UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

David McCall
International President

March 11, 2024

Via Electronic Mail
Mr. Takahiro Mori
Representative Director and Executive Vice President
Nippon Steel Corporation

Re: Acquisition of United States Steel Corporation by Nippon Steel North America, Inc. and Treatment of All USW Agreements

Dear Mr. Mori:

I am writing in reference to several documents previously provided to United Steelworkers ("USW").

First, only upon its public release on December 18, 2023, was USW able to access the Agreement and Plan of Merger by and among Nippon Steel North America, Inc. ("NSNA"), 2023 Merger Subsidiary, Inc. ("Merger Sub"), Nippon Steel Corporation ("NSC"), and United States Steel Corporation ("U.S. Steel"), dated December 13, 2023 ("Plan of Merger"). Under that Plan of Merger, NSNA would acquire U.S. Steel, and, following the consummation of such transaction – if consummation, in fact, occurs – U.S. Steel would become a wholly owned subsidiary of NSNA. On that same day – December 18, 2023 – NSNA furnished USW with a letter in which NSNA, and NSNA only, made certain representations with respect to USW's agreements with U.S. Steel, including that NSNA would "assume[] all USW agreements" upon closing.

Subsequently, by a letter dated February 13, 2024, NSC wrote to USW, referring to Article 2, Section D of the Basic Labor Agreement ("BLA") between USW and U.S. Steel and representing that NSC, upon closing, would both "recognize[] the USW as the bargaining agent" for employees employed by U.S. Steel in certain bargaining units and "assume[] all USW Agreements." NSC additionally represented that it "assures the USW that NSC has the willingness and financial wherewithal to ensure that U.S. Steel will continue to honor all commitments in all USW agreements as applied to the USW-represented employees at U.S. Steel."

To "assume" an executory contract, especially a series of complex agreements arising out of decades of collective bargaining, has a particular meaning. Assuming a contract in this context refers to the "act of taking (esp. someone else's debt or other obligation) for or on oneself." "Assumption," *Blacks's Law Dictionary* (11th ed. 2019); *see also, e.g.*, *Bouton v. Litton Indus., Inc.*, 423 F.2d 643, 651 (3d Cir. 1970) ("[O]ne who assumes a liability, as distinguished from one who agrees to indemnify against it, take[s] the obligation of the transferor unto

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himself. . . ."); *SEIU Local 32BJ v. Stone Park Associates, Inc.*, 326 F. Supp. 2d 550, 555 (S.D.N.Y. 2004) (under the "contractual principle of assumption," buyer who assumed "any and all liabilities" under a collective bargaining agreement was bound by the collective bargaining agreement's arbitration provision); *Stockton Door Co.*, 218 N.L.R.B. 1053, 1055 (1975) ("once [the employer] by its actions assumed the contract, it was bound by it thereafter."). Likewise, "an assignment of 'the contract' or of 'all of my rights under the contract" . . . is an assignment of the assignor's rights and a delegation of his unperformed duties under the contract[,]" and, "[u]nless the language or the circumstances indicate the contrary, the acceptance by an assignee of such an assignment operates as a promise to the assignor to perform the assignor's unperformed duties, and the obligor of the assigned rights [in this context, USW] is an intended beneficiary of the promise." Restatement (Second) of Contracts, § 328.

For these reasons, among others, the representations contained for the first time in NSC's letter of February 13, 2024 – articulating NSC's willingness to "assume[] all USW Agreements" – does not satisfy the accepted understanding of the principles of contract assumption. Notably, the parties to the Plan of Merger dated December 13, 2023 – namely, NSNA, Merger Sub, NSC, and U.S. Steel – have not modified the Plan of Merger to reflect NSC's representations concerning the assumption of all USW agreements. But, even if that were to occur, it would change little about the substance of NSC's proposed conduct. In many of our communications, NSC representatives have made clear that NSC does not propose, in fact, to take U.S. Steel's obligations as its own or to take these obligations unto itself. Nor has NSC committed to binding itself to the BLAs and all of the other agreements that U.S. Steel presently has with the USW. It is USW's understanding that, at most, NSC proposes to provide an indirect financial guarantee or indemnification for U.S. Steel's obligations, but only if U.S. Steel defaults on its obligations and then, when asked to cure U.S. Steel's defaults, NSNA itself defaults on those obligations. This is the extent of what NSC communicated to the USW in the document it provided at our March 7 meeting. Plainly, NSC's currently expressed intent to guarantee or indemnify against future obligations is not consistent with its written promise to USW and U.S. Steel to "assume[] all USW agreements," and thus NSC's expressed intent falls grievously short of constituting an assumption.

If NSC were actually to "assume all USW Agreements," consistent with the legal meaning of that term, it would stand in the shoes of U.S. Steel under the USW agreements and be bound by all of the obligations pertaining to U.S. Steel that are found in or related to those agreements. Those agreements include not only every labor agreement, but also all USW pension plans, retiree health care plans, commitments made by U.S. Steel regarding capital expenditures, and profit-sharing obligations. They also include a myriad of agreements and practices that currently must be followed by U.S. Steel, and necessarily would fall upon NSC based on its assumption of all agreements with USW if the merger were to be consummated.

Assuming all USW agreements will impose upon NSC numerous obligations, including (but certainly not limited to) each of the following:

- Accepting the full scope of NSC's commitments to the Steelworkers Pension Trust. (NSC's recent acknowledgement that NSNA and NSC would be part of the U.S. Steel control group is encouraging, but NSC likewise must execute an incorporation agreement with the Steelworkers Pension Trust, thereby assuming U.S. Steel's obligations to make all contractually and statutorily required payments to that Trust, including the payment of any withdrawal liability that may be owed in the event of a mass withdrawal from the Pension Trust, *see* 29 U.S.C. § 1381 *et seq*.; *see also, e.g., Shopman's Local Union 502 Pension Fund v. Samuel Grossi & Sons, Inc.*, 578 F. Supp. 3d 698, 710-11 (E.D. Pa. 2022));

- processing in the ordinary course all outstanding USW grievances against U.S. Steel through arbitration and complying with any remedy awarded by an arbitrator;

- complying with the contractual restrictions on the contracting out of bargaining unit work, *see* BLA, Article 2F;

- giving the USW advance notice and a detailed explanation of any proposed decision to permanently close or discontinue a Plant department or substantial portion thereof, as well as an opportunity to bargain over suggested alternatives, *see* BLA Article 5G;

- providing the Union with "full and continuing access" to NSC's "short and long-term operating and financial results including inputs relevant to the development of them," as well as "the earliest practicable notification and continuing updates of any contemplated corporate transactions, including mergers, acquisitions, joint ventures and new facilities to be constructed or established, *see* BLA Article 6A2;

- remaining neutral with respect to the unionization of any employees of NSC, or its affiliates, in the United States or Canada, *see* BLA Article 2E;

- participating in quarterly meetings in Pittsburgh of a Joint Strategic Labor Management Committee comprised, on NSC's side, of NSC's CEO, Senior Vice President, Chief Human Resource Officer, and the highest ranking officials at each of NSC's facilities, *see* BLA Article 6A4;

- paying for public policy initiatives, the Institute for Career Development, supplemental unemployment benefits, an incentive pay plan, and inflation recognition payments, pursuant to the terms of the BLA, *see* BLA Articles 6B, 7B, 8B, 9B, and 9H;

- complying with the profit sharing obligations, which includes furnishing information that would allow USW to confirm these amounts and fully communicate with bargaining unit employees about the calculations, *see* BLA Article 9G;

- complying in all respects with the contractual obligation to refrain from replacing product produced at USW-represented facilities, *see* BLA Article 11A; and

- agreeing to upstream only in amounts consistent with NSC's "historical, current, and projected financial performance and spending requirements," *see* BLA Article 11.B.

In addition to these and other obligations, and as has been previously discussed, as part of its assumption of all the USW agreements, NSC must be subject to the jurisdiction of U.S. courts, to the same extent as U.S. Steel. *See*, *e.g.*, *Simmers v. American Cyanamid Corp.*, 576 A.2d 376, 389 (Pa. 1990) ("When a successor corporation assumes the liabilities of its corporate predecessors, the successor in effect consents to be held liable in the same locations where its predecessor would have been exposed, i.e. consents to the same jurisdictional qualities of its predecessor."); *Duris v. Erato Shipping, Inc.*, 684 F.2d 352, 356 (6th Cir. 1982) (contacts of predecessor entity with forum subjected successor entity to jurisdiction in the forum).

Any effort by NSC to proceed without fully satisfying USW on the matters listed above will fall short of NSC's obligation to assume all USW agreements, and thus will not satisfy either NSC's or U.S. Steel's obligations under the BLA relative to this transaction. USW will continue strongly to oppose Nippon's proposed acquisition of U.S. Steel in light of these failings. Additionally, USW reserves all rights to make all demands of its choosing and to insist that USW's consent is required to implement any and all aspects of NSC's assumption of all USW agreements.

Sincerely,

David R. McCall
International President

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION

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