

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL STEEL COMPANY USA
INDIANA HARBOR WORKS

And

Award No. 22

UNITED STEELWORKERS, USW
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case from Indiana Harbor Works concerns the Union's claim that the Company improperly assigned work to MTM craftsmen that had formerly been assigned principally to Service Techs. The case was tried at the Company's offices in East Chicago on January 7, 2008. Patrick Parker represented the Company and Dennis Shattuck presented the Union's case. The parties submitted the case on final argument.

Background

This case revisits some issues first considered in Mittal Award No. 8, issued on February 14, 2007. That case concerned the Company's decision to remove the work of indexing rail cars at the North Rail Dump from employees in the Internal Logistics LOP and assign it to employees in the Iron-Making LOP. The principal issue in the case was whether the local working condition giving the work to the Internal Logistics employees had survived the 2005 Basic Labor

Agreement, which made changes in the seniority structure and eliminated some local working conditions. But the seniority structure was also an issue in that case.

The backdrop of the instant case was explained in Mittal No. 8 as follows:

There were significant changes in the basic steel industry between 2000 and the time this case arose in 2005. LTV Steel Company, located adjacent to the Company's operations in northwest Indiana, went bankrupt and ceased operations. ISG Steel purchased the assets of LTV and negotiated a new agreement with the Union. That agreement made significant changes in basic steel language and created more flexibility in job assignments. Similar language was introduced in the 2003 Basic Agreement between United States Steel Corporation and the United Steelworkers, USW. In late 2004, Ispat International acquired ISG, including the old LTV location in East Chicago, which resulted in the creation of Mittal Steel Company USA. In October 2004, the Company and Union agreed that if the Company acquired ISG, the production and maintenance bargaining unit from Ispat Inland would be covered by the ISG/USWA Agreement, with appropriate supplements covering various subjects, including seniority. Negotiations over those supplements culminated in a new Agreement between USW and Mittal Steel that became effective on November 13, 2005....

In this case, the Company points to revisions to both the seniority structure and the local working conditions language to justify this change, as well as a reduction in the number of jobs. Prior to the current Agreement, there were hundreds of jobs in the plant, each grouped in a seniority sequence. Each seniority sequence was itself a seniority unit that could have jurisdiction over certain work. In some departments, there were a dozen or more seniority sequences, each of which, as recognized in Article 13, Section 3, was "intended to provide definite lines for promotion and demotion, insofar as practicable, in accord with logical work relationships, supervisory groupings and geographic locations...." The seniority unit was defined differently in the 2005 Agreement in Article 5, Section E:

2. Determination of Seniority Units

a. Seniority shall be applied on a job and departmental or larger unit basis, as agreed upon. A job may be in one seniority unit for one purpose and in a different unit for another.

b. The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the Effective Date shall remain in effect unless modified by a local written agreement signed by the Grievance Chair.

Prior to 2005, there were three different seniority sequences in the Central Shops: the Fab Shop, the Machine Shop, and the Electric Shop. The parties agree that under the 2005 Agreement, the Central Shops are one LOP.

This case began when the Company assigned Labor Grade 4 Maintenance Technicians (MTM) to perform work typically done by Service Technicians. Apparently the MTMs were initially assigned to operate cranes and do shipping work in addition to their MTM duties. However, by the time of the hearing, some of the MTMs were not performing any craft duties at all. Once the work was assigned to MTMs the Service Techs were transferred temporarily to the pugh ladle repair area. The Union does not protest that move in this case. Rather, the Union argues that it was improper for the Company to assign the Service Tech work to the MTMs. Had it not done so, presumably there would have been no need to assign the Service Techs to other work.

The parties entered into the following stipulations:

All arguments of the Company relative to the reassignment of work are based in the new (2005) contract and have nothing to do with the previous Ispat Inland-USWA contract.

In the Electric Shop the MTMs (craft employees) performed the kind of non-craft work at issue here; there were no Service Techs in the Electric Shop. However, there were Service Techs in the Machine Shop and the Weld Shop, and the work at issue here was always performed by employees in the non-craft sequence. The parties agree that what is happening now is that MTM employees are being assigned to essentially perform the work that non-craft employees had done.

The parties agree that the local working condition was the result of the seniority structure as aided by the principles of Section 2.2 of the old contract. The parties agree that the Union does not need to introduced any history to establish that there was a local working condition in this case. The Company agrees that there have been no changes that would justify eliminating a local working condition concerning the assignment of work. However, the Company says the 2005 Agreement allowed it to eliminate the local working condition. The Union says the effect of the new seniority system only goes to the extent it was negotiated.

Labor Relations Manager Robert Cayia cited Mittal No. 8 and the job descriptions in the 2005 Agreement to justify the Company's actions. In Mittal No. 8, I said the department was the seniority unit, although the smaller branch within the department also affected seniority rights. Mittal No. 8 says the Company cannot assign work across LOP lines. But, the Company says, it has not done that here. Both the MTMs and the Service Technicians were in the same LOP. They would not have been under the prior agreement, where each sequence constituted a separate seniority unit. However, under Article 5-E, quoted above, the LOP is the department – the Central Shops – and the MTM assignments are being made within the same department, Cayia contended.

Cayia noted that the Maintenance Technician job description on page 116 of the contract says an incumbent “operates equipment in conjunction with repairs and provides assistance in operating functions as necessary to keep equipment running.” This means, Cayia said, that in addition to craft work, an MTM can operate a fork lift, drive a truck, or operate a crane, none of which appear in the Maintenance Tech box on the seniority diagram. An Operating Tech could perform the same functions. A Service Tech operates cranes and other mobile equipment, but also “supports and assists in maintenance activity in their areas and in support of operating units.” These broad job description, Cayia said, give the Company flexibility to assign employees to work they have not traditionally performed. Although Cayia said the Company's flexibility is broad, he also said it would not make assignments that weren't practical. However, within a seniority unit, Cayia said, the only limitation on the Company's discretion to assign work is reasonableness. Cayia also said the non-craft work being performed by MTMs has a “close factual nexus” to the craft work they normally perform. Cayia said the Company did not

have a “blank check” to move employees, but it had great discretion within the limits of the LOP and the job descriptions.

As it did in Mittal No. 8, the Union introduced evidence that following the purchase of ISG, the parties agreed that the former Ispat Inland facility would adopt the ISG Agreement with certain modifications. The parties had experienced difficulties negotiating a new seniority clause prior to the merger. Once the transaction was announced, the Union says it studied the ISG seniority provisions to try to understand how they worked and how they could be accommodated at the former Ispat Inland plant.

The Union called Loren Hansen, who was part of the negotiating committee for the 2002 ISG Agreement that covered the former LTV property. He said at that facility (now Indiana Harbor Works West), the department is a seniority unit, but each line or branch of the department is also an LOP. He said the Company has never contended that the branches are not seniority units and, in fact, refers to them as such. He also identified a document sent to employees after the negotiations which showed the various departments and the “lines of progression” within the department. Hansen also said job descriptions are typically used as a way of establishing pay rates.

Mike Milsap, a International Union Staff Representative, was part of the 2002 ISG-USWA negotiations, and participated in the Indiana Harbor Works East (formerly Ispat Inland) negotiations in 2005, which led to the current contract. He said that even though the 2005 Agreement says the department – the entire grouping of jobs – is a line of progression, it isn’t a seniority unit “in the historic sense of the word.” The common concept of a seniority unit in the steel industry, he said, is the branch of related jobs. Employees can move up and down in those jobs if there is a solid line between them. But they cannot move to another progression in the

absence of such a line. Milsap also said the Union consistently referred to the branches as seniority units during negotiations, and the Company never contended otherwise.

That testimony was echoed by Matt Beckman, Secretary of the Grievance Committee. He said Local 1010 struggled to understand the seniority structure at the West plant, and that Local 1011 (West Side Local) said each of the branches were separate LOPs. During negotiations for the former Ispat Inland Plant, Beckman said no one from the Company objected to the Union's claim that all of the LOPs were separate seniority units. Moreover, he testified that during negotiations, the Company had tried to insert lines between the various branches, which the Union would not accept. Beckman also identified job postings that distinguished between the Department as an LOP and the "seniority unit/branch." On cross examination, Beckman acknowledged that the department has more significance in job bidding under the new contract than it had under the old. Now, if no one in the branch moves up, bidders from the department get priority over bidders from the rest of the plant.

Max Carrasquillo, Union Chairman of the Bargaining Unit Work Committee (formerly the Contracting Out Committee) testified that the amount of work contracted out increased after the Service Techs were removed from the department. The Union believes, he said, that the Central Shops can't keep up with the volume of work because craftsmen are being used to perform non-craft duties. On cross examination, he acknowledged that the amount of money the Company spends on maintenance has increased dramatically. The parties agree that the appropriateness of the Company's decision to contract out work is not an issue in this case.

Positions of the Parties

The Company says many of the arguments advanced by the Union in this case were rejected in Mittal Award No. 8, which said the department was the seniority unit. It also points to the Wood/McCall Letter, included at page 119 of the Contract under the heading “Understanding Concerning Miscellaneous Matters for the Ispat Inland Employees.” Paragraph 5 of that letter says, “Existing local working conditions which are inconsistent with the implementation of the work restructuring effort will be eliminated or modified as appropriate in order to implement the new seniority structures.” The new seniority system here, the Company argues, names the Central Shops as the seniority unit, replacing what had been 20 seniority sequences. Formerly, there were (or could have been) jurisdictional restrictions that prevented moving work from one of the shops to the other. But the Company can do that now, it argues, because the Central Shops are one department. The Company also relies on the new job descriptions, which include language that allows the MTMs to do the work the Company has assigned them in this case. The Company says the department is the LOP and there are no barriers to moving work inside the LOP.

The Union says Mittal No. 8 recognized that seniority is applied on a job basis, whether the branches are called LOPs or not. The Company’s action here, the Union argues, takes away the employees’ right to apply seniority on that basis. The Union says MTMs can’t be assigned to the work at issue because Service Techs have the right to the work. The Union also says the Company is arguing that it can move work on a much broader basis than has ever been done under the ISG-type agreement. The ISG contract, the Union says, carried forward the traditional basic steel approach. The parties reduced the number of LOPs and gave the Company more

flexibility to assign work. But it can't take an employee off a job and replace him with someone else in a different branch.

The Union also says the Company cannot rely on the job descriptions to justify its actions. It notes that the Company has argued previously that job descriptions were used to grade jobs for pay purposes. The job descriptions cannot be used to defeat the parties' seniority system. It also says if the Company can give any work to anyone within the department, then the LOPs would be meaningless. The Union acknowledged that the way the term "LOP" is used in the Agreement and on the department diagrams created ambiguity. But, it says, the Company never claimed it could move work within a seniority unit or department solely on the basis of the job description, and it did not say the branches were not LOPS until after negotiations were concluded. The Company's present interpretation, the Union argues, would effectively negate the LOPs. If that were the intent, the Union claims, there would have been no reason to have bargained them in the first place and the Service Tech's seniority rights will have been destroyed. The way seniority applies at Indiana Harbor Works East should not differ from the way it applies in the other Mittal facilities, including Indiana Harbor Works West, the Union argues.

Findings and Discussion

As I recognized in Mittal Award No. 8 – and as the Union's final argument acknowledged in this case – the new seniority language in the 2005 Agreement created ambiguity about how seniority rights will be applied. There is no question that the parties intended to provide more flexibility for the Company in making job assignments. But, as noted in Mittal No. 8, the Company's discretion is not unbounded. The locations of those boundaries,

however, are difficult to discern from the language the parties used. In Mittal No. 8, the Company urged that it could assign an employee to work anyplace in the plant as long as the assignment was consistent with his job description. I rejected that claim by saying employees could not be assigned from one LOP to another, which responded to a principal Company argument in that case. I also said the department was the LOP and that the separate branches within the department were not LOPs.

The Company interpreted the decision to mean that while it could not transfer work from one LOP to another, it was free to transfer work within the LOP, as long as the duties were within the job description of the employee assigned. The Mittal No. 8 opinion, however, did not directly address that issue. Although I said the branches were not LOPs, I also said, “The branch does not have to be an LOP for seniority to be applied on a job basis,” then giving as an example the way employees promote within the branches. This was consistent with Article 5-E-2-a, which says, “Seniority shall be applied on a job and departmental or larger basis, as agreed upon.” I also said that the contract imposed other limitations: “The parties have also negotiated procedures for moving employees temporarily from branch to branch within the larger LOP, which may provide the Company with greater discretion in assignment.” But that did not mean the Company had a free hand to reassign work within the LOP as it saw fit.

I noted in Mittal No. 8 that the Company had once proposed using dotted lines between the branches as a way of recognizing that it had the right to move work from one branch to another, but the Union would not agree. This supported my conclusion that the Company could not move work between departments, but the same reasoning obviously applies to branches. Why would the parties have gone to the trouble of negotiating branches – which was a difficult

process – if they were to be used only to give a sense of how the work was organized, or to provide a promotional progression?

The department is not simply an unstructured group of employees who can perform any work within the department. If that were true, the word “job” in Article 5-E-2-a would become irrelevant, except for promotion purposes. The parties took particular care to create a simplified seniority system that grouped many jobs within one box, thus allowing the Company to assign every employee in the box to perform any of the work associated with that box (assuming he is qualified). But the presence of the branches and the Company’s withdrawn dotted-line proposal negate the Company’s claim that it had full freedom of assignment within a department or that it could, in effect, abandon one of the boxes and assign that work to other department employees.

I recognize, as the Company argues, that the job description for Labor Grade 4 says the incumbent can “operate equipment in connection with repairs and provides assistance in operating functions as necessary to keep the equipment running.” I also agree that this language may allow an MTM to run a crane or a forklift. That apparently was already the case in the Electric Shop, where craftsmen used a crane to place equipment for repair, and also operated forklifts. But I have difficulty finding that the parties abandoned traditional job assignments in favor of general job descriptions that allow the Company to interchange employees in a department without regard to seniority. Had such a drastic change been contemplated, one would have expected express language. In the absence of such language, I cannot find that the designation of the department as a seniority unit rendered the job – the boxes – irrelevant.

In *Mittal No. 8*, I rejected the Company’s argument that the new seniority structure meant that all jurisdictional local working conditions had been eliminated by the 2005 Agreement. Given the narrow issue in *Mittal No. 8*, I reserved the question of whether the kind of local

working condition at issue here survived the new seniority structure, although I did say the Company's argument would "undermine jurisdictional boundaries throughout the plant." There was obviously a modification of at least some jurisdictional working conditions; the boxes in the departmental diagrams now contain numerous jobs and the former incumbents of those jobs no longer have the right to do a narrow body of work exclusive of the other employees in the box. But recognizing that the former rationale no longer applies does not mean the local working condition was eliminated entirely; the Wood/McCall letter says they can also be "modified as appropriate."

Recognizing a local working condition within the department is inconsistent with the restructuring only if the restructuring was intended to give the Company freedom of assignment within the department. Whether this was the intent is not addressed in the Agreement but, as already noted, had the parties intended that result, it is hard to understand why they would have bothered negotiating branches at all. The fact that they negotiated branches and that the effort was not without controversy suggests that the jurisdictional rights associated with the former jobs attached to the boxes. This may not have been the Company's intent, but I cannot find that the contract language supports its position that jurisdictional local working conditions disappeared under the 2005 Agreement. This is not to suggest that every local working condition survived; the one in Mittal Mo. 8, in fact, was eliminated. In this case, however, I find that the Company cannot justify assigning the bulk of work traditionally performed by employees in the Service Tech box to craftsmen and, in effect, eliminate the Service Techs from the department.¹

¹ There may be some question about whether employees had a right to certain work under the old seniority structure. I cannot find that the restructuring gave them rights where none existed before. For example, there was testimony that the Service Techs did not work in the Electric Shop and that craftsmen operated cranes and other mobile equipment in that department. This decision should not be interpreted to mean that Service Techs now have the right to do that work. In addition, the job description – whether used principally for pay purposes or not – does say that craftsmen can operate cranes in certain

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The grievance is resolved as explained in the Findings.

Terry A. Bethel
April 29, 2008

circumstances. Although the breadth of those circumstances is narrower than the Company claimed in this case, the circumstances in which MTMs can operate cranes, etc., cannot be decided on the record in this case. It is worth noting that occasional performance of work by employees outside a seniority sequence did not necessarily defeat jurisdictional rights even under the old contract.