IN THE MATTER OF AN ARBITRATION

BETWEEN

ALGOMA STEEL INC.

(the “Company”)

and

UNITED STEELWORKERS OF AMERICA, LOCAL 2251

(the “Union”)

INDIVIDUAL GRIEVANCES
RE OVERTIME
19-0784, 19-0786, 19-0787, 19-0788, 19-0789, 19-0790, 19-0791, 19-0792, 19-0793, 19-0794, 19-0795, 19-0796, 19-0798, 19-0799, 19-07800, 19-0836, 19-0838, 19-0839, 19-0849

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For the Company:
R. Ross Dunsmore - Dunsmore Law
Mike Mannarino – Senior Business Partner

For the Union:
Mike Da Prat - President

HEARINGS HELD BY ZOOM VIDEOCONFERENCE ON JUNE 21 AND 22, 2023

AWARD

INTRODUCTION

[1] The Union has brought forward an issue arising from a number of individual grievances filed on behalf of employees in the Central Maintenance sub-department claiming a failure by the Company to offer overtime prior to contracting out work normally performed by the bargaining unit.

[2] The parties filed extensive briefs outlining the background facts and positions that they would rely upon in addressing this issue. The matter was mediated on June 21 and 22, 2023, along with a number of other matters. The other matters involving over 500 grievances are being resolved by the parties entering into Minutes of Settlement. The parties have requested that I issue an award resolving this dispute, which in turn will assist them in resolving numerous other similar grievances.

[3] The Union requests assistance and direction with respect to damages to be awarded to employees for a lost overtime opportunity. The Union advises that the Company is presently applying a monthly average of an individual's overtime worked over the previous year to determine the damages to be awarded for a lost overtime opportunity. The Union argues that the Company's method is discriminatory and does not properly reflect the amount of overtime an individual would have worked if they were properly offered the overtime opportunity. The Union submits that the appropriate calculation of damages should be based on the amount of overtime that was available and should have been offered, as reflected in the grievance, to a maximum of 60 hours per week (consistent with the parties' agreement on excess hours).

[4] The Company sees the dispute a little differently. The Company asserts that the Union has provided no evidence of any employee being available on a specific day to perform overtime that was either assigned to other employees or contracted

out. The Company also takes issue with how the Union says overtime should be offered in the Central Maintenance sub-department. The Company submits that the Central Maintenance sub-department is not entitled to a separate canvass after overtime has been initially offered to the employees who would normally perform the work and before the overtime is offered plant wide.

[5] The Union disagrees with the Company's submission on the proper way to canvass overtime. The Union points out that management saw fit to incorporate separate departments into the Central Maintenance sub-department. As a result, employees in Central Maintenance normally perform work in other departments across the plant. In terms of overtime, employees designated as Central Maintenance must be offered overtime in accordance with the Collective Agreement. This means that after canvassing a specific department, the Company must then canvass Central Maintenance employees and track such offers in accordance with Article 5.07.31 before the overtime is canvassed plant wide, which is not tracked.

[6] In terms of the employees available for the overtime, the Union points out that the Company failed to hold Step 1 meetings and as a result no timely discussion occurred about the particular situations. The Union submits that the problem would not exist if overtime lists were maintained for the sub-departments pursuant to Article 7.07.31.

DECISION

[7] After carefully considering the evidence and submissions of the parties, and for reasons elaborated upon in this award, I find that Central Maintenance employees ought to be offered overtime for work that they normally perform in other departments after the first canvass of employees who normally perform the work. This additional offer of overtime ought to be tracked on the home department list as well for the purposes of the equal distribution of overtime. After the overtime

has been offered to Central Maintenance employees, then it is to be offered plant wide and not tracked.

[8] In terms of remedy, I direct the Company to use a monthly average of an individual's overtime worked over the previous year to determine the amount of overtime damages to be paid to the individual grievor for the lost overtime opportunity up to the date of this award. After the date of this award, the Company will be required to pay damages based on the Union's position of overtime being paid up to the 60 hours maximum.

[9] The requirement to canvass for overtime prior to contracting out any work is found in Article 1.02.10. As a pre-condition to contracting out any work, normally performed by employees within the bargaining unit or similar work that has been past practice to have performed by employees within the bargaining unit, the Company must offer overtime work to qualified and eligible employees who are available.

[10] Articles 5.07.30 and 5.07.31 of the Collective Agreement address the issue of overtime distribution and those provisions provide as follows:

> **5.07.30** Overtime work shall as far as possible be equitably distributed among the employees concerned. A chart showing overtime hours recorded for each employee, on the approved form shall be posted weekly and a copy given to the steward. **Overtime distribution lists shall be administered by the Company in accordance with Article 5.07.31.**
>
> Where time does not permit the utilization of the equitable distribution list, supervision may call upon those employees already at work to work the necessary overtime.
>
> **5.07.31** For the purposes of Article 5.07.30 above, the following provisions will apply:
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> i) the overtime hours record for each group will be zeroed on January 1 of each year. To be clear, all employees on an overtime list will be recorded as having zero hours as of January 1 of each year. At the start of the year, the employees will be listed on the Overtime list by seniority. Initially, overtime will be offered by seniority. As overtime is distributed, the list will be administered by the overtime hours, with

the person having the least number of overtime hours being asked first.

ii) employees will be charged all overtime hours worked or refused and overtime for which the employee would be eligible, but could not be offered because the employee could not be contacted;

iii) employees who are new to the group will be credited with the average number of overtime hours charged to the group at the time any such employees enter the group;

iv) employees who are absent from the group for any reason for more than one (1) week will be charged the average number of overtime hours charged to the group during the absence.

v) Zero overtime list January 1.

[11] A chart is found in Article 5.07.30, which provides for tracking an employee's overtime worked, refused and not available.

[12] The Company and the Union have an agreement regarding excess hours that allows employees to work up to 60 hours. That is the maximum number of hours an employee can work, and the Company has no obligation to pay damages above that maximum threshold.

[13] The agreed upon rules regarding canvassing of overtime are set out in an email from Teresa D'Angelo dated January 20, 2015. Those rules relevant to this matter are as follows:

Plant Wide canvasses for overtime

> When an employee responds to a plant wide canvass for overtime outside their department, this overtime is distributed by seniority, and it is not recorded on the departmental overtime distribution list. It is counted in the 60 hour per week rule.
>
> If an employee accepts overtime outside their department and declines overtime in their own department, then the overtime declined is counted as a refusal on the applicable overtime distribution list.

60 hour rule

> An employee can only be charged to a maximum of 60 hours per week (worked hours and refusals combined) for example:
>
> - If a 12 hour worker is scheduled to work 48 hours and refuses two 12 hour overtime shifts, then they can only be charged 12 hours refusal.

- If an 8 hour worker is scheduled 40 hours and refuses three 8 hour shifts, they would be charged a refusal for 20 hours. In the above examples you cannot stop offering available overtime to the employees.

An employee is only ineligible to be canvassed if they have already worked 60 hours.

Distributing overtime between scheduling groups

Available overtime will be offered to the scheduling group who normally performs the work first. For example:

- If a 12 hour worker calls in sick and the shift needs to be covered by overtime, then it will be offered to 12 hour workers first.
- If there is overtime that is not a result of a vacancy on the schedule, then it will be offered to group that normally performs that work first.

If the overtime is for work that is not normally performed by one group exclusively, then it will be offered to the 8 hour workers first.

[14] Essentially, overtime is first offered to those employees in a department or sub-department who normally perform the work. This initial offer of overtime is tracked on the form provided under Article 5.07.30. After the department or sub-department is canvassed, any remaining available overtime is canvased plant wide. Plant wide overtime is not tracked and employees who refuse such overtime are not charged for the refusal.

[15] Central Maintenance is novel as a sub-department because the employees work in different areas all over the plant. The employees work in three departments that are found in Article 7.04 (Construction, Field Forces and Mechanical Maintenance).

[16] Article 7.01.22 provides that "Assigned maintenance sub-departments are as shown on the most recent line of sequence charts for the mechanical Maintenance. Electrical Maintenance, Erectors, Fitter Welders Departments respectively."

[17] The most recent line of sequence chart is attached to a February 20, 2014 Letter of Agreement (LOA) referring to Erectors and Fitter Welders. Central Maintenance and Construction were noted as sub-departments.

[18] The Union has provided a number of other LOA's (December 18, 2003, November 2006, October 14, 2010) all of which clearly provide that "after exhausting the overtime list for any group, then a volunteer list will be accessed, all overtime will be added to employees' home department list."

[19] I agree with the Union that Central Maintenance employees ought to be offered overtime for work that they normally perform in other departments after the first canvass of employees who normally perform the work. This additional offer of overtime must be tracked on the home department list as well for the purposes of the equal distribution of overtime. After the overtime has been offered to Central Maintenance employees, then it is to be offered plant wide and not tracked.

[20] Accordingly, the Company has violated the Collective Agreement by not properly canvassing employees in Central Maintenance. The Company is ordered to immediately implement a process that conforms with this award (i.e., initiate a secondary canvass for Central Maintenance, which is tracked).

[21] In terms of the appropriate remedy for the individual grievors, it has long been established that an arbitrator has the power to make an award of damages for any loss suffered as a result of a breach of the collective agreement, see *Polymer Corp. Ltd. and Oil, Chemical and Atomic Workers* [1961] O.R. 438 (C.A.) affirmed (1962), 33 D.L.R. (2d) 124 (S.C.C.). The basic principle established in the jurisprudence is to place the aggrieved person as nearly as possible in the position they would have been in had the collective agreement not been breached. This "make-whole" principle is subject to the normal duty to mitigate and applies to an actual loss, not a notional loss, see *Firestone Steel Products of Canada and U.A. W., Local 27* (1974), 6 L.A.C. (2d) 18 (Weatherill).

[22] I agree with the Company that the Union and individual employee is required to provide evidence that they had the skills and were available to perform the work. The employees clearly have the skills. However, the parties never had a Step 1 meeting and therefore never had an opportunity to discuss the particulars

of the grievance. In addition, the Company did not properly track the overtime for these employees. I am left with a situation where a clear breach of the Collective Agreement has occurred, but the exact damages are uncertain.

[23] In situations where the assessment of damages cannot be certain, an arbitrator must still craft a remedy based on a fair assessment, see *Re Blouin Drywall Contractors Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 2486* (1975), 8 O.R. (2d) 103 (C.A.).

[24] In my view, this is an unusual set of circumstances and having regard to no proof of bad faith, I am of the view that it would be just and reasonable to use a monthly average of an individual's overtime worked over the previous year to determine the amount of overtime damages to be paid to the individual grievor for the lost overtime opportunity up to the date of this award. After the date of this award, the Company will be required to pay damages based on the Union's position of overtime being paid up to the 60 hours maximum.

[25] I remain seized to address any issue fairly raised by the grievances but not addressed in this award.

Dated this 13th day of August 2023 in the City of Toronto, Ontario.

John Stout, Chief Arbitrator