IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and Award No. 977

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated a 1990 settlement agreement when it contracted out certain work in 1997. The case was tried in the Company's offices in East Chicago, Indiana on December 11, 2000. Pat Parker represented the Company and Dennis Shattuck presented the case for the Union. The parties submitted the case on final argument.

Appearances:

For the Company:

P. Parker.....Section Manager of Arbitration and Advocacy
T. Kinach.....Section Manager, Union Relations
J. Payonk.....Section Manager, Process Automation
B. Swoverland...Team Resource, Process Automation
J. Ryerse.....Team Resource, Process Automation

For the Union:

D. Shattuck.....Chairman of Grievance Committee
M. Mezo.....USWA Staff Representative
S. Vokovich.....Griever
M. Bennett.....Witness
R. Fett.....Witness
R. Frost.....Witness
M. Cooper.....Witness

Background

On September 29, 1987, the Union filed Grievance 22-S-15 in which an employee from the Process Automation Department complained that the Company had violated the contracting out provisions of the Agreement when it used a temporary employee (a Kelly Girl) to do his job of expediter at the No. 7 Blast furnace. The Company denied the grievance, claiming initially that the job had become mostly clerical and that it had the right to withdraw it from the bargaining unit and to assign it to a clerical occupation. In 1987, when the grievance was filed, clerical employees were not represented for purposes of collective bargaining. The grievance stayed in the grievance procedure until it was settled in Step 4 on or about December 19, 1990.

The settlement agreement does not set out all of the facts existing at the time of the 1987 dispute and, if there are any third step minutes, they were not introduced into the record. This is a matter of some importance, because the parties now disagree about the effect of, and the reasons for, some of the terms of the settlement. For example, paragraph 1 of the settlement said that the Company would hire three additional Instrument Service Technicians (IT's), which would expand the workforce at that time to 160 bargaining unit positions. This was apparently the number of IT employees. At about the same time, the Company removed the contractors from

the plant. There were apparently three contractor employees, though that number is not entirely clear on the record. The parties disagree, whoever, about why the contractors were removed. Brian Swoverland testified that the Company was downsizing in the late 1980's and in 1990, and that the Company made the decision to remove the contractors at about the same time as the settlement at issue here, though not because of it. Mike Mezo, who in 1990 was President of the Local Union, testified that he understood the Company was to remove the contractors as a result of the settlement. However, IT Mark Cooper, another Union witness, said he remembered that the contractors were removed because the Company was cutting back and he was not aware of any relationship between that decision and the settlement.

Paragraph 2 of the settlement named two Process Automation (PA) employees who worked in the storeroom (where the work at issue here is located) and who would remain there; paragraph 3 gave first rights for three additional storeroom jobs to some named employees. The next three paragraphs are integral to the Union's case:

> 4. The Instrument Service Technicians shall be given an opportunity to perform the data entry work for disbursements, receiving and inventory unless they do not have the necessary skills to perform the work, then this work may be assigned at management's discretion. This shall not exclude salaried personnel from performing any or all of the same work.
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> 5. The duties of the instrument service technician are expanded to include:
>
> a. Pick up and delivery of materials
>
> b. Disbursements and receiving (subject to item 4 above).
>
> c. All inventory work.
>
> None of the above items would prevent salaried personnel from performing any of the same duties during an emergency or if the time spent was inconsequential.

6. The settlement of this grievance will be binding on all pending or future orals or grievances relevant to this issue.

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The instant case arose in 1997, when an employee grieved because he said the Company had violated the Agreement by "contracting out storeroom work." The grievance says the contractors came into the storeroom in 1997 and that they were doing inventory work and data entry work. The Company acknowledges that it started using contractors at the time of the grievance, a move it says was necessitated by "retirements, transfers and downsizing" of the salaried employees who had been performing the same work. The Company points to paragraph 4 of the settlement, above, and says that it had the right to use salaried (i.e., non-bargaining unit) employees to do some of the same work being performed by members of the production and maintenance (P&M) bargaining unit. The Company says it had used salaried employees to do some of the same work as bargaining unit employee prior to 1990 and that the language in the last sentence of paragraph 4 of the settlement allowed it to continue doing so. In addition, the Company introduced unrebutted testimony that both before and after the 1990 settlement, salaried employees had performed bargaining unit work that is not described in the exception contained in paragraph 4 of the settlement. And, the Company argues, because it could use non-bargaining unit employees to do that work, it could also contract out the work. The Company's principal defense, however, relates to an agreement between the Company and USWA Local Union 1010-6, covering the Office and Technical (O&T) employees at the Indiana Harbor Works.

As noted above, at the time of the 1990 settlement, the Company's office and technical employees were not represented for purposes of collective bargaining. Although there is some

disagreement about exactly who the language was intended to cover, the parties agree that the reference to salaried employees in paragraph 4 of the settlement applied to non-represented employees. Sometime in the late 1990's the Steelworkers Union organized the Company's office and technical workers, as well as two other bargaining units. On August 1, 1999, Local Union 1010-06 and the Company executed a collective bargaining agreement covering those employees. The O&T Agreement contains what is generally regarded as the standard steel industry contracting out language, perhaps with some modifications not relevant to this case. Company witness Tim Kinach, one of the Company's negotiators, testified that the Company told the Union in negotiations that it needed some exclusions from the contracting out language. He also said that this was important enough to the Company to make it a strike issue.

Kinach said the Company did a survey of the plant and identified the areas where the Company had been using contractors for a number of years and areas where it did not want to replace those contractors. In all, there were about 86 to 90 FTE contractors, three of whom were doing what the Company refers to as Process Automation (PA) expediter work in the storeroom. This is the work at issue in this case. The Company then made a list of contractors it wanted to exclude from the operation of the contracting out language in the O&T Agreement. The list was shared with the Union and the Union agreed. Number 12 on the list is "P.A. Expediters." The Company leans heavily on this list in the instant case. This means, the Company argues, that it secured the right to contract out the PA expediter work at issue in this case during the 1999 negotiations. It points out that there were three contractors doing that work before the 1999 O&T Agreement was entered into, and there were three such contractors doing that work afterwards. And, as to the Union's claim that the O&T negotiations could not settle a grievance

pending under the P&M agreement (that is, the 1997 grievance at issue here), the Company points out that some the Union officials who signed the O&T Agreement are also signatory to the P&M Agreement. Thus, they should have realized when they signed the O&T Agreement that they were allowing the Company to do what Local 1010 had claimed it could not do in the instant grievance.

Mike Mezo testified that there was no real discussion of the exclusions in the O&T negotiations. The Union insisted on the standard industry language and the Company indicated that it had to have some exclusions, principally to protect its previous decision to contract out the work formerly done in its benefits and accounting departments. That was the strike issue, Mezo, said, not the Process Automation contractors. Moreover, neither Mezo nor Kinach – the principal players on each side – was even aware of the grievance at issue here when they negotiated the exclusions list. Mezo also repeated the Union's claim that the O&T bargaining unit cannot, in its negotiations, waive rights already secured by the P&M unit under a different collective bargaining agreement.

As to the grievance settlement, Mezo testified that he understood that the Company was to get rid of the contractors and to expand the total department by three employees. Paragraph 4, he said, was simply a restatement of the Basic Prohibition in the contracting out language which says that work capable of being performed by bargaining unit employees is to be done by them. The second sentence allowed the Company to continue to assign some of the same kinds of work to salaried, non-bargaining unit employees, but Mezo said that did not mean the Company was free to contract it out. The principal understanding, he said, was that the overlapping work would be done by salaried ET's, who were really highly skilled IT's. He conceded, however, that the

language did not limit assignment to them. But the exception was to be limited, according to Mezo. The Union agreed that some work could be performed by non-unit employees, but that did not mean that the Company was free to contract it out. Mezo said it would have made no sense for the Union to gain agreement from the Company to get rid of the contractors and then agree in the very same settlement that the Company was free to contract out some work.

The Union says that the 1999 O&T Agreement is irrelevant to the case and that the issue here is controlled by the 1990 grievance settlement. That settlement, the Union argues, makes it clear that all of the work contained in paragraph 5 belongs to the P&M unit and that certain salaried employees and the P&M unit would share the work in paragraph 4. Other witnesses testified about the kinds of work generally performed by the contractor employees, and the work performed by the bargaining unit. Company Exhibit 1 lists five kinds of work the contractors do. Much, but not all, of that work involves data entry work, as described in paragraph 4 of the settlement. But it is clear that the contractors also do other kinds of work, including some interaction with customers (other parts of the mill that bring items in for repair) as well as interaction with suppliers and shippers. The contractors also physically put things in bins, they catalogue the necessary repairs, and they put completed items on shelves to be picked up or delivered. No witness quantified the amount of these other duties in comparison to data entry responsibilities. A Company witness said all of this work was performed by non-bargaining unit employees both before and after the 1990 settlement. In fact, he said that both before and after the settlement, the expediter work (meaning the work that has been contracted out in this case) has always been "much more than data entry work." The Union griever agreed with this testimony. He said that the contractors at issue in this case are doing the same work that the non-

unit salaried employees formerly performed. Apparently, the Union never previously protested the assignment of non-data entry work to salaried employees between 1990 and 1997, even though the assignment seemingly exceeded the terms of the settlement agreement.

The Union points out that in the field shops, all of this work is done by P&M IT's. The same employees do some of the work in the main shop, which is the area at issue here. The Union agrees that in the main shop, it agreed to allow some non-bargaining unit employees to perform some of the data entry work, but it argues that it did not agree to allow those non-unit employees to do other kinds of work. And, as noted above, it says it did not agree that the Company could contract out the data entry work that could be performed by non-unit employees and, obviously that it did not agree to allow the Company to contract out any of the other work described in the settlement. The Company responds that there were about the same number of bargaining unit employees and non-unit employees doing this kind of work both before and after the settlement and that the Union did not protest until the work being done by the non-unit employees – which included more than data entry – was contracted out.

Findings and Discussion

This is a difficult case. One problem is that the record does not disclose whether Local Union 1010 and Local Union 1010-6 are different legal entities or whether the addition of "06" was simply a way of identifying a segment of the local Union working under a different collective bargaining agreement. The point is that if Local Union 1010–06 is a separate entity, that makes it harder for the Company to claim that what happened in its negotiations with that Union should control the resolution of this case. But even if Local 1010 and Local 1010-06 are the same legal

entity, there is still merit to the Union's claim that what happens in negotiations for an agreement covering one bargaining unit cannot typically control the outcome of a dispute that has arisen under a different agreement covering a different unit.

It may be, of course, that the these parties could have agreed to settle the instant grievance in return for some concession made in the O&T negotiations. But in that event, they would have to act consciously to affect their rights under a different contract. The evidence here, however, is that neither of the principal players – Kinach or Mezo – even knew about the instant grievance at the time they agreed to exclude PA Expediter work from the operation of the contracting out language in the O&T Agreement. In the typical case, it does not necessarily matter that the parties fail to have specific discussions over language in their agreement, as Mezo said was the case here. Despite frequent citation to a "meeting of the minds," an objective standard applies to contract formation. Thus, language will usually be given its ordinary meaning, whether or not both sides understood it in that fashion. But in these circumstances, where the Company claims, in effect, that it settled a P&M grievance when it negotiated the O&T contract, there has to be some evidence that the parties understood their negotiations to address that issue. There is no such evidence here and, in fact, I am persuaded that the O&T negotiators agreed to the exclusion of PA Expediter work without thinking about its effect on this case. That does not mean, however, that the O&T Agreement's exclusion of PA Expediter work is irrelevant to the outcome of this case.

The 1990 settlement provided that salaried employees could perform data entry work. In addition, it said that salaried employees could perform other kinds of work if the time spent was "inconsequential." Presumably, the Union – or, at least, the P&M employees working in the area

– thought the time salaried employees spent doing these other non-data-entry duties was "inconsequential," because they never protested the assignments. The issue in the case, then, is not necessarily whether the Company has exceeded the scope of the 1990 settlement in its assignment of particular kinds of duties to persons outside the bargaining; rather, the question is whether the Company breached the settlement agreement when it decided to contract out that work rather than having it performed by salaried Company employees.[1]

The Union correctly points out that nothing in the 1990 settlement agreement says that the Company can contract out any of the work at issue here. But that is not determinative. The parties agreed that IT's were not to have exclusive jurisdiction over all of the expediter work. They could perform the data entry work, but the Company also retained the right to give it to salaried employees outside the bargaining unit. And the work in paragraph 5 was to be deemed part of the IT job, though the Company could have salaried non-unit employees perform some "inconsequential" duties. The Union says it agreed to these exceptions, but that it did not mean to say that the Company could contract out the work. The settlement doesn't say that, but if removal of the Kelly Girl contractors was among the Union's motives in negotiating this settlement, there is obvious logic to Mezo's assertion that it would have made no sense for the Union to agree that the Company was free to contract out some of the work. There is, however, legitimate disagreement about whether this was really a part of the deal. I have no doubt about Mezo's claim that this was his intent, but even a Union witness said he was not aware that the removal of the contractors and the grievance settlement were related.

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[1] Presumably, one might question whether the contracting out at issue here violated the contracting out provisions of the P&M Agreement. But neither party referred to those provisions in this arbitration so I need not address them.

The Union's witness said, as did a Company witness, that he understood that the removal of the contractors was prompted by the Company's efforts to economize. The Union says this must not have been true, since it would have been cheaper to keep the contractors. But it does not follow that contractors would have been more cost efficient if the Company could spread their duties amongst bargaining unit employees who had the time to absorb them. The Company could have acted with this motive, without conceding that it was required to replace the contractors. The point here is that I cannot assume that the removal of the contractors – and an implicit obligation not to use them in the future – was part of the 1990 settlement. There are equally plausible alternative explanations. I am left, then, with the language the parties decided to employ. Of course, I can consider that language in the context of the situation at the time the agreement was made, but the context was eleven years ago and there is disagreement about the facts that prevailed at the time.

Obviously the Company did not procure the 1990 settlement merely so it could contract out the work at issue here. It continued to assign various duties to salaried employees until 1997, when retirements and transfers prompted it to contract out the work. There is no evidence that the contractors are doing work that exceeds what was formerly performed by salaried employees. In fact, there was evidence that the salaried employees trained the contractors. In these circumstances, it is hard to understand how the Union can control the Company's discretion about who will do the work. Presumably, the parties could have agreed that, if the Company did not want to give the work to salaried employees, then it must be returned to the bargaining unit. But that is not what the settlement says. In effect, the Union agreed that the data processing work

could be assigned outside the unit and, having relinquished that work, it cannot later claim that it otherwise limited the Company's discretion.

The Union says, however, that this reading has the effect of nullifying the first sentence of paragraph 4 of the 1990 settlement. Thus, it argues that the first sentence is simply a restatement of the Basic Prohibition in the contracting out provisions, as applied to a specific situation. The Basic Prohibition says that work bargaining unit employees are capable of performing is to be assigned to them. In this case, then, the Union says the parties agreed that the data entry work could not be contracted out but, rather, was to be performed by the bargaining unit. This benefit is obviously forfeited if the second sentence is read to mean that the Union lost the right to contest the Company's decision to contract out the work.

This is a logical argument and, if the 1990 settlement were the only factor in the case, it might prevail. But this is the relevance of the 1999 O&T Agreement. By the time the O&T employees were organized, the parties seemed to have recognized that the PA Expediter work performed in the main storeroom was no longer controlled exclusively by the P&M bargaining unit. The non-represented salaried employees to whom the work had originally been assigned were now part of a different bargaining unit. It makes no sense to suggest that work belonging to the O&T unit is somehow supposed to revert out of the unit and into an entirely separate bargaining unit. Rather, the Company's right to assign the work would be governed by the O&T Agreement. Whether the work can be contracted out under the terms of that agreement is not necessarily the issue in the instant case and, in any event, I have no authority to interpret any other

agreements.[2] The importance, however, is that by recognizing that the PA Expediter work is now controlled by a different bargaining unit, the P&M unit has no right to claim that its own contract prevents the Company from contracting out that work.[3] The P&M Agreement obviously applies to work within the jurisdiction of that unit, but the 1990 settlement and subsequent developments removed the work at issue here from that category.

I find, then, that the Union has no right to contest the Company's decision to contract out the data entry work identified in paragraph 4 of the 1990 settlement. Moreover, it appears that the parties have acknowledged that at least some quantity of work identified in paragraph 5 is part of the duties of the PA Expediter. All the record reveals is that salaried employees did some of this work prior to 1997, apparently without any protest, and that contractors started doing it after 1997. There was testimony that the same quantity of work was involved both before and after 1997, though no one quantified the precise amount of work involved. On this record, I cannot determine whether the Union did not contest the assignment prior to 1997 because it thought it was inconsequential, and therefore permitted by the settlement, or because the parties merely assumed that this was otherwise work the salaried employees were allowed to perform. The griever who filed the grievance testified that he did so because he saw a contractor inventorying parts in the storeroom. However, he did not say that this work had previously been done

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[2] The Company asserted that I should decide the meaning of the exclusion clause in the O&T Agreement, but the Union did not agree that I had the right to do that. It said that the issue was whether the instant dispute is controlled by the 1990 settlement agreement. The Union representative said that, should I decide that the O&T Agreement controlled, the Union did not agree that I should interpret it. In these circumstances, my authority is limited to interpretation of the P&M Agreement and disputes arising thereunder.

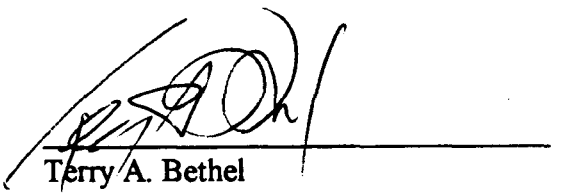
[3]The overlap of negotiators between the O&T and P&M units is relevant to this issue.

exclusively by IT bargaining unit employees. Instead, he said it was formerly work done by the IT's and by salaried ET's. I took this as a recognition that the Union did not understand that assigning the work to the ET's was a violation of the settlement, even though this was not data entry work.

In these circumstances, I cannot find that the Company's action in this case was prejudicial to the rights of the employees in the P&M bargaining unit. The Union has not, in short, demonstrated that the Company's decision to contract out the work was prohibited by the settlement agreement or that it otherwise harmed the employees in the P&M unit. Thus, I must deny the grievance.

AWARD

The grievance is denied.



Terry A. Bethel
February 13, 2001