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In the Matter of the Aribtration between :

INLAND STEEL COMPANY
INDIANA HARBOR WORKS

and

UNITED STEELWORKERS OF AMERICA, CIO,
LOCAL UNION NO. 1010

November 28, 1950

OPINION AND DECISION

of the

ARBITRATOR

Pursuant to Article VII of the collective bargaining agreement between the abovenamed parties, dated May 7, 1947, Albert I. Cornsweet of Cleveland, Ohio was selected as Arbitrator to conduct a hearing and make a final determination in the matter of a certain grievance submitted to arbitration. A hearing was held at the Company's Conference Room on October 5, 1950 at which the representatives of the parties and their witnesses appeared and offered testimony in support of their respective positions. A Record of Proceedings was prepared by the reporting firm of E. J. Walton of Chicago and a copy furnished the Arbitrator.

GRIEVANCE NO. 17 C 60

This grievance, dated June 6, 1950, alleges that the Company violated the labor agreement by instituting a new, so called 6-2 schedule for Electrical Division employees in the Tin Plate Department and requests that these men "go back to their previous schedule which they have worked under for a long period of years."

The issue raised by this grievance, as defined in the Union brief, is :

> "Whether or not the Company may arbitrarily change the schedule of employees from a long standing schedule (4-2 type) to a so-called 6-2 schedule without their mutual agreement under the terms of Article VI, Sections 4 and 5 of the existing agreement between the parties."

At the time the current agreement was executed the employees involved were working a 4-2 schedule. On May 22, 1950, following the installation of many new units and an increase in the number of electrical maintenance men, the Company decided to change to a 6-2 schedule to attain greater efficiency by having the same crews work together and to permit the placing of responsibility for equipment on specific crews.

The matter of a change in schedule was discussed with those working on the day turn by W. T. Hencey, Jr., Divisional Supervisor of Labor Relations prior to the change in May. These men would not agree to the change. Union witnesses testified that Mr. Hencey stated that no change would be made without agreement by the employees, and that he suggested a poll of the department. (P.78) Mr. Hencey testified that he had no recollection of such a statement being made (P.90-91) and that "we felt that in the contract there was no actual written obligation to do that (obtain agreement." (P. 87) "We solicited mutual agreement, but when we were unable to get it, we went ahead and made the change." (P. 89) In the poll which was held, the proposed change was rejected by a unanimous vote of the men, but the change was nevertheless instituted and the grievance was subsequently filed.

Article VI, Hours of Work and Overtime, provides in Section 4 :

> "Unless otherwise mutually agreed, the schedules now operative throughout the plant shall remain in effect for the life of this agreement, subject to the provisions of Section 5 below."

Section 5 of Article VI provides : "Determination of the daily and weekly work schedules shall be made by the Company from time to time and such schedules may be changed by the Company from time to time. ..... To accomodate the off-period planning of employees, the Company shall .... post work schedules .... Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made.... changes required by power or mechanical breakdown or other conditions beyond the control of the Company or because of a changed condition in the business of the Company are not arbitrary changes.....

The position of the Company is that it acted under Section 4 in attempting to secure mutual agreement to the schedule change, and, when this failed, it "exercised its right in determining the schedule as provided in Section 5."

"Here in Section 5", says the Company brief, "the statement is clear and concise.... In light of this statement, it cannot be argued that this Section 5 does not authorize the Company to determine the daily and weekly schedules and to change them as it sees fit."

The position of the Union that Article VI, Section 4 maintains schedules in effect at the time the Agreement was signed and guarantees these schedules unless they are changed by mutual agreement. Section 5, says the Union, covers individual situations where schedule changes may be required by conditions beyond the Company'scontrol. If the Company's position is sustained, the Union argues, Section 4 would be completely nullified and the Union's bargaining position on schedules would be rendered completely useless.

The Union points to the 1945 Agreement, Article V, Section 6. The opening statement of this section is compared with the opening statement of Article VI, Section 5 of the current Agreement. The old Agreement provided : "Determination of the starting time of daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time to suit varying conditions of the business." (Underscoring added) The Union offered testimony that no change was intended in the new Agreement.

Mr. Jeneske stated (P.97) : "Section 6 is almost identical to Section 5 here, except that we have deleted some of the terminology from the 1945 Agreement and restated it here, because the Company lawyer told us it was superfluous and unnecessary."

The Union contended that this is the first instance where a schedule in effect at the time of the signing of the Agreement was changed without mutual agreement, except in cases of breakdown or other condition beyond the Company's control or in cases of changed business conditions. The following statement appears in the Company's brief (Page 7) : "Other schedule changes in the past have been compelled by business conditions. In cases where the demand for product is pressing ... in a slack market ... manpower shortage ... strikes in related industries ... national emergencies."

COMMENT

The Arbitrator agrees with the Union view that Section 4 of Article VI of

the Agreement would be nullified if the Company's position were sustained. Clearly it was not the intent of the parties to maintain existing schedules, except for mutually agreed changes, and, at the same time, give the Company the right to change such schedules at will, and despite Union opposition.

A reasonable interpretation of Article VI, in the Arbitrator's view, is found in Mr. Stone's statement (P. 114) : "I feel that Section 5 only applies to emergencies, such as coal strikes, such as changes of equipment when you move and shut a machine down ..."

That the parties themselves have, in the past, applied Section 4 and 5 of Article VI in conformity with the Union position, is amply supported by the evidence.

If, as the Company contends, the prohibition against arbitrary schedule changes in Section 5 applies only to changes in posted schedules, then a posted schedule "to accomodate the off-period planning of employees" would have greater status than a schedule in effect at the time of the signing of the Agreement. Can greater sanctity be claimed for a posted schedule than one in effect when the Agreement was signed in view of the language of Section 4 : In Section 4 the paramount intention is to preserve existing schedules for the life of the Agreement unless otherwise mutually agreed. True, this intention is qualified by the language" subject to the provisions of Section 5 below." It is, in the Arbitrator's opinion, a reasonable interpretation to regard the language of Section 5 dealing with breakdowns or changed business conditions as a qualification of the primary intent of Section 4. But it is an unreasonable interpretation to hold that Section 5 qualifies Section 4 to the extent that the Company can, in the absence of mutual agreement, and for any reason, change a schedule operative at the time the Agreement was executed. That would be nullification, not qualification.

Tracing the opening statement in Section 5, on which the Company relies, through previous Agreements lends great weight to the Union contention that it was not intended to nullify Section 4 and was intended to apply to individual situations. There was no denial of the testimony of Union witnesses present when the 1947 Agreement was negotiated, that there was no intent to make a substantive change from previous Agreements which confined the Company's absolute right to determine starting times.

While not included in the grievance, the Union requested that "a penalty be placed upon the Company for instituting an arbitrary 6-2 schedule to the extent that the Company pay time and one-half for the sixth consecutive day worked for the time that the 6-2 schedule has been in effect." This request is the subject of another grievance, already filed. After studying the provisions of the Agreement, and particularly the third paragraph of Step 5 (top of Page 33) and Section 6 of Article VIII, the Arbitrator decides that this request cannot properly be considered by him.

Having found that the schedule change instituted by the Company and protested in Grievance No. 17 C 60 is in violation of Article VI, Section 4, and that it was neither a change in starting time nor a change recognized as not being arbitrary and therefore not subject to the provisions of Section 5, and further finding that the purpose of the change was to "correct" a condition which prevailed substantially when the Agreement was executed and when the original schedule was operative, the Arbitrator comes to the following decision:

DECISION

It is the decision of the Arbitrator that institution of the so-called 6-2 schedule for Electrical Division Employees in the Tin Plate Department was in violation of the collective bargaining agreement between the parties, and that the schedule shall revert to that in operation on the effective date of the current collective bargaining agreement.

Albert L. Cornsweet, Arbitrator