In the matter of the Arbitration)
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Between:)
)
ArcelorMittal USA)
) Layoff Minimization Plan
and)
)
United Steelworkers of America) Cleveland Plant
Local 979)

The Company's Cleveland Plant was among the nation's steel-producing facilities forced to curtail operations in response to the drastic drop in customer orders resulting from the recession which began in the fall of 2008. In effect at the time was the 4-year Basic Labor Agreement commencing on 1 September 2008. It is an Agreement which pledges the parties to a partnership approach in dealing with workplace issues. The pledge and its various requirements are contained in Article Six, titled "Joint Efforts". Neither party is saying that the other failed to live up to its obligations under Article Six. At issue is the involuntary layoff of some 300 bargaining-unit employees, announced and resorted to by Management in December 2008, in implementation of the provisions of Section A of Article Eight of the Agreement. The case's time-span coverage is through the end of the first quarter of 2009. Slightly fewer than 300 bargaining-unit employees were on involuntary layoff until late

February; about 350 were on involuntary layoff through the first three weeks of March; about 325 were on involuntary layoff in the last week of March; the higher numbers of bargaining-unit employees on involuntary layoff were accompanied by lower numbers of bargaining-unit employees on voluntary layoff; and the highest combined number for both groups ever reached in the quarter was 478.

Section A of Article Eight is titled "Employment Security" and contains five subsections. For an understanding of the arbitrator's function in a case of this sort, it is best to quote all of Section A. The Section reads as follows:

> "1. Objective
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> The parties agree that it is in their mutual interest to provide all Employees, with at least three (3) years of Continuous Service, with the opportunity for at least forty (40) hours of pay each week.
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> 2. Layoff Minimization Plan
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> The Company agrees that, prior to implementing any layoffs, it shall review and discuss with the Union:
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> a. documentation of a clear and compelling business need for the layoffs (Need);
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> b. the impact of the layoffs on the bargaining unit, including the number of Employees to be laid off and the duration of the layoffs (Impact); and

c. a Layoff Minimization Plan which shall contain at least the following elements:

(1) a reduction in the use of Outside Entities;

(2) the elimination of the purchase or use of semi-finished and hot-rolled steel from outside vendors that can be reasonably produced by the Company;

(3) the minimization of the use of overtime;

(4) a program of voluntary layoffs;

(5) the use of productive alternate work assignments to reduce the number of layoffs; and

(6) a meaningful program of shared sacrifice by management, including senior management.

3. Employee Protections

Reference to elements of a Layoff Minimization Plan in Paragraph 2 above shall not be construed to impair in any way any protection afforded to Employees under other provisions of this Agreement.

4. Union Response

The Union shall be provided with sufficient information to reach its own judgment on whether there is a Need, the appropriate Impact and to develop its own proposed Layoff Minimization Plan.

5. Dispute Resolution

a. In the event the parties cannot reach agreement on whether there is a Need, the appropriate Impact and the terms of a Layoff Minimization Plan, the Company may implement its plan and the Union may submit their dispute to an expedited final offer arbitration

under procedures to be developed by the parties. If the Company lays off Employees in violation of this Article, such Employees shall be made whole.

b. The arbitrator's ruling shall address whether the Company demonstrated a Need and if it did, whose proposed Impact and Layoff Minimization Plan are more reasonable, given all the circumstances and the objectives of the parties."

Both parties refer to the Layoff Minimization Plan appearing in these provisions as the LMP. And each of them has submitted an LMP for the determination to be made pursuant to subsection 5-b -- the last of the quoted provisions. The Company's LMP was made up of the above-mentioned approximately 300 bargaining-unit employees placed on involuntary layoff together with approximately 150 bargaining-unit employees who went on voluntary layoff. The succeeding discussion lumps them and refers to them as the 450 employees or the 450 laid-off employees (deleting "approximately" and "bargaining-unit"). The Union's LMP called for the reduction in the Company's $25 million obligation to contribute to VEBA as of 1 March 2009 by $5 million. VEBA stands for Voluntary Employee Beneficiary Association; it is a collectively-bargained trust wholly funded by the Company; and it provides medical benefits for former bargaining-unit employees in retirement.

I have used the past tense in identifying the parties' respective LMPs because the months addressed by the LMPs lie in the past. It was manifestly the intention of those who wrote subsection 5-a that the extent of the parties' disagreement would be known before the Company put the terms of its LMP into effect and that the arbitration provided for in the subsection would take place promptly upon that implementation. The parties apparently had not been able to develop the governing arbitral procedures by the time the hearings in the present case took place. Neither party, however, is saying that the delay should operate to invalidate the present proceeding. Further, both parties confirm that the reference to "final offer arbitration" is to be taken as requiring the arbitrator to choose one or the other of the LMPs and to do so without in any way undertaking to modify the terms of either LMP.

The case was argued with great thoroughness and produced a voluminous record. I distill the record to a case-framework statement confined to the elements which I view: 1) to be factually established on the evidence in the case, and 2) to be of immediate materiality in applying the mandate of subsection 5-b to

select the LMP which is "more reasonable, given all the circumstances and the objectives of the parties." The statement is as follows:

- Basic to the case is the fact that the recession which began in the fall of 2008 and lasted through much of 2009 affected the nation's steel industry to an extent unmatched since the Great Depression of the 1930s. The Cleveland Plant was not spared. Its orders, billings and income went down to an approximate 50-percent level relative to the then-recent times; its two Blast Furnaces were shut down, respectively in September and October 2008; and its steel mills were correspondingly shut down or brought to sporadic operations. The plant was beset by economic conditions of crisis proportions.

- Management squarely lived up to its obligation to proceed in partnership fashion. It refrained from precipitous actions; it recurringly furnished Union representatives with data and developments through presentations in conference settings, as well as through telephonic updates; and the Plant Manager was in virtually constant touch with the Local's President, as was the corporate Vice President for Labor Relations with the Union's District Director. There was no holding back on the sharing of pertinent information.

- Management believed that prompt and substantial cost-saving measures were needed to stem the tide. The Union believed that the chances were good that the recession would be short-lived, and it saw Management as overreacting.

- Among the proposals made by Management, and stressed by it via reiteration, was that the plant should go to 32-hour workweeks. The proposal included the non-payment of production bonuses and the payment of Job Class 1 for all bargaining-unit employees. Including these conditions, the adoption of the 32-hour proposal would have produced a cost saving of nearly $10 million in the first quarter of 2009 relative to status-quo assumptions for that quarter. With or without the conditions, the adoption of the 32-hour proposal required the Union's consent. Management would have been free on its own initiative to put bargaining-unit employees with less than three years of service on 32-hour workweeks. But this category of employees was small -- numbering about 10 percent of the plant's bargaining-unit force -- and it seems clear that it would have been highly impractical to place these employees on 32-hour workweeks while retaining the rest of the bargaining-unit force on 40-hour workweeks. Neither side ever raised for consideration going to 32-hour workweeks for the plant as a whole

without one or the other or both of the conditions. The Union steadfastly rejected the 32-hour proposal, and it did so on the grounds that most of the bargaining-unit employees, entitled to UC and SUB, would financially fare better being laid off than working 32-hour weeks. The Union also told Management to go by "the book" for the proper course of action -- meaning that the Agreement's seniority regulations anticipated layoffs but not 32-hour workweeks.

- The so-called WARN Act is a piece of federal legislation requiring 60-day notice as a condition of laying off 500 or more employees. The Cleveland Plant is a facility covered by the legislation. Management made the decision that the need for prompt action was such that 60 days should not be permitted to go by without cost-reduction action. The resulting proposal -- the non-delayed layoff of 450 employees -- was a matter of making certain that the plant would be in compliance with the WARN Act. The cost saving (by the given yardstick for the first quarter of 2009) was about $4.5 million -- translated to about $5 million by frequent reference in the record.

- Management's LMP proposal was outlined in a discussion, in early December 2008, between the Plant Manager and the Local's President. The Local's President, upon conferring by phone with the Union's District

Director, transmitted to the Plant Manager the $5 million reduction in the VEBA contribution as the Union's counterproposal and asked the Plant Manager to submit the counterproposal to the Company's CEO for his reaction. The latter turned it down. There followed some exchanges between the parties as to whether the reduction offered in the Union's counterproposal was to be taken as a mere deferral in the making of the contribution or as a full forgiveness of $5 million in the Company's obligation toward the fund. The Union ultimately made it clear that it intended the latter. Management nonetheless rejected the Union's counterproposal as inadequate and therewith commenced the layoffs embodied in its LMP proposal.*

- The Union's counterproposal was submitted to the Company in written form on 30 March 2009. The document defines the "Need" as a need to reduce labor costs by $5 million in the first quarter of 2009, and it offers two alternative means by which to achieve that objective. By the first alternative, there would have been: the layoff of 24 percent of both the bargaining-unit force and the salaried force, the elimination of the Production Bonus for bargaining-unit employees

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* The Union understood the proposal to include the elimination of the Production Bonus for all remaining bargaining-unit employees. But this was subsequently dealt with so as to make it clear that the elimination of the Production Bonus would apply to non-operating units only. As the case was ultimately argued, there is no importance in this matter.

in non-operating units, and a 5-percent cut in wages for salaried employees. The second alternative was: "The reduction of the Company's obligation to contribute $25 million to the VEBA on or before March 1, 2009 by $5 million."

- This was the Union's proposed LMP at the beginning of the first day of the arbitration hearings. But, following the parties' initial presentations at that hearing, the Union granted that the proposal in reality constituted two proposals, and the Union therewith withdrew the first alternative. Thus, the Union's proposed LMP as it is here to be considered is the second alternative -- as just quoted, with the understanding through the parties' discussions that "reduction" is meant to be applied in the sense of forgiveness.

- Substantively (the Union is saying that it was in some respects belatedly informed), items (1) through (6) of subsection 2-c were complied with. There is no need to provide the particulars because the fulfillment is acknowledged by the Union. But it is to be said, given the special importance of shared sacrifices in a partnership approach, that Management is heavily in fulfillment with respect to item (6).

I dispose of two preliminary matters before turning to the selection of either the Company's LMP or the Union's LMP as the more reasonable one.

The first has to do with what I regard as rejectable procedural niceties in the context of an arbitration proceeding which is new to the parties and for which they have yet to develop the ground rules. There is, on the one hand, the Company's assertion that the change in the Union's LMP away from the alternatives makes the Union's LMP fatally flawed and requires the rejection of it on this basis alone. And there is, on the other hand, the Union's assertion that Management failed in its obligation fully to discuss with the Union all the elements involved in subsection 2 prior to putting its LMP into effect -- something which would have to be dealt with if the evidence were not as clear as it here is that Management was constantly engaged in the fullest sort of information sharing with the Union.

The other preliminary matter concerns subsection 2-a. I read the Union's post-hearing brief as not contesting the Company's showing as to Need (again speaking substantively). But the present Opinion should not go forward without explicit confirmation on that point. Given the fact of the extent of the deteriorated economic conditions, it cannot be concluded that the layoff of 450

employees at the Cleveland Plant was something other than "a clear and compelling business need".

Based on what follows, I have concluded that the Company's LMP is to be upheld as the more reasonable one.

First, I think it is to be kept in mind that the LMP first proposed by the Company was the best for all concerned and was turned down by the Union on grounds which cannot be squared with the notion of shared sacrifices in times of dire need. The Union did not point to the two conditions in turning down the 32-hour proposal (and I think it is correctly assumed that something would have been done about either or both had the Union otherwise been receptive to the 32-hour proposal). Rather, as shown, the Union turned the 32-hour proposal down on narrow financial grounds allowing pain-free layoffs relative to 32-hour workweeks for some while preserving 40-hour workweeks for others. In times past, this would have been accepted as the expectable calculation by a bargaining agent vis-a-vis his constituents. But the time here involved was late 2008.

It was a time of the worst sort of economic conditions bearing down on the plant as well as a time at which the governing Agreement called for partnership approaches and the series of countermeasures embodied in Section A of Article Eight. I think it is clear that going to 32-hour workweeks would have been the optimal LMP: it would have constituted uniform sacrifice for all in the bargaining unit; it would have produced high cost savings; and it would have yielded a workforce to be kept intact rather than a workforce to be taken apart and left for subsequent rebuilding. The loss of a day's pay per week over many weeks in the life of working people is substantial and is not to be belittled. But it is not a a pay cut, for the loss is accompanied by a day of rest or play. And, by the various considerations spelling the superiority of 32-hour workweeks for all over layoffs for some, coupled with Management's implementation of the steps directed of subsection 2-c, the Union's turndown on the narrow financial grounds is to be viewed as anachronistic in the light of the parties' aims under Articles Six and Eight of the Agreement. I view this as relevant in applying the equation of subsection 5-b.

Second, I see nothing in the Company's LMP which would warrant faultfinding. To the contrary, by all that has been presented in the case, the Company's LMP is to be affirmatively supported as in

accord with the Agreement: the Company did not seek to resort to involuntary layoffs until justifiably giving up on its 32-hour proposal and in effect being told by the Union to take the layoff route; in terms of keeping the Union constantly and fully advised of pertinent developments, the Company acted as a good partner should act; at least substantively, the Company did what it is supposed to do on all six of the factors prescribed at subsection 2-c; though true that the number of employees placed on layoff was dictated by the WARN Act, it is also true that the number was wholly consistent with the contractual Need standard; and the Company did not try to have it both ways by promptly going ahead with the WARN-Act allowance while also giving notice to proceed with more extensive layoffs in 60 days.

Third, if the Union's LMP had meant a cost saving at least as large as did the Company's LMP, there would manifestly be every temptation to make the Union's LMP the prevailing one. Presented would be a cost reduction of about $5 million in each LMP together with zero involuntary layoffs in the one LMP versus about 300 involuntary layoffs in the other. But this is not the correct view of the Union's LMP. The

reason is: that the size of the Company's contribution to VEBA funding is geared to the size of the contractually promised benefits, that the Union's LMP does not include an offer to reduce those benefits, and that accounting principles require the assumption that the promised benefits will be available in the four years to which the Agreement applies. Thus yielded by the Union's LMP is the equivalent of an influx of cash permitting borrowing at a reduced rate of interest. It would certainly have been a helpful measure. But it would have been a measure producing a cost reduction confined to the interest advantage and thus to an annual cost reduction of only a fraction (about 2½ percent) of $5 million. The Union seeks to overcome this by pointing to the facts: 1) that the $5 million reduction in the Company's contribution to VEBA funding would have produced a $5 million reduction in the Company's cash requirements, and 2) that, in the various briefings which preceded the formulations of the LMPs, the Company repeatedly referred to cash conservation as among its pressing needs -- even to the point of creating the slogan of "the 3 C's -- Cash, Customers and Costs". I view it as an erroneous argument. The Company's LMP produced an approximately $5 million reduction both in cash requirements and in costs. And in the context of the Need showing here made, the reduction in both

elements was clearly superior to a $5 million reduction in cash requirements together with the fractional reduction in costs. It cannot be doubted that costs had to be brought down as urgently as cash had to be conserved.

D E C I S I O N

The Opinion defines the two LMPs here presented in application of Section A of Article Eight of the Agreement. For the reasons given in the Opinion, the Company's LMP is upheld as the more reasonable one.

Rolf Valtin
Arbitrator

Dated: 7 June 2010