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BOARD OF ARBITRATION

Case USS-4901-S

March 12, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Fairfield District Works
Ensley Steel

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1489

Subject: Scope of Bargaining Unit - Contracting Out.

Statement of the Grievance:

Grievance Nos. 151-2331; 151-2337

Grievance 151-2331:

This grievance was filed in the First Step of the grievance procedure February 4, 1964.
Grievance 151-2337:
"We, the undersigned employees of the Shops and Service Department protest management's action in contracting out work we have always performed."

This grievance was filed in the First Step of the grievance procedure February 26, 1964.


Statement of the Award: The grievances are denied.
These two grievances from Ensley Steel Works protest closing down a Soil Conditioner Plant which was part of the Ensley Open Hearth Department, and assert that Management violated the April 6, 1962 Agreement, as amended June 29, 1963, when it contracted for the processing of accumulated slag at a slag dump to market as a soil conditioner.

Issues under Sections 2-A and 2-B of the Basic Agreement are presented, as well as under that portion of the Experimental Agreement (attached as Appendix C to the Basic Agreement) reading as follows:

"A. Contracting Out

"The parties have existing rights and obligations with respect to various types of contracting out. In addition, the following supplements protections for bargaining unit employees or affirms existing management rights, whichever the case may be, as to those types of contracting out specified below:

"1. (a) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees in the bargaining unit shall not be contracted out for performance within the plant, unless otherwise mutually agreed pursuant to paragraph 4.

" (b) 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 in the bargaining unit and under some circumstances by employees of contractors, or both, such practice shall remain in effect with respect to such work performed within the plant, unless otherwise mutually agreed pursuant to paragraph 4.
"(c) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees of contractors may continue to be contracted out, unless otherwise mutually agreed pursuant to paragraph 4."

There is no serious conflict of evidence as to major background facts. From 1900 until recent years, Ensley Open Hearth slag contained enough phosphate and lime to make it useful for processing into a soil conditioner. Early in the century, however, the slag was "wasted" and conveyed to a location known as the Wylam Dump for discard. Around 1916 the Company began to process the slag, in the Open Hearth Department, for sale as a soil conditioner. At this time, the currently produced Ensley slag contained enough phosphate and lime to permit guaranteed minimum analyses of 8% phosphate and 40% lime in the soil conditioner.

For many years thereafter Ensley Works constituted the only U.S. domestic source of basic Open Hearth slag for soil conditioner use. Operation of the Soil Conditioner Plant consisted basically of receiving the hot slag from the furnaces, then crushing, grinding, screening, storing, and bagging it as a finished product for shipment.

The peculiar suitability of Ensley slag as a soil conditioner stemmed from two underlying circumstances: use of (1) a high phosphorus red ore mined locally, and (2) the duplex process in steel making.

Phosphorus in iron ore is not removed in the blast furnace, and so passes into the Open Hearths in the molten iron. Ensley Blast Furnace iron contained .85% phosphorus, which produced an Open Hearth slag with a 10% to 12% phosphate content.
In the duplex steel-making process, molten blast furnace iron is charged into basic Open Hearth furnaces after blowing in Bessemer converters. Charging of hot metal into the Open Hearth furnace takes place while the furnace still contains slag from the previous heat. The blown metal comprises approximately 80% of a typical heat; when charged through the slag left from the prior heat, most of the phosphorus is removed and passes into the slag. At this point the slag was drawn off (prior to adding slag-making elements for the new heat) and sent directly to the Ensley Soil Conditioner Plant in slag pots.

Major changes began to affect phosphate content of the Ensley slag, when the Company began using low phosphorus Venezuelan ore in 1954. About 50% of the ore charged into the Ensley Blast Furnaces after 1954 was Venezuelan, and only 50% local red ore. This combination produced blast furnace iron with a phosphorus content of .5% to .6%, and yielded an Open Hearth slag of 8% to 10% phosphate so that the Company still was able to meet its specified Soil Conditioner minima for phosphate and lime content (8% and 40%, respectively).

Late in 1962, however, the Birmingham area red ore mines were closed permanently, and T.C.I. thereafter relied entirely on Venezuelan ore. About the same time the Ensley Bessemer Converters were shut down and Ensley now uses the conventional Open Hearth process, with oxygen lances.

Management then began charging Fairfield Open Hearth slag into the Ensley Blast Furnace so as to maintain the phosphate content in the Ensley Open Hearth slag at a level adequate for soil conditioner use, as well as to use the metal content of the Fairfield slag. This new practice yielded blast furnace iron with .50% phosphorus content, and Open Hearth slag with phosphate content of about 6% to 6.5%. The Company thereupon
reduced the guaranteed minimum phosphate content of the Soil Conditioner from 8% to 6%, and the guaranteed lime content from 40% to 30%. At this time it also began bringing in Wylam Dump slag to blend with the current Ensley slag so as to upgrade the phosphate content.

A final significant change occurred in 1963, when it became clear that the rolling of Ensley steels for new types of light gauge tin plate involved serious problems because of excess phosphorus content. In December of 1963 this produced a Management decision to cut phosphorus content by reducing the amount of Fairfield Open Hearth slag charged into the Ensley Blast Furnaces. This in turn dropped the phosphate content of the Ensley slag to 4% or 5%, well below the 6% guaranteed minimum.

This meant that currently produced Ensley slag no longer was usable to produce the Soil Conditioner, and Management had to decide whether to continue operating the Soil Conditioner Plant. It would have been possible to do so by mining, crushing, drying, and hauling in slag from the Wylam Dump. From time to time, prior to December of 1963, the Company had recovered slag from the Wylam Dump, conveyed it to Ensley, and blended it with currently produced hot Open Hearth slag. On such occasions the necessary work at the Wylam Dump usually was done by outside contractors, but at times some such work was done by Ensley Yard Department employees.

During one period in the 1930's, Wylam Dump slag had been mined and dried for processing in the Soil Conditioner Plant because no slag then was being produced at Ensley. And in World War II, demand for the Soil Conditioner led the Company to supplement current Ensley slag production with Wylam Dump slag. In 1947, continued heavy demand induced the Company to arrange to ship Wylam Dump slag to a conveniently located Lone Star Cement
plant for processing into the Soil Conditioner. When this arrangement proved unsatisfactory, a contract then was let to another company to build and operate a soil conditioner plant at the Wylam Dump. After several months this contractor dropped out of the picture, and the operation was transferred to the Birmingham Slag Company. Birmingham Slag then produced the Soil Conditioner for marketing under U.S. Steel direction, specifications, and trade-name until 1953. This production supplemented production at the Ensley Plant (which continued to process all currently produced slag) and was in the following amounts:

1948 - 41,000 tons
1949 - 119,000 "
1950 - 117,000 "
1951 - 134,000 "
1952 - 117,000 "
1953 - 85,000 "

A major problem in using Wylam Dump slag to produce the Soil Conditioner arises from its high moisture content (between 12% and 14%) which must be reduced to about 1%, by drying, as a preliminary to satisfactory grinding. The Ensley Soil Conditioner Plant had no drying facilities, and so could not dry Wylam slag for use, by itself, to produce the Soil Conditioner product. When Wylam Dump slag occasionally was used between 1955 and 1962 to supplement the current slag supply from the Ensley Furnaces, necessary drying was obtained by blending up to 20% Wylam Dump slag with hot Ensley slag. In 1963 a Birmingham Slag Company dryer was used at the Dump to dry slag prior to hauling it to the Soil Conditioner Plant in Ensley.
When it became clear, late in 1963, that current Ensley slag no longer could be used (even with Wylam Dump slag added) to meet specifications, the Company considered various alternatives, including (1) building and operating a new slag processing facility at Wylam Dump, (2) mining slag at the Dump and conveying it to Ensley for processing, after modifying and enlarging the Soil Conditioner Plant to provide required new facilities, and (3) using an outside firm to mine and process the slag at the Dump.

The Company finally adopted the latter alternative, and contracted with Vulcan Materials Company (successor of Birmingham Slag Company), which was willing to erect a plant at the Dump, even though the reserve of usable slag there was estimated at about 1,000,000 tons, and would not last more than about 10 years (on the basis of estimated sales of 100,000 tons per year).

In deciding to shut down the Ensley Soil Conditioner Plant, Management was influenced by the following: (1) it would be necessary to purchase or rent loading equipment and heavy trucks to load and haul the slag from Wylam Dump to the Ensley Plant, with a possible problem of running such heavy loads over public roadways; (2) this would require double handling of a bulk, low cost, product thereby raising cost to an unsound level; (3) substantial alterations and additions to the Soil Conditioner Plant would be required (new drying equipment, relocation of the Primary Crusher and the building of an additional receiving yard); and (4) other substantial rehabilitation of the Soil Conditioner Plant (as replacement of an overhead crane) was required if it were to remain in operation.

Because of the relatively large investment required, and the limited amount of saleable slag, the Company was unwilling to pursue this course. Vulcan Materials Company, however, can move equipment from Wylam Dump to another location once the usable slag at Wylam Dump is exhausted, and also can operate on a seasonal basis.
The Union believes that Section 2-A of the Basic Agreement has been violated, because the Company arranged for slag processing by an outside contractor who uses some of the same slag which previously was processed by grievants. According to the Union, this action arbitrarily and unreasonably reduced the scope of the collective bargaining unit, in violation of principles expressed in Case N-159. Secondarily, the Union feels that a protected local working condition under Section 2-B-3 required that such work be performed at the Ensley Soil Conditioner Plant. It stresses that the Company did not abandon the Soil Conditioner business, and believes that its reasons for not doing the work at Ensley do not withstand scrutiny. It cites the existence of a "USS" sign by a road into the new plant, identifying it as the "New Basic Slag Plant," which the Company says was erected to guide truck drivers into the plant. The Company continues to market the product, and controls the minimum phosphate and lime content in the soil conditioner. The Union does not deny that it represents the Vulcan employees who now perform this work, however, and has not undertaken to prove that the Vulcan Materials operation at Wylam Dump in reality is so dominated and controlled by U. S. Steel as in effect to be a U.S. Steel operation.

The Company does not believe that this is a "contracting out" case at all, since the recovering and processing of slag at Wylam Dump never was performed by bargaining unit employees. Looking to the Experimental Agreement, the Company notes that slag processing at Wylam Dump is not being performed "within" the Ensley Plant for purposes of Section A-1-(a). And if Section 2-B-3 of the Basic Agreement could be deemed applicable, the Company stresses that the Soil Conditioner Plant at Ensley became inoperative because changed conditions cut off the hot slag source on which it depended. Finally, the Company urges that it was not practicable to modernize and add to the Ensley facilities so as to process slag hauled in from the Wylam Dump.
FINDINGS

The Experimental Agreement (Appendix C to the Basic Agreement as amended June 29, 1963) appears to reflect an effort to clarify and supplement pre-existing principles as to "contracting out" problems and to provide useful procedures for the future. It provides an appropriate point of departure for analysis of the present case.

To the extent that the Experimental Agreement might be applicable here, Sections A-1-(a), (b), and (c) provide the relevant guidance. These provisions leave no doubt that they relate only to the performance of work within a plant. The Company thus asserts that they are totally inapplicable in the present case because Wylam Dump is not, and never has been, "within" the Ensley Works. The Dump is an unfenced area at least a mile from Ensley Works, which is enclosed by a fence. The Union, of course, stresses that Ensley Works' employees have worked at Wylam Dump from time to time in past years, both in delivering wasted slag and in reclaiming slag for use at the Ensley Soil Conditioner Plant.

The phrase "within a plant" must be given a reasonable and practical interpretation under the facts of each given case. Perhaps because the present case would not in any event turn solely upon the phrase "within a plant," the parties have not made detailed or definitive presentations on this aspect of the case. It thus would be unwise, as well as unnecessary, for the Board now to rule that the Wylam Dump either is or is not a part of Ensley Works for purposes of Section A of the Experimental Agreement. In view of Section A-1-(c), the result would be a denial of the present grievance, even if the Experimental Agreement were to be applied. The only prior practice where slag was mined, dried, and processed at Wylam Dump was between 1948 and 1953, when the practice was "to have such work performed by
employees of contractors" within the precise language of Section A-1-(c). There never was a time when employees of the Company mined, dried, and processed the wasted slag at Wylam Dump for sale as a Soil Conditioner.

A second major issue is under Section 2-B-3. It again is unnecessary to decide whether the Union is right in claiming a protected local working condition (contemplating that the Soil Conditioner will be produced only at Ensley Works), since the changes which began in 1954 and culminated late in 1963 radically altered underlying basic conditions upon which any such local working condition would have rested. The principal changes commenced with introduction of Venezuelan ore, and culminated in abandonment of the local red ore and of the duplex steel-making process. Subsequent efforts to continue to maintain enough phosphorus in current hot slag at Ensley (by charging Fairfield slag) had to be abandoned in December of 1963, because excess phosphorus in the Ensley steel made it difficult to process satisfactorily into new types of tin plate. This final change made current Ensley slag unusable any longer for production of the Soil Conditioner. Together with the earlier changes, it effected a change in basic underlying conditions for purposes of Section 2-B-4.

Turning finally to the argument under Section 2-A, based on the Opinion in Case N-159, many of the considerations which would apply under Section A of the Experimental Agreement, as well as the changed conditions for purposes of Section 2-B-4 of the Basic Agreement, are relevant to this issue. Without detailing all of the evidence already set forth, suffice it to say that the Company's action involved neither an arbitrary nor unreasonable contraction of the bargaining unit. This ruling, of course, rests entirely upon the unique circumstances of this case.
In this connection, moreover, it should be stressed that there is no issue here as to representation rights. The Vulcan employees who now perform the disputed work at Wylam Dump are represented by the Steelworkers. The Union thus is not asserting any claim to represent such employees on the basis of the recognition clause set forth in Section 2-A, nor does it argue that the Ensley employees now should be permitted to perform this work at the Wylam Dump. Rather, the Union urges that the Company should re-open the Ensley Soil Conditioner Plant so as to process Wylam Dump slag there. The Board can find no basis under provisions of the Basic Agreement, or of the Experimental Agreement, for requiring such action.

AWARD

The grievances are denied.

BOARD OF ARBITRATION

[Signature]

Jivester Garrett, Chairman