

Subtitle: Re: General Grievance 05-538 regarding contracting out and Template T-05-354

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Algoma Steel Inc. (the Employer)

- and -

United Steelworkers of America (the Union)

AND IN THE MATTER OF General Grievance 05-538 regarding contracting out and Template T-05-354.

Heard Before: Daniel Harris, Sole Arbitrator

Date of Hearing: June 6 and 7, 2006

Decision Date: June 20, 2006.

Appearances:

For the Employer: Ross Dunsmore, and Steve Orr

For the Union: Mike Da Prat, Merle Evans and others.

AWARD

General Background

This is the first of a number of contracting out grievances arising between Algoma Steel Inc. and the United Steelworkers of America, Local 225. There are five grievances covering consecutive 21 day periods. Each grievance encompasses the union's allegations of incidents of improper contracting out within each of the five periods. In all, there are some 183 alleged violations. In my view, to hear these allegations in the normal course would defeat the parties' right to a speedy resolution of the disputes that arise between them.

The parties have negotiated a unique process for dealing with the contracting out of work. The implementation of that process is still developing. The parties have an overriding interest in continuing to refine and advance the implementation of that contract language. In that vein, the matters before me involve not only the individual disputes, but also include the larger concerns of furthering the implementation of the overall process, a process seemingly intended to resolve such disputes before they develop.

Part of the contracting out provisions is set out in the "Letter of Agreement Re: Contracting Out Review". One requirement of that letter, which has not yet been implemented, is the Dispute Resolution Procedure as follows:

Dispute Resolution Procedure

The parties must develop an expedited process to resolve disputes and issues surrounding contracting out including the reasonableness of either party's position with respect to any issue, including whether or not items, functions or activities should be placed on the Exemption List.

This provision confirms that the parties recognize that it is to their mutual benefit to engage in a process that quickly addresses their contracting out disagreements. To that end, and in accordance with my jurisdiction under s. 48 (12) to control the arbitration hearing process, I proposed to conduct the hearing of these matters in a fashion that will assist the parties in the development of the "Dispute Resolution Procedure" set out above.

The union produced a volume of documents relating to the allegations included in each grievance. Each volume includes the documents and particulars relating to each allegation of improper contracting out. The union is to be commended for having marshaled its case in such an accessible fashion. I proposed, and the union then provided, a brief statement explaining its facts and arguments relating to each allegation.

The employer reviewed that documentation and provided a written response setting out a brief summary of its facts and arguments and providing other documents it intended to rely upon.

All of the documents were provided to me in advance so that I might review them prior to the hearing.

The following principles were agreed upon and form a set of Rules of Procedure that may be added to from time to time:

- 1) The parties will file generic material as well as material that specifically relates to the instances of contracting out raised by the grievances;
- 2) The generic, or precedent, material will consist of three categories, being the primary documents giving me jurisdiction, Algoma Steel jurisprudence and other jurisprudence external to Algoma Steel. The precedent material will be compiled into a "Precedent Book" which may be added to as these matters are heard so as to create a permanent shared resource upon which the parties may rely in future disputes;
- 3) The material relating specifically to the particular instances raised by the grievances is to consist of copies of any documents upon which the parties intend to rely, along with a statement of facts and arguments. These being union grievances, the union shall file its material first. The employer will file responding material;
- 4) The statement of facts and arguments will include a concise summary of the facts relied upon, the law relied upon, drawn from the Precedent Book and the outcomes, or remedies, requested;
- 5) In the event that either party seeks to contradict the facts of the other party, they will notify the other party, following which witness statement(s) will be provided by the challenged party that set(s) out the witness's evidence in chief. The witness is to be made available on the day of the hearing, to be cross-examined by the party challenging the facts, subject to the arbitrator's direction at the hearing;
- 6) Copies of the above material are to be forwarded to the arbitrator in advance of the hearing;
- 7) At the hearing, the union will present a summary of its case, based upon the material filed. In the event that the employer has challenged the union's proposed facts, the need to cross-examine any union witnesses will be addressed at that time. The employer will then present a summary of its case. Again, in the event that the union has challenge the employer's proposed facts, the need to cross-examine any employer witnesses will be addressed at that time. The union will subsequently have an opportunity to reply to the employer's summary;
- 8) The arbitrator may reserve any decision on the matter for a period not exceeding two weeks. Brief written reasons will be provided sufficient to assist the parties in resolving future matters;

These Specific Proceedings

This specific matter is the first allegation, template T-05-354, contained in grievance number 05-538 and involves the company's decision to contract out the repair of Heavy Lift Transport Dump Boxes. The general factual context is captured by the following excerpt from an email sent by Brent Lanaway on July 14, 2005. Mr. Lanaway is the Shops Superintendent:

SUBJECT: #217 & #5 cetc box rebuild

Guys, Ctec box availability is now an issue due to the new scrap handling program in #2 bosp. Currently there are 2 boxes out of service for "major" rebuilds and 18 boxes with problems with the cylinder locking devices. Our customer (transportation) and his customer (#2 bosp) want an expedited repair schedule.

Our proposal is to contract out the 2 boxes for rebuild and work overtime on the 18 boxes with locking device issues. In addition we need to install locking device "protection guards" on the balance of the fleet (12-15 units).

The car shop is continuing to work high levels of overtime to deal with ongoing work and backlog on lime car repairs, iron ladle fleet mtce and repairs as well as preparation of spare running gear assemblies for the replacement bottle for #26 ladle. In addition a safety job for Kmagg bumpers, casob boxes and road mtce equipment.

I will schedule a meeting for discussion next week... Al Rouleau will be replacing me at the meeting.

A meeting was held at which T-05-354 was discussed. The discussion was summarized in an email from Bob Roussain as follows:

SUBJECT: Union's View re: Discussion regarding template 05-354 "Full scope rebuilds for #5 and #217 CTEC Boxes"

Gentlemen, on behalf of the Union and the UMC, Merle Evans, here are some of the pertinent points brought up during the discussion. This is NOT a formal response from the Union regarding the Company's request to contract out Bargaining Unit work.

2 CTEC Boxes require full rebuild

15 other boxes require and upgrade that takes approx. 16 hrs x two men (one car repairman and one shops welder)

There are no formal inspection records. Reports on the conditions of various ctec pallets and boxes are made by the trucks foreman and the mobile car repair gang.

No formal pm or repair program exists and hence scheduling of the work as per shops practice) is not easily accomplished. (lack of formalized inspections and reporting as well).

The car shop bay is capable of holding two ctec pallets for repairs and a third area could be used for repairs of 16 hrs or less durations.

Switching of ctec pallets in an out of the car shop is not consistent. It was reported that boxes sat in the shop up to a week prior to removal.

The inspection and location of the boxes is difficult at best and once they are in service there is a reluctance to take them and substitute them for another box.

There is little to no communication between the customer and service provider on the best approach for these repairs as evidenced by lack of record keeping and lack of negotiated repair scopes and repair times/duration.

These boxes will be in service as long as ASI makes steel from scrap or hauls scrap from its mills.

Currently on average there is one car repairman and one welder assigned to the area on dayshift and overtime usually consists of the same.

Preparation of plate and shapes for replacement on boxes is limited to the capacity/backlog encountered in the shops dept. flamecut area (where the material is prepared for all shops work).

Approximate manpower allocation for repairs:

- a. locking devices (not proposed for contracting out) 2men @ 16 hrs each times 18 locking devices.
- b. Full scope rebuild: duration approx. 3-8 wks contingent on crew size (this is proposed for contracting out)

Alternatives:

1. Immediately institute a regular, inspection, reporting, and scheduled repair program for boxes and pallets
2. Immediately initiate repairs to boxes requiring the least amount of work (using ASI employees), this would put more boxes in service condition faster.
3. Boxes requiring full scope repairs should be done near the end of the campaign when volatility (box availability) is less. These full scope repairs to be done using ASI employees at the Car Repair Shop.
4. Manpower may be augmented in the following ways:
 - a. OT spareboard for car shop, internal then plant wide
 - b. temporary assignment of skilled individuals currently working labour.
 - c. hire new employees with the necessary skill to perform the work required

- d. train existing and new employees to have the necessary skills to perform the work
5. Go to the Joint Steering Committee if required to implement these alternatives

The union's submission, in essence, is that the company has failed to keep the complement of bargaining unit employees high enough to do the work required. Accordingly, an artificial need has been created to contract work out. At the same time it maintained that there was sufficient interest in the Shops to perform this specific work. That is, this work could have been completed on overtime.

The company, on the other hand, says that the employees were working so much overtime that there was no reasonable prospect that this work could be completed in a timely manner on overtime. Mr. Lanaway unequivocally agreed that the impediment to keeping this work in-house was a shortage of manpower. On that basis he could not accept that there was any need or utility in posting plant-wide to bring in workers to the shops to do this work on overtime. To do so would simply be to export his manpower shortage to some other department.

The union, in order to resolve its contradictory positions, advised that it would restrict its submissions here to the need to hire more employees. It examined earlier collective agreement language that dealt with agreed upon staffing reductions as determined by the Haefling Award [Algoma Steel Inc. and USWA Local 2251 (unreported, Haefling, November 29, 2004)]. It said the company went beyond those staffing reduction limits, which has led to this contracting out and an over-all increase in grievances relating to contracting out.

The union said the collective agreement lays out a clear process for contracting out that requires the company to follow specific administrative steps that could potentially result in hiring more employees in order to keep the work inside. The company is required to hire in sufficient numbers to address the workload. The company here has agreed it does not have sufficient manpower to do the work and employees have reached their overtime maximums, in the Shops and elsewhere. The provisions of the collective agreement were an attempt by the parties to fashion a process that would drive both parties to the same conclusions on staffing. That process contemplates the consideration of a five-year period of historical data to ensure that arguments and disputes are kept to a minimum. The company has failed to follow that process.

The employer submitted that it is undisputed that there were not sufficient qualified persons to perform this work. Accordingly, the company was free to contract the work out. It said that it has no jurisdiction to require the company to hire more staff. That is a prerogative reserved to management. The employer reviewed the history of the parties' relationship and concluded that the current contract language reasserted management's right to manage following a period of joint management. Although the current language is not ambiguous, the parties are still struggling with its implementation and neither party should be saddled with negative consequences for purported breaches of directory, not mandatory, requirements as they pertain to overtime.

I turn now to a brief consideration of the collective agreement provisions that touch on contracting out as raised by the parties.

The union relied on article 1.01.10, the relevant portion of which is as follows:

1.01.10 The Company recognizes the Union as the sole bargaining agent for all the employees of the Company (within the meaning of the term employee as defined in the Labour Relations Act, R.S.O. 1960) in Sault Ste. Marie, Ontario, which the following exceptions: ...

This article is not applicable to the present circumstances because the people doing the contracted out work are not employees of ASI.

Of direct importance is article 1.02.10

1.02.10 Except as agreed to by the Local Union, work normally performed by employees within the bargaining unit or similar work which has been past practice to have performed by employees within the bargaining unit shall continue to be performed by employees within the bargaining unit, except when employees with the necessary skills are not available for such work. No employee will be displaced from his job or be laid off or continue to be laid off as a result of the company contracting out such work. Where a sufficient number of qualified and eligible employees are available, they will be offered to work overtime prior to contracting out such work. (This sentence and commitment cannot cause another problem re: rest periods, pyramiding, etc). The Company may contract out work not normally performed by employees within the bargaining unit, but shall, whenever practicable, and especially during layoffs, have such work performed by employees within the bargaining unit.

1.02.11 Subject to the provisions of the “Exemptions List” section of the Letter of Agreement re: Contracting Out Review, the following process will be followed for work that the Company is considering to contract out

1. If contracting out is being considered, a contracting out template (the ‘template’) will be immediately initiated by management. The template will include the following:

- a. location, type, duration and a detailed explanation of the work and the designated contact person;
- b) occupations involved and the anticipated use of bargaining unit forces;
- c) the effect upon the operations, if the work is not completed in a timely fashion

- d) copies of any bids from outside contractors and any internal estimating done by or on behalf of the company regarding the use of the outside contractors, if available;
- e) the date and time by which a response must be received; and,
- f) the reason for the need to contract out the work (i.e. manning, equipment, etc.)

The template is to be forwarded to the affected Steward(s), the “Union Co-Chair of the Union Management Committee” for review, discussion and resolution. The Union Co-Chair of the Union Management Committee will provide a response to the designated contact person by the designated date and time

2. Should the Union Co-Chair of the Union Management Committee believe a meeting is necessary, a written request will be made within two (2) days (excluding Saturdays, Sundays, and holidays) to the designated contact after receipt of the template. The meeting will be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. At such meeting, the parties shall review the plans for the work to be performed and the rationale for using outside entities. The parties will be provided with all of the available information concerning the issue at hand.
3. If agreement is reached, the completed template will be forwarded to the Joint Contracting Out Review Committee.
4. If agreement is not reached or a timely response is not received from the Union, and the Company contracts out the work, the Union may file a general Nature Grievance. The template will be forwarded to the Joint Contracting Out Review Committee.
5. Notwithstanding the foregoing or any other item within Article 1.02, or the Letter of Agreement re: Contracting Out Review, the parties recognize that work of an emergency nature may be contracted out if the alternative would be to place the facilities and/or employees and their employment security in jeopardy.

As is evident from this article, the parties have also entered into a “Letter of Agreement re: Contracting Out Review”. That is reproduced as Appendix “A” hereto.

For present purposes it is sufficient to note that the parties have agreed to a comprehensive and ongoing process to review the degree of contracting out that is taking place. That review has a monthly component, a quarterly component and a yearly component. The yearly exercise is particularly noteworthy. Part of that exercise is the aggregation of the data from the ongoing reviews into “a graph along with the rolling five (5) year data for each trade/area”. (“Addendum “A” Contracting Out, paragraph 4).

The Addendum goes on as follows:

1. With the benefit of this graph, the parties will then attempt to agree on the proper force level for each of the ASI trades covered in the Block Planning Process. This will be accomplished by establishing a 'staffing line' on the graph that best represents the level of sustainable work that ASI forces could perform (includes scheduled work, overtime, backlog/deferred work, and that work which will be 'contracted in').
2. Once this process is complete, all work that exceeds this agreed to level may be contracted out subject to the terms contained within the "Exceptions" section.
3. Once this Force level is established, the parties will review the anticipated attrition rate for the up-coming year in their efforts to determine whether or not given the outcome from Item #5, there is a need to hire additional forces into ASI. If the analysis shows a need to hire, the contractual posting procedures will be followed. An external hiring process will commence if there are not a sufficient number of qualified internal applicants in each trade that was identified.

It is readily evident that if the process is followed additional forces may be hired in order to reduce the amount of contracting out of bargaining unit work.

The review process outlined in the "Letter of Understanding" begins with the monthly meetings. Arbitrator Carrier found that those meetings were not taking place as required and ordered that they do so. [Algoma Steel Inc. and USWA, (unreported, Carrier, October 11, 2005)].

The monthly review by the Joint Steering Committee has both a prospective and retrospective aspect. It's forward-looking role is to review anticipated contracting-out for the next quarter and beyond. In this matter, the ctec boxes were being sent for repair as a result of the company adopting a new scrap handling program. That program had been under discussion for some time and must have been known to the Joint Steering

Committee (hereafter JSC), entailing as it did fundamental changes to the handling of scrap metal.

In addition to its forward-looking role, the JSC is to have produced to it, by the Company, "a detailed reporting of the work performed by outside contractors for the previous period (since the last report) using the information that is available." If the templates are being properly filled out, that foundation information would be available in order to produce the required report.

In my view the requirement to provide a template is mandatory and the information to be included is prescribed by article 1.02.11. Failure to complete the template in the form required is a violation of the collective agreement, irrespective of the validity of the contracting out which is the subject matter of the template. I reach that conclusion on the

basis that the templates are the first-rung data source upon which the entire contracting out review process rests. If the parties are to be able to fulfill their mandate to manage contracting out in accordance with the Letter of Understanding and its Addendum, they must have the data to do so. Production of the templates is a substantive requirement of this collective agreement.

It is not to be lost sight of that the primary directive governing contracting out is article 1.02.10, set out above. There is no issue here that the work in question is work normally performed by bargaining unit employees. Also, no employee was laid off as a result of the contracting out.

The article first requires that the work be performed by bargaining unit employees except when employees with the necessary skills are not available for such work.” It is agreed that there were not sufficient employees to simply assign them the work. That is the essence of the union’s case.

The article goes on to provide that, “Where a sufficient number of qualified and eligible employees are available, they will be offered to work overtime prior to contracting out such work.” The employer’s evidence was that no efforts were made to canvass for overtime in spite of it being obliged to make that effort. That is, no efforts were made to enquire plant-wide whether “qualified and eligible” employees might be interested in such an overtime opportunity. Also, the company did not know they would not get volunteers. The bases upon which the Shops Superintendent decided not to canvass plant-wide for overtime were the statistics available and the urgings of other managers that they too had reached maximum levels of overtime. That is, any overtime obtained from other departments would have likely resulted in those departments having to contract out their excess work. In my view that is not the test. Contracting out has been dealt with extensively in this collective agreement, and it is something that the collective agreement seeks to avoid. Without making enquiries, the company was unable to ascertain whether other work might be deferred. Further, employees from other departments might have preferred a steady overtime opportunity in the Shops. The company was obliged by the collective agreement to determine whether a sufficient number of qualified and eligible employees were available in order to offer this work on an overtime basis prior to contracting out such work. If that cascaded the contracting out to another department, that would simply be the result of the parties’ collective agreement.

In addition, the template required by article 1.02.11 includes the “location, type, duration and a detailed explanation of the work...”. Such detail is lacking from this template. That is the very information that would be necessary in order to canvass for overtime outside of the Shops. Had the structure of the template been followed, the company would have had the information required to offer the overtime.

Finally, I have not needed to consider the “Letter of Agreement Re: Contracting Out” of April 1992. However, in my view, to the extent that its provisions are contradicted by the newer letter, the newer letter’s provisions prevail.

In the matters before me the union asks for the following relief:

- a declaration that the Company has violated the contracting out provisions of the collective agreement;
- an order that the research and information required under "Addendum A" be supplied;
- an order that the company provide sufficient management resources to ensure completion within an ordered time-frame;
- that the aforesaid research be performed in conjunction with the union;
- That the Joint Steering Committee be ordered to discuss the issue within the time-frame;
- Barring agreement on a staffing line, that I take the information relied upon by the parties and declare which party's proposal is more reasonable;
- As regards template T-05-354, the union seeks lost dues and a special remedy of \$2,500 in damages

Most of the relief requested deals with macro level issues. That is, the back-end of the contracting-out process. Such relief would be premature at this point given that we are dealing with one template amongst dozens. However the final request is reasonable in the circumstances.

The union is awarded \$2500 for the violations described above.

Dated this 20th day of June 2006

Daniel Harris, Sole Arbitrator