Terence A. Bethel, Arbitrator

P.O. Box 2208
Bloomington , IN 47402

Phone 812-824-2047
Fax 812-824-2057
Law School 812-855-3892
Email Bethel@Indiana.edu

January 12, 2010

Tim Kinach
ArcelorMittal Steel
3210 Watling St.
East Chicago, IN 46312

Bill Carey
USW
1301 Texas Street
Gary, IN 46402

Gentlemen:

This is in response to the Union's letter of December 30, 2009, asking for clarification of Award 33, and to reopen the hearing because of changes in the scope of the work. I have read the Company's January 6, 2010 response, which asserts that no clarification is needed; the Company interprets the Award to mean that it can have the contractor finish the work and then pay the bargaining unit for every hour spent by the contractor.

I disagree with the Company's contention that no clarification of the Award is necessary. I acknowledge that part of the remedy the Union requested included returning the mandrel to the shop and having bargaining unit employees finish the work, and that the award does not address that issue. It is fair to observe, however, that the principal thrust at the hearing was the appropriateness of a special remedy for the Company's willful violation, which was the focus of my decision. By the time I finished the case my assumption was that the work was completed, especially given the Company's reason for contracting out the work – that the circumstances demanded that the work be performed quickly. The remedial language in the Award was worded to take account of that belief, and was also influenced by a comment the Company made in its opening statement. In that statement, the Company said the typical settlement was to pay employees at straight time for the number of hours worked by the contractor. This was followed by the assertion that, "The Company will go ahead with payment to the Union." When I wrote

the opinion, I assumed that the work was completed and that such payments had probably already been made, which is why I added the words, "if it has not already done so."

The remedy language was not intended to suggest that the Company was free to have additional work performed by the contractor after receipt of the Award. Such action clearly conflicts with my finding that the Company had committed a willful violation by sending the work outside. It would, in effect, simply have preserved the status quo, which is what prompted the arbitration to start with. Had I realized the work had not been completed, I would have ordered the Company to return it to the bargaining unit for completion. I understand the Company's contention there may be complications caused by having had the contractor do the strip and advise work and having the bargaining unit make the necessary repairs. But that is one of the consequences of the contract violation. In addition, I recognize that having the bargaining unit do the work will preclude a warranty from the contractor. But the contract does not create an exception on that basis and, as I observed in the original opinion, I do not have the authority to create one. I understand the language on Warranty Work in Article 2-F-2-c to except work that is done by a contractor pursuant to a warranty, but not to permit contracting out in order to obtain a warranty. This is consistent with how such language was interpreted under prior versions of the contracting out language.

For the reasons outlined above, I now clarify the Award to order the Company to return the unfinished mandrel to the bargaining unit for completion. I assume this clarification makes it unnecessary to determine whether there has been a substantial change in the scope of the work. Absent a settlement between the parties, the work will not be performed by the contractor.

Very truly yours,

Terry A. Bethel

cc: Patrick Parker
William Nugent
Dennis Shattuck