

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA  
CLEVELAND PLANT

And

ArcelorMittal Case No. 95

UNITED STEELWORKERS  
INTERNATIONAL UNION AND  
LOCAL UNION 979, USW

OPINION AND AWARD

Background

This case from the Cleveland Plant concerns the Company's decision to replace paper time sheets by having employees capture their work time through the use of time clocks or swipe systems. The case was tried in the Cleveland, Ohio on June 20, 2019. Rebecca Bennett represented the Company and Patrick Gallagher presented the Union's case. The Company raised a procedural arbitrability issue, which I will address in the Findings. The parties did not stipulate to the precise wording of an issue, but the basic question is whether the use of paper time sheets was a local working condition. The parties submitted the case on final argument.

Although the grievance was not filed until July 2017, the Company first notified the Union in 2012 that its time management software system would no longer be supported. That system, called Workbrain, used paper time sheets filled in by employees, with the data from those sheets entered manually into the system by other employees. In addition to software support issues, the Company conducted an audit that found there was no way for management to verify the hours reported on a time sheet and that employees were working unplanned and avoidable overtime. The Company told the Union it planned to install an electronic system that

would use swipe cards to record the time employees reported for and left work. The new system was referred to as Workforce Management, or WFM, which is a module within a system called Dayforce.

The Union claims that the Company's decision to use time clocks or electronic card readers to measure time worked violates a local working condition protected under Article 5-A:

1. Local Working Conditions

The term Local Working Condition as used in this Section means specific practices or customs which reflect detailed applications of matters within the scope of wages, hours or work or other conditions of employment, including local agreements, written or oral, on such matters. It is recognized that it is impractical to set forth in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in this Agreement which of these matters should be changed or eliminated (Change or Changed). The provisions set forth below shall provide general principles and procedures which explain the status of these matters and furnish necessary guideposts. Any arbitration arising under this Section shall be handled on a case-by-case basis on principles of reasonableness and equity.

2. Deprivation of Benefits

In no case shall Local Working Conditions deprive an Employee of rights under this Agreement and the conditions shall be Changed to provide the benefits established by this Agreement.

3. Benefits in Excess

Should there be any Local Working Conditions in effect which provides benefits that are in excess of, or in addition to, but not in conflict with benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are changed in accordance with Paragraph 4 below.

4. Right to Change

The Company shall have the right to Change any Local Working Condition if the basis for the existence of the Local Working Condition is Changed, thereby making it inappropriate to continue

such Local Working Condition; provided, however, that the Change shall be reasonable and equitable.

5. Modification of Agreement

No Local Working Condition shall be established or continued which conflicts with any provision of this Agreement

6. Additional Requirements

As of the Effective Date, all future Local Working Conditions must be reduced to writing and signed by the Plant Manager and the Local Union President/Unit Chair.

As reflected in Article 5-A-1, a local working condition can arise either by express local agreement or through specific practices or customs.

Prior to 2003, the Company's Cleveland facility was owned by LTV Steel. There is no dispute that when LTV operated the plant, employees used a time clock to record their working time. After LTV's bankruptcy, International Steel Group (ISG) purchased certain assets of the facility, negotiated a new labor contract with the Union, and began operations at some point in late 2002. Thus, the Union does not claim that a practice of manually reporting working time on paper ballots carried over from LTV as a protected local working condition. Rather, the Union claims that the local parties agreed that once ISG began operating the Cleveland facility, time would be recorded manually and time clocks would not be used. The Union also claims that this practice was carried forward when Mittal acquired the plant and, subsequently, to ArcelorMittal.

David McCall, USW District 1 Director, is the Union's Chairman of Negotiations for ArcelorMittal, and he served in the same role for its predecessors, including ISG. McCall identified what he called the parties' "initial interim agreement" dated April 11, 2002 in which, among other things, the Company recognized the Union as the exclusive representative of its employees. As part of that interim agreement, the parties committed to negotiating a new basic

labor agreement (BLA), with negotiations to begin as soon as possible upon execution of the interim agreement. Attached to the interim agreement are two exhibits, one detailing wage rates and the other headed “An Illustrative List of Certain New BLA Provisions.” Neither the interim agreement nor the Illustrative List mentions the use of time clocks nor the procedure to be followed in recording time worked.

McCall testified that in the negotiations leading to the interim agreement there were discussions concerning a wide range of issues, including how the facility would be staffed and operated. McCall said in one meeting, Rodney Mott, ISG’s President and CEO, was “insistent” that he did not want employees to swipe in and out to record their time. Rather, Mott said he wanted a “trusting relationship” in which employees recorded their own time on an honor system. McCall testified that he regarded recording time as a local issue, so he arranged another meeting with Mott that included Local Union 979 President Mark Granakis. During that meeting, McCall said, Granakis agreed with Mott that the plant would not use time clocks. On cross examination, McCall said he told Mott that the use of time clocks was a local issue he would have to address with the Local Union leadership at each plant. McCall said he was not aware of any written agreements concerning time clocks. Nor did he proffer any notes concerning time clocks from the discussions with Mott leading to the interim agreement.

Granakis testified that he attended several meetings with Mott. In a meeting in March or April 2002 – prior to the 2002 BLA – Mott told Granakis that he did not want any time clocks in the plant. Granakis said Mott asked him to agree to that, “and I did.” According to Granakis, Mott said he wanted time keeping to be a system of trust. Granakis said there had been no time clocks in the plant since operations resumed in late 2002 until the change complained of in this case. On cross examination, Granakis agreed there had been no written agreement about time

clocks. He also said he did not inform the membership in writing about the time clock agreement. Granakis said he did not take any notes in the meeting with Mott about time clocks. Granakis acknowledged that he did not raise the issue of an oral agreement about time clocks until the third step of the grievance procedure. Nor did he tell anyone from the Company about the agreement prior to the third step.

The Union also called Local Union officials from other ArcelorMittal plants. Mark Glyptis, President of Local 2911, testified that he met with Mott when ISG acquired Weirton Steel in 2004. Near the end of contract negotiations, Mott told Glyptis that he planned to remove the time clocks from the plant. Glyptis said he protested because the payroll system at the plant worked well and caused no issues. Sometime later, Mott appeared at the Weirton plant and said the time clocks would be removed in a few days. Glyptis said he did not agree and that the time clocks remained and are still in place today. On cross examination, he acknowledged there was no written agreement concerning the time clocks.

Richard Sayers, President of Local 1375, is the Unit Chairman for Local 1375-7, which represents the employees at the Warren Coke Plant. In June 2016, he said, two electricians approached him and said they had seen parts for a swipe system on a truck and they questioned whether they should install them. Sayers told them to do the work under protest. He then spoke to Plant Manager Jeff Foster and told him the use of time sheets was a local working condition and that Foster would have to bargain with the Union to use time clocks. Sayers said he was worried about buddy relief and other issues, principally having to do with the alternative work schedule (AWS) worked by 80% to 85% of the employees. Sayers identified an exhibit headed Memorandum of Understanding Regarding Time clocks (MOU), which he and Foster signed on February 6, 2017. The MOU deals with issues about how early employees can clock in, buddy

relief, and schedule deviations. Sayers said even with time clocks, some employees are still required to manually record their time on paper records.

Anthony Panza is Chairman of the Grievance Committee for Local 979. He said recently the Company had asked the Local Union to agree it could mail checks to employees. Panza said he asked the Company why it needed an agreement, and Janet Jordan, Manager of Labor Relations, said there was a verbal agreement with the Union requiring the Company to distribute the checks personally. On cross examination, Panza agreed that Jordan ultimately said the Company had the right to mail checks, but she wanted to get the Union to buy into the decision.

Panza said time clocks had not been used after the plant reopened in 2002. At some point, the Company had installed a swipe system to gain access to the Dille Road parking lot because cars had been broken into. However, the Company told the Union the system was for security and would not be used for time keeping. Panza said the Union has been meeting with the Company to discuss the effects of the change to time clocks and had tried to bargain over the change itself, although without any luck. Panza said the Union has been consistent in telling the Company it does not have the right to make the change without bargaining with the Union.

On cross examination, Panza said he did not know about Granakis' agreement with Mott not to use time clocks when he filed the grievance or in the second step. Rather, the Union's theory was that manually recording time was a local working condition constituting a benefit in excess of those provided in the Agreement. Granakis did not tell him about the verbal agreement with Mott until the third step. Panza said he believed Mott's view of the time clocks was influenced by his belief in the partnership between the Company and the Union. He said there have been effects bargaining meetings monthly, but he did not attend many of them. He thought the Company was talking about the implementation process, not the effects on employees. He

said he may have offered some suggestions about where the time clocks should be, although he did not go on the tour of where the devices would be placed. He agreed there had been discussions about walk time and about how to handle buddy relief and AWS.

Kira Geiss, the Company's Division Manager of Shared Services, said WFM will automate a manual process and be more accurate and efficient. She agreed that implementation had taken a long time – apparently longer than expected – but said that was because people had to be educated on the system and had to be trained to process the information. The Minorca and Weirton locations have been completed, she said, and Cleveland and Steelton are in process. She also said Indiana Harbor East would take longer and be handled last, because it was not on the Workbrain system. On cross examination, Geiss said the Company could implement the Dayforce system without using time clocks, but the system was designed for time clocks.

Labor Relations Manager Jordan testified that neither Granakis nor Mott ever told her about any agreement not to use time clocks. She also said the Company did not recognize the Union until April 2002, so any agreement prior to then would not be enforceable because the Union did not have representative status. Jordan said the new system will be in place everywhere by the end of 2019 because Workbrain will end on December 31. Jordan identified a memorandum Tom Wood, Corporate Vice President for Labor Relations, prepared for management employees following negotiation of the 2002 Agreement. In a section headed Local Working Conditions, Wood wrote, "There are none. New ones can be created in writing signed by the Plant Manager and the Union President."

Jordan also testified about a power-point presentation concerning WFM from 2014. Both McCall and Granakis attended the presentation, she said. No one said anything about a 2002 agreement with Mott not to use time clocks. Although the Company did not bargain over the

decision to use time clocks, it has bargained over the effects, Jordan said. This included which devices to use, and the locations and the number of readers. When the Company refused to bargain over the decision, Jordan testified that no one said anything about a verbal agreement with Mott. In addition to the accuracy and efficiency of the new system, Jordan said it also has the advantage of letting the Company know who is in the plant, something it cannot know when employees use paper time sheets. This would be a benefit, she said, during an event like an active shooter situation.

On rebuttal, Granakis challenged Wood's claim that there were no local working conditions in effect at the beginning of the contract. He said wash-up time and some other non-written local working conditions had carried over from LTV to the 2002 Agreement. He also pointed to language in the contract that said local working conditions could be written or oral, although new ones had to be in writing.

#### Positions of the Parties

The Union says it has proven there was a verbal agreement between Mott and Granakis not to use time clocks at the Cleveland plant. It points to the local working conditions language in the Agreement, which recognizes that there can be oral agreements. The Company can change local working conditions unilaterally, the Union says, only if it satisfies the conditions in Article 5-A-4. But there is no basis for a change in this case, the Union says, and it is not inappropriate to continue using paper time sheets. The Union also says there are lines at other plants and inconvenient locations for the clocks. Thus, a change is not reasonable and equitable. The Union asks for a cease and desist order.

The Company denies the Union's claim that there was a binding verbal agreement between Granakis and Mott. Any such agreement would have been in February or March, which

was before the Company recognized the Union. Thus, Granakis would not have had authority to negotiate with the Company. In addition, an oral agreement would violate the statute of frauds. The Company also says Wood's contemporaneous memorandum indicating that there were no local working conditions as of 2002 is more reliable than the Union witnesses' memories. The Company points out that bricks and mortar were all ISG acquired from LTV; it did not assume any agreements with the Union. Moreover, Mittal, and subsequently ArcelorMittal, could not legally have assumed agreements they did not know about.

Even if there was a local working condition, the Company says there was a basis for making the change. The new system is more efficient and more accurate and it increases the safety and security of employees in the plant. The new system is also more reasonable and equitable. Moreover, the new system asks very little of the employees. There was no evidence that employees were waiting in lines at other locations and no basis for believing that would be an issue in Cleveland.

The Company also denies that any local working condition could have arisen simply by having employees use paper time sheets. That system was not a benefit in excess of those provided for in the Agreement. Paper time records benefit employees only if they're gaming the system, which is not a practice that can be protected. The Company concludes that there was no meeting of the minds and asks that the grievance be denied.

### Findings and Discussion

At the outset of the hearing, the Company mentioned the possibility that the grievance was untimely. There is no dispute that the Union knew about the Company's plans as early as 2012 and that there was some discussion of the use of time clocks between then and 2017, when the grievance was filed. Frankly, it was not clear to me from the hearing that the Company

wanted to resolve the case on a procedural ground and avoid a decision on the merits. But even if it did, neither the second nor third step minutes advanced a claim that the grievance was untimely. Absent circumstances not present in the instant case, a procedural arbitrability issue cannot be raised for the first time at the arbitration hearing. Thus, I find that the case is arbitrable.

Article 5-A-1 recognizes that local working conditions can be created through custom – often called a past practice – or by local agreement. In the instant case, there can be no claim of a past practice that carried over from LTV to ISG, and then onward to ArcelorMittal. There is no question that LTV used time clocks and that with few, if any, exceptions, employees were not responsible for manually recording their working hours on paper time sheets. Nor could a local working condition have developed after ISG assumed control. It is true that ISG and its successors, including ArcelorMittal, have used paper time sheets since the plant reopened in 2002. But even under the dubious hypothesis that the non-use of a time clock could be a local working condition absent an express agreement, that practice could not have ripened into one in Cleveland. Article 5, Section A-6 says unambiguously that future local working conditions – i.e., those that did not exist as of the time ISG’s operations began – had to be in writing and appropriately signed. The Union does not claim that any agreement concerning the use of paper time sheets or the non-use of time clocks was ever reduced to writing. Thus, no local working condition was formed by custom or practice between 2002 and 2017, even though ISG and successor operators of the plant used the same time capture consistently for a period of many years.

The Union’s only real claim of a local working condition was its contention that Mott told Union officials he intended to operate the plant without time clocks and that Local Union

President Granakis agreed before the parties negotiated the 2002 Agreement. I have no doubt that Mott told McCall he did not plan to use time clocks in the plant or that McCall then arranged a meeting between Mott and Granakis. Nor do I question Granakis' claim that Mott told Granakis he intended to eschew time clocks in favor of manual recording of time worked. And I believed Granakis' testimony that he agreed with Mott's plan. But that does not mean their interchange was a local agreement. In the context in which Granakis described the conversation, it seems clear that Mott was simply telling Granakis about how he intended to handle a particular management function and soliciting Granakis' acknowledgement of his plan. The fact that Mott may have wanted Union recognition of his resolve to trust the employees' honesty does not mean he was bargaining with Mott about how time would be recorded, a management function he was under no obligation to negotiate with the Union.

Granakis' subsequent actions confirm the accuracy of this interpretation. The dispute does not date merely from the filing of the grievance in July 2017. Rather, the Company told the Union of its intent to use time clocks as early as 2012, and reiterated that objective through the next several years. Yet there is no evidence that Granakis told the Company about the agreement once the dispute arose. More significantly, he did not even tell anyone in the local Union. Grievance Chairman Panza, who filed the grievance and sheperded it through the process, testified that Granakis did not mention the agreement to him until the third step of the procedure. In these circumstances, it seems clear that Granakis did not regard his 2002 conversation with Mott to create an enforceable local agreement. Rather, he simply acquiesced in Mott's declaration that he did not plan to use time clocks in the plant. It is simply inconceivable that Granakis would have remained silent for a period of almost five years between the Company's 2012 announcement and the third step meeting, had he really believed the Company was barred

from its plan by a prior agreement. I find that there was no local working condition that prevented the Company from using time clocks in the Cleveland plant.

The Union argues that if no local working condition exists, the Company has an obligation to bargain over the effects of the decision. The Company agrees that it must bargain about effects. On this record, I cannot say whether the Company's obligation has been exhausted. It is clear, however, that the Company has met with the Union to discuss the effects of the decision on numerous occasions and that it has tried to involve the Union in the process, including discussion of the types, number, and locations of card readers. Panza, who did not attend many of the meetings, said the bargaining sessions were merely updates about implementation. But Jordan said the Company had sought Union input and accepted some Union suggestions. Thus, if the Union believes the Company has further obligations, it will have to address them through an additional grievance.

AWARD

The grievance is denied.

Terry A. Bethel  
Terry A. Bethel, Arbitrator  
July 21, 2019