

IN THE MATTER OF THE ARBITRATION BETWEEN

MITTAL STEEL COMPANY

And

Award No.

UNITED STEELWORKERS, USW  
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company violated the Agreement when it contracted out the work of flushing and sweeping roadways to remove particulate matter. The case was tried in the Company's offices in East Chicago, Indiana on August 14, 2006. Pat Parker represented the Company and Mike Mezo presented the case for the Union. The parties submitted the case on final argument.

Background

When the parties negotiated the 2003 Basic Labor Agreement, they agreed to a May 2, 2003 letter dealing with certain understandings relating to contracting out. The letter reads as follows:

This will confirm the understandings reached in conjunction with the negotiations of the Basic Labor Agreement dated December 15, 2002.

- There will be a six (6) month waiver on the voiding of contracting out agreements as required by Article Two, Section E

- The Company may contract out non-core functions, including janitorial, mail activities, landscaping, snow removal, garbage and trash removal, track repair and general plant housekeeping.
- The parties agree that any incumbents in the jobs listed above will continue to perform such work until such time as there is a permanent vacancy for them in the plant. Additionally, in the case of a lay-off situation, Employees shall be assigned to such work (if being performed) before being laid off.

At issue in this case is the second bullet point. Historically, bargaining unit employees have performed the work of flushing and sweeping roadways on the East side of the facility (formerly the Inland Steel facility). On March 27, 2006, the Company notified the Union that it was considering contracting out this work, with the work described as the "Mittal Steel East Fugitive Emissions Plan."

Particulate matter is a by-product of the steelmaking process. The emissions at issue are particulate matter of less than 10 microns, known to the parties as PM10. This particulate matter --- also known as fugitive emissions --- settles on roadways and in other areas. Once settled, it can be re-circulated by wind or traffic. There is no question that environmental regulations require the Company to take steps to control the emissions. The Company has developed a practice of spraying roadways with water to trap the particulate, and then collecting it with sweepers. This process presumably also sweeps up other dust or dirt on the roadway. The work is performed from April through October. It is typically not done in the winter because the particulate is less likely to become airborne. Tracy Brough, Internal Manager for Internal Logistics, testified that most of the spraying and sweeping work at issue is required by government regulations. However, Brough said the Company performs some work that is not required, and it would perform the rest of it for the safety and comfort of employees, even if it was not required.

Much of the Union's case involved the introduction of documents outlining the pertinent environmental regulations and the Company's plan for meeting them, which involves flushing and sweeping the roadways. It is not necessary to review either the requirements or the plan in this opinion because neither party questions the applicability of the regulations, or the fact that the Company effects compliance, in part, by the flushing and sweeping work that is the subject of this case. The issue in this case is whether the spraying and sweeping work qualifies as general plant housekeeping, as that term is used in the letter quoted above. If it does, then the Company can contract out the work without regard to the contracting out provisions in the body of the Agreement; but if it does not, then the Company can contract out the work only if it satisfies some exception in the contracting out section of the Agreement.

#### Positions of the Parties

The Company says the common element among each of the listed non-core functions is that none of them contributes to making steel or supporting the production process. The fact that the Company is required to sweep its roads does not convert that basic cleaning function into core work. The Company points out that it is also required to comply with regulations that insure a clean and safe workplace. But that requirement does not mean that janitorial work, or trash removal, or snow removal are core functions. Each of these tasks, in fact, is listed as a specific example of non-core work. In addition, the Company asks what the term general plant housekeeping could mean if it did not include sweeping roads.

The Union says there is no relevance to the contract's distinction between core work and non-core work because the May 2, 2003 letter provides expressly that general housekeeping is non-core work. The Union relies heavily on Bethlehem Decision No. 1584 (1968), in which Umpire Ralph Seward created guidelines for distinguishing between categories of work. Seward rejected a contention that the nature of the duties determined the category in favor of a holding that arbitrators had to look at the purpose for which the work would be performed. But here, the Union says, the Company looks only at the nature of the duties without considering why the flushing and sweeping work is performed. This analysis, the Union argues, has been consistently rejected by steel industry arbitrators for over 40 years.

The Union also says that under the Company's analysis, spraying and sweeping would always be general housekeeping, no matter why it was done, since the nature of the work would always be the same. The focus on purpose, however, would not always produce the same result. Here, the work is not done to keep the plant clean; rather, it is performed to comply with federal and state environmental regulations. Something that is required by law cannot be merely general housekeeping work. Moreover, even if sweeping roads qualifies as housekeeping, the contracting out exemption still does not apply because it is not "general" housekeeping. "General" means common or generic. But the work at issue here is specific work dictated by a specific plan.

#### Findings and Discussion

In Bethlehem 1554, relied on by the Union, Umpire Seward faced the now-familiar problem of distinguishing between categories of work that required the same

skill set. The agreement distinguished between day-to-day maintenance; other maintenance and repair; and installation, replacement, and reconstruction.

However, it did not define those various categories, thus leaving Seward to divine the difference. He did so by looking to the purpose for which the work was performed. The Union urges the same analysis applies here. Housekeeping, the Union says, involves cleanliness or “tidying up.” But that isn’t the purpose for which this work is done; rather, the Company sweeps the roads to collect fugitive dust emissions because the law requires it to.

But this argument proves too much. The Company does lots of things that seemingly constitute housekeeping, but are also required by law or regulation. For example, the Company introduced OSHA Standards that require it to keep workplaces clean; to remove sweepings, waste and refuse; to maintain the place of employment in a sanitary condition; and to provide appropriate waste receptacles and empty them regularly. One might question, in fact, whether there are any housekeeping activities that aren’t required by some regulatory agency with jurisdiction over manufacturing facilities. The Union’s argument, then, could remove all such tasks from the housekeeping category, even if they were also performed in order to keep the plant clean. That is not an issue with respect to janitorial work, or snow, garbage, and trash removal, because those are specific examples of non-core work. But surely the parties intended that the exclusion of general plant housekeeping was also to have some meaning.

I agree with the Union’s claim that steel industry arbitrators have continued to apply Seward’s purpose test in distinguishing between categories of work. But the appropriate analysis here is not between general plant housekeeping and other kinds of

cleaning; rather, the distinction to draw is between core and non-core. The parties exempted non-core work from certain contracting out restrictions, but they did not define the word “non-core.” The word “core” is defined in various ways, including “essential.” This could support the Union’s argument because compliance with environmental regulations is obviously an essential part of the business. But it seems unlikely that a for-profit enterprise would do anything that was not essential to its business. That definition, then, would make the distinction meaningless. The more likely intention was to separate out certain activities from the Company’s “basic and most important” functions, which is the definition offered by the Cambridge Online Dictionary.

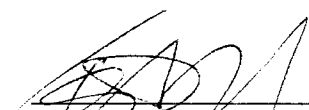
The basic function of the plant is to make steel. As already noted, presumably everything the Company does is part of that process or it wouldn’t do it, including sweeping the roads. But the various facets of the steelmaking process are the “basic and most important functions.” I need not decide in this case everything entailed in that category. It is sufficient to find that sweeping the roadway is not a basic part of steelmaking and, even though it is important in order to effect compliance with the law, it is not among the most important functions. This activity, then, is non-core work.

It also qualifies as general plant housekeeping. The specific functions listed in the letter inform the meaning intended for general plant housekeeping. Like the examples that come before, sweeping the roads is part of keeping the facility clean, no matter what kind of material is swept. This is not to suggest, as the Union claims, that all work involving emission control is general housekeeping, or even that all sweeping work can be so defined. Those issues are not part of this case and I express no opinion about them.

But sweeping the roads is work that is clearly encompassed by the terminology "general plant housekeeping."<sup>1</sup>

AWARD

The work at issue can be contracted out as outlined in the May 2, 2003 letter.

  
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Terry A. Bethel  
November 2, 2006

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<sup>1</sup> I reject the Union's claim that even if the work is housekeeping, it is not **general** housekeeping because it is directed toward a specific task. All work is directed toward a specific task. No one works generally. This distinction, then, would make the terminology meaningless.