In the Arbitration Matter)
Between the)
Inland Steel Company)
and the)
United Steelworkers of America)
Local 1010)
Both of Indiana Harbor, Indiana)

ARBITRATION NO. #31

DECISION.

On December 3, 1946, the Inland Steel Company, represented by W. A. Blake, Superintendent of Labor Relations and the United Steelworkers of America, represented by Joseph B. Jeneske, Representative, addressed a letter to Jacob J. Blair, the undersigned, requesting him to serve as arbitrator to decide several cases then in controversy between them. A copy of this letter is shown below:

INLAND STEEL COMPANY
INDIANA HARBOR WORKS
East Chicago, Indiana

Dec. 3, 1946

Mr. Jacob J. Blair
535 B Union Trust Building
Pittsburgh, Pennsylvania

Dear Mr. Blair:

Re: Grievances Nos. 3-B-6, 4-B-51, 5-B-30 and 12-B-9, requesting reinstatement of women war workers and compensation for time lost.

The management of the Indiana Harbor Works Plant of the Inland Steel Company, and Local Union 1010 of the United Steelworkers of America, (CIO), have been unable to resolve the above numbered grievances, and in accordance with Step number 6 in Section 7, Article VI, entitled "Adjustment of Grievances" of the Agreement between the company and the union, the matter is now to be submitted to an impartial umpire.

You have been agreed upon, and we would appreciate word from you regarding your willingness to serve. If you are available, will you be kind enough to submit several possible dates for a hearing, to eliminate any danger of possible conflict with other matters involving either the management or the union.

All of these disputes have to do with the question of whether or not the company acted within its rights when it laid off women war workers following the termination of the war effort because they were unable to meet all the requirements and perform all of the duties specified in the job content of their particular jobs. The charge is generally made by the union that these women were laid off in violation of the Seniority Article of the Agreement between the company and the union and without regard to the provisions contained in Section 11 of Article VI of the Agreement dealing with Discharges.

Should you desire a formal joint submission of the issue or issues involved prior to the date of the hearing, we shall attempt to have the same prepared and agreed upon jointly in order to facilitate the hearing of the same.

The hearing is to be held in the meeting room of the Indiana Harbor Works Plant of Inland Steel Company in East Chicago, Indiana, at a time and date mutually acceptable to all concerned. When a date is finally agreed upon, we will advise you with respect to the type of transportation to take from Chicago, and arrange to meet you if necessary.

Very truly yours,

INLAND STEEL COMPANY

By W. A. Blake (Signed)
Supt. of Labor Relations

UNITED STEELWORKERS OF AMERICA

By Joseph B. Jeneske (signed)
Representative

cc: Mr. Joseph Jeneske
Mr. F. M. Gillies
Mr. L. B. Luellen
Mr. W. G. Caples

Pursuant to the terms of the Agreement between the parties, four issues were submitted to Jacob J. Blair, in a hearing held in the Offices of the Company, at Indiana Harbor, Indiana on January 14, 1947. Copies of the grievances identifying these issues are shown below:

June 7, 1946 STATEMENT OF GRIEVANCE (5-B-30)
USA Local Union No. 1010

NAME: Ella Crews, Bennie Yaucy, Fannie Watson, Johnetta, McLawn, Mary Morris, Ollie Williams, Daisy Upshaw.

CHECK NO. 8365, 8367, 8366, 8373, 8353, 8268, 8251.

DEPARTMENT - DIVISION #2 Open Hearth - Labor

DESCRIPTION OF GRIEVANCE: Aggrieved contend termination of employment in violation of Article VI, Section 11 of the Agreement. Request reinstatement and compensation for time lost.

(Signed) Harry H. Powell, Rep.

June 15, 1946

SUPERINTENDENT'S DISPOSITION:

These Women War workers were laid off permanently because they could not perform the normal requirements of the job. We do not feel that this action was in violation of the contract.

(Signed) L. R. Berner

June 25, 1946

SUPERINTENDENT OF INDUSTRIAL RELATIONS DISPOSITION:

Our investigation reveals that the following named employees, working as Laborers in No. 2 Open Hearth, cannot perform more than 40% of the job requirements: Ella Crews, Bennie M. Yancy, Johnetta B. McLaurin, Mary F. Morris, Ollie Williams and Daisy M. Upshew. We therefore must sustain the action of departmental superintendent in permanently laying off these temporary war workers. In the case of Hannie Watson, Foundry Helper, our investigation reveals that she cannot perform more than one-half the normal job requirements. Therefore, we must sustain the permanent lay off of this temporary woman war worker. Reinstatement and compensation for time lost is denied.

(Signed) M. M. McClure

July 2, 1946

GENERAL SUPERINTENDENT'S DISPOSITION:

See reply dated July 2, 1946, addressed to Mr. Harry H. Powell, Grievance Committeeman, #2 Open Hearth. Re: Termination of Employment of Women War Workers in Alleged Violation of Article VI, Section 11 of Agreement. Grievance #5-B-30, dated 8/7/46.

Attachment

(Signed)_____
Leland B. Luellen
Asst. to General Supt.

May 17, 1946 STATEMENT OF GRIEVANCE (12-B-9)
USA Local Union No. 1010

NAME: Anne Sut, Madgeline Mureean

CHECK NO. 4541, 4538

DEPARTMENT - DIVISION Galvanize Dept. OCCUPATION Inspector Helpers

DESCRIPTION OF GRIEVANCE: Discharged without cause and not according to seniority.

(Signed) Wm. Jenvey, Rep.

May 22, 1946

SUPERINTENDENT'S DISPOSITION:

The aggrieved were employed for occupations of Inspectors and inspector helpers because of the shortage of man-power during the war emergency.

The aggrieved had not been able to perform the complete and normal requirements of the occupations and are therefore being replaced with male employees.

(Signed) H. W. Bradley

June 7, 1946

SUPERINTENDENT OF INDUSTRIAL RELATIONS DISPOSITION:

An investigation of this grievance reveals that the women involved are unable to meet the job requirements set up for the occupation of inspector helper. The Management feels that the women simply do not have the physical capacity to perform the following job duties:

1. Hook and un-hook rolls during roll change, or equipment during flux box change.
2. Drive machine in or out.
3. Clean screen conveyor.
4. Obtain blocks and aid in dressing lot.

Inasmuch as the foregoing constitute about 25% of the total job requirements, they cannot be said to be performing these tasks as well as the men and, consequently, this grievance is denied.

(Signed) M. M. McClure

June 12, 1946

GENERAL SUPERINTENDENT'S DISPOSITION:

See reply dated June 12, 1946, addressed to Wm. Jenvey, Grievance Committeeman, Sheet Mill, Re: Galv. Dept., Ann Sut, #4541, and Magdeline Muresan, #4538. Grievance #12-B-9, dated 5/17/46.

(Signed) L. B. Lueller
Asst. to General Superintendent

April 17, 1946 STATEMENT OF GRIEVANCE (4-B-51)
USA Local Union No. 1010

NAME: General (Women)

CHECK NO._____

DEPARTMENT - DIVISION #1 Open Hearth OCCUPATION Labor

DESCRIPTION OF GRIEVANCE: Management of No. 1 Open Hearth has laid off indiscriminately a number of women from the labor department. The Union objects to the deliberate violation of the agreement. Younger employees are left in the labor department. We request that these women be reinstated and paid all lost time.

Nick Migas, Grievance Committeeman

Walter Pedziwiatr, Assistant

April 29, 1946

SUPERINTENDENT'S DISPOSITION:

See Departmental Management's reply dated April 29, 1946, addressed to Nick Migas, Grievance Committeeman, #1 Open Hearth Re: General Grievance #4-B-51 on Women Laid Off, dated 4/17/46.
Attachment.

(Signed) John Rudolf, Supt., #1 O.H.

May 20, 1946

SUPERINTENDENT OF INDUSTRIAL RELATIONS DISPOSITION:

In this grievance there are nine women involved, indicated by the following check numbers: 723, 727, 729, 733, 740, 741, 785, 790 and 788. Investigation of this case indicates that eight of the nine employees involved were laid off for proper reason. Evidence proves that they are not performing in the normal requirements of their jobs. There are many elements of the normal labor job at No. 1 Open Hearth which these female employees do not perform at all, and there are other tasks which they perform far below the normal standard of the department. In the case of the latter, Check No. 738, it was discovered, after she was laid off, that she was performing her work as well as would normally be expected of a male employee. Therefore, she has been reinstated and her lost time made up.

(Signed)M. M. McClure

July 15, 1946 STATEMENT OF GRIEVANCE (3-B-6)
USA Local Union No. 1010

NAME: Women Employees

DEPARTMENT - DIVISION Coke Plant OCCUPATION Laborers

DESCRIPTION OF GRIEVANCE: Company has violated Article 7 of the Agreement by not recalling these women and placing new employees on their job.

July 20, 1946

SUPERINTENDENT'S DISPOSITION:

The aggrieved were not returned to work to the Coke Plant because they were hired as women war workers, and have now been replaced with men. Therefore, the grievance is denied.

(Signed) G. L. Corban

SUPERINTENDENT OF INDUSTRIAL RELATIONS DISPOSITION:

It is our opinion that any temporary women war workers laid off since the termination of hostilities with Japan are not subject to recall. The employment of women in the steel industry was strickly a war measure and not covered by the usual considerations of the Labor Agreement. At the time of signing Labor Agreement on August 5, 1942, the manpower shortage during the war had not developed yet to a point where it was necessary to give consideration to the question of employing women on jobs traditionally held by men. It was many months later before action was taken to employ women. It hardly seems logical that emergencies arising under the extremes of war conditions would be covered by the

Labor Agreement, which was written to include the usual and normal considerations in the employer-employee relationship. No thinking or fair-minded person would deny the fact that women were taken into American industry during the war emergency because sufficient manpower was not available to fill the war jobs. The women covered by this grievance were laid off upon termination of their jobs. Hostilities have long since ceased and men are now available and there is no longer a need for the services of these women. It has been understood all along by women war workers, Management, the Union, also war agencies such as War Manpower Commission, U.S. Employment Service, Women's Bureau of the Department of Labor, State Labor Commissioner's Office, U.S. Army authorities charged with the responsibility of manning war plants, that women were utilized during the war emergency for the purpose of assisting in winning the victory on the production line. That victory has been won and, therefore, their jobs are done. Grievance rejected.

(Signed) M. M. McClure

September 10, 1946

GENERAL SUPERINTENDENT'S DISPOSITION:

See reply dated 9/10/46 addressed to Mr. Glenn Cramer, Grievance Committeeman, Plancor-Re: Women employees, Coke Plant laborers contend Company has violated Article VII of Agreement by not recalling them and placing new employees on their job. p - Grievance #3-B-6, dated 7/15/46.
Attachment.

(Signed) L. B. Luellen,
Asst. to Gen. Supt.

THE ISSUES.

Four grievances were presented by the parties in this case, all dealing with the same issue. Such differences as exist between these grievances are differences in argument and fact. Because the same issue is involved in all four grievances, these four cases will be considered together, with differences pointed out only as such differences are found.

The basic issue running through all four grievances is whether the Company has the right under the contract to permanently lay off certain female employees hired during the war to take the place of male workers who either entered the Armed Services or resigned to take the other jobs. Women were also hired to do jobs usually assigned to men as a result of the expansion of the plant during the war, male workers not being available for these assignments. Upon the termination of the war, and when male labor became available, the Company permanently laid off the women involved in these grievances and replaced them with men.

This action of the Company is challenged by the Union on the grounds first, that these female employees were "discharged" without cause in violation of the Agreement and second, these female employees were laid off in violation of the seniority provisions of the Agreement.

CONTRACT CLAUSES CITED BY THE PARTIES

Under Section 11 of the Agreement, the Union holds that the permanent separation of these female employees from employment in the Company was the equivalent of a discharge. Discharges, according to the Union, are to be made according to the conditions of Article 6, Section 11, which reads as follows:

Discharges.

Section 11. In the exercise of its rights as set forth in Article XI, Management agrees that a member of the Union shall not arbitrarily be discharged, but that in all instances in whibh Management may conclude that an employee's conduct may justify suspension or discharge, he shall first be suspended. Such suspension shall be for not more than five (5) calendar days. During this period of initial suspension, the employee may, if he believes that he has been unjustly dealt with, request a hearing and a statement of the alleged offense from his superintendent, or the department of Industrial Relations with the member or members of the grievance committee present. After such hearing, Management may conclude whether the suspension shall be converted into discharge or, dependent upon the facts of the case, that such suspension may be extended or revoked. Any such decision will be given within forty-eight (48) hours after the hearing. If the suspension is revoked the employee shall be returned to his regular occupation and receive full compensation at this regular ate of pay for the time lost, but in the event disposition shall result in either the affirmation or extension of the suspension or discharge of the employee, the employee may allege a grievance which shall be disposed of in accordance with this grievance procedure of Article VI, starting with Step 4, without prior notification. Should it be determined by the Company or by an umpire in accordance with the grievance procedure that the employee has been discharged or suspended unjustly, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time lost.

Under this Article and Section, it will be noted that the procedure requires first, a suspension for not more than five (5) calendar days, a hearing on the alleged offense for which the employee was discharged followed by a decision on the disposition of the case terminating in arbitration under the grievance procedure.

The Union also cites Article 7, the Seniority Clause. The pertinent provisions of this Article are quoted below:

Seniority.

The Company and the Union recognize that promotional opportunity and job security, when decrease of forces takes place, and reinstatements after layoffs should merit consideration in proportion to length of continuous service. It is also recognized that efficient operation of the plant greatly depends on the ability of the individual on his particular job.

It will be the intent of the administration of the following action to give full due consideration to the employee's length of continuous service in the department within which he is active.

Following the Preamble appears Section 2, entitled "Demotions." This provides:

Demotions.

Section 2. When it is necessary to lay employees off because of decreased business activity, the following procedure shall be in force:

1. Employees having no seniority shall be laid off. (Probationary employees.)

2. The hours of work shall be reduced to twenty-four (24) hours per week before anyone else is laid off.

3. Should there be further decrease in force, employees will be laid off according to the seniority status as defined in the following paragraphs of this section in order to maintain the 24-hour week.

Employees will be demoted and laid off by considering the following factors:

(a) Length of continuous departmental service.

(b) Ability to perform the work.

(c) Physical fitness.

Employees will be demoted in reverse order of the promotional sequence in accordance with factors (a), (b) and (c) above. Where factors (b) and (c) are relatively equal continuous service in the department shall govern. No question may be raised with respect to factor (b) "ability to perform the work", where the employee has held and performed the duties of an occupation for six-months or more.

In the evaluation of (b) and (c) of employees on occupations where employees have not proved their ability to perform the work by having held the occupation six months or more, the company will be the judge.

Under this Article the Union points out that the Company is obligated to consider only length of continuous departmental service since all of the women involved have more than 60-day satisfactory records in the departments from which they were laid off.

The Company also makes reference to Article 7, Section 2, claiming that under the circumstances they were entitled to consider physical fitness as a basis for laying off female employees when the full content of the job was restored.

The Company also refers to Article 11 of the Agreement covering the rights of management. This Article is reproduced below:

Plant Management.

The management of the plants and direction of the working forces, including the right to direct, plan and control plant operations, the right to hire, promote, demote, suspend, and discharge employees for cause, and to relieve employees because of lack of work or for other legitimate reasons, and the right to introduce new and improved methods or facilities and to change existing production methods or facilities and to manage the properties in the traditional manner, is vested exclusively in the Company, provided that nothing shall be used for the purpose of discrimination against employees because of membership in or activity on behalf of the Union. These provisions shall not apply to nullify the other provisions of this agreement.

Under this Article the Company stresses their right to "relieve employees because of lack of work or for other legitimate reasons." (My underscoring for emphasis.)

CONTENTIONS OF THE PARTIES.

In cases involving grievances numbers 3-B-30, 4-B-51, and 12-B-9, the Union holds that the female employees involved should be reinstated in their former positions with back pay on two principal grounds. First, that these women were not discharged in accordance with the discharge procedure outlined in Article 6, Section 11. Second, the Union claims that these women fully satisfied the jobs to which they were assigned. They had also been employed on these jobs with a satisfactory record for more than six months. In view of this, the Company is not permitted under Article VII, section 2 to lay them off while retaining other employees, including men, who were junior to them in length of service. Such action by the Company would jeopardize the entire seniority section of the Agreement, thus weakening a "property right" which employees have in their jobs.

Grievance 3-B-6, involving women employed as laborers in No. 3 Coke Plant, was argued on the same grounds as the first three grievances, plus the additional claim that male jobs have never been established in the No. 3 Coke Plant since it did not begin operations until 1943. It was also argued that supervision in No. 3 Coke Plant had agreed that these women would be taken back on their former jobs as soon as the Plant was reopened, this condition occuring in June of 1946.

The Company claims that all of the jobs upon which these women were employed were jobs traditionally held by men. The only exception to this are the jobs in the Labor Department in the No. 3 Coke Plant, but even here the Company contends that women are not normally employed on such work, hence, these jobs cannot be regarded differently from the others. In order to meet the demands of the War, these jobs were then scaled downward to enable women to be assigned. As a consequence, women at best performed only a part of the normal job requirements in these departments. Opinions of supervisors in each of these departments were given to show the percentage of the full job which women were unable to do.

At the end of the War and when male labor became available, the Company under its rights in Article 11 of the Agreement, changed the partial jobs back to their full pre-war content. Under these circumstances women, being unable to perform all the requirements of the job, were released, and their places were filled by men.

On grievance 3-B-6 the Company denies that supervision made any specific commitment to re-employ women after Coke Plant No. 3 was again put in operation. Instead, it was held that supervision indicated that the women would be employed on such work as they were capable of doing.

ANALYSIS AND FINDINGS

All four of these cases rest upon the question of the physical fitness of the female employee to perform the normal duties of the job. All the jobs upon which these women were employed were jobs requiring heavy physical labor. Particular attention is called to the fact that two of the grievances are in the Labor Division of #1 and #2 Open Hearth, a third in the Galvanizing Department and a fourth in the

Labor Department of No. 3 Coke Ovens. As such, this issue is not a new one, but one which has been treated exhaustively in arbitration and N. L. R. B. decisions. With the general principle established that an employee should be able and physically fit to perform the job in question, this principle is found not only in arbitration decisions which will be reviewed later, but in at least one decision of the National Labor Relations Board. (Columbia Powder Company, Frederickson, Washington, and Powder Workers Federal Labor Union. Case No. C-2018, April 7, 1942. 40 N. L. R. B. 223, 10 L.RR Man. 58).

The obvious exception to this rule is a gain covered by an N. L. R. B. decision in the Crossett Lumber Company case. Here the Company applied two standards of physical fitness, the Board holding that such a policy was unjustified.

All arbitration decisions studied were unanimous in maintaining the principle that in the case of women, the employer had the right to replace them if their ability or efficiently was less than male workers. (See Republic Steel Corporation and United Steelworkers of America, 1 LA 244; Union Oil Company and Oil Workers International Union 3 LA 108; Seattle Department Stores and Building Service Employees, 3 LA 150; Pittsburgh Corning Corporation and United Mine Workers, 3 LA 364; Ingram-Richardson Manufacturing Company and United Steel Workers of America 3 LA 482).

The cases then rest not upon a principle but upon a question of fact, via were women physically fit to perform the work when the job was restored to its normal content?

In answer the Company cited the work required in the jobs of the four departments. It is pertinent here to inquire only into that portion of the job which women were unable to do.

The women involved in grievance 5-B-30 were employed in the Labor Department of No. 2 Open Hearth. Testimony, uncontested by the Union, was to the effect that these women could perform only 50% to 60% of the work in this department which normally would be assigned to men.

The women involved in grievance 12-B-9 worked in the Galvanizing Department. In this case testimony was to theeffect that they could do 80% or more of the full job. Some operations like dressing, hooking up rolls, boiling pot leaks and handling wide sheets had to be done by men. Normally, all of this work was performed by men assigned to the job from which women were laid off. These statements also were not denied by the Union.

The testimony in grievance 4-B-51, involving women employed in the Labor Department of No. 1 Open Hearth, was similar to that previously outlined under the No. 2 Open Hearth. Examples given were to the effect that women were only 33% as efficient as men in wheeling brick up to the furnaces; on light clean up work around the furnace, they were from 50% to 60% as efficient as men; and, that in all cases where women were used, special arrangements of special allowances had to be provided.

As noted before, the circumstances of grievance 3-B-6 differ from the first three grievances in that women had initially filled the jobs in 1943 when the plant was opened. It is from these jobs that the women have since been displaced. In addition, it is claimed by the Union that supervison had agreed to take these women back when No. 3 Coke Plant was returned to operation. Except for the latter, the Company acknowledged that women were initially employed on the jobs from which they

were later displaced, but claim that these jobs are traditionally held by men. In other words, under normal operations such as would prevail at this time, men would do this work. Many of the jobs in this department are clearly outside the physical limitations of women. For example, unloading lime and soda ash requires lifting up packages of 50 or more pounds in weight; cleaning the phenol tower and the C-3-2 column require climbing and exposure to fumes and other hazards; breaking concrete with an air hammer together with heavy excavation work are clearly outside the limits of the work that women can do safely. In all, women were unable to do about 25% of the job in the Labor Department of No. 3 Coke Plant. Like the others, these statements were not challenged by the Union.

From these facts it is clearly shown that the women were replaced by men only because they unable to perform the work normally included in the job. It has already been pointed out that most authoritative opinion sustains the action of the Company.

No merit can be found in the Union argument that women were discriminated against because the Company did keep older men in the Labor Department who were also unable to perform all the duties of the job. Such an argument would have merit only if it was shown that the employment of such older men followed an arbitrary policy. No facts to substantiate such a claim were revealed.

It is abundantly clear that the facts establish that the women involved in each of the four grievances were laid off their jobs because they were physically unqualified to perform the heavy and arduous work, normally a part of this job. Under these circumstances the seniority rights of employees are not endangered. Ample evidence of this is in the careful consideration given to this case. Further evidence, if necessary, is found in the grievance procedure wherein "grievances arising out of the terms of this Agreement" are subject in the final step to arbitration. This prevents unilateral action on the part of the Company and gives accepted protection to all employees under this Agreement. The layoff of these women for these reasons does not violate Article VI, Section 11 and Article VII, the Preface and Section 2. Instead, it must be held as being clearly within the right of management under Article XI, "Plant Management" to "hire, promote, demote, suspend, and discharge employees for cause, and to relieve employees because of lack of work or for other legitimate reasons."

While not stressed by either of the parties, it seems appropriate to point out that Article VII, Section 11, "Reservice Labor" is closely related to Article XI. Under Article VII, Section 11, "Employees laid off may, be application to the Industrial Relations Department or General Superintendent, be placed on the reserve labor list. Preferential consideration will be given to these employees in line with length of service, ability and physical fitness. In the event permanent jobs open in departments other than those to which the employee has been attached, reserve labor employees will be preferentially considered for filling of these jobs. His seniority status in his old department shall be reserved, but not after adequate notice has been given and his refusal to reinstate to his old job when it again becomes available.

Subject them to the rights which these women have under Article VII, Section 11, the action of the Company in laying off the women in each of the four grievances discussed herein, because they were physically unqualified to perform the normal duties of the jobs to which they were assigned, is sustained.

DECISION

In view of all the facts and arguments submitted by the parties, both orally, and in writing, the Union claims under grievances 4-B-51, 5-B-30, 12-B-9, and 3-B-6 that these women were permanently laid off in violation of Article VI, Section 11, "Discharges"; and Article VII, "Seniority," Preface and Section 2, "Demotions" is denied on the ground that; (a) under Article XI, "Plant Management," the Company has the right to "Relieve employees .....for.....legitimate reasons"; and (b) that the jobs from which these women were laid off were normally jobs done by men; and (c) that the women were unqualified physically, to perform the job when restored to its usually and traditional content. The Union claims with respect to these grievances is, therefore, denied.

Jacob J. Blair, Arbitrator

Dated In Pittsburgh, Pennsylvania, March 21, 1947.