IN THE MATTER OF THE ARBITRATION BETWEEN

MITTAL STEEL COMPANY
COATESVILLE PLANT

And Mittal Award No. 9

UNITED STEELWORKERS, USW
LOCAL UNION 1165

OPINION AND AWARD

Introduction

This case from the Coatesville Plant concerns the Union's claim that the Company violated the Agreement when it changed the schedule from a 7-7-7 pattern to a 5-2 Timken schedule, which the parties also call a "contractual schedule." The case was tried in Coatesville, Pennsylvania on March 21, 2007. Patrick Parker represented the Company and Lewis Dopson presented the Union's case. There are no procedural arbitrability issues. The principal issues involve the local working condition language of the Agreement and the meaning of a document entitled "Resolution Agreement," signed by the parties on May 2, 2006.

Background

When Bethlehem Steel went bankrupt, ISG purchased certain of its assets, including the Coatesville plant. The December 2002 collective bargaining agreement covering other ISG properties was extended to former Bethlehem facilities, including Coatesville, effective June 16, 2003. The Union presented evidence that when the Company operated on a 21 turn schedule,

employees were scheduled 7-7-7[1], meaning they worked seven consecutive days in a two week period. Under the Bethlehem agreement (and, before that, under Lukens Steel) this schedule did not require payment of overtime. However, under the ISG Agreement, and continuing thereafter under the Mittal Steel USA Agreement, the parties agreed to the following language in Article 5-D-2-c:

> 2. Conditions Under Which Overtime rates Shall Be Paid
>
> Unless worked pursuant to an agreed upon Alternate Work Schedule, overtime at the rate of one-and-one-half times the Regular Rate of Pay shall be paid for:
> ....
>
> > 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....

No one disputes that this language required the Company to pay overtime to employees working the 7-7-7 schedule, or that the Company paid overtime to employees in the steelmaking shop who worked on this schedule from about August 2004 until November 2005.

Local Union President Bill Sharp testified that he learned in May 2005 that Union and Company officials had met about scheduling patterns, apparently to discuss an Alternate Work Schedule (mentioned in Article 5-D-2, quoted above) that would allow employees to work a 7-7-7 schedule without payment of overtime. In August 2005, the parties discussed a Union document headed "Consistency List," which included certain concerns, including

> 6^{th}&7^{th} day waiver of claims – Decisions to waive claims to be determined by majority vote of each unit, with the understanding that voted upon schedules that are changed by the Company would result in eligibility of 6^{th}&7^{th} day claims.

[1] The parties sometimes used the terminology 7-7-6 instead of 7-7-7. There was no explanation about how these two schedules differed, if at all. I understand them to describe the same schedule. For the sake of consistency, I have used 7-7-7 throughout the opinion.

In September 2005, steelmaking employees and Company officials formed a scheduling committee to discuss the issue. Sharp said he was not aware there was such a committee until an employee told him about it.

In November 2005, the employees voted on an Alternate Work Schedule that would have allowed either a contractual schedule or a 7-7-7 schedule with a waiver of 6th and 7th day overtime. This agreement was apparently based on Article 5-C-6, which said the Company could adopt an alternate work schedule, which is defined as, "consisting of ten or twelve hours per day." Adoption required a 60% vote by employees and approval by the President and Grievance Chair. The steel shop employees approved the proposal from the Company; however, the Union objected because it interpreted Article 5-C-6 to mean that the only option it allowed was a six or seven day schedule, and not a waiver of overtime. This was the point at which the Company stopped paying claims for 6th and 7th day overtime.

On December 8, 2005, a Local Union Committeeman and the Division Manager of the Melt Shop signed a document headed, "Steelmaking Division Alternate Working Schedule." It agreed to implement a 7-7-7 schedule without overtime for a trial period of 8 weeks. Following the trial period, the parties could consent to a vote to extend the schedule for 6 months. Sharp said he was not aware of the agreement until after it was signed. He pointed out that under Article 5-A-6[2], local working conditions must be signed by the Plant Manager and the Local Union President. Sharp said he told the Plant Manager that the schedule contained in the agreement was not an Alternate Work Schedule as outlined in Article 5-C-6, and that the December 8 agreement was void. Subsequently, Lew Dopson from the International Union met

[2] Article 5-A covers the maintenance and creation of local working conditions. There are modifications from the basic steel language that predominated in the industry prior to 2003. Given my resolution of the case, it is not necessary to discuss the language in depth. However, Article 5-A-6 is of some importance, and reads as follows: "As of the Effective Date, all future Local Working Conditions must be reduced to writing and signed by the Plant Manager and the Local Unit President/Unit Chair."

with employees to explain the Union's concerns, and then, on March 9, 2006, sent a letter to Albert Fuller, Area Manager of Human Resources, saying that employees must be paid overtime when they work under a 7-7-7 schedule. At about the same time, Sharp posted a notice for employees telling them there had been no properly executed agreement for an Alternate Work Schedule and that 6th and 7th day overtime had to be paid.

From April 5 through April 13 there were a series of meetings in the plant to discuss the work schedules. There was a step 3 meeting between the parties on April 18, 2006. Subsequently, on May 2, 2006, Sharp and Dave Wirick, Plant General Manager, entered into a document headed "Resolution Agreement":

Resolution Agreement

This agreement details the process that will be used to jointly resolve the issue of 6th and 7th day overtime pay for the steelmaking department. At our April 18, 2006 step (3) meeting the following steps were developed:

- A joint resolution letter will be developed (this letter) and will be provided to all steelmaking employees during the week of April 30th to communicate the proposed resolution and explain the process that will be used.

- During the week of April 30th, steelmaking employees will be solicited by crews by schedule area (i.e. Floor, Caster, Cranes, Maintenance etc.) to solicit interest in scheduling options. Employees would be given the choice of two scheduling options:

  to remain on the current 7-7-6 schedule and not file claims
  or
  to move to a contractual schedule that does not create a six or seventh day overtime payment within a two week period.

- Based on that solicitation we will make every effort to minimize schedule changes for those who wish to continue to work the 7-7-6 schedule and not file claims. However, in those areas/groups where we do not have a unanimous consensus and where we can not schedule otherwise, we will move to a contractual schedule.

- The results of the solicitation will be communicated to all Steelmaking employees the week of May 7th. Any schedule changes would then go into effect the week of May 14th.

- All grievances filed in regards to this matter will be held in abeyance pending final disposition on scheduling within Steelmaking. This joint resolution in no way deprives either party of any rights under the current collective bargaining agreement, specifically as it relates to the grievance procedure.

A communication meeting will be held at a later date after the schedule changes have been made to address any questions or concerns. Please contact your steelmaking supervisor for any specific questions regarding the solicitation or proposed schedule changes.

The meaning and effect of this document is one of the central issues in the case.

At some point, the employees voted their preferences by department, as recorded in the second bullet point, above. In some areas, employees unanimously adopted the 7-7-7 schedule without 6th and 7th day overtime. The Company implemented the schedule in those areas and the Union has not protested that move. A majority of employees in steelmaking voted for the 7-7-7 schedule and the Company implemented it there, as well. That led to this grievance. The Union contends that the schedule waiving 6th and 7th day overtime was to be implemented by department only with the unanimous consent of the affected employees.

Sharp compared the Resolution Agreement to an earlier draft. He said he insisted on the removal of language that said, "Reverting back to the contractual schedule will be done so only as a last resort and does NOT violate the language contained in Article Five – Workplace Procedures, Section A, Local Working Conditions." (capitals in original). In addition, he insisted that the second sentence of the last bullet point be added to the agreement. Sharp said that with these changes, he understood that the Union had the right to grieve the use of the contractual schedule, at least in those cases where there was not unanimous consent.

On cross examination, Sharp agreed that the Bethlehem local working conditions did not roll over when ISG purchased the assets, and that the contract with ISG was a new agreement. He also acknowledged that there was no written agreement to continue the 7-7-7 scheduling

practice. Human Resources Manager Fuller agreed that local working conditions did not carry over from Bethlehem to ISG. He also said the Company considered the Resolution Agreement to be a local working condition, noting that it is in writing and signed by the appropriate persons required under Article 5-A-6. Fuller also pointed out that when Bethlehem employees worked the 7-7-7 schedule, that company did not incur 6th and 7th day overtime. Fuller agreed that the parties added the language about grievances to the Resolution Agreement, but he said he understood it to protect grievances employees had filed over 6th and 7th day overtime, some of which remained unresolved.

Dave Wirick, General Manager, said the Company wanted to change scheduling practices to avoid payment of 6th and 7th day overtime. There had been efforts to reach agreements, which ultimately led to the Resolution Agreement. Wirick said he understood the Resolution Agreement to resolve all issues, and the Union never said otherwise. He also acknowledged that there were some areas of the plant where operational needs resulted in leaving employees on a 7-7-7 schedule with payment of 6th and 7th day overtime.

Positions of the Parties

The Union argues that the fundamental issue in the case is the continuation of the local working condition allowing employees to work the 7-7-7 schedule. The Company, the Union says, hasn't contested the existence of a local working condition under Bethlehem and it hasn't argued that the overtime requirement in the ISG and Mittal contracts were changed conditions. Instead, the Company argues that the local working condition did not survive the Bethlehem bankruptcy and subsequent purchase of assets by ISG. The Union points to Article 5-A-6, which says local working conditions that provide benefits in excess of the agreement – which the Union

says is true here – are to remain in effect for the term of the agreement. In addition, it says the writing requirement in Article 5-A-6 applies to future local working conditions, not those carried over. Finally, the Union argues that the Resolution Agreement did not settle the grievance at issue here, pointing in particular to the clause that Sharp insisted be added concerning preservation of rights under the collective bargaining agreement.

The Company argues that the Resolution Agreement resolves the dispute. It points to Fuller's testimony that the preservation of rights under the grievance procedure related to pending grievances concerning payment of 6th and 7th day overtime. The Company had scheduled employees 7-7-7 but had stopped paying overtime sometime in late 2005. This led to the overtime grievances that were not extinguished by the Resolution Agreement. The Company also says Local President Sharp's testimony acknowledged that no local working conditions survived the bankruptcy and the subsequent purchase of assets by ISG. There can be no local working condition concerning scheduling, the Company argues, because there is nothing in writing signed by the Union President and the General Manager, as required by Article 5-A-6.

Findings and Discussion

I have difficulty understanding the Union's claim that the Resolution Agreement did not resolve disputes over the scheduling patterns at issue here. There is no question that the parties were in disagreement about the Company's right to change to a 5-2 schedule or to a 7-7-7 schedule that did not require the payment of 6th and 7th day overtime. There had been previous attempts to resolve the issue but, as the Union correctly argues, the December 5, 2005 agreement establishing a trial period and subsequent vote was not signed or agreed to by the appropriate parties to make it a local working condition.

But these problems are not present in the May 2, 2006 Resolution Agreement signed by Wirick and Sharp. The Resolution Agreement does not reference Article 5-C-6. Rather, the agreement follows the procedure of Article 5-A-6 for creation of a local working condition. This is consistent with the Union's claim that the 7-7-7 schedule itself is a benefit in excess of those provided by the contract, whether or not the employees receive 6th and 7th day overtime. The Resolution Agreement was probably not the deal the Union hoped to get. The most favorable course for the Union would have involved allowing employees to stay on the 7-7-7 schedule with 6th and 7th day overtime, or at least to vote on that option. But the Company was seemingly unwilling to do that, so the parties established an alternative as a way of resolving their dispute. The employees could choose a contractual schedule or they could keep the popular 7-7-7 schedule, but without 6th and 7th day overtime. This agreement did not merely give the Company the right to take the vote and then leave the Union with the right to contest the results. Rather, as the parties agreed in the preamble, the Resolution Agreement was intended "to jointly resolve the issue of 6th and 7th day overtime pay in the steelmaking department." The word "jointly" is of particular importance. Both parties were to be bound by the employees' selection.

The second bullet point – which describes the choice – says nothing about unanimous consent, which the Union says was necessary to enforcement of the Resolution Agreement. However, there is such language in the third bullet point: "In those areas where we do not have unanimous consent [to a 7-7-7 schedule] and where we cannot schedule otherwise, we will move to a contractual schedule." I cannot understand this to mean that the Resolution Agreement does not apply to areas without unanimous consent, which is apparently how the Union interprets the language. Rather, the parties agreed that if there was not unanimous consent, the contractual schedule would apply. This was not simply a statement of unilateral action on the Company's

part; rather, it was part of the parties' agreement about how the scheduling issue would be resolved.[3]

Nor can I understand that the language added as the second sentence to the last bullet point preserved the Union's right to contest the terms of the Resolution Agreement. If that were the case, then the Resolution Agreement would have had no effect at all. No matter what happened with the vote, the Union could declare the Agreement invalid and then file a grievance to overturn the results. This would make the vote the parties agreed to in the Resolution Agreement little more than a straw poll, an interpretation that is clearly at odds with the language the parties used. The more logical interpretation is that the language of the first sentence suspended grievances already filed, pending the outcome of the vote, including those in which employees made 6th and 7th day claims, as the Union had encouraged them to do. The second sentence seems to say that the Resolution Agreement itself did not resolve the existing 6th and 7th day claims or those that would be filed in the future for events that occurred before the effective date of the Resolution Agreement; the grievance procedure was still available to resolve those grievances.

Sparks was a credible witness and it may be that he believed the Resolution Agreement did not resolve the issue without unanimous consent. But my obligation is to determine what the

[3] The Union references the language that it insisted be removed from the draft, quoted above, about reverting back to the contractual schedule "as a last resort," with such a change not violating the contract. Although I have referenced unanimous consent in the opinion, it is not free from doubt whether the third bullet point required unanimous consent to adopt the contractual schedule. It says "if we do not have unanimous consent and we cannot schedule otherwise we will move to a contractual schedule." (underlining added.) This language apparently was intended to give the Company discretion about using either the 7-7-7 schedule or "when we cannot schedule otherwise," the contractual schedule. That would not seem to encompass "reverting back" to a contractual schedule. Rather, the deleted language seemed to say that even if employees adopted the 7-7-7 schedule without overtime (unanimously or otherwise) the Company still had the right to revert back to the contractual schedule as a last resort without violating the Resolution Agreement. It is not surprising that the Union would want this language deleted. It could have made the employees' election meaningless by vesting the Company with the right to use the contractual schedule even if the employees had chosen the 7-7-7 alternative.

parties' written agreement means, even if there may have been subjective disagreements – perhaps not voiced during negotiations – about intent. As explained above, I find that the Resolution Agreement resolved the 6th and 7th day issue, as the parties agreed it would. Given this interpretation, it is not necessary for me to determine whether there was a local working condition.

AWARD

The grievance is denied.

Terry A. Bethel
June 4, 2007