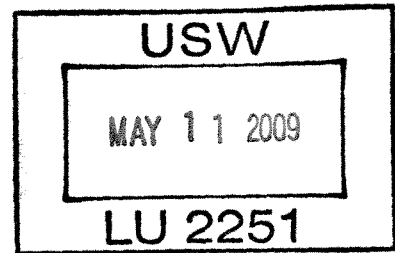


IN THE MATTER OF AN ARBITRATION

BETWEEN:

ESSAR STEEL ALGOMA INC.



(the "Company")

and

UNITED STEELWORKERS, LOCAL UNION 2251

(the "Union")

**General Nature Grievances concerning contracting out, # 07-373,07-385,  
07-399,07-425, 07-436, 07-471, 07-505, 07-514, 08-043, 08-058, 08-085,  
08-101, 08-125, 08-171, 08-235, 08-264, 08-294, 08-355, 08-401**

SOLE ARBITRATOR: John Stout

APPEARANCES:

For the Union: Michael Da Prat, Local Union President

For the Company: R. Ross Dunsmore, Counsel

HEARING HELD IN SAULT STE. MARIE, ONTARIO ON APRIL 14, 2009

## **INTRODUCTION**

This matter arises from my appointment to hear and determine a number of General Nature Grievances. These grievances concern the contracting out of work by the Company. In total, I am currently seized with nineteen General Nature Grievances incorporating over 200 distinct incidents of contracting out.

On October 17, 2008 I met with the parties to discuss creating a process to litigate the grievances in a timely and effective manner. After lengthy discussions, the parties agreed to a process for the expedited disposition of the grievances. In general, the agreed upon process includes the grouping of incidents and identification of test cases for each grouping. The test cases are litigated after an exchange of documents and particulars. The agreed upon process was incorporated into an award that was issued by me on October 22, 2008.

This award addresses the fourth test case involving the contracting out of hoisting work and the process that was followed in contracting out this work. The issue in this test case arises from incident #61 on Grievance #08-401 (referred to as the "incident" and "grievance" respectively).

## **BACKGROUND**

The facts in this case are not in dispute. The parties agreed to enter a number of documents on consent. In addition, the parties agreed to stipulate a number of facts that were agreed upon in their pleadings. Neither party called any oral evidence.

The parties have negotiated comprehensive and detailed language in their Collective Agreement concerning the contracting out of work. The parties also have agreed to a unique process for monitoring and managing the contracting out of work. The process is found within provisions of the Collective Agreement

as well as other ancillary documents that have been agreed to by the parties in negotiations.

The applicable provisions of the Collective Agreement are as follows:

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 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 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 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.

In addition, reference was made to the following provisions of the Collective Agreement:

**GENERAL ARTICLE**

**WORKPLACE REDESIGN AND EMPLOYEE PARTICIPATION  
PROCESS**

...

#### **4. UNION MANAGEMENT COMMITTEES**

...

##### **c) Duties and Responsibilities**

...

- Monitors contracting out and overtime hours (excluding replacement hours) in excess of 10% of all hours worked in a 12 month period in any specific functions or jobs in departments of each area and initiates any action required in accordance with the policies and administrative processes established by the Joint Steering Committee;

...

#### **7. OVERTIME, CONTRACTING OUT, AND EMPLOYMENT LEVELS**

The parties agree to monitor and review the levels of overtime and the levels and types of contracting out on an ongoing basis.

Each Union Management Committee will provide the Joint Steering Committee with a quarterly report for each department in their area.

The Joint Steering Committee will take appropriate action to eliminate or reduce any overtime or contracting out deemed to be excessive.

...

#### **ARTICLE 1**

##### **UNION RECOGNITION**

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 with the following exceptions:

- 1) Persons practicing professional engineering or engaged in training for professional engineering as defined in the Professional Engineers Act of Ontario.
- 2) Employees in reasonable numbers with special qualifications who are receiving special or technical training and who do not displace employees within the bargaining unit.
- 3) Superintendants, assistant superintendants, front line supervisors, supervisors and persons who exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations.
- 4) Any difference, which arises between the Company and the

Union as to whether a person in a new or significantly changed job is a front line supervisor or supervisor as defined above, may be submitted by the Union as a grievance of a General Nature.

- 5) Those office and clerical employees for whom Local 2251 is not now bargaining.
- 6) Employees engaged on police and plant protection duty.

1.02.20 Employees within the bargaining unit have no claim to jobs outside the bargaining unit. Except as expressly provided in this Agreement, employees outside the bargaining unit have no claim to jobs within the bargaining unit.

1.02.30 Persons excluded from the bargaining unit shall not perform work normally performed by employees within the bargaining unit except for the purposes of instruction or training, or in those non-routine circumstances where the alternative would mean serious loss, damage, or delay, or creation of a safety hazard.

1.02.40 Where it is found that either party has engaged in conduct which constitutes wilful or repeated violations of Article 1.02, the arbitrator may fashion a remedy or penalty specifically designed to deter the offending parties (sic) behaviour. A similar remedy or penalty may be levied if either party withholds processing a template in the time constraints detailed within.

1.02.41 No testimony offered by an individual employed by a contractor may be considered at arbitration unless the party calling the individual provides the other party with a copy of any document to be presented in evidence at least forty-eight (48) hours (excluding Saturdays, Sundays, and holidays) prior to the individual giving testimony.

## **Article 4**

### **MANAGEMENT**

**4.01** Except to the extent otherwise stated in the Collective Agreement, the Union recognizes that all functions, rights, powers, and authority which the Employer has not specifically abridged, delegated or modified by this Agreement are retained by the Employer. Management retains the right to discipline, but shall do so in a just, fair and reasonable manner consistent with the terms of

this Collective Agreement.

**Article 11**

**APPRENTICES**

The Apprenticeship Agreement dated December 28, 1999 is incorporated into this Agreement as Appendix "E" and its provisions shall apply as if set forth in full herein.

**ARTICLE 18**

**LETTERS OF AGREEMENT**

**18.01** The current Letters of Agreement are supplemental to this Agreement, but nothing contained herein shall affect the termination dates or any other provision of such Letters of Agreement.

The parties have also agreed to a number of ancillary documents relating to monitoring and managing the contracting out of work. Two of these documents were agreed to in the 2004 bargaining and include a Letter of Agreement Re: Contracting Out Review and Addendum "A" both dated January 18, 2005. These documents provide as follows:

**Letter of Agreement**

**Re: Contracting Out Review**

**Contracting Out Review**

**Monthly Review**

Not less than monthly, the Joint Steering Committee will meet, in part, for the purpose of reviewing all work which the Company anticipates contracting out during the next quarter or further time span, if available). The Company will present the rationale for each request by:

- Producing a clear demonstration that the work cannot be performed with the existing workforce or facilities and equipment;
- That such assignments would not be cost competitive; and/or,
- That the work is of such a nature or duration that other alternatives

would not be viable.

During this review process, the Joint Steering Committee may agree on items of work (or categories/functions) that may be performed by outside contractors for a defined period of time (or subject to a review period).

The Company will produce a detailed reporting of the work performed by outside contractors for the previous period (since the last report) using the information that is available.

### **Contracting Out Review**

The Joint Contracting Out Committee comprised of four (4) individuals; two from the Company and two from the Union to assist in the process of reviewing the items and projects that have been or will be contracted out and to generate and ensure the integrity of the data used in the contracting out review process. The Company shall supply the Union representative(s) with all requested available information regarding compliance with this Article.

The Joint Contracting Out Review Committee will meet at least once per quarter to review:

- (a) bargaining unit work force levels and anticipated attrition rates;
- (b) historical contractor utilization within the plant;
- (c) Review the draft Force Block Plan to identify opportunities to better utilize ASI personnel;
- (d) review projections for contractor utilization in the upcoming period;
- (e) perform a reconciliation against the Force Planning data and identify any concerns or suggestions for improvement and/or to reduce the amount of contractor usage, and;
- (f) monitor programs and develop ideas to reduce contractor utilization;

and will report their conclusions back to the Labour - Management Committee.

Prior to the Company entering any new agreement or arrangement to use contractors (beyond those items contained on the "Exemptions List" section of the Letter of Agreement re: Contracting Out Review or that exceed the commitments made in the block force planning process), the Company will provide written notice (in the form of a template) to the Joint Steering Committee in sufficient time to permit a full consideration of the matter, in accordance with the provisions of Article 1.02.11.

## **Exemption List**

The parties have developed a preliminary "Exemption List" All items on the Exemption list will be subject to a regular review/renewal period. Those items on the "Exemption List" which directly or indirectly permits the use of contractors shall only be valid and enforceable once reduced to writing and signed by the President of the Local Union. Any such agreement shall expire on the Termination Date of this Agreement, unless signed by a Representative of the International Union. Items on the Exemption List can be removed with 30 days' notice by either party. If there are members who are displaced, laid off or will be laid off, who are capable of performing such work, such work will be assigned to such members and removed from the Exemption List. Until the work is removed from the Exemption List, any displaced employees will be assigned suitable work.

## **Dispute Resolution Procedure**

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

## **Addendum "A"**

### **Contracting Out**

The following represents the details surrounding the new process intended to provide more rigor into our workforce planning efforts and by better performing our annual block planning, the parties together may be able to reduce the level of contracting out required to perform all of the work needed to be done over the course of the work year.

### **General Principles**

These principles are intended to encapsulate the methodology that will be used annually (or more regularly as required) to perform the tasks necessary to effect our manning block planning.

1. On or about November 1st of each year, the Joint Steering Committee (along with the JCOC) will meet to begin the block force planning process for the upcoming year.
2. The activities that will occur during this time include;
  - Review the accuracy of the block planning process for the previous

- four (4) quarters against each of the identified trades/areas
  - Determine the current level of backlog and 'deferred work' that exists in each of the above areas;
  - Review the level of overtime incurred by trade/area over the last four (4) quarters;
  - Review the planned activity block planned for the upcoming year by department and identified trade/area and the timing of each planned activity;
  - Identify any work that the Company has identified as being intended to contract out;
  - Identify any material variations in the anticipated level(s) of activity in the upcoming year against the historical levels over the previous five (5) years.
3. The parties with the benefit of the foregoing information will then review the Company's Draft Block Plan for the upcoming year. The purpose of this review will be to:
    - Identify scheduled activities that, if the timing of their execution were amended, would result in less (or no need) to use supplemental forces to complete the work;
    - Attempt to agree on the number of individuals that will be needed to complete each of the activities listed;
    - Establish an acceptable target level of backlog/deferred work to be maintained;
  4. All the foregoing information will be formatted onto a graph along with a rolling five (5) year data for each trade/area.
  5. 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 work/deferred work, and that work which will be 'contracted in').
  6. Once this process is completed, all the work that exceeds this agreed level may be contracted out subject to the terms contained within the "Exceptions" section.
  7. 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 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.

In 2004, the parties also agreed to a preliminary “Exemption List” that included 14 categories of work. However, the parties were not able to agree upon a “Dispute Resolution Procedure” as set out in the Letter of Agreement Re: Contracting Out Review. As a result, the parties were left to rely upon the grievance and arbitration procedure set out in the Collective Agreement for resolving disputes and issues arising from the contracting out of work.

Subsequent to the 2004 negotiations, the Union filed a number of General Nature Grievances concerning contracting out. These grievances involved not only individual disputes but also issues arising out of the implementation of the contracting out process agreed to in the 2004 bargaining. Many of these grievances were referred to Arbitrator Dan Harris. In all, Arbitrator Harris was initially seized of some 183 alleged violations of the Collective Agreement. The parties agreed to a set of Rules of Procedure to expedite the resolution of the issues arising from the grievances. Most significantly, the parties agreed that Arbitrator Harris was permitted to reserve on a matter for a period not exceeding two weeks. In addition, only brief written reasons would be provided that were to be sufficient to assist the parties in resolving future matters, see *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated June 20, 2006 (D. Harris) at pages 1-3.

Arbitrator Harris issued a number of brief written awards relating to the contracting out of work and the process set out in the Collective Agreement and ancillary documents. Both parties referred to a number of these awards in this matter.

In 2007, the parties bargained for a renewal Collective Agreement. One of the issues addressed during bargaining was contracting out. At the conclusion of negotiations, the parties agreed to a Memorandum of Agreement which provides as follow:

**July 30, 2007**  
**Memorandum of Agreement**  
**BETWEEN**  
**Algoma Steel Inc.**  
**(hereinafter referred to as the Company)**  
**AND**  
**THE UNITED STEELWORKERS OF AMERICA ON BEHALF OF ITSELF AND**  
**ITS LOCAL 2251**  
**(hereinafter referred to as the Union)**

The undersigned representatives of the parties hereby agree to the following amendments to the Collective Agreements, in full settlement of all matters at issue between them and agree to recommend these terms of settlement to their respective principals.

This agreement shall become effective upon the Union's ratification of this agreement and is conditional upon ratification without a work stoppage.

....

**Contracting Out**

- **Company Items 3, 4, 5 Contracting Out**
- **Union Items 68, 69, 21 Contracting Out**

*The Parties agree as follows:*

1. The Company will withdraw its proposals CNM 3, 4, 5 re: Contracting Out

2. The Union will withdraw its proposals NU 68, 69, 21 re: Contracting Out.
3. The Company will pay the Union the sum of one hundred and sixty thousand dollars (\$160,000) in full and final settlement of all grievances referred to at 7. below. This amount will be paid within sixty days of the signing of the Memorandum of Agreement.
4. The Company will increase its proposed force level increase for trades to one hundred (100) as set out in the attached document. This force level increase will be added to the existing force levels and will become the staffing line for each trade attached.
5. All work of the trades listed on the attached document will be put on the Exemption List effective July 20, 2007 and remain there until December 31, 2008. No grievances will be filed as a result of the Company contracting out the work of the trades listed on the attached document for the period of time those trades remain on the Exemption List. On November 1st, 2008 the review contained in item 1 of the general principles of addendum A Contracting Out will be conducted and every November 1, thereafter.
6. No trade will be removed from the Exemption List without prior approval, in writing, by Tony DePaulo.
7. The Union will withdraw all General Nature grievances presently filed against the Company since August 1, 2004 wherein the Union alleges that the Company violated its obligations related to Contracting Out as set out in the Collective Agreement and the Letters of Agreement and Addendums between the Parties, including Special remedies section of grievance 05-558 only and grievances numbered 05-592, 05-631, 05-680 which are before arbitrator Dan Harris.
8. At the request of the Union, the Company will agree to the appointment of Dan Harris on one occasion to arbitrate a single incident wherein the Union alleges that the Company has violated the contracting out process as agreed to between the Parties.

## Summary of Block Force Planning Proposals

<b>Trade</b>	<b>Force Level Increase</b>
Mechanical Mtce. Technician(MMT) (includes Crane Repairs)	<b>10 +10 Apprentices</b>
Electrical Mtce. Technician (EMT)	<b>5 + 10 Apprentices</b>
Fitter Welder	<b>6</b>
Erector	<b>12</b>
Shops/Fabricator	<b>10 Apprentices</b>
Machinist	<b>12</b>
Carpenter	<b>0</b>
Electrical Repair Shop Technician	<b>2</b>
Auto Repair Technician	<b>4</b>
Hoisting Engineers (Branch 1)	<b>3+4 Apprentices</b>
HVAC Technicians	<b>1 Apprentice</b>
Bricklayers	<b>8 Apprentices</b>
Construction Linemen	<b>3</b>
<b>TOTAL</b>	<b>100</b>

.....

On September 3, 2007, the parties agreed to an Exemption List. The Exemption List agreement provides as follows:

### **Exemption List**

In accordance of Article 1.02.11 and the Letter of Agreement Re: Contracting Out Review the following items form the current exemption list between the parties:

- Work of the Mechanical Mtce. Technician (MMT) (includes Crane Repairs) trade;
- Work of the Electrical Mtce. Technician (EMT) trade;
- Work of the Fitter Welder trade;
- Work of the Erector trade;

Work of the Shops Fabricator/Welder trade;  
Work at the Machinist trade;  
Work of the Carpenter trade;  
Work of the Electrical Repair Shop Technician trade;  
Work of the Auto Repair Technician trade;  
Work of the Hoisting Engineers (Branch 1) trade;  
Work of the HVAC technician trade;  
Work of the Bricklayer trade;  
Work of the Construction Lineman trade;  
Detailing of T-Sills and H-Frames;  
Cokemaking Through Wall repairs.

The Union also references a Letter of Agreement dated April 8, 1992. The Company agreed that this document exists, but they take the position that this document is no longer applicable. For reasons set out later in this award, I find that the applicability of this document is not relevant to the determination of this matter. However, I have attached the Letter of Agreement as an Appendix "A" to provide a complete record.

## **THE FACTS SURROUNDING THE TEST CASE**

The stipulated facts are as follows:

1. The Material Service Request Form (MSR#2467525), relating to the work in question, was generated on June 19, 2008 by Mark Rains, a temporary foreman.
2. The MSR was approved by Kamal Ughadpaga on June 20, 2008.
3. Work commenced on June 23, and the MSR identifies 40 hours of work.
4. On July 3, 2008 Mr. Molinaro sent the No Template notice (NT-08-341) to Mr. Lanaway and others which included the MSR. Mr. Molinaro sought a template for the work in question.
5. The NT notice included a copy of a letter from Mr. Da Prat.

6. On June 4, 2008 Mr. Molinaro sent a reminder letter regarding the Exemption List.

The Agreed upon documents indicate that on March 6, 2008 Tony DePaulo, Area Coordinator United Steelworkers, sent a letter to Laurie Wilson, Superintendent-Employee Relations, Essar Algoma Steel Inc.. In the letter, Mr. DePaulo informed Mr. Wilson, among other things, that the Union was removing "Machinists and Hoisting" from the Exemptions List. On the same date Brent Lanaway, the Company's Co-Chair of the Joint Contracting Out Review Committee (JCORC), sent an email out regarding the Exemptions List that he copied the Union. The email stated as follows:

"Colleagues, the Union has withdrawn the Machinists and Hoisting Engineers from the exemptions list. Starting immediately you must fill out the Non Staffing Line Template and submit the templates in time for review at the JSC prior to contracting out. If you have any questions please call"

On July 7, 2008 Mr. Lanaway, on behalf of the Company, responded by email to Mr. Molinaro's July 4, 2008 NT notice. Mr. Lanaway's email attached a "CONTRACTING OUT TEMPLATE NO STAFFING LINE AGREEMENT"; Template Number T-2467525 which referenced the MSR #2467525 (the "Template"). The Template identified the work in question as rental of a 12.5 ton Boom truck for cleanup. The Template also provided additional information concerning the contracting out of the work. The Template indicated, among other things, that the work was normally performed by Company employees (Hoisting Engineer). The Template also indicated that the Company's employees were already allocated to perform other work and therefore unavailable to perform this work. The estimated value of the work was indicated as being \$3,912.80.

## **THE POSITIONS OF THE PARTIES**

The Union argues that the language in the Collective Agreement and ancillary documents must be read and interpreted as a whole. The Union stresses that the parties have dealt with contracting out in a complete manner and decisions by arbitrators have confirmed that templates are required as a notice vehicle. In this situation, the Company failed to immediately initiate a template as required by the Collective Agreement.

The Union submits that the overriding principle is that bargaining unit members perform the work required by the Company. The Union suggests that the Letter of Agreement dated April 8, 1992 is still in effect and relevant to deciding this matter. Specifically, the Union points to a portion of the agreement that relates to training and developing employees to obtain the skills necessary to perform work that might otherwise be contracted out.

The Union argues that the Letter of Agreement dated April 8, 1992 should be read together with the July 30, 2007 Memorandum of Agreement. In particular, the Union references the agreement to increase the force level by 100, including additional apprentices. The Union stresses that the parties agreed to place the work of Hoisting Engineers on the Exemption List and agreed to increase the force level of that trade by three employees and four apprentices. The Union suggests that the Company did not increase the force levels as agreed upon and therefore the Union exercised their right to remove the trade from the Exemption List on March 6, 2008.

The Union argues that the Hoisting trade was properly removed from the Exemption List by Mr. DePaulo in accordance with the terms of Collective Agreement, ancillary documents and specifically the July 30, 2007 Memorandum of Agreement. The Union submits that the Company breached the Collective

Agreement by not immediately generating a template for the hoisting work that was contracted out. The Union further submits that damages are also required because the work in question was not on the Exemption List.

The Union relies upon the following cases in support of its' argument: *Algoma Steel Inc. and United Steelworkers of America Local Union 2251 (Grievances 98-202 and 98-208)*, unreported decision dated November 2, 1998 (S.R. Ellis Q.C.); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated June 20, 2006 (D.Harris); *Algoma Steel Inc. and United Steelworkers of America Local 2251 (Grievances Re Contracting Out)*, unreported decision dated August 31, 2005 (J. Devlin); ); *Algoma Steel Inc. and United Steelworkers of America and Local 2251 (General Nature Grievance 08-165)*, unreported decision dated July 4, 2008 (E. Newman); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated January 8, 2007 (D.Harris); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated February 21, 2007 (D.Harris); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated March 26, 2007 (D.Harris); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated May 29, 2007 (D.Harris); *Algoma Steel Inc. and United Steelworkers of America (General Nature Grievance 05-538)*, unreported decision dated June 6, 2007 (D.Harris); *Essar Algoma Steel Inc. and United Steelworkers, Local 2251 (General Nature Grievances 07-373 et al.)*, unreported decision dated March 8, 2009 (J. Stout); *Essar Algoma Steel Inc. and United Steelworkers, Local 2251 (General Nature Grievances 07-373 et al.)*, unreported decision dated March 31, 2009 (J. Stout)

The Company suggests that only two issues need to be addressed;

1. Whether, in the circumstances, the Employer was required to provide a timely template?
2. Whether the work in question was on the Exemption List and therefore exempt from the requirements under the Collective Agreement and ancillary documents?

The Company submits that the work in question was placed on the Exemption List pursuant to the July 30, 2007 Memorandum of Agreement. The Company suggests that the Union agreed in the July 30, 2007 Memorandum of Agreement that work placed on the Exemption List would not be removed until January 1, 2009. The Company further suggests that the parties amended the Collective Agreement to provide Mr. DePaulo with the authority to approve all work removed from the Exemption List until the Collective Agreement expires on July 31, 2010.

The Company submits that the language in the July 30, 2007 Memorandum of Agreement is clear. The trades listed on the Exemption List were to remain on the list until January 1, 2009. The Company suggests that Mr. DePaulo did not have the authority to remove any trade prior to that agreed upon date. Therefore, the only issue to be addressed is whether the Company failed to provide a timely template.

The Company suggests that the March 6, 2008 email from Mr. Lanaway was issued out of an abundance of caution. Further, the Company suggests that the Union provided no evidence that it relied upon the email.

The Company submits that when a template is required, the word immediately must be interpreted in the context of the type of contracting out that is occurring.

In this case, the Company suggests that the work in question was on the Exemption List. Since the work was on the Exemption List, a template was not required for a meeting to review and agree upon contracting out the work. In effect, the parties already agreed that the work could be contracted out by placing it on the Exemption List. The Company argues that immediately should be interpreted in this context as being within the time required to provide the Union with the information for the larger contracting out review process. The Company submits that in this situation, a template was provided within a reasonable time frame necessary for the parties to fulfill their obligations.

The Company argues that I do not need to address the issue concerning the applicability of the April 8, 1992 Letter of Agreement. The Company suggests that the entire answer to the issue is found in the July 30, 2007 Memorandum of Agreement. The Company submits that the focus of my inquiry should be what the parties last agreed upon and only if the intent was unclear should I review other documents. The Company further suggests that if any other documents were to be examined then such a review should be in reverse chronology. The Company argues that the April 8, 1992 Letter of Agreement is of no assistance in clarifying what the parties agreed to in the July 30, 2007 Memorandum of Agreement

In Reply, the Union argues that the word immediately is not a flexible term. The parties did not agree to a different time frame for providing templates for work on the Exemption List. The Union suggests it would be improper to infer a different time frame for providing a template when work is on the Exemption List.

The Union also argues that the July 30, 2007 Memorandum of Agreement does not say that the trades on the Exemption List can't be removed before December 31, 2008. The Union suggests that the notice provisions in the Letter of Agreement Re: Contracting Out Review applies to all work of trades on the Exemption List including the work of those trades placed on the Exemption List

pursuant to the July 30, 2007 Memorandum of Agreement. Therefore, any work could be removed so long as thirty days notice was provided with the approval of Mr. DePaulo.

## **DECISION**

The first issue to be determined is whether the work in question was on the Exemption List during the relevant period of time. In this regard, the July 30, 2007 Memorandum of Agreement must be interpreted to determine if Mr. DePaulo properly removed the work from the Exemption List on March 6, 2008.

The general principle is that the parties' intention is to be found in the words chosen. However, the language must be interpreted in the context of the entire agreement and not in isolation.

The July 30, 2007 Memorandum of Agreement sets out the parties' agreements regarding amendments to the Collective Agreement. The parties also included agreements concerning their ongoing dispute relating to contracting out work. The July 30, 2007 Memorandum of Agreement must be read in context and in consideration of the obligations flowing from the Collective Agreement and the ancillary documents.

The July 30, 2007 Memorandum of Agreement clearly states an agreement to place work of a number of trades on the Exemption List. The Company also agreed to increase its proposed force levels for trades to 100. The increase in force levels was directly related to the work of the trades that was placed on the Exemption List. However, the parties did not place any time frame on when the force levels had to be reached. In a separate paragraph, the parties agreed that no trade would be removed from the Exemption List without prior approval, in writing, by Mr. DePaulo.

The agreements in the July 30, 2007 Memorandum of Agreement relating to the Exemption List must be interpreted in the context of the Letter of Agreement Re: Contracting Out Review which addresses the parties ongoing agreement concerning the Exemption List. In particular, the Exemption List section of the Letter of Agreement Re: Contracting Out Review provides, among other things, that items on the Exemption List can be removed with 30 days notice by either party.

In the July 30, 2007 Memorandum of Agreement, the parties agreed that work of specific trades would remain on the Exemption List until December 31, 2008. However, the parties did not exclude the possibility of the work of such trades being taken off the Exemption List prior to that date. Rather, the parties agreed to add Mr. DePaulo's approval for removal of work from the Exemption List.

The language concerning Mr. DePaulo's approval is found in a separate paragraph in the July 30, 2007 Memorandum of Agreement. The parties did not place the language in the same paragraph that referenced placing the work of certain trades on the Exemption List. Accordingly, there is nothing to indicate that the parties placed any limitations on Mr. DePaulo's authority to remove work from the Exemption List. I conclude that the parties agreed that Mr. DePaulo's approval was needed to remove the work of any trade from the Exemption List, including the work placed on the Exemption List pursuant to the July 30, 2007 Memorandum of Agreement.

I also conclude that the parties did not adopt any language that would indicate any intent to waive the notice provisions found in Letter of Agreement Re: Contracting out Review. Instead the language signals an intent to amend the Exemptions List procedures to include a requirement for Mr. DePaulo's approval. Mr. DePaulo's letter of March 6, 2008 indicated his approval to remove hoisting from the Exemption List. I find that the hoisting work was effectively removed

from the Exemption List on April 6, 2008. Therefore, the hoisting work was not on the Exemption List during the relevant period, June 19 – July 7, 2008.

I agree with the Company that I need not consider the applicability of the April 8, 1992 Letter of Agreement. This document does not assist me in interpreting the agreement found in the July 30, 2007 Memorandum of Agreement. In my opinion, this matter can be resolved by reviewing the July 30, 2007 Memorandum of Agreement in the context and in consideration of the provisions of the Collective Agreement and the ancillary documents agreed upon in 2004. Consideration of the April 8, 1992 Letter of Agreement is not necessary for resolving this matter.

Neither party argued that the language in question was ambiguous. Therefore, I have limited my reasons to interpreting the language chosen by the parties within the context of the Collective Agreement and relevant ancillary documents. However, I note that any ambiguity would be resolved by examining the parties subsequent actions which include Mr. Lanaway's March 6, 2008 email and the use of a "No Staffing Line Agreement" template. In both circumstances, the actions of the Company support my interpretation.

The next issue concerns whether the Company has an obligation to provide a template to the Union in a timely manner. I conclude that in the circumstances of this case the Company should have initiated a template immediately.

In *Algoma Steel Inc. and United Steelworkers of America (General Grievance 05-538)*, unreported decision dated June 20, 2006 (D.Harris) at page 12, Arbitrator Harris indicates the following regarding the requirement to provide a template.

"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 the collective agreement.”

*In Algoma Steel Inc. and United Steelworkers of America (General Grievance 05-538)*, unreported decision dated May 29, 2007 (D.Harris), Arbitrator Harris addresses whether a template is required for work of an emergency nature or for work on the Exemption List.

In terms of emergency work, Arbitrator Harris’ comments are found at page 8 as follows:

“Article 1.02.11(5) permits contracting out. However, nothing in the article exempts the Company from its obligation to provide a template including the required data. That was not done here, which is a breach of its obligations under the collective agreement. As has been previously said, the templates are an essential part of the contracting out review process.”

Later in the same award, Arbitrator Harris addresses whether the Company is exempt from all provisions of article 1.02.11 for work on the Exemption List. In this regard, he concludes at page 11 as follows:

“However, inclusion on the exemption list only has the effect of permitting contracting out. Article 1.02.11 is “subject to”, not replaced by, the “Exemptions List” language set out above. In my view, considering the contracting out review process as a whole, the Company is obliged to provide sufficient information to protect the integrity of that process, that is, to facilitate a “regular review”. **That would include subparagraph 1, of article 1.02.11. (emphasis added)**

In *Essar Algoma Steel Inc. and United Steelworkers, Local 2251 (General Nature Grievances 07-373 et al.)*, unreported decision dated March 8, 2009 (J. Stout), I stated my view that Arbitrator Harris clearly articulated that the Company is required to immediately initiate a template when considering contracting out work on the Exemption List. I also found, based on my own analysis, that the Company is not excused from initiating a template for work that is on the Exemption List.

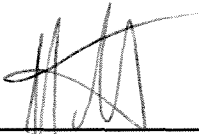
In this matter, I have found that the work in question was not on the Exemption List at the relevant time. Therefore, a template ought to have been immediately initiated by the Company. However, even if I am wrong and the work was on the Exemption List, the Company was still obliged to immediately initiate a template. I agree with the Union that the parties agreed that a template was to be initiated immediately. The only deviation would be for emergency work. In emergency situations, it would be next to impossible for the Company to initiate a template immediately. Therefore, the Company would be entitled to a reasonable amount of time to initiate a template, keeping in mind the parties mutual obligations under the Collective Agreement and the ancillary documents.

## **DISPOSITION**

I find that the hoisting work in question was not on the Exemption List during the relevant period of time. Further, I conclude that the Company has breached the Collective Agreement when they did not immediately initiate a template for the hoisting work that was contracted out on June 23, 2008. In accordance with my October 22, 2008 award, I remit the matter of remedy for this breach of the Collective Agreement to the parties. The parties are directed to discuss the application of this award to the remaining incidents within the identified group relating to this test case. If the parties cannot resolve the remedy or other incidents, then they may request a further hearing pursuant to my earlier award.

I remain seized of the remedy in this matter and the remaining grievances.

Dated at Toronto, this 6th day of May 2009.



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John Stout - Arbitrator

## **Appendix "A"**

### **LETTER OF AGREEMENT**

#### **RE: CONTRACTING OUT**

The guiding principle to be followed by the New Algoma is that employee owners find it unacceptable that work that they are capable of performing should be contracted out. Further, when work being considered for contracting out is beyond the skill level possessed by available employees, it is agreed but every effort will be made to train and develop employees as quickly as possible so that they may be assigned now or in the future.

A Joint Union-Management Committee which will be part of the Steering Committee Structure, will be established with a mandate to review all work which is being considered for contracting out and work currently being contracted out. Evaluation of all of the facts involved with such work will be weighed by the Joint Committee, with the overriding principle being that the parties are seeking ways and means to retain such work for bargaining unit employees at the same time assures the ability to operate the plant facilities consistent with stated objectives of the Negotiations Protocol. All the facts and circumstances being considered will be openly shared by all members of the Joint Committee. The decision whether to contract out shall be made by the Joint Committee based on consensus. Any issue in which there is not consensus will be referred to the Steering Committee. If the decision is to contract out, management shall select the supplier and in doing so, consideration shall be given to all relevant factors. Upon request the management shall review all such information with the Joint Committee.

Further, an ongoing evaluation will be conducted of all contracted out work previously approved by the Joint Committee so as to determine if such work may be assigned within the bargaining unit and within what time frame. The contracted out work under this ongoing review shall include work performed by contractors inside the plant as well as work which is performed by contractors off site. Notwithstanding the foregoing, 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.

In recognition of Algoma Steel Inc. and the United Steelworkers of America commitment to the community of Sault Ste. Marie and the district of Algoma, when the Joint Contracting Out Committee has made a decision to contract out work, preference shall be given to suppliers in the City of Sault Ste. Marie or District of Algoma.

This Letter of Agreement cancels and replaces the Letter of Agreement Re: Contracting Out Articles 2.03 and 2.04 dated November 16, 1990