IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

ArcelorMittal Case No. 64

And

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1011, USW

OPINION AND AWARD

Introduction

This case from the Indiana Harbor Works West concerns the Union's contention that the Company violated the Agreement when it subcontracted the work of driving/operating a vacuum truck, and labor work associated with the operation. The case was tried in East Chicago, Indiana on June 20, 2013. Robert Casey represented the Company and Bill Carey presented the Union's case. The parties filed post-hearing briefs.

Background

The contracting out language in the BLA includes the "Guiding Principle" that "the Company will use Employees to perform any and all work which they are, or could be capable ... of performing." If the Company wants to contract out work, it has the burden of establishing either that the bargaining unit employees are not capable of performing it, or proving that one of the express exceptions in the contract applies, most of which are found in Article 2-F. There is no dispute that bargaining unit employees are capable of performing the work at issue in this

case, and the Company does not claim that any of the express exceptions in Article 2-F apply. Rather, the exception at issue in this case originated in the 2002 Agreement between the Union and International Steel Group, Inc. (ISG), a forerunner of ArcelorMittal.

The 2002 Agreement included a letter dated May 2, 2003, from Thomas Wood, Corporate Manager of Labor Relations, to David McCall, USWA District 1 Director. The language pertinent to this case said:

> The Company may contract out non-core functions, including janitorial, mail activities, landscaping, snow removal, garbage and trash removal, track repair and general plant housekeeping.

As the word "including" made clear, the list of work functions in this provision was not exclusive; rather, it was illustrative of the kind of work that could be classified as non-core. In ArcelorMittal Case # 10, I said the terminology "core work" meant work that was part of the most basic and important functions in the steel-making process. Under this approach, work that was not listed expressly as "non-core" had to be evaluated to see if it was one of the most important functions.

The parties changed that approach in their September 1, 2008 Agreement, in a letter between McCall and Dennis Arouca, the Company's Vice President of Labor Relations. The core/non-core language that originated in 2002 was amended to say:

> Notwithstanding any local understandings to the contrary, the company may contract out non-core functions limited to, janitorial, mail activities, landscaping, snow removal, garbage and trash removal[,] track repair and general plant housekeeping which is not directly associated with general labor work on a production facility.

The words "non-core functions *limited to*" meant that, unlike the 2002 language, the listed non-core work was no longer illustrative ("including"), but was exclusive. In order to contract out

work under this exception, the Company had to prove that the work at issue fell into one of the listed categories.

In the instant case, the Company contends that the work performed using the sucker truck constitutes garbage and trash removal, or general plant housekeeping, and, thus, can be contracted out as non-core work. The Company points out that contractors have done the work at issue on the West Side since the first incarnation of the non-core language in 2002, and that the Union did not file a grievance claiming the work until the instant cases were filed in 2009. There are two pending grievances in this case, one involving the vacuum truck operator/driver and the other concerning the laborers who control the hoses that suck material into the truck. The laborer grievance was filed on February 9, 2009, and was aimed at "the labor work , associated with vac/sucker trucks plant wide." The grievance aimed at the work of driving the truck and operating the equipment was filed on August 1, 2009.

The Union contends that the Company improperly contracted out items of work from 29 purchase orders to Haas Environmental beginning in February 2009, and continuing through December of that year. It says it does not seek a general statement of how core work should be distinguished from non-core work, but only a specific decision for the 29 purchase orders at issue. The Union's exhibits detail the laborer hours spent on each item of work, and the driver/operator hours. In contrast, the Company says there is no difference between the Union's 29 purchase orders and the work performed by other vacuum truck contractors at the same time. Nor does the work the Union claims differ from all vacuum truck contractor work in the years following 2009. Thus, the Company says the issues are "global," and are not limited to the 29 purchase orders identified by the Union. The Union responds that it filed the grievance and appealed the case to Expedited Arbitration, and, as such, it has the right to identify the work it

claims was improperly contracted out. In this case, the Union targets only certain items of work performed by Hass between February 1, 2009 and December 15, 2009.

Chuck Mauder, Division Manager of Services and Spares, said the West Side has used contractors for vacuum truck services since 2002. The West side does not own vacuum trucks, although LTV (a former owner whose assets were purchased by ISG) once had a smaller truck that was in limited use. Even then, LTV contracted out vacuum truck work. The East Side (the former Inland Steel facility), he said, has its own vacuum truck, which is operated by bargaining unit employees. This was the result of a 1989 arbitration that interpreted different contracting out language that did not distinguish between core and non-core work. Mauder said vacuum trucks are used for planned work, which includes downturns and outages, and unplanned work, like breakdowns. They are also used in areas that are located away from production areas, like the bag house. The work the vacuum trucks perform, he said, is not "directly associated with general labor work on a production facility."

The Union introduced an exhibit listing the work it claims in this case, all of which was performed by Haas Environmental. Union Exhibit 1 identifies production areas in the plant, and contains a summary of the various tasks that it says were improperly contracted out, along with the man-hours allocated to each job. The summary comes from a printout introduced as Union Exhibit 4, which is the result of a requisition search for work performed by Hass. The exhibit is 493 pages and would appear to have several thousand entries of work done by Haas, although the Union does not claim all of those jobs. But the exhibit contains the data from which the Union complied the work it seeks, as summarized in Union Exhibit 1. The Union says all of the work it seeks was associated with production units.

Union Bargaining Unit Work Committee Chair John Dec identified some of the entries on Union Exhibit 4 that are summarized in Union Exhibit 1. He also described some of the work the contractors performed. The contractor's laborers, he said, were not confined to hosing up waste water or other detritus accumulated from the steelmaking process. In the hot mill, for example, he said the laborers also scraped grease and shoveled debris into piles. The laborers also used the hose to suck up waste resulting from power washing, a task completed by a different contractor. The Union has not claimed in this case that the power washing was improperly contracted out.

On cross examination, Dec agreed that almost all of the work vacuum truck contractors perform is intended to get rid of waste, although he said the scale the truck sucks up is reused and, thus, not waste. He also acknowledged that on most occasions, when a vacuum truck is working in a production area, the production unit is down. The Company questioned Dec about documents in Union Exhibit 5, which show work orders for Haas to clean back flumes that run underneath the hot strip mill. The waste generated by power washing the flumes ultimately runs into a scale pit located outside the facility. Under cross examination, Dec said work done outside the production facility --- like using the vacuum truck to clean out the scale pit --- is not core work; rather, core work occurs inside the production facility itself.

The Company introduced exhibits showing vacuum truck work performed by contractors that was not included in the work at issue in this case. The work included sucking water off rail switches, cleaning up oil spilled from a broken pipe at a storage tank, unplugging a dust catcher, and unplugging a bathroom drain line. None of that work was done by Haas. The Company's contention is that all vacuum truck work is the same, no matter where it occurs, and the exhibits were intended, in part, to demonstrate that it does not make sense to differentiate between

vacuum truck work performed inside a production facility and vacuum work performed elsewhere. A Company witness, apparently referencing my decision in ArcelorMittal Case #10, where I found the work of sweeping roads to be non-core, said there is no real difference between sucking dirt off the roads, and sucking carbon flakes off equipment.

Positions of the Parties

The Union argues that the Company cannot rely on the non-core work categories of "garbage and trash removal" or "general plant housekeeping which is not directly associated with general labor work on a production facility." Although "housekeeping" is not defined in the BLA, the Union says there are 50 years of arbitration awards that illustrate how that term has been used in the steel industry. Housekeeping, the Union says, has been understood principally as tasks performed to keep one's work area clean, e.g. sweeping, dusting, picking up tools, and other minor cleaning duties. But, the Union argues, "housekeeping" does not include specific work assignments that require particular skills, or that pose hazards. Thus, in Packard Mather, 9 Steel Arb 6,515 (Arb. Lehoczky, 1961), the arbitrator said that housekeeping might include touch-up painting on equipment "associated with the operating cycle"; but, it did not include painting staircases that were not "integral parts of the equipment," work that typically was performed by craft painters. And, in Bethlehem Steel Decision No. 1181, the umpire said washing and cleaning light fixtures located as much as 60 feet off the ground was not housekeeping, despite the cleaning nature of the work.

The Union also argues that there is a difference between specific housekeeping and general housekeeping; the requirement to keep one's work area clean is "specific", and cleaning outside one's work area is "general." More precisely, the Union says general housekeeping is

"general clean-up," which does not involve heavy cleaning work that is typically performed by janitors or, in this case, a 350 horsepower vacuum truck. The Union also relies on USS-27,109, where the Board of Arbitration distinguished between housekeeping (cleaning immediate work area and operating area), and "light labor" work. The latter included clean-up that required "picks, shovels, and wheelbarrows," which, the Union says, is how the work at issue was performed before the vacuum trucks. One of ArcelorMittal's predecessors (Inland) made the same distinction, the Union argues, citing Inland Award No. 758, where the Company described housekeeping as "keeping the area clean."[1]

The Union says that in ArcelorMittal Case #47, I recognized that the 2008 amendments had changed the focus of the core/non-core distinction. The list of non-core work in the revised provision was no longer illustrative, as it was under the 2002 Agreement; the parties agreed that non-core work was limited to the work listed in the September 1, 2008 letter agreement between McCall and Arouca. This case, then, the Union argues, does not depend on the importance of the vacuum truck work to the steel-making process, which had been the focus in ArcelorMittal Case #10.

The Union also argues that not all general housekeeping work can be contracted out under the 2008 language; the work has to be "general plant housekeeping," and, to qualify as non-core, it cannot be "directly associated with general labor work on a production facility." Stated differently, general housekeeping that is associated with general labor work on a production facility *is* core work that cannot be contracted out. Although the scope of "general labor work on a production facility" was not fleshed out at the hearing, the inference to be drawn from the language, the Union says, is that such labor work is core work, and that work "directly

[1] The use of the word "predecessor" is not intended to describe a legal status or relationship between ArcelorMittal and Inland Steel. It is used only in a general sense to indicate that Inland Steel operated a mill on property where ArcelorMittal now operates a mill.

associated" with it is, too. All of the work the Union seeks in the instant grievances, it says, occurred on a production facility. The Union's first argument is that the work vacuum truck crews perform is not housekeeping at all; but, even if it is, the Union says it is housekeeping work directly associated with what laborers do on production facilities and, therefore, is core work.

The Union also urges that I should ignore testimony from John Dec, the Local Union's Bargaining Unit Work (i.e., Contracting Out) Committee Chairman, that work performed outside a production facility could not be directly associated with general labor work on a production facility. The flumes under the hot strip mill catch scale that comes off the slab, and carry it to the terminus of the flume outside the building. If the scale is not removed from the flume, the Union says, ultimately the mill could not operate. Similarly, if the bag house is not cleaned, the BOF will eventually shut down. The fact that neither the flume terminus nor the bag house is located under roof with the production facilities they serve, the Union says, does not mean they are not part of, or associated with, a production facility. Thus, The Union asserts that emptying scale from the flume is core work that cannot be contracted out under the Arouca-McCall letter.

The Union cites ArcelorMittal Case #45 in support of its claim. In that case, the Burns Harbor Plant management procured from Local Union 6787 an agreement that the parties would consider vacuum truck and water blasting to be non-core work, meaning that the Company could contract out the work without notice to the Union. Local Union 1011 does not claim that the Burns Harbor agreement applies to the instant case. However, the Union points out that Burns Harbor and Indiana Harbor West are covered by the same collective bargaining agreement, including the core/non-core letter at issue in the instant case. If, as the Company claims, the vacuum truck work is non-core general plant housekeeping, then, the Union asks, why did Burns

Harbor management believe it needed to secure an agreement that it could contract out that work? The answer, the Union says, is that the Company recognized the work did not qualify as general plant housekeeping, or trash and garbage removal.

The Union rejects the Company's claim that the work at issue falls under the garbage and trash removal language in the Arouca-McCall letter. The fact that the Company wants to get rid of some waste product, the Union says, is not enough to make it garbage removal. Nor is it determinative that the vacuum truck contents might end up in a landfill, alongside trash and garbage. The point, the Union says, is that the scale of the work matters --- trash and garbage are thrown away by hand, or dust-pan, or shovel; or they are collected in trash cans or sweepers. But trash removal cannot be compared to using a 350 hp vacuum truck to suck up mill scale from the flumes under the hot strip.

The Union dismisses as irrelevant the Company's claim that the expense of providing its own vacuum truck for the bargaining unit would be prohibitive. There is nothing in the contracting out language of the BLA or in the Arouca-McCall letter that makes cost a relevant consideration, the Union says; either the work is core work that cannot be contracted out, or non-core work that can be contracted out. The Union also questions the accuracy of the Company's cost calculations, and, it says, even if the figures are correct, ArcelorMittal is the largest steel company in the world, and can afford the expense involved.

The Company argues that the vacuum truck work qualifies as garbage and trash removal. The vacuum truck sucks up waste material and deposits it in a landfill or settling pond; a garbage truck empties trash receptacles (like dumpsters) by depositing the material inside the truck, and then dumping it in a landfill. The driver/operator is driving a vehicle akin to a garbage truck, and the laborers help him fill the truck with garbage and trash. The word "garbage," the Company

says, is defined as "discarded or useless material," which describes the material picked up by the vacuum trucks and dumped in a landfill. The word "trash," also used in the letter, has a similar meaning. These definitions, the Company argues, fit the material collected in the vacuum truck; it is waste material the Company no longer wants and, like other garbage, has to be collected and disposed of in a landfill or a comparable facility, like a settling pond. Relying on ArcelorMittal Case #47, the Company contends that garbage and trash removal is on the list of non-core work, and if the vacuum truck is removing garbage or trash, then the scope of the operation does not matter.

The Company says the Union did not introduce any evidence undermining the Company's claim that the work at issue constitutes garbage and trash removal. The Union argues that whether work is core or non-core depends, in part, on the purpose for which it is being done. If the waste products generated by the production process are not removed, the Union says, production would be hindered. But the Company says ArcelorMittal Case # 47 already settled that issue; the importance of the work to steelmaking is no longer key. Moreover, the Company says that allowing any kind of material to pile up has the potential to affect the efficient and safe operation of the mill. The Company also says the Union's focus on whether the vacuum works on a production facility has no relevance to whether the work it performs qualifies as garbage and trash removal. Rather, the production facility argument affects the general housekeeping language, which says such work can be non-core only if it is "not directly associated with general labor work on a production facility." But there is no comparable limitation for garbage and trash removal.

Although the Company's principal argument is that the vacuum truck and its crew are involved in garbage and trash removal, it also claims that the vacuum truck work is non-core

because it is general plant housekeeping "not directly associated with general labor work on a production facility." The term "general labor work," the Company argues, must be work performed under the Utility Person Labor Grade 1 Job Description, which says the incumbent, "Performs any type of general labor ... required to maintain plant operations." This is the only job description that uses the term "general labor." In addition, the Company says the terminology applies to the kind of work general laborers are normally assigned to perform on a production facility. And, to qualify as core work, the general plant housekeeping work has to be "directly associated" with general labor work on the facility. To be "directly associated," the Company contends, the general housekeeping work must be performed while the laborers are working in their regular jobs to maintain operations on a production facility. But there is no evidence that the vacuum truck's crew's work is directly associated with what laborers do on a production facility. Moreover, the Company points out that most of the work the Union claims in this case was performed when the production facility was down.

The Company says it understands the Union's contention to be that the general housekeeping language is satisfied if the work the vacuum truck crew performs is done in a production facility and enhances the operation of the mill.[2] Dec, the Union's Contracting Out Chairman, testified that work done outside a production facility --- like vacuuming scale from the scale pit --- is non-core work. But, the Company argues, there is nothing that says housekeeping work performed inside the facility differs from the same kind of work performed outside. That is apparent, the Company says, when one considers that the material sucked out of the scale pit outside the hot strip mill all came from the flumes located inside the hot strip, on which the vacuum truck crew performed the same kind of work, removing the same kind of

[2] A footnote in the Company's brief says the Union's evidence seems to indicate that the Union seeks a remedy for some work that was not performed on or in a production facility.

material. What the truck does outside is part and parcel of what it did during the downturn, the Company says. The material flushed through the flumes and into the scale pit did not suddenly become garbage when it left the building, the Company contends; rather, it was garbage all along.

The Company says there is no evidence that any vacuum truck driver/operator performs general housekeeping work directly associated with general labor work on a production facility. Nor is there any evidence that a vacuum truck was ever operated in support of any steel production. To the contrary, when the vacuum truck is operating, the production facility is shut down. The drivers do not perform any general labor work at all --- they simply drive and operate a large garbage truck. The same conclusion follows for the vacuum truck laborers, the Company claims. The Company acknowledges that the work the vacuum truck laborers do could be classified as general labor work. But, the Company says, that does not mean the work must be performed by a Company laborer. The Company can contract out the work even if bargaining unit employees could do it, as long as it is not "directly associated with general labor work on a production facility." The Company points out that in 2012, the parties --- without prejudice to their positions in this case --- agreed to create a crew of 20 employees who acted as vacuum truck laborers. When they are dispatched to perform work, they do not work in support of any other laborers. Moreover, when they are sent to work on a production facility, there is no production work going on in that facility, meaning that their work will not be directly associated with general labor work on that facility.

Finally, the Company argues that the work at issue is not core work, as understood by the parties for purposes of contracting out, because the Company has contracted out the work since the inception of the core/non-core language in 2002. The Company relies, in part, on COEX 20

(1992), an Inland Steel case concerning the Company's right to contract out hauling coils from the plant to an off-site warehouse. Central to the decision in that case was the conclusion that the parties understood the work could be contracted out because the Company had done so since the inception of the work without challenge from the Union. In the instant case, from 2002, the vacuum truck work on the West Side had always been performed by contractors, and the Union did not grieve the issue until 2009. These facts, the Company argues, show an implicit recognition that the Company could contract out the work.

Findings and Discussion

As both sides point out, the 2008 Agreement created an exclusive list of non-core work, thus making it unnecessary to classify some unnamed task, or develop standards for differentiating core from non-core. But the 2008 amendments did not eliminate the responsibility to categorize different kinds of work. In ArcelorMittal Case #47, for example, I said track repair --- one of the listed non-core work items --- was non-core, regardless of its importance to the operation of the mill. It was still necessary, however, to decide whether repairing a transfer car track, which differed from railroad track, was "track repair" as the parties used that terminology in the 2008 letter. I found that it was, relying, in part, on the parties' decision to leave "track repair" unadorned with any limitations, (a decision that prompted the parties to add the word "railroad" before the word "track" in the 2012 Agreement). The task in the instant case is to determine what the parties meant by the terms "garbage" and "trash," and to interpret not only "general plant housekeeping," but also divine a meaning for "not directly associated with general labor work on a production facility."

I am not persuaded by the Company's claim that the work performed by vacuum truck laborers is garbage and trash removal. The Company's analogy to a garbage truck is serviceable; both the garbage truck and vacuum truck remove unwanted material from the premises and dispose of it elsewhere. But that does not explain what the laborers do. To carry the analogy further, a garbage truck hauls trash away from a customer's home, but no one from the trash hauling company enters the house and rounds up the items to be discarded. Rather, the customer put the items in trash cans (or dumpsters), which the driver/operator dumps into the truck, often using hydraulic equipment to lift and empty the cans. But this scenario is not followed by the vacuum truck labor crew in the plant.

The laborers use the truck's hose to suck up debris or water, but they also collect the debris by using brooms and shovels to move it into piles, or into areas the hose can access. They also use tools to scrape grease and grime off of the equipment. In addition, a Company witness said the laborers use the hose to suck carbon flakes off of equipment. Again, using the Company's analogy, sweeper bags filled with dirt are properly considered trash or garbage, but filling them --- i.e., sweeping --- is not part of the trash removal service. In short, the terminology "garbage and trash removal" applies to transporting unwanted items and debris from the property, but not the cleaning and trash collection process that precedes it, including the use of the hose itself.

The question then becomes whether the vacuum truck laborer's work can be classified as "general plant housekeeping not directly associated with general labor work on a production facility." I agree with the Union's claim that in an industrial setting, "housekeeping" is typically understood to describe an employee's obligation to keep his work area clean and free from clutter. But "general plant" housekeeping seems intended to encompass more than simply

tidying-up a work station; general plant housekeeping applies to keeping the facility clean. The kind of work that goes into plant housekeeping has to be understood in context. In a home, housekeeping generally involves sweeping, dusting, and removing (or stowing) clutter. The same kind of work can be performed in an industrial facility; but, it is unreasonable to think the parties believed the mill could be kept clean by running the sweeper and spraying Pledge on the caster. I recognized that in ArcelorMittal Case #10, when I found that sweeping the roadways in the plant qualified as general plant housekeeping. But that does not mean that "housekeeping" embraces all kinds of industrial cleaning. It might be reasonable to think housekeeping includes having a vacuum truck and its crew suck up some oil spilled from a storage tank, or some standing water near a railroad track. Those are messes that someone would have to clean up, and using a vacuum truck does not give the work a different character. However, the same conclusion does not necessarily follow for other kinds of tasks performed by a vacuum truck crew.

Although line-drawing is hard, the parties' decision to describe cleaning work that can be contracted out as "housekeeping" is significant; it suggests a distinction between keeping the facility clean on a routine basis, as the road sweepers did in ArcelorMittal Case #10, and cleaning industrial equipment during downturns, or even when the facility is running. The latter is not merely keeping the facility clean, but, rather, is part of the maintenance and upkeep required to protect the machinery and its associated structures, like, for example, the flume and scale pits. The same is true of emergency calls to unbury a belt, or to address flooding in the caster. This is core work, not the kind of housekeeping chores that the parties agreed could be contracted out.

This conclusion is buttressed by a common principle of interpretation. Words are often defined by the company they keep. The word "housekeeping" appears in a list of work items that are ancillary to the operation. The parties agreed that contractors could deliver the mail, or shovel snow, or plant flowers, or clean toilets. Given those activities, it does not make sense to believe they intended the word "housekeeping" on the same list to mean that contractors could go into production areas of the mill and perform labor work on and around the production equipment. This is not a conclusion based on the importance of the work as part of the steelmaking process, a criterion I used in ArcelorMittal Case #10, but largely abandoned in ArcelorMittal Case #47. Rather, it is the result of an attempt to understand what the parties meant when they included a broad term --- "housekeeping" --- in a list of work that could be contracted out. Certainly, the parties *could* have agreed to contract out the work performed by vacuum truck laborers. But I find that they did not do so merely by including the words "general plant housekeeping" among work listed in the Arouca-McCall letter.

And even if the work properly could be classified as housekeeping, it still seems unlikely that it would be non-core. The Arouca-McCall 2008 letter says general plant housekeeping can be contracted out if it is "not directly associated with general labor work on a production facility." The Company says there is no evidence that the vacuum truck crew assists any laborers when the production facility is in operation. But the language does not say anything about laborers; rather, it asks if the housekeeping is associated with "general labor work." Employees other than Labor Grade 1 Utilitymen might be assigned to that work, or it could be performed by contractors. The point is that the character of the work stays the same, no matter who does it. The Company's argument also assumes the production facility must be in operation for the "directly associated" language to apply. But the letter says the general labor work must

be on a production facility; it does not say the facility must be operating. Downturns and outages are a normal, and necessary, part of the operation of plant equipment and machinery, and the work performed during those periods is work "on a production facility."

The record is sketchy about what general laborers do during downturns, although Dec testified that prior to the extensive use of vacuum trucks, laborers scraped and cleaned equipment and surrounding facilities when the operation was down. Hosing up the debris resulting from that process, then, would be "directly associated" with general labor work, even if the work itself is not being performed by the Company's general laborers. It might also be that the vacuum truck laborers are performing the general labor work themselves.

I find that the Company has not established that the vacuum truck laborer work at issue is non-core work that can be contracted out. The work is not housekeeping, and even if it is, it is "directly associated with general labor work on a production facility."[3]

The above analysis applies to the laborers who operate the hose end of the vacuum truck; but the same conclusions do not follow for the driver/operator. The driver is not involved in cleaning out pits or vacuuming flakes off equipment. Nor does he scrape machinery or accumulate debris into piles so it can be sucked into the truck. I agree with the Company's contention that the debris sucked out of the mill can be appropriately described as trash. The driver operates the machinery that allows the transfer of that material into the truck, and then

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[3] As noted in the Background, Dec testified that general labor work in a production facility did not include work performed outside the facility, like emptying the scale pits. The Company says the distinction does not make sense, because the work is the same no matter where it is performed. Thus, it says if the work is non-core outside the facility, it is also non-core inside. The Union says I should ignore Dec's testimony and recognize that emptying the scale pit outside the hot strip is an integral part of the work that was performed inside the hot strip. I agree. I do not mean to suggest that the location of the work is never relevant; indeed, the language at issue identifies work "on a production facility." But the location of the scale pit outside the hot strip does not obscure the fact that emptying it is part of the work that was performed "on" that facility.

takes it someplace else and dumps it. I find that this is "garbage and trash" removal, as those words are used in the core/non-core letter, and, accordingly, is non-core work the Company can contract out. Given this conclusion, I need not consider whether the driver/operator is involved in general plant housekeeping.

In summary, I find that the work performed by vacuum truck laborers on the jobs at issue in this arbitration was core work that could not be contracted out under the 2008 Arouca-McCall letter, but that the driver/operator work was non-core, and *could* be contracted out.[4]

Remedy Issues

The Union asks for make-whole relief for the work improperly contracted out to Haas from February 1, 2009 to December 15, 2009. This is the work identified in Union Exhibits 1 and 4, and the only work at issue in this case. My finding that the vacuum truck laborer work was improperly contracted out means that the affected employees are entitled to make-whole relief. The Union is not entitled to similar make-whole relief for the driver/operators under the Arouca-McCall letter, because I have found that work to be non-core, and, therefore, properly contracted out.

But the Union says a make-whole remedy for the driver/operator work is appropriate under another theory. The last sentence of the 2008 Arouca-McCall letter says "in the event of a

[4] The Company also claims that the parties recognized the work was non-core because it had been performed by the bargaining unit since the inception of the Wood-McCall letter in 2002, without complaint by the Union. The Company reminds me I used similar reasoning in Inland Steel COEX 20 (1992). But unlike that case, in the instant case the language changed in 2008, shortly before the Union filed the grievances. Previously, the Company could contract out general plant housekeeping, and, given my decision in ArcelorMittal #10, the Union might reasonably have believed the vacuum truck work would fall under the reasoning of that decision. But the parties added a limitation in 2008; even if the work was general plant housekeeping, it was still core work if it was directly associated with general labor work on a production facility. Once the parties changed the language, the Union was entitled to test the scope of the new limitation through the Expedited Procedure.

lay-off situation, Employees shall be assigned to such work (if being performed) before being laid off." I understand the "such work" reference to apply to non-core work the Company properly contracted out, which would include the work done by the Haas driver/operators. On May 12, 2009, the Company served a WARN notice that there would be a "mass layoff," as defined under law. The layoff was the result of the severe economic crisis that began in the fall of 2008, and which had a severe impact on the entire steel industry. The layoffs began in late July, 2009. During the hearing, the Company acknowledged, generally, that if it contracted out non-core work after the layoffs began, then it should have gotten the work back. The Union is entitled to a make-whole remedy for the driver/operator work.[5]

The Company says no make-whole remedy should be imposed, and that any relief must be addressed through the Work Subject to Transfer (WST) provisions of the BLA, found in Article 2-F-10

Oversight and Work Subject to Transfer

> a. Notwithstanding any other provisions of this Section, a Company-wide Oversight and Work Subject to Transfer Committee (Committee) will be established comprised of two union members (as designated by the Union Negotiating Committee Chairman) and two company members (as designated by the Company Negotiating Committee Chairman).
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> b. An initial review of all outstanding issues at all plants covered by this Agreement will be conducted within one hundred twenty (120) days of the ratification of this Agreement. After the initial review the Committee will meet at least monthly to address issues that may arise during and after the review. After each meeting the Committee will prepare a written report for the Co-Chairs of the Negotiating Committee including any issues the local parties are unable to resolve, for review by the Co-Chairs.

[5] Should a similar situation arise in the future, the remedy imposed here would not foreclose discussion about how the Company could satisfy the requirement to assign the work to bargaining unit employees in lieu of layoff, including whether the Company would buy or rent trucks, or if there would be some other accommodation.

c. The parties recognize that in addition to ongoing concerns regarding the Commitment provisions of this Section there also exists a significant amount of work that is performed inside the plants that is being performed by Outside Entities that may not meet an exception as defined in this Section. The substantial level of work inside the plants that is currently (as of the Effective Date) being performed on a full-time basis pursuant to agreement or by practice by Outside Entities is work that is identified as Work Subject to Transfer (WST). The parties are committed to having all work inside the plants performed by Employees as is required by this BLA.

d. The Company agrees that WST will be transferred to Employees pursuant to the procedures in paragraph f below unless the Company can clearly demonstrate that the work meets both of the exceptions outlined below.

1. The Outside Entity performing such work has a significant (in the context of the relevant Company facility and the number of Outside Entity employees performing the WST) investment in either equipment, facilities, proprietary technology, or business and administrative infrastructure; and

2. That to transfer such WST to Employees would, under all the circumstances, subject the Company to a material economic disadvantage measured over time and taking into account the size of the initial required investment (and without comparing wage and benefit costs).

e. The Company shall provide the members of the Committee with any relevant resources or information including arranging meetings with Outside Entities, in addition the Company will:

1. Identify Outside Entities who have employees performing WST;

2. Examine the type and amount of WST done by each Outside Entity and identify the contract termination dates of any contracts between the Company and such Outside Entities;

3. Identify those Outside Entities which meet the exception outlined in paragraph d above.

4. Develop plans to transfer the WST to Employees. In developing such plans, the objective of the Committee shall be

> to do so as expeditiously as possible without interfering with the orderly operation of the plant.
>
> f. After completing the tasks set forth in this Section, the Committee will develop schedules and procedures to transfer any WST which does not meet the exception outlined above to Employees. Progress on such schedules and procedures will be monitored monthly. Should the Union Co-Chair conclude that a dispute cannot be resolved; the dispute may be referred directly to arbitration under the relevant provisions of Article Five Section I of the BLA.

The Union introduced testimony from Sub-District Director Mike Millsap, that when this language first appeared in the 2002 Agreement, it applied only to former Bethlehem plants. That did not include Indiana Harbor West, which had once been owned and operated by LTV. However, the September 1, 2008 Agreement that governs this case applied the language generally. That Agreement went into effect about four or five months before the Union filed the first of the two grievances at issue in this case.

The Company argues that no back pay or other financial remedy is appropriate in this case; rather, it says the sole remedy should be to order the parties to invoke the WST language. Even then, the Company says, the language does not mandate that the work be transferred to the bargaining unit; the Company can try to establish that it meets the exceptions, or invoke some other defense, matters that it says should not be addressed until the parties go through the WST process. But the purpose of the WST language appears to be to provide a mechanism for transferring work to the bargaining unit that the parties had previously agreed the Company could contract out, or work that was contracted out pursuant to a practice. The Company did not present any evidence that the parties agreed to allow the Company to contract out the work performed by the vacuum truck driver/operators.

Nor is there evidence of a practice, as that requirement is now understood. The Company said repeatedly that the work had been contracted out on the West Side since 2002, when the non-core language first appeared in the contract. That was about the same time that ISG reached agreement with the Union and began operating the facility. There is no evidence that any practice concerning vacuum trucks existed at LTV that carried over to ISG. Nor is there evidence of a practice arising after the effective date of the 2002 Agreement. It is true, as the Company says, that the Company used contractors exclusively from 2002, until the present case arose in 2009. But the 2002 Agreement and the 2008 Agreement both say that "future local working conditions must be reduced to writing and signed by the Plant Manager and the Local Union President/Unit Chair." See Article 5-A-6. There is no evidence in this case of any signed writing that would satisfy the practice requirement of the WST language. Thus, I find that the WST does not preclude the award of a monetary remedy in this case.

Finally, the Union asks that I invoke Article 2-F-9-a-1, Special Remedies, which says, in pertinent part:

> Where it is found that the Company (a) engaged in conduct which constitutes willful or repeated violations of this [contracting out] Section, the arbitrator shall fashion a remedy or penalty specifically designed to deter the Company's behavior.

The Union argues that a special remedy is appropriate in this case because by July 2009, the Company was contracting out the vacuum truck work, claiming it was non-core, pursuant to the Arouca-McCall letter. But the same letter said non-core work could not be contracted out when employees were on layoff. Nevertheless, the Union says, the Company continued to contract out the work from July, when the layoffs began, through December 15, 2009.[6] This, the Union says,

[6] The Union does not claim that the improper contracting out stopped in December 2009, and it does not say the Company was no longer in violation of the Arouca-McCall letter after that date. Instead, it says the only time period it has put at issue in this case extends from February 1, 2009 to December 15, 2009,

constituted a willful, continuing violation, which should be remedied by requiring the Company to pay time-and-one-half for all hours worked by a Haas vacuum truck crew during the July to December period.

It is not clear to me what, if any, communication may have occurred between the parties concerning transferring the non-core work to laid off employees. The Company said the Union had not raised the matter prior to the hearing. The Union countered that this case was brought under the contracting out Expedited Procedure (although it wasn't tried until about four years after it was filed), which does not include the steps from the regular grievance procedure that require a full disclosure of all claims. But even if previously undisclosed positions can be raised under the Expedited Procedure, a special remedy is not available in this case. Arbitration remedies, like remedies in any contract case, are typically not punitive; contract remedies restore rights or enforce the terms of the bargain. In the steel industry, however, the parties agreed to allow special remedies in contracting out cases to deal with a perceived pattern of continuing or willful violations. The provisions have been used rather sparingly, and typically have involved multiple violations over a period of time, and situations where the employer seemingly did not act in good faith. The circumstances of this case do not warrant punitive action.

To summarize, I find that the Company did not have the right to contract out the vacuum truck laborer work in the instances the Union claims in Union Exhibit 1, and that the bargaining unit is entitled to make whole relief. The Company did have the right to contract out the work of the driver/operator as non-core; however, its right to do so was affected by the layoff and the part of the Arouca-McCall letter that says when there is a layoff, "Employees shall be assigned to such work (if being performed) before being laid off." The bargaining unit is entitled to a make-

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and it does not claim back pay or other remedies past that date. The time period at issue for the special remedy begins in July 2009, when the first employees were laid off.

whole remedy under this provision. As is typically the case with these parties when there is a make-whole remedy, I will remand the case for discussion and calculation of the amounts due. I will retain jurisdiction to resolve any disputes concerning the remedy.

AWARD

The grievance is resolved as explained in the Findings.

s/Terry A. Bethel
Terry A. Bethel
November 2, 2013