

IN THE MATTER OF THE ARBITRATION BETWEEN

MITTAL STEEL COMPANY

And

Award No. 11

UNITED STEELWORKERS, USW
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company violated a local working condition when it stopped rotating inspector assignments in the Utilities Department. The case was tried in East Chicago, Indiana on April 16, 2007. Patrick Parker represented the Company and Bill Carey presented the Union's case. Although the Company asserts that the Union was required to file a plant wide grievance – which it did not do – it raises no procedural objection in this case. The parties submitted the case on closing argument.

Background

In 1998, Ispat Inland Steel Company and the Union entered into an agreement entitled "General Principles for the Selection & Rotation Process Bargaining Unit Inspectors & Area Planners." (Rotation Agreement). Among other things, the document provided for training and recognized other requirements for employees to qualify for rotation through the inspector and planner positions. The Rotation Agreement applied plant-wide, and not just in the Utilities

Department that is the subject of this grievance. The Company stopped assigning inspectors under the Rotation Agreement on November 13, 2005, the effective date of the current collective bargaining agreement. There is no dispute that the Rotation Agreement qualified as a local working condition under the USWA-Ispat Inland Agreement. In Mittal No. 8, I found that some local working conditions carried over to the current Agreement. The Company asserts, however, that the Rotation Agreement no longer binds the parties.

Robert Cayia, Manager of Labor Relations, Indiana Harbor, said the Company determined that the 1998 agreement was inconsistent with the new seniority structures of the November 13, 2005 collective bargaining agreement. That Agreement made significant revisions in the contract that prevailed at Ispat-Inland. Under the 2005 Agreement, hundreds of jobs were compressed into five job descriptions, consisting of Senior Operating Technician (SOT), labor grade 5; Maintenance Technician, labor grade 4; Operating Technician, labor grade 3; Plant Transportation Specialist, labor grade 2; Service Technician, labor grade 2; and Utility Person, labor grade 1. The new job descriptions contained general language rather than the discrete tasks characteristic of job descriptions under previous contracts. The new seniority structures include lines of progression identified by the labor grades mentioned above, with boxes that contain the job titles previously existing. In general, an incumbent in a labor grade in a line of progression can be assigned to any of the former jobs identified in the box. Thus, the new structure gives the Company considerably more flexibility in assignment than prevailed under the old contract.

Cayia said the new job descriptions would allow the Company to assign even production employees to maintenance tasks, including inspector. The SOT description, for example, says

Operates and is responsible for the performance of all functions on a producing unit as a member of the operating team. Directs other operating crew members and service areas,

and communicates with maintenance, as required, to maximize production. Performs and assists in production and maintenance tasks and functions necessary to assure maximum production, quality, and inspection. Performs or leads maintenance activities as required with operating crew members and coordinates and works in conjunction with maintenance activities.

Maintenance responsibilities also appear in other job descriptions. The labor grade 3 position reads as follows:

Operates and assists Senior Operating Technician and other crew members to assure maximum production, quality, inspection, and maintenance of materials and equipment. Performs and assists in maintenance tasks as directed by the senior operating technicians and Maintenance Technicians as required.

Similarly, the labor grade 2 Service Technician's job description includes "supports and assists in maintenance activities in their area and in support of operating units."

Cayia also pointed to a memorandum of agreement included in the 2005 Agreement headed "Understanding Concerning Miscellaneous Matters for Ispat Inland Employees," also known as the Wood/McCall Letter. Cayia said the parties adopted the existing ISG Agreement, but modified it by retaining some provisions from the prior Ispat Inland – USWA agreement. In particular, Cayia referenced paragraph 5 of the Wood/McCall Letter, which reads as follows:

Existing local working conditions which are inconsistent with the implementation of work restructuring efforts will be eliminated or modified as appropriate in order to implement the new seniority structures. Those local working conditions unaffected by the foregoing shall be retained....

The 1998 Rotation Agreement is inconsistent with the work restructuring effort, the Company argues.

The Company cites four factors in support of its argument. First, the craft occupations under the 2005 Agreement are Maintenance Technician Mechanical (MTM), and Maintenance Technician Electrical (MTE). There were different craft occupations when the parties agreed to the Rotation Agreement in 1998. Second, the production occupations now in effect also differ

from those existing in 1998, and the new production job descriptions include maintenance work. Third, the 1998 agreement included a 92 cent per hour additive for planners, who were also covered by the document. That was eliminated with the 2005 Agreement. Finally, the Company says the functions of inspection and planning are embedded in the new job descriptions for MTM and MTE.

Cayia said the planner – whose rotation assignments were also covered by the 1998 Rotation Agreement – was no longer a “stand alone” assignment. Rather, the parties recognized that planning was part of the MTM and MTE job descriptions. The Union hasn’t protested the fact that the Company is no longer paying the 92 cent additive and is no longer rotating assignments, the Company says. The Union agreed that planners are not at issue in this arbitration, but it said that was because their treatment had been resolved by agreement. However, Cayia said the agreement reflects the Union’s understanding that planners had “fallen by the wayside.” On cross examination, Cayia agreed that most of the decisions about planners were made after the 2005 negotiations. The Union says it gave up the 92 cent additive and the rotation practice in exchange for an agreement that the bargaining unit was to get more planner work. However, Cayia said he was not aware of the Union’s motivation, although he agreed the bargaining unit assumed more planner work and abandoned the rotation assignments. Cayia also agreed that inspection was part of the job of mechanics and electricians under the previous contract.

Otis Cochran, Griever for the Utilities MTMs, said the employees he represented were formerly called Utility Mechanics. Otherwise, he said, there were no changes under the 2005 Agreement. He also said the only difference between the former electronics classification and the new job description was the addition of a group of about eight instrument control technicians

to the MTE group. Cochran said the inspection function continues to exist; however, the Company now makes the assignments rather than using the rotation system agreed to in 1998. On cross examination, he agreed that all of the MTEs, including the former instrument control technicians, can be required to do the same work under the new seniority system. He also said he has not seen SOTs perform any maintenance work.

Dennis Shattuck, Chairman of the Grievance Committee, said the 1998 agreement was influenced by a history of disputes over which employees got the inspector jobs, regarded by employees as choice assignments. Formerly, the Company had appointed inspectors. The 1998 agreement insured that all employees would get the opportunity to rotate through the job. Planners were also covered by the agreement, although that had been a salaried position. The Company was free to use salaried employees, but if it decided to use bargaining unit employees, they were subject to rotation and the 92 cent additive.

Shattuck identified a document headed "Miscellaneous LOP Understandings," which is part of the 2005 Agreement. Paragraph 16 of the document reads as follows:

Currently the planning of routine maintenance jobs is performed by both bargaining unit craft employees and salaried non-bargaining unit employees. It is agreed that in the future, allowing time for an orderly transition, those salaried employees will no longer perform such planning work and such work will be considered bargaining unit work. This understanding does not apply to the planning work currently performed by the non-bargaining unit job of Senior Planner.

Shattuck testified that during the 2005 negotiations, the Union was interested in certain jobs outside the bargaining unit, including planners. The agreement, he said was that if the Company would make planning a bargaining unit job that was part of the MTM, the Union would give up the 92 cent additive and would not insist on rotating planners. He said that decision was motivated by the Union's recognition that without hourly foremen, planning became more important and the Company should have the discretion to use the people it wanted for that

function. But there was never any intent to include inspectors in the planner agreement, he said, and they are not mentioned in the LOP Understandings memo.

Shattuck also testified about paragraph 5 of the Memorandum Concerning Miscellaneous Matters for Ispat Inland Employees, the Wood/McCall Letter, mentioned by Labor Relations Manager Cayia, that allows the Company to eliminate local working conditions that are inconsistent with the implementation of the new seniority structure. Shattuck said the Company's original proposal had mirrored a provision from the USS-USW 2003 Agreement that said local working conditions could be eliminated "to implement the new seniority structures," but also added the words, "and to achieve the restructuring objective." Shattuck said the Union refused to agree to the "restructuring objective" language because it feared the Company would use it to eliminate any local working condition that interfered with flexibility.

Shattuck said when he was a craneman, the production employees performed inspection work. The inspectors did the same kind of work, although some was at a much higher level, including such things as vibration analysis, hydraulics and other things that required craft knowledge. He also said the Company had never argued that the right to assign inspection work to production employees had any effect on craft assignments as inspectors. On cross examination, Shattuck said that after the effective date of the 2005 Agreement, some production employees were sent through maintenance training. He said that had also happened before the 2005 Agreement, but he agreed that there was more emphasis on such training after 2005. He also said he was not aware of grievances from other areas where employees are also not rotating through the inspector assignment.

Darrell Reed, Vice Chairman of the Grievance Committee, agreed with Shattuck's testimony that the Company never said the elimination of the rotation assignments for planners

had anything to do with inspectors. He also said Terry Laird, the Company's negotiator for maintenance issues, said the inspector rotation was not a "big deal" for the Company. On cross examination, Reed agreed that Laird was no longer the negotiator when the parties reached the agreement about planners, quoted from the LOP document, above. Steve Wagner, Local Union Vice President, said Laird told the bargaining committee that he had no intention of ending rotation assignments for inspectors.

Patrick Parker, Corporate Manager of Labor Relations, said Laird negotiated for Ispat-Inland prior to the merger with ISG that formed Mittal Steel. In those negotiations, the parties were on a different track that would have produced a unique agreement that differed from the models already agreed to at ISG and USS. However, he said after the ISG merger, the parties agreed to model the new contract after ISG's existing agreement. The parties had reached agreement on some maintenance issues, but had to abandon them after the decision to use the ISG model. The Union's testimony about Laird's comments, Parker said, took place under the original negotiations. Parker pointed to Attachments 4 and 6, identified in the Wood/McCall letter as "miscellaneous understandings regarding maintenance forces." These go on for several pages, Parker noted, but say nothing about rotating inspectors or the 1998 agreement.

Positions of the Parties

The Company reviewed the 1998 Rotation Agreement, noting that paragraph 2, which covers planners, no longer applies, and that two paragraphs covering temporary supervisors are also inapplicable after 2005. It also points to paragraph 1, which says the Company does not have to use inspectors, and paragraph 20, which allows termination of the agreement with 6 months notice. The Company also notes that the Union did not file a plant-wide grievance, as

required by the Rotation Agreement, thus suggesting that even the Union understood the agreement no longer had any force. The Company said the context in which the 1998 agreement was negotiated no longer exists because of dramatic changed conditions. The rotation practice is not used anywhere else in the plant and the Union has not objected, which also suggests it knows the agreement has been “gutted” and should no longer bind the parties.

The Union says that despite the Company’s claim, the craft occupations have not changed. The only difference is the name change, and the addition of 8 instrument control technicians to the MTE job. But there was no explanation, the Union says, about how this would affect the rotation. The Union also argues that the mention of inspection in the production employee job descriptions is an object, not a verb, thus questioning how much inspection work production employees are able to do. The Union agrees that the Company does not have to use inspectors, but, it says, if it does, then the 1998 agreement applies. The planner situation is not relevant, the Union claims, because they were removed from the rotation practice by agreement.

Findings and Discussion

It is true, as the Company argues, that some of the provisions of the 1998 agreement no longer apply. It is not clear to me how many of the provisions were eliminated by agreement and how many were eliminated by circumstance. But the evidence was convincing that, acting on a Union proposal, the parties agreed to transfer planner work to the bargaining unit. They did this at the same time they removed planners from the rotation practice and eliminated the wage additive. The clear inference is that these changes were part and parcel of the same transaction. The obvious question, then, is why it would have been necessary to take that step if the Rotation Agreement was not to survive in any event. Moreover, if it was necessary to terminate the

practice for planners by agreement, then the absence of a similar agreement for inspectors strongly suggests there was no similar intention for them.

The 2005 Agreement allows the Company to eliminate local working conditions that are inconsistent with the implementation of the new seniority structures. No one questions that the new seniority structure gives the Company considerably more flexibility in assignment than existed under the previous agreement. But that does not necessarily mean the Company's freedom is unbounded or that any local working condition limiting its ability to assign employees is inconsistent. It is hard to understand how rotating inspectors was more inconsistent with the new seniority structure than rotating planners. Yet, the Company did not eliminate the rotation of planners unilaterally by claiming an inconsistency; instead, it made an agreement to do so. This suggests that the parties understood the local working condition would continue and that some limitation in assignment from an express agreement was not enough to claim inconsistency with the new seniority structures.

Nor do any of the Company's other three arguments convince me the Rotation Agreement is inconsistent with the new seniority structure. The labor grade 4 MTMs are the same employees with a new job name, performing the same functions as before the 2005 Agreement, including inspection work. The parties added instrument control technicians to the new MTE classification, but there is no evidence that they could not perform the inspection duties or of how the addition of these employees to the MTE job made the local working condition inconsistent with the new seniority structure. I agree with Cayia's testimony that inspection is "embedded" in the work of an MTM, but as I understand the facts, the parties also recognized that it was part of the work for the same employees prior to the 2005 Agreement.

The issue is not whether it was within the duties they would be expected to perform, but how those particular duties would be assigned.

I agree with the Company's argument that the production job descriptions allow those employees to perform maintenance work.¹ It may be, as the Company argues, that some of those employees could qualify as inspectors. The evidence about their capabilities and the extent of their training, however, was not sufficient to justify a conclusion that, at this point, their exclusion from the Rotation Agreement had any impact on the new seniority structure or the Company's flexibility in assignment. There was credible testimony that production employees formerly performed maintenance activities, although the work of inspectors was of a more complicated nature. I don't know the extent to which the Company intends to use production employees to perform work typically done in the past by maintenance employees. The point is that if production employees are to continue to do limited maintenance work, then the Company presumably would not want to assign them as inspectors anyway. Thus, I cannot find that the change in the seniority structure that allows the Company to assign maintenance work to production employees is inconsistent with the new seniority structure.

I have not given any significant weight to evidence about Laird's comments in negotiations. Parker's testimony about the different track of negotiations after the merger was persuasive. But I also cannot give much weight to the fact that MTMs from other departments have not complained about the change. This grievance was filed shortly after the Company stopped rotating inspectors, meaning that the absence of other grievances at that time did not

¹ I agree with the Union's interpretation that the use of the word "inspection" in the job descriptions is as an object and not a verb. Stated differently, the labor grade 5 job description says, to paraphrase, that the incumbent "performs and assists" in production and maintenance tasks in order to insure production, quality and inspection. Thus, production, quality and inspection are the goals of the production and maintenance work done by the employee. But Cayia also testified that inspection is part of maintenance, and there is no question that the job descriptions allow maintenance work.

show acquiescence by the Union. Nor does the lack of subsequent grievances mean that the Union has abandoned the position it took in this case.

The Wood/McCall Letter recognized that local working conditions that were not inconsistent with the new seniority structure would be preserved. For the reasons explained above, I find that the Rotation Agreement is not inconsistent with the new seniority structure. The grievance will be sustained and the Company will be directed to assign inspectors in the Utilities Department in accordance with the Rotation Agreement.

AWARD

The grievance is sustained. The Company is directed to assign inspectors in the Utilities Department in accordance with the Rotation Agreement.

Terry A. Bethel
June 12, 2007