2-12-1971

United States Steel Corporation Fairless Works and United Steelworkers of America Local Union 4889

Sylvester Garrett
Chairman

Alexander M. Freund
Arbitrator

BOARD OF ARBITRATION

Case USS-7119-S

February 12, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Fairless Works

and

Grievance No. SFL-69-5

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

Subject: Contracting Out

Statement of the Grievance: "We protest management contracting out work that should be performed by masonry employees.

"Facts: Contractors are performing work which has been done by masonry. Masonry is presently working a 32 hour week and should have been assigned to perform that work.

"Remedy Requested: Cease and desist and pay all monies lost to all employees in masonry."

Contract Provision Involved: Section 2-A-4 of the September 1, 1965 Agreement.

Grievance Data:	Date
Grievance filed:	November 4, 1968
Step 2 Meeting:	January 17, 1969
Appealed to Step 3:	February 7, 1969
Step 3 Meetings:	February 14, 1969
	February 17, 1969
Appealed to Step 4:	April 7, 1969
Step 4 Meeting:	May 8, 1969
Appealed to Arbitration:	July 16, 1969
Case Heard:	April 22, 1970
Transcript Received:	No transcript

Statement of Award: The grievance is denied.

In this grievance from the Masonry Department at Fairless Works the Union contends that certain subcontracted masonry work performed during a two-week period that the Masonry Department was scheduled for 32 hours per week should have been assigned the bargaining unit employees in order to give them a five-day week. 1

According to the Union, the following five jobs were performed by the contractor's employees during the two weeks of October 20 to November 2, 1968, when the Masonry Department was scheduled on the basis of a four-day week: 2

1. hot blast main patch expansion joints
2. weigh hoppers
3. shaker pans
4. casting tuyeres and swivels
5. well walls and checker stoves

These jobs were part of a major reline and hearth enlargement on No. 2 Blast Furnace, which the Company had notified the Union on December 17, 1967 was to be contracted out and on which the contractor had begun work in January 1968. It is not disputed that bargaining unit employees have performed such jobs on occasion in the past.

The parties join the issue here first on the question whether or not the grievance is untimely, the Company pointing out that the Union did not grieve until ten months after it was notified of the contracting out of the Blast Furnace rebuild. The Union maintains, and the Company denies, that the parties had an understanding that timeliness would be waived for the duration of the contracting out and that the Union could grieve concerning any of the jobs involved in the rebuild. The record includes supporting testimony for the parties' respective claims. According to the Union's testimony, the time limit was waived because so many COI's (contracting out inquiries) were involved that it was impossible in the time available to discuss each in detail. 3

With respect to the merits, the Union relies on Section 2-A-4-a(2), which provides that: 4

> "If production, service, and day-to-day maintenance and repair work has in the past been performed within a plant under some circumstances by employees within a bargaining unit and under some circumstances by employees of contractors, or both, such contracting out shall be permissible under circumstances similar to those under which contracting out has been a practice, unless otherwise mutually agreed pursuant to paragraph 2-A-4-d."

The Union argues that masonry work has been subcontracted in the past only when bargaining unit Bricklayers have had a heavy workload and a great deal of overtime; and that inasmuch as Bricklayers were on a short week when the contractor's employees work in the plant, the Company violated Section 2-A-4-a(2). There is also testimony by Grievance Committeeman Thomas Kempf that the Union had been assured by the Assistant Superintendent of Personnel Services, L. A. Hackett, that the men would never be on a short week while employees of a contractor were in the plant.

5 The Company argues that the Union did not question the reasonableness of contracting out the major reline and hearth enlargement on No. 2 Blast Furnace, of which the five masonry jobs in question are a small part; that it was not until 10 months later, when the grievants were scheduled for two four-day weeks, a development which could not be foreseen, that the Union complained; that as the Company's testimony shows, Masonry Department management was able by diligent effort to schedule the grievants for 32 hours per week for the period of October 20 to November 2 and return them to a five-day schedule immediately thereafter; that not only was there no violation of Section 2-A-4-a(2) under the facts of this case but also management's efforts to cushion the effect of the reduced workload were far and beyond those required by Section 2-A.

6 The testimony to which the Company refers, primarily by Masonry Superintendent Keith Bartels, is to the following effect. On October 16, which was Wednesday of the week prior to the two-week period involved here, Operations announced a cut-back to a lower

level of furnace operations and postponed work on the furnace coming down the next day to November 1. Inasmuch as the Masonry Department had completed its work on October 14 on the Open Hearth furnace that was down; and since the Open Hearth furnaces provide the bulk of the masonry work, it was apparent that the men were in for short work weeks. Masonry Department management canvassed every department in the plant to develop masonry jobs that could be performed and consulted with the Engineering Department, which deals with the contractors, to determine which masonry jobs involved in the Blast Furnace rebuild could be taken back.

The major part of the rebuild, the Company's testimony continues, had been subcontracted on a lump sum basis and none of this work could be reclaimed. The minor part was contracted out on a unit price basis, such work not being considered committed to the contractor until it is in progress; that is, the contractor has unloaded material, erected scaffolding, committed his work force or taken some other preparatory steps. Review of the status of the jobs subcontracted on a unit price basis revealed that they had been started by the contractor or were committed to him or were not ready to be worked on because the structural part of the job had not yet been completed and the masonry work could not be done. 7

However, Operations agreed to advance the November 1 date for the Open Hearth furnace. The job took ten days; in the usual circumstances, when overtime is scheduled, the furnace would have been ready in five days. Masonry Department management also got permission to repave the coke wharf, a job which had been scheduled for a later date. In the week beginning November 3 management could schedule the Department for five days because a number of the uncommitted furnace rebuild jobs which were not available in the prior two weeks were ready for masonry work beginning November 4. 8

As to the status of the five jobs associated with the furnace rebuild which the Union says were performed by the contractor's employees during the period October 20 to November 2, Superintendent Bartels testified as follows. The contractor's employees started the brick work on the first listed job, hot blast main patch expansion 9

joints, October 16 and began to change the expansion joints October 19, the job being completed October 29. The weigh hoppers job was begun by the contractor in the October 13-19 week. No work was done on the shaker pans in the two-week period involved here, management having determined that no work was necessary. Late in November Blast Furnace operating personnel decided to have stainless steel bottoms installed, and the contractor's employees performed the metal work and lining in December.

With respect to the fourth job, management determined that 10
work on the tuyeres was not needed, and the swivels were done by bargaining unit Masons in the latter part of November, the job not being ready before then. As to the last job, the well walls were begun by the contractor during the week of October 20 to 26, and the checker stoves were started October 29. According to the testimony of Construction Engineer Albert DePolo, whom Bartels consulted concerning the possibility of reclaiming some of the contracted out furnace rebuild work, the fifth job falls in the category of work committed to the contractor by reason of preparatory work performed by him.

FINDINGS

In maintaining that the Company had waived the time limit 11
for grieving the contracting out of No. 2 Blast Furnace rebuild, the Union does not argue that it retained the right to grieve the original decision to subcontract this major project. It contends only, in Grievance Committeeman Kempf's words, that: "If we saw a problem during the rebuild, we could file a grievance." And, of course, the problem which arose and which is grieved here is the unforeseen eventuality of two short weeks for bargaining unit Masons during which period the contractor's employees worked on the rebuild.

Thus the question of timeliness involves more than a pro- 12
cedural issue. What the Union says here in effect is that although it did not protest the contracting out of the furnace rebuild, it may invoke Section 2-A-4-a(2) to reclaim some of the subcontracted

work in order to avoid short work weeks for the bargaining unit employees. And, specifically, it cites five masonry jobs involved in the rebuild which, it claims, should have been assigned to the unit Masons.

This line of argument overlooks the clear provisions of Section 2-A-4. Here the Company gave adequate notice of its tentative decision to contract out the disputed work, in full accord with Section 2-A-4-e of the September 1, 1965 Agreement. There then was full opportunity for the discussion contemplated under Section 2-A-4-e. The matter thus appears to have been resolved at that time, since there was no grievance within the 30 days specified in Section 2-A-4-e protesting the decision to contract out this work. 13

While the Union now suggests that the Company had indicated it would not object to later filing of grievances, any such unusual agreement would run counter to the manifest purpose of Section 2-A-4-e and therefore may not be given effect by the Board. The same is true for the Union's broad claim that a Company official assured its representatives informally that employees would never work less than 40 hours per week while contractors' employees were in the plant. Inasmuch as Section 2-A-4-a, 2-A-4-b and 2-A-4-c set forth the substantive policies which control the contracting out of work, the claimed agreement is an illegal local substitute that can have no contractual status in view of Section 2-B-5, which provides that no local working condition may be established which modifies any provision of the Agreement, except as approved in writing by an International Officer of the Union and the Personnel Services Executive of the Company. As the Board has held in a recently issued case, USS-8224, where similar arguments concerning timeliness and past practice were raised, the parties are required to comply with all procedural and substantive provisions of Section 2-A-4. 14

Finally, Section 2-A-4, and particularly 2-A-4-e, leave no doubt that the proper time for the local parties to reach a decision as to whether a significant project may be contracted out is normally before the contract is let. Under all of the evidence, it must be found that this in truth is what was done here. 15

In the light of the foregoing discussion, it is clear that the present grievance is both untimely and lacking in merit. 16

AWARD

The grievance is denied.

Findings and Award recommended by

Alexander M. Freund, Arbitrator

This is a decision of the Board of Arbitration, recommended in accordance with Section 7-J of the Agreement.

Sylvester Garrett, Chairman