

**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 05-538 and Contracting Out Templates  
Number T05-461, 462, 463, 464, 465, 466, 468, 474, 475, 478 and 479

**Heard Before:** Daniel Harris, Sole Arbitrator

**Date of Hearing:** July 6, 7, 19, 20, September 6, 8, November 20, 21, 2006

**Decision Date:** January 8, 2007

**Appearances:**

For the Company: Ross Dunsmore, and Steve Orr

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

## **DECISION**

### **General Background**

This decision arises in the course of hearing a number of contracting out grievances filed by USWA, Local 2251, against Algoma Steel Inc. (hereafter ASI or the Company).

These grievances involve 183 alleged violations of the contracting out language of the collective agreement. This decision addresses the remaining contracting out allegations raised in General Grievance 05-538. My decision of June 20, 2006 dealt with template T-05-354, which is also part of General Grievance 05-538. The General Background and my reasons in that decision are equally applicable to the following templates.

### **Template T05-461**

Template T05-461 involved the contracting out of the fabrication of an iron ladle cover.

The parties agreed, that in light of my award in T-05-354, the template was not filled out correctly. The union submitted that this matter was similar to T-05-354 in most respects. The Company said that the difference was that this job required boilermakers to work as part of a team. Mr. Lanaway, the Shops contact person identified on the template, had sole management of the Company's boilermakers. Accordingly, he was in the unique position of knowing that there was no boilermaker available to do the work either on straight time or overtime. Without boilermakers available, a team could not be assembled to do the work, so there would be no utility in canvassing for welders. Mr. Lanaway testified that the fabrication of the iron-ladle cover would begin with the flame-

cutting of the components and there were only two employees trained on the machine to be used. The fabrication would also require boilermakers who were trained on his shop equipment. Having headed up the Shops Department since 1990, it was his opinion that since there had been no transfers of employees out of his shop into positions of erector or fitter/welder, there was no one else in the Company capable of doing the job.

It should be noted that a Contracting Out Template Meeting was held by the Union Management Committee. The notes of that meeting indicate that 4 - 8 hours of flame cutting was required, as well as 50 hours of boilermakers time and 80 hours of welders time.

My reasons in T-05-345 are equally applicable to this matter. The only difference is whether Mr. Lanaway's purported unique, subjective knowledge relieved the Company of its obligations to obtain objective data. To ask the question is to answer it. I understand and appreciate the hands-on, practical drive of Mr. Lanaway and the other members of management. In my dealings with these matters to date, I have also recognized those attributes in the members of the bargaining unit. No one has an interest in so burdening the operation that it cannot succeed. However, the larger entities, being the Company and the Local Union, have negotiated language that must inform the day-to-day activities of the operation. The process put in place to review and document every proposal to contract out work is required in order to fulfill the parties larger obligation related to block-force planning.

Mr. Lanaway cannot be taken to know the qualifications of all of the employees at ASI. His assessment may well have been confirmed by a canvass for the overtime hours needed. However, that did not relieve the Company of its obligation objectively to determine whether a sufficient number of qualified and eligible employees were available in order to offer this work on an overtime basis. He ought to have canvassed plant-wide for the trades needed. Had he done so, the UMC would have had objective information available for its consideration.

Article 1.02 requires the Unions agreement to the contracting out of work normally performed except when employees with the necessary skills are not available. Further, 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 nub of the Company's submissions is that there were not enough employees available to do the work. In large measure, the union shares that perspective. The Company says that the size of the workforce is to be taken as found. The union relies on what it says was the intention of the parties in crafting the block-force planning process in the Letter of Agreement and its Addendum A. That is, the seemingly permissive language of article 1.02 must be read in the context of the party's commitment to an ongoing review of the workforce size. The Company's answer is that it is not obliged by that ongoing review to make any specific commitment to increase the workforce. It may simply decide not to hire additional employees.

It is undisputed that the ongoing review has not occurred. Indeed, Arbitrator Carrier ordered, on October 11, 2005, that the employer is directed and undertakes, effective immediately, to schedule and conduct monthly meetings of the Joint Steering Committee at which time(s) it will outline and address work it will be contracted out in the next quarter following each meeting. The instant grievance was filed October 4, 2005. It is more likely than not that in the period covering this grievance, no meetings of the Joint Steering Committee were held, as required by the Letter of Agreement and its Addendum A for the purpose of reviewing all work which the Company anticipates contracting out during the next quarter (or further time span if available).

To my eye there has been an ongoing disregard by the Company of its obligation to participate in the workforce planning process. The repeated disengagement of front line managers from their obligations under article 1.02 has all but rendered the Letter of Agreement and its Addendum A superfluous. It cannot be that such disregard of the Union's rights is without remedy.

The grievance regarding this template is allowed for the Reasons set out above. The remedies are set out below.

**Template T05-462**

The template itself describes the work as Transition Weldment. Neither party was particularly clear as to what the project actually was, which is itself indicative of the inadequacies of the template and the template review process. The consensus seemed to be that this was a fabrication of a new dust collector for the lime plant. The Contracting Out Template Meeting notes indicate the following trade requirements:

boilermaker	-58 hours
flame cut	-4 hours
drill	-8 hours
welding	-16 hours
break transition	-16 - 20 hours

It was agreed that ASI does not own a large enough machine to do the bending/breaking work on this project, which is a significant portion of the work. The union's suggestion was that the bending/breaking work be done by an outside contractor, with the final assembly to take place at ASI.

In my view, it would not have been a reasonable course of action to contract out only the bending/breaking portion of this work. The evidence is that projects of this nature in the Shops Department involve a team composed of different trades. The bending/breaking represented a significant portion of the project, from which I draw the inference that the project was not the type of project that was normally performed by ASI. Further, it would not be reasonable to split responsibility for the final product in such a fashion. I agree

with Arbitrator Barton (ASI and USWA, May 10, 2004) at page 8 that a balancing is required.

To the above extent, the grievance relating to this project is denied. However, as in T05461, the template is deficient and the required process was not followed. The grievance is allowed to that extent. The remedies are set out below.

**Templates T05-463, 464, 465, 466, 475**

These templates involve the machining and resurfacing of various sizes of slabcaster rollers (or rolls). As the steel moves through the caster, the surface of the rolls deteriorates. Any defects on the surface must be machined off on a lathe and new face material welded onto the roll. This last process is performed on a sub-arc welder that lays a continuous bead of new metal as the roll is slowly turned. Once the new material has been laid on, the surface of the roll is again turned on a lathe to achieve the correct tolerances.

Somewhat less than half of the rolls are welded and machined internally, the rest are contracted out. There can be no question that this is work normally performed by members of the bargaining unit. There is also significant agreement between the parties that, in part, the inventory of caster rolls fell, leading to contracting out, because responsibility for keeping count was reassigned following the retirement of the inventory manager.

The templates were incomplete, but they were discussed at meetings. The union suggested that more of the work could be kept in-house if the roll-grinder was used, in addition to the lathes, to finish the rolls. As its name suggests, a roll grinder removes material by grinding it off with a grinding wheel. It was undisputed that a trial of the roll grinders demonstrated that the grinders took 27 hours to do work that could be accomplished on a lathe in 4 hours. Clearly, it was not a viable suggestion to use the grinders.

In my view it was a violation of the contracting out provision to have sent this work out. As was the case with T05-461, the parties do not seriously disagree that there was not sufficient personnel available to do the work. The real issue between them is the legal effect of that fact. The first part of article 1.02.10 bears reiterating:

A.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 by employees in 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 . . .

It is clear that there were not enough employees with the necessary skills available for such work. With respect to the caster rolls, Mr. Lanaway had made a proposal to senior management on May 6, 2005 to purchase additional machinery and temporarily reassign welders to clear the backlog. These templates were discussed with the union at meetings in September held pursuant to article 1.02.11(2). On the face of the templates, the value of these contracts was approximately \$375,000.

It is not only articles 1.02.10 and 1.02.11 that apply to contracting out. The Letter of Agreement and the Addendum also apply. As per Arbitrator Carriers Order, we know that the Joint Steering Committee was not meeting during the period from May to September 2005. The Company knew that it anticipated a major contracting out of the caster rolls which is work normally performed by the bargaining unit. It was obliged to raise this matter with the union at a Joint Steering Committee meeting.

The Company has often submitted to me that the JSC is a high level committee that ought not to be burdened by an interpretation of the Letter of Agreement that requires it to deal with each and every contract that goes to outside contractors. The burden placed on the JSC is one that has been settled on it by the Letter of Agreement and the Addendum to the Letter.

In its many submissions to me the union has consistently taken the position that there is insufficient personnel and that there has been a serious default in honouring the requirements of the Letter and the Addendum. In my view, the requirement of article 1.02.10 that employees be available to do the work must be read in conjunction with the unique process these parties have agreed upon to review the workforce levels in order to permit prior approval of contracting out by means of the exemptions list. The terms of this collective agreement, which includes the Letter of Agreement and Addendum, provide a comprehensive scheme of consultation, which has not occurred. That failure sounds in damages irrespective of article 1.02.40. The caster roll grievances are allowed.

Specific remedies are set out below.

**Template 05-0468**

This involved the demolition of the top 75 feet of the #6 Blast Furnace Gas Bleeder stack. Seemingly, the stack was in bad repair, so a new stack was built. Then a fire occurred which further damaged the old stack. It was necessary to complete this work on a primary down-day when the blast furnaces were not operating. It is undisputed that on such days everyone who wants to work overtime does so because extensive maintenance work takes place while the mill is not operating. The fact that this had to occur on a primary down day is a distinguishing feature from the situations discussed above. More importantly, I am not satisfied that this is work that would normally be performed by members of the bargaining unit. It is certainly work that would require the skills of erectors. However, there is considerable evidence that this was a unique project with significant safety concerns regarding the gaseous conditions in the area. On these bases, the grievance is denied.

**Template 05-474**

The grievance as it relates to this template was withdrawn by the union on a without prejudice basis.

**Template 05-478**

The grievance as it relates to this template was withdrawn by the union. The parties agreed that it was an emergency situation.

### **Template 05-479**

This involved installation of exterior sheeting on the roof gables at the ByProducts Phenol Plant control room. A new roof had been installed a couple of years prior. It is agreed that this was erectors work. A meeting was held pursuant to article 1.02.11 on September 29, 2005. It was estimated by the Company that the work would take four people eight days to complete (272 hours). At the meeting, the union suggested that two specific individuals could be assigned the work, Burns and Casselman. The Company rejected that suggestion because Burns and Casselman had transferred from erector positions into production positions. Their assignment would have disrupted production.

Having heard the evidence of Dave Duggan, Planner Central Trades and that of Bob MacVicar, the Erector Shop Steward, I conclude that it has not been established that either Burns or Casselman had the up-to-date safety and other training to perform the work. That is, they lacked the necessary skills. No other employees were suggested as actually being available.

The union's initial position here was as in the other circumstances above. There was a shortage of personnel. In all of the circumstances, it is more likely than not that there was no one available to do the work on straight time or overtime. It is appropriate to draw such an inference from the fact that the gables had not been closed-in with sheeting for two years.

For the reasons given in the roster roll templates above and T05-461, I find that there has been a violation of the collective agreement in failing to implement the entirety of the contracting out language. It is not reasonable to staff at levels that encroach on the unions ability to represent its members and which undermines the integrity of the bargaining unit.

### **General Comments and Remedies**

It is appropriate at this stage to make some general observations relating to the templates dealt with in this grievance.

In my decision of June 20, 2006, the union asked for various relief including a special remedy under article 1.02.40. That request was made in Section Two of its Statement of Facts and Summary Arguments and I made that award. In the course of the hearing of the remaining templates in this grievance, I made it clear that there would not be a further award in this grievance under that article. Article 1.02.40 is directed at willful or repeated breaches of the process set out in article 1.02, which would, of course, include 1.02.10, which governs the content of the templates and their consideration. Article 1.02.40 deals with punitive rather than compensatory damages. The failure to follow the process has been dealt with in my earlier award. Accordingly, I have not gone into much detail in these templates as to specific process inadequacies. By now it should be clear that the template must contain the information required by article 1.02.11 (1) (a) (f) and that proper canvassing for overtime is required prior to contracting out the work, if only

to satisfy the substantive requirement to complete the data trail.

As set out in my reasons above, it is my view that the Company has failed to staff at levels that respect article 1.02.10. Further, the failure to reach agreement or even conclusions under the Addendum, while staffing at levels that undermine the bargaining unit, must have a remedy. I agree with the Company that it is managements right to hire. I should think it unlikely that I could or would order them to hire staff. However, it is within my jurisdiction to order appropriate remedies for breaches of its obligations under the collective agreement, Letter of Understanding and Addendum.

I believe that the appropriate remedy for the templates that were allowed is that the Company pay to the union the dues lost from the Company's inappropriate contracting out of bargaining unit work. The remedial claim advanced by the union, in this grievance, included a claim for lost dues. The contract violation is with respect to the continued failure to implement the block force planning process. This applies to templates T05-354, 461, 463, 464, 465, 466, 475 and 479. In each case, there are estimates set out of the hours lost to outside contractors. I leave it to the parties to calculate the amounts and remain seized to deal with implementation if necessary.

As to the claims for individual redress, I am most influenced by the overarching reality that both parties, for different reasons, say there is insufficient personnel to do all the work. I have not been persuaded that it is possible at this stage to ascertain which individuals may have lost specific shifts of overtime. My decision to award lost union

dues is in the nature of a collective, or blanket, remedy, which is appropriate in these circumstances because the loss is really to the collectivity. An award of this nature also fits within the jurisprudence that has allowed damages for the loss of opportunity to consult, where such opportunity is protected by the collective agreement. Here there is a significant and comprehensive regime for prior consultation laid out in the Letter of Agreement and Addendum, which has not been honoured.

Finally, I turn to the Joint Steering Committee. The simple fact is that it is to meet not less than monthly in part, for the purpose of reviewing all work which the Company anticipates contracting out. That was ordered by arbitrator Carrier, yet the Company still resists doing so in its submissions before me. The Company has argued that the JSC could not possibly discuss each template that is produced, that it should be where higher level discussion occurs. I generally agree with that submission. However, it is a requirement of the Letter of Agreement that any new agreement or arrangement to use contractors that is outside the exemptions list or block force plan must find its expression in a template that is provided to the JSC. Currently, there is no exemptions list and there is no block force plan. Those templates are to be provided in sufficient time to permit the process outlined in article 1.02.11 to unfold. If the Company anticipates contracting out between meetings of the JSC, then the UMC would receive the template first and it would form part of the Company's review at the next JSC meeting. Whether it goes to the Union Co-Chair of the Union Management Committee before or after it is provided to the JSC, it is at the UMC level that it will be subjected to review, discussion and resolution. None the less, it must be provided to the JSC by the Company pursuant to the

requirements of the Letter of Agreement. This interpretation is not a license for the Company to refuse to discuss individual templates at the JSC. The behaviour of both parties in discussing contracting out matters at the JSC, and otherwise, is governed by the standard of reasonableness, as required by the Letter of Understanding.

I remain seised to deal with any outstanding issues including implementation.

**DATED AT TORONTO this 8th day of January 2007.**

Daniel A. Harris, Sole Arbitrator