

IN THE MATTER OF THE ARBITRATION

BETWEEN

UNITED STEELWORKERS LOCAL 12-369 )

and )

TEAMSTERS LOCAL 839 )

) **OPINION AND ORDER**

) Re: MTD Jurisdictional Dispute

) Case No. 09-03

---

BEFORE

TERRANCE B. McGANN

ARBITRATOR

---

August 18, 2011

REPRESENTATION

FOR THE UNITED STEELWORKERS 12-369

Melvin Stein  
Assistant General Counsel  
United Steel Workers  
Five Gateway Center  
Pittsburgh, PA 15222  
[mstein@usw.org](mailto:mstein@usw.org)

FOR THE TEAMSTERS LOCAL 839

David Ballew  
Reid, Pedersen, McCarthy & Ballew LLP  
101 Elliott Ave. West, Suite 550  
Seattle, WA 98119  
[david@rpmb.com](mailto:david@rpmb.com)

### Nature of the Proceedings

This is an appeal of a decision by a five (5)-member panel of the Jurisdictional Committee ("Hearing Committee") of the Hanford Atomic Metal Trades Council ("HAMTC") over a jurisdictional dispute between the United Steel Workers, Local 12-369 ("USW") and Teamsters Local 839 ("Teamsters"). HAMTC is composed of fifteen local unions affiliated with fourteen international unions. Each of the parties agreed to resolve jurisdictional disputes under procedures adopted by HAMTC. Under those procedures, the decisions of the HAMTC jurisdictional committee are subject to appeal to the Metal Trades Department of the AFL-CIO, which provides that a neutral arbitrator or referee shall have authority to review the decisions of the Hearing Committee.

The work in dispute was originally assigned to members of the USW. On May 28, 2009, the Teamsters through its Secretary-Treasurer, Mr. Robert Hawks, filed a challenge to the assignment under the HAMTC procedures. Pursuant to the established HAMTC procedures to resolve the dispute, the Hearing Committee held a hearing on July 14, 2009. Each party had an opportunity to present its respective position and to provide evidence and testimony in support of its position. The Hearing Committee, applying the agreed upon criteria, awarded the work in dispute to members of the Teamsters.

USW now appeals the decision of the Hearing Committee to the Metal Trades' Department, which provides authority to a neutral arbitrator to review the decision of the Hearing Committee. The parties have not contested the designation of the neutral arbitrator to rule in this matter or the arbitrability of this dispute.

An appeal hearing was held in Richland, Washington on April 6, 2011, with each party having a full opportunity to present arguments, witnesses and evidence in support of their respective positions. The parties subsequently submitted briefs on May 25, 2011 in support of their positions.

#### Work in Dispute

Handling, preparing, mixing, delivery, hauling, use and/or application of water, before, during and after the demolition of a non-radioactive building, whether in an RCA or not, including non-radioactive buildings being demolished that may contain asbestos materials, i.e., but not limited to siding, flooring, and roofing. Handling, preparing, mixing, delivering, hauling, use and/or application of soil cement and/or similar products, fixodents and/or similar products, Silv-Ex concentrate and/or similar products, whether diluted or not, before, during and after the demolition of a non-radioactive building, whether in an RCA or not, including non-radioactive buildings being demolished that may contain asbestos material, i.e., but not limited to siding, flooring and roofing.

#### Standard of Review

Initially, I note that the documents presented at the hearing and which have been placed in the record do not appear to establish a standard of review which would guide neutral arbitrators in reviewing the decisions of the Jurisdictional Committee. This was also noted by Arbitrator Lindauer in *PACE Local 8-0369 and Teamsters Local 839 (September 30, 2004)*. However, consistent with prior decisions, USW must establish by a preponderance of the evidence that the Hearing Committee erred in awarding the work in dispute to the Teamsters. *Heat Frost and Asbestos Workers Local 120 v. USW 12-369, MTD Case 06-08 (2008)*

### Statement of the Issue

While the parties did not agree upon the issue in this dispute, I adopt the issue proposed by the USW as follows: Whether USW has demonstrated by a preponderance of the evidence that the Hearing Committee erred in awarding the work in dispute to the Teamsters based on the July 14, 1999 Agreement.

### Statement of Facts

The Hanford Nuclear Reservation was first established in 1943 as a plutonium production facility. Jt. Ex. 1 When the production of plutonium was curtailed in the 1980's, a massive clean-up effort administrated by the U.S. Department of Energy was commenced. The organized employees working at the site are represented by the HAMTC, which is composed of fifteen local unions affiliated with fourteen international unions. HAMTC is the sole collective bargaining representative of the employees. While there are separate collective bargaining agreements, each member of the HAMTC has committed to resolving jurisdictional disputes under internal HAMTC procedures. Jt. Ex. 3. All HAMTC jurisdictional decisions are subject to appeal to the Metal Trades Department of the AFL-CIO.

CH2M Hill Plateau Remediation Company ("CHPRC"), a contractor on the Hanford site, was charged with the task of dismantling the buildings designated 270 and 272 in the 200 West Area. Cutting electrical power and water to the buildings was accomplished by the electricians and plumbers. The removal of asbestos insulation around piping and air ducts was performed by asbestos workers. The Decontamination and Demolition classification of the Steelworkers ("D&D") was then assigned the task to remove all other hazardous materials within the buildings including all asbestos not wrapped around pipe or air ducts.

Having cleared the building of hazards, the next task was to remove the building's walls leaving the steel skeleton in place. The walls of building 272 and 277 and most, but not all, structures on the Hanford site are constructed of transite – a material composed of Portland cement and 12-50% asbestos fiber to provide tensile strength. Transite was favored for construction because it permitted speedy assembly of walls, roofs, and partitions, and it is strong, durable and fire proof. The transite siding was affixed to a steel skeleton using lead bolts. The use of transite was phased out in the 1980s because it became known that asbestos was a carcinogen and the inhalation of asbestos fiber could lead to asbestosis and mesothelioma, among other life threatening diseases.

In the demolition of all prior transite sided buildings, D&D workers removed the lead bolts holding the transite to the steel skeleton or cut a hole around the bolt to free the siding. The sheet of transite was then lowered to the ground where it was wrapped in protective sheeting and carried to an environmental remediation disposal facility container ("ERDF"). USW Ex. 3. Typically, the ERDF container was wrapped to seal in its contents, tarped a second time, affixed with signs warning of the asbestos contents and transported to a disposal facility where the contents were buried.

In order to minimize the hazards of demolition to all workers involved in such projects, the 272 and 277 buildings were first surveyed by industrial hygienists to identify hazardous materials. Once it was established that the buildings contain asbestos, an asbestos barrier (a rope line with danger signs) was set out around the work zone to prevent access to the site. USW Ex. 1. Both OSHA and Washington State regulations establish permissible exposure limits for asbestos (WAC Chapter 296, Part 62-07706), require continuous exposure assessments and monitoring (WAC 296-62-07709), the

establishment of regulated areas, the use of protective clothing and the use of respirators in some circumstances. [WAC 296-62-07711 and 07715 (i) and (3).]

In June 2009, prior to directing the demolition of the 272 and 277 buildings, CHPRC determined that it would tear down the transite siding on the buildings using heavy equipment rather than remove it sheet by sheet. USW Ex. 7 & 8. This was a departure from the typical procedures followed in the demolition process. CH2MHILL made this decision because "As a result of the configuration and the accessibility of the transite wall panels, removal of the panels prior to demolition will be extremely complex and will result in putting personnel in hazardous conditions such as working from elevated scaffolding, high-reach manlifts, and crane baskets". USW Ex. 8, attachment p.2. In the typical procedures, tearing the transite material from the building and allowing it to fall to the ground would have resulted in the break-up of the siding as it hit the ground and increased the likelihood that asbestos fibers would be released to the air. CHPRC's operation plan therefore provided:

The project will use all prudent means to mitigate the hazard presented by the demolition of the transite with each structure. All personnel working in the asbestos-regulated area (equipment operators, laborers, and support personnel) will wear powered air-purifying respirators and a full set of ant-contamination clothing including booties, hood, and gloves. A listing of controls and mitigation techniques that will be employed during demolition will include but are not limited to:

- An initial "fixative" coating will be applied to all accessible areas of the walls.
- An asbestos work area will be established around each structure and area and perimeter and personnel air monitoring will be conducted.

- During demolition and waste load-out operations a “wet method misting” of the general area will be performed to ensure that emissions do not leave the controlled area.
- Care will be taken to minimize the damage to the transite material and transite will be segregated to the extent feasible from structural debris.
- Periodic application of a fixative will be applied to any and all debris until it is loaded for disposal.
- All structure debris will be handled and packaged as RACM [regulated asbestos-containing material] in a timely manner to minimize the amount of debris exposed to the environment. Debris will be placed into double-lined containers and labeled “asbestos-containing material.”
- At the end of each shift or prior to high-wind events, a fixative such as Soil-Sement<sup>®</sup>, will be applied to remaining debris.
- At the conclusion of each structure’s debris removal, a clearance inspection will be conducted. After successful clearance inspection the asbestos work area will then be down-posted.

Area and personnel monitoring will be used to verify the effectiveness of the controls during the demolition. Samples will be processed as needed and the results returned to the workers and supervision to provide feedback on the effectiveness of the demolition and asbestos control methods.

Conclusion:

The plan for demolishing the Industrial Buildings with Category II cement asbestos panels (transite) in place significantly reduces the risk to the workers when compared to traditional removal methods. The asbestos controls that will be implemented throughout the demolition process will minimize the damage to the transite panels and maintain airborne asbestos levels below regulatory standards outside the regulated area.

USW Ex. 8, attachment at p. 3-4.

Under the procedure implemented by CHPRC, the heavy equipment used to tear down the transite walls was operated by Operating Engineers. D&D workers applied the water, sometimes including a fixative to better secure loose fibers. D&D workers removed and wrapped the broken transite walls and placed them in ERDF containers, double-tarped them and prepared them for transport to a disposal site by affixing appropriate "Danger-Asbestos" signs to the sides of the containers. When all hazardous materials including all transite were removed, other crafts cut and removed the steel skeleton of the buildings.

As pointed out by the Teamsters, the work involved related to the demolition of non-radioactive buildings on the site. The actual demolition of the buildings is not in dispute. The disputed work involves spraying the building with water and fixodent while the building is being demolished. The Teamsters contested the assignment of work to members of USW, which resulted in a hearing before the Jurisdictional Committee on July 14, 2009. The five-member panel was bound by the following criteria in making its decision:

#### **INSTRUCTIONS FOR JURISDICTIONAL COMMITTEE**

The procedure outlined in the Hanford Atomic Metal Trades Council By-Laws – Article IV, Section 2, Subparagraph E – provides for an orderly disposition of all disputes where only delegate members of the Council participate in the decision process, thus taking the employer out of decisions that affect the Council affiliates.

When the procedure was drafted and accepted by the Council body, there were three criteria that were to be considered by committee members and only those three. There should never be any personal preferences, political considerations or compromises set forth by these jurisdictional committees. The three criteria for jurisdictional decisions are as follows in order of importance:

1. The first item for consideration is a written HAMTC agreement on the questioned work between the parties. If such an agreement exists, you must base your decision on the agreement.

2. In the absence of a written HAMTC agreement between the parties, you must establish if there has been a material past practice in performing the questioned work under the HAMTC agreement. And, if so, award work accordingly.

3. In event there is no written agreement or an established material past practice under the HAMTC contract, such as might be the case in new work, it would then be acceptable to use outside agreements between the respective affiliates in making your decision.

These are the only criteria that should be used in making your decision. The By-Laws provide for either party to appeal this decision through the Metal Trades jurisdictional procedure.

Jt. Ex 2 p. 7.

Following the July 14, 2009 hearing, the Hearing Committee found that the work in dispute should be awarded to the Teamsters based upon a written agreement between the Teamsters Local 839 and P.A.C.E., Local-8-0369 (USW predecessor) dated July 27, 1999 ("1999 Agreement") Teamsters Exhibit 1. The Jurisdictional Committee cited the following language contained in the July 27, 1999 Agreement:

"It is agreed the use of water for the purpose of dust control and soil stabilization during demolition of non-radioactive buildings shall be the work of the Teamsters."<sup>1</sup>

JT. Ex. 2, p.7.

On July 27, 2009, the USW requested an appeal of the award to the National Metal Trades Department. Jt. Ex. 2, p.4. After unsuccessful attempts by the parties to

---

<sup>1</sup> While the Hearing Committee's decision and the parties' submissions focused on the portion of the work having to do with the application of water, the second portion of the work in dispute relates to the "handling, preparing, mixing, delivering, hauling, use and/or application of soil cement and/or similar products..." The application of soil cement and similar products is addressed separately in the parties' 1999 Agreement holding "...soil cement products applied to debris created as a result of demolition of a radioactively contaminated building when using a trailer mounted 500 gallons or less, shall be the work of P.A.C.E. members....application of all other soil cement and similar products shall be the work of the P.A.C.E. members....application of all other soil cement and similar products shall be the work of the Teamsters".

resolve the dispute, on February 5, 2010, USW requested to proceed to arbitration. Jt.

Ex. 2, p.1.

#### Teamsters' Position

The Teamsters rely almost exclusively on the July 27, 1999 Agreement between the parties and contend that the Hearing Committee properly applied Criteria No. 1 contained in the HAMTC procedures which, they maintain, requires that the work be awarded to the Teamsters rather than the USW. They contend that the work in dispute was performed during the demolition of a non-radioactive building using a fire hose connected to a water truck and, hence, the work falls within the "plain language of the 1999 Agreement." Teamsters' Secretary Treasurer Mr. Robert Hawks testified to the parties' intentions in entering into the 1999 Agreement and to a prior decision by the Jurisdictional Committee on July 30, 2008, where the Committee found that the application of Sil-Ex fire control concentrate on non-radioactive buildings is the work of the Teamsters. Teamsters Ex. 2. Mr. Hawks testified that like the USW, the Teamsters are also trained and capable of working in radioactive areas and have been involved in removing asbestos contained products in the demolition process.

#### USW Position

The USW contends that the Jurisdictional Committee was not an impartial body. In support of this contention, USW provides a historical perspective relating to the D&D Classification and the changing work assignments at the Hanover project. The USW refer to the acrimony created when the President of Local 12-369 filed a lawsuit against her own International, HAMTC and various individuals, and the ensuing expense incurred by HAMTC. USW then goes on to dissect the language contained in the 1999 Agreement arguing that "by assigning the removal of non-contaminated trash, debris to the

Teamsters, the fair implication is that the removal and disposal of contaminated trash and debris falls to the D&D Classification (USW)". USW further argued that "nothing in the agreement references non-radioactive hazardous substances such as lead and asbestos." USW urges that the 1999 Agreement is not applicable to the assignment of work in dispute. USW contends that the asbestos hazards were well known to the parties prior to the 1999 Agreement and the fact that the agreement does not address this issue means that the parties did not intend to include the application of water to hazardous substances like asbestos within the Agreement.

#### Analysis

The criteria provided by the HAMTC must guide the final resolution of this dispute. The criteria are quite clear that if an agreement exists between the parties which addresses the work, the agreement must prevail and the Hearing Committee and the neutral arbitrator shall not venture beyond these terms to create a different result. In this case, the Hearing Committee determined that the parties' July 27, 1999 Agreement addressed the work in dispute and that the parties agreed that the work in dispute belonged to the Teamsters. Jt. Ex. 2, p.7. Accordingly, I must ascertain whether the Hearing Committee correctly determined that the 1999 Agreement covered the work in dispute and, if the answer is affirmative, whether the Hearing Committee honored the agreement by awarding the work to the Teamsters.

I cannot consider USW's claim that the Jurisdictional Committee was biased against them since it is arguably beyond the scope of my review and the assertion, which may in fact be true, is not supported in the record.

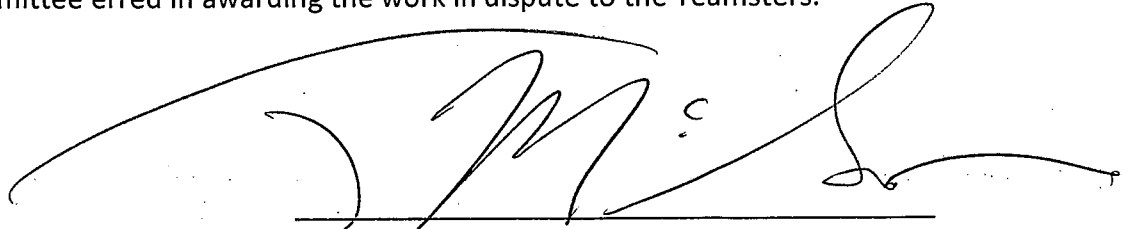
The 1999 Agreement addresses "the use of water for the purpose of dust control and soil stabilization during the demolition of non-radioactive buildings". Teamsters Ex.1. The parties do not dispute that the work included the use of water during the demolition of non-radioactive buildings. The core issue is whether the parties' 1999 Agreement regarding the "purpose" for the application of water encompasses dust that also contains asbestos. In other words, does the existence of asbestos in the dust take this matter outside the scope of the 1999 Agreement? The USW contends that because the dust contained asbestos, the work falls outside the scope of the 1999 Agreement and further that the USW D&D Class workers are certified and trained to handle and transport asbestos materials. Clearly, the testimony presented by the USW supported the qualifications of D&D workers in handling asbestos contaminated materials. While it is true that the 1999 Agreement is silent regarding "asbestos" or similar contaminants, the term "dust" may reasonably be interpreted to include many composite materials. The fact that the parties were aware of the existence of asbestos hazards before or at the time of the 1999 Agreement as argued by the USW does not, standing alone, lead to the conclusion that the parties intended to exclude asbestos related materials in their 1999 Agreement. Teamsters' Robert Hawks who participated in the negotiations which resulted in the 1999 Agreement was the only witness to testify to the intentions of the contracting parties.

Further, while the Hearing Committee's July 14, 2009 ruling fails to reflect the specific findings which formed the basis of its July 14, 2009 ruling, the Committee was clearly unpersuaded by the argument that the inclusion of asbestos as part of the materials being demolished took it outside the scope of the 1999 Agreement. The application of water/fixodent to suppress dust escaping into the atmosphere, which may itself constitute a health hazard, is not somehow changed because the dust contains asbestos. Perhaps more care is needed because of the increased risk but the testimony

presented in this case did not show the performance of the work would significantly change. This fact is corroborated by the statement made by USW during the hearing that if the materials being demolished did not contain asbestos, the work would belong to the Teamsters. Furthermore, the stated reasons for departing from the piece-by-piece or manual removal of transite panels on the non-radioactive buildings were unrelated to elevated health risks due to ambulatory asbestos particles. USW Ex. 8, attachment p.4 (“Manual removal of transite panels from the steam buildings poses a much higher risk due to falls, strains and other injuries than the potential risk posed by asbestos fiber release during demolition...”)

While the testimony presented by the USW at the hearing reflected superior skill and training by USW members in handling and transporting asbestos materials, I rely on the testimony of Robert Hawks that Teamster members have been trained and have access to training which would not preclude them from performing the required tasks. The Teamsters are not foreclosed from complying with state and federal regulations which require the setting of barriers around work areas, the use of protective clothing and monitoring air quality which are related peripheral tasks to the performance of work under the 1999 Agreement. These ancillary tasks cannot be used to defeat the terms of the 1999 Agreement. Even if it were true that none of the Teamsters were certified to perform the work in dispute, my review is limited to the application of the parties’ 1999 Agreement, rather than to the relative skills and certifications of the competing crafts. Similarly, the fact that the contractor, CH2MHILL, may have preferred that D&D workers perform these tasks is not relevant to my inquiry. USW Ex. 8, p 1. I am mindful that my authority and the scope of my review is very narrow and limited in this dispute.

Accordingly, I find that the USW has not demonstrated by a preponderance of the evidence that the Hearing Committee erred in awarding the work in dispute to the Teamsters.

A large, stylized handwritten signature in black ink, appearing to read 'T. McGann', is written over a horizontal line.

Terrance B. McGann, Arbitrator  
August 18, 2011