IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Award No. 52
Tandem Mill Crew Size

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1010, USW

OPINION AND AWARD

Introduction

This case from Indiana Harbor Works East, concerns the Company's elimination of a crew size at the 80" Tandem Mill. The case was tried in East Chicago, Indiana on December 9, 2011. Robert Casey represented the Company and Bill Carey presented the Union's case. There are no procedural arbitrability issues. The parties did not agree to a statement of the issue, although both recognize that the ultimate issue is whether the Company had the right to eliminate the established crew size on the tandem mill. Further guidance about the issue can be identified from the parties' stipulations, quoted below. Both parties filed post-hearing briefs, which I received on or about January 14, 2012.

Background

The parties began the hearing by submitting the following stipulations:

The parties agreed that a protected Local Working Condition in the form of a scheduled crew of nine was in existence at the 80" Tandem Mill pre-2005.

> The parties disagree about the effect on this Local Working Condition by (sic) the 2005 agreement.
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> The Company contends that the 2005 CBA eliminated this Local Working Condition at the 80" Tandem Mill. The Union disagrees with that contention.
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> The parties agree that after the effective date of the 2005 CBA through October, 2010, the Company continued to schedule nine employees to operate the 80" Tandem.
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> If it is found that a protected crew size continued after the 2005 agreement, the Company contends that the basis for the existence of the Local Working Condition has Changed making it inappropriate to continue such Local Working Condition and that the Change is reasonable and equitable.
>
> The Union disagrees with that contention also.

The 2005 Agreement had a significant impact on job classifications and assignments. Prior to that time there were hundreds of job classifications, and seniority sequences included discrete jobs to which employees were assigned, which limited the kinds of duties the employees could perform. The 2005 Agreement collapsed that structure into five classifications and five job descriptions. As has been described in other cases, the new structure created boxes into which former occupations were slotted. For example, in the instant case, the pre-2005 structure included, in part, the separate occupations of Head Stand Operator, Back Stand Operator, Middle Stand Operator, and Feeder. Under the seniority sequence structure adopted in 2005, the duties of all four jobs were placed in the Operating Technician, Labor Grade 3 box for the 80" Tandem Mill. Once the employees were trained, the Company had the flexibility to assign any incumbents in the box to perform any of the duties of those jobs. This case arose in November 2010, when the Company began scheduling eight instead of nine employees on the tandem mill.[1]

[1] In addition to the four job titles named in the text, the pre-2005 temper mill also had employees classified as Stocker, Bander, Assistant Operator, and Operator, for a total of eight occupations working on the mill. The nine man crew included two Assistant Operators.

The parties agree that the 2005 amendments were intended to, and did, provide the Company with more flexibility in job assignments. The parties also recognized that some local working conditions (past practices) were inconsistent with the implementation of this new seniority system. Thus, the parties adopted what they refer to as the Wood-McCall letter, Paragraph 5 of which reads:

> Existing local working conditions which are inconsistent with the implementation of the work restructuring efforts 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. Furthermore, work assignments will be made using the concept of self-direction that have been implemented at other ISG locations. Following implementation of the new seniority structures, Article 5, Section A, and Article 5, Section E(2)(b) shall apply.

The references to Article 5 are to the local working conditions language in the Agreement. Although the Company concedes that some local working conditions survived the 2005 Agreement, it says crew size local working conditions did not. Crew sizes, it says, are inconsistent with the implementation of the new seniority structure.

Robert Cayia, former Manager of Labor Relations (now retired) said slotting people into boxes was a "gargantuan task" and spurred lots of questions from operating managers. Although the boxes used former occupations to identify the duties included within the box, Cayia said he told managers that they did not have to schedule an employee for each former job title. If a box included four occupation titles, management could elect to schedule only three employees if they could perform all of the work. Cayia also said he believes the Union knew he was giving this advice. He and his counterpart in the Union, Grievance Chairman Dennis Shattuck, spoke frequently, Cayia said, and he sometimes told Shattuck the advice he had provided to operating managers. He said he told Shattuck managers were asking if they had to schedule employees in the box in which they were slotted, and he told them they only had to schedule the number of

employees they needed. He also said he told the managers they could schedule an employee below a box in which he was slotted. Shattuck did not object to this, Cayia said. He also testified that the Union knew employees could be scheduled below their box because the Union pressed for and achieved a provision that provided an earnings floor no matter where the employee was scheduled.

Cayia explained the Company's position that the 2005 Agreement eliminated crew size local working conditions. The preservation of a crew size, he said, would be the "antithesis" of the new structure. If crew sizes are still protected, Cayia said, then the Company gained very little from the 2005 changes. Cayia did not disagree with Union testimony that the parties never talked about protected crew sizes during the 2005 negotiations. However, Cayia said eliminating such local working conditions was "understood to be a basic tenet of the entire system." Cayia also pointed to the last sentence of the Wood-McCall letter quoted above, which says the local working conditions language in Article 5 will apply once the new structures are implemented. Article V, Section A-5 says no local working conditions will be established or continued if it conflicts with a provision of the Agreement; Section A-6 says future local working conditions must be in writing and signed by the Plant Manager and the Local Union President. These sections, Cayia said, support the Company's claim that crew size local working conditions did not survive the 2005 Agreement and they insure that no crew sizes were established after 2005.

Most of Paragraph 5 of the Wood-McCall letter was not carried over into the 2008 Agreement. Cayia said the Union proposed removing the entire paragraph because the Company had implemented the new structure and the paragraph no longer had any effect. Cayia agreed the language was "moot," and the parties struck all but the sentence about self-directed work

assignments. There were no specific discussions about continuing or maintaining crew sizes during the 2008 negotiations, Cayia said.

Robert Elder is a Manager whose duties include supervision of the 80" Tandem Mill. He reviewed the way the mill was staffed historically and described generally the duties performed by each assignment. The change the Company made, he said, was to stop scheduling an employee as a back stand operator. He said the changes were motivated in part because the back stand operator's duties had been reduced. He said at one time the back stand operator had to apply threading solvent to the coil so the machine would get a firmer grip when the coil was threaded. That work is now done by using a foot pedal that sprays the solution on the coil. Pedals have been installed so employees at other stations on the mill can apply the solution. Elder said when the mill ran with nine employees, the stand operators would relieve each other when they went to lunch. This allowed the mill to keep running. But it also meant there were frequently just eight employees actually working on the tandem mill. Following the crew reduction there was no longer someone to relieve the other crew members, and the mill now shuts down for lunch. Elder said the Company had also installed a new strip steering system, which makes adjustments automatically as needed. He said the employees began operating the steering system in 2008, but it presented a number of problems. There was a lot of down time in 2009 because the system malfunctioned. Elder said the Company continued scheduling nine employees through this period. Employees got more comfortable with the new system and were able to operate it effectively by July or August 2010.

Elder also described a camera that shows the feeder how the strip is loading. This is an improvement over the previous camera, Elder said, because it shows whether the strip is straight as it goes into the guide box. This improvement affected the back stand operator's work,

because the feeder now has a better view. Thus, the pedal allows the machine operator to monitor the spray, and the strip steering system monitors the off-set of the strip, which had previously been done manually by the back stand operator. After these improvements, Elder said, there was no need to schedule a back stand operator. His remaining duties could be performed by the other members of the crew. Elder said even before the change it was not unusual for the mill to run with only eight employees, especially when there were absences or illnesses. The open turn often did not get filled, either because the Company did not want to force overtime, or because forced employees sometimes received emergency phone calls and had to leave. Elder said the elimination of one crew member has not changed the make-up of the Labor Grade 3 box – all of the operators' duties are still performed by employees in the box, although the Company now schedules three employees instead of four.

On cross examination Elder agreed that the automatic steering system can be operated manually, and the feeder does that when necessary. He also said using a dipper or sprayer to add the solvent to the strip took "2 seconds." He said the back stand roll still needs to be changed from time to time, and that it is typically changed by the middle stand operator. The Union pointed to the Statement of the Union Positions in the Step 2 minutes that says: "The Company does not know how much work was eliminated by their supposed changes and no documents or time studies exist to support their contention that sufficient work was eliminated to justify reducing the crew." Elder agreed that the Company did not provide any documents about the amount of work eliminated.

Union Grievance Chairman Dennis Shattuck described a skill-based program introduced at Inland Steel in the early 1980's. The Company created skill-based jobs by combining individual occupations into one, similar to the kind of changes made in the restructuring.

Employees were trained on all the jobs and were paid according to their highest level of training. The Company had scheduling flexibility, as it does under the new structure, Shattuck said, but under that program, crew sizes were not affected. Existing crew sizes stayed in effect and at least one new one was created. Shattuck said crew sizes were not discussed during the 2005 negotiations. The Union understood that crew sizes would no longer be created without a writing signed by the Plant Manager and the Union President. The Union also knew there would be changes to crew sizes where occupations were merged and there were two different crew sizes. But, he said, that would be a change in the underlying circumstances, as provided for in Article 5-A-4.

Shattuck said in the 2005 negotiations the Company proposed the local working conditions language in the USS-USW Agreement. The Union rejected that, Shattuck said, because it believed it gave the Company too much discretion in eliminating local working conditions. Ultimately, the parties agreed to language that Shattuck said required the Company to look at the new circumstances; the Company could modify or eliminate only those local working conditions that stood in the way of implementing the new system. Shattuck agreed that he and Cayia talked about implementing the new system following execution of the 2005 Agreement, although he said most of the discussion occurred in the first month of the Agreement and had very little to do with the issues in this case. Many of the issues they discussed concerned slotting and, Shattuck said, they used protected crew sizes as one way of slotting people. No one said anything about eliminating or reducing the crew sizes. Shattuck identified a Union proposal from the 2005 negotiations in which the Union proposed eliminating Paragraph 5 of the Wood-McCall letter (except for the self-direction sentence). He said the Union wanted the

language removed because keeping it would imply that the Company had a continuing right to modify or eliminate local working conditions.

Shattuck said he had never before heard anyone say, as Cayia did, that without the right to eliminate crew sizes the Company would have gotten "very little" from the 2005 negotiations. The Union believes, he said, that the Company benefitted significantly by having the right to assign any employee in a box to perform any of the functions formerly reserved to particular occupations. Shattuck also said the Company has eliminated other crew sizes since 2005 without protest from the Union because it thought the underlying circumstances warranted the change. Cases like the one at issue here are "rare," he said.

On cross examination Shattuck denied being present when Cayia told a manager he could assign fewer people if a smaller crew could do the work. He also said there was never any discussion of crew sizes being "inherently affected" by the new structure. Shattuck said he could not say that the 80" tandem mill runs better with a crew of nine than with a crew of eight. He agreed that if crew sizes were eliminated under the Wood-McCall letter in the 2005 Agreement, then removing that language from the 2008 Agreement would not have mattered to this case.

The Union also called Michael Bridgeman, Head Stand Operator on the 80" Temper Mill. Prior to the foot pedals, the back stand operator used a dipper to put solvent on the head end. He did this twice on each coil. Using the pedal takes about the same amount of time, Bridgeman said. The automatic strip steer became operational in 2010. Before then, the back stand operator would watch the strip and if necessary, make adjustments by shifting the feed rail mandrels, which took only a "split second." The strip steer system now makes adjustments, but someone still has to watch the strip, Bridgeman said. Also, the strip steer system sometimes does not handle the problem and manual adjustments are required. Bridgeman said with only three

operators, the crew still has to watch all of the things four operators watched, with the middle stand operators typically doing what the back stand operators did. Bridgeman agreed that the new feeder camera is a "big help," but he said it gives only a top view of the coil and someone still has to see what is happening underneath. The back stand operator used to do that, he said, but now it is the middle stand operator's responsibility.

Bridgeman reviewed a list of 17 back stand operator duties that he said are still performed by other crew members. For the first nine duties listed, the Company says the back stand operator's duties have been affected by automation, including the installation of a better camera above the strip as it goes into the stand. The Company says the camera allows the feeder to monitor the strip, although Bridgeman said the feeder sometimes cannot see areas that have to be watched. The remaining eight duties, the Company says, are infrequently performed and were handled by reassignment to others on the crew. On cross examination, Bridgeman agreed that he can perform all of the jobs in the Labor Grade 3 box, although he said some employees slotted into that box have not been trained on all of the functions. He also agreed that the mill can run with eight people and that the new camera is "helpful." Bridgeman said the spray pedals and the automatic steering system had reduced the quantity of work, but that there was still work for the back stand operator to do. He also said even before the crew change, if the back stand operator was absent, the middle stand operator would perform his duties. The Union also called Ernie Barrientez, Griever for No. 3 Cold Strip, who said he had not previously heard the Company say it sometimes ran the temper mill with eight employees to avoid forcing overtime. He said the Company forced overtime prior to the reduction and continues to do so. On cross examination he said he had heard that forced employees sometimes received emergency phone calls and had to leave work.

The Company recalled Bob Cayia on rebuttal. He said the skill-based occupations did not survive the 2005 Agreement. They were "unwound" and the duties were put in boxes in the new structure. He also called attention to language in the 2005 Agreement under the heading "Understanding Concerning Lines of Progression, Seniority Units, and Departments at Ispat Inland Indiana Harbor Works and the Minorca Mine." In relevant part the section says:

> A. Objective
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> Workplace procedures and productivity initiatives under this Agreement will be consistent with the ISG pattern and will be adapted for the Ispat Inland bargaining units through collective bargaining. Workplace reductions associated with productivity initiatives will be through attrition.

Cayia said there were no crew sizes or work rules at ISG, and the objective was to replicate that system as closely as possible. He said the Company understood the 2005 restructuring to mean that it would have a lesser number of people performing the work. This would not only increase flexibility, but it would also reduce idle time, which had existed under the old system. Cayia reiterated his belief that the changed structure includes an inherent right to use fewer people. Cayia agreed that the Company had sought language in the Wood-McCall letter that was closer to the USS-USW model, and that the Company believed it would have allowed the elimination of more local working conditions. However, he said the test under the agreed-to language is whether a local working condition is "inconsistent" with implementation of the restructuring, and that crew size local working conditions did not survive that test. He also said the Union's claim that a crew size could not be eliminated because the basis for the condition had not been affected sounded like the Union was trying to apply the old local working language rather than the test of inconsistency.

On cross examination Cayia agreed that the local working condition language in Article 5, Section A-4 says a local working condition can be eliminated "if the basis for the existence of

the local working condition has changed." But he said that differed from the language that was in the Inland agreements. Cayia also agreed that there were some similarities between the skill-based job concept at Inland and the current structure. But he said the primary benefit to management under the skill-based system was the ability to use fewer people to do the body of work, which is why everyone was paid the same wage.[2]

Positions of the Parties

The Company's principal argument is that crew size local working conditions were eliminated under the 2005 Agreement. The Company relies on Paragraph 5 of the Wood-McCall letter and contends that mandatory crew sizes are "inconsistent with the work restructuring efforts." Under the Ispat Inland job structure, the Company was required to assign an employee to each of eight different job titles, and employees could not be assigned to two of the jobs. In the 2005 restructuring, all of the duties of the head stand operator, the middle stand operator, the back stand operator and the feeder were put into one box, and any of those duties could be given to any employee assigned to the box. The issue in this case, the Company says, is whether it is still required to assign four employees to perform those duties. The Company notes that none of the duties associated with the four jobs has been transferred to other boxes or other LOPs. The Company recognizes that Mittal Award No. 8 rejected its contention that the 2005 Agreement permitted the Company to eliminate any local working conditions that it deemed inefficient. But that is not the argument it makes in this case, the Company says; rather, the Company argues that

[2] The Company also called Tony Pacilio, Division Manager of the East Foundry, who testified in detail about the financial crisis that began in the last quarter of 2008 and, even though there has been some improvement, continues to affect the industry today. I am not indifferent to those facts. Anyone involved in the steel industry – even people as tangential as arbitrators – understands the significant impact of the recession on the companies and their employees. But I did not find the testimony to be relevant to the question of whether the parties terminated crew sizes in 2005, or whether the basis of the crew size had changed.

the crew size local working condition in the 80" temper mill was eliminated because it was inconsistent with the restructuring efforts of the 2005 Agreement.

The Company distinguishes the skill-based job concept at Ispat Inland, which combined job duties, but retained crew sizes. At that time, the Company points out, the crew sizes could only have been eliminated by agreement, or by satisfying the more restrictive tests under the pre-2005 local working conditions language. But the test under the 2005 Agreement was whether the local working conditions were inconsistent with the implementation of the new job structure. That test is clearly satisfied here, the Company says. The new structure was intended to simplify the assignment of work by giving the Company the flexibility to assign employees to job tasks that formerly could be performed only by employees in a specific occupation. The restructuring eliminated those barriers, and allowed the Company to assign the duties of those jobs to any employee in the box. But that flexibility would be undermined if the Company has to continue scheduling four employees to perform work that can reasonably be completed by only three. The Company says continuing the local working condition would deprive it of the FTE savings that the grouping of job duties allowed, and would effectively give employees the right to "do a narrow body of work exclusive of the other employees in the box" (quoting ArcelorMittal No. 22).

In the alternative, the Company argues that if the crew size local working condition survived the 2005 Agreement, then it was appropriately eliminated by the Company in November 2010 because the basis for the local working condition had changed, thus making it inappropriate to continue scheduling nine employees. The Company points to Elder's testimony that the Company installed a new camera that gave the feeder a better view of the coil, and the automated strip steering guide system; these improvements, taken together, eliminated much of

the back stand operator's duties. The back stand operator, the Company says, would "largely be reduced to simply 'observing' that the feeder has done his job correctly…." The Company also points out that the nine man crew operated continuously, with the ninth employee providing lunch relief, meaning that the mill ran with only eight employees for about half the turn. But lunch relief is no longer necessary because the employees now shut down the mill and take lunch together. The Company also contends that the change to an eight man crew was both reasonable and equitable, as required by Article 5, Section A-4.

The Company denies that it waited too long to implement the eight man crew, as the Union argues, and says the removal of most of Paragraph 5 of the Wood-McCall letter in the 2008 Agreement had no effect on the decision. The local working condition at issue was eliminated by the 2005 language, and there was no need to declare what had and had not survived Paragraph 5 when the parties eliminated it in 2008. Nor could continuing to schedule a nine man crew until 2010 have created a new local working condition, the Company says, noting that any new local working conditions had to be in writing and signed by the appropriate persons.

The Union denies that it agreed to eliminate crew sizes, pointing to testimony from both Shattuck and Cayia that the parties did not even discuss crew sizes in the 2005 negotiations. The parties are skilled negotiators, the Union says, and if they had intended to eliminate crew sizes in the 2005 Agreement, they would have said so. Nor can the Company argue that the parties "understood" crew sizes had been eliminated, given the history of skill-based jobs, which, like the ISG pattern adopted in 2005, allowed employees to perform a variety of job duties. The Company says the parties took "a very conservative approach," and eliminated only those local working condition that were a barrier to implementation of the new seniority system. The

Company implemented the new system in the temper mill and continued to operate with the same crew size for five years. Thus, the Union says there was no inconsistency between the new system and the crew size.

The Union says Cayia himself testified that the 2005 Agreement allowed it to eliminate many protected crew sizes and he said the Company had achieved significant productivity increases by eliminating many jobs. The Union has protested some job cuts, but the Union cites Shattuck's testimony that others were not pursued because they had no merit. Cayia also testified that the 2005 Agreement combined eleven mechanical crafts into one and five electrical crafts into one, which eliminated jurisdictional restrictions and scheduling practices for particular crafts. But the Union says if a crew was merely reclassified and slotted into new labor grades, the crew size continued. The basis of the crew size was workload, the Union says, and in the instant case the Company did nothing to decrease the amount of work for the crew. The new seniority structure itself, the Union says, did not affect the amount of work for the crew.

The Union also says the Company exaggerates the effect of the 2005 Agreement. The Union notes Mittal Award No. 8, which held that the Wood-McCall letter did not allow "the Company to change or eliminate any local working condition it deems inefficient." In addition, Mittal Award No. 11 recognized that the intent of giving the Company more flexibility in assignment " does not necessarily mean the Company's freedom is unbounded or that any local working condition limiting its ability to assign employees is inconsistent." The Union says the Wood-McCall letter was intended to deal with potential conflicts between local working conditions and the work restructuring efforts. It eliminated existing overtime agreements in newly merged LOPs, as well as crew sizes in sequences that were merged with other sequences. The Union also says that when the parties agreed to remove most of Paragraph 5 of the Wood-

McCall letter in 2008, they recognized that the implementation of the new seniority system was complete. Yet the Company had not disturbed the crew size at the 80" tandem mill.

The Union also denies there have been changes that would warrant eliminating the crew size under the "changed basis" test of Article 5-A-d. The Union says the basis for the crew size was work load and the employees on the tandem mill said the same amount of work remains, only now there are fewer people to do it. It was the amount of work, not the seniority system or the job classification system, that led to crew sizes. The Union says the Company has not produced any evidence that the work load has reduced. The testimony involved saving a couple of seconds with the new spray pedal. Moreover, the Company did not furnish any information to the Union in the grievance process about a reduction in the workload. The Union also dismisses the Company's claim that it has routinely operated the mill with only eight employees. The Union cites a Youngstown Sheet and Tube case that says a local working condition assignment pattern cannot be changed simply because it is possible to do the same amount of work with fewer employees.

Findings and Discussion

The Company's principal claim is the crew size at the 80" tandem mill was eliminated by Paragraph 5 of the Wood-McCall letter in the 2005 Agreement. The Company acknowledges that there was no discussion about crew sizes, or about the effect of the new structure on crew sizes during those negotiations. Rather, Cayia said he thought the elimination of crew sizes was understood and he said without that understanding the Company would have realized "very little" from the new structure.

Although the Company's brief says his testimony was more limited, Cayia testified that he believed crew sizes themselves – not just the one at the 80" temper mill – were inconsistent with the restructuring, and that it was understood they were eliminated. Obviously, crew sizes require the Company to assign a set number of employees, which limits its ability to increase efficiency by reducing the work force. But I have already observed in other cases that the 2005 restructuring and the Agreement's language about flexibility and efficiency did not give the Company unlimited authority to change the way work is assigned. That does not mean every crew size survived the 2005 Agreement. Even Shattuck agreed that the Company had reduced some crew sizes without complaint from the Union. The Company presented evidence that it had reduced a crew size on the pickle line at about the same time as the reduction at issue in this case. There is some confusion in the record about whether the Union challenged this action. The Company's brief notes correctly that at the hearing I questioned whether a reduction elsewhere was relevant to the reduction in the temper mill. But the Company's brief says the relevance is to show that the Company has acted consistently with its understanding of what it achieved in 2005; namely, when job duties were combined in one box, "eventually fewer employees could perform the same amount of work...."

I agree that the pickle line reduction is relevant to the Company's claim about how it understood 2005 Agreement's effect on crew sizes. But other evidence is also relevant, including the fact that the Company continued to operate the temper mill with nine employees for five years after it agreed to Paragraph 5 of the Wood-McCall letter, just as it had done for many years prior to 2005. And it did so despite the fact that the Company knew it could have operated with eight employees, as it had done during lunch relief for as much as half of the hours of a nine-man-crew shift. The Company also knew there had been times when it could not (or

did not) fill an open turn and elected to operate with eight employees and a common lunch period, which is exactly what it is doing now. The Company, then, would have had a basis for believing that it could operate the mill efficiently with only eight employees.

If the 2005 Agreement had the effect the Company claims, it could have changed the crew size as early as November 13, 2005. However, it continued to operate with nine employees for five years, including the period beginning in late 2008 when the entire industry was reeling from the sudden reduction in demand, and steel producers, including ArcelorMittal, were struggling to cut costs. Had the Company actually believed that crew size local working conditions had disappeared in 2005, it is hard to understand why it continued to pay nine employees for work it knew could be performed by only eight. This suggests that the Company did not really believe in 2005 that the Wood-McCall letter had eliminated the crew size in the temper mill. And not only did the Company not act on the crew size during the term of the 2005 Agreement, during the 2008 negotiations the parties agreed to remove the language the Company relies on from Paragraph 5 because, Cayia said, it was "moot," meaning that the restructuring was complete. The Company says the language was no longer important because the crew size had already been eliminated, and it was not required to make a list of local working conditions that did not survive the Wood-McCall letter. But the objective evidence does not support that claim. Whatever Company negotiators might have been thinking, nothing in their conduct during the negotiation of either the 2005 or the 2008 Agreements, or in the interval between the Agreements, indicated that the parties understood the tandem mill crew size was no longer in effect. [3]

[3] The Company also pointed out that the Union proposed a red circle rate to protect employees who were slotted into assignments with a lower pay rate. The parties adopted the proposal which the Company says indicates that the Union understood employees could be scheduled in lower boxes. But I thought Shattuck was credible when he testified that the proposal was his idea and that it was intended to protect

This conclusion about what the parties understood is not contradicted by Cayia's testimony that he told Shattuck he had advised managers they could evaluate how many people they needed to schedule once the new structure was put into place. Shattuck denied there had been much, if any, conversation about such changes, but even if there was, Cayia's advice was accurate; in areas not affected by crew sizes, the Company would be able to reduce the number of employees it assigned. The Union obviously knew this could be one of the effects of combining job duties into one box. It also knew that the old structure required the Company to schedule employees on jobs that involved idle time, and prevented the Company from eliminating employees whose duties did not take a full shift because it could not assign their duties to other employees in the sequence. In areas without crew sizes the Company presumably took advantage of its new-found flexibility by assigning duties within a box and scheduling fewer employees to perform them.

This also responds, in part, to Cayia's claim that without the right to terminate crew sizes the Company would have received very little from the restructuring. Even putting aside the Company's ability to assign work in a box without regard to traditional occupations, the Company still realized benefits from the restructuring. Shattuck testified without rebuttal that the Union had not contested most crew size reductions because they involved facts that were inconsistent with the new system, as in cases in which separate crews were merged. Also, there may have been other cases like Mittal Award No. 8, which allowed the Company to reassign the indexing of rail cars in the north rail dump, an action that had been explicitly rejected under the old seniority system in Inland Award No. 992. The Company also benefitted from the combination of craft jobs and the reduction of jurisdictional disputes. I also find relevance in

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employees who worked in a skill-based job, which paid at the highest level of training. Some of those employees would otherwise have lost money when they were slotted into jobs under the new structure.

Ispat Inland's history of skill-based jobs. I agree with the Company's argument that during the time those jobs existed, the pre-2005 local working conditions language would have made it more difficult for the Company to eliminate crew sizes. But even so, the Company agreed to the concept, presumably in part to achieve the scheduling flexibility it offered. This suggests that assignment flexibility is of value to the Company even if limited by crew sizes.

The Company's inaction also bears on its argument that the crew size was inconsistent with the restructuring. Again, it is hard to see why the Company would have waited five years to implement the change if the crew size was an impediment to implementing the new structure. There is no explanation for the Company's delay, other than its claim that the workload decreased as a result of improvements, which allowed the Company to decrease the size of the crew. In the first place, as I will discuss below, the reduction in workload does not appear to have been substantial. But even if it was, the principal improvement the Company cites is the strip steer system, which was not fully operational until late in 2010, which was *after* the inconsistency test had been stricken from the Agreement. And equally important is the fact that the Company already knew it could operate with 8 employees even before the improvements.

The Company says, in part, that the crew size is inconsistent with the new structure because, if the crew size is still in effect, the Company will have to continue scheduling nine employees as it did prior to 2005, and that each employee would (quoting Mittal No. 22), "have the right to do a narrow body of work exclusive of the other employees in the box." If that were true, then the crew size obviously would be inconsistent with the restructuring, which was intended to dramatically reduce the number of jobs and give the Company assignment flexibility it did not have when there were hundreds of jobs with specific job descriptions. But nothing about a crew size requires the Company to maintain the old structure. The Company has the

flexibility to assign the duties in the box to any of the employees slotted there, and none of them can claim they have an exclusive right to perform any part of the work.

I find that the 2005 Agreement and the Wood-McCall letter did not terminate all crew sizes and, in particular, it did not eliminate the nine man crew on the 80" temper mill. Nor was continuation of that crew inconsistent with the new structure. In some cases, like when old sequences were being combined, the Company might not have been able to implement the new structure if it was required to retain the same crew sizes that existed before the combination. But nothing about the temper mill crew prohibited the Company from reducing the number of job titles and job descriptions to those identified in the 2005 Agreement, or from slotting employees into the boxes and assigning them any work they were able to perform. The Company's real inconsistency claim is that absent a crew size it could make more changes that would allow it to be even more efficient. But the Company's ability to operate at prime efficiency has no doubt always been limited by local working conditions and other contract provisions that protect employees. The 2005 Agreement was intended to eliminate some of those restrictions, but not all of them. The Wood-McCall letter, in fact, recognized that some local working conditions would remain, and nothing in either the letter or the evidence convinces me the parties understood the survivors would be limited to such practices as wash-up time.

The issue then becomes whether the basis for the crew size had changed, thus allowing the Company to reduce the crew in November 2010. The understanding at ArcelorMittal predecessors – particularly Ispat Inland – was that the Union has the burden of establishing a crew size, but the Company must prove circumstances exist that justify its elimination. The Company focuses principally on a diminution of work for the back stand operator, although as explained below, that view is too narrow. Even so, I cannot accept the Company's argument that

the work of the back stand operator was reduced to "nil." Elder acknowledged that the spray pedal saved only a couple of seconds. The real innovation was the ability to place pedals so other members of the crew could reach them. But the work is still performed and, as Elder agreed, without any significant time savings. The record supports the conclusion that the installation of a better camera in 2007-2008 allowed the feeder to observe areas that had previously been monitored by the back stand operator. Bridgeman said the new camera was a "big help" but that someone (formerly the back stand operator) still had to watch the underside of the strip. The middle stand operator now does this. The other innovation the Company claims is the strip steering system, which eliminated the need for the back stand operator to spend as much time monitoring the strip, although Union witness Bridgeman said the strip must still be monitored visually. He also said the three remaining operators still watch all of the same things the crew watched when the Company scheduled four Labor Grade 3 employees.

I am not persuaded that the improvements cited by the Company have reduced the workload significantly. The issue in the case is not simply whether the Company has reduced the work of the back stand operator. There *is* no back stand operator in the sense of a separate job with defined duties. Rather, the back stand operator was one of four Labor Grade 3 employees who could be assigned to any duty performed by the former job titles contained in the box. The question, then, is not whether the back stand operator's work has diminished but, rather, whether the work performed by employees in that box has been reduced enough to justify eliminating the crew size. I cannot find any significant diminution from the installation of foot pedals or the camera that allows the feeder more flexibility in monitoring the strip. I also note that these improvements were made in the 2007-08 time period. Steel industry arbitrators have

sometimes considered the timing of changes in determining whether a change in workload or automation was related to the basis for the local working condition.

The Company points out that the automatic strip steering system was installed in 2007 but did not work consistently until mid to late summer, 2010. That innovation does seem to have had an effect on the work load, although Bridgeman testified that the strip sometimes still needs a manual adjustment, and, importantly, that even before the strip steering system, manual adjustments took only a "split second." This may understate the time spent on manual adjustments in order to minimize the time saved by the new system, but even so, the record does not convince me that the volume of work has diminished enough to warrant eliminating a crew member. In addition, the Company did not deny the Union's claim that in the grievance procedure the Company said it did not have information or time studies to say how much work the changes had saved.

The Company says, however, that the work is being performed with no effect on quality or efficiency by an eight man crew. The Union cites USS-5873-S, where the Board of Arbitration recited the general understanding in the industry that crew sizes cannot be changed just because it is physically possible to do the work with fewer employees. One might question whether the full force of that principle can survive under future collective bargaining agreements that stress the need for efficiency. But that question is simply another way of asking whether protected local working conditions should be continued under the new structure, an issue the parties presumably will address in future negotiations.

On the record in this case, I find that the parties did not eliminate the 80" temper mill crew size either expressly or implicitly and, in fact, the Company's actions between 2005 and

2010 suggested that it believed the crew size had not been affected.[4] In these circumstances, I will sustain the grievance and order the Company to reinstate a nine man crew. The Union asks for make whole relief, including an equitable payment to the remaining crew members who performed the work after the crew was reduced. The Union cites a 1963 Pittsburgh Steel case which imposed such a remedy. I have read that case, but I do not believe that kind of remedy is warranted in the instant case. As is typically true, the parties did not submit evidence about the remedy issue, something they are usually able to work out once the need for a make-whole remedy becomes known. Thus, I will remand the case to the parties to calculate a make-whole remedy for the affected employees. I will retain jurisdiction for 90 days to resolve any issue concerning calculation or implementation of the remedy.

AWARD

The grievance is sustained. The Company is ordered to reinstate a nine-man crew on the 80" temper mill, and to provide make-whole relief as explained in the last paragraph of the Findings.

s/*Terry A. Bethel*
Terry A. Bethel
March 19, 2012

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[4] The Company relies, in part, on a provision appended to and part of the Agreement, headed Understanding Concerning Lines of Progression, Seniority Units, and Departments at Ispat Inland Indiana Harbor Works and the Minorca mine. Section A, headed "Objective," reads as follows:

> Workplace procedures and productivity initiatives under this Agreement will be consistent with the ISG pattern and will be adapted for the Ispat Inland bargaining units through collective bargaining. Workforce reductions associated with productivity initiatives will be through attrition.

This is relevant, the Company claims, because ISG did not have crew sizes. The Union argues it is inappropriate for me to consider this language because it was not revealed in the grievance procedure or prior to arbitration, as the contract requires. But I would not be influenced by the language in any event. I have already found that the parties did not eliminate – or even discuss – protected crew sizes in 2005 or in 2008. Whatever the language is intended to mean, there has been no elimination of crew sizes by collective bargaining.