IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And Award 999

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company improperly combined three welding sequences. The case was tried in the Company's offices on May 13, 2002. Patrick 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, Arbitration and Advocacy
M. Carle.....MMD Manager, Retired
P. Clinnin.....Section Manager, MHS
T. Kinach.....Section Manager, Union Relations

For the Union:

D. Shattuck.....Chairman, Grievance Committee
M. Mezo.....International Representative, USWA
L. Aguilar.....Vice-Chair, Grievance Committee

M. Beckman.....Griever, Area 20
J. Gogolak.....Griever, Area 24
D. Siefert..... .....Steward, Area 20
B. Carey.....Staff Representative, USWA
W. Drekker..... .Witness

Background

In the 1993 Mega Maintenance Agreement (MMA), the parties addressed numerous issues concerning maintenance activities in the plant. The MMA itself is headed "Mega Maintenance Concept" and says it is for "discussion purposes only." Previous cases have indicated, however, that the document serves as the agreement reach by the parties in negotiations. The document is organized into several sections. Section D, beginning on page 6, is headed "New Work System and the Work Environment." Section D extends over six and one-half pages without subheadings. This does not mean that the material is random or unorganized. However, it is not always clear whether successive paragraphs are related to each other. That is a matter of some importance in this case.

Beginning at the bottom of page 8, the MMA says:

> The existing Trucking Mechanical, Mobile Equipment Repairman and Mobile Equipment Machinist will be combined into one sequence upon the recall of all sequentially established employees to their respective sequence or to Central Maintenance or acceptance of a voluntary layoff if offered and the parties' agreement on wage and incentive issues.
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> The three (3) welding sequences associated with mobile equipment are combined into one (1) upon the recall of all sequentially established employees to their respective sequence or to Central Maintenance or acceptance of a voluntary layoff if offered and the parties' agreement on wage and incentive issues.

The second of these two paragraphs is at issue in this case. The Company claims that it appropriately combined welders in sequences from the Trucking Department Shop, the Mobile

Equipment Repair Shop, and the Locomotive Shop into one sequence. Although the drafting of the paragraph at issue is somewhat confusing, the parties understand the last clause to mean that there must be agreement on wage and incentive issues before the sequences could be merged. This requirement was satisfied in this case, according to the Company. All three welding sequences are at job class 16, so the Company asserts there can be no wage issue. Moreover, by September, 2000, the parties had reached agreement on separate Performance Based Incentive (PBI) plans for each of the three sequences. This, according to the Company, resolved all of the incentive issues.

Although the parties agree that there is no issue in this case about whether sequentially established employees have been returned to their sequences, the Union disagrees with the Company about the resolution of wage and incentive issues. The word "wage", the Union says, was used to denote more than the base rate for the three jobs. In particular, the Union claims it includes overtime agreements that allowed the Company to schedule some, but not all, of the sequences across the sixth and seventh day. The Union also denies that the mere agreement to a PBI resolves incentive issues related to the merger of the sequences. This is especially true, the Union says, because all three sequences merged by the Company have different PBI plans. Finally, the Union also says that the Company merged the wrong three welding sequences. The Union agrees that the plan included welders sequences from the Truck Shop and the Mobile Equipment Shop. However, it says the locomotive welders did not work on mobile equipment, as the parties generally understood that term. Rather, the third sequence was to be the Field Force Welders.

Each side called a witness to testify about the three sequences affected by the above language. Mike Mezo, Local Union President at the time of the 1993 negotiations, said there was never any discussion about the locomotive welding sequence. He said management approached the Union as early as 1987, seeking to merge sequences, including the truck shop, mobile equipment and field forces welding sequences. The Union refused because there were employees on layoff. The language at issue in this case, Mezo said, came from the Union's goal of achieving job security in the 1993 negotiations. He pointed to the first of the paragraphs quoted above, which concerned repairmen from what he characterized as the "three mobile equipment operations." The mobile equipment machinists, he said, referred to the field forces, who worked on field forces mobile equipment. Mezo said the parties intended the next paragraph, which mentions "The three welding sequences," to refer to the same three areas. Those are the mobile equipment shop welders, the truck shop welders, and field forces welders, the same three sequences the Company had proposed merging in 1987. Locomotives, Mezo said, were not thought of as mobile equipment in the same way and were never mentioned by the Company in connection with merging welding sequences. The Union also claims that if the parties had intended the language to include welders in the locomotive shop, then they would also have included welders from rail car repair. There would be no reason to include one but not the other.

The Company's principal witness on this issue was Phil Clinnin. He said combining the three welding sequences – including the locomotive shop welders but not the field forces welders – had been an ATQ idea from 1991. The idea was to shut down the locomotive round house and move locomotive repair to the mechanical equipment shop. There had also been a proposal to shut the garage and move truck repair to the same place. Clinnin said this had actually been the

intent when the main shop was built in the late 1970's. The sequences to be combined, then, were the three sequences that would be working in the shop, namely the mobile equipment welders, the truck welders and the locomotive welders. There was no intent, he said, to merge the field forces welders, who did not work on equipment in the main shop. Clinnin said the locomotive shop was shut down and the operations moved to the main shop in late 1993 or early 1994. However, he said there were plans to do so in 1991.

On cross examination, the Union pursued its theory that it made no sense to merge locomotive welders, but not rail car welders. Clinnin said the Company did not consider rail cars to be mobile equipment, although he conceded that it did think of truck trailers as mobile equipment. On redirect, he noted that the rail car repair work was performed in a separate building, unlike locomotive repair, which was performed in the main shop with the other two welding sequences.

The Company also says it would have made no sense to include field forces welders in the merged sequence for two reasons. First, pursuant to a 1986 agreement concerning restructuring of the department, the field forces welder was to be eliminated over time. Second, most field forces welders spent their time in the field assisting field forces machinists on construction projects. This kind of work was not performed by welders in the other two sequences that were to be merged. The Union responded that there were still welders in the field forces in 1993, although there apparently are none there today. In addition, the Union said some field forces welders were assigned to work in the shop, repairing mobile equipment used by the field forces.

There was not much testimony at the hearing concerning the requirement that wage issues be settled before the sequences were merged. As noted above, the Company says that because all

three sequences are at job class 16, there were no wage issues. However, the Union says the language was included in part because the field forces welders were at job class 18 and the other two sequences were job class 16. In addition, it says there were other wage issues, including overtime treatment. Unlike wages, there was considerable testimony about incentives. The Union agrees that the PBI matter was settled for all sequences involved here, whether the third sequence is the locomotive shop welders or the field forces welders. However, it says agreement to PBI plans is not what the parties meant by settling incentive issues prior to the merger. The Union says it would have taken different positions in the PBI negotiations if it had realized the Company thought agreement to PBI plans was all that was required for a merger.

The Union points out that each of the three welding sequences is covered by a different PBI and that the plans have different Key Performance Indicators. In the course of a week, employees in the merged sequence might work under more than one plan, thus creating difficulties about how their incentive earnings should be measured. The Union says the Company has no right to make unilateral determinations about this and that the parties should have negotiated about it. The Union also points to a 1994 letter from a manager that it reads to suggest that PBI and sequence merger were separate issues. In addition, the Union tendered a copy of an unrelated agreement from 2000 that specifically tied agreement to a PBI plan to a change in operations. This means, the Union says, that the parties knew how to identify PBI agreements as a specific pre-requisite when they wanted to do so, and they did not do so in the 1993 MMA.

The specific matter at issue here arose, the Union claims, in January of 2000 when the Company tried to schedule a welder from the trucking mechanical welding sequence to a schedule worked by mobile equipment welders. This created an overtime problem because the mobile

equipment welders had an agreement that allowed non-normal schedules, but the truck welding sequence did not. The Company apparently relented but, in February 2001, it notified the Union that it had merged the three sequences, including the locomotive welders. The Union argues that the Company did this after it realized that a retirement in the mobile equipment area made it difficult to fill the schedule without posting for new employees. It claims the Company did not want to merge the field forces welders, as originally agreed, because there were few if any left, and that would not make it easier to fill vacancies. The Company responds that it would not have agreed to merge a sequence that was being eliminated and that did not work much in the shops. It says it is entitled to the benefit of its bargain.

Findings and Discussion

Both sides present strong arguments about which sequences were to be included in the merger, although each one has its problems. Clinnin testified credibly that he understood the third sequence would be the locomotive welders and he adequately explained that the rail car welders were not to be included because they worked in a different shop. Of course, one difficulty with this explanation – despite Clinnin's credibility – is that he was trying to recall the 1993 negotiations. By February 2001, when the Company made the decision at issue here, the locomotive welders had actually been moved into the main shop, making it seem all the more reasonable to include them in the merged sequence. Clinnin said this did not occur until late 1993 or early 1994, so the movement had not occurred by the time of the 1993 negotiations. The MMA, in fact, is dated May, 1993. Clinnin also said that the movement had been planned as early as 1991, although the Company had no documentary evidence supporting that testimony. I do

not mean to suggest that Clinnin's testimony was not truthful. To the contrary, he has testified in hearings before and he is a highly credible witness. But testimony like that at issue here, in which a witness tries to describe the motives from a nine-year-old negotiation, can sometimes confuse plans with ideas. Also, the issue in this case is not what made the most sense in 2001, when the merger at issue occurred. I have no doubt that at that time, merging the locomotive welders was the most efficient action. My charge, however, is to decide what the parties agreed to in 1993.

There are also flaws with the Union's case. Like Clinnin, Mezo has testified in arbitration hearings many times and is a very credible witness. He acknowledged that the parties had agreed in 1986 to phase out the field forces welders. This raises questions about why the Company might want to merge them, although one might say that the merger made sense because it would allow the Company to effectively use the remaining field forces welders as they were being phased out. I was also impressed with the Company's argument that most of the field forces welders actually worked in the field and not in the shop. One might assume that not all of the field forces welders would become part of the new sequence, although the general language of the MMA does not speak to that issue.

But neither the eventual elimination of the field forces welder nor the fact that the sequence included welders who worked only in the field is a convincing argument for the Company in this case. Mezo testified without rebuttal that the Company itself proposed merging the field forces welders into the other two mobile equipment welding sequences in 1987, which was after the 1986 agreement that would lead to the eventual elimination of the field forces welders. And, presumably, most of the field forces welders worked in the field at that time, just as they did in 1993. These factors undercut the Company's argument in this case. If it was

willing to make a merger proposal that included field forces welders in 1987, then there is no reason to suspect that it would not have been willing to do so again in 1993. The same problems cited by the Company now existed in both 1987 and 1993. The point is worth repeating that the issue in this case is not what merger made the most sense in 2001 but, rather, what the parties agreed to in 1993.

Given the time lapse and the difficulties of accurately reconstructing memories, I have to be guided principally by the language of the MMA itself. This, too, is not without its problems. As I noted early in the opinion, the section containing the disputed language is fairly long and is not broken into subdivisions. There are places where the subjects covered change from one paragraph to the next. The fact that the parties specifically identified the areas of trucking, mobile equipment repair and field forces in the first paragraph quoted above, then, does not necessarily mean that they intended to include the same areas in the following paragraph, which contains the disputed language.

There are, however, some clues that they did have that intent. The first paragraph does not say that it is concerned only with mobile equipment, but the three sequences it identifies are all associated with mobile equipment repair. It makes sense, then, that after speaking of combining the repairmen into one sequence, the next paragraph would combine the welding sequences from the same three areas, especially since the paragraph begins by speaking of the welding sequences associated with mobile equipment repair. This language did not give the Company the option of identifying three sequences of its choice. Rather, it had to have meaning when it was drafted, and the only way to determine that meaning from the document itself is by referring to the preceding paragraph. Equally important, the relevant language is virtually identical between the two

paragraphs. Both paragraphs speak of combining three sequences into one upon the recall of employees and "the parties' agreement on wage and incentive issues." This supports the interpretation that both paragraphs address the same areas of the plant.

Finally, the Company's interpretation of the language would make the word "wages" superfluous. The Company says there were no wage issues because the three sequences it combined had a common base rate. But if that had been the parties' intent, then there would have been no reason to require the resolution of wage issues prior to the merger. I cannot assume that the parties used meaningless language in their agreement. Thus, either the word "wages" is broader than mere base rates, which I will address below, or the negotiators realized that the difference in the base rates of the three sequences (with the field forces at a higher base rate than the other two sequences) would have to be reconciled. The negotiators might also have understood that issues of both types would have to be resolved.

The factors mentioned above convince me that whatever may have made the most sense in 2001, in 1993 the parties intended the MOA to mean that the third sequence to be merged was that of field forces welders. The Company, then, misinterpreted the relevant paragraph of the MOA and had no right to merge the locomotive welding sequence with the mobile equipment welders and the truck welders.

As the Union points out, this finding is sufficient to cause the Company to rescind its action of combining the locomotive welding sequence with the truck and mobile equipment welding sequences. The Union also contends that the Company improperly interpreted the wage and incentive language from the MOA, a matter that was fully explored at the hearing. As noted above, the reference to "wages" could have been limited to reconciling differences in base rates of

the three targeted sequences. I cannot say whether this would still be necessary, given the apparent absence of any field forces welders in the plant, an issue not discussed at the hearing. Nor can I conclude that the wage matter was necessarily restricted to the payment of base rates. A merger like that at issue in this case obviously would have an impact on other earnings capabilities, including overtime. The language makes most sense when it is read to mean that such issues were to be resolved prior to the merger.

However, I have less sympathy for the Union's claim that the incentive issue was not tied to the PBI process. Union witnesses testified that no one from the Company told them that the PBI negotiations for the welders were related to the merger of the sequences. But the Union surely was aware of the MMA and the language at issue here. The MMA, in fact, specifically mentions PBI plans and requires that they be negotiated. The Union must have understood, then, as it negotiated the separate plans, that there would be issues when the sequences were merged. The disputed paragraph, in fact, says the sequences "are merged" when such issues are resolved. This would not appear to be discretionary language. There is no issue in this case about whether the Company was required to merge the sequences and about whether it acted too slowly, although the Union did mention the latter issue in its closing. But the point is that, given the mandatory tone of the language, there was no reason to believe that problems with combining the PBI plans – if that is what the Union desired – could be put off for another day. If there were issues with the combination of plans, they should have been addressed in the PBI negotiations. I recognize that this interpretation could mean that a combined sequence would work under three different incentive plans. But there was testimony that non-craft employees do this in the plant.

Moreover, if the Union disputes how the Company makes calculations under the plans, it is free to contest its actions in the grievance procedure.

As for the Union's other arguments, I see nothing in the 1994 letter that necessarily identifies PBI as an issue unrelated to the merger. I understand that the Union reads the letter that way, but the meaning is not so clear to someone who is uninterested in the outcome. Nor am I influenced by the Union's argument that a letter from March 2000 used a different "construct" in identifying when negotiation of a PBI was to be a condition to action. There is a principle of interpretation that holds that when parties do something in a particular manner, it proves that they know how to accomplish a particular end. But the two documents at issue here are significantly different in form. One is a short letter dealing with a specific topic and the other is a long document covering several issues, which uses general language to describe a series of agreements. I am not willing to say that the failure of the MMA drafters to follow a particular format is evidence that they were unconcerned with negotiation of the PBI, especially when that very topic is covered by the MMA itself.

Because of my findings in this case, I will order the Company to rescind the merger. Nothing said here precludes the Company from merging the three proper sequences, assuming the wage issues can be resolved. The Union asked for make-whole relief, although it did not specify exactly what that might entail. Presumably, some of it might result from scheduling overtime. The bargaining unit is entitled to make-whole relief, if any loss stemming from the merger itself can be identified. I will return the matter to the parties on the subject of the appropriate remedy. If they cannot agree, they can resubmit the case.

AWARD

The grievance is sustained. The Company will revoke the merger of the welding sequences, as discussed in the Findings. The case will be returned to the parties for determination of the proper remedy, as discussed in the last paragraph of the Findings.

Terry A. Bethel
April 14, 2003