Award No. 873
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
USWA LOCAL UNION 1010
Arbitrator: Terry A. Bethel
March 14, 1993
OPINION AND AWARD
Introduction
This case concerns a dispute over the jurisdiction of craftsmen in the mobile maintenance services department (MMS) and is submitted on the following stipulation:
Beginning December 18, 1992, Mobile Maintenance Services Department employees began performing maintenance work on equipment located in the Utilities Department. This work had previously been performed by Utilities Department employees.
The parties agree that the work jurisdiction of the Mobile Maintenance Services Department is defined by Appendix N of the Collective Bargaining Agreement. The union alleges that the work jurisdiction of the Mobile Maintenance Services Department is limited to equipment maintained by assigned maintenance employees. The company maintains that the jurisdiction conferred to the Mobile Maintenance Department by Appendix N is not limited to equipment maintained by assigned maintenance employees, rather, includes all equipment maintained in the plant.
The sole issue before the arbitrator is, therefore:
Whether Appendix N restricts the Mobile Maintenance Services Department from supplementing mechanical, electrical and welding maintenance work associated with scheduled repair downturns in the Utilities Department.
The parties further agree that if the arbitrator were to find that the Mobile Maintenance Services Department is prohibited from performing maintenance work at the Utilities Department, a make whole remedy is appropriate and the parties will consider the issues of amount and coverage of such remedy.
The parties submitted the case to me on the basis of this stipulation and without further evidentiary hearing. Each party filed a brief and made a final argument. Brad Smith represented the company and Jim Robinson argued the union's case.
Appearances
For the company:
B. Smith -- Arbitration Coordinator
K. Kantowski -- Manager, MMS
W. Peterson -- Project Rep., Union Relations
For the union:
J. Robinson -- Chrm, Grievance Committee
M. Mezo -- President, Local 1010
A. Jacque -- 1st Vice Chrm, Grievance Comm.
W. Spencer -- Griever
O. Cochran -- Assistant Griever
R. Cox
A. Sanchez
D. Senis
Discussion
Interpretation of Appendix N is not a new endeavor, either for these parties or for this arbitrator. This is the first time, however, in which the parties have disputed whether MMS craftsmen can work in areas other than those which employ assigned maintenance craftsmen.<FN 1> Each side contends that the plain wording of the contract supports its interpretation and, moreover, each asserts that to the extent the parties' intent can be gleaned from the words they used, that intent supports its position.
The company's principal argument is that because the parties failed expressly to restrict MMS craftsmen from other than assigned maintenance areas, there is no prohibition against using them in the utilities department. The parties agree that the craftsmen in the utilities department are not part of the "assigned maintenance force" which is granted certain protections by Appendix N. As such, they are not listed on Attachment A, a document that has itself been the subject of prior arbitrations, but is of no particular relevance in this case.

As is typically the case with Appendix N cases, the analysis begins with examination of AN.1, which I have previously characterized as the preamble to the Assigned Maintenance Agreement. That language, in relevant part, reads as follows:

The parties recognize the need to substantially improve the efficiency and productivity at the Indiana Harbor Works while assuring employment security for assigned maintenance forces. Therefore, in a joint effort to address the foregoing, the parties mutually agree to establish a new department designated as the Mobile Maintenance Service Department (MMS). The purpose of this department will be to supplement mechanical, electrical, and welding maintenance work associated with scheduled repair downturns in various departments throughout the Harbor Works and to minimize the use of outside maintenance forces.

As I have observed previously, both sides received something from this agreement, the benefit to each being summarized in the preamble. Management got the increased efficiencies and productivity associated with a centralized maintenance force; the union got job security guarantees for assigned maintenance craftsmen.

The issue here, in effect, is whether management's benefit extends beyond the scope of what the union received. Essentially, the company's argument is that it secured the right to use MMS craftsmen throughout the plant, wherever there is a scheduled repair downturn, and whether or not Attachment A assigned maintenance employees work in that department. The union, on the other hand, urges that there is a relationship between what it gave up and what it got. That is, the union asserts that it negotiated away certain jurisdictional rights of craft employees, but only to the extent that the affected employees were protected by Attachment A, or elsewhere in Appendix N. As is ordinarily the case, both sides make plausible arguments in support of their respective positions.

It is basic hornbook law, of course, that there is no requirement of equivalency in the bargain. Absent conduct which might give rise to rescission (and there is no suggestion of any such conduct here) the parties can strike any bargain they desire. A man may pay too much or too little for a horse, but that fact alone does not affect the enforceability of the deal. The issue in this case, then, is not whether the parties bargained a contract of equal benefit to each. Rather, the task before me is to attribute a reasonable meaning to the words they used.

Mr. Smith is quite correct when he argues that AN.1 does not say that MMS will supplement maintenance work only in those departments which employ an assigned maintenance force. Rather, it says that MMS employees will supplement maintenance work on scheduled downturns "in various departments throughout the Harbor Works." The company argues that if the parties had meant to restrict the jurisdiction of MMS to those departments with assigned maintenance employees, they would have said so expressly. Failing that, the inference is that they intended to grant a wider jurisdiction, unencumbered by whether the department has assigned maintenance workers.

I agree that the parties could have restricted the jurisdiction of MMS expressly to assigned maintenance areas. But it is not clear to me what that proves. They also could have said that the purpose of MMS was to supplement other craftsmen anyplace in the plant. Or, more realistically, they could have simply left out the words "in various departments." The sentence would then have said that the purpose of MMS is to "supplement . . . maintenance work throughout the Harbor Works. . . ." This would come closer to the meaning contended for by the company. My task is not to speculate about what the parties meant by what they did not say. Rather, I must attribute meaning to the words they used.

Here, the parties did not say expressly that MMS craftsmen could work only in assigned maintenance areas; and they did not say merely that MMS craftsmen could work "throughout the Indiana Harbor Works." Instead, they said that MMS was to supplement maintenance work "in various departments." The addition of those words dispels any intent to grant MMS jurisdiction in every department where maintenance work is performed. The grant of jurisdiction is narrower. The question is, what did the parties mean by "various departments?"

Of course, they could have meant nearly anything. The words, in fact, may have been added without much thought at all. But while one can never really know the actual intent of the negotiators, the assumption is that they chose the words they used in order to express their intention. The words "various departments," then, must mean something. In my view, it makes sense to attribute meaning from the context in which the words appear.

The preamble to the Assigned Maintenance Agreement does not stand in isolation. It introduces an agreement, a principal part of which is devoted to the protection of assigned maintenance employees as a result of the creation of MMS. The first sentence of AN.1 recognizes the tension between efficiency and security. The next sentence begins by saying "Therefore, in a joint effort to address the foregoing" the

parties agree to the creation of MMS. There can be no mistake that this language refers to the interests of both efficiency and security. The word "foregoing" cannot legitimately be read as applying only to the company's interest. Then comes the sentence over which the parties disagree. After having said that the parties were creating MMS in order to address the interest of efficiency and the interest of the security of assigned maintenance forces, the paragraph then says that the purpose of MMS is to supplement maintenance work in various departments.

To this point, the focus of the paragraph had been on the efficiencies of a centralized force and the security of the assigned maintenance employees. Why would the focus shift in the last sentence of the paragraph? If the parties were trying to say that MMS employees could work anyplace in the mill, why choose to say it in a paragraph devoted to the accommodation between efficiency and security? In my view, the parties did not use the last sentence of AN.1 for the purposes the company claims. Rather, consistent with the focus of the rest of AN.1, the parties expressed that MMS would "supplement" (not replace) employees in the various departments where assigned maintenance employees worked.

This interpretation is supported by another provision in appendix N, paragraph AN.13.1. That paragraph reads in full as follows:

The purpose of the MMS is to supplement departmental assigned maintenance crews on work associated with scheduled repair downturns. It is not expected that such work will have any impact on Field Services Department or Shop Services Department employees. Furthermore, new contracting out language should enhance job security especially for those departments. The following protections are included in the unlikely event displacements will affect these departments. (emphasis in original)

Obviously, the first sentence of this paragraph is consistent with the interpretation I have given paragraph AN.1. It says expressly what I found implicit in the language and structure of AN.1. The company, however, would read AN.1 more broadly, to allow use of MMS employees in departments, whether they have assigned maintenance forces or not. In that event, the company asserts that there is an apparent conflict between AN.1 and AN.13.1, but that its interpretation of AN.1 must prevail.

Because of the meaning I have given to AN.1, I need not resolve this contention because I find no conflict between AN.1 and AN.13.1. In fact, I find that they say the same thing. Even if I were required to address the company's argument, I would reject it. Although his argument is about as creative as it can be under the circumstances, Mr. Smith's position is not an easy one to defend. He recognizes -- indeed he quotes my own opinions -- that an agreement must be construed as a whole and that contract interpreters should not read an agreement so as to void part of it. If I were to find that paragraph AN.1 grants MMS jurisdiction in any department, irrespective of the presence of assigned maintenance forces, then I would simply have to ignore the first sentence of paragraph AN.13.1. The more realistic interpretation is that, when the parties bargained AN.13.1, they simply set forth what they had already agreed to in the preamble. In short, the two provisions are consistent and do not need to be reconciled.

Although I find that the language is not particularly ambiguous, my understanding of the purpose of Appendix N also supports the union's interpretation. AN.1 states clearly that it is intended to foster both efficiency and security. Obviously the security provisions of the agreement are directed at those employees most likely to be affected by the creation of MMS -- the assigned maintenance forces. But they are not the only ones who would be affected. The parties agreed at the hearing that prior to the creation of MMS, field forces and shop services had spent the bulk of their time supplementing assigned maintenance forces during repair downturns. The creation of MMS to perform exactly the same function, then, would appear to be a threat to those employees.

Neither field forces nor shop services employees are covered by the protections made available for Attachment A employees since they are not assigned maintenance employees. The security provisions of Appendix N, then, would seem not to apply. But that was the reason for AN.13.1, which says that the creation of MMS and new contracting out language should enhance rather than detract from field forces and shop services work. But it nevertheless creates a number of protections for those employees in case that prediction proves wrong.

An.13.1, then, turns out to be consistent with the protections afforded by the rest of Appendix N. The parties recognized that the MMS craftsmen were going to supplement assigned maintenance craftsmen so they negotiated protections for the groups of employees most likely to be affected by the creation of this new department -- the assigned maintenance forces, shop services and field forces.

There was no need to provide similar protections for craftsmen elsewhere in the mill because, pursuant to AN.1 and AN.13.1, MMS craftsmen would not work in other than assigned maintenance departments. The company argues, however, that no such protections were negotiated for craftsmen in the utilities

department because MMS did not have all the skill necessary to supplant utilities craftsmen. Therefore, there was no threat that MMS would eliminate them, as was the case with assigned maintenance forces, shop services, and field forces.

This would be a more convincing argument if Appendix N recognized a threat to the very existence of assigned maintenance forces, field forces, and shop services. But there is nothing in Appendix N which indicates that MMS was a threat to completely eliminate assigned maintenance forces. Rather, the parties agreed that MMS would supplement assigned maintenance, not supplant it. Even supplementation, however, could adversely affect assigned maintenance employees. Thus, the parties negotiated the protection of Attachment A.

I can accept the company's assertion that MMS could not completely eliminate utilities craftsmen. But that does not mean that assignment of MMS craftsmen in the utilities department could not have had some significant effect on utilities craftsmen. Consistent with the direction they took in Appendix N, then, the parties presumably would have negotiated protection for utilities craftsmen, had they contemplated that MMS could work there.<FN 2>

In addition, the company relies in part on Arbitrator High's opinion in Inland Award 830, where he concluded that:

In the absence of any evidence to the contrary, I must assume that the parties intended that the new term 'scheduled repair downturn' apply to all the departments in the plant and that it not be limited to production units. Otherwise the language 'Throughout the Indiana Harbor Works' becomes meaningless.

Although the language he used was broad, Arbitrator High's opinion is inapposite. There was no issue in Award 830 about whether MMS craftsmen could be assigned to units without an assigned maintenance force. Rather, the parties were disputing the meaning of "scheduled repair downturn," with the union contending for a narrow interpretation that would limit the use of MMS to only a few departments. Arbitrator High rejected that limitation. It was in that context that he observed that the words "scheduled repair downturns" were to be applied to all the departments in the plant. But he had no occasion to consider whether that included departments that did not employ assigned maintenance forces.

Additionally, the company argues that Arbitrator High noted the testimony of a company vice-president that the company's plan was to introduce the centralized maintenance force in all departments of the company. The arbitrator observed that this testimony was uncontradicted, though I hardly understand how the union could have rebutted testimony about the company's planning. In any event, the testimony seems to have been intended to give meaning to the term "repair downturn," which was the issue in the case. Moreover, even if it is to be read to mean that the company intended to use MMS in departments that had no assigned maintenance force, the expressed intention of one party is not determinative. And, by agreement of the parties, I am not privy to what they may have said to each other about this issue across the bargaining table. What counts is the language and the language does not support the conclusion that MMS craftsmen can work in areas that have no assigned maintenance force.

I recognize the company's desire to use its employees in as efficient a manner as possible, especially given Inland's financial situation. I am unable to find, however, that the Assigned Maintenance Agreement granted unlimited jurisdiction to MMS. To the contrary, I think there is, as the union contends, a relationship between what it gave up and what it got. It got protections for those employees threatened by the creation of MMS, and it gave up the jurisdictional claims of only those employees. I have no doubt that the arrangement argued for by the company would be more efficient, but as Arbitrator Whitney McCoy recognized 35 years ago, "The contract cannot be circumvented in the name of efficiency."<FN 3>

AWARD

The grievance is sustained. In accordance with the stipulation of the parties, they will consider the issues of the amount and coverage of the make-whole remedy.

/s/ Terry A. Bethel

Terry A. Bethel

March 14, 1993

<FN 1>In its brief, the company notes a number of instances in which it has assigned MMS craftsmen to departments without assigned maintenance employees. At the hearing, the parties agreed that the union has grieved at least some of those instances. This case, apparently, is the vehicle the parties have chosen to resolve the issue of the company's right to make such assignments.

<FN 2>AN.13.1 is an even better example. There the parties expressly recognized that creation of MMS and new contracting out language should enhance rather than decrease work opportunities for field forces and shop services. Nevertheless, they negotiated protection, just in case. Surely they would have taken the

same precautions for utilities craftsmen if they believed MMS craftsmen could work in the utilities department.
<FN 3>See, American Bridge Division, U.S. Steel Corp., Grievance A-58-3.