IN THE MATTER OF AN ARBITRATION

BETWEEN:

Algoma Steel Inc.

(the Company)

- and -

United Steelworkers of America, Local 2251

(the Union)

AND IN THE MATTER OF General Grievance 05-558 regarding contracting out: No Template, #9 992 Loader Rebuilt Starters; No Template, SDM Systems Degreasing in the DSPC October 19, 2005; T-05-490, #7 Blast Furnace, Granulator Ten Day Shut Down; Withdrawal of Templates T-05-495, 511, 522, 510, 515, 507.

Heard Before: Date of Hearing: Decision Date: Appearances:

For the Employer:

For the Union:

Daniel Harris, Sole Arbitrator

June 4, 2007.

June 6, 2007

Ross Dunsmore, Fernando Garcia and Steve Orr

AWARD

No Template, #9 992 Loader, 2 rebuilt starters

The #9 992 Loader required two replacement starter motors on or about October 7, 2005; it takes two such motors to start that equipment. The provision of the rebuilt starters was contracted out to H.E. Brown. They were supplied on October 8, 2005 and installed by ASI mechanics. The departmental union representatives alerted the Local Union of the contracting out on October 14. Bob Roussain communicated the Union's concerns to the Company on October 20, 2005. He received the following reply from Laurie Wilson, Superintendent Employee Relations, later that day:

> Bob/Mark,
>
> 1. You are right to ask for a template, this is a fundamental requirement of the contracting out process. You are aware the company, with the support of the employee relations group and LU 2251 is continuing to work ongoing with all initiators of contracting out to ensure they are fully engaged in the process and are executing it on "center line" on a consistent basis.
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> 2. In this instance employee relations will determine if the process was intentionally violated and if so will take immediate action in the form of specific direction to the offending party in order to correct the problem.
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> 3. In this instance a template will be provided if required and/or not already done so.

4. This concern will be remedied by employee relations and the union continuing to work together within the spirit of the collective agreement as it relates to contracting out for the purpose of better educating the users of contracted services and to ensure this complex process functions as we both intended it to.

Respectfully,

L.W. Wilson
Supt Employee Relations

No subsequent communications were received from the Company.

The Company's facts are that the responsible manager, Mr. Predinchuk, asked the Main Diesel Shop for replacement starters, but none were on hand. He then inquired as to whether the two starters could be rebuilt in house. The mechanics who normally rebuilt these starters were unavailable, as they were on vacation, with the last of them about to start his vacation that day, being a Friday afternoon. Given the lack of mechanics that normally do the work, and the lack of spare parts, the decision to contract out the work was made.

The Union says that there were other mechanics employed by ASI with the skill to rebuild the starters. A plant -wide canvass should have been made to recruit them.

The Company submitted that this work was on the exemptions list at the material time. It also submitted that it was entitled to contract this work out in any event. Purchasing a part off the shelf was said not to constitute contracting out. It relied upon (1989) 13

C.L.A.S. 82 (Collier); (1999), 58 C.L.A.S. 172 (Hope) and (1999), 56 C.L.A.S. 148 (Ready).

I turn first to the submission that this work was on the preliminary exemption list at the material time. There is no doubt that this work was on the preliminary exemptions list following bargaining in August 2004. It is number 2 as follows:
Exchange components; starters, alternators, compressors and fuel pumps.

By email dated November 16, 2004, Mr. Da Prat gave notice of the removal of various items from the exemptions list as follows:
Due to the fact that there is confusion and that we have not met regarding the exemption list on contracting out please accept this note as my 30 day notice to remove the following items:

> Transmission Repairs
> Exchange Components
> Fuel Injectors
> Installation and Removal of Coolers Heaters
> Hydraulic Hoses

There are others that we wish to include and some we wish to exclude …
Thanks in advance for your time …

The Company submitted that this email only removed “Exchange Components”. That is, it did not specifically remove “starters”. The Union submitted that the removal of the general category “Exchange Components” included the removal of the specific examples, including starters.

The parties are agreed that I am to interpret the language of the collective agreement without recourse to any extrinsic evidence. That is, the language is agreed to be unambiguous. Looking at the preliminary exemptions list as a whole, I conclude that there were fourteen different numbered “items” on the list Item two is “exchange components” with four subcategories, including starters. “Exchange components” is, in effect, defined by the four examples set out: starters, alternators, compressors and fuel pumps. In the parties’ submissions made on this point there was some discussion relating to the fact that a semi-colon, not a colon, follows the phrase “exchange components”. I am not satisfied that the parties intended any specific grammatical effect other than to demarcate the general term from the specific examples. The meaning argued for by the employer would lead to the unlikely result that the Union’s removal of the general, all encompassing, descriptor “exchange components” would leave on the exemption list the specific examples, including starters. I conclude that the Union’s removal of “exchange components” from the exemption list on November 16, 2004 had the effect of removing all of item two, including starters. Accordingly, as at the time of the grievance, the starters at issue were not on the exemption list.

The Company also submitted that to purchase exchange starters, as it did, was not contracting out the work of the bargaining unit. In supra, the employer purchased a rebuilt engine for one of its tractors to replace an engine with a damaged crankshaft. The employer was not equipped to repair the crankshaft; that repair would have been sent out in any event. It took four days to swap out the replacement engine. It would have taken 1 week to repair the engine in house. In the previous three years, seven rebuilt engines were purchased and 10 were

rebuilt in house. The Board found that there was no violation of the contracting out language because it was more efficient to buy the rebuilt engine and the Company was not equipped to repair the crankshaft. Both of those criteria were contained in the collective agreement language under consideration. The Board saw the purchasing of the replacement engine as "nothing more than the purchasing of a new piece of equipment by the Employer to replace a damaged piece of equipment, or to acquire equipment which it did not previously possess" (see paragraph 18).

In supra, Arbitrator Hope found that the purchase of a new snowplow, did not amount to contracting out work normally performed by members of the bargaining unit.
In supra, Arbitrator Ready upheld the employer's right to have certain locomotive parts replaced with OEM parts, under warranty, rather than rebuild them in house. The collective agreement specifically exempted warranty work from the contracting out prohibitions.

In the matter before me, the Company witness, Mr. Predinchuk concedes that the bargaining unit generally performs the rebuilding of such starters. He also says that the employees who usually do this work were not immediately available. It is undisputed that the work was required to be completed promptly.

Not surprisingly, the resolution of this matter comes down to the cogency of the evidence provided by the parties. Mr. Predinchuk's evidence includes the following:

> 2) No other persons with the skills to perform this work, with satisfactory training and with the proper qualifications were available. Mr. Predinchuck was concerned that by bringing people in from other Departments without adequately accessing

> [sic] their skills, training and qualifications, he would have been unable to vouch for the quality of the work.

Mr. Da Prat's evidence was that:

ERS, Fitting floor machinists and some mechanics could easily rebuild starters. Da Prat has rebuilt starters for Algoma in the ERS shops.

Neither party sought to cross -examine the other party's witness.

It appears that no general canvass was made so Mr. Predinchuk was in no position to say that no one with the skills necessary was available to do the work. Mr. Predinchuk's main concern was that he would have to assess the skills, training and qualifications of anyone who volunteered prior to being able to "vouch for the quality of their work". This seems to me to be a normal supervisory responsibility. It was not a reason to fail to adhere to the requirement of the collective agreement to offer overtime prior to contracting out work normally performed by members of the bargaining unit. There ought to have been a canvass for this work. This aspect of t he grievance is allowed. The Union is to be made whole for the lost dues and assessments. It has not been established that no one was available to perform this work. Accordingly, the Union is also to be paid the lost wages as compensation for the work opportunity lost to the bargaining unit.

There was no template filed. That process violation may be addressed in final arguments on this grievance, if the parties are so advised.

No Template, SDM System s Performing Labour Work in DSPC on October 19, 2005

This work involved removal of grease and oil build up in the Direct Strip Production Complex (DSPC). Paragraphs four and five of the Company's facts are as follows:

> 3. While this work was initially performed by ASI Mill Operations (Labourers), it was not bargaining unit work. Numerous complaints by bargaining unit members were made as the work was very physically demanding and had to be performed in tight and crowded areas. Consequently, SDM Systems has been brought in to perform this work at the ASI for a t least the last 3- 4 years. No grievances were filled.
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> 4. This work is generally performed once every month during extended downtimes. A template for this work has never been submitted over the last 3 – 4 years. As the Company has relied upon the conduct of the Union in not objecting to the work and not grieving.

Mr. Blanchette was the responsible manager. His evidence is as follows:

> 1) This work started in 2003. It is possible that the Union Hall did not know that this work was taking place. However, the Union members on the shop floor knew that this work was ongoing as they explicitly refused to do this work and were glad when the work was contracted out as they did not have to perform it themselves. The members regularly had refused to perform this physically challenging, tedious and dirty work.
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> 2) Due to the physical nature of the job, the lack of supervision and lack of coordination regarding these assignments, there has been reluctance to use labour pool to perform this work.
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> If this job was posted plant-wide, those who volunteered for it would refuse to perform the work once they realized what it entailed. For example, this November, there was a posting for this work. Three employees from the

DSPC volunteered, but then refused to perform the work. There was another volunteer from Primary, however, he refused to perform the work for one shift, insisting that he be given two shifts. Consequently, no volunteers have come from posting this job company -wide. It is a job that most members will gladly see contracted out.

3) An e-mail was sent by Mr. Blanchette to Merle Evans and the 2251 Contracting Out Committee on December 18, 2006 at 12:57 pm as a follow-up to the contracting -out template. The Union at no point replied to agree with the contents of the follow-up or to raise concerns with regard to the process.

Mr. Blanchette concedes that it is possible that the Local Union may not have known this work was taking place and that indeed is the position advanced by the Local. It is not for individual employees to make arrangements with the Company that bind the Union. The Company's bold assertion in paragraph four of its facts that this was not bargaining unit work is not made out. This is labourers' work. This work was initially, and properly, assigned to bargaining unit members. The fact that employees would sooner not do the work or a "reluctance" to use the labour pool to do the job does not remove it from work normally performed by the bargaining unit. There are no specific skills or equipment required. It would certainly fall into labourer classifications. This is bargaining unit work that was contracted out contrary to the collective agreement. In view of the refusal of individual employees to do the work, I am not satisfied that there should be reimbursement for hours lost. However, the Union is entitled to lost dues and assessments. Any process issues may be addressed in the common arguments and specific remedies hearings.

#7 Blast Furnace, Granulator 10 Day Shut Down October 14 28, 2005

The granulator grinds iron dumpings into powder. In October 2005, both the Lime Plant and the Granulator were shutdown for major maintenance. The following facts were agreed:

1. The Granulator is a machine that takes the dumpings from iron making and grinds them into powder. This is then sold to customers.

2. During the time in question, there was a dual shutdown of both the Granulator and the Lime Plant.

3. On September 23, 2005, a plant wide overtime canvass was posted for mechanical maintenance overtime work in the Lime Plant. This work was to be performed during the 24th and 28th of October. Those willing and able to work overtime were fully utilized in the Lime Plant work.

4. The type of skills and qualifications required in both assignments were identical. Therefore, all employees were already being fully utilized in work of similar priority. Taking from one to give to the other would not solve the short-term staffing requirements.

5. A request for iron making labourers was made to Lorne Jones. Mr. Tucci was told that the labourers required would be unavailable as they were already fully utilized. Nevertheless, all Labour work in the granulator was performed using ASI forces.

6. A plant -wide overtime canvass was undertaken on October 5, 2005 for mechanical maintenance work to be performed on the granulator. This work covered overtime for the period between the 20 and the 28 of October.

7. An agreement was reached on October 14, 2005 to conduct an overtime Canvass as of the 18 of October for work on the granulator. This agreement was entered into between MacVicar, Graystone, Frech.

From a review of the documents filed by the Union, it is clear that the discussions which ensued regarding the template for this work resulted in all labourer hours ultimately being supplied by ASI. Initially, 700 hours of labourers' work was to be contracted out. Other occupational classifications did not fare so well, due to shortages of manpower. The

Union does not assert that the Company should staff to a level that includes full coverage for all downdays. However, it says that there are sufficient downdays in the various areas of the mill as ought to influence the staffing-line process, possibly resulting in hiring. The Company continued to submit that it was entitled to contract out because there simply were not sufficient employees available to do the work. Nothing distinguishes this situation from many of those already decided. There are not the hallmarks that would result in payment of lost hours to the Union, since it appears that everyone who wanted to work did. However, the Union is entitled to lost dues and assessments for the hours that were contracted out. The Union's submissions with respect to losses resulting from process defects will be addressed in the common arguments and special remedies.

Outstanding Matters

The remaining allegations in this grievance were withdrawn, on consent, without prejudice: Templates T -05-495, 511, 522, 510, 515, 507.

Dated at Toronto this 6th day of June, 2007

Daniel Harris, Sole Arbitrator