IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
STEELTON PLANT

And

ArcelorMittal Case No. 81

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1688

OPINION AND AWARD

Background

This case from the Steelton Plant concerns the Union's claim that the Company violated the Basic Labor Agreement BLA) when it reduced crew sizes in two areas of the plant. Grievance 140518RM-1 asserts that the Company improperly reduced the 28" mill build-up crew from four employees to three employees on each of two shifts. Grievance 140518RM-2 protests a crew reduction on the hydraulic straightener – also called the Gag – in the long length finishing mill. The cases were tried in the same hearing on November 29, 2016, and, although the facts differ, both cases present the same issue concerning the Company's right to have made the changes unilaterally.

The Steelton Plant was part of Bethlehem Steel, which went bankrupt in December 2002. In May 2003, International Streel Group (ISG) purchased the Bethlehem assets, including those of the Steelton facility. As of June 16, 2003, the former Bethlehem plants were covered by the December 15, 2002 BLA between ISG and USWA. That Agreement made significant changes to what was often referred to as the basic steel language. Under what a Union witness

characterized as "a massive restructuring," the ISG-USW BLA eliminated job classifications – in some plants running into the hundreds – and collapsed everyone into nine basic job descriptions. In addition, new seniority lines of progressions gave ISG considerable flexibility in making job assignments across the former job classifications.

At Steelton, one objective of the new BLA was to reduce manpower in order to provide the plant with long term viability. Pat Gallaher, USW Sub-District Director, was part of the 2003 negotiations to bring Bethlehem under the December 15, 2002 BLA. He said everyone recognized that Steelton was different from other Bethlehem properties and that it faced difficult challenges. A large number of employees had left because of the bankruptcy, and the parties recognized that they needed to reduce man-power even more to stay in operation. This led to an agreement that applied only to Steelton, and which recognized what Gallagher called the extraordinary efforts the parties had made to keep the plant running. On May 2, 2003, David McCall, the Union's District 1 Director, and Thomas Wood, the Company's Corporate Manager of Labor Relations, agreed to a letter that applied only to the Steelton Plant:

> In recognition of the continuous progress that the Parties at the Steelton facility have made to cooperatively restructure and redesign work in order to attain long term viability the following process will be developed:
>
> 1. A Joint Determination Committee (JDC) consisting of the Steelton Plant Manager and the Local Union President will be established.
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> 2. The JDC shall continue to discuss modification to the current Lines of Progression (LOPs), manning levels and assignment practices in order to continue implementation of efficient and effective utilization of the workforce. Such discussions shall also focus on safety issues, capital investment opportunities, facility utilization and quality of work life issues.
>
> 3. The Chairmen of the Negotiating Committee will resolve any disputes that may arise within the JDC.

At the time of the letter, Wood and McCall were the Chairmen of their respective negotiating committees.

Local Union 1688 Grievance Committee Chairman Greg Reese testified that during the 2002-2003 negotiations, the parties recognized that the plant was staffed at a higher level than production could support, and the parties looked at how they could reduce the workforce. Reese identified a document titled Rail Mill Department Memorandum of Understanding (hereinafter Rail MOU), which included job eliminations and manning changes. Reese said the document was agreed to after December 17, 2002, and prior to May 2, 2003, which was the date of the Wood-McCall JDC Letter. However, at some point in December 2002, the Union learned that the PGBC was planning to terminate the Company's pension plan. The Company and Union counseled 473 employees about taking a shutdown pension. Within 24 hours, 212 employees were placed on layoff status. One of the tentative agreements the parties made during this process was to reduce the manning for the build-up crew from five employees per turn to four per turn, which the Company implemented in May of 2003. In fact, Reese said, even though the parties never signed the Rail MOU, the Company implemented the changes agreed to following the retirements caused by the pension issue.

Reese also identified exhibits showing the parties agreed to eliminate 18 jobs due to technological changes. In addition, the Company proposed 26 job eliminations that were not prompted by technological change, and the Union ultimately agreed to all of them (save one withdrawn by the Company) except the three at issue in the instant case. It is not entirely clear when these agreements were made, although they apparently occurred under the JDC. Both exhibits are dated August 1, 2013. Reese said he learned the Company planned to implement the two changes at issue unilaterally on May 15, 2014, during another meeting about the Company's

job elimination proposals. He filed the grievances on May 20. At various points in the grievance procedure, the Company said it was eliminating the jobs because of technological change. The Union responded with several requests for information about the changes, most of which received no response. The Company made it clear during the arbitration that it was not claiming it had a right to eliminate the jobs because of change, technological or otherwise. Nevertheless, the Union says the events in the grievance procedure are relevant because they show the Company was struggling to find a reason to justify the changes, which is evidence the Company did not believe it had the right to do so unilaterally.

Although Reese sometimes described the manning levels on the build-up crew and the straightener as local working conditions, the Union's argument did not rely on the local working conditions language in Article 5-A. Rather, the Union points first to the May 2, 2003 Wood-McCall JDC letter that applied only to Steelton. In particular, the Union relies on the sentence that says the JDC "shall continue to discuss modifications to the current ... manning levels and assignment practices in order to continue implementation of efficient and effective utilization of the workforce." The word "current" referred to the manning levels that were in effect at the time Steelton became covered by the BLA, on June 16, 2003. In addition, the Union points to a September 1, 2012 Workplace Procedures letter of agreement between McCall and Dennis Arouca, who was then the Company's Vice President of Labor Relations, which is included in the September 12, 2012 BLA. The letter, which applies Company-wide and not just to Steelton, discusses the parties' commitment to "effective and efficient procedures" and to improving the financial efficiency of the Company "by having employees perform a broader range of duties by eliminating barriers that may interfere with flexibility and productivity." The letter continues:

> This process began by restructuring the then existing job descriptions and agreeing to new lines of progression ("LOP") and new Job

> Descriptions during the negotiations of the predecessor agreements ("Predecessor Agreements") to this Basic Labor Agreement ("BLA"). The parties recognize that their long term mutual goals can be achieved only through a process of continuous review and refinement of the original plan. Accordingly, in order to achieve the foregoing objectives, the Parties have agreed to continue existing local restructuring agreements and the process already initiated under the Predecessor Agreements.

This language, the Union argues, continued the JDC established under the 2003 (for Bethlehem) BLA, which was an "existing local restructuring agreement." As such, the Union says, the Company was not only obliged to discuss the changes with the Union pursuant to the JDC, but also, if the parties were unable to agree, it was required to submit the dispute to the Chairmen of the bargaining committees, McCall for the Union and current Company Vice President of Labor Relations Patrick Parker. The Company, the Union says, had no right to act unilaterally.

The Company argues that the JDC has been abandoned and is no longer operative. David Wirick, former General Manager, testified that the parties used the process in the early days after the Company acquired the Steelton assets and became covered by the 2002 ISG-USW BLA. The meetings facilitated the reduction to nine job descriptions and the changed LOPs. The Company says the JDC was also useful in the parties' quest to reduce staffing. But, Wirick said, the JDC was not intended to be permanent, and the process terminated in late 2003 or early 2004. Wirick also said he did not stop meeting with the Union after the JDC process was completed. He and Union officers met frequently and discussed a whole host of issues, including a reduction in staffing. But those meetings were in the interest of good communication and occurred because of the parties' Partnership Agreement; they were not required by the JDC. Wirick said he could not remember either party ever having submitted an issue to the bargaining chairmen pursuant to paragraph 3 of the JDC. On cross examination, Wirick agreed that he never sent a notice to the Union terminating the JDC.

Steve Taylor became General Manager in 2013. Although he said the parties met and discussed manpower reductions, he never held a JDC meeting, and was not aware of the JDC letter. Reducing the number of employees is absolutely imperative Taylor said, if the plant is to survive. Taylor said he has met with the Union to address manning reductions, but that he believes the Company can eliminate jobs unilaterally, including the ones at issue in this arbitration.

The Company also relies on the local working conditions language in Article 5-A. Under the December 15, 2002 ISG-USW BLA, which applied to Steelton beginning June 16, 2003, Article 5-A-5 said, "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." There is no signed local working condition concerning the crew sizes at issue in this case. The Company acknowledges that in *ArcelorMittal Award No. 52*, I found that a protected crew size in the 80" tandem mill at the Indiana Harbor East facility survived the 2005 agreement that brought the former Ispat Inland facility under the ISG-USWA agreement. But, the Company points out, unlike the former Bethlehem properties, including Steelton, Ispat Inland did not go bankrupt. Thus, the Company bought Ispat Inland as a going concern, whereas with Steelton it merely bought the assets of a bankrupt company. Moreover, in *ArcelorMittal Award No. 52*, the parties agreed that the crew size on the 80" tandem mill had been a protected local working condition at Ispat Inland. And, in *Mittal Award No. 8*, I recognized that some local working conditions from Ispat Inland had survived the combination of Ispat Inland and ISG, relying principally on an agreement that did not apply to former Bethlehem properties. In the instant case, however, the Union does not claim there was a protected local working condition for crew sizes in the build-up crew or the straightener crew. Thus, the Company says, the principles

underlying *ArcelorMittal Award No. 52* do not apply in this case. Finally, the Company asserts that there were no protected crew sizes for non-craft employees under the former Bethlehem contracts, citing *Mittal Award No. 15*.

Findings and Discussion

The initial question is whether the JDC remained in effect in May 2014, when the Company reduced the size of the build-up crew and the straightener crew. As the Company points out, the JDC letter was part of the 2002 BLA, but it does not appear in the 2008 BLA. However, Gallagher testified without rebuttal that the understanding in the 2008 negotiations was that all 2002 letter agreements carried over to the 2008 BLA, except as they were specifically modified in the 2008 contract. There is no evidence that the JDC was excluded from this understanding. Moreover, it is clear that the parties continued to meet and discuss the topics enumerated in the JDC letter after the effective date of the 2008 BLA and, in fact, after the 2012 BLA went into effect.[1] I am unable to conclude, then, that the parties abandoned the JDC following an initial "flurry of activity," as Wirick claimed.

This is not intended to suggest there was no flurry of activity. It is reasonable to believe that the dramatic changes in job descriptions and work assignment practices created confusion and disagreements and that the JDC meetings helped alleviate those concerns. But there is

[1] Despite Gallagher's testimony, some of the letters in the 2002 BLA seem to have expired because they were no longer needed. Examples include a Bethlehem salary bonus, an interim incentive plan for Lackawanna, and a letter concerning Chesapeake Heavy Machine Services, LLP. There are other letters concerning the same subjects in both agreements which reflect amendments. Thus, the 2002 BLA had a letter concerning railroads operated by ISG; a letter concerning the railroads in the 2008 BLA differs significantly from the 2002 letter. There is also at least one example of a minor change in a letter included in both the 2002 and 2008 BLA. A letter concerning plant protection services at Indiana Harbor was amended in 2008 to clarify that it applied to Indiana Harbor West, a revision needed after the former Ispat Inland plant fell under the agreement in 2005 and became Indiana Harbor East. The understanding that letters continued unless there was a specific amendment apparently did not carry over to the 2012 BLA; there are some letters in the 2012 BLA that are identical to those found in the 2008 BLA.

nothing in the JDC that suggests it was only to remain in effect for a brief period; to the contrary, the parties could hardly have expected to have any meaningful discussion of "investment opportunities [and] facility utilization" during the initial "flurry of activity." Moreover, the parties continued to meet about manning levels, and they reached some agreements about job eliminations and combinations, which the Company implemented despite the lack of a signed writing. I understand Wirick's and Taylor's testimony that they met with the Union in the interest of good communication, and not because of the JDC. But the JDC document did not expire by its own terms and the Company never told the Union it believed the letter agreement had served its purpose. Nor, according to Gallagher's unrebutted testimony, did the parties expressly agree to delete it during the 2008 negotiations.

As reflected in the Background, the Workplace Procedures letter in the 2012 BLA continued "existing local restructuring agreements and the process already initiated under the Predecessor Agreements." The letter then lists three specific agreements, including recognition that employees hold incumbency in a box in an LOP, that employees can be assigned to perform any duty in their job description, and that the co-chairs of the negotiating committees will attempt to resolve any disputes. Given the specific agreements that immediately follow the quoted sentence, the agreement to continue "existing local restructuring agreements" is best understood as applying to restructuring agreements already implemented, which would not include the JDC letter. However, the JDC letter is a "process" the parties initiated to deal with restructuring issues, as is recognized in the letter itself, i.e., "the following process will be developed." I find, then, that the Workplace Procedures letter in the 2012 BLA continued the exiting JDC process at Steelton. That finding, however, does not resolve the issue.

The Union understands the JDC to mean that the parties will bargain over manning levels, including reductions and, if they cannot agree, they will submit the dispute to the bargaining chairmen for resolution. The intent of the letter is ambiguous. The JDC letter requires the parties to "discuss" a number of issues, including manning levels. It does not say, however, that the parties will "bargain" about any change in manning levels, or declare that no changes could be made absent agreement. The letter was the product of an agreement between two experienced negotiators, who knew the difference between discussion and bargaining, and who understood the legal requirements that would attend an obligation to bargain, but would not apply to an injunction simply to discuss. However, in addition to the obligation to discuss manning levels, the letter said the parties were to "discuss modifications to the current Lines of Progression (LOPs)."

The reference to modifying LOPs is significant because of a document titled "**Memorandum between International Steel Group, Inc. and United Steelworkers of America, AFL-CIO-CLC Concerning Acquisition of Bethlehem Steel Assets**" and sub-headed "Understandings between the Parties Regarding the Effects of the Acquisition on the Union-Represented Workforce of Bethlehem." The document includes the following language in Paragraph E:

> The Lines of Progression (LOPs) and the Seniority Units and Departments that the LOPs are applicable to have been negotiated by the parties at each location/Plant.

As I understood Gallagher's testimony, Steelton differed significantly from other Bethlehem properties, which made the restructuring process – including LOPs – difficult. Thus, the JDC letter recognized that the Local Union and Steelton had made "continuous progress," and the JDC was intended to have them continue discussions about the new LOPs and other issues. The

promise to discuss manning levels and other issues was not merely hortatory. Reese testified that the parties discussed and agreed to numerous manning changes, including reductions, and that all of them were implemented by the Company. This, seemingly, is how the process was supposed to work, given the sweeping changes in job descriptions and lines of progression, and the large number of classifications at the Steelton facility. But it is significant that the agreements the parties reached during JDC discussions were not reduced to writing and were not signed by the parties. Thus, the agreements on manning reached after Steelton fell under the 2002 BLA (June 16, 2003) cannot be considered local working conditions under Article V-A-6, which requires a signed writing for local working conditions agreed to after the effective date of the BLA

The other subjects covered in the JDC letter also demonstrate that the letter did not create a list of mandatory bargaining subjects. The same paragraph that requires discussion of LOPs and manning also directs the parties to discuss "capital investment opportunities [and] facility utilization." I have no doubt that such discussions could be useful, but it is unrealistic to believe that the JDC was intended to leave capital investment decisions to the local parties. The same is true of facility utilization, at least to the extent that utilization is affected by decisions involving what is produced or what markets to pursue. Nor is it fair to believe that the JDC letter itself created protected crew sizes where none existed before. The obligation to discuss manning was tied to the LOP negotiations, and the LOPs were intended to increase flexibility by allowing the Company to assign duties that were formerly in separate classifications to any employee in a job box that included those duties. In that context, it makes sense to believe that discussions about manning for the new LOPs and the job boxes they created would be useful. But there is no evidence of local working conditions that established protected crew sizes when Bethlehem was operating the plant prior to ArcelorMittal's purchase of the Bethlehem assets, and I cannot

conclude that a letter agreement requiring the parties to "discuss" manning was intended to require agreement to wide-spread protected crew sizes throughout the facility.

It is clear, however, that the Company violated the JDC procedure when it acted unilaterally without having submitted the dispute to the chairmen of the negotiating committees. Even if the Company has a right to act unilaterally, the JDC contemplates that it will discuss manning issues with the Union and, if there is no agreement, that the parties will direct the dispute to the Chairmen for resolution. That does not mean, however, that the dispute would die there if the Chairmen cannot resolve the issue. Otherwise, one party could frustrate the process simply by refusing to agree. During the hearing, Gallagher agreed with the Company's contention that if the parties could not settle the matters at issue in this case, the dispute would be submitted to arbitration. And, in fact, in arbitration the parties tried the merits of the case as well as the procedural issues surrounding the JDC. Still, the Company shortcut the process by skipping the referral to the Chairmen.

In arbitration, the Union asked for an order that required the Company to restore the status quo, to refer the case to the Chairmen, and to provide make-whole relief. As I understand the facts, no one was laid off because of the Company's decision to reduce the two crews. However, it may be that the reduced employees were placed in jobs that afforded less pay or that offered less overtime or that received lesser monetary benefits. If so, they are entitled to make-whole relief. At this point, there is no reason to order the Company to restore the status quo, although the make-whole liability, if any, will continue until the case is resolved. I will grant the Union's request to refer the dispute at issue in both grievances to the Chairmen, although for a period not to exceed 60 days. I will retain jurisdiction and, if the parties are unable to resolve the issue by that time, I will decide the cases on the merits. The time period can be extended only by

the request of both parties or because of unavoidable circumstances. The parties can notify me to proceed if they determine in less than 60 days that they will be unable to resolve the dispute. I will also retain jurisdiction to resolve any disputes concerning the monetary remedy.

AWARD

The parties are directed to take the action explained in the last paragraph of the Findings.

Terry A. Bethel

Terry A. Bethel, Arbitrator
January 26, 2017