IN THE MATTER OF ARBITRATION BETWEEN THE

INLAND STEEL COMPANY, Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA, C.I.O., LOCAL UNION NO. 1010

ARBITRATION NO. #39

D E C I S I O N

AND

A W A R D

Appearances:

For the Company:

William A. Blake, Superintendent of Labor Relations,
Herbert Lieberum, Divisional Supervisor of Labor Relations,
J. A. Keckich, Divisional Supervisor of Labor Relations,
W. T. Hensey, Jr., Divisional Supervisor of Labor Relations,
W. J. Walsh, Assistant Superintendent, Tin Plate Department

For the Union:

Joseph Jeneske, International Representative,
Harry Powell, President, Local 1010,
O. H. McKinsey, Chairman, Grievance committee,
Emil Strimbu, Grievance Committeeman.

Before Clarence M. Updegraff, Arbitrator.

In pursuance of previsions pertaining to arbitration appearing in Article VIII of the labor agreement between the Inland Steel Company and United Steelworkers of America, Local No. 1010, the parties addressed the following communication to the undersigned arbitrator under date of May 5, 1949:

"Professor Clarence M. Updegraff
College of Law
University of Iowa
Iowa City, Iowa

Dear Professor Updegraff:

Re: Grievances 17-C-17 and 17-C-18

The Management of the Indiana Harbor Works of the Inland Steel Company and Local Union 1010 of the United Steelworkers of America (CIO), have been unable to settle the above numbered grievances, and in accordance with step number 5, under Section 2, Article VIII, entitled 'Adjustment of Grievances,' of the Agreement between the Company and the Union, dated May 7, 1947, the matter is now to be submitted to an impartial umpire for final determination.

"In each grievance, the charge is made that the Company violated the provisions of Article VII, Section 6 (b), of the Collective Bargaining Agreement involving the subject of 'Waiver of Promotions.' The Company denies the allegation in each case and contends violation upon the part of the Union of Article III, Section 4 (a), of the Collective Bargaining Agreement. A copy of the Collective Bargaining Agreement is enclosed to enable you to familiarize yourself with the provisions involved in this dispute.

You have been agreed upon by the undersigned to act as arbiter. We would, therefore, 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 of the Union/?

The hearing is to be held in the Meeting Room ofthe Indiana Harbor Works Plant of the 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. The expense and salary incident to the services of the umpire shall be shared equally by the Company and the Union.

Very truly yours,
INLAND STEEL COMPANY
By W. A. Blake
Supt. of Labor Relations

WAB/lp
Enclosure
cc: J. B. Jeneske
L. B. Luellen
W. G. Caples

UNITED STEELWORKERS OF AMERICA
By Joseph B. Jeneske
Representative

All steps preliminary to arbitration having been observed or waived by all parties, a hearing was held at the office of the Company in Indiana Harbor, Indiana on July 1, 1949, at which written and oral evidence was received by the arbitrator from both parties.

THE ISSUE

Briefly stated, the union's position is that the men were offered temporary promotions, refused them, and were improperly punished for so doing.

The company asserts that for a considerable length of time it was the practice of employees to help each other obtain pay on an overtime basis by remaining absent from time to time without giving advance notice to management. During man-

power shortage this resulted in requests by management on such occasions that men who had worked the previous shift remain over for another shift at overtime rates of pay or resulted in the calling in of men who were not scheduled to work and who were, therefore, in most cases entitled to some premium pay. Some time prior to the incidents leading to the filing of this grievance, the company adopted a policy that it would not hold over any men for additional shifts of work nor call in men out of turn, but would transfer the personnel who were then present to fill positions left temporarily vacant by absenteeism. The employees then adopted the attitude that they would not accept temporary transfers or promotions to work so vacated. This employee attitude, of course, if successful would necessarily either greatly impede production or force the company to resume the former expensive practise of holding over workers who had already been on duty for a full shift to work an additional period at the applicable overtime rate, or calling in men who were scheduled off.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The grievances offered in evidence by the union are stated in the following terms.

The first one is worded:

> "On September 24th, 1947, eight to four turn, aggrieved waived promotion to Tin Shear Tractor Operator as entitled under Labor-Management Agreement. Company violated Article VII, Sub-Paragraph (b) by refusing to accept waiver and sending employee home. Request: 7 hours pay at rate of job."

The second one is almost identical. It states:

> "On September 25, 1947, on the eight to four turn, employees were offered promotions to Tractor Operators.
> Employees waived promotions as entitled under Agreement. Management violated Article VII, Sub-Paragraph (b) by refusing to accept waivers and sending employees home.
> Request: 8 hours pay at rate of job."

As supporting its contention that the men were justified in refusing the temporary promotions and were, therefore, unjustly punished for so doing, the

union refers to the contents of Article VII, Section 6, which reads as follows:

> "Section 6. Filling of Vacancies and Stepbacks Within a Sequence.
>
> (a) Promotions. Temporary vacancies shall be filled by the employee on the turn and within the immediate supervisory group in which such vacancy occurs in accordance with the provisions of this Article, except that, where such vacancy is on the lowest job in the sequence, it may be filled by the employee in the labor pool group (including available employees in single job promotional sequences) most conveniently available in accordance with their seniority standing. Temporary vacancies which are known to extend over the next work week or longer, or those where no definite information as to the duration of the vacancy has been furnished to the department management by the time schedules for the next work week are posted, shall be filled by the employee within the sequence who is entitled to the vacancy under the provisions of this Article.
>
> Permanent vacancies in jobs more than one step above the labor pool shall be filled by the employee within the sequence who is entitled to the job under the provisions of this Article, except that no employee shall move into a higher job without first having performed the immediately subordinate job, unless another employee entitled to the higher job makes this impossible by waiving promotions.
>
> (b) Waiver of Promotions. An employee may waive promotion by signifying such intention to his superviser or shall be considered as waiving if he fails to step up to fill a vacancy. Such waivers shall be noted in the personnel records and confirmed by the Company in writing. Employees may withdraw their waiver or announce their intention to fill future vacancies (which the Company shall also note in personnel records and confirm in writing), following which they shall again become eligible for promotion, but an employee who has so waived promotion and later withdraws it as herewith provided shall not be permitted to challenge the future higher sequential standing of those who have stepped ahead of him as the result of such waiver, until he has reached the same job level above (by filling a permanent opening) as those who have stepped ahead of him, at which time his waiver shall be considerd as having no further force and effect.
>
> Employees may not enter and withdraw waivers indiscriminately and without good and valid reason.
>
> This sub-paragraph (b) shall not apply to alter existing practices in the Transportation Department."

There was very little dispute at the hearing in respect to the essential, operative facts. The company stated and the union admitted that the men concerned had been offered temporary promotional opportunities and had refused the same.

It was also mutually agreed that the men were then sent home as penalties for such refusals. Moreover, it was undisputed that under routines followed formerly persons voluntarily laying off without notice created overtime opportunities for others if such others, replacing them, were held over from a previous shift or called in for extra and additional work. It was also recognized by the parties that the persons who then laid off on any one day would ordinarily have been called in for extra work at an overtime rate later on and thus, without working more than the normal number of hours per week, be entitled to overtime on some of such hours.

Giving as its reason for disciplining the parties, the charge that they had participated in a plan or conspiracy to force the company to pay premium wages for work which should have been done on a straight time basis, the company made reference to and relied in part upon Article III, Section 4 (a) of the contract between the parties, which is as follows:

> "The Union agrees that neither it nor its officers, agents, representatives or members will authorize, instigate, cause, aid, sanction or take part in any strike, work stoppage, sit-down, stay-in, slowdown, or other interruption or impeding of work."

It will be observed, upon careful scrutiny of Article VII, Section 6, and Article III, Section 4, of the contract that in some details they are inconsistent with each other. In a case of this kind, it is invariably necessary to recognize that one of the conflicting parts of the text of the writing, whether it be a statute, a will, a contract or other document, must be restrictively read to eliminate the ambiguity brought about by their conflict. It is assumed the parties did not intend their document to contradict itself and the problem is to ascertain which of two conflicting meanings they must have intended.

The above investigation directs further scrutiny toward Articel VII, Section 6 (b). Here is found an explicit statement that "an employee may waive

promotion . . . ." etc. On the other hand, in a separate paragraph consisting of but one sentence, the same section provides that:

> "Employees may not enter and withdraw waivers indiscriminately and without good and valid reason." (Underlines supplied.)

By means of a careful examination of the meaning and significance of the word "valid," it seems Article III, Section 4 of the contract can be reconciled with Article VII, Section 6. When its significance is summarized, the last mentioned part of the contract provides only that an employee may waive promotion for a "good and valid reason." The word "valid" is defined in Webster's New International Dictionary as follows: "founded on truth or fact; capable of being justified, supported, or defended; not weak or defective; well-grounded; sound; good; as, a valid argument; a valid objection." Other meanings given are, "Having legal strength or force; executed with the proper formalities; legally sufficient or efficacious; incapable of being rightfully overthrown or set aside; as, a valid deed, covenant, title, marriage." The list of synonyms is also significant. The words included are efficacious, just, good, sound, sufficient, weighty.

This examination moves the course of this study and decision to contemplate the question whether there is a just, sound and valid reason for a man to refuse temporary promotion so that the employer may be forced to pay someone else a premium wage for performing duties which in ordinary custom and routine should be performed at the normal and usual wage without premium, and so that the person so refusing may be similarly paid at some later time? Obviously, the answer to this must be in the negative. The right to refuse a temporary promotion must therefore be regarded as a qualified one and it must give way in the situation where its assertion will result in undue and inequitable expense to the employer. The labor agreement between the parties, in Article V makes elaborate provisions recognizing job qualifications, evalua-

tion points, and rates per hour. It cannot be disputed that any conduct calculated and intended to force the employer to pay more than the ordinary job rate when a job is being executed under ordinary circumstances, violates both the spirit and the letter of the agreement.

These conclusions lead inevitably to the decision that the grievances in question must be disallowed.

THE AWARD

It is awarded that Grievance No. 17-C-17 and Grievance No. 17-C-18 be and the same are disallowed and dismissed.

Clarence M. Updegraff
Arbitrator

Iowa City, Iowa

August 4, 1949.