IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. 59

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1010, USW

OPINION AND AWARD

Introduction

This case from Indiana Harbor Works East concerns the Union's claim that the Company improperly contracted out maintenance work and failed to provide the Union with information concerning its intent to do so. The case was tried in the Company's offices on June 4, 2012. Philip Brzozowski represented the Company and Dennis Shattuck presented the Union's case. There are no procedural arbitrability issues and the issue on the merits is whether the Company established that it could contract out the work under the surge maintenance exception to the Guiding Principle. The parties submitted the case on final argument.

Background

Article 2, Section F of the parties' Agreement deals with contracting out. Section F-1-a defines the "Guiding Principle" as follows:

> 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 work meets one of the exceptions outlined in Paragraph 2 below.

Paragraph 2 contains exceptions that allow the Company to contract out work in certain circumstances. There is no dispute that the Company has the burden of demonstrating that an exception applies. The one at issue in this case is Section F-2-a-2, "Surge Maintenance work":

> Surge Maintenance Work is that portion of maintenance and repair work which is required by bona fide operational needs performed on equipment where the Company temporarily uses Outside Entities [contractors] to supplement bargaining unit forces and where: (a) the use of Outside Entities would materially reduce the downtime of the equipment; and (b) the work cannot reasonably be performed by bargaining unit forces.
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> The Company may use Outside Entities to perform Surge Maintenance Work provided that the Company has offered all reasonable and appropriate requested overtime to all qualified Employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities.

The work at issue in this case involved disassembling and removing the blades from the mist eliminator, cleaning the blades, and then reinstalling them.

The mist eliminator is part of the scrubber system at No. 2 Steel Producing. The device captures gas from the blast furnace and removes the moisture, which allows clean air to go up the stack. The equipment contains about 300 blades which sit side-by-side in three vertical rows. The rows of blades are about 10 feet tall and 25 feet wide. The blades were installed in 2003 and had not been removed for cleaning since that time, although they were water-blasted about every six weeks. That procedure, however, reaches a limited area. The Company decided it would remove the blades and clean them in late March 2012, although the time frame was later advanced to March 4 through March 9. Pratyusha Devarakonda, Senior Planner at No. 2 Steel Producing Maintenance, said the work was rescheduled to insure that it was completed in time for an EPA audit. In addition, the project had to be coordinated with one of the furnace vessel outages, and the Company had to secure permission to take one of the scrubber systems out of service.

Devarakonda said planning for the project began in early February. The planning was complicated by the fact that the Company had no prints for the mist eliminator, and was unable to secure them from the original equipment manufacturer, Mikropul, who said they were proprietary. Devarakonda also contacted the MEU, the Company's central maintenance group (also known as Field Forces), about performing the work; MEU management expressed concern about the lack of prints or procedures. Devarakonda said she met with Max Carrasquillo, Union Chairman of the Bargaining Unit Work Committee, who suggested allowing some Maintenance Technician-Mechanical (MTM) employees from MEU try to remove some blades from the mist eliminator as a way of evaluating whether they could do the work. The MEU employees attempted to do so on a 3:00 - 11:00 shift, after which Jim Curto, Manager MEU Special Projects, told Devarakonda that MEU was not interested in doing the work.

Curto testified that he spoke to the three employees who had tried to remove a blade, along with the Union's Safety Advocate. They told him they started on the bottom tier of blades and, though they were able to get a blade to "wiggle," they were not able to remove it. Curto said he was concerned about the lack of prints and, because no one had done this job before, the "big unknowns." He said he asked the employees if they wanted to do the job, but never got a response. Curto was worried about the "huge consequences" involved in the job, including the EPA audit. He was also worried about whether he could get sufficient manpower, noting that all overtime in MEU is voluntary. The MTM employees who had tried to remove a blade told him it would take five to eight employees a turn to do the work. Curto said he would not have turned the job down if he had been assigned to do it, but he did not want the work.

Devarakonda said after speaking with Curto, she put out a global overtime solicitation for any MTM in any department. She solicited for eight MTMs per turn, three turns per day, from

March 4 to March 9, for a total of 17 turns. She received the completed list "a couple of days" before the project started, and noticed that many of the employees who signed worked in No. 3 Cold Strip. She contacted the cold strip foreman who told her several of the volunteers were not available, either because they had already signed up for overtime elsewhere or because they signed up for two turns on the mist eliminator project in addition to their normal scheduled turn in the cold strip; employees cannot work 24 hours. Once those employees were removed from the sign-up, Devarakonda said she did not have enough MTMs available to meet her eight MTMs per shift requirement. At that point, Devarakonda said she canceled the global solicitation and decided to go with a contractor. The Company gave the job to the contractor – Stevens Engineers and Constructors – on Friday, March 2, 2012; Stevens began work on Sunday, March 4.

Devarakonda said she decided to solicit for eight MTMs per turn based on her estimate that she would need four or five MTMs removing blades, one or two transporting them to the ground floor for cleaning, and two MTMs cleaning the blades. Devarakonda said she decided to use only MTMs because there could be unanticipated problems and she wanted to be certain she had enough MTMs to do what was required. She could not use her department MTMs because they were working on the vessel outage, along with four MTMs from MEU. Devarakonda said she did not consider using a mixed crew of contractors and Company MTMs because of liability and accountability issues, and safety concerns.

On cross examination the Union contended the global sign-up sheet showed there were sufficient MTMs to do the work, even though there would not be eight MTMs on each turn. But the Union said laborers could operate the equipment necessary to do the cleaning work. In addition, the Union introduced evidence through other witnesses that the Company intended to

solicit only seven MTMs per turn. Devarakonda said she did not consider using laborers or production employees on the job because they would not be able to assist the MTMs if they encountered a problem requiring MTM skills. She agreed that laborers and some production employees were capable of cleaning the blades if properly instructed. She also agreed that the contractor used laborers on the job. Devarakonda solicited a bid in early February from Mikropul, the manufacturer of the mist eliminator. Their initial bid was about $43,000, but Devarakonda said Mikropul misunderstood what she wanted them to do. After speaking to Devarakonda, Mikropul sent Stevens Engineers and Constructors to survey the job. Mikropul submitted an amended bid on February 23, 2012 in the amount of about $100,000. The bid contemplated five 12 hour shifts "working around the clock."

Devarakonda said she thought it would take as much as two hours to clean a blade, or about 400 to 600 hours in all, plus the work of removing, transporting, and reinstalling the blades. She acknowledged that the quote from Stevens Engineering and Constructors, the contractor that did the work, estimated a total of 550 hours, 300 for laborers and 250 for pipefitters.[1] Devarakonda said she thought this was a reasonable estimate. She became concerned about the job, Devarakonda said, when she learned that the contractor's employees were not working around the clock, as planned. She spoke to Stevens' Superintendent Eric Bell, who assured her the job would be completed on time. The Union introduced an exhibit indicating that the contractor had about ten employees working one twelve-hour shift each day, including six laborers, as opposed to the 24 MTMs Devarakonda planned to use spread over three eight hour shifts each day, for a total of seventeen shifts. Devarakonda agreed that the contractor completed the work in significantly fewer hours than she thought it would take.

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[1] The bid also included 127 hours for Teamsters, supervisors and support craft. None of these employees apparently did any of the work at issue.

Devarakonda also acknowledged she received a call from Field Forces (MEU) on or near the day she contracted out the work to Stevens. She was told she would get about 17 MTMs who qualified for overtime because of the surge project. By that time the decision to contract out the work had already been made, Devarakonda said, so she used those MTMs on other work. On redirect, Devarakonda reiterated that neither she nor anyone else at the Company had ever planned this job, and she did not have prints for the equipment. Nor had any contractors done the job. She said using eight MTMs per shift was her best judgment of what the job would take.

Eric Bell, Stevens' Superintendent, said the Company did not give him a scope of work, but simply told him what they wanted him to do. He said he and four other Stevens employees – two pipefitters and two laborers – started on the job on Sunday, March 4. Bell said it was harder to remove the blades than he expected; it took fourteen hours to get the first blade out, although that improved as they continued the work. The cleaning also proved to be more difficult than he thought. He said his employees simultaneously removed and cleaned the blades, although none of the blades could be reinstalled until the cleaning was completed. Bell said he had between eight and ten employees working on the job, including laborers, for one 12 hour shift each day. Devarakonda questioned whether that was enough almost immediately. She wanted him to work around-the-clock, using eight pipefitters a shift, Bell said, but he assured her that was not necessary and that he would finish the job on time. Bell said he would not have used a mixed crew of his employees and Company MTMs, partly because his union would object. On cross examination, Bell said he budgeted for 250 pipefitter man-hours, although the job took only 181 pipe-fitter man-hours, even though it was harder than he thought it would be. Bell also said the job would have been more difficult if he had had to use a different crew every day.

Brian Glover, Maintenance Manager of No. 2 Steel Producing, said he was not involved in the decision-making, but that he thought Devarakonda's plan was reasonable. There were a lot of variables in the job, he said, so it was appropriate to "schedule for the unknowns." He said Devarakonda's plan was based on the best information the Company had. This included the belief that they would be removing blades, cleaning them, and replacing them all at the same time, a plan that proved to be unworkable. The different methodology meant that they did not need as much manpower as originally thought. On cross examination, Glover said the Company probably would not have contracted out the work if it had been able to get eight MTMs on some turns and seven on others. He also said the MTMs sent from Field Forces were only available on the 3 to 11 turn.

Contracting Out Chairman Carrasquillo said he had suggested sending MEU employees to try to remove a blade, as explained in Devarakonda's testimony, but that no one got back to him about what happened before the global solicitation was posted. Subsequently, Devarakonda called him and said the overtime turns were canceled and she intended to contract out the work. The Company Contracting Out Chairman told Carrasquillo the decision to contract out was based on an insufficient response to the posting. At that point, Carrasquillo said, he demanded expedited arbitration. He also requested the names of the MEU employees who tried to remove a blade, but was not given them until March 16, after the project had been completed. Carrasquillo identified an e-mail from the Company's Contracting Out Chairman to the Senior Planner saying they had talked about using six MTMs, and an e-mail from Devarakonda saying she had put up a posting for seven MTMs per turn. Carrasquillo said he was never notified that the Company planned to begin the work on March 4. The contracting out notices he received had a starting date of March 25. Also, all of the notices said the rationale for contracting out the

work was that the employees were not capable of performing it; none of the three notices mentioned the surge maintenance exception.

On cross examination, Carrasquillo agreed that during a February 22 meeting about the project, the Company did not claim that bargaining unit employees were incapable of doing the work. He also said Devarakonda told him the work would have to be performed by MEU employees because the department MTMs were involved in the furnace outage. Carrasquillo pointed out that in a demand for arbitration sent on March 5, he said the job would be a good opportunity for "blending of personnel," meaning using employees in addition to MTMs.

Danny Mosley is an MTM with MEU, and the Union Safety Advocate. He was one of the MEU employees who went to the mist eliminator prior to March 4 to see if they could remove the blades. He said they started with one on the bottom row and were able to get it to move. It then became apparent that the blades would not come out until they removed the tension rods, which meant they would have to start on the top tier. The group did not have any scaffolding so they could not proceed that day. Mosley said the employees told Curto they could do the work with the right equipment and that they thought it would take about six employees at a time. No more than three could work inside around the blades, he said. Curto responded that he did not think he wanted the work. Anyone could have cleaned the blades, Mosley said. He saw a contractor employee clean one in ten minutes. Mosley was one of the MEU employees who was sent to No. 2 BOF for overtime when the contractor was doing the work. That department did not have anything planned for them to do, Mosley said. Two employees inspected transfer cars and seven or eight others worked on an expansion joint. Jerry Kisela, an MTM in No. 2 Steel Producing, also testified that there had been no work planned for the MEU employees who were sent to the department.

Tom Kerwin also was part of the crew that attempted to remove a blade. He said the employees told Curto the job would not be easy, but they could do it. He said they would need four employees inside taking out blades, and three outside transporting and cleaning them. Jeff Brinkman offered similar testimony, and also said when they went to No. 2 BOF for overtime they "didn't give us a lot of work to do." Robert Hubster agreed with Mosley, Kisela, and Kerwin. He said when they talked to Curto, he said he did not think "this was a job we should undertake."

On rebuttal, Devarakonda reiterated that she wanted eight MTMs a turn. Bell, the contractor, disagreed with Union testimony that the blades were easy to remove. You could not pull them out, he said; they had to be pushed out. He also said it typically took more than five to ten minutes to clean a blade. Finally, Curto said the employees did not tell him the job would be easy.

Positions of the Parties

The Company says Field Forces and department MTMs were not available to work on the mist eliminator because they were assigned to work that had to be done to retain the viability of No. 2 Steel Producing. This work was especially important, the Company says, because of the imminent outage scheduled for No. 4 Steel Producing. There is no question, the Company says, that the Company did not have enough MTM man-power available to complete the job on time. The results of the global solicitation support that conclusion. In addition, the solicitation satisfied the Company's obligation to offer reasonable and appropriate requested overtime. The Company characterizes as "Monday morning quarterbacking" the Union's criticism of Devarakonda's decision to solicit for eight MTMs per turn. The Company had no previous

experience with the job and it had no prints to help it plan the work. Devarakonda exercised her business judgment by planning for the unknowns, a decision she made in good faith. She solicited only for MTMs in order to retain the flexibility of having all employees trained in MTM duties. It was also reasonable, the Company says, for Devarakonda to decide that she would not use a mixed crew of Company and contractor employees, something the Company had never done before. The Company says that unlike the Union, it did not have the benefit of hindsight when it made the decision to contract out the work. There was no reason to believe the blades could be easily removed or that the work could be performed with fewer hours than Devarakonda's estimate. The Company says using a contractor reduced the downtime of the equipment, which is a factor to be considered under the surge maintenance exception.

On the notice issue, the Company points out that it discussed the job with Carrasquillo on February 22, and acceded to his request to allow bargaining unit employees to test whether they could perform the work. In addition, the Company complied with Carrasquillo's request to solicit overtime from all MTMs before contracting out the work. The Company also says there is no justification for a special remedy in this case. The Company did not willfully or repeatedly violate any of its substantive or notice obligations under the Agreement. The Company also cites a USS-USW Board of Arbitration case that says a repeated violation requires the Union to show a pattern of violations over the same or similar issues.

The Union argues that the Company did not want to manage the cleaning job and it engaged in "after-the-fact juggling" with the numbers to support its decision to contract out the work. The Union says the contractor estimated only 550 hours to do the work – some of them from laborers – and in fact spent only 457 hours. Estimates from other contractors were as low as 686 hours. The Company's global solicitation garnered 769 hours, all of them from MTMs,

which in itself would have been enough to do the work. In addition to laborers there are also production employees in the mill who are trained to support maintenance work and who might have been available to help with this work. The Union characterizes the Company's decision to use only MTMs on the job as "preposterous," pointing out that the Company stuck to its plan to use only MTMs when it admitted it did not know what the job required, and when it had contractor bids that used laborers and fewer craftsmen. The Union acknowledges that initially the job went slowly. The contractor spent 14 hours getting out the first blade. But that is not unusual, the Union says, pointing out that after the first two turns, the contractor spent only about 110 hours on the job. The Union also argues that the Company had no real work planned for MEU forces, who could have been used on the project.

The Union says the Company cannot defend its position by saying it was reasonable to avoid co-mingling of contractor and bargaining unit employees. That kind of work-assist exists in other areas of the plant, the Union says, particularly in janitorial and cleaning work. The Union points out that management made no effort to discuss the job with the MEU employees who had tried to remove a blade, which is consistent with the Union's claim that the Company did not want to do the work. But not wanting the job is not contractual justification to contract out the work.

The notice issue, the Union says, has to do with the Company's failure to furnish information, which is covered in the same section as the notice requirements. The Union is entitled to see contractor bids and internal estimating, but none of that information was given to the Union. Special remedies for notice violations are available in cases of willful or repeated violations of the notice provisions. Here, the Company willfully failed to furnish the information. That is sufficient, the Union says, to justify a special remedy under Section F-9-a-2

that "includes earnings and benefits to employees who may otherwise have performed the work." The Union also asks for a cease and desist order and an order to provide proper notice and information in future cases.

Findings and Discussion

a. The Notice Issue

The notice issue concerns the Company's failure to furnish information. The Company did not give the contractors' bids to the Union prior to making the decision to contract out, which violates its obligation under Article 2-F-5-a. The Union characterizes this as a willful breach and asks for a special remedy under Section F-9-a-2, which can be granted in cases of willful or repeated violations. There is no evidence of repeated notice violations. The Company's failure to furnish information was willful in the sense that nothing prevented it from doing so. But I am not satisfied that in this case the Company's inaction was motivated by a desire to thwart Union participation in the process or to hide information that would have questioned the legitimacy of the Company's action. Motives like these should be considered in deciding whether to, in effect, impose a penalty for a contract violation, which is essentially what a special remedy involves. Thus, I find that the Company violated its obligation to furnish information under Section F-5-a, but that a special remedy is not warranted. Given the decision on the merits, there is no reason to impose a remedy for the notice violation. Nor does this case justify a cease and desist order. There is no reason to believe that the Company will fail to follow its notice and information obligations in future cases.

b. <u>The Merits</u>

Although each of three contracting out notices given to the Union in this case said bargaining unit employees were not capable of doing the work, the Company withdrew that claim sometime prior to arbitration in favor of the surge maintenance exception. The Union stipulated that the Company had a bona fide operational need to do the work in the general time period at issue, which satisfied one criterion imposed by the surge maintenance exception. The exception also includes an obligation to offer overtime. The Union did not claim at the hearing that the Company failed to comply with that requirement. The remaining criteria require a showing by the Company that using contractors "would materially reduce the downtime of the equipment" **<u>and</u>** that "the work cannot reasonably be performed by bargaining unit forces." Most of the evidence concerned whether the bargaining unit could reasonably have done the work.

Although Devarakonda testified that she really wanted eight MTMs on a turn, prior communications made it clear that she and other Company officials thought seven MTMs would be sufficient. But the real question is not whether it was reasonable for the Company to insist on seven or eight employees; rather, the issue is whether it reasonably insisted on using only MTMs. I cannot find that the Company acted in bad faith or, as the Union says, "juggled the numbers" to avoid doing the work. Devarakonda seemed credible when she said she wanted to schedule only MTMs because of unknown or unanticipated issues that might develop during the job. The Company, after all, had never done the work before, and it did not have and could not obtain prints for the mist eliminator. But those facts do not compel a finding that bargaining unit employees could not reasonably have done the work. Moreover, the reasonableness

determination must consider whether it was necessary to schedule a full complement of workers for seventeen consecutive shifts.

I agree with the Company's argument that it is easier to criticize a staffing decision after-the-fact than it is to decide such issues before the work is performed, especially for a job that had not previously been attempted. But it is inaccurate to say the Company had no reason to question whether its staffing decisions were reasonable. By March 2, when it decided to contract out the work, the Company had received bids from two contractors: Mikropul, the equipment manufacturer, and Stevens, which did the work. Mikropul's first bid on February 7 was for $43,812 and included five employees[2] working over five days. Devarakonda expressed concern that the bid underestimated the scope of the work, noting that Mikropul had not visited the site to see what was required. Mikropul then sent Stevens – to whom it probably would have subcontracted the job – to evaluate the job and, on February 23, submitted a revised bid at just over $100,000. The revised bid did not include the number of employees Mikropul planned to use, but it did say the work would be completed in five 12-hour shifts, working around-the-clock. This was not a lump sum bid, and would have required additional payments if the work required extra days.

Stevens submitted its own bid (apparently with the permission and encouragement of Mikropul) on February 27. This was a lump sum bid[3] in the amount of $68,900, covering 250 hours of pipefitter work and 300 hours of laborer work. The bid contemplated working around-the-clock, but, like the Mikropul bid that was based on information from Stevens, for five

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[2] The bid also included a Mikropul Service Technician, but Mikropul would have – and did – furnish that technician no matter who did the work. His presence, then, was not a factor in the cost or the number of hours required to do the work.

[3] The bid says "any additional cost will be performed on a time and material basis," but Bell, Stevens' Superintendent, said the parties entered into a lump sum contract. Moreover, the cover letter for the bid describes it as "our lump sum proposal."

consecutive 12-hour shifts, or only about half of the seventeen 8-hour shifts Devarakonda contemplated. By February 27, then, the Company knew that contractors planned to do the work in far less time than the 1000-plus man-hours the Company believed the work would take.[4] In fact, the Company actually let the contract to a contractor that planned to do the work in only 550 hours, with more than half of those hours coming from laborers. It is fair to point out that Devarakonda expressed concern when she learned Stevens' employees were not working around-the-clock. The bid itself said, "The work is to be performed on a round the clock basis beginning the morning of March 4 with a continuous progression of 5 shifts." But Devarakonda knew Stevens planned to do the job in only 550 hours, which would not have allowed around-the-clock staffing for five days.

There is no evidence that the Company asked Stevens how it planned to do the work in about half of the time the Company thought it should take. Even if Stevens had been reluctant to part with much information, the Company, which had already planned another outage in No. 4 Steel Producing, had a legitimate need to know whether the job could be performed on time in 550 man-hours. But there is no evidence the Company made such inquiries before it let the contract to Stevens, or whether in light of Stevens' bid, it re-evaluated its own determination that it would need a thousand MTM man-hours to do the job. This is troubling given Devarakonda's testimony that she thought the number of hours in the Stevens' bid was "reasonable." There is also no evidence that anyone but Curto spoke to the MTMs who attempted to remove a blade in late February. And, even though I reject the Union's claim that the process was rigged against doing the work in-house, it is clear from the record that Curto did not want to do the work even

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[4] The Company also received a bid on March 2, the day it subcontracted the work to Stevens. This bid estimated six 12-hour shifts. The manpower was listed as "12," but it not clear whether there would be two crews (for around-the-clock work) or only one.

before he sent the MTMs to see if they *could* do it, and he did not appear to have given serious consideration to their conclusion that they could handle the job.

I understand the Company's concern about unknowns, which influenced its decision to use only MTMs. But that does not mean it was reasonable for the Company to consider *only* MTMs for the job. Company witnesses acknowledged that laborers and other employee groups could have cleaned the blades. Given the unknowns, it may have been reasonable to schedule more MTMs than might seem needed based on an initial evaluation of the work, but it was unreasonable for the Company to demand only MTMs. If circumstances required more MTM assistance there were other MTMs in the plant and, even though they were all assigned to other duties, it is hard to believe that one or two could not have been dispatched for an hour or so to assist the cleaning crew. The point is that even though the Company has the right to schedule for contingencies, its decisions must be based on a realistic assessment of risk. Otherwise, the Guiding Principle would have little meaning, something the parties clearly did not intend, given the limited number of exceptions and the specific requirements the Company must meet to invoke one. The record does not support a claim that the possible contingencies – which the Company's evidence did not address with any specificity – justified using only MTMs on the crew.

The evidence about the availability of MTMs indicates that there were sufficient employees (including the Field Forces MTMs) to staff the job even if the Company used five or six MTMs on a turn. Company testimony that it needed the Field Forces MTMs for other important work that had to be completed in a short time-frame is not supported by the record. The employees testified that they were not given any such assignments. In addition, Devarakonda testified that she received a call on March 2 – the day the work was contracted out

– that she would be getting about 17 Field Forces MTMs, and she would have to find work for them on overtime because the Company had contracted out the mist eliminator job under the surge maintenance exception. Union witness Kisela, who is involved with management in planning projects, also said there was no work planned for the Field Forces MTMs and that they had to "scramble" to find assignments for them. The Company cannot argue that laborers or other capable employees were unavailable to fill out the crews and clean the blades; the Company's focus on MTMs meant that it did not solicit to determine whether laborers or other qualified employees would have worked overtime.

Finally, I agree with the Company's claim that using in-house forces could make the work less efficient if the crew make-up would not be constant. But there was no evidence that there could not have been some carryover on shifts so that any new workers could be shown the procedures necessary to do the work. Nor is it clear that the project required skills it would take an extended amount of time to learn. Moreover, the surge maintenance exception does not say the Company can use contractors if it is more efficient to do so. Rather, the Company has to show that bargaining unit employees could not reasonably have done the work in the time required. The Company's evidence does not meet that burden.[5]

I find, then, that the Company has not shown that the work at issue could not reasonably have been performed by bargaining unit employees. That finding makes it unnecessary to consider whether the use of contractors would materially reduce the downtime of the equipment.

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[5] Efficiency might be a consideration in deciding whether using contractors would materially reduce the downtime of equipment. But that does not seem to have been within the Company's contemplation when it contracted out the work. Devarakonda was concerned when she learned the contractor's employees were not working around the clock because she believed continuous work was needed to get the job finished by March 9. Thus, she apparently did not expect them to complete the work early. Moreover, there is no reason to believe that it would have taken Company employees any longer to do the job than it took the contractor's employees, so it is not possible to know whether using a contractor materially reduced the down time of the equipment.

As a remedy, the Company is ordered to provide make-whole relief to the employees who would have done the work. Employees who worked overtime on the days at issue cannot collect twice for the same time period or for overtime work that, along with their regular schedule, would equal more than 16 hours in one day. As is typically the procedure with these parties, I will remand the case to them to negotiate and implement an appropriate remedy. I will retain jurisdiction for a period of 90 days to resolve any dispute concerning the remedy.

AWARD

The grievance is sustained. The Company failed to furnish information as required by the Agreement, and it did not satisfy the criteria to invoke the surge maintenance exception. The Company is ordered to provide a remedy to the employees who would have done the work, as explained in the last paragraph of the Findings. The case is returned to the parties for implementation of the remedy. I will retain jurisdiction for 90 days to resolve any disputes that arise in calculating or implementing the remedy.

Terry A. Bethel

Terry A. Bethel
August 23, 2012