Award No. 841
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
USWA, LOCAL 1010
Arbitrator: Terry A. Bethel
June 14, 1991
OPINION AND AWARD
Introduction
This case involves a jurisdictional dispute in which the union contends that IRMC wiremen have exclusive jurisdiction over a body of work being retrieved from Indiana Bell. The hearing spanned two full days, beginning on January 18, 1991 and concluding on February 13, 1991. Mike Mezo, local union president, represented the union. Robert Cayia presented the company's case. Both sides filed prehearing briefs.
Appearances
For the Company
Robert Cayia, Section Manager, Union Relations
Paul Schloff, Section Manager, Information Technology Dept.
Larry Martin, Electrical Supervisor, No. 7 Blast Furnace Dept.
Walter Orzechowicz, Supervisor, Process Automation Dept.
Bob Szabo, Supervisor, Process Automation Dept.
Ike Oliver. Supervisor, PEG Mobile Maintenance Serv. Dept.
Greg Swantko, Electrical Superintendent, IRMC
Ray Baumanis, Project Computer Analyst, Info Technology Dept.
Dan Larson, Regional Service Manager, Indiana Bell
Jack Goldsberry, Supervisor, Information Technology Dept.
For the Union
Michael Mezo, president, USWA local 1010
Donald D. DeVerne, griever
Scott A. Uliek
James L. Leighty
Charles D. Newman
Del DePaula
Larry McMahon, griever
Phil King, contracting out
Jim Robinson
Background
This case involves a difficult jurisdictional dispute over certain work being retrieved from Indiana Bell. Before 1984, the Bell system monopoly meant that AT&T or affiliated companies owned and maintained telephone equipment providing voice communication services to the company. Although the record is less clear about data services, there is no doubt that AT&T provided certain data communication services. The company continued to use AT&T to provide installation and maintenance services even following the demise of the AT&T monopoly position. In 1989, the company contracted the same work to Indiana Bell, though the IRMC wiremen began performing some of the work in 1987 and acquired more in 1988 or 1989.
Ultimately, the union invoked the notice, review and discussion requirements of Article 2, Section 3 of the collective bargaining agreement and, as a result of those procedures, the company agreed to retrieve certain work from Indiana Bell and assign it to internal plant forces. This did not, however, resolve the dispute since the parties now disagree about who is entitled to the work. The company would like to assign the bulk of the work to electrical craftsmen employed in Plants Electrical General (PEG), while maintaining the flexibility to assign portions of the work to other craftsmen, including IRMC wiremen. The union, however, claims that the work belongs to the wiremen. Resolution of that conflict is the basic issue for decision in this case.
The parties agree about the description of the work in dispute, although they disagree about whether it alone is the relevant body of work for which the union must prove exclusivity in the wiremen. There are three categories of work at issue: major wire installation, which involves the pulling and termination of low voltage twisted pair wire; moves and changes, which involve much of the same work, but typically on a

smaller scale; and maintenance, which can also involve pulling and terminating twisted pair wire. In addition, there are other functions being retrieved from Indiana Bell which the union does not claim in this case. As I understand it, that work does not involve the pulling and termination of twisted pair wire.
There was significant testimony about the techniques and skill involved in pulling twisted pair wire. Although there is some dispute about the facts, I think the company was able to establish that craftsmen other than IRMC wiremen have pulled and terminated twisted pair wire for voice and data communication systems at Inland Steel. Thus, there was evidence of such activity by craftsmen from PEG, from Process Automation, and from assigned maintenance.
The union, however, was able to establish that none of these craftsmen from other departments have ever (or at least have hardly ever) done any of the work being retrieved from Indiana Bell. Moreover, the union was able to prove that the IRMC wiremen have done such work, in the form of major installation work. The wiremen, however, have not performed any moves and changes or maintenance work.
Finally, the company was able to establish -- again subject to some doubt because of union testimony -- that pulling and terminating twisted pair wire involves essentially the same skill, whether it is the work being retrieved from Indiana Bell or similar work for maintenance or installation of internal voice and data systems. Moreover, the company established that numerous employees have pulled and terminated other types of low voltage cable which, again, involves similar skills.
Discussion
Although resolution of the case itself is difficult, the procedural posture is not in controversy. The union's claim, which it bears the burden of establishing, arises under Article 2, Section 2 -- a "local working condition" -- and Article 13, Section 3, which is among the seniority provisions of the contract. As explained by arbitrator McDermott in Inland Award No. 813,
". . . If a given seniority sequence has done recognizable types of work with reasonable consistency and exclusivity, the concepts of paragraph 13.11 and local working condition principles of Article 2, Section 2 require that such work not be transferred across seniority sequence lines."
As I will discuss below, defining the relevant body of work to which these principles are applied is in itself a significant issue in this case and, no doubt, many cases. Once the relevant work is identified, however, the union carries the burden of establishing that the employees claiming the work have performed it with "reasonable consistency and exclusivity." Although the adjective "reasonable" does not necessarily modify "exclusivity" in the quoted sentence, the parties -- or at least steel industry arbitrators -- have understood that occasional assignments elsewhere will not defeat a craft sequence's claim to exclusivity.
There are, essentially, two different, though related, disputes. First, the parties disagree about the relevant body of work. Second, whatever the relevant body of work, the union must establish that it has performed the work exclusively, a requirement understood to encompass something less than one hundred percent performance. That is, a minor or casual performance of the work by another craft will not necessarily defeat a craft's claim of exclusivity.
The interrelationship between these two issues is obvious: The extent to which the union can prove exclusive control over the work often depends on how the body of work is defined. The company, obviously, has an interest in establishing a broad definition. The more all encompassing the description, the less likely the union will be able to prove exclusivity. Conversely, the union seeks to narrow the definition as much as possible, or at least as much as is consistent with its claim of exclusive performance.
The claims made by the parties in this case are consistent with these observations. Thus, the company claims that the relevant body of work is the pulling and terminating of twisted pair wire for voice and data communication systems. This description would include not only work being retrieved from Indiana Bell, but also work performed in the installation and maintenance of numerous other systems, including Femco, paging, hotlines, process control computer systems, and other data communication. If the relevant body of work is so defined, there is no real possibility the union can prevail since, without reporting the evidence in detail, it is sufficient to observe that numerous other craft groups have pulled twisted pair and other low voltage cable for such purposes.
In contrast, union witness Charles Newman described the union's version of the relevant body of work as follows: the pulling and termination of twisted pair wire under the direction of the Information Technologies Department, which is used for voice and data communication and which is routed to the main switch gear. There was some testimony about the importance of routing the wiring through the north switch gear, but frankly I think that merely identifies the body of work formerly done by Indiana Bell and which is now being retrieved.

There is no question that, in one sense at least, the work retrieved from Indiana Bell is a recognizable body of work. The body of work was not necessarily established for reasons of efficiency, economy, or other management prerogative. Nor was it established by mutual agreement between union and company. Rather, it appears that the work at issue was segregated from other voice and data wire installation by virtue of the Bell System's monopoly. It is true that Indiana Bell continued to perform the same work even after the Bell System breakup, when such arrangements were no longer mandated. But that was apparently just the continuation of a practice that began because of the AT&T monopoly. That is, the original structure was motivated by factors beyond the company's control.

The company would point to the inception of the work as support for its position here, since before the demise of Bell's monopoly power, the company had no right to structure the work as it saw fit and, perhaps, to combine it with other voice and data communication wire installation. The union would say, however, that whatever benefit the company derives from that fact is counter-balanced by its decision to continue the same arrangement even though it was no longer legally required to do so. That is, following 1984, the company might have taken steps to retrieve the work and distribute it among in plant forces, much as it seeks to do now. Instead, it chose to contract with Indiana Bell and to continue about the same division of labor that had prevailed before.

I neither have, nor am I entitled to have, an opinion about the wisdom of continuing that arrangement. Whether it was a good idea or a bad idea isn't the point. Rather, the union's claim is that, for whatever reason, the company chose to leave a recognizable body of work -- a number of identifiable tasks -- with Indiana Bell even after it was no longer required to do so. The union doesn't dispute the fact that this work is similar to work performed by other craftsmen in other areas of the plant and it even accepts (with only minor grumbling) the company's claim that it requires about the same skill. But the union says that the company kept it separate. It chose to keep the work in the hands of contractors and out of the hands of its own workforce. Thus, the union says, the work to be retrieved is a recognizable body of work and, since the wiremen are the only bargaining unit employees to have performed any of the work, they have exclusive rights to it.

Although accepting the company's description of the relevant body of work would effectively decide the case -- since the wiremen can make no reasonable claim of exclusivity as to all types of twisted pair wire installation for voice and data systems -- the same is not necessarily true if the union's definition prevails. As noted above, the company will retrieve three categories of work from Indiana Bell: major wire installation, mostly associated with construction projects; wire installation as a result of moves and changes of telephones and data processing equipment; and maintenance. As I understand it, not all of the maintenance work is in dispute in this case. Rather, the parties contest only that portion of retrieved maintenance work that involves the pulling and termination of twisted pair wire.

There is no question about the fact that, to the extent bargaining unit employees have pulled twisted pair wire for major installations, the work has been performed by IRMC wiremen. The company makes some claim of involvement by other departments, but none that are significant. There is some confusion about exactly how long the wiremen have done this and about how much of the work it has performed. Paul Schloff, Section Manager of the Information Technologies Department, testified that the company used Indiana Bell employees exclusively for major installation projects until 1989. During that year, it began to use IRMC wiremen to do some of the work. Schloff said the wiremen have done five or ten jobs a year. Schloff also claimed that while the wiremen do about fifty percent of the major installation work, the wiremen have performed only about "less than ten percent -- probably less than five percent" of the work to be retrieved. The remainder, including major installation, moves and changes, and maintenance, has been performed by Indiana Bell employees.

The union claims that its major installation work began as early as 1987. Apparently that was the year the wiremen began receiving work assignments to pull twisted pair wire for data communication, which was about the time vendors were able to furnish equipment that would run on twisted pair. This work, too, was also performed by Indiana Bell employees.

There are a few examples of other employees on rare occasions who were involved in some aspect of the work being retrieved. On the whole, however, it is fair to observe that to the extent bargaining unit employees have performed any of the work being retrieved by Indiana Bell, that work has been done with reasonable exclusivity only by IRMC wiremen. But it is also fair to observe that such work represents only a small part of the work being retrieved. Indeed, maintenance and moves and changes would appear to comprise the bulk of the work and no one in the bargaining unit, wiremen or otherwise, has done that work.

Identification of the relevant body of work is by no means a simple task. Both sides make convincing arguments. I credit the company's testimony that employees from numerous other departments have pulled twisted pair and other low voltage cable for voice and data communication <FN 1>; that the same skills are involved in many of these applications, including the work to be retrieved; and that much of the wire is interchangeable and could be used for various purposes. I also recognize that a previous award rendered by me mentioned the importance of skills in the identification of the relevant body of work.

In that case, Inland Award 835, I had to decide whether buildup of segment 0's was within the exclusive jurisdiction of no. 2 BOF/CC mechanics, who had regularly performed the work on segment 0's but not necessarily on other segments. In that case, like this one, there was also a dispute about exclusivity. I did not resolve that conflict, however, because I identified the relevant body of work as roll segment buildup generally, and not 0 segment buildup in isolation. My opinion demonstrated that I was influenced both by the skills involved and by the fact that such skills were applied to almost identical equipment in one discrete and continuous production process, namely the system of segments that guide a strand from the mold exit to the cutoff machine:

"Although the matter is not entirely free from doubt, on balance I think I have to identify the relevant body of work by looking to the skills the workers are expected to employ, especially when those skills are applied to nearly identical segments of one production process."

In its brief and its final argument, the company focuses on my recognition that the reasoning to this case, argues that a like result is mandated. That is, the company's evidence demonstrated that many craft employees pull twisted pair and other low voltage cable for voice and data communication systems and that all of the work -- including that to be retrieved from Indiana Bell -- requires essentially the same skills. Focusing principally on the skill, then, the company is able to expand significantly the relevant body of work.

I think the matter is less clear than the company's argument makes it. In Inland Award 835 I did not focus solely on the skills to be applied. Rather, I looked at those skills as work applied to almost identical and contiguous (or nearly contiguous) equipment in one continuous production process. Given that the strand progressed immediately from one segment to the next, and the next and so on, I saw no way rationally to conclude that what the employees did to segment 0's was any different from what they did to the next segment up the line.

It doesn't necessarily follow, however, that pulling twisted pair cable in various parts of the mill is all the same body of work, merely because employees work with the same kind of wire. Indeed, focusing exclusively on the skill involved could effectively destroy any claims of exclusivity. Workers become craftsmen because of their skill and they are expected to make a living by applying those discrete skills in various settings around the mill. Plumbers, for example, have discrete craft functions that obviously require similar skills no matter where they are employed. It doesn't follow from that, however, that all plumbing work at Inland Steel is necessarily a relevant body of work for determination of exclusive jurisdiction. Rather, where the employees work and the circumstances under which they apply those skills are also relevant considerations.

The difficulty with this case, however, is the inability of the union to point to any of those circumstances as a way of defining the relevant body of work. I don't mean to suggest that the union failed to do something it might have done. Quite the contrary -- the union introduced the available evidence and it showed quite clearly that certain work had been held separate and apart; that it was easily identifiable; and that the company, though forced into the arrangement at the outset, maintained the separation even after the reasons for its establishment had expired. Nevertheless, I have some question about the sufficiency of the union's proof that the relevant body of work should be as narrow as it contends.

Ultimately, I need not resolve that issue because I find that the union cannot establish exclusivity, even if I accept as the relevant body of work that which is to be retrieved from Indiana Bell. The wiremen admittedly have performed only a small portion of the entire quantity of the work in dispute. True, recently the wiremen have done all of the major installation not done by Bell itself, but that only amounts to half of a small subset. In total, Schloff testified credibly that the wiremen had done only five to ten percent of the work being retrieved and had never done any of the moves and changes or maintenance work. <FN 2>

In my view, the union is in a very difficult position. The only chance it has to win this case is to establish that the work retrieved from Indiana Bell is the relevant body of work. If it proves that, however, it can only establish exclusivity to a small portion of the disputed work. Why, then, should it also have exclusive rights to moves and changes and maintenance since it has never done that work? The answer can't be "because it was done by Indiana Bell" since both parties acknowledge that other work is being returned

from Indiana Bell that is not part of this case. The union does not claim all of the work being retrieved but only the work which involves pulling and terminating of twisted pair wire.

In effect, then, the union asserts that the wiremen, having done the major installation work being retrieved from Indiana Bell, should also have the moves and changes and maintenance work because it is essentially the same work requiring the same skill. But if that is the argument, why stop at Indiana Bell? Why not look at other similar work in the mill as well? If similarity of the work is the key -- and it has to be since the wiremen cannot claim some of the retrieved work -- then there is no logical reason not to look beyond the Indiana Bell work. That, of course, destroys the union's claim to exclusivity since I find ample evidence that other crafts have performed work that is quite similar to that at issue here.

In short, then, I find that the union has not met the burden of establishing exclusivity for the entire body of work being retrieved. It did prove that among bargaining unit employees, only wiremen have performed any of the disputed work, namely, major installations. But it did not -- and, I think, cannot -- establish any claim to the bulk of the work, which has never been performed by any Inland employee.

I make no finding about whether the wiremen's shared responsibility with outside contractors would have been sufficient to establish exclusivity had the major installation work been the only body of work in dispute. The union did not claim only that work. Moreover, Schloff testified without contradiction that it would make little sense to segregate major installation work from moves and changes. Thus, I see no basis for setting major installation aside from the other work being retrieved from Indiana Bell.

In closing, I must mention two other issues advanced by the union. First, the union did a fairly good job of establishing that overtime concerns were among the company's motives in assigning this work to PEG. That is, because the IRMC enjoys different overtime assignment procedures, the company was concerned that it might not always have trained craftsmen available on overtime. I thought Mr. Mezo's cross examination of Schloff was quite telling on this point, but I don't see how it affects the outcome of the case. In the first place, overtime was not the company's only concern. Moreover, as I observed at the hearing, it is not my function to review the wisdom of management decisions unless those decisions violate the letter or the spirit of the contract. Given the union's inability to establish exclusivity, I don't understand how its concern about overtime can affect the outcome of the case.

Similarly, the union's understandable concerns about job security cannot, in themselves, change the result. The bottom line is that the facts simply do not support the union's claim of "reasonable consistency and exclusivity."

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel, Arbitrator

Bloomington, IN

June 14, 1991

<FN 1>The union contends that some of this work is not similar to the work in dispute because it doesn't go through the north switch gear. I don't think that fact itself is significant. Rather, this is simply another way of saying that the work is not among the work being retrieved from Indiana Bell.

<FN 2> One of the union witnesses testified that wiremen had done work quite similar to the moves and changes work at issue here, but clearly the union can't advance that argument. Once it admits the relevance of similar work, it risks broadening the relevant body of work to the definition offered by the company.