3-23-1971

United States Steel Corporation Eastern Steel Operations Fairless Works and United Steelworkers of America Local Union 5092

Sylvester Garrett
Chairman

Clare B. McDermott
Assistant to the Chairman

BOARD OF ARBITRATION

Case Nos. USS-7424-S;
-7426-S

March 23, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Fairless Works

and

Grievance Nos. SFL-69S-29
SFL-69S-31

UNITED STEELWORKERS OF AMERICA
Local Union No. 5092

Subject: Bargaining Unit Work

Statement of the Grievances: SFL-69S-29 (USS-7424-S)

"We the undersign claim the Company is depriving us of our Contractual rights of the Basic Labor Agreement of August 1, 1968.

"Facts: Company assigned Bargaining Unit Work to excluded (Co-op) personnel. See attached.

'Subject: Student Co-op. May 8, 1969

'The Company assigned Thomas Daley, a (Student Co-op) to collect the combined shop hours & dollarization, concerning the following Cent. Mtce. working Shop Orders.

S/O 43737 42555 43102

"'In conjunction with the above assigned work, the employees immediate supervisor informed him to instruct his vacation replacement, on job functions which made it impossible for the encumberant to complete work assigned to Co-op.

'Grievant will start his vacation for thirteen (13) weeks on 5-18-69.

'Work performed by the non-bargaining employee was from 9 AM to 3 PM, excluding lunch hour, for a total of five (5) hours.'

"Remedy Requested: Employee be reimbursed for all monies lost, and the Company is to be more realistic in their obligation to the Basic Labor Agreement (2A 2B3 & 9G)"

SFL-69S-31 (USS-7426-S)

"WE THE UNDERSIGN CLAIM THE COMPANY IS DEPRIVING US OF OUR CONTRACTUAL RIGHTS OF THE BASIC LABOR AGREEMENT OF 1968.

"Facts: COMPANY COST ANALYST, ASKED FOR CHARGES AGAINST VARIOUS SHOP ORDERS AND WAS INFORMED THAT WE COULD IMMEDIATELY FURNISH FOR YEAR 1968. ALSO, ALL CHARGES FROM 1962 to 1968. HE INSISTED ON COMING OVER AND COLLECTING. PREVIOUSLY THIS WAS GRIEVED & WAS WITHDRAWN WITHOUT PRECEDENCE OR PREJUDICE. THE COMPANY AGREED NOT TO CONTINUE PRACTICE WHICH UP TO NOW HAS BEEN KEPT.

"Remedy Requested: STOP IMMEDIATELY AND REIMBURSE FOR ALL MONIES LOST."

Contract Provision Involved: Section 2-A of the August 1, 1968 Salaried Agreement.

Grievance Data:

	Date	
	SFL-69S-29	SFL-69S-31
Grievance filed:	May 9, 1969	May 2, 1969
Step 2 Meeting:	May 20, 1969	May 20, 1969
Appealed to Step 3:	May 22, 1969	May 22, 1969
Step 3 Meeting:	May 28, 1969	May 28, 1969
Appealed to Step 4:	June 18, 1969	June 18, 1969
Step 4 Meeting:	August 25, 1969	August 25, 1969
Appealed to Arbitration:	October 20, 1969	October 20, 1969
Case Heard:	May 12, 1970	May 12, 1970
Transcript Received:	May 25, 1970	May 21, 1970

Statement of the Award: The grievances are sustained.

These grievances from the Maintenance Accounting Department of Fairless Works claim violation of Sections 2-A-3, 2-B-3, and 9-G of the August 1, 1968 Salaried Agreement in Management's having certain work done by personnel outside the bargaining unit. 1

Grievant in both cases is a Job Class 6 Labor Distribution Clerk in Maintenance Accounting. 2

The dispute in USS-7424-S arose as follows. On May 8, 1969, grievant was doing some work which he had started earlier, which was part of his customary duties, i.e., drawing off and recapping some labor- and material-charge statistics for dollarization purposes for three Shop Orders from the Combined Shop Order Distribution Report, the master copy of which is kept in Maintenance Accounting. After grievant began this work, he was taken off it and was told by his Supervisor to instruct his vacation replacement on the principal functions of grievant's job. Since he was assigned to that instruction work, grievant could not continue with the work he had been doing, and it was assigned to a Co-op Student from the Slab and Strip Division, who worked at it for five hours. 3

Apparently Slab and Strip wanted this data in a hurry, although the evidence does not indicate and the Company does not argue, that there was any emergency. Slab and Strip was told that it could not have the data extracted and accumulated right away and, if it wanted the data soon, it could send someone over to Maintenance Accounting and have him draw it off. That is what was done. 4

The dispute in USS-7426-S arose as follows on April 9, 1969. Apparently some other department wanted to get records of the cost per month for repair of plant vehicles, both Company-owned and those which are rented. The response was that such data were ready for the year 1968 in a report routinely made out by grievant every month. Seemingly, data were requested for the 5

years 1962 to 1967, as well, and, when told that this was not yet completed, a Cost Analyst was sent to dig this out of the Combined Shop Order Distribution Report, which work occupied between two and three hours. The Company says that this work was a data-verification assignment to support the 1970 Capital Budget Forecast then being prepared.

Case USS-7426-S was presented on briefs, for all practical purposes. That is, it was submitted with only one or two exceptions as being controlled by the record made immediately before it in USS-7424-S.

The Union says that the tasks performed by the Co-op Student and by the Cost Analyst were routine bargaining unit duties normally performed by grievant and thus that they could not properly be assigned outside the bargaining unit in view of the language of 2-A-3.

The document from which the data were taken on both days is the Combined Shop Order Distribution Report which exhibits to the various divisions their costs of labor and materials on each job, by the month. It is apparently a good sized document, and eight other locations get complete or partial copies. Grievant, in Maintenance Accounting, gets complete copies and seems to retain them for long periods of time, whereas other locations dispose of theirs after some time. Thus, grievant's location may be said to be the "library," and other locations often need data which can be found only in the copies kept by grievant.

At the several locations where full or partial copies of this report are kept, various personnel have access to them and in fact take data from them for various purposes. At a given location, the parties agree that bargaining unit employees, Supervisors, and non-Supervisory personnel outside the bargaining unit ordinarily would work with such copies, taking off whatever information might be needed.

The Union insists, however, that, regardless of the kinds of personnel which may have used this report at other locations, and the Union concedes that other than bargaining unit employees have accumulated data from it at other places, the taking of substantial volumes of information from it at Maintenance Accounting routinely has been confined to grievant or other bargaining unit employees since 1953. That is, the Union says that, if grievant needed data in that report, he searched through it and took the information out, and if Supervision or anyone else needed such information, they informed grievant and he or his fellows extracted it from the report. Thus, the Union insists that gathering data from this report at this location always has been done by bargaining unit employees and, therefore, under 2-A-3, cannot be done by members of Management or by excluded personnel. 10

The Company relies first on the admitted fact that bargaining unit employees have not made exclusive use of this report at other locations. The Company argues that, since Supervisors and other personnel use this report at other locations, the Union cannot narrow the issue to an alleged exclusive use of it by bargaining unit employees at this one location. 11

Secondly, says the Company, it is not true that only bargaining unit employees have used this report even at this location. A present Industrial Engineer who formerly was on an excluded, non-Management position of Industrial Engineering Technician in Maintenance Accounting, said that he had used this report at this location in 1961, in that he extracted shop hours and material dollars relating to a particular piece of equipment, for purposes of decision as to whether to buy a new piece of equipment or continue to repair the old one. The witness said that he made similar use of this report infrequently at this location from 1961 to 1964, while he was an excluded Industrial Engineering Technician. The Company claims that that position 12

was both non-Management and non-bargaining unit, allegedly similar to this Co-op Student and Cost Analyst.

13 In 1965, the witness became an Industrial Engineer, a member of Management, and he says that from then on he directed other non-exempt excluded positions (neither Management nor bargaining unit) to use this report. These were Industrial Engineering Technicians, Analysts, and Trainees.

14 The witness says that when he used this report, he took it off the shelf and sat down and examined it, without having grievant present with him. The same procedures allegedly were followed from 1965 on when the witness directed other non-exempt, excluded positions to use this report.

15 Grievant says that the Company witness on numerous occasions (approximately four or five times per month) from 1961 on came to him and requested data from this report, and he and grievant would sit down with it and break out information dealing with specific items of cost. Similar procedures allegedly were followed with other personnel under the jurisdiction of the Company witness from 1965 on. There were times also when the Company witness wanted only a specific item of information from the report, and grievant then would explain several column headings to him and would let the Company witness look for it himself, while grievant did other work. This occurred also with personnel sent there by the Company witness for specific data. If grievant were free, he would get it; if not, he would direct the other person where to look.

16 The Company witness denies that he and grievant ever extracted information from this report together. He says only that grievant sometimes would educate him on column headings.

The Union stresses that in USS-7424-S grievant already had started on the very work in question and then was taken off it in order to train his vacation replacement, and for that reason alone the work then was done by the Co-op Student. This is said to be clear indication that grievant normally performs this very work. 17

If the Company is relying of 2-A-3, the Union feels its reliance is misplaced because it is said that that provision would justify performance of certain work listed in Paragraphs 8.3, 8.4, 8.5, and 8.6, only when performed by a "Supervisor," and the Co-op Student and Cost Analyst are not Supervisors and are not "members of Management," either. The Union thus urges that Management cannot rely on Paragraphs 8.2 through 8.7, because they deal only with "Supervisors" or "members of Management" and not with excluded positions such as these. 18

The Company says that the Co-op Student and Cost Analyst are Management-associated positions, within the following language of 2-A-1: 19

> "...the term 'employee' does not include persons occupying...(f) confidential or other jobs directly associated with Management. Illustrative of the last mentioned category are: (a) Student, Technical Apprentice, or Management Trainee; (b) Cost Analyst...."

Since the positions involved here thus were "associated with Management," in the Company's judgment, they fall within Paragraph 8.7.

Section 2-A-3 in its entirety reads as follows: 20

> "3. Any member of Management at a plant shall not perform work on a job normally performed by an employee in the bargaining

"unit at such plant; provided, however, this provision shall not be construed to prohibit supervisors from performing the following types of work:

a. experimental work;

b. demonstration work performed for the purpose of instructing and training employees;

c. work required of supervisors by emergency conditions which cannot reasonably be foreseen by or are beyond the control of Management on the scene;

d. work which, under the circumstances then existing, it would be unreasonable to assign to a bargaining unit employee and which is negligible in amount.

Work which is incidental to duties of members of Management on a job normally performed by such persons, even though similar to duties found in jobs in the bargaining unit, shall not be affected by this provision to the extent such work is normally performed. It is not intended that the language of this paragraph shall cause Management to extend its prerogative to have such work performed by members of Management."

FINDINGS

The Union says that this Co-op Student is similar to a Management Trainee, as excluded in Part I of the May 6, 1950 Basis Agreement. The Cost Analyst is also listed as a non-Management job in that Agreement. Although the Company says that the job is not in Management, it claims that the Co-op Student is associated with Management. The parties have taken similar positions regarding the Cost Analyst job involved in USS-7426-S. Those positions of the parties form a sufficient basis for the Board to treat both jobs as members of Management for purposes of Section 2-A-3. Section 2-A-1 says that both jobs are "...directly associated with Management." Moreover, the Company defends on the basis of Paragraph 8.7, which is applicable only to "members of Management." Thus, however the Company may choose to look upon Co-op Students and Cost Analysts as an internal matter, in these circumstances the Board will treat them as "members of Management" for present purposes. 21

The difficulty with the Company's position on Paragraph 8.7 is, however, that it requires that the work in question be "...incidental to duties of members of Management on a job normally performed by such persons...," but here there is no evidence or suggestion of what are the "duties" of this Co-op Student to which the disputed task can be "incidental." 22

The Company brief seems to feel that, since the data he was drawing off allegedly were going to be used by Rolling Mill Supervision as basic information in deciding whether or not to buy some new equipment, it would follow that drawing off the data could be incidental to the making of that decision. But there is no evidence that the Co-op Student played any part in that decision and, therefore, that cannot be one of the "duties" of the job to 23

which the disputed work was "incidental." Finally, there is no evidence that this Co-op Student job ever had done any comparable drawing off and recapping of data from this report at this or any other location.

24 The situation may be somewhat different as to the Cost Analyst, which job may be involved in analytical assignments, although here, too, there is no evidence of what that position does. But, however that may be, there is no evidence to suggest that this Cost Analyst position has done any similar extracting of data from this report at this or any other station.

25 Consequently, the "incidental" category of 2-A-3 (Paragraph 8.7) does not help the Company, but that is not the critical problem here. The pivotal issue is not whether the Company has made out a legitimate defense under Paragraph 8.7 of Section 2-A-3, but rather whether the evidence shows that the Union has made a persuasive attack under Paragraph 8.2 of Section 2-A-3, or under 2-B-3 or 9-G.

26 That issue turns on whether the evidence shows that the work in question was "normally performed" by employees in the bargaining unit. If it was, it may not be done by "Any member of Management...."

27 As to Paragraph 8.2, the Company insists that the Union cannot prevail unless it is able to demonstrate that the work in dispute has been done <u>exclusively</u> by bargaining unit employees, presumably meaning 100 per cent of the time.

In this respect, the Company's original and main defense was that there were eight other full or partial copies of this report which were distributed to eight other locations which use Central Maintenance services and at those locations all kinds of personnel (bargaining unit, Supervision, other members of Management, and non-Management personnel) made various uses of it. Thus, the Company felt that that was a showing that this report had not been used exclusively by bargaining unit employees, sufficient to defeat the Union's claim under 2-A-3. 28

But, regardless of the uses made of this report by various kinds of personnel at those other locations, the Union is entitled to insist that it is dealing only with this very work at this location, as the word "work" is used in the second line of Paragraph 8.2, and that contrary treatment of this report at other places cannot defeat grievant's claim here if, in fact, at this location bargaining unit employees "normally performed" this work. 29

The Company says, however, that even at this location this work has not been done "exclusively" by bargaining unit employees, and that appears to be true when the Company testimony is taken at face value. That testimony would indicate in general that on an unspecified number of occasions, but infrequently, between 1961 and 1964 and Industrial Engineering Technician made some use of this Combined Shop Order Distribution Report and from 1965 to grievance time he directed other such positions which made some similar use of it. Thus, it must be taken as established that bargaining unit employees have not done this work exclusively, even at this location. 30

But, nothing in 2-A-3 (Paragraph 8.2) requires that the Union demonstrate "exclusivity." It is enough if the work in dispute was "normally performed" by bargaining unit employees, and that does not mean 100 per cent of the time. 31

It is unnecessary and would be unwise to attempt to state any given percentage figure as being equivalent to "normally." The Union testimony would indicate that grievant or some other bargaining unit job in this area has done the work in question nearly all the time, and that clearly would satisify the Union's burden under 2-A-3. 32

The Company's purpose in introducing the testimony of its second witness was to destroy the supposed requirement of "exclusivity," and that testimony succeeded, in that it could not be said that this work always has been done by bargaining unit jobs. But, as stated above, that kind of stringent showing is not necessary. Moreover, since the Company apparently felt it had succeeded when it demonstrated absence of "exclusivity," its testimony did not develop any helpful details of how often or under what circumstances the Industrial Engineering Technician did this work between 1961 and 1964 or how often he, as an Industrial Engineer, directed other Technicians to do it between 1965 and 1969. The witness said that he used it "...so infrequently, or sporadically...," which still would leave this work as "normally performed" by bargaining unit employees. Indeed, grievant's testimony would indicate that, when such positions came to dig out this kind of information, he worked with them, and the Company's second witness agrees that grievant sometimes had to explain various headings to him, which supports grievant's testimony that he worked with the Company witness. 33

Thus, the proof is in this condition. Union testimony by the employee who works with and has custody of this report says that bargaining unit employees have done almost all of the work in question. Company testimony by a man who was not so closely connected with the physical location of this report says that other than bargaining unit employees have done this work infrequently. Thus, on the whole it seems that the work has been "normally performed" by employees in the bargaining unit under Paragraph 8.2. 34

Accordingly, the grievances will be sustained.

AWARD

The grievances are sustained.

Findings and Award recommended pursuant to Section 7-J of the Agreement, by

Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman