing and signed by the Plant Manager and the Local Union President/Unit Chair." No signed writing exists that obligates the Company to schedule a floorman on both batteries. Union Exhibit 3, mentioned above, was created in February 2006 and was not the product of negotiation. Rather, it was generated by the Company as part of a survey undertaken by a management employee. The Union does not contend otherwise, although it says the document actually shows what the parties had agreed to almost three years earlier. The Company argues, then, that there can be no local working condition that restricts its ability to schedule only one floorman on the night turn.

In testimony, a Union witness contended that Bethlehem had scheduled two floormen and that this practice carried over to ISG and, later, Mittal. The carry-over of local working conditions has been an issue in at least one previous case. In Mittal No. 8, I addressed the Union's claim that a work-assignment local working condition had survived the combination of

ISG and Ispat Inland that created Mittal Steel USA. The Union's claim was based in part on language identical to Article 5-A-1 in the instant case, which reads as follows:

> The term local working condition as used in this Section means specific practices or customs which reflect detailed applications of matters within the scope of wages, hours of work or other conditions of employment, including 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 a matter of local nature only, or to state specifically in this Agreement which of these matters shall be changed or eliminated (Change or Changed). The provisions set forth below provide general principles and procedures which explain the status of these matters and furnish necessary guideposts. Any arbitration under this Section shall be handled on a case-by-case basis on principles of reasonableness and equity.

In Mittal Award No. 8, I noted the reference to the existence of oral local working conditions in Article 5-A-1, and contrasted it to the language in Article 5-A-6, which requires that "future" local working conditions be written and signed by the Plant Manager and the Local Union President. The inference, I said, was that some local working conditions survived, although not the one at issue in that case.

In Mittal No. 8, my conclusion that some local working conditions survived was influenced not merely by Article 5-A-1; rather, I placed principal reliance on language from a side letter between David McCall, the Union's District Director, and Thomas Wood, Vice President for Labor Relations. Their agreement, titled "The Adaptation of the ISG Collective Bargaining Agreement to Ispat Inland," was dated October 30, 2005, and said, in relevant part:

> Existing local working conditions which are inconsistent with the implementation of the work restructuring effort will be eliminated or modified as appropriate in order to implement the new seniority structures. Those local working conditions unaffected by the foregoing will be preserved.

This language – especially the last sentence – makes it clear that at least some of the local working conditions that bound Ispat Inland and the Union were preserved; indeed, the language would not have made sense if all local working conditions had been eliminated. In Mittal Award

No. 8, I had understood the testimony to mean that there was a similar provision in the Agreement at issue in this arbitration. However, that understanding was in error; there is no comparable language, meaning that the principal rationale for Mittal No. 8 is not a factor in this case.

In Mittal No. 8 there was no question that the practice at issue had been a protected local working condition at Ispat Inland, and had been recognized as such by a previous arbitration decision. Here, the parties dispute whether there had ever been a local working condition requiring the Company to schedule two floormen on the midnight turn. Sampsell said there had never been an agreement between the Union and Bethlehem about manning requirements in Batch Anneal, which the Union did not rebut. Bethlehem scheduled two floormen on the night turn, but that decision would not necessarily have resulted in a crew size local working condition.[1] Although the Union said there had been a practice of using two floormen when Bethlehem owned the plant, it did not really argue that the provisions of Article 5-A-1 required recognition of that practice as a local working condition. Instead, in response to my questioning to clarify the issue, the Union said the requirement to use two floormen on the night turn was a product of the parties' agreement in negotiations over the LOPs. This was also the focus of the Union's closing argument. The issue, then, is whether the parties made an enforceable agreement to staff the batteries with two floormen on the night shift.

The parties agree that there were discussions about the LOPs when ISG took over the plant. In part, at least, the parties discussed how they would reduce the workforce by 52 employees. During those talks, Union President Fortunato said the Company agreed to keep 12

[1] There were some variations in basic steel about the kinds of practices that were protected local working conditions under the pre-ISG language. Inland Steel, for example, sometimes protected jurisdictional rights to work for non-craft employees that may not have been recognized elsewhere. There is no evidence that the Bethlehem Umpire had ever found that protected crew sizes existed for non-craft employees.

employees in the Batch Anneal LOP, which included use of two floormen on the night turn. He acknowledged that there is no signed agreement concerning how many employees would work on each turn in Batch Anneal. Sampsell said there had never been *any* agreement about manning numbers, either with Bethlehem or with ISG. However, it makes sense to believe that in order to determine where cuts would be made to reduce the workforce, the parties discussed how many employees would work in each area.

The Union has not pointed to anything in the Agreement itself that recognizes a minimum crew size for Batch Anneal, or that requires the Company to use two floormen on the night turn. Instead, the Union's contention is that this obligation was assumed during the negotiations. As such, it would amount to a local agreement, which, as Article 5-A-1 makes clear, is included within the term local working condition. I understand the Union's contention that during the negotiations the Company promised to use two floormen on the night turn going forward. Union Exhibit 3 is not a written agreement between the parties as contemplated by Article 5-A-6, and even if it were, it is not properly signed. It does, however, seem to reflect the parties' understanding about how Batch Anneal would be staffed. But even if this understanding was intended to be a local agreement, I cannot order the Company to comply with a local agreement made during the 2003 negotiations unless it is written and signed by the Plant Manager and the Local Union President, as set forth in Article 5-A-6. That is not the case here. Therefore, the grievance must be denied.

AWARD

The grievance is denied.

Terry A. Bethel
November 29, 2007