

IN THE MATTER OF THE ARBITRATION BETWEEN

MITTAL STEEL COMPANY

And

Award No. 8

UNITED STEELWORKERS, USW
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company violated the Agreement when it removed the work of indexing cars at the North Rail Dump from employees in the Internal Logistics Line of Progression (LOP) and assigned it to employees in the Iron Making LOP. The case was tried in East Chicago, Indiana on August 15, 2006. Patrick Parker represented the Company and Bill Carey presented the Union's case. There are no procedural or substantive arbitrability issues. The parties filed post-hearing briefs and reply briefs, which I had received by October 9, 2006.

Background

On May 18, 2002, I issued Inland Award 992, a case involving the same issue presented here. There, the Company had removed the work of indexing rail cars at the North Rail Dump from what was then the train operator sequence and had assigned it to another sequence. I ordered the Company to return the work to employees of the train operator sequence, applying

accepted principles derived from the seniority and local working condition sections of the agreement in effect at that time. The Union had established the requisite exclusivity to place the duties at issue in that sequence and the Company had not been able to point to a change in the basis for assignment of the work to those employees, meaning that the local working condition itself could not be changed.

There were significant changes in the basic steel industry between 2000 and the time this case arose in 2005. LTV Steel Company, located adjacent to the Company's operations in northwest Indiana, went bankrupt and ceased operations. ISG Steel purchased the assets of LTV and negotiated a new agreement with the Union. That agreement made significant changes in basic steel language and created more flexibility in job assignments. Similar language was introduced in the 2003 Basic Agreement between United States Steel Corporation and the United Steelworkers, USW. In late 2004, Ispat International acquired ISG, including the old LTV location in East Chicago, which resulted in the creation of Mittal Steel Company USA. In October 2004, the Company and Union agreed that if the Company acquired ISG, the production and maintenance bargaining unit from Ispat Inland would be covered by the ISG/USWA Agreement, with appropriate supplements covering various subjects, including seniority. Negotiations over those supplements culminated in a new Agreement between USW and Mittal Steel that became effective on November 13, 2005. On that same day, the Company took the action at issue here by assigning the indexing of cars in the North Rail Dump to employees in the Iron Making LOP.

In this case, the Company points to revisions to both the seniority structure and the local working conditions language to justify this change, as well as a reduction in the number of jobs. Prior to the current Agreement, there were hundreds of jobs in the plant, each grouped in a

seniority sequence. Each seniority sequence was itself a seniority unit that could have jurisdiction over certain work. In some departments, there were a dozen or more seniority sequences, each of which, as recognized in Article 13, Section 3, was "intended to provide definite lines for promotion and demotion, insofar as practicable, in accord with logical work relationships, supervisory groupings and geographic locations...." The seniority unit was defined differently in the 2005 Agreement in Article 5, Section E:

2. Determination of Seniority Units

a. Seniority shall be applied on a job and departmental or larger unit basis, as agreed upon. A job may be in one seniority unit for one purpose and in a different unit for another.

b. The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the Effective Date shall remain in effect unless modified by a local written agreement signed by the Grievance Chair.

The Company says the parties have agreed that each LOP is to be considered a seniority unit. Under the old agreement, there were two different blast furnace departments at the Harbor Works, the Plant 2 department and No. 7 Blast Furnace Department, comprising 31 different seniority sequences. Under the new Agreement, there is one LOP, known as the Iron Production LOP, covering both of the old departments.

Bill Calhoun, Manager of Rail Operations for Indiana Harbor Works, described the work at issue in this case, which is operation of a locomotive to index cars at the North Rail Dump. Calhoun said this work cannot be done by the production employees who index pugh ladles because they are tied to the furnace for production reasons. He also said the locomotive operator in the North Rail Dump could not be used to operate trains in other parts of the plant because those jobs need a two man crew. The Company doesn't staff to hold a second employee in

reserve, especially since the work might be done only on an occasional basis. He also said the work at issue here is performed by production employees at the South Rail Dump, which is about 225 yards away from the North Dump.

Tom Wood is Vice-President of Labor Relations for Mittal USA, and was the Company's lead negotiator over the accommodations needed to bring the former Ispat Inland facility under the ISG Agreement. Wood noted the "dramatic changes" in the steel industry in the late 1990's and early 2000's, which saw more than 50 companies go bankrupt. He said the old LTV plant was the "poster child" for what was wrong with the industry, which included a resistance to change. LTV closed and was idle for 8 months. During that period, ISG approached the Steelworkers Union and discussed changes that would have to be made in order to reopen the plant. The parties reached agreement on a new contract in 2002. He described the agreement as a new approach to management and to how the Union assists in managing the plant. The overall goal, he said, was to have a "modern era" contract in which the way work was done would have to be changed. In addition, the Company significantly reduced the number of managers in the facility. The new agreement was shorter and had significant structural changes.

Under the old agreement there were hundreds of detailed job descriptions promulgated unilaterally by the Company. These were not reprinted in the contract, although the Union's brief says they were incorporated by reference. Under the old job descriptions, Wood said, employees could not be assigned to work that was not included in their job description. Under the new contract, the old job descriptions were eliminated and converted into 6 broad scope jobs. These include Senior Operating Technician (grade 5); Maintenance Technician (grade 4); Operating Technician (grade 3); Plant Transportation Specialist/Service technician (grade 2); and Utility Person (grade 1). The production employees who operate locomotives in the South Rail

dump and in the blast furnace department are grade 3 operating technicians, as are the Internal Logistics locomotive operators who operate trains throughout the Harbor Works, including the one that indexes cars at the North Rail Dump.

Wood also described the changes made in seniority sequences, which turned small sequences into larger work groups, as described above. Wood said an LOP is essential in a large mill because the work has to be organized. Wood identified the Iron Production LOP, which covers all of the jobs at both blast furnaces. There are branches within the LOP that include boxes representing the various jobs – Service Technician, Operating Technician, etc – with former job titles contained within the box. These depict the kinds of duties associated with each level in the branch of the LOP. Wood said the job titles in the box do not limit the work an employee assigned to that level can perform. Rather, he can be assigned to any work that is consistent with his job description. The branches indicate how employees promote within the branch. Wood said this is not unlike the old system, although there are fewer jobs and an employee has to be proficient in all of the jobs within his level (box) before he can promote up to the next box. Employees move up within their branch; if they want to go to another branch, they have to bid in at the bottom and then promote up the branch as vacancies arise. The seniority unit, however, is the entire LOP.

Wood said there were more negotiations at the old Inland location over the LOPs than there were at other locations. During those negotiations, the Company proposed adding a footnote to the Raw Materials #7 branch of the Iron Production LOP that said, “share jurisdiction for indexing,” which was located in the Operating Technician 2 box. In addition, the Company proposed dotted lines between the labor grade 2 boxes of the various branches. Wood said the Union objected to using footnotes, saying that if work was encompassed by the job descriptions,

then it could be assigned to the employees. It also objected to the dotted line. Both the footnote and the dotted lines were removed from the Company's proposal.

There were also discussions concerning local working conditions and how they would apply at the Indiana facility. This was not an issue on the West side of the Harbor Works – the old LTV facility – because the LTV plant closed and ISG bought the assets and began operations as a new company. Any local working conditions under LTV did not survive that process. But there were local working conditions at the Inland facility, including the use of a train operator to operate a locomotive to index cars at the North Rail Dump. The Agreement itself made what the Company says was a significant change. Under the old contract, arbitrators – including but not limited to me – enforced jurisdictional claims as local working conditions by pointing to the interplay between Article 2 Section 2, which recognized the existence of local working conditions, and Article 13 Section 3, which provided for seniority sequences. Article 2, Section 3 said a local working conditions could be changed, “when the basis for the existence is changed or eliminated, thereby making it unnecessary to continue such local working condition....”

The new contract says the Company can change local working conditions,

if the basis 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.

The Company notes, in particular, the substitution of “inappropriate” for “unnecessary,” which it says lessens the burden of establishing the right to eliminate a local working condition. It also points to the requirements of reasonableness and equity when making a change.

Wood also identified a letter between him and David McCall, the Union's negotiator, which explains how the Basic Agreement applies to the Harbor facility concerning various issues. Paragraph 5 concerns local working conditions and reads as follows:

Existing local working conditions which are inconsistent with the implementation of the 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 will be preserved. Furthermore, work assignments will be made utilizing the concepts of self direction that have been implemented at other ISG locations. Following implementation of the new seniority structures, Article 5, Section A and Article 5, Section E (2)(b) will apply.

Wood said there had been a similar document for the former Bethlehem plants which, like Ispat Inland, had not shut down prior to the merger with ISG. The intent there and at Ispat Inland, he said, was to preserve local working conditions that did not interfere with operations. Some local working conditions at Bethlehem -- like bottled water -- had been preserved, but he said the intent of the language was not to preserve inefficient local working conditions, like the one at issue in this case. Although Wood said the local working condition cannot preserve the assignment at issue here, it was not the Company's intent to use blast furnace employees "to run transportation around the plant."

On cross examination, Wood said if there is a low activity job and it is more efficient to have it performed by other employees, the Company can do so. There are, however, limitations, which he defined as reasonableness. The Company, Woods said, cannot do things that are irrational, like using blast furnace employees to operate transportation in other areas of the plant. He said there was a "sense of organizing work around a group."

Robert Cayia, Manager of Labor Relations for Mittal-Indiana Harbor, compared the seniority sequences under the old agreement to the seniority unit in the new Agreement. In the old contract, a department would have several seniority sequences through which employees would promote, as permanent vacancies occurred in the higher levels. If an employee at the top of the sequence retired, the employees would promote up until there was a vacancy in the entry

level job. That vacancy would be filled by a plant-wide posting and the most senior bidder would get the job.

Under the new Agreement, Article 5, Section 2(a) says, "Seniority shall be applied on a job and departmental or larger unit basis, as agreed upon." The parties agreed to consider both blast furnace departments as one LOP that includes all production jobs. Those jobs are listed in various branches, all of which are linked together in the diagram. Even though there are various branches with ascending levels of jobs, each branch is not intended to be a separate seniority unit, Cayia said. Under the new scheme, bidding begins as it did under the old contract. That is, as a vacancy occurs in a higher job in a branch, employees promote in seniority order from the box immediately below, which continues until there is a vacancy at the entry level. Unlike the old system, however, that vacancy is not filled by a plant-wide posting. Instead, it is posted for the department or LOP. In addition, if employees in the branch do not want to promote to the top job, that vacancy, too, would be posted in the LOP. Once the movements within the LOP are completed, the resulting vacancy is posted plant-wide.

Cayia reiterated Wood's testimony that the titles within the boxes are not the jobs; rather, the job is the designation given to the box, like Operating Technician. The job description, not the old titles, determine what employees can do. These changes create the efficiency the Company sought in negotiations, Cayia said. Employees in the box are trained in each function, which means the Company can assign them to duties they formerly would not have done. This means the Company can accomplish the same amount of work with fewer employees. Cayia also said the Company can assign employees from one LOP to another as long as the work they perform is consistent with their job description.

Steve Snell, Manager of PCI, Raw Materials and Furnace Operations, described the work at issue. The primary focus of the South Rail Dump is to unload coal for the coal storage field for the PCI. The employees also unload coke from rail cars and an Operating Technician from the Iron Production LOP is assigned to index the cars with a locomotive. The North Rail Dump feeds bins to the furnace to keep it running. The locomotive used for indexing the cars is operated by an Operating Technician from the Internal Logistics LOP. On back turns, the work is typically done by employees from the Iron Production LOP. He estimated that the train operators at the North Dump spend about 4 hours per day indexing cars (apparently including waiting time while the cars are dumped) and have some other duties. It is not reasonable, however, to expect them to go to other areas of the plant to operate trains. The North Rail Dump must keep bin levels full and the timing cannot be predicted.

Dennis Shattuck, Chairman of the Grievance Committee, was involved in the negotiation of all agreements concerning seniority units and their application on the East Side of the plant, which is the former Inland plant. Before the negotiations, Union representatives studied both the USS and ISG agreements to try to understand the restructuring and to implement that pattern at the Ispat Inland, with appropriate modifications. Shattuck said department and LOP are usually synonymous, although there are some LOPs that encompass two departments, like the No. 7 Blast Furnace and No. 5 and 6 Blast Furnaces in the Iron Production LOP. Shattuck said it took a year and four months to resolve how the LOPs were to be structured and which duties were part of which LOP. There was some progress, but when ISG and Inland merged, the Union agreed to the ISG model. There were still some problems with LOP issues. Ultimately, the parties resolved the issues on October 17, 2005. Shattuck agreed that Iron Producing is an LOP, but he said the branches within that LOP are also seniority units.

Shattuck said the Company explained the dotted line proposal for Service Technicians, also mentioned by Wood, by saying the Company would have the right to move employees between branches of an LOP to fill temporary needs, without regard to seniority. Shattuck said the Union would not agree to this and that the Company "backed off." The Union told the Company that if it had to displace an employee from a branch because there was no work available, it had to displace and move the least senior employee; it did not have the discretion to choose an employee. There were however, instances – as in the temper lines – where the Company wanted the right to transfer employees from one line to another without regard to seniority. In that case, the parties drew a line from one branch to another for the grade 3 boxes of 28 mill and 29 mill branches. There were also situations where two sequences were merged into one branch, like the anneal area of the #3 Cold Strip LOP.

The Company had wanted to do the same thing with the East and West Cranes in the Cold Strip LOP, meaning that it could assign employees to either side as needed. The Union resisted and delayed negotiations for 3 months, until the Company agreed to two different branches. The employees work on one side or the other, but if displaced they can work temporarily on the other side. To provide more flexibility, however, the parties added the following footnote:

Temporary on the turn vacancies in a crane branch may be filled by the junior employee(s) on the turn from either East/West crane branch, or from the senior employees on the turn working in the mobile equipment box.

This allows the Company the discretion to move employees on the turn, Shattuck said, although it limits its discretion about which employees will be moved. Shattuck said the Company never said in negotiations that it had the right to move work wherever it wanted. If that were true, he said, the months of negotiations over seniority units and branches would have been unnecessary.

Shattuck said the job descriptions or labor grades the Company uses as part of the justification for its action were to make it clear that there were a limited number of pay rates. The rates of pay, he said, were for what employees did within the seniority unit, not for duties an employee might perform in some other unit. The condensed number of pay rates and the combination of jobs into boxes created more flexibility and a bigger body of work or assignment. But the Company did not claim it had the right to move employees from one seniority unit to another and it did not say it eliminated its dotted line proposal for the LOPs because it could move employees anyway.

Shattuck explained paragraph 5 of the Wood/McCall letter by saying it was intended to insure there would be no argument when the new seniority system and a local working condition were inconsistent, as in overtime equalization practices for combined jobs. But it was not intended to redefine the work contained within the seniority unit. The Company said nothing about that according to Shattuck.

On cross examination, the Company questioned Shattuck's claim that the branches within an LOP are considered seniority units, noting that there was nothing so providing in the Agreement. Shattuck said the Agreement did not use the word branches, either, though the parties recognized they existed. He also said the Union's position in this case is that the branches are seniority units and, as such, they preclude movement of work from one unit to another.

Ricky Campos was a two-term grievor for the area that includes the North Rail Dump. He said it was not true that the train operator only worked Monday through Friday. Before Award 992, the employees worked 8 hours a day, 7 days a week. After the award, they worked day turn, although they came in 2 hours early and left 2 hours late, making 12 hours. He also said

there had been no changes in the operation of the North Rail Dump. On cross examination, He acknowledged that after Award 992, if cars had to be indexed on the back turns, blast furnace employees did the work.

Positions of the Parties

The Company says jurisdictional cases like Award 992 were based on two sections of the Agreement, Article 2.2 and Article 13.3. Those provisions, however, have undergone significant change under the new contract. Under the old contract, each sequence was a stand-alone seniority unit with as many as several dozen sequences in one department. Under the new Agreement, the department itself is the LOP and each LOP is a separate seniority unit. In the instant case, the department includes all three blast furnaces, one LOP that replaced 31 seniority sequences. In addition, there are only 6 jobs in the plant. All of the employees at issue here – the blast furnace employees currently operating the locomotive and the Internal Logistics employees who claim the work – are all labor grade 3 Operating Technicians.

As noted in the Background, the Company says the change in wording in the local working provision is important to the case. Previously, the Company could change a local working condition when it was no longer necessary; now it can do so if it is no longer appropriate, providing it acts reasonably. Both the old and the new version of the language say in order to change a local working condition, “the basis for the local working condition is changed....” The change that justifies the elimination of the local working condition in this case, the Company argues, is the agreement to restructure all of the jobs and the new job descriptions. There is an Operating Technician in the Raw Materials branch of the Iron Producing LOP, and employees in that job operate locomotives in the department, including the ones at the North and

South Rail Dump. The Union has not challenged the use of a Raw Materials branch employee at the South Rail Dump. In addition, the employees who formerly operated the locomotive at the North Rail Dump are also Operating Technicians. The Company also argues that there is no local working condition at all because the old jobs and job descriptions were eliminated and pre-existing local working conditions could not have remained attached to the new seniority units.

But even if the local working condition at the North Rail Dump survived the restructuring, the Company says, then it is inappropriate to continue it, which is the standard in the new Agreement. The question, the Company says, is not whether it is necessary to perform the work – which often influenced arbitrators under the old agreement – but whether it is appropriate to continue performing it in the same way and with the same jurisdictional constraints. It is not appropriate, the Company says, to schedule an Internal Logistics employee at the North Rail Dump who would be idle most of the shift. In addition, unlike the old contract, the new one allows for consideration of reasonableness. The Company says it is not reasonable to schedule three employees – two from the Blast Furnace LOP and one from the Internal Logistics LOP – to perform work that two employees can do.

The Company also argues that the Wood/McCall letter agreed to eliminate local working conditions that are inconsistent with the work restructuring effort, which is the case with the local working condition at issue here. This local working condition, the Company argues, is nothing more than featherbedding because it forces the Company to use more employees than it needs to do the job.

The Company rejects the Union's argument concerning withdrawal of the proposal to include a footnote in the LOP that would have allowed blast furnace employees to index rail cars at the North Dump. The Company notes that the parties bargained about the structure of the

seniority system before the merger and before the Union agreed to adopt the ISG contract with appropriate modifications. Once the parties agreed to the ISG contract, Wood, the chief negotiator, knew that employees from the Iron producing LOP were doing the same work on the East (LTV) side of the plant. It is fair to conclude, then, that when the parties agreed to the ISG format, they agreed that implementation of the agreement at other ISG locations would be mirrored at the Ispat Inland location. Wood knew that the job descriptions, as used at ISG, would be broad enough to allow the change, thus making it unnecessary to insist on the footnote.

As noted in the Background, the Union argues that the branches within LOPs are also LOPs and that they operate like the seniority sequences in the old agreement, although there are now obviously fewer of them. The Union supports this argument by looking to Article 5, Section E-2-b, which says:

The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the effective date shall remain in effect unless modified by a local written agreement signed by the grievance chair.

The Union says both the departments and the branches are lines of progression because permanent vacancies are filled first in the branches and then in the departments before they are posted plant wide. Prior to the restructuring, the work at issue fell within the jurisdiction of the train operator sequence, which is now a branch in the Internal Logistics LOP. The jobs placed in that branch, the Union says, were "associated with a set of duties," which were carried over to the new job box in the branch. The parties agreed through the language quoted above to maintain that relationship between the job and the duties.

The Union rejects the Company's claim that the local working condition at issue was eliminated when the new contract was signed. It says the Union spent more than 60 years fighting for a seniority system that allowed jurisdiction over work and it did not surrender it

merely by agreeing to new units that operate similarly to the old ones. The Union also disagrees with the Company's claim that it can move work across LOP lines as long as it acts reasonably. If that were the case, then there would have been no reason to spend over a year negotiating a massive restructuring of the seniority units. The Union says the point of the negotiations was to break down barriers between the old seniority sequences, which happened when the parties agreed to far fewer seniority units than existed under the old contract. But, the Union says, if there was no jurisdictional claim to bodies of work by the remaining sequences, there would have been no reason to place tasks within an LOP. In addition, the Union argues the Company would not have proposed a footnote allowing the blast furnace employees to index cars if it believed it already had the right to do so. The Union also disagrees with the Company's claim that Wood abandoned the proposal only after the parties agreed to follow the ISG contract, which he believed would allow the change.

The Union criticizes the Company's interpretation of the labor grades in the Agreement. These do not mean the Company can move work to any LOP as long as it is assigned consistently to the same labor grade. Job descriptions, the Union says, have been used traditionally to determine a rate of pay for a set body of duties. Even though there were employees in different sequences performing the same duties for the same pay, the Company did not have the right to assign work across seniority unit lines. The parties did not change that concept, the Union argues, merely by putting the job descriptions in the contract. This is obvious, the Union says, because the job bidding process works within the department prior to a plant-wide bid, and because an employee bidding out of the department loses his standing in the former department after 30 days.

The Union says the Company has no right to change the local working condition assigning this work to the Internal Logistics LOP because there has been no change in the basis for the local working condition. There was no testimony that the work is different than it was at the time of Award 992. As such, the Union says, the Company has no right to eliminate the local working condition.

Findings and Discussion

As I noted in Inland Award 992, the Inland-USWA Agreement in effect in 2002 sometimes provided jurisdictional rights for non-craft employees that might not have existed elsewhere in basic steel. One issue in this case is whether the new Agreement terminated those rights. I disagree with the Union's claim that the parties retained the previous structure in which each branch of a departmental diagram constituted a separate seniority sequence. The Union supports its contention by pointing to the language from Section E-2-a, that says seniority will be applied on a "job and departmental basis" (emphasis added), which I obviously cannot ignore. But it does not follow that each branch is an LOP.

The branch does not have to be an LOP for seniority to be applied on a job basis. Permanent transfers in the department, for example, progress first through the branch, which lists a grouping of jobs. Within the branch, employees move up from one labor grade to the next on the basis of seniority. After that process is completed, employees move from one branch to another in a department, which in the blast furnace department is the LOP. The fact that employees first bid within the branch does not mean the branch is a separate seniority unit; rather, it shows how seniority is exercised within the larger LOP. This procedure contrasts with the one under the old contract, which demonstrated the primacy of the sequence. There, once

movement in the sequence was completed, the job was posted plant-wide, indicating that the departmental employees had no special right to exercise seniority in bidding. But that changed when the parties agreed to the department as the appropriate LOP. Now, employees have seniority rights within the LOP, although the parties created priorities about how they would be exercised.

Although I agree with the Union's claim that Article 5, Section E-2-b applies to this case, I reject its claim that this mandates retention of the old seniority sequences. As quoted above, that section says seniority units and lines of progression "in effect as of the effective date," and the rules for applying seniority factors to those units, "shall remain in effect," unless modified in writing. But this does not mean that sequences under the old Ispat Inland agreement were to be retained. This is clarified by paragraph 5 of the Wood/McCall Letter, which references the applicability of Section E-2-b. That section is to apply, "Following implementation of the new seniority structures." It was not, then, intended to apply to the old structure. Rather, the seniority units and lines of progression that are to remain in effect unless modified in writing are the ones the parties agreed to in the negotiations for the current contract.

Under the current agreement, the LOP – the department – is the seniority unit. This fact limits the Company's right to assign employees across department lines as if no seniority unit existed. The new contract provides the Company considerable flexibility within the branches, where the Company has the discretion to assign employees to a multitude of tasks, and not merely ones limited to specific job descriptions. The parties have also negotiated procedures for moving employees temporarily from branch to branch within the larger LOP, which may provide the Company with greater discretion in assignment. But the new structure does not say the Company can assign employees to work within their labor grade anywhere in the plant. The

negotiations over the LOPs and branches were time consuming and difficult. It seems unlikely the parties would have devoted so much time and energy to that process merely to create a document in which they were showing how work is structured, and in which movements between LOPs was bounded only by reasonableness. Moreover, the promotional process described above would seemingly have been unnecessary, as would the seniority-based temporary assignment procedure within the LOP. Nor would there have been any reason for the Company to propose dotted lines between branches if it had the discretion it now claims. Finally, nothing in the contract suggests the Company can move employees between LOPs at will as long as it acts “reasonably.”¹

I cannot accept the Company’s claim that local working conditions were extinguished upon the effective date of the new Agreement. That happened with the old LTV facility, but that company had gone bankrupt and the plant had ceased operations. Mittal purchased the assets and combined that facility and Ispat Inland. But there had been no bankruptcy and no cessation of work at the Inland plant. Moreover, the Agreement itself recognizes that some local working conditions continued. Article 5-A-6, for example, says all future local working conditions are to be in writing and Article 5-A-1 recognizes that some local working conditions are oral. The inference is that some local working conditions survived – even some oral ones – although new ones would have to be written. More significant, paragraph 5 of the Wood/McCall letter would not make sense if all local working conditions had been eliminated. There would have been no reason to agree that local working conditions inconsistent with work restructuring would be eliminated if none survived anyway. Nor would it make sense for them to have said, “local working conditions unaffected by the foregoing will be preserved.”

¹ The only reference to reasonableness cited by the Company is in Article 5-A-4, which applies to the elimination of local working conditions.

The Company argues that even if local working conditions survived, the one concerning the North Dump can be eliminated under Article 5-A-4, which permits such action when the basis for the local working condition has changed. The ability to eliminate a local working condition has typically accompanied a change in methodology or work-related circumstances; no such changes exist here. The Company argues, in effect, that the basis for the local working condition was the jurisdictional rights attached to individual seniority sequences. Those sequences have been abandoned and replaced with larger, more flexible LOPs, meaning that it is inappropriate to retain rigid jurisdictional lines. Although this argument is plausible, the effect could be to undermine jurisdictional boundaries throughout the plant, a result not warranted by the limited scope of this case.

However, the Wood/McCall letter supplements the Company's ability to eliminate local working conditions, and does not limit it to circumstances in which the basis for the local working condition has changed. Shattuck testified credibly that he understood paragraph 5 to apply to situations in which there might be conflict between two sequences that were to be merged, like overtime equalization practices. But the language is not that narrow on its face, and Wood testified credibly that it was intended to address broader concerns. I am not persuaded on this record that paragraph 5 allows the Company to change or eliminate any local working condition it deems inefficient. This is the kind of issue the parties seemingly would have addressed directly and not merely by the general language of a side letter. But the parties surely intended that paragraph 5 have some effect; I cannot assume it was merely hortatory.

In Award 992, I rejected the Company's claim that the use of blast furnace employees to move rail cars at the South Dump defeated the exclusivity necessary to maintain the local working condition for train operators to index rail cars at the North Dump, noting Union

testimony about an agreement to that effect. That exclusivity finding is not at issue in this case. However, given the emphasis on efficiency recognized by the Wood/McCall letter, it is relevant that employees from the Iron Producing LOP are performing the same kind of work about 200 yards away from the North Rail Dump, and that employees from both areas are now in the same LOP. Iron Producing employees also perform the same work at the North Rail Dump as needed on the back turns. The work at issue is of limited duration during the workday and the Internal Logistics employees performing the work cannot realistically be expected to work elsewhere in the plant. Moreover, as the Union argued in this case, the train operators presumably could not be assigned across LOP lines to other productive work in the blast furnace department. The result is that they remain idle for a substantial part of the turn. I have already found that the restructuring did not, of itself, defeat the claim to jurisdiction over certain work.² But at least in the narrow circumstances at issue here, the local working condition is inconsistent with implementation of work restructuring and the efficiencies it was to produce. The Wood/McCall letter allowed the Company to eliminate the practice of assigning this work solely to what is now the Internal Logistics Sequence.³

² In his testimony, Wood said the negotiations over LOPs took longer at Inland than at any other location. This may have been because of Inland's history of jurisdictional local working conditions. There is no evidence about whether similar local working conditions existed elsewhere or about whether the parties in those negotiations placed as much emphasis on restricting the Company's ability to transfer work from one area to another. The findings in this case, then, should be understood to apply in the circumstances at issue here and not necessarily to represent a judgment about how the same language might apply in other locations.

³ I am mindful of the Union's argument that it would have been unnecessary for the Company to propose adding a footnote allowing Iron Producing employees to index rail cars if it could assign them to do so anyway. I have given some credit to that argument with respect to moving work between branches, where the Company made a proposal and then withdrew it. But these circumstances are different. Here, the decision does not depend solely on the terms of the Agreement; rather, my finding interprets the Wood/McCall letter, which is reprinted in the Agreement and dated October 30, 2005, about two weeks after the parties had agreed to the final version of the LOPs. The footnote proposal, then, had been withdrawn before the Wood/McCall letter was finalized. The letter supplemented the contract, at least concerning the right to eliminate local working conditions. Even if the Company's withdrawal of the

AWARD

For the reasons explained in the Findings, the Company has the right to assign the work of indexing rail cars in the North Rail Dump to employees in the Iron Producing LOP.

Terry A. Bethel
February 14, 2007

proposal was an acknowledgement that the Agreement itself did not permit elimination, that would not affect the action permitted under the October 30, 2005 letter.