DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration between	)	Arbitrator's Opinion and Award
ArcelorMittal	)	Grievance CR-09-015
and	)	Award Issued: July 19, 2012
United Steelworkers Local Union 1011	)	Case 57

Subject: Workplace Procedures – Local Working Conditions – Pay Practice

Appearances of Representatives:

Tim Kinach
On behalf of the Company

Bill Carey
On behalf of the Union

This grievance from Finishing West at Indiana Harbor Works charges that the Company improperly eliminated an enforceable local working condition according Grievants the right to be paid their incumbent rate even when regressed to lower-rated jobs. Violations of Article Five, Sections A and J of the September 1, 2008 Basic Labor Agreement are alleged.

Article Five, Sections A and J of the 2008 Basic Labor Agreement provide, respectively, as follows:

ARTICLE FIVE – WORKPLACE PROCEDURES

Section A. Local Working Conditions

1. Local Working Conditions

   The term Local Working Conditions as used in this Section means specific practices or customs which reflect detailed applications of matters within the scope of wages, hours of work or other conditions of employment, including local agreements, written or oral, on such matters. It is recognized that it is impracticable to set forth in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in this Agreement which of these matters should be changed or eliminated (Change or Changed). The provisions set forth below provide general principles and procedures which explain the status of these matters and furnish necessary guideposts. Any arbitration arising under this Section shall be handled on a case-by-case basis on principles of reasonableness and equity.

2. Deprivation of Benefits

   In no case shall Local Working Conditions deprive an Employee of rights under this Agreement and the conditions shall be Changed to provide the benefits established by this Agreement.

3. Benefits in Excess

   Should there be any Local Working Conditions in effect which provide benefits that are in excess of, or in addition to, but not in conflict with benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are Changed in accordance with Paragraph 4 below.

4. Right to Change

The Company shall have the right to Change any Local Working Condition if the basis for the existence of the Local Working Condition is Changed, thereby making it inappropriate to continue such Local Working Condition; provided, however, that the Change shall be reasonable and equitable.

5. Modification of Agreement

No Local Working Condition shall be established or continued which conflicts with any provision of this Agreement.

6. Additional Requirements

As of the Effective Date, all future Local Working Conditions must be reduced to writing and signed by the Plant Manager and the Local Union President/Unit Chair.

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Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

The Union asserts that Finishing West employees were advised by Management in the Spring and Summer of 2002 that they would be paid their incumbent rate regardless of the job they were scheduled to perform or actually performed, and that Grievants enjoyed the benefit of this pay practice for years until Management improperly eliminated the practice in or about the Fall of 2008. The Union recalls that International Steel Group (ISG) Management representatives responsible for the start-up of Finishing West operations beginning in the Summer of 2002, under the terms of an April 2002 Interim Agreement reached between ISG and the Union after ISG purchased the plant assets from LTV Steel which had filed for bankruptcy and shut the plant down in December 2001, assured returning Finishing West employees they would be paid the wage rate associated with their assigned job category (i.e., Mill Operation, Service, or Labor) for any and all

work they performed even on lower-rated jobs. The Union also recalls that these employees were then in fact paid as such from their respective hire dates through and after the December 15, 2002 effective date of the first formal ISG/USW Basic Labor Agreement at the plant. The Union contends that Management's assurances to Finishing West employees in the Spring and Summer of 2002 and its consistent adherence to the practice of paying Grievants their incumbent rate even when scheduled to perform a lower-rated job gave rise to a protected local working condition by December 15, 2002. The Union denies that this pay practice for Finishing West employees was effected by the implementation of the 2002 ISG/USW Basic Labor Agreement or that this pay practice was properly eliminated under the current ArcelorMittal/USW Basic Labor Agreement dated September 1, 2008. The Union insists Management cannot now eliminate this local working condition based on changes which first occurred with the 2002 Basic Labor Agreement since Management continued to honor this pay practice for many years thereafter. And, while the Union does not contest that Management may have had a right to temporarily suspend its compliance with this pay practice due to the significant recession-related changes in economic circumstances in the Fall of 2008 which adversely affected the rate of production, the Union urges that Management is obligated to honor and comply with this local working condition once the normal rate of production is restored. In addition to witness testimony and exhibits the Union offered a number of arbitration awards in support of its position. The Union seeks to have this grievance sustained, with the pay practice being confirmed and Grievants being made whole based on the parties' determination of when the normal rate of production was restored.

The Union presented four witnesses in arbitration. The Union witnesses testified that when Finishing West employees were returned to the plant by ISG and went through orientation in the Spring and Summer of 2002 the employees were told of the new job categories and the pay rates associated with the Mill Operation, Service and Labor categories, and they were told they would be assigned to one of these job categories and would receive the associated rate even when they were required to perform lower-rated work. It was explained that this pay practice accorded Management increased flexibility in assigning work among the available employees while at the same time this pay practice enhanced employee morale. It was said employees in the department were paid in accordance with this pay practice as production ramped-up from June 2002 to December 2002, and that the employees continued to be paid in accordance with this pay practice subsequent to the December 15, 2002 effective date of the ISG/USW Basic Labor Agreement which implemented a detailed seniority structure and new lines of progression and formal job descriptions and five Labor Grades. It was acknowledged that this pay practice was never reduced to writing and signed by the Plant Manager and Local Union President/Unit Chair.

The Company maintains that this pay practice for Finishing West employees is not an enforceable local working condition, and that even if this practice was determined to have been a local working condition under the 2008 Basic Labor Agreement it was appropriately eliminated at the time in view of the substantially changed economic circumstances and drastically reduced production levels. The Company agrees that Finishing West operations under ISG started-up in or about June 2002, and that the ISG/USW Basic Labor Agreement became effective December 15, 2002 and the successor ArcelorMittal/USW Basic Labor Agreement became effective September

1, 2008. The Company views the period of June 2002 to December 2002 as having been a ramp-up period from a cold start to full production where Management wanted maximum flexibility and needed to accommodate the constraints of what was referred to as a primitive payroll system. Although the Company does not deny that Grievants were paid basically as the Union described from 2002 through most of 2008, the Company disputes that this pay practice could have attained the status of a protected local working condition between June 2002 and December 15, 2002, and it disputes that any such unwritten local working condition which was inconsistent with or in conflict with the detailed seniority and job description and wage rate provisions of the 2002 and 2008 Basic Labor Agreements could be enforceable. The Company observes, too, that both Basic Labor Agreements provide for reasonable and equitable changes to a local working condition if the basis for its existence changes and makes it inappropriate to continue, and that the Basic Labor Agreements further provide all future local working conditions must be reduced to writing and signed by the Plant Manager and Local Union President/Unit Chair. The Company offered a number of arbitration awards as well as witness testimony and exhibits in support of its position. The Company requests this grievance be denied.

The Company presented two witnesses at the hearing. One witness testified with regard to economic and business conditions and the other witness testified with regard to the pay practice. The Union objected to the Company offering testimony on the pay practice issue since the Company had not presented this testimony in the grievance procedure. After the arbitrator determined the parties did not want to take this case back into a lower step of the grievance procedure for further factual development the arbitrator ultimately allowed this testimony into the record pursuant to the Company's representation that it was offering this testimony only as rebuttal to Union witness testimony earlier in the hearing. According to the first Company witness plant production was at normal levels from the end of 2002 into 2008, and then there was a dramatic drop in production at the end of the 3rd Quarter of 2008. It was noted that after the 4th Quarter of 2008 only one of five Blast Furnaces was running for a period of time and the plant experienced an unprecedented number of layoffs. It was said the plant still has not recovered completely and that production levels remain somewhat depressed. The second Company witness stated that he attended the Finishing West employee orientation sessions in 2002 and he recalled there were no formal job descriptions or lines of progression at the time. He also noted that, in contrast to the former LTV payroll system which could calculate employees' pay by the hour and job classification, the ISG payroll system was very basic; the use of the employees' respective Mill Operation, Service or Labor rates for all work they performed in 2002 accommodated the limits of the payroll system and accorded Management needed flexibility in making work assignments during this cold start and ramp-up period.

FINDINGS

At issue is whether the Company violated an enforceable local working condition when it paid Finishing West employees regressed to lower-rated jobs the wage rate associated with such lower-rated job rather than the wage rate associated with their incumbent job.

It was established on this record that ISG Management at Indiana Harbor told Finishing West employees during orientation sessions in the Spring and Summer of 2002 that they would be assigned to one of three job categories with an associated wage rate and that they would then be paid this wage rate even when they were scheduled to perform work on lower-rated jobs. It was also established that these employees were paid in accordance with this practice before and after the December 15, 2002 effective date of the initial ISG/USW Basic Labor Agreement. The dispute between the parties here is whether this pay practice constitutes an enforceable local working condition under Article Five, Section A of the September 1, 2008 ArcelorMittal/USW Basic Labor Agreement.

Assuming for purposes of this opinion that the Finishing West pay practice could have become a local working condition in the relatively brief period between the Summer of 2002 and the December 15, 2002 effective date of the 2002 Basic Labor Agreement, while these employees were working at the plant under an Interim Agreement not shown to have included a local working condition provision, it is determined that this practice could not have been entitled to continuation as an enforceable local working condition under the Basic Labor Agreement. Both the 2002 and 2008 Basic Labor Agreements contain detailed seniority and earnings provisions setting forth the specific Labor Grades associated with each of the existing job descriptions. While Article Five, Section A-3 of the Basic Labor Agreements reflect that local working conditions "which provide benefits that are in excess of, or in addition to, but not in conflict with benefits established by … [the Basic Labor] Agreement" shall generally remain in effect, this pay practice is inconsistent with and clearly conflicts with the Basic Labor Agreements' negotiated and comprehensive scheme of formal job descriptions with associated Labor Grades and provisions governing the application of these wage rates. Article Five, Section A-5 of the Basic Labor Agreements expressly preclude the establishment or continuation of a local working condition which conflicts with any provision of the Basic Labor Agreement, and this pay practice which would accord Grievants the right to retain a higher wage rate than is contractually associated with a lower-rated job to which they may be regressed must reasonably be found to conflict with provisions of the Basic Labor Agreement. It is determined that this unwritten pay practice was not and is not an enforceable local working condition under the Basic Labor Agreement. And, as noted previously, the parties never expressed their mutual intent to amend the negotiated and comprehensive contractual scheme governing the association of job descriptions and Labor Grades and the application of these wage rates by reducing this pay practice to a writing signed by the Plant Manager and the Local Union President/Unit Chair.

It is concluded, therefore, that the Company did not violate an enforceable local working condition when it paid Finishing West employees regressed to lower-rated jobs the wage rate contractually associated with the lower-rated job. No violation of Article Five, Sections A or J was proven to have occurred in this case, and none of the cited arbitration awards is found to preclude this determination. The grievance will be denied.

AWARD

The grievance is denied.

David A. Petersen, Arbitrator