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In the Matter of Arbitration Between:)	
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ARCELORMITTAL USA)	**Grievants: Weaver, et al**
Weirton, W.VA.)	**Issue: 6th and 7th Day Overtime**
)	**and Sunday Premium**
and)	**Grievance Nos. 15MEU0129/130/131/132**
)	**Arbitrator Docket No. 171003**
UNITED STEELWORKERS,)	
District 1, Local 2911.)	CASE 86
)	
**********	

BEFORE ARBITRATOR JEANNE M. VONHOF

INTRODUCTION

The undersigned arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on November 7, in Weirton, West Virginia.

Mr. James A. Vilga, Division Manager, ArcelorMittal USA, represented ArcelorMittal USA, hereinafter referred to as the Employer or the Company. Mr. Brian James, Plant Manager; Mr. Nick Pappas, Lead Labor Relations Representative; and Mr. Michael Day, Senior Labor Relations Representative, testified on behalf of the Employer.

Mr. Pete S. Visnic represented United Steelworkers, Local 2911 hereinafter referred to as the Union or the Local. Mr. John Balzano, Union Benefits Coordinator; and Mr. Jan Weaver, Grievant, testified on behalf of the Union.

Each Party had a full and fair opportunity to present evidence at the hearing. Both parties made closing arguments on December 13, at which time the hearing was declared closed.

Issues:

Did the Company violate the Basic Labor Agreement when it failed to pay Grievants for sixth or seventh day overtime, as well as Sunday premium pay, when their sixth or seventh workday fell on a Sunday?

Did the Company violate the BLA by failing to permit employees to count forwards or backwards in time in order to designate a workday as a sixth or seventh day, in order to be paid sixth or seventh day overtime?

If so, what shall the remedy be?

Relevant Provisions of Basic Labor Agreement

Article V -- Workplace Procedures

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Section C. Hours and Work Week

1. Normal Workday and Work Week

a. The normal workday shall be any regularly scheduled consecutive twenty-four (24) hour period comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest. The normal work week shall be five (5) consecutive work days beginning on the first day of any seven (7) consecutive day period. The seven (7) consecutive day period is a period of 168 consecutive hours and may begin on any day of the calendar week and extend into the next calendar week. On shift changes, the 168 consecutive hours may become 152 consecutive hours depending upon the change in the shift.

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Section D. Overtime

1. Definitions

a. The payroll week shall consist of seven (7) consecutive days beginning at 12:01 AM Sunday or at the changing hour nearest to that time.

b. The workday for the purposes of this Section is the twenty-four (24) hour period beginning with the time the Employee is scheduled to begin work.

...

d. For the purposes of determining hours which are subject to the non-duplication of overtime hours provision, hours worked on Sunday in excess of normal (or AWS) hours will not be used for the purpose of calculating overtime payments.

2. Conditions Under Which Overtime Rates Shall Be Paid

Unless worked pursuant to an agreed upon Alternative Work Schedule, overtime at the rate of one-and-one-half times (1 1/2) the Regular Rate of Pay shall be paid for:

a. hours worked in excess of eight (8) hours in a workday;

b. hours worked in excess of 40 (40) hours in a payroll week;

c. hours worked on the sixth or seventh workday of a seven (7) day period during which five (5) days were worked, whether or not all such days fall within a single payroll week;

...

3. Holidays

Recognized holidays, whether or not worked, shall be counted as a day worked in determining overtime; however, worked holidays shall only be paid as specified in Article Ten, Section A (Holidays).

4. Non-Duplication of Overtime

Overtime shall not be duplicated by using the same hours paid at overtime rates more than once for the purpose of calculating overtime payments.

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Article 9 – Economic Opportunity

Section D. Sunday Premium

All hours worked by an Employee on Sunday, shall be paid for on the basis of one and one-half (1 1/2) times the Employee's Regular Rate of Pay. For the purpose of this Section, Sunday shall be deemed to be the twenty-four (24) hours beginning with the shift change hour nearest to 12:01 a.m. Sunday.

Appendix B – Letters Concerning Miscellaneous Matters

(Letter to Mr. David McCall, Director, USW District 1 from Mr. Patrick David Parker, Vice President - Labor Relations, ArcelorMittal, dated September 1, 2015)

Re: Payroll Guidelines

Dear Mr. McCall:

The below guidelines have been agreed as further guidance in implementing the pay provisions of the Basic Labor Agreement. These guidelines apply to all locations other than Indiana Harbor East. If you concur, please sign below.

Normal Schedule

Sunday Premium

- Paid on first eight (8) hour turn worked on Sunday. Any hours worked on Sunday in addition to the first eight (8) hours are considered paid at overtime and are not used for the purpose of calculating overtime.

...

Overtime (paid at 1.5)

...

- For hours worked on a 6th or 7th workday in a 2-week period in which 5 consecutive days were worked (days may not be worked in the same payroll week) except where it is worked pursuant to a Local Working Condition Agreement.

...

Alternative Work Schedule (AWS)

Definition of AWS – In order for a scheduled to be considered an Alternative Work Schedule it must be a schedule other than the Normal Workday and Work Week as defined in Article 5 Section C. 1....

Sunday Premium

- Paid on first shift (ten (10) or twelve (12) hours) worked on Sunday. Any hours worked on Sunday in addition to the first shift (ten (10) or twelve (12) hours) are paid at overtime and are not used for the purpose of calculating overtime.

Background

In this grievance, the Union claims that the Employer has violated the Basic Labor Agreement (BLA) in the way that it has paid for work when an employee's 6th or 7th day falls on a Sunday. The Union asserts that in such a situation, the employee should be paid both 6th or 7th day overtime pay, as well as the Sunday premium. The Company takes the position that this constitutes "pyramiding" of pay, and the BLA requires paying only the Sunday premium. The Union also takes the position that the employee can count forwards or backwards during a 7-day period in order to designate a 6th or 7th day.

Mr. John Balzano, Benefits Coordinator for the Local Union, has worked for the Company or its predecessors since 1959. He testified that at Weirton, an employee seeking 6th or 7th day overtime pay must apply for it; is not automatically included in his or her paycheck. Balzano testified that in order to be paid for a 6th or 7th day, an employee must first work five

(5) consecutive days, and that the five (5) days may extend over two payroll weeks. He testified further that in order to collect 6th day overtime., an employee must work 6 days within 168 hours, which the Basic Labor Agreement generally recognizes as the length of a workweek.

Balzano provided an example from the grievance. He said that a group of employees worked five days Monday through Friday, skipped Saturday and then worked on Sunday. He said they were entitled to eight (8) hours' pay for working that Sunday, plus four (4) hours' pay for the Sunday premium, and another four hours for 6th day overtime. He testified that the language of the Agreement requires overtime for "hours worked on the 6th or 7th workday of a seven (7) day period," and these hours fit that requirement. Under similar schedules for the employees covered in grievances 0130, 0131, and 0132, Sunday was their 6th day of work in that week and they were paid the Sunday premium but not the 6th day overtime.

Balzano testified that the language of the Basic Labor Agreement does not restrict 6th day overtime to particular days of the week. He went on to say that there is no duplication problem because the additional payment on Sundays is a Sunday premium and not overtime.

Bolzano also testified that in determining which is the 6th day, an employee may choose to select any five consecutive days, counting either forwards or backwards. Under the facts present in grievance 0132, the Grievant could have begun his count on May 7, counted backwards to Sunday, May 3, to collect the Sunday premium, and then continued counting backwards to Friday, May 1, collecting 6th day overtime for that 6th day worked within a 168-hour workweek. If the Grievants here are permitted to count backwards in this way, the rest of the issue here is moot, according to Balzano, because they could designate the 6th day as something other than a Sunday. Employees could collect both 6th day overtime and the Sunday

premium in one workweek, and no issue would arise regarding duplication of pay for the same day.

Balzano testified that USW Local 2911 Officials discussed this issue with another Local President from the Company's facility in Coatesville, Pennsylvania. The Union President at Coatesville provided the Local Union here with a booklet or manual of guidelines entitled "6th and 7th day Overtime." The claim forms contained in the booklet are titled, "Bethlehem Steel Corporation Request for 6th or 7th Day Overtime under Article VII, 3(a)(4)." Balzano testified that the Local President in Coatesville told him that it is still relied upon by the Parties there. Balzano testified that the Local Union here examined this in-depth analysis of 6th and 7th day overtime claims, and found specific support in the examples and language of this booklet for the positions taken in this grievance.

Balzano acknowledged, under questioning from the Company, that although he has served as Benefits Coordinator for the Local since 1985, he does not normally deal with claims for 6th and 7th day overtime. He testified that he was not aware of whether the Company has been paying these claims according to the method the Union argues should be applied to the grievances at issue here, either at Weirton or at Coatesville. He did not agree that the use of the term "consecutive days" or the definition of a normal workday or workweek preclude an employee from counting backwards to a 6th or 7th day of overtime. The Company questioned whether the example provided by Mr. Balzano from the booklet demonstrated that the Parties had counted backwards.

Grievant Jan Weaver testified that he has worked at ArcelorMittal Weirton for four years. Before that he worked at Wheeling Pittsburgh Steel for 41 years, as a Craneman and Motor Repairman. He testified that he filed a claim for Sunday, July 26, 2015 for both 6th day overtime

at time and a half and the Sunday Premium at time and a half. He was paid only the Sunday premium and so filed grievance 0129, along with other employees who worked the same schedule that week. He testified that in his 41 years at Wheeling Pitt, he was paid both the Sunday premium and the 6th day overtime when the 6th workday fell on a Sunday. He testified that on two occasions while working at Weirton he also was paid both the Sunday premium and the 6th day overtime. The Union offered one of Weaver's paycheck stubs allegedly showing this payment record.

The Union also submitted a grievance in which the Company agreed to pay 6th day overtime claims in 2014, after initially denying them to Mr. Weaver and other employees. Mr. Weaver claimed that the Company went back to not paying 6th and 7th day claims after they granted this grievance and after paying him on two other occasions. The records from that grievance show that they were initially denied because the Company claimed that employees could not collect for 6th day overtime if they had a day off between the five consecutive workdays and the 6th workday.

Mr. Brian James, General Manager at ArcelorMittal Weirton, testified that Weirton just began receiving claims for 6th or 7th day overtime a few years ago. Until that point in time, he said that Management at Weirton had never received any such claims. He testified that is the responsibility of the Union employee to file a claim for 6th and 7th day overtime. The Company does not pay this overtime automatically.

Mr. Nick Pappas, Lead Labor Relations Representative, testified that he has worked in Labor Relations for the Company for over 10 years. He also has participated in contract negotiations for the last three Agreements. He confirmed that employees do not automatically receive overtime pay for 6th or 7th day overtime, but must make a claim for payment. He testified

further that employees have not been paid 6th or 7th day overtime in addition to Sunday premium pay in the ten years that he has worked in Labor Relations. The Company has only paid the Sunday premium for the first eight hours of any Sunday worked by an employee. He testified further that in handling these claims he has never counted backwards to reach a 6th or 7th day.

Pappas testified that he contacted other ArcelorMittal locations and none of them reported that they had paid claims in the manner that the Union is seeking in this case. He acknowledged, under questioning from the Union, that he was not aware whether any grievances over this issue had been filed at other locations. Although he acknowledged that nothing in the Agreement explicitly states that one cannot count backwards to determine five consecutive days worked, he said that his understanding of the word "consecutive" means counting the days forwards, not backwards. He also acknowledged that nothing in the Agreement explicitly states that an employee may not receive both a Sunday premium and 6th day overtime for the same day. However, he testified that no part of the Agreement authorizes penalty pay of two times the regular rate, or states that Sundays should be paid this way.

Mr. Michael (Mickey) Day, Senior Labor Relations Representative for the Company, based in Cleveland, testified that he is very familiar with the pay provisions of the Agreement. He testified that in 2003, at least part of the Company changed from a system of calculating pay on spreadsheets, to implementing a computerized pay system. He testified that the Company worked with the Union on implementing this pay system, so that both Parties agreed on how pay provisions would be calculated in the system. He testified further that the system was recently replaced by a newer system, and again the Company worked with the Union to review the programming of the system, so that it pays employees as the Parties concur they should be paid, under the Basic Labor Agreement.

He testified further that he examined Grievant Weaver's paystub introduced at the hearing, and said that the paystub does not match with the claim submitted for 6th day overtime. He also said that it was impossible to tell from the paystub which day overtime was paid on, and that the payroll program is not programmed to pay double overtime for the same hours worked. He also testified that Weirton is only one of many plants covered by the Basic Labor Agreement, and that they all pay the same way in this situation.

According to Day, the non-duplication of overtime language at Article 5, Section D. 4 means that once hours are paid at the overtime rate, they cannot be used again for purposes of calculating other overtime payments. He also testified about the letter regarding "Payroll Guidelines" which appears in Appendix B of the BLA. He said that the purpose of the Letter, which was originally agreed to in 2007, was to develop guidelines to address inconsistencies which had arisen regarding the application of overtime and premium pay across the Company's facilities.[1] According to Day, the Letter clarifies the employee must work five (5) days consecutively (but not necessarily in the same payroll week) in order to qualify for 6th or 7th day overtime. The BLA at Article 5 does not use the word "consecutive." Day testified that before the arbitration hearing he had never heard about a claim that an employee can count backwards to fulfill this requirement. He testified that this would not be appropriate since the Union and the Company have worked together to program the payroll system, and the Union never brought up this possibility before this hearing.

[1] The original 2007 Letter to Mr. David McCall, sent from Mr. Thomas F. Wood, the Company's Vice President of Labor Relations at the time, begins, "Due to complications associated with the implementation and coordination of multiple payroll systems and the Company's desire to consolidate payroll procedures, there have been some inconsistencies with regards to the interpretation of the overtime and premium pay provisions of the Basic Labor Agreement (BLA). I have developed a set of guidelines and definitions of our understanding of the BLA provisions below for your review; if you concur with the guidelines, I would request that you countersign this letter and return a copy to me." Mr. McCall did countersign the Letter.

Day testified that, under the Agreement, Sunday hours worked are paid at time and a half; they are not considered eight hours of straight time plus four hours' premium time. Day explained why the Addendum language is different from Article IX, stating that the first eight hours worked are paid as Sunday premium. Article IX refers to "all hours" worked on Sunday and Day testified that the Parties' intent was to pay all hours on Sunday at time and a half, but that they failed to specify in Article IX which hours would be considered Sunday premium and which treated as regular overtime. He said the Parties wished to clarify in the Addendum that only the first eight hours worked were to be considered Sunday premium hours, and noted that there was a need for clarification because the Company was combining payroll systems from previous companies. He stated that under some of the labor agreements of the Company's predecessor companies, the Parties applied overtime provisions first on a Sunday and then the Sunday premium, and the Parties here decided to reverse that order. He also testified that even before the letter was signed, payroll personnel were instructed to treat the first eight hours on Sunday as Sunday premium hours, and any hours over that were treated as overtime.

Day also addressed the non-duplication language of the BLA. He said that hours paid as Sunday premium hours are not considered overtime and therefore are not subject to the non-duplication requirement, but any other hours paid as overtime on a Sunday would be subject to the non-duplication requirement. The Sunday premium hours (the first eight hours worked) therefore count towards the forty hours needed to calculate whether overtime is due later in the week, and they count towards 6^{th} or 7^{th} day overtime; however, other overtime hours paid on a Sunday do not count towards the calculation of later overtime. Because hours which are not subject to the non-duplication provision are counted towards overtime calculations later in the week this is of benefit to the employees. If the Union's grievances were granted, the first eight

hours worked on a Sunday would be counted towards the non-duplication requirement. He stated that when he worked with the Union to establish the payroll guidelines, the Union never took the position that these Sunday hours were subject to the non-duplication of overtime provisions.

Day also testified that holidays are treated similarly under the Agreement, as another penalty paid by the Company for employees working on a day some employees may not consider desirable. If an employee works eight hours on a holiday they are not compensated for 20 hours, but rather eight hours at 2.5 times their regular rate. If a holiday falls on a 6th or 7th day worked by an employee, the employee is not entitled to an extra four hours of overtime.

Day testified that there are general provisions for overtime, and specific provisions for certain days, such as Sundays and holidays, and the specific provisions control over the general provisions. The Parties have agreed to specific language in the Agreement which states that if a holiday falls on a Sunday, the employee will be paid on the following Monday as a holiday. Day testified that the intent of this provision is to preserve both the Sunday premium and the holiday premium, because employees are not paid two premiums for the same hours worked. The same principle of not paying employees two premiums for the same hours worked applies to the hours at issue in this grievance, according to Day.

Day acknowledged that none of the grievances at issue here involve claims for 6th or 7th day overtime in weeks involving holidays or vacations. Under questioning from the Union, he also said that the issue of non-duplication of overtime hours had not been raised previously in relation to these grievances. However, on redirect, Day pointed out language in the Union's grievance which he said relates to a non-duplication argument. He also pointed out that the Union made a claim in the grievance that these claims do not involve pyramiding.

Position of the Union

- ArcelorMittal-Weirton employees whose sixth or seventh day of work falls on a Sunday are entitled to the following: base pay, four additional hours of overtime pay, and Sunday premium pay.
- Employees should thus receive 16 hours of pay: 8 hours of base pay, four hours of overtime, and four hours for Sunday premium.
- Sunday premium pay is not overtime pay. It was negotiated as a separate benefit, intended to deter employers from freely assigning work on a day which has traditionally been viewed as a day of rest.
- The Payroll Guidelines set forth in the letter to Mr. David McCall from Mr. Patrick David Parker, dated September 1, 2015, make clear that Sunday premium is a benefit distinct from overtime. This letter was incorporated into the September 1, 2015 Labor Agreement.
- It is therefore clear that the parties have expressly acknowledged that the Sunday premium is treated as a benefit separate from overtime.
- The Union presented testimony from Mr. John Balzano, Benefits Coordinator, demonstrating that Local #2911 had struggled for some time with issues surrounding the application of the sixth and seventh day overtime concept.
- Local #2911 President Mark Glyptis was given a compendium of arbitration decisions prepared by a Labor Relations official at the former Bethlehem Steel Plant. The Union introduced this manual at arbitration.
- The issue of payment of Sunday premium as it relates to overtime has been examined, as this booklet shows, with the conclusion that receipt of Sunday premium would not preclude the payment of additional overtime.
- As the Labor Agreement makes the explicit distinction between Sunday premium and overtime benefits, there is no contractual language forbidding payment of both benefits on a Sunday.
- The Company provided testimony from Mr. Nick Pappas, a lead Labor Relations representative for ArcelorMittal. Mr. Pappas indicated that no other ArcelorMittal-USA plant pays Sunday overtime in the manner sought by the Union. However, the Company presented no evidence indicating that sixth or seventh day benefits were requested at other plants in the same manner presented in the instant grievances.
- The Union elicited the testimony of Grievant Mr. Jan Weaver, an employee of the former Wheeling-Pittsburgh Steel facility prior to his employment with ArcelorMittal. Mr. Weaver testified that employees at Wheeling-Pittsburgh were paid four hours overtime on Sunday in addition to Sunday premium.

- Mr. Weaver further testified that he had been paid four hours in addition to the Sunday premium while employed at ArcelorMittal. He provided paycheck information to confirm this.

- The Company's representatives contend that Mr. Weaver was paid in error. The Union argues that Mr. Weaver's testimony establishes a precedent for the payment of sixth and seventh day benefits, as requested by the Union, both outside and from within the ArcelorMittal-USA system.

- The Company argues that payment of sixth and seventh day overtime benefits as sought by the Union would violate the non-duplication of overtime provision in the Labor Agreement at Section D.4. However, this provision forbids using hours paid at overtime more than once for the purpose of calculating overtime payments.

- In the instant case, the Union is not seeking overtime hours for the hours paid as Sunday premium. Rather, the Union simply seeks payment for hours worked on the sixth or seventh day—a benefit separate from the Sunday premium.

- ArcelorMittal USA-Weirton employees should be permitted to count backwards from the second payroll week into the first payroll week as they determine eligibility for sixth and seventh overtime benefits.

- This contention is supported by the Sixth and Seventh Day Overtime Manual, which indicates that sixth and seventh day claims are not automatic, but initiated by the employee.

- The Union would note the contractual language found in Article Five-Workplace Procedures, Section D. Overtime 2.C., which holds that overtime is paid under certain circumstances, including hours worked on the sixth or seventh day of a seven day period during which five days were worked, whether or not all such days fall within a single payroll week.

- It is thus clear that the employee determines when the calculation period for entitlement to sixth and seventh day overtime benefits should begin, and is not limited to a single payroll week in doing so.

- The Union emphasizes Mr. Balzano's testimony, as he worked constantly with rates of pay, incentives, and other issues determining employee compensation.

- Mr. Balzano drew attention to page 14 of the Claim Evaluation section of the Sixth and Seventh Day Overtime Manual. The sample request form clearly demonstrates calculation backwards from June 10th in the second payroll week.

- It is evident from arbitral precedent, contractual language, and overtime calculation examples that an employee is free to select the date upon which overtime calculation may begin, and that such a period may overlap between two payroll weeks.

- Calculation of sixth and seventh day overtime in this manner will render the first issue presented above largely moot, permitting employees to collect the Sunday premium and to collect on a separate day as the 6th day, for overtime purposes.

- The Union requests that the Arbitrator grant Grievance numbers 15MEU0129, 15MEU0130, 15MEU0131, 15MEU0132, holding all affected employees entitled to an additional four hours of overtime on the dates referenced in the grievances.

- The Union further requests that when calculating potential sixth or seventh day overtime benefits, ArcelorMittal employees should be allowed to count backwards from a second payroll week into the preceding payroll week.

Position of the Company

- Because the Union alleges that the Employer violated the Collective Bargaining Agreement, it falls to the Union to prove this violation by a preponderance of the evidence.

- The Union claims that employees should be entitled to sixteen hours of pay for eight hours worked on a Sunday. However, there is no provision that allows employees to receive two times pay for the same hours worked on a Sunday.

- The language of Article 9, Section D-Sunday Premium states that all hours worked by an Employee on a Sunday shall be paid on the basis of 1½ the Employee's regular rate of pay.

- This language was further clarified in 2007 to eliminate any ambiguity. It stated that under a normal schedule, Sunday Premium was paid on the first eight-hour turn worked.

- This made clear the parties' agreement that employees could work the first eight hours of the Sunday shift without those hours being subjected to the Company's non-duplication provision.

- It did not change the mandate that hours worked on a Sunday shall be paid on the basis of 1½ the Employee's regular rate of pay.

- The Company has a specific provision prohibiting duplication of hours, also known as "pyramiding." There is significant arbitral support for this position.

- Arbitral precedent holds that the right to pyramid must be unambiguously articulated in the Collective Bargaining Agreement. Many arbitrators recognize that prohibition of pyramiding prevents an employee from receiving a windfall when two or more different premium pay rates would otherwise apply to the same hours worked.

- The Union does not have a right to combine penalty pay provisions in the absence of specific language allowing for pyramiding.

- The evidence shows that the parties determined long ago that Sunday was to be treated separately from any other premium language.

- The Union's desire to receive two times pay for hours worked on a Sunday goes against the specific provision that allows the Union to receive 1½ times pay for all hours worked that day.

- The parties have an established practice for how they apply the Sunday Premium and 6th and 7th Day Overtime Pay provisions.

- The Company has consistently paid Sunday premium the same way it did in this case. Had there been a mistake in the way these payments were made, it would have come up either when Management and Union officials provided guidance on programming the payroll system, when issuing the Payroll Guidelines Letter in 2007, or when changes were made to this Letter in 2008 or 2012.

- When the Company clarified payroll provisions in the 2007 Letter, the Union confirmed the Company's understanding of these provisions. The Union further confirmed the Company's understanding of these provisions in the 2015 Payroll Guidelines Letter.

- There have been no grievances filed on this issue at other plants in AM-USA.

- This grievance arose because one of the Grievants previously worked for Wheeling-Pitt; however, even if said Grievant was paid two times pay for the same hours worked by his previous employer, Wheeling-Pitt was not acquired by ISG, Mittal Steel, or AM USA. The policies and practices of Wheeling-Pitt are not binding on AM USA.

- The Company implemented the 2007 guidelines with the express purpose of clarifying and standardizing interpretations of premium and overtime pay across different plants.

- The Arbitrator should not grant weight to the pay stub and 6th and 7th Day Claim Form relied upon by the Union, as these documents were not presented to the Company before arbitration.

- Further, the hours on the claim form do not match those appearing on the pay stub. There is not enough information to verify that the Grievant received Sunday Premium and overtime pay for hours worked on a Sunday, nor is there information to clarify why this may have occurred. The Employer's subsequent examination of records showed that the Grievant received 6th day overtime for Monday, not Sunday, and that this was paid in error.

- The Union relies on the payroll guidelines of predecessor company Bethlehem Steel, now long defunct. Those guidelines hinge upon arbitrator decisions dating back to the 1950s, 1970s, and 1980s, governed by the language in the former Bethlehem Steel Collective Bargaining Agreement.

- The Sunday Premium language from that Agreement has since evolved into the current BLA. In an effort to simplify pay rules, these revisions included a substantive change on how certain Sunday hours were treated and paid.

- According to the Union's argument in this case, if employees could combine these two premium pay provisions, they should be asking for 2.25 or three times pay for the same hours worked.
- The Union did not request this amount, presumably recognizing that it would be inconsistent with the terms of the BLA and would undermine the way the parties consolidated Sunday pay in 2002.
- In addition, if the Arbitrator follows the Union's interpretation, an employee would earn *less* pay for time worked beyond 8 hours on a Sunday.
- None of these calculations appear in the BLA, and any would produce an illogical result, clearly counter to the parties' intentions.
- The Holiday Pay provision in the BLA provides further proof that the Union recognizes that premium pay provisions cannot be combined and applied to the same hours worked.
- The Union has failed to establish that it can count backwards from the second payroll week to determine 6th or 7th day overtime pay.
- Following the implementation of the 2007 guidelines, the parties have observed uniform payroll practices at odds with the Union's argument about counting backwards.
- The Union's interpretation of counting backwards is not supported by the contract language or the FLSA.
- The contractual language clearly states that all hours worked on a Sunday should be paid at 1½ times pay. This specific language takes precedence over other contractual provisions.
- The parties have a fifteen-year practice of paying only Sunday Premium rates for hours worked on a Sunday, rather than two premium wages for the same hours worked.
- The Union's interpretation would lead to the illogical result of employees being paid two times pay for the first eight hours worked on a Sunday, and then 1½ pay for remaining hours worked that day.
- The Union has been unable to prove a contractual violation. For the reasons stated, the Company requests that the Grievances be denied.

Findings and Decision

This a group of grievances consolidating claims for 6th or 7th day overtime to be paid to employees when they worked a 6th or 7th day which falls on a Sunday. In these claims, the Company paid the employees only for the Sunday premium of one and one-half times the regular rate of pay, and not any additional overtime pay for working a 6th or 7th day. The Union contends that the Sunday premium and this overtime are separate benefits under the Agreement, and that the employees are entitled to 16 hours of pay for an eight-hour shift, claiming both the Sunday premium and the 6th day overtime pay. The Union also argues that in determining whether an employee is entitled to 6th or 7th day overtime pay, the employee may designate whether the calculation shall be based upon days worked going forwards or proceeding backwards in time. Because the Union argues that deciding the second issue in the Union's favor would moot the first issue, the Arbitrator will address the second issue first.

Counting Backwards to Determine a Claim for 6th or 7th Day Overtime

Article V. D. 2. c. states that overtime shall be paid on "hours worked on the sixth or seventh workday of a seven (7) day period during which five (5) days were worked, whether or not all such days fall within a single payroll week." The Parties clarified that the five (5) days must be "consecutive," in the Payroll Guidelines Letter,[2] which has been incorporated into the Basic Labor Agreement at Addendum B. The Parties agree that in counting the 5 consecutive days, they need not all be contained within one payroll week, which normally extends from Sunday through Saturday. The Parties also agree that 6th or 7th day overtime is not automatically awarded. Instead the employee must make a claim for the benefit.

[2] The word "consecutive" also is found in the 2007 Letter introduced by the Company at arbitration as a predecessor to the Letter in Addendum B.

The Parties disagree, however, about the Union's claim that an employee may designate a day in the second payroll week as "Day 1," and then count backwards five (5) workdays to designate the first day actually worked as the 6th or 7th day. Permitting an employee to do so in the claims before the Arbitrator would generally result in the 6th or 7th day not falling on a Sunday, and would allow the employee to collect both the Sunday premium and the 6th or 7th day overtime pay in one payroll period.

An employee clearly may make a claim based upon days which cross over into another payroll week. However, the Parties in the BLA used the term "consecutive" to describe the 5 days leading up to the 6th or 7th day. "Consecutive" is defined as "following one another in uninterrupted succession or order; successive; continuous, uninterrupted, continuing in time or space without interruption" Dictionary.com. (Example of use provided: "It rained for three consecutive days."). Thus, counting days "consecutively" is generally understood to mean counting forward in time. Although the word "consecutive" technically modifies only the 5-day period in the Labor Agreement, the normal meaning of a "6th day" is usually the day following the 5th day. The Parties have restricted the payment of such overtime to the 6th or 7th day of a 7-day period; they did not state that payment is to be made for the 1st or 2nd day of the 7-day period. Counting backwards in time from the last day of the 7-day period to designate the 1st or 2nd day worked as the 6th or 7th day, for purposes of overtime, contradicts the plain meaning of the Agreement language.

In further support of its position that an employee has a right to count backwards, the Union relies upon the booklet which the Union obtained from the Local Union at the Company's facility in Coatesville, Pennsylvania. The Company objects to the introduction of this document on the grounds that it was not provided to the Company prior to arbitration. Under Article V,

Sec. I. 4. c, "facts, provisions or remedies not disclosed at or prior to Step 3 of the grievance procedure may not be presented in arbitration." It is not clear on the record whether the Union is relying upon this document as a current policy of the Company that must be followed, or rather as an interpretative guide to the Agreement language, which may have persuasive but not binding authority. If it is the latter, then it may not be considered the type of factual evidence that must be provided during the grievance procedure under Article V.

Nevertheless, there are other significant problems with the document. First, there is only hearsay evidence that it is currently being relied upon by the Parties at the Coatesville facility, even as a non-binding interpretive guide. There is no current date on the document, and it uses forms from Bethlehem Steel Corporation. It is not clear whether the language relied upon in the document is the same as the contract language at issue in this case.

However, even if the document were not barred for these reasons, the Arbitrator concludes that it does not support the Union's position on the argument that employees may select whether to count forwards or backwards. The booklet does appear to instruct that the claimant should count backwards six or seven days from the last day claimed for 6^{th} or 7^{th} day overtime. However, the purpose of this instruction appears to be to calculate the 7-day period during which the 6^{th} or 7^{th} day must occur in order to be paid as overtime. Once the 7-day period is determined, the booklet then instructs the claimant to begin with Day 1 and count consecutive 24-hour periods forward in time, marking these periods on Line C of the form. This is made clear from the printed example, where the days are marked off on Line C beginning with 6/04 as Day 1 and ending with 6/10 as Day 7. In that printed example, a 6^{th} and 7^{th} day claim was not made for 6/04, the first day of the period, but rather for 6/09 and 6/10, the final two days in the period. Therefore, the example provided does not persuasively support the Union's argument that the

employee has the option to determine whether to count forwards or backwards. The Union bears the burden of proving this claim and there is no mention of this method of calculation in the BLA language. On the basis of this record, therefore, there is not sufficient convincing evidence to conclude that the Parties have agreed that employees may count days forwards or backwards in order to establish a claim for 6th or 7th day overtime.

Paying for 6th or 7th Day Overtime on Sundays

The Union argues that employees whose sixth or seventh day of work falls on a Sunday should receive 16 hours of pay: eight hours' base pay, four additional hours' pay for Sunday premium, and four hours of overtime pay. The Union argues that Sunday premium pay is not overtime, but was negotiated as a completely separate benefit to deter the Company from freely assigning employees to work on a day which has traditionally been viewed as a day of rest. According to the Union, because Sunday premium is a separate and distinct benefit from overtime pay for 6th or 7th days, the Employer should pay both amounts when the 6th or 7th day falls on a Sunday.

The Company argues, however, that the Basic Labor Agreement clearly sets forth a specific method for paying employees for Sundays, and that when work is performed on a Sunday, the more specific language of that section controls over other more general language in the Labor Agreement providing for overtime. Article IX, Sec. D establishes that "all hours" worked by an employee on Sunday are to be paid at the rate of one and one-half times the employee's regular rate of pay. This provision covers only Sundays, and Sunday is the only day of the week which has its own pay rate. The Parties have thus agreed to a specific Sunday pay rate, and used language stating that that rate applies to *"all"* Sunday hours. The word "all" is

broad and comprehensive, and therefore appears, on its face, to establish one rate for any and all hours worked on a Sunday.

The Company also relies upon the "non-pyramiding" section of the Agreement in support of its position. Article V, Sec. D. 4 states that, "Overtime shall not be duplicated by using the same hours paid at overtime rates more than once for the purpose of calculating overtime payments." The Company agrees, however, that the first eight hours of Sunday work are not considered overtime, and are not subject to this non-duplication language. Even though these hours are paid at time and a half, they may still be used to calculate overtime later in the week, as part of the forty-hour requirement, or to establish 6th or 7th day overtime on another day. The Payroll Guidelines set forth in the Letter in Addendum B of the BLA make this clear by describing Sunday hours *after* the first eight hours as "overtime and...not used for the purpose of calculating [additional] overtime."

The Company argues, however, that paying the first eight Sunday hours as 6th and 7th day overtime and the Sunday premium[3] would violate the non-duplication provision, because the 6th and 7th day overtime provision is subject to the non-duplication clause. The Company also argues that, even in the absence of explicit contract language, multiple premium payments should not be layered on top of each other for the same hours worked, without very clear authorization in the collective bargaining agreement permitting such payments, and that such clear authorization is not present in this Agreement. According to the Union, the Parties have expressly acknowledged

[3] It is not clear how the Union arrived at a remedy of 16 hours in this case. The evidence suggests that overtime payments may be represented on an employee's paystub as blocks of additional hours paid at the straight time rate. However, the Company presented information that in calculating the pay in question—for either the Sunday premium or 6th and 7th day overtime – the Company does not add on blocks of hours, but calculates the pay as 1.5 times the employee's regular pay rate. The Sunday premium pays at the rate of time and a half and the 6th and 7th day premium also pays time and a half, so if both benefits were paid, calculated separately and then added together, it appears that the proper rate, under the Union's interpretation, would be three times the employee's regular rate of pay.

in the Addendum Letter that Sunday premium is to be treated as a separate benefit from daily or weekly overtime, and that nothing in that Letter or anywhere else in the Agreement specifically prohibits both kinds of payments from accruing for the same hours.

If the Agreement clearly provides for both payments for Sunday hours, then the Arbitrator must uphold that language. The Arbitrator concludes that the contract language, however, is not entirely clear and unambiguous. Article IX, with its reference to "all" Sunday hours being paid at time and a half, offers significant support to the Company's position in this case. However, the language does not explicitly state that no other premium may be paid for Sunday hours, and it is not entirely clear whether or how the Parties intended the non-duplication language to apply to this situation. Therefore, the Arbitrator will consider the past practice of the Parties in determining their intent under the Agreement.

The Company presented testimony that it has not paid 6th or 7th day overtime on Sundays at any of its facilities over the past 15 years, through 4 successive Basic Labor Agreements. The Company has simply paid employees the Sunday premium authorized under Article IX. According to the Company, this did not become an issue until Grievant Weaver raised it, based upon how he was paid at Wheeling Pittsburgh, a former steel company which was not acquired as part of the ArcelorMittal group. However, the policies at Wheeling Pitt do not control the Parties' Agreement at ArcelorMittal.

It is true that the Company does not automatically pay employees for 6th or 7th day overtime; the employee must file a claim for it. However, this situation of a 6th workday falling on a Sunday must have arisen in the Company's facilities on many occasions over the past 15 years. Yet there is no record of any attempts to claim both benefits for the same Sunday hours filed by employees—or grievances filed by the Union—before this case. It is difficult to believe

that there would not have been other claims or grievances filed, either at Weirton or other ArcelorMittal facilities, over this fifteen-year period, if the Parties had intended the result sought by the Union here. In addition, the Parties have collaborated twice on programming the Company's payroll system to reflect the pay requirements of the Labor Agreement, and the Company presented unrefuted testimony that that system does not permit multiple overtime or other premium payments for the same hours.

The Union relies upon a pay stub from early 2016 introduced by Grievant Weaver as evidence that the Company has paid him 6th day overtime on a Sunday. The Company objected to this evidence being presented for the first time at arbitration. Even if that were not the case, the pay stub submitted by the Grievant does not designate a payment for 6th or 7th day overtime and does not clearly show on which days of the week overtime or premium pay was earned (other than one eight-hour unit marked "sun prem.") Therefore, the Arbitrator cannot conclude that this evidence demonstrates that the Grievant was paid 6th or 7th day overtime on a Sunday.

Even if Grievant Weaver were paid both premiums for Sunday work on one occasion, however, the Union would have to demonstrate the existence of a consistent practice over a considerable period of time in order to establish a practice which clearly reflects the intent of the Parties regarding the meaning of the ambiguous contract language. The evidence does not show a consistent, conscious pattern of the Employer paying employees 6th or 7th day overtime on Sundays; rather, the evidence demonstrates an absence of such payments. Because it is likely that there would have been other payments for 6th day overtime and Sunday premiums if the Parties agreed that both were to be paid for the same hours, the absence of such payments demonstrates a past practice of the Parties supporting the interpretation of the Agreement put forth by the Employer.

The Union also introduced a group of grievances that were granted by the Employer in 2014, after Management originally refused to pay these claims for 6th day overtime. A close reading of these grievance records indicates that the issue they raise differs from the issue here. In those cases, the Company refused to pay 6th day overtime when the employee had a day off between the 5th and 6th days, contending that the employee was required to work six consecutive days in order to qualify for 6th day overtime. The Parties determined that the Company made a mistake in denying these claims, because the employee is required only to work five (5) consecutive days, and may collect for 6th day overtime as long as the 6th day falls within a seven-day period. The Employer paid the claims. However, those grievances do not address claims for 6th day overtime arising on a Sunday.

The Union also submitted the booklet from Coatesville as evidence that 6th day overtime can be earned along with the Sunday premium. However, as discussed above, this document is not dated, and there is no convincing evidence in the record that it is a policy manual followed by the Company currently at any of its facilities. It is not clear that the contract language which the booklet refers to is the same as the language at issue in this Basic Labor Agreement. Therefore, language in this booklet supporting the Union's position is not sufficient to establish the Parties' intent with regard to the contract language at issue in this case.

Therefore, considered as a whole, there is not persuasive evidence on this record to conclude that the Parties intended, under the Basic Labor Agreement, to require payment for both 6th or 7th day overtime and the Sunday premium, when an employee's 6th or 7th workday falls on a Sunday. Article IX indicates that "all" Sunday hours are to be paid at time and half. To the extent that the language in the Agreement is not entirely clear, the past practice of the Parties demonstrates that the Employer has not paid both Sunday premium and overtime pay on Sundays

for the same hours. Therefore, there is not sufficient evidence to support the grievance claim that the Company violated the Basic Labor Agreement when it failed to pay both the 6th or 7th day overtime claims, after paying Sunday premium pay, for the shifts covered by these grievances.

AWARD

For the reasons set forth above, the grievances are denied. The Company did not violate the Basic Labor Agreement when it refused to pay 6th or 7th day overtime for hours which were paid at the Sunday premium rate.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 31st day of January 2018.