

**IN THE MATTER OF THE ARBITRATION BETWEEN:**

**United Steel Workers Local 2002**

**And**

**ARBITRATION OPINION  
AND AWARD**

**Joseph T. Ryerson & Son, Inc.**

**FMCS Case No. 11-52665-3**

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**Arbitrator**

**Richard A. Beens**

**Appearances**

**For the Union:**

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9119 92<sup>nd</sup> Pl.  
St. John, IN 46373**

**For the Employer:**

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**June 1, 2011**

## **JURISDICTION**

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) Between United Steel Workers Local 2002 (“Union”) and Joseph T. Ryerson & Son, Inc. (“Employer” or “management”).

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on April 15, 2011 in Minneapolis, Minnesota. The parties agreed that the matter was properly before the arbitrator. Both were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Final briefs were submitted simultaneously by email and regular mail on May 16, 2011. The record was then closed and the dispute deemed submitted.

## **ISSUE**

The parties agreed to the following statement of the issue:

*Did the Employer violate the terms of the collective bargaining agreement when it ceased to physically distribute paychecks and pay stubs to employees on the job, and, if so, what should the appropriate remedy be?*

## **FACTUAL BACKGROUND**

Joseph T. Ryerson & Son, Inc. is a processor and distributor of metal products with offices throughout the United States and Canada. This grievance involves their Plymouth, Minnesota, facility. 72 members of United Steel Workers Local 2002 are employed there. Since at least 1984, a supervisor would appear in the plant just before noon on each Thursday. He would physically distribute paychecks with attached stubs to

each employee. Those working later shifts would receive their paycheck and/or stubs later in the day. Even with the advent and popularity of direct deposit, the underlying process remained the same. As of December, 2010, approximately 10 members of the Union still receive their actual paycheck and attached stub each Thursday. The remaining members physically received pay stubs while their actual pay was transmitted to their personal bank accounts by direct deposit.

In the negotiations leading to the present CBA, the Employer made a number of proposals in July, 2009, including the following:

***16. PAYROLL, - Implement mandatory direct deposit for all employees including electronic pay notification (eliminate paper).<sup>1</sup>***

In the face of Union resistance, the Employer withdrew the proposal two months later.<sup>2</sup> There is no evidence that any CBA between the parties since 1984 makes any mention of the manner by which the Employer would pay its employees.<sup>3</sup>

In late 2010, the Employer informed the Union that it had made a company-wide decision to move from processing its payroll internally to using ADP, an outside payroll processor located in Atlanta, Georgia. “Live checks” and check stubs (for those on direct deposits) would no longer be sent to each plant and distributed weekly. For those employees wanting “live checks,” they would now be mailed by ADP directly to their homes. Those using direct deposit would have pay transmitted to their personal accounts as before. Those wishing to receive a “check advice” or stub would have to go online to the ADP website and print one for their records. The Employer also informed the Union

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<sup>1</sup> Union Exhibit 1.

<sup>2</sup> Union Exhibit 2.

<sup>3</sup> Joint Exhibit 1.

that employees would be given access to company computers if they did not own a computer at home.<sup>4</sup> Most work stations at the plant have computers capable of accessing personal payroll information directly from ADP. Computers are also available for employee usage in the plant lunchroom and business office. Those unfamiliar with computers were offered the assistance of an employee in the plant business office.

The Union filed the grievance at issue here on December 17, 2010. They claim the proposed payday changes violated, “*Article II, Section 6, & all other applicable Articles of the CBA. Past Practice.*”<sup>5</sup>

The Employer contends the right to change procedures for delivering paychecks and stubs is wholly within management discretion as set out in Article V of the CBA.<sup>6</sup>

**APPLICABLE CONTRACT PROVISIONS<sup>7</sup>**  
**ARTICLE II**  
**RECOGNITION**

**Section 6**

*The term “local working conditions” as used in this Section means specific practices or customs which reflect detailed application of the subject matter within the scope of wages, hours of work, or other conditions of employment and includes local agreements, written or oral, on such matters. It is recognized that it is impractical to set forth in this Agreement all of these working conditions, which are of a local nature only, or to state specifically in the Agreement which of these matters should be changed or eliminated. The following provisions provide general principles and procedures which explain the status of these matters and furnish necessary guideposts for the parties hereto and the impartial arbitrator.*

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<sup>4</sup> Joint Exhibit 3, Step 3 Grievance Answer.

<sup>5</sup> Joint Exhibit 2.

<sup>6</sup> Joint Exhibit 3.

<sup>7</sup> Joint Exhibit 7.

- A. *It is recognized that an employee does not have the right to have a local working condition established, in any given situation or plant where such condition has not existed, during the term of this Agreement or to have an existing local working condition changed or eliminated, except to the extent necessary to require the application of a specific provision of this Agreement.*
- B. *In no case shall local working conditions be effective to deprive any employee of rights under this Agreement. Should any employee believe that a local working condition is depriving him of the benefits of this Agreement, he shall have recourse to the grievance procedure and arbitration, if necessary, to require that the local working condition be changed or eliminated to provide the benefits established by this Agreement.*
- C. *Should there be any local working conditions in effect which provide benefits that are in excess of or in addition to the benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are changed or eliminated by mutual agreement or in accordance with Paragraph D below.*
- D. *the Company shall have the right to change or eliminate any local working condition if, as the result of action taken by management under Article V, Management, the basis for the existence of the local working condition is changed or eliminated, thereby making it unnecessary to continue such local working condition: provided, however, that when such a change or elimination is made by the Company any affected employee shall have recourse to the grievance procedure and arbitration, if necessary, to have the Company justify its action.*
- E. *No local working condition shall hereafter be established or agreed to which changes or modifies any of the provisions of this Agreement, except as it is approved in writing by the International Officer of the Union and the Vice President, Human Resources of the Company.*
- F. *The settlement of a grievance prior to arbitration under this Section 6 shall not constitute a precedent in the settlement of grievances in other situations in this area.*
- G. *Each party shall, as a matter of policy, encourage the prompt settlement of problems in this area by mutual agreement at the local level.*

**ARTICLE V  
MANAGEMENT**

*The management of the plant, the direction of its working forces, including by not limited*

*to the right to hire, to promote, and the right to demote, suspend, discipline or discharge for just cause, or transfer and the right to relieve employees from active duty because of lack of work, inability to perform regular duties efficiently, or for other legitimate reasons and the right to establish, change, or introduce new or improved production methods, standards, or facilities, shall be vested exclusively in the Company, except as limited by other provisions contained in this Agreement.*

**ARTICLE XV  
ADJUSTMENT OF GRIEVANCES**

**Section 2.**

*“Grievance” as used in the Agreement is limited to a complaint or request which involves the interpretation or application of, or compliance with the provisions of this Agreement.*

**Section 4.**

*Should grievances arise between the Company and the Union or its members employed by the Company as to the meaning or application of the provisions of this Agreement, ...the matter shall be settled promptly in the following manner:*

**FOURTH**

*Except for grievances as to which the foregoing shall be final, grievances which have not been satisfactorily settled in the foregoing steps shall be referred to an impartial arbitrator to be selected by the parties...*

*Said impartial arbitrator shall not have the power to alter, change or modify this Agreement in any manner whatsoever or add any provision thereto...*

**OPINION AND AWARD**

The instant case involves a contract interpretation in which the arbitrator is called upon to determine the meaning of some portion of the collective bargaining agreement between the parties. The arbitrator may refer to sources other than the collective bargaining agreement for enlightenment as to the meaning of various provisions of the contract. However, the essential role of the arbitrator is to interpret the language of the

collective bargaining agreement with a view to determining what the parties intended when they bargained for the disputed provisions of the agreement. Indeed, the validity of the award is dependent upon the arbitrator drawing the essence of the award from the plain language of the agreement. It is not for the arbitrator to fashion his or her own brand of workplace justice nor to add to or delete language from the agreement.

Physical delivery of paper paychecks at Ryerson every Thursday dates back to the mid-1980's. However, the manner of delivering paychecks to employees is not mentioned, either directly or by implication, in any of the parties' collective bargaining agreements from the 1980's to the present. In this grievance, the Union contends physical delivery of paychecks and/or pay stubs is a "Local working condition" governed by Article II, Section 6 of the CBA and, thus, enforceable.

The particular CBA provision relied on by the Union has long been a standard clause in steel industry contracts. A thoughtful discussion of the issue appears in the Proceedings of the National Academy of Arbitrators.<sup>8</sup> The author, Richard Mittenthal, frames the issue in the following manner:

*Because practices may relate to any phase of an Employer's business, some parties have seen fit to spell out limitations on the kind of subject matter a practice may cover. In the steel industry, for instance, a practice is referred to as a "local work condition" and it is binding only if it provides "benefits...in excess of or in addition to" those provided in the agreement. And in determining what constitutes a "benefit," steel arbitrators have applied an objective rather than a subjective test. Hence, whether the aggrieved employees like or dislike the*

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<sup>8</sup> *Past Practice and the Administration of Collective Bargaining Agreements*, Richard Mittenthal, Proceedings of the National Academy of Arbitrators (1961).

*practice in dispute is irrelevant. The decisive question, instead, is whether an ordinary employee in the same situation would reasonably regard the practice as a substantial benefit in relation to his job. If so, the practice may be an enforceable “local working condition.”*

In its thoughtful brief, the Union acknowledges that the determination is made by applying an objective rather than subjective test. They also acknowledge that the personal likes or dislikes of individual employees are irrelevant. Yet they go on to posit purely subjective examples to support their case: *it could be more convenient to discuss financial matters with his spouse with a pay stub in hand; it might be costly for the employee to purchase a computer and internet service; those now receiving paper checks by mail might have to make an extra trip to the bank, etc.* All of these examples are, in the first place, the subjective likes and dislikes of individual employees. In the second place, all this evidence was, at best, speculative. Not a single employee testified to specific problems arising under the new pay policy.

As set forth by Mittenthal, the central question is whether or not an “...ordinary employee in the same situation would reasonably regard the practice a substantial benefit in relation to his job.” (Emphasis added.) What is a “substantial benefit?”

The majority of arbitrators have ruled an established practice or custom to be binding only where it involved a “benefit” of peculiar personal value to the employees. To be of “personal value” the practice would normally involve pecuniary gain or relate to a major condition of employment.<sup>9</sup> Article II, Section 6, paragraphs B of the CBA echoes, by implication, this concept. Pecuniary value might involve paid work breaks, wash-up periods, free coffee or meals, or maternity leaves of absence. In each example,

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<sup>9</sup> *How Arbitration Works*, Elkouri & Elkouri, Sixth Edition (2003), Chapters 12.5.A and C.

the employee is earning a benefit of value for time spent at something other than normal work.<sup>10</sup> On the other hand, major conditions of employment usually involve a practice relating directly to basic wages, seniority, or pensions.<sup>11</sup> Physical delivery of checks is not covered by the CBA, either directly or even by implication.

The facts of this case are not disputed. While physical delivery of paychecks dated back to the mid-1980's, by the time the Employer proposed electronic delivery, 62 out of 72 Union members already used direct deposit. It is difficult to view the change from a live to electronic pay stubs as an abrogation of a "substantial benefit" to the vast majority of Union members. After withdrawing their proposal for a completely electronic delivery system, the Employer unilaterally imposed a combined delivery system, something markedly different than their 2010 plan. Delivery of earnings to those employees already using direct deposit would continue as before. However, they would no longer receive a paper check stub. It would now only be available online, either through personal or company computer connections. The few still opting for paper checks and stubs will now receive them via the United States Postal Service rather than from a company supervisor. The practice of physical check distribution does not confer any benefit of pecuniary value to the employees. Their pay is the same in either case. The assertion that some employees might now have to make an extra trip to deposit checks delivered by mail is speculative and unconvincing. No specific examples were brought forward. While the new check delivery system represents a significant cost reduction for the Employer, it has a neutral economic impact on the Union members. Thus, I find no "substantial benefit" that would constitute an enforceable "working

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<sup>10</sup> *How Arbitration Works*, Ibid, p. 616.

<sup>11</sup> *How Arbitration Works*, Ibid. p. 612.

condition.”

Second, the new system has no impact whatsoever on the employees’ wages, seniority or pensions. Wages remain exactly the same. The manner of delivering wages is the only change. The new procedure has zero impact on seniority or pensions. Those are unaffected by the electronic and U.S. mails check delivery system. Consequently, these do not constitute major conditions of employment that would render the past practice binding on the Employer.

The Union cites Ivyport Logistical Services, Inc., Case 24-CA-10794, as authority for its position that the time and method of paycheck delivery is a mandatory subject of bargaining. I find it inapplicable to the present case. In Ivyport, there was prior, written agreement regarding precise times and days of paycheck delivery. In that circumstance, it may well be a mandatory bargaining subject that cannot be unilaterally changed by management. No such agreement exists in the present case. Further, the fact that the company raised the issue in the last round of negotiations does not change the outcome. It is simply a proposal that was later dropped. Raising an issue at the bargaining table does not automatically convert it to a mandatory bargaining subject.<sup>12</sup> Non-mandatory subjects are commonly discussed for the sole purpose of preserving open communications and maintaining harmonious labor-management relations.

The same result occurs when the new check delivery procedure is viewed through the prism of management rights. While some practices are the product either in their inception or application of a joint agreement, no evidence of an agreement on this subject was presented in this case. At best, the Union acquiesced to physical delivery of paychecks and/or stubs. Acquiescence does equal agreement. Other practices develop

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<sup>12</sup> See *How Arbitration Works*, Supra., Chapters, 13.2, 3, 4, and 5.

from a choice made by the Employer in the exercise of its managerial discretion without any intention of a future commitment.<sup>13</sup> This appears to be what occurred in the present case. There is no evidence that the physical delivery of paychecks was ever anything but an exercise of managerial discretion. As such, it can be unilaterally changed by the Employer.

Article V of the CBA reserves to management the right, *to establish, change, or introduce new or improved production methods, standards or facilities...*” Clearly, the Employer instituted the change with a view toward achieving cost savings and increased efficiency. Office staff will no longer need to prepare paper checks. Supervisory time is not spent handing out the checks. Outsourcing payroll functions has become common area of expense reduction in the modern workplace. Where the CBA is silent and where there is no evidence of prior agreement, it is hard to envision the new procedure as anything other than an exercise of the managerial right to control operation of the company. Even while exercising managerial discretion, the Employer has made every effort to minimize any problems that might be associated with the transition. The Union was duly notified of the change.<sup>14</sup> Almost a month in advance, the employees received a memo announcing the change.<sup>15</sup> At the same time a Day One Guide was provided to give step-by-step instructions for accessing payroll information through the internet.<sup>16</sup> Finally the Employer offered access to and assistance with company computers for those without home internet connections.

Based upon all of the foregoing, I find the Employer’s previous procedure of

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<sup>13</sup> Mittenthal, *supra*.

<sup>14</sup> Employer Exhibit 3.

<sup>15</sup> Employer Exhibit 1.

<sup>16</sup> Employer Exhibit 2.

physically distributing paper paychecks and/or stubs is not a binding “past practice” or “working condition.”

**AWARD**

The grievance is DENIED.

Dated: \_\_\_\_\_

/s/ Richard A. Beens

Richard A. Beens, Arbitrator