ARBITRATION BETWEEN

United Steelworkers of America, Local Union No. 1010	)	Arbitration No. 32
and	)	Grievance No. 20-B-83
Inland Steel Company, Indiana Harbor Works	)	Subject: Hugh McGilvery's Suspension and Discharge

Statement

The following account is a brief report of the factual background of this case, based on the testimony and the formal statements of the parties adduced at the hearing.

In February, 1947, the Company had certain overhaul work to be done in connection with the coke plant operation. Wishing to avoid interference with production while this overhaul work was being performed, the Company had the repairs scheduled during lulls in that operation. Because of the nature of the overhaul job, the maintenance crews of boilermakers and riggers necessary for its completion were requested to work on 10-hour shifts until it was done; and they agreed to this arrangement, including Mr. McGilvery who was one of the three riggers employed on this task. This overhaul job was to take some weeks for completion; and it was almost finished when the incident occurred which gave rise to this grievance.

The boilermakers and riggers employed at the Company's plant were not averse to overtime work. The Union testimony indicated, however, that they objected to any such overtime unless they could secure a guarantee of 4 hours overtime each day they worked overtime. The Company testimony indicated that this was not true and that McGilvery promoted this demand for a 4 four guarantee, using his position as assistant grievance committeeman either to urge or to order the men in question to refuse to work any more overtime at all unless they were given a guarantee of 4 hours overtime. While McGilvery initiated a grievance to the effect that the Company was not complying with the provisions of the contract governing overtime pay, it appears that he did not initiate a grievance concerning a demand for the 4 hour guarantee. The grievance he did file on construction of the contract was denied. In connection with this denial, on March 4 foreman Myers of the boilermakers wrote McGilvery a letter in which he set forth the Company's reasons for denial and, after noting McGilvery's statement to him that he was now going to put the pressure on and his having yelled to a truck load of boilermakers bound for an assignment the admonition "No more overtime," warned McGilvery that he was violating Article XI of the agreement "which provides and reserves a to Management 'the right to direct, plan and control plant operations'" and that further attempts at this encroachment on the rights of management "will be cause for discipline, including suspension preliminary to discharge."

The next step seems to have been a general resolution among the boilermakers and riggers not to do any more overtime work at all, until the Company conceded the guarantee of 4 hours overtime whenever any at all was requested.

this step unfortunately occurred shortly before the coke plant overhaul was completed and interfered slightly with such completion as it had been planned. At the same time, on March 5, 1947, a tower had to be repaired in the plant (an emergency in no way connected with the coke plant overhaul and not affected by the aforesaid agreement of the maintenance employees to work a 10-hour schedule until the coke plant overhaul was finished) and the boilermakers' foreman requested a group of them to agree to work overtime until it was fixed. They refused to take on this overtime unless he would commit the Company to the aforesaid 4 hour guarantee. Naturally he could not do this; and after unsuccessfully trying to persuade the required number of these men to take on the overtime work necessary to fix the tower, he called upon his superior who sent down Mr. Helme, assistant superintendent of labor relations, to see what he could do. While Helme was attempting to convince these men that they should agree to do this overtime work--that it was their duty to do so--in spite of the refusal of the Company to agree to a general guarantee of 4 hours overtime whenever such work was requested, McGilvery came along.

While McGilvery's presence in the plant and at the place where this colloquy was in process was unexplained, he nevertheless acted from then on as spokesman for the group of employees and asserted that they would not work any overtime over their regular 8 hours until the requested 4-hour guarantee was forthcoming. Indeed, some of the testimony was to the effect that he told the men at that time that they should not work any overtime until the 4-hour guarantee was given. Helme thereupon told McGilvery he was fired, shortly thereafter correcting this to a statement that he was suspended, so as to comply with that part of the contract dealing with suspensions and discharges, telling McGilvery he would receive a suspension notice forthwith and be given a hearing. McGilvery received this notice on March 7, 1947, a hearing was immediately granted pursuant to the terms of the agreement, and the Company discharged him without further delay.

The reason for McGilvery's suspension was stated by Helme, as follows: "He was suspended for the reason that he indicated to me conclusively that he was the leader of a concerted, a collective action to refuse to work overtime and that the men were abiding by the instructions given them by him rather than those given them by their supervisors, their foremen." In its brief the Company summarized the reasons for McGilvery's suspension and discharge, as follows: "McGilvery was suspended and discharged for just cause since (a) his inciting and instructing fellow employees to refuse and his intimidating such employees so that they would refuse to work certain hours of an agreed to schedule constituted interference with management's right to direct, plan and control plant operations, in violation of Article XI of the Agreement, and (b) his conduct and behavior in relation thereto constiuted insubordination and also a violation of sections 3 and 12 of Article VI of the collective bargaining agreement."

Article XI, the management clause, reads as follows: "The management of the plants and the 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 for lack of work or for other legitimate reasons, and the right to introduce new 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."

Article VI, that part of the agreement setting forth the grievance procedure, states in its inception that this procedure is available to both the Company and the Union for the presentation and settlement of grievances arising under the terms of the agreement. The first paragraph of section 3 of this Article reads as follows: "Should differences arise between the Company and the Union as to the meaning and application of the provisions of this agreement, or should any local trouble of any kind arise inthe plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences orderly and promptly in the following manner..." The balance of this section is merely an outline of the procedure to be taken through the first four steps.

Article VI, Section 12, is included with a view to maintaining uninterrupted operation of the plant and orderly bargaining relations there. After certain preliminaries having to do with union membership and lockouts, it says, in part: "The Union and its members, individually and collectively will not during the term of this agreement cause or take part in any strike, sitdown, stay-in, slow-down, stay-in, or other curtailment or restriction of production and the grievance procedure as herein provided shall be complied with. If this procedure is not followed and as a result of such failure, this section of the agreement is violated on the part of the employees, the Company shall have the right to suspend and later discharge in accordance with section 11, of this Article, all persons taking part in this violation who refuse to resume normal work immediately upon request."

In connection with the coke plant overhaul job, it appeared at the hearing that on the night of March 5, the five boilermakers and the three riggers were scheduled to work from 12 until 10 A.M. on March 6. McGilvery clocked out some time after 3 A.M. having reported to his gang leader that he was going on a trip to Indianapolis (a trip he did not make because, he said at least, he missed his ride): and it appears that he turned up at the plant again around 7 A.M. under unexplained circumstances. While the boilermakers worked until 10 A.M., the other two riggers knocked off at 8 A.M., apparently pursuant to their new policy on overtime which McGilvery seems to have come back to remind them of, thus inconveniencing the Company and holding up effective progress on the overhaul job.

The basis of the Union's position, as the arbitrator understood it at the hearing, is that the men do not have to work more than 8 hours a day, whatever the Company's needs may be and whether or not the Company wants them to do so. Incidentally, the Company refused at the hearing to claim any right contrary to this contention of the Union with respect to the right of any man to turn down overtime assignments, thus seeming to confirm the Union's contention. At any rate, the Union claimed that if individual boilermakers and riggers could take this position under the contract, then they could do so collectively, using this right as a counter in bargaining for advantage in exchange for their agreement to engage in overtime work. And if tye could go this far under the contract, they could request and employ the services of their appropriate committeeman or assistant committeeman, McGilvery, to represent them and to handle the matter of the 4-hour guarantee for them. Hence, it argued, all that McGilvery did, as indicated above, was in pursuance of his duties as a Union Committeeman, engaged in legitimate Union business: and suspending and discharging him for such activity was unjustifiable discrimination under the contract, warranting redress.

The Company takes issue with these claims. While it did not assert any right to assign overtime work against an employee's will under the contract, it denied the significance of this issue of whether or not it had this right. It claimed aviolation of the management clause by McGilvery, under which clause it asserted "the right to direct, plan and control plant operation." Furthermore, it contended that McGilvery violated the grievance procedure by not having handled the 4-hour guarantee issue as a grievance, apparently right down the line, instead of resorting to economic self-help and leading a concerted refusal to work overtime. And it denied that McGilvery's conduct in this case was within his rights as a Union representative. It may be added that the Company's position is skillfully documented with references to many allegedly similar cases in which awards were given by arbitrators to companies, together with forceful quotations from the opinions of such arbitrators.

In the large record built up in this case there was a considerable wealth of detailed testimony offered by both sides, emblished by numerous arguments. While the arbitrator sees little profit in including any more of such matter in this statement, he would like to refer to two items appearing in the contract under Article V. These are as follows:

"Section 2. The normal daily hours of work shall be eight (8) consecutive hours, followed by sixteen (16) consecutive hours of rest. The normal weekly hours of work shall be forty (40) hours per scheduled work week. . . . Time and a half will be paid for all hours worked in excess of eight (8) hours in any one day . . .", the unquoted part of this section being of no material importance in this case.

"Section 10. If, due to an emergency or other proper cause, it is necessary to disrupt an employee's schedule by working extra hours within the established work week, he shall not be prevented from working the balance of his weekly schedule."

Issue

Was Hugh McGilvery unjustifiably suspended and discharged, as revealed by the facts of this case; and if he was, what redress is he entitled to?

Arbitrator's Comments

The arbitrator does not find this case easy to decide, partly because of the manifest complications involved in it and chiefly because of the distinct impression he gets that each party was confused as to its own and the other's rights under the contract. On the one hand he thinks it is shocking to have in a busy steel plant the sort of conduct which was described in this hearing, where a group of employees, represented by and under the leadership of a minor local union official, virtually defy management in refusing to comply with what he (the arbitrator) feels sure are reasonable requests to work occasional overtime--particularly as these employees are maintenance workers, on whose performance the production at the plant so frequently depends. He would suppose offhand that resolution of the difficulty which arose between this group and the Company--the question pertaining to the 4-hour guarantee of overtime--would be a matter to be settled once and for all by collective bargaining and included in the collective agreement governing employment conditions at the plant or in a side agreement attached to such main agreement. Yet, on the other hand he is somewhat surprised

to find that the Company refuses to deny the right of its maintenance employees to turn down requests to work overtime when occasion demands such services. Altogether, this suggests to the arbitrator a picture of somewhat incomplete mutuality of understanding between the Company and the Union, in spite of the long and detailed collective agreement covering their relationship together.

It is the arbitrator's understanding that in most union-organized units of industry today, management prerogative stems from the original right of each employer to run his employment relations as he then saw fit and is what remains after such original prerogative has been cut down by provisions in a collective bargaining agreement, by custom and by acquiescence on the part of his employees and their union with specific rights which the employer has claimed and asserted after a collective agreement has been in force, although such rights were not specifically set forth in the agreement. Of course, management prerogative is also to a considerable extent today curtailed by labor laws, both state and Federal, although such laws were not brought to bear by the parties in this case. In any event, under whatever influences its own management prerogative has been shaped, the Company believes that what McGilvery did in this case amounted to a flouting of this prerogative and management's authority and was, as such, insubordination, as well as being in violation of one or more specific provisions of the collective agreement. The Union, of course, takes a contrary view.

The arbitrator supposes that most employers, in the absence of express provisions covering the matter in the collective agreements prevailing in their shops, successfully assert the rights to have their employees work overtime in order to get the day's work done--at least in the case of maintenance employees, whose services are required to keep plants in effective operation for production. Usually extra pay is guaranteed by the agreements for daily overtime and the employees are by these same agreements frequently protected against deletion of the same number of hours from their normal work-days later in the week.

The collective agreement involved in this case does not have any provisions expressly covering the Company's right to have any of its employees work overtime when they do not wish to do so. Article V, section 2 (quoted above) established 8 hours as the "normal" work day, to be followed by 16 consecutive hours of rest. The obvious purpose of this provision is to furnish a point of departure or base for the payment of daily overtime, as to which see the further provision in this same section which at least acknowledges that daily overtime is sometimes worked. Another purpose of the first sentence in this section is, apparently, to protect the employees from imposition by the Company with respect to the length of days to be worked, and to guarantee to such employees, if they want it, 16 consecutive rest hours between work-days, although these inferences depend to some extent on the meaning of the word "normal" in this section. This purpose is certainly not spelled out, although it might be inferred from the claim made by the Union in this case that no employee in the plant need workmore than 8 hours a day unless he wants to do so, plus the fact that foremen <u>request</u> and do not <u>order</u> men to work overtime. Article V, section 10 (quoted above) to be sure, speaks of emergencies, and other proper causes, making it necessary to disrupt an employee's schedule by working extra hours; but it is fairly clear that this section is included to guarantee some protection to employees against compensating cuts in hours worked later on in the work-week and does not signify in any way a right on the part of the Company to require such extra work.

But all this does not foreclose the Company from freely requesting its employees to perform such overtime work as they wish to take on for the purpose of earning extra money. Both custom and past acquiescence by the Union firmly establish this right in the Company, even if compliance with such requests by particular employees results in what might be called "abnormal" work days and less than 16 consecutive hours' rest between tricks. However irrelevant to the issue in this case much of the foregoing discussion of employees' rights or lack of rights to turn down requests to work overtime may be, the fact remains that this right of the Company to deal with individual employees in requesting overtime work is a clear instance of an established management prerogative. And this right seems to be supported by the additional right that the Union, because of custom and past acquiescence, shall not interfere with its exercise as the agreement now stands. Indeed, it is on the basis of this dual prerogative, such as it is, that the Company builds its strongest case against McGilvery and the Union in this arbitration, the arbitrator believing that little is added by reference to Article XI of the agreement (quoted above), the management clause, limited as it is expressly by other provisions in the contract.

During the course of the hearing in this case, it appeared from the suggestions made by management representatives that the proper way for the 4-hour overtime guarantee to be handled would be by collective bargaining between the Company and the Union, reference being made to negotiations then in progress looking toward a new agreement. And the Company also took the position at the hearing that the Union should raise this matter of the 4-hour guarantee as a grievance, to be processed under the established grievance procedure in the agreement. These indications of the Company's attitude are given as a prelude to discussing McGilvery's activities. McGilvery did not see to it that a grievance was formally filed and prosecuted on this matter--a task which might conceivably have fallen within his duties as an assistant grievance committeeman; nor did he, in the absence of such a course, leave the matter to be handled formally as a collective bargaining item by the Union, as such, through the proper officials thereof. What he actually did was to take matters into his own hands and himself conduct what might be called a type of informal collective bargainin g on the basis of recourse to economic self-help--the withholding of a benefit from the Company in the way of voluntary overtime work by his constituent riggers and boilermakers until the Company conceded the guarantee of four hours overtime.

The Company claims that this course of action was a defiance of Article VI, section 3 and 12, of the agreement (quoted above) and also of its management prerogative as signified in Article XI of the agreement (quoted above.) While the arbitrator believes it to be somewhat doubtful whether McGilvery's conduct was in defiance of section 3, since he thinks it far from clear that there was a suspension of work here in the sense in which that phrase is used in the agreement, he is of the opinion that his conduct was in defiance of section 12 of Article VI in that it falls within the normal meaning of the words "other curtailment or restriction of production as a means of circumventing recourse to the grievance procedure provided in Article VI. Any doubts concerning this conclusion rest, of course, on the Union's argument that these men did not have to work overtime if they did not choose to do so. But such doubts seem fairly resolved against the Union when it is remembered that the Company had a right to ask the employees individually to work overtime and to secure their independent and individual responses to such request without interference from the Union, from any official thereof, or from the employees themselves acting in concert. And as far as the Company's charges based on Article XI are concerned, it amply appears that

McGilvery acted in defiance of the Company's prerogative to request the employees to work overtime and to secure their uninfluenced responses to such requests, without interference from the Union, from any official thereof, or from the employees themselves acting in concert.

Under these circumstances, the Union's contention that the Company's suspension and discharge of McGilvery was discrimination practiced against him because of his proper activities as a Union official representing his constituents is difficult to sustain. For his conduct has been shown to have been in derogation of the Company's rights under the contract and not in the line of any legitimate duty which he might have performed thereunder, which duty comprised substantially the filing and processing of a grievance under the formal grievance procedure set forth in the contract.

One point should be mentioned before concluding. The Union has laid off great stress on the fact that McGilvery's discharge was not in strict accordance with Article VI, section 11, in that he was actually fired before he was suspended. While there is evidence of irregularities on the part of the Company in this respect, the arbitrator believes that the Company's departure from precise step-by-step order was not sufficiently serious, especially in view of its quick correction, to warrant a decision in favor of the Union. The arbitrator, therefore, concludes that the award in this case should be given to the Company.

Award

Hugh McGilvery was not unjustifiably suspended or discharged.

Respectfully submitted to the parties,

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Charles O. Gregory, Arbitrator

January 14, 1948.