

IN THE MATTER OF THE ARBITRATION BETWEEN

CLEVELAND CLIFFS
BURNS HARBOR PLANT

And

Grievance No. 20-6116

UNITED STEELWORKERS-USW
LOCAL UNION 6787

Case 157

OPINION AND AWARD

Subject: Contracting Out – Notice Requirements

Contract Provisions Involved: Article 2, Section F, 1.a, 2.a.(1) of the September 1, 2022 Collective Bargaining Agreement

<u>Grievance Data:</u>	<u>Date</u>
Grievance Filed:	March 26, 2020
Case Tried:	November 18, 2025
Opinion and Award Issued:	December 31, 2025

Statement of Award: The grievance is sustained. The Company did not file a proper notice, as required by the Agreement. As a remedy, the Company is directed to pay 286 hours at the overtime rate to capable coke plant craftsmen. I will remand the case to the parties to determine which employees will receive payments. If they cannot agree, they can resubmit the calculations to a remaining member of the arbitration panel, although not to reduce the overall level of payments.

Background

This contracting out case from the Burns Harbor Plant alleges that the Company failed to properly notify the Union of work to be performed at the WALPS Building in the coke plant, and then improperly contracted out the work at issue. Several witnesses testified about the work at issue, but the testimony of Joesph Pescatore was the most illuminating for understanding the dispute. Pescatore worked for Cliffs for 28 years, and is now employed by them as a contractor. Pescatore said the WALPS building furnishes power to another significant building, called the No. 2 Seal Pot Building. At some point in December 2019, the seal pot building lost power, so Pescatore said the Company decided to have some hydro excavating performed at the WALPS building to determine if a repair was needed underground.

The Company issued a contracting out notice on December 9, 2019. The notice was given to the Bargaining Unit Work Committee and said it covered work to be performed in areas where MEU Power employees worked. The detailed description of the work was as follows:

Continental Electric to Hydroexcavate on the north side of the WALPS Building to expose damaged conduits and make repairs if possible.

The notice said the contractor would use about three men on the job and that the duration would be about one day. However, the notice also said the work was to begin on 12/10/2019 and conclude on 12/13/2019. The Company says this makes it clear that the work was actually intended to last three days. However, Union Witness Bryan Scott, who has been on the Bargaining Unit Work Committee, said the date range was understood to mean that sometime in that three-day period, the contractor would undertake the hydro excavating work, which was expected to take about a day. The Company points out that Christine Clausen, the Assistant Grievant for MEU, checked the box on the notice that says “No Meeting,” which Pescatore said the Company understood to mean that she did not contest the notice.

Pescatore said he hoped to find the problem area when the excavation started, but he said the contractor simply encountered more problems, including damaged conduits and piping that was not on the drawings. This caused the Company to stop the hydro excavation project. Pescatore said he talked to Clausen and told her they would have to use an alternate method to get power to the seal building. On cross examination, Pescatore said it was necessary to install all new conduit. He said he did not issue a new contracting out notice because he had told Clausen they could make the repair using MEU work and she did not object.

Union witness Scott said the Union did not have any issue with the contracting out notice because it was for hydro excavation, which the bargaining unit did not do. But he also said the coke plant craftsmen and MEU both work in and around the WALPS building, and the coke plant craftsmen have performed some of the work that the Company determined was necessary once they discovered the damage near the WALPS Building. There was work done above ground on conduit, wire pulls, and multiple drops, which was work the coke oven millwrights had done before. All of the hangers for conduit were fabricated by the millwrights and installed by coke oven mechanics over ten years ago, Scott said. He said the area had been shared by

coke oven craftsmen and MEU for many years. Once the Company discovered the scope of the project, contractors spent 572 hours performing the necessary work, and none of the overhead work went to a bargaining unit employee.

The parties have adopted a Guiding Principle concerning contracting out in Article 2, Section F.1.a.:

The Guiding Principle is that the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and ability) of performing (bargaining unit work), unless the work meets one of the exceptions outlined in Paragraph 2, below.

There is no contention by the Company in this case that bargaining unit employees were incapable of performing the work at issue. Nor does the Company argue that the work satisfies one of the exceptions in Section F.2. Thus, there is no reason to review the various exceptions.

The Union's principal contention is that the Company should have filed another contracting out notice once its brief use of hydro excavation demonstrated the work that would be necessary to have the WALPS Building restore power to the No. 2 Seal Pot Building. The Notice and Information provision of the Agreement (Article 2.5.a.) requires the Company to provide a notice that includes the following:

- (1) Location, type, duration and detailed description of the work;
- (2) Occupations involved and anticipated utilization of bargaining unit forces;
- (3) Effect on the operation if the work is not completed in a timely fashion; and
- (4) Copies of any bids from outside entities....

The Union points out that the initial notice covering the hydro excavation work furnishes almost none of this information, and the Company did not provide a more detailed notice once the scope of the work changed. But the Company says there were bargaining unit employees involved in discussions or who saw the work being performed, and who said nothing about it. Also, Pescatore said he told Clausen the Company would have to find an alternate method of performing the work. Finally, the Company also contends that the grievance was untimely. The Company gave the notice on December 9, 2019, and the Union did not grieve until March 26, 2020. The Union says the work was continuing and was still ongoing when it filed the grievance.

Findings and Discussion

The Union's grievance alleges that contractors were running conduit under a "false contracting out notice." I reject the claim that the notice was "false," but that does not mean there were no problems with it. A "false" notice would suggest some form of trickery or a corrupt motive. But in this case, I credit Pescatore's testimony that he believed there were problems at the WALPS Building that were affecting the No. 2 Seal Building, and he wanted to use hydro excavating to help identify them. Within what was apparently a very short time, Pescatore realized he could not use hydro excavation to uncover the below ground structures, and some other method would have to be substituted. At that point, the Company should have issued a new notice. I understand Pescatore's testimony that he told Clausen they would have to use an alternative method, but he did not testify in any detail about what the method was or how much he explained to her. But surely, Pescatore understood that his plan to use hydro excavation as a part of the process was no longer possible. He testified that the Company had to regroup and stop the hydro excavation. It seems clear, then, that the original notice no longer described the work the contractor would perform.

I understand, as the Company points out, that the notice says the contractor would "make repairs if possible." But the discovery of problems with the conduits and the existence of unmapped piping meant that the scope of the repairs would no longer be a simple matter that could be handled in some period between one and three days. In fact, the repairs took 572 hours, although the record does not indicate how many contractor employees were present in the plant on a typical shift. Still, this project quickly became a much larger endeavor than Pescatore had envisioned. At that point, the Company should have filed a revised contracting out notice to account for the larger body of work. This also bears on the Union's failure to file a grievance promptly. This was an ongoing project, so I am not prepared to say that the grievance was late. I might feel differently about the issue if the Company had filed a revised notice, which I believe Article 2.5.a. required it to do. But the Company had not given the Union information the Agreement required, so it is not surprising that the Union might have waited to appreciate the full scope of the work before grieving.

The Company places significant reliance on Clausen's decision to check the "No Meeting" box on the original notice. But this is not surprising. There was testimony that bargaining unit employees do not perform hydro excavation, which seemed to be the focus of the notice. Had the hydro excavation worked, Clausen could always have asked for a meeting or more information if the extent of the contractor's repair work was larger than she originally believed. The Company also identified other bargaining unit employees who either understood the alternative means Pescatore would use or who saw some of the work. But their observations cannot be attributed to members of the bargaining unit work committee. And, once again, what they saw or knew would not have been an issue at all if the Company had filed a revised notice.

As I understand Pescatore's testimony, the Company argues that any work assigned to bargaining unit craftsmen on this project would have gone to MEU workers, and not coke plant craftsmen. This is a response to the Union's grievance, which was filed on behalf of the coke plant. Pescatore was a credible witness and he obviously understood what kind of work employees in the MEU department did. But Bryan Scott was also credible and he said it was

common for coke oven craftsmen to share above ground work at the WALPS Building. In fact, he said he saw craftsmen performing such work less than ten years ago. If so, that would have been in about 2015. This is an old grievance, which was filed in March 2020 over work that began in 2019. Thus, Scott's observation of coke plant craftsmen doing similar work cannot be written off as an event too old to matter.

The Guiding Principle does not assign work within the bargaining unit to particular employees. Rather, it mandates that work bargaining unit employees are capable of performing be done by the bargaining unit employees, absent an exception not present in this case. Scott's testimony convinces me that coke plant craftsmen were capable of performing the work at issue in this case (absent the hydro excavation work) and had done similar work on occasion. I find that at least some of the work at issue should have been assigned to them.

At this point, nearly six years after the fact, it is difficult to know how the work would have been assigned had all of it not been contracted out, or who would have performed which tasks. That uncertainty does not mean, however, that the Company should escape providing a meaningful remedy for its failure to provide proper notice. The Union says – and the Company did not contest – that contractors worked 572 hours. This was work bargaining unit employees were capable of performing, and a grievance was filed on behalf of capable coke plant craftsmen. I will direct the Company to pay 286 hours (1/2 of 582) at the overtime rate to coke plant craftsmen. I will remand the case to the parties to determine which employees will receive payments. If they cannot agree, they can resubmit the calculations to a remaining member of the arbitration panel, although not to reduce the overall level of payments.

AWARD

The grievance is sustained. The Company did not file a proper notice, as required by the Agreement. As a remedy, the Company is directed to pay 286 hours at the overtime rate to capable coke plant craftsmen. I will remand the case to the parties to determine which employees will receive payments. If they cannot agree, they can resubmit the calculations to a remaining member of the arbitration panel, although not to reduce the overall level of payments.

Terry A. Bethel

Terry A. Bethel, Arbitrator
December 31, 2025