IN THE MATTER OF THE ARBITRATION BETWEEN

MITTAL STEEL COMPANY

And

Award No. 12
(USW number 15-1)

UNITED STEELWORKERS, USW
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company violated a mutual agreement when it reduced the crew size at the Cokenergy facility. The case arose under the 1999 Agreement between Inland Steel Company and the Union. The parties agreed that the issue is whether the Company violated the 1999 Agreement. The Company asserts that I have no jurisdiction to decide whether the Company's action violates the 2005 Agreement between Mittal Steel USA and the USW. The Union does not press that issue in this case. Mittal Steel USA is a successor to Ispat Inland.[1] The case was tried in East Chicago, Indiana on April 16, 2007. Patrick Parker represented the Company and Dennis Shattuck presented the Union's case. The parties submitted the case on closing argument.

[1] I use the word "successor" only in a descriptive sense and do not intend that usage to resolve any dispute that may exist between the parties concerning Mittal's status as a successor, as that term has been applied by the NLRB or the courts.

Background

The coke battery at the Indiana Harbor Works is the primary provider of coke for No. 7 blast furnace. Part of the coke plant is the Cokenergy power module and boilers, which sit atop coke ovens. The boilers capture flue gas and process it, and Cokenergy then distributes energy to various parts of the plant. The Cokenergy facility is owned by Primary Energy, which was not part of Ispat Inland, and is not part of Mittal. Primary Energy paid for the Cokenergy facility and owns the equipment. Inland and Cokenergy entered into a Tolling Agreement on November 4, 1996, that controls the relationship between the two companies. That agreement remains in effect. Pursuant to the Tolling Agreement, Cokenergy manages the facility and is responsible for staffing and maintenance. Inland employees staffed the facility beginning in 1998, and it is now staffed by Mittal employees.

On April 9, 1998, Inland and the Union signed a mutual agreement recognizing that Inland employees would operate and provide some maintenance services for the Cokenergy facility. The mutual agreement said there would be an operating sequence of two occupations, one of which was a skill-based occupation, and an initial staffing of 20 employees. The agreement also provided for training and various other matters. Robert Cayia, Manager of Labor Relations for Indiana Harbor, described it as a comprehensive agreement. Of greatest importance to this case is paragraph 6, which reads as follows:

> Cokenergy Management shall exclusively determine the size and duties of the crews staffing the Cokenergy facility. Subject to paragraph 5, above, no grievance(s) alleging the scheduling of an improper crew size at the Cokenergy facility will be filed under Article 2, Section 2 of the Collective Bargaining Agreement within five (5) years of the signing of this Mutual Agreement.

Paragraph 5 of the mutual agreement, mentioned in paragraph 6, is not implicated in this case. Article 2, Section 2 of the 1999 Agreement concerned the creation, maintenance, and elimination of local working conditions. A crew size could be a local working condition.

The five year anniversary of the mutual agreement was April 9, 2003. On March 23, 2003, Cokenergy reduced the crew size from five to four employees. The Union says the crew had been made up of five employees from start-up until March 23, which was less than three weeks from the expiration of the initial five year period. The Union grieved the reduction on April 9, 2003, one day after the five year period expired. The Union argues that a local working condition existed that required the Company to schedule a five person crew. Under Article 2-2-d, once that crew size was established, the Company could not eliminate it by reducing the crew unless it was able to show that the "basis for the existence of the local working condition is changed or eliminated, thereby making it unnecessary to continue the local working condition." The Union claims there was no change in the basis for the local working condition in this case. Thus, it argues the Company was required to continue to schedule a five man crew. The Union also says it did not violate the five year ban established in paragraph 6 of the mutual agreement because it did not file the grievance within the five year period.

The Company argues that the five year ban extended to events occurring within that period, and not merely to the grievance itself. Grievances have to be filed within 30 days of occurrence, so the Union's interpretation, the Company says, would effectively change the five year period to four years and eleven months. The Company's principal argument is that paragraph 6 gave the Company – or, here, Cokenergy – five years to establish an appropriate crew size. Thus, there could be no protected crew size until after the five year period ended. Cokenergy reduced the crew from five to four within the five year period, so there can be no

argument, the Company contends, that there was a local working condition protecting a five person crew.

The Company relies on my decision in Inland Award No. 923, where I interpreted a clause quite similar to paragraph 6 of the mutual agreement at issue here. In that case, involving a crew size reduction of a caster sequence, I interpreted the language to mean the Company could alter the crew size without limitation for the first five years of that mutual agreement. The Company also asserts the Union should have understood the meaning of paragraph 6 of the Cokenergy mutual agreement, because it executed the agreement less than a year after the decision in Inland Award 923. The Union acknowledges the decision in Award 923, but it says the language relied on by the Company was dicta and, therefore, need not control the current case. The Union also points out that in Award 923, I observed that the disputed language might be read differently, meaning that I left the door open for a different interpretation in this case.

Findings and Discussion

As the Union points out, the issue in Inland Award 923 differed from the claim it makes in this case. There, the question was whether there were changed circumstances that would justify elimination of the crew size, which the Company acknowledged was a local working condition. That issue arose several years after the expiration of the five year period in which the Union agreed, as it did here, not to file a grievance over crew sizes. In the instant case, the issue is whether there was a local working condition at all. The Company does not claim there were any changed circumstances so, were I to find a protected crew size, there is no claimed justification for eliminating it. But the difference in the cases does not mean the interpretation of the five-year language was dicta in Award 923, or that it is inapplicable to the instant case.

As noted, the issue in Award 923 was whether there was a changed circumstance sufficient to allow the Company to reduce the crew size. That question could not be answered without a finding about the basis for the crew size; once that determination was made, the focus shifted to whether there was a change in the basis that made it unnecessary to continue the same sized crew. In Award 923, there was a disagreement between the parties about the basis for the crew size when it was first established in 1986. I found, however, that the reason for the *initial* crew size – whatever it may have been – was not the relevant inquiry; rather:

> There may be other ways to read paragraph 15 [similar to paragraph 6 at issue in the instant case] but it seems clearly to mean that the company had a time period – from start up until January 1, 1990 – to establish a crew size. Although it began operations with two deck operators, it could have decided any time up to January 1, 1990, that it needed only one or, presumably, that it needed none at all. Similarly, it might have decided that it did not need two strand operators, or that it did not need a crew leader. All of those were options the Company maintained until January 1, 1990, *when the Union gained the right to file grievances about protected crew size*.... The Company bargained for the right to make adjustments in the crew size .... (emphasis added)

As I noted at the outset of the Discussion section in Award 923, paragraph 15 of the caster mutual agreement "is the determinative factor in the case." It was necessary to interpret that provision to understand when the crew size became protected so the basis existing at that time could be identified.

The same issue is presented here. The Union argues that there was a protected crew size, if not initially when Cokenergy began using a five person crew, then at least by March 23, 2003, almost five years later and only about three weeks short of the termination of the five year period specified in paragraph 6. But the decision in Inland Award 923 – and even without that case, the most reasonable reading of the language – makes it clear that paragraph 6 was intended to prevent disagreement about crew size until April 9, 2003. As I said in Award 923, the Company bargained for the right to adjust crew sizes during a five year period and no protected crew size

could arise until it expired. Thus, the question of whether there were changed circumstances between April 9, 1998 and April 9, 2003 is irrelevant.

The Union says, however, that it did not file its grievance within the five year period carved out by paragraph 6; it waited until the day after the five years expired. But the right to grieve concerns events that happened after the five year period expired, and not events that occurred after 4 years and eleven months. Here, the Company decided to reduce the crew size within the five year period and, pursuant to paragraph 6 of the mutual agreement, the Union had no right to challenge that decision.

AWARD

The grievance is denied.

Terry A. Bethel
June 16, 2007