ARBITRATOR'S AWARD

In the Matter of the Arbitration
Between

United Steelworkers of America, Local Union 1011

and

ArcelorMittal, USA, Indiana Harbor West,
East Chicago, Illinois

October 25, 2010

David A. Dilts
Arbitrator

APPEARANCES:

For the Union:

Bill Carey, Staff Representative
John Dec
John Cargill
David Dombrowski
Terry Schuster

For the Company:

Tim Kinach, Labor Relations Manager
Mike Heaney
Ray Higgenbottom
Frank Ingala

Hearings in the above cited matter were conducted on Friday, October 22, 2010 at the Company's offices located at 3210 Watling Street, East Chicago, Indiana. The parties stipulated that the present matter is properly before this Arbitrator pursuant to Article 2, Section F, paragraph 7 of their 2008 Collective Bargaining Agreement. The record in this case was closed upon completion of the hearings on October 22, 2010.

ISSUE

Did the Company violate the 2008 Collective Bargaining Agreement when they sent out of the plant for repair butterfly valves used at the 84 Inch Hot Strip Mill? If so, what shall be the remedy?

BACKGROUND

On June 15, 2010 Local 1011 of the United Steelworkers (herein the Union) invoked the arbitration process described in Article 2, Section F of the 2008 Collective Bargaining Agreement concerning their grievance over the contracting out of the repair of butterfly valves in the 84 inch Hot Mill.

The ArcelorMittal, USA (herein the Company or Employer) purchased the assets of LTV Steel Company at Indiana Harbor West in 2002. Since the purchase of the facility, the Company has contracted out the work of repairing butterfly valve in the 84 inch Hot Mill. During the time frame from 2005 through 2010 (5 years and approximately 9 months) the Company has had 69 ten inch valves repaired and 29 twelve inch valves repaired by Corrosion Fluid Products Corporation, a distributor of Flowserve products who manufactures the subject butterfly valves. In 2009 and 2010 only 6 ten inch valves per year were sent out of the plant for repairs. In 2009 only one twelve inch valve was sent out of the plant for repair. So far in 2010 there have been 5 twelve inch valves sent to Corrosion Fluid Products.

The Union claims this is a continuing contract violation, and that they filed the grievance

to recapture work which was rightfully theirs under the Collective Bargaining Agreement. The Company argues that the Union has sat on their rights and that the Union was attempting to reestablish the shops that helped bankrupt LTV. The Company denied the grievance, and its subsequent appeals.

UNION'S POSITION

The Union contends that the Company has violated the Collective Bargaining Agreement. The Union asserts that the Company has not claimed that this work meets one of the *exceptions* in Article Two, Section F (Bargaining Unit Work). Therefore, the only issue to be decided is if the bargaining unit is capable in terms of skill and ability to perform the work.

The butterfly valves at issue are part of a water cooling system that sits over the runout tables of the hot strip mill. Valves are opened and closed to cool the hot band strip as it leaves the mill and heads for the coiler where it is wrapped into a coil of steel.

The butterfly valve assembly consists of two parts: the butterfly valve and an actuator. The actuator is a pneumatic devise controlled by an electronic solenoid that opens and closes the valve. The butterfly valve has a disc in it that opens or closes to control the flow of water.

Union witnesses testified that they had over 30 years of mechanical experience repairing steel mill equipment. They testified that when the plant was operated by LTV they repaired the butterfly valves at issue. They also testified that they repaired actuators like the ones used on the butterfly valves at issue.

Union witnesses testified that they regularly repair Beck actuators which are similar to the

Gainsbury actuator used on the butterfly valves. It is the nature of a mill mechanic or electrician's job to encounter new parts and equipment and using their skills as craftsmen study the part, read the repair manual, download information, trouble shoot the equipment and order necessary parts and effect the repair.

The number of hours of overtime worked at the plant since 2008 has declined as a result of the recession. When the Company contracts out work, the overtime once enjoyed by the bargaining unit has disappeared.

Bargaining unit members have the skills and ability to perform the repairs at issue. Steel industry arbitrators have ruled that employees are deemed capable, as that terms is used here, even if a short period of training is necessary to reacquaint or refresh the employees on the job. Arbitrators have ruled that a week is not an unreasonable amount of time to learn a new job and several weeks would not be unreasonable to become proficient.

The Collective Bargaining Agreement makes clear that the parties are committed to provide training so that the bargaining unit can accomplish these sorts of jobs. Further, the Company, which manufactures these valves, advertises on their website that they have training courses for these valves.

The Company has advanced two arguments. First, they have said there was not the necessary space to repair the valves at the mill. This is not true. Second, they claimed that extensive machining was necessary to repair the valves, this too is a gross exaggeration.

The only question before the Arbitrator is whether the employees are capable of repairing the butterfly valves. They have the requisite skills and abilities, therefore the answer should be yea. The grievance should be granted with the relief sought.

The Union is asking for a cease and desist order and a make whole remedy for all monies lost due to the violation.

COMPANY'S POSITION

The Union bears the burden of proof in this matter, and the Company contends that the preponderance of evidence does not support the Union's position in this case.

Since the startup of this facility in 2002, the Company has consistently contracted out the repair of the butterfly valve assemblies. The essence of the Company's position is two fold. It is the Company's position that the bargaining unit personnel are not capable of doing this work, and given all of the circumstances, could not become capable of doing this valve assembly repair work. In terms of the definition of capability, the Company's position is that capability has in it the implication that a worker is capable only if there is an expectation that he/she can efficiently perform the task and such repair work is effective and would not create additional delays on the production mill by repair failures.

The second part of the Company's position is that the contractor has proprietary equipment which permits more efficient and accurate diagnosis of defects and problems with the butterfly valves. It is not feasible for the Company to acquire this test equipment under the circumstances.

The Company believes that the subject repair work, butterfly valve assemblies, represents a very unique and very narrow issue. Also, while the Company has not taken the position in this case that the grievance is improperly before the Arbitrator, it is troubling that it took years for the

Union to file this grievance protesting this contracting out. After years of contracting out this work, if the Union believed it was capable of doing this work why was there no grievance filed until now?

The butterfly valve repair work is of very small volume. There is virtually no impact on the job security of the maintenance force at the 84 inch mill. There has been no one laid off as a result of this contracting out of the butterfly valve repair work.

The Company's witnesses were credible. The two managers who testified provided evidence concerning the way things had been done at LTV, and why the changes instituted by the Company were necessary. There was also testimony concerning the nature of this repair work and why it was contracted out. The third witness was from the contractor who repairs these valves. This testimony demonstrates the technical expertise necessary and what the proprietary equipments makes the contractor capable of in trouble shooting and diagnosing problems with the valves.

It is clear from the preponderance of the evidence in this case that the Company lacks the equipment necessary to do this job. Further, the low volume of this work makes training impractical. Training does not enhance capabilities, when there is a need to train several persons who may not see any of this work for months or even years hence losing the knowledge gained through training.

The Company believes this grievance should be denied in its entirety as being without merit. Should, however, the grievance be sustained, *arguendo*, a monetary remedy is not appropriate given that the Union sat on their rights, literally for years, without protesting the Company's contracting out the subject work. Therefore the Company would ask that no

monetary remedy be ordered should the Union somehow prevail.

ARBITRATOR'S OPINION

The case before the Arbitrator involves in the interpretation and application of Article 2, Section F.1.a of the parties' 2008 Collective Bargaining Agreement. This language says (Joint exhibit 1, p. 14):

> 1. Guiding Principle
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> a. The Guiding Principle is that the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and ability) of performing (Bargaining Unit Work), unless the works meets one of the exceptions outlined in Paragraph 2 below.
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The dispute between these parties focuses on how this language applies under the specific facts and circumstances concerning the contracting out of the subject butterfly valves in the 84 inch hot mill. In this case, the facts and circumstances are not is substantial dispute. The parties agreed that the subject work has been contracted out since 2002. The parties also agree that none of the exceptions containing in Article 2, Section F.2 apply in this case.

What the Company based its decision to contract out the butterfly valve repair work on was simply two things: (1) the bargaining unit personnel were not capable of completing the work necessary, and (2) the contractor had proprietary equipment which made it more effective in diagnosing problems with the valves. This Arbitrator's opinion will examine these two

factors, in turn, in the following paragraphs.

Equipment

The contract provides for contracting out if the bargaining unit is not capable of performing the work. What Article 2, Section F.1.a makes clear is that capability is "in terms of skill and ability." This Arbitrator is not persuaded that the second Company contention finds contractual support. Nothing in the language of Article Two's exception is persuasive that the lack of equipment is proper cause for contracting out, under the Guiding Principle negotiated by these parties. In fact, exception 2.b(1), in the last paragraph speaks to this issue:

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> In determining whether a meaningful sustainable economic advantage exists, neither lower wage rates, if any, of the Outside Entity, nor the lack of necessary equipment (unless the purchase, lease or use of such equipment would not be economically feasible) shall be a factor.
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No specific information about the feasibility of the purchase or lease of the testing equipment was entered into this record. Information concerning the cost and replacement of valves and actuators and the number of valves sent for repairs was entered into the record (Union exhibit 5). However, a determination of the economic feasibility of procuring this equipment was not plausible from this record of evidence. Therefore, the plain language, cited above, lays to

rest this Company contention.

What this Arbitrator is left with is determining whether the bargaining unit personnel are capable of performing the subject work.

Bargaining Unit Personnel Capabilities

The testimony of all three of the witnesses who were technicians called to testify concerning the capabilities necessary to repair butterfly valves was that the bargaining unit had the requisite skills and abilities. When quizzed about specific actions necessary to diagnose problems and repair defects, each gave knowledgeable and what appeared to be credible answers.

The Company called Mr. Heaney and Mr. Higginbottom to testify. Both of these Company witnesses were also forthcoming, knowledgeable and appeared to be credible. Mr. Higginbottom is a maintenance manager in the 84 inch mill and Mr. Heaney is the senior maintenance manager. Both of these managers testified, persuasively, that training would be necessary and that because of the low volume of repairs for the butterfly valve they would expect that the technicians who were trained would find that knowledge would erode due to long periods between the use of that knowledge. Erosion of learned knowledge and skills does occur, however, without specific evidence concerning this erosion and how one would expect it to impact these skills sets, little credit can be given to this assertion.

The Company also points to a letter dated September 1, 2008 to David McCall, District 1, United Steelworkers from Dennis Arouca, Vice President Labor Relations, ArcelorMittal, USA, which in pertinent part states (Joint exhibit 1, p. 121):

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2. The parties recognize that certain jobs may require skills which some Employees may not possess. In light of this situation, the Company agrees to provide Employees who do not have the required skills for their jobs with reasonable ongoing training and skill enhancement opportunities to ensure competent job performance.

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The language of this letter is clear and unambiguous, that it is the intent of the Company to provide reasonable training and skill enhancement opportunities to bargaining unit personnel to ensure competent job performance. The question then becomes one of reasonableness. The Union put an award into this record which speaks to the issue of reasonableness of training. Under the United States Steel contract, the Board found that a "week or so" was reasonable in that case (paragraph 49,USS-44, 363). Those facts and circumstances and the contract language differs from this case, however, the reasoning of that Arbitrator is persuasive. This Arbitrator finds nothing in this record to substantiate that any necessary training for employees to be fully capable to do this work would require more than a week or so of training or skill enhancement to do this work. This Arbitrator is persuaded that this is reasonable.

The Arbitrator is cognizant of the fact that the Company fears that this grievance was the first step along a path to reestablish the shop system that contributed to the failure of LTV. However, this Arbitrator is not free to weigh the respective equities of a case as though it were a civil matter. This Arbitrator's authority and jurisdiction is confined to the parties' agreement and

the facts in this case. Given that the general guiding principle is that work of which the bargaining unit is capable will be done by the bargaining unit, and that the training letter of September 2008 obliges the Company to do the necessary training – this Arbitrator has no alternative save to sustain this grievance.

Remedy

This Arbitrator, like the Company, is puzzled by the fact that the Union allowed a continuing grievance to go unfiled for this prolonged period of time (eight years). Arbitrators, when *laches* is not argued, will fashion an award and its attendant remedy on the merits, but in recognition of the laxity in filing the grievance, will generally apply significant and often substantial time limits for remedial awards.[1] In this case, the nearly eight years of tolerance of the contractual violations must weigh heavily in favor of no monetary remedy. For the Company to have been permitted to engage in this behavior for eight years and then be called to question, places strict limits on what remedies may be applied. Arbitration remedies may not be punitive, but must make the victim whole. This Arbitrator is persuaded that the only remedy due in this case, is a cease and desist order and that the Employer assign the subject work to the appropriate members of the bargaining unit. The Employer, if deemed necessary, may also provide appropriate training to members of the bargaining unit for the repair of the subject butterfly valves.

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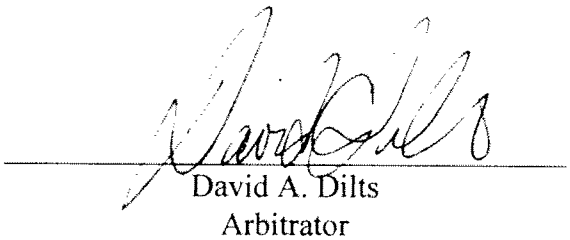
[1] See Elkouri and Elkouri, *How Arbitration Works, sixth edition.* Washington, D.C., Bureau of National Affairs, Inc., 2003, pp. 218-19.

AWARD

The grievance is sustained. The remedy is a cease and desist order requiring the Company to repair the butterfly valves using bargaining unit labor pursuant to Article 2, Section F.1.a of the 2008 Collective Bargaining Agreement. No monetary remedy is due under these facts and circumstances.

At Fort Wayne, Indiana
October 25, 2010



David A. Dilts
Arbitrator