arb-#704

In the matter of:

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

and

THE INLAND STEEL COMPANY

Case ARB

June 5, 1943

Rates of Pay and Probationary Period for Women

The question at issue here has been presented as one arising wholly out of the terms of the contract between the parties. The question as to whether there has been a violation of public policy was, for some reason, withdrawn by the Union's representative at the hearing. The claim that the Company has acted in violation of General Order No. 16 was withdrawn. Apparently this was done as a result of the confusion arising out of Executive Order 9328, issued April 8, 1943. For a time there was prevalent the general impression that the latter Order had eliminated all questions of inequality and inequity as a basis for wage adjustments. However, on June 4, 1943, in a letter to the Secretary of Labor, William H. Davis, Chairman of the National War Labor Board, had the following to say: "General Order No. 16 has neither been impaired nor amended as a result of Executive Order no. 9328. It stands today in full force and effect." Therefore, the Arbitrator does not feel that General Order No. 16 should be altogether ignored in this matter.

This dispute arose out of a grievance lodged by Nick Migas on December 7, 1942, for the No. 1 Open Hearth Grievance Committee, where women (or a woman) had been employed in the charging scales as weighmasters. The Company had introduced a probationary or trainee period of sixty days for women, during which time they were to be kept on the common labor rate rather than on the rate which their respective job classifications specified. This was done without reference to the Union. The General Superintendent discussed the matter, informally, in his office with some of the women employees, and issued a memorandum on the subject on December 23, 1942.

(He did not take it up with the Union officials). There was apparently tacit acceptance by these women of his suggestion that such a trainee or probationary period he introduced for women only. Shortly thereafter the Superintendent sent out the following notice:

January 1, 1943

"To all department heads:

Effective this date, the policy in relation to women employees who replace men on jobs customarily handled by the men in the plant proper will be as follows:

Women hired in the offices will be paid at the established starting rates, and women hired on various jobs in the mills will start at the basic labor rate.

After sixty days of service the rate will be reestablished to the customarily paid the men whom they have replaced, provided the evaluation of the work performed by the woman equals that done by the man whom she has replaced.

If the evaluation does not meet the parity evaluation, then a rate shall be established in direct proportion to that work performed by the woman in relation to that done by the man.

This applies only to those women who replace former men employees.

F. M. Gillies
General Superintendent"

The Union, taking exception to this as a matter of general policy lodged a complaint, charging a violation of the collective bargaining agreement which it had signed jointly with the Company on August 5, 1942, setting forth "rates of pay, hours of work and conditions of employment to be observed by the parties . . ." Articles III and IV of this contract cover the matter of "Wages" and "Rate Establishment and Adjustment."

Article III, Section 3, provides that "In compliance with the Directive Order of the National War Labor Board dated July 16, 1942, the Company agrees each employee (except apprentices and learners) shall be guaranteed and shall receive for each day's work and amount which shall be not less than 78¢ multiplied by the number of hours worked by him on that day, but if such employee's fixed occupational hourly rate is more than 78¢, the Company agrees and guarantees that he shall receive for each day's work an amount which shall be not less than his fixed occupational hourly rate multiplied by the hours worked by him that day, and in accordance with the overtime provisions of Article V, Section 2 . . ."

Article IV, Section 5 further provides that "An employee working on a regular job ordinarily filled by someone else, shall be paid the rate of the job."

The Union makes no complaint in this matter regarding the rates of women employed on jobs where they are under actual instruction. Nor does it contend that women should be paid the full rate of the jobs to which they are assigned if they are incapable of carrying the full responsibility of such jobs. Its complaint is based purely upon the arbitrary sixty-day trainee or probationary period which the General Superintendent announced on January 1, 1943. The fact that such an action was taken without negotiation with the duly established collective bargaining agency is regarded as a breach of the contract. And the fact that women are being assigned to jobs which pay higher than the common labor rate and still retained at the lower rate is regarded by the Union as a breach of the terms of the contract.

The Management's response to this is that women are less experienced in the type of work towhich they are commonly assigned in production work; that they need a period of special training; and that while in some cases women may learn their jobs in less than sixty days, in others it may be longer than this period before they are capable of assuming full responsibility for some of the jobs to which they are now

being assigned. The Management further believes that the establishment of some such arbitrary period will eliminate a lot of grievances, since people often feel or think that they are capable of accepting full responsibility for jobs when actually they are not so fitted.

The Arbitrator fully appreciates the Management's basis for apprehension on some of these points. However, he doesn't feel that such an arbitrary rule as that established by the General Superintendent is either in keeping with the terms of the collective bargaining agreement or will be conducive to the morale of the plant. It may, and apparently has, created more of a problem than it has obviated.

A group of women employees brought together in the office of the General Superintendent, and without previously established or experienced spokesman in such matters, would naturally go along with such a suggestion from the "boss." After all, there appeared no immediate alternative, However, once back on jobs which women may handle with dispatch equal to that of male employees their previously unvoiced reservations might well rise to a point of deep resentment. Particularly might this be the case when it is observed that such a plan is (a) not in accord with the established wage agreement, and (b) is contrary to an oft-asserted policy of the National War Labor Board.

The Arbitrator finds that, according to the terms of the contract between the parties, the Company may keep any employee, regardless of sex, on the minimum rate of pay, or even on a reduced rate in certain instances, for such time as instructions or guidance in the occupation is necessary. This may be for three days. It may be for six months. There may even be instances where women are never able to assume full responsibility for a task to which they are assigned. Any such instance is a fair occasion for discrimination in the matter of pay rates. But it should be fairly clear to all concerned just when an employee is ready to take over the full

responsibility of a particular job to which he (or she) is assigned. If it is possible to determine this with men it is equally possible to determine it in the case of women employees. And when a woman is assigned to a task in the production line, to which she is capable of adapting herself, she should not be penalized with a lower rate of pay simply because she is a woman. Any arbitrary rule which attempts to do this is unduly discriminatory.

The employment of women in industry is not new. It may be that the Inland Steel Company has not previously made it a practice, to employ women in the production shops. But it has been done in many instances. Therefore, it is possible that some of the women employed in the Company's plant have had previous industrial experience. Yet such women are subject to this arbitrary trainee rule. The fact that a man (without any previous experience in industrial production) may go immediately from the common labor rate to the rate of the job to which he is assigned is proof of the discriminatory aspect of the General Superintendent's rule in this case.

The Arbitrator is of the opinion that the Company may, under the terms of the agreement with Local 1010, United Steelworkers of America, keep women on reduced pay only where the physical circumstances warrant it. They may be kept on reduced pay as trainees, only if they are actually being trained -- and under the same terms as men in similar situations. This may be for six months instead of two. And it may be for only three days. But there should be no trainee period based purely upon sex. The setting up of an arbitrary trainee period of sixty days, for women only, is definitely discriminatory. It is in violation of both the contract and current public policy.

The General Superintendent has said that the establishment of an arbitrary sixty-day period would eliminate a lot of grievances over the question as to when

a particular female employee had established competence in a particular job. If it is not difficult to determine when a man's training is completed and he is ready for the full responsibility of a new job neither should it be difficult to determine when a woman has established competence. This should be obvious. It should also be fairly obvious when an employee (male or female) is not physically capable of performing without assistance the task to which he or she has been assigned.

Conclusion

1. The Arbitrator must, therefore, rule that the Company's policy of keeping women on the common labor rate after they have assumed full and complete responsibility for jobs which normally pay higher rates is arbitrary, discriminatory, in violation of the collective bargaining agreement between the parties, and is contrary to General Order 16, which establishes the policy of equal pay for equal work.

2. Since the Company's policy was established in violation of the contract and without either the Local or the International Union officials' sharing the responsibility for its establishment, the Company should make restitution to those women employees who have thus been deprived of their full rate of pay. The difference between the common labor rate and the full rate of the jobs held should be paid retroactively to the date when the employees assumed full responsibility for such jobs.

3. The Company should not be required to keep this matter of retroactive claims open indefinitely. If any employee who is entitled to such retroactive pay fails to claim it within sixty days after notice is mailed to her last know address, she should thereafter forfeit the claim.

Respectfully submitted,

John Day Larkin
Arbitrator