In the Matter of Arbitration	)	
Between:	)	
ArcelorMittal USA Cleveland Plant	)	
and	)	Grievances 0142, 0143, 0144 and 0145
United Steelworkers of America Local 979	)	

Each of these grievances is directed to one or another of the four Production Bonus Plans which cover the plant's Primary, Hot Strip Mill, Finishing, and Hot Dip Galvanize operations. (Production Bonus Plans are also known as Incentive Plans.) The protest in each instance is against the non-payment of the 10-percent bonus payable under each Plan for scheduled work hours at times when the particular unit is not in operation. The parties are agreed that the issue for decision is one and the same in all four instances.

The context in which the case arose is once more the recession which began in the fall of 2008, lasted through much of 2009, and severely affected the American steel industry. The prior case is the recently decided case involving the parties' respective Layoff Minimization Plans (essentially

for the first quarter of 2009) at the Cleveland Plant. The decision for that case provides a series of facts relating to the recession's impact on the Cleveland Plant, including that the plant's "two Blast Furnaces were shut down" and that "its steel mills were correspondingly shut down or brought to sporadic operations".

Each of the present grievances is concerned with the situation in which the employees were paid the production bonuses they earned when their unit was in operation and then (with an exception about to be identified) were paid zero bonus, and thus were paid their base rate, when their unit was shut down. For the most part, this situation began in December 2008 and lasted until the fall of 2009. Some of the Finishing operations were retained until April 2009. In the succeeding approximately five months, all of the plant's production units were shut down.

In those months, the plant's bargaining-unit force was substantially on layoff. The plant was kept "warm" in this period by a skeleton force numbering about 200 employees (or about 15 percent of the overall size of the bargaining unit). In the preceding approximately four months (December 2008-April 2009), the layoffs were typically in the 400s -- so as to leave some 70 percent of the bargaining-unit employees at work. Some of these employees manned the retained

Finishing operations. The rest of them were assigned to various chores at various plant locations, apparently including locations in the employee's home unit. They are the employees in the given situation -- i.e., the employees who went from incentive pay at various percentages while their unit was in operation to pay with zero bonus and thus at their base rate when their unit was shut down.

The above-mentioned exception occurred over five successive weeks in November and December 2008 at the Primary unit. In those weeks, the unit was no longer in operation but the unit's employees were uniformly paid the 10-percent bonus (and thereafter were uniformly reduced to the base rate).

In contending that the employees in the given situation should have been paid the 10-percent bonus, the Union relies on a statement in each of the four Production Bonus Plans together with Management's obligation under Section B of Article Nine of the Basic Labor Agreement to keep established incentive plans intact -- it being an acknowledged fact that none of the "new or changed conditions" there specified as warranting Plan modification here occurred.

The precise phraseology covering the 10-percent bonus varies among the four Plans. But the crucial terms on which the Union relies are found in each of them -- and to be recalled is that the Company is in agreement with the Union as to issue sameness. The statement I am selecting is from Joint Exhibit 4 and reads as follows:

> "A fixed 10% Bonus Percentage is applied to all Tandem and/or Temper Mill Scheduled Non-Production Crew Hours for the week."

The Union is saying that the hours for which the employees in the given situation were not paid the 10-percent bonus were scheduled non-production hours and that Management's failure to apply the 10-percent bonus constituted a prohibited unilateral Plan change. The Agreement language on which the Union relies is subsection 2 of the given Section and Article. It reads as follows:

> "The Company shall establish new incentive plans to cover newly created jobs. The Company shall also modify existing incentive plans where new or changed conditions resulting from mechanical improvements made by the Company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards impact the earnings opportunity provided under an existing incentive plan. In all other circumstances, existing incentive plans shall remain unchanged. Such plans shall be installed within ninety (90) days of an Employee being assigned to work on a new or modified job." (Emphasis supplied to permit focus on the Union's position in the case.)

I do not believe that the Union is making a sound claim. It is indeed to be granted: that the 10-percent bonus arrangement embodied in the quoted excerpt is an inherent part of the Plan; that the arrangement becomes operative when the employees covered by the Plan are engaged in scheduled non-production work; that the non-payment of the 10-percent bonus when the arrangement is operative would constitute a Plan modification; and that this in turn, given the absence of any of the conditions warranting a Plan modification identified at the quoted subsection, would constitute an Agreement violation to be remedied by the retroactive bonus payments the Union is asking for. The question in the case, however, is whether the 10-percent bonus arrangement <u>was</u> operative in the given circumstances. I do not believe that the question can reasonably be answered in the affirmative.

The Union's position as to applicability flows from making the hours put in by the employees in the given situation "Scheduled Non-Production Crew Hours". Literally speaking, there is no difficulty in this: the employees in the given situation were scheduled for work and the work they were scheduled for was non-production work. By any reasonable regard for

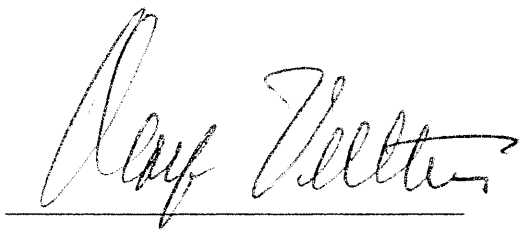
context, however, the employees in the given situation were not in the status of employees scheduled for or engaged in the Plan-contemplated work calling for the application of the 10-percent bonus. That work arises when there is a pause -- a temporary halting -- in the operation of one of these units. Such pauses occur in connection with outages and repair turns. And there may be other exigencies of short duration in which the 10-percent bonus arrangement would reasonably be seen as operative. But it would be the height of an artificiality to view the facts in the present case as having generated any such pause. What happened, rather, was that a sharp curtailment in orders brought unit shutdowns for months. The duration of the shutdowns per unit varied, but they were all shutdowns of substantial and indefinite duration. The proper view of the Plans in that circumstance is that they were in a state of deactivation. The fact that unit employees were for a time kept at work rather than be laid off cannot serve to adopt the view that the Plans were in active status -- and thus to arrive at a holding that the 10-percent bonus arrangement was operative and that its non-application was a Plan modification barred under the Agreement. Important to recognize is that the Union is not saying that the work to which the employees in the given situation were put was so designed to improve the efficiency

of the unit's operation, and thus to reduce the incidence or duration of the usual down times, that the 10-percent bonus should fairly have been paid. The Union is not pointing to any particular pieces of work. It is flatly saying that the 10-percent bonus arrangement was operative and should have been applied to all hours worked by the employees in the given situation. I overrule it as a misplaced claim.

The Union makes two further arguments. One is that the 10-percent bonus arrangement should be seen as among the imaginative forms of payment produced by the parties' partnership approaches under the Agreement and should be respected as such rather than be treated skeptically. I think it would be stretching things to conclude that the parties' partnership tenets extend to the point at which the 10-percent bonus arrangement would become operative in the shutdown circumstances here presented. The other argument concerns the fact the 10-percent bonus <u>was</u> paid for five weeks at the Primary unit after its shutdown. I am not prepared to give this the significance either of a practice governing all the other shutdown weeks or of a showing that Management itself understood that the 10-percent bonus was payable and arbitrarily issued an edict terminating the payments. I accept that Management briefly entertained the hope of a speedy recovery and then gave up in the light of realistically assessed facts.

D E C I S I O N

The grievances are denied.



Rolf Valtin
Arbitrator

Dated: 30 June 2010