Inland Steel Company
Indiana Harbor Works

and

United Steelworkers of America, CIO
Local 1010

ARBITRATION NO. #138

Grievance No. 16-C-305

Award - 28 February 1956

GERALD NADLER
Arbitrator

Pursuant to Article XIV, Section 4 of the 1 July 1954 Collective Bargaining Agreement, and Article VIII and Section 9 of Article V of the 7 May 1947, as supplemented and revised 1 December 1950, Collective Bargaining Agreement between the above named Company and Union the following question was submitted to the herein named Arbitrator.

A stipulation was entered into by the above named Company and Union in which was set forth the question in dispute. The following is the text of the stipulation contained in a letter addressed to the Arbitrator under date of 12 November 1954:

"The question to be decided by the arbitrator is whether or not the Company was in violation of Article V, Section 5 of the December 1, 1950 Collective Bargaining Agreement when it denied grievance 16-C-305 filed August 17, 1951. The Company contends that the Cold Strip Temper Mill Tractor Operator Wage Incentive Plan, 77-2409 installed June 11, 1951 provides equitable incentive earnings in accordance with the provisions of Article V, Section 5 of the December 1, 1950 Collective Bargaining Agreement."

The Union Position.

The Union contends that the wage incentive plan, 77-2409, does not provide equitable incentive earnings in accordance with the provision of Article 5, section 5 of the December 1, 1950 Collective Bargaining Agreement.

Specifically, the Union makes the following contentions:

(1) Earnings under plan No. 77-2409 were not equitable in relation to other incentive earnings in the department.

(2) Earnings under plan No. 77-2409 were not equitable in relation to previous job requirements.

(3) Earnings under plan No. 77-2409 were not equitable in relation to previous incentive earnings.

(4) Incentive plan 77-2409 is a replacement plan for the jobs involved.

(5) Present "Job requirements as to responsibility and work business conditions" and "The level of performance" (tr 26) are greater then when the jobs were part of the general tractor group, and therefore, entitled to higher earnings.

(6) There is no like department to which these jobs can be compared for equitable earnings purposes.

(7) The 15½ cents paid per hour was previous incentive earnings based on the general tractor group.

The Company Position -

Generally, the Company contends (tr. 44) that wage incentive plan 77-2409 "was developed and installed in accordance with the provisions of Article V, Section 5 of the Collective Bargaining Agreement and that it fulfills the requirement of those provisions."

Specifically, the Company contends the following:

(1) The job is a new one, and therefore the incentive plan developed is completely new. (Co. post-hearing brief 7)

(2) Incentive earnings under plan 77-2409 were equitable in comparison with other incentive earnings in the department.

(3) Because there was no like department to which the jobs in dispute could be compared, incentive earnings under plan 77-2409 were not subject to this criterion in the contract provisions.

(4) The Company contends that, because the jobs were new, the contract provisions of "Previous job requirements and the previous incentive earnings" are not applicable.

(5) The hourly payment of 15½ cents was a fixed payment, "was the result of a local agreement between the parties" and did not represent previous earnings.

Arbitrator's understanding of development of grievance.

Many of the conclusions reached by the Arbitrator in this award, are necessarily based on his understanding of the conditions. Most importantly, these conclusions are going to be based on the interpretation of these conditions in relation to contract provision. Most of the following material therefore, is repeated to clarify the Arbitrator's position. Much of the information comes from the Company brief and since the Union did not contest this information, it will be considered as fact by the Arbitrator.

A modernization program included the construction of the No. 2 Cold Strip Mill, In 1948, three Coil Temper Mills were placed in this new building. Two of the temper mills (#23 and #24) were the old ones moved from the old building, and one temper mill (#22) was new. A ram tractor was assigned to each temper mill to remove the coils.

Because of higher, new speeds on the temper mills it was anticipated by the Company "That a considerable amount of time would be required to standardize production speeds and processes. "(tr 46) (Emphasis supplied) Starting around 17 May 1948, these tractors received a fixed hourly payment of 15½ cents an hour. "The basis for the fixed hourly payment was the average incentive earnings of the Cold Striped Mill General Tractor group for the period of December 29, 1947 to May 17, 1948. (tr 46-47)

A job description was prepared in August 1949 and it was assigned an identifying code of 77-2410. The incentive plan presented before the Arbitrator was installed on 11 June 1951.

No evidence or testimony was presented to explain why more than 3 years elapsed between the installation of the job and the final development and installation of an incentive plan. The only comment that can be construed as being applicable to this situation has been emphasized above (tr 46). Even this does not explain what period of time is "A considerable amount of time." Certainly, three years is more than sufficient time in almost every situation familiar to the Arbitrator. In addition, the Company has indicated that the situation must have stabilized somewhat because it developed a job description with classification in August 1949, almost two years before the incentive plan was installed. It is the Arbitrator's opinion that the Company shares much of the responsibility for the conflicting contentions regarding the 15½ cents hourly payment. Regardless of how the 15½ cents were determined, such payment becomes an almost accepted fact of life in the employee's minds when continued for such a long period of time without any other justification. It seems therefore, that under any reasonable standards, a three year period is too long a waiting period for installing an incentive plan.

To complete the development of this grievance, it is necessary to point out that the grievance was filed on 17 August 1951, and the hearing was on 14 October 1955. This was over three and a half years after the answer of the combined third and fourth step of the grievance procedure. (Joint exhibit 2). Although this delay is rather unusual, it occurred by tacit agreement between the parties. It is the Arbitrator's understanding that such delays are not permitted for current grievances. However, the Arbitrator has considered only evidence pertaining to the period through 17 August 1951, in making any opinions or rulings. This has been agreed to by both parties.

Are jobs numbered 77-2409, 77-2410, and 77-2411 new or revised jobs?

The Union contends that the jobs involved are replacement jobs (tr 88). This is argued on the basis that the work performed at the new location of the mills was similar to the work performed as part of the general tractor group (tr 88-89). In addition, the Union argues that "the mere issuance of a new job description does not necessarily mean a new duty has been created." (tr 89). In addition, the Union argues that this is a replacement because the "frozen bonus of 15½ cents was arrived at and paid in accordance with theprovisions of Article V, Section 5-5 of the agreement." (Tr. 5, 104).

The Company claims that these jobs were new ones, for several reasons. The Company claims that the work performed in the general tractor group was different from the work required as a tractor operator for the temper mills. (tr 92) "The general tractor group serviced these mills as a part of their many other duties, and no individual tractor was assigned to any particular mill." (Company post hearing brief 44). The Company also claims that a completely new job was established when the new job description (Company exhibit H) was developed and the Union did not object to the classification as a new job. (tr 48-49). In addition, the Company claims that the 15½ cents fixed hourly payment was arrived at by an unwritten agreement (tr 103) between the Union and Company and was not to be construed as a payment of average hourly earnings from incentives, although the figure itself was determined from average hourly earnings of the general tractor group. Because of this latter claim the Company insists that sub-section 5, Section 5 of Article V applied only to replacement incentives. (tr 39-40,

Company post-hearing brief, 45-46). The Company claims that the language of this sub-section "clearly contemplates the discontinuance of one plan because of changed conditions and the institution of a new plan." (Company post hearing brief 46). The first paragraph of the sub-section in question reads: "Until such time as the new incentive is agreed upon, or, in the event the grievance is processed to arbitration, until an arbitrator's decision has been rendered, the average hourly earnings of the incumbents of the job as of the date the new incentive is installed shall not be less than the average hourly earnings received by such incumbents under the incentive plan in effect during the three (3) months immediately preceding the installation of the new incentive." (emphasis supplied)

To arrive at some conclusion regarding this issue, each claim will be examined by the Arbitrator to determine the most valid argument.

The Union claims that the work of jobs 77-2409, 77-2410 and 77-2411 was part of the work of the general tractor group. The Company, in a sense, agrees with this contention, but claims that the general tractor group had more work to do than the present temper mill tractor operators. The question then becomes one of deciding whether or not a new job exists when its work was previously part of some other job. In this situation, general Industrial Engineering practice, general management procedures, and general union acceptance, would indicate that there is a new job. The history of industrialization has shown that such breakdown of duties within one job into different jobs, each one of which encompasses some of the duties of the previous job, has always been considered as construction new jobs. This has been true regardless of whether the duties of the new job have made it simpler than the other job. On this basis it is necessary to conclude that a new job exists.

The Union contends that, although a job description was written labelling the jobs as new, this does not necessarily mean that the jobs were new. However, the Company indicates that when the new description was made and processed according to Section 6 of Article V that this, in effect, made the job a new one. The contention is that the Union did not object at that time to the classification of the work as a new job. Although the Arbitrator agrees that a new job description in itself does not constitute a new job, the Arbitrator must conclude that the job in effect was new when the Union did not raise any objection to the job description entitled 77-2409, 77-2410, and 77-2411.

The record becomes unclear when the discussion revolves about the meaning of the 15½ cent hourly payment. As pointed out above, the Union contends that 15½ cents is paid because of sub-section 5, Section 5, of Article V. The Union intimates that this sub-section pertains to incentives which are replacements. The Company, on the other hand, contends that this sub-section is not applicable because the job is new. This, therefore, means that the Company feels this sub-section is for replacement incentives. Also, the Company claims that a local agreement between the Company and Union established the 15½ cents as a fixed hourly payment as opposed to a payment of average incentive earnings (Company post-hearing brief 46) The Union should not substantiat or negate this argument, (tr 104) so that this contention of the company tends to substantiate their position that the jobs were new.

However, the Arbitrator must take issue with the Company when it claims that the language of sub-section 5 clearly "contemplate" the discontinuance of one plan because of changed conditions and the institution of a new plan." (Company post-hearing brief 46) It should be pointed out that the Arbitrator's opinion in this particular situation has no bearing on the final award. However it seems important to include this discussion since it did involve detailed investigation on the part of the Arbitrator in attempting to interpret the contract.

When sub-section 5 was quoted above two phases were underlined. To grasp the full meaning of sub-section 5 it seems important to define the two phrases. New incentive was the first phrase. To define this properly, the Arbitrator had to return to the first and second paragraphs of Section 5. In these two paragraphs it was clearly stated that a "new incentive" could refer to either a new job, or a job which had an incentive inappropriate through change. Therefore, when the words "new incentive" are used, it can be construed to mean application to "new job" incentives as well as replacement incentive." The second phrase was the. In trying to search out the implications of the word the in this sub-section, the arbitrator had to decide what was meant by "incentive plan in effect." It could be interpreted as either "the incentive plan in effect on the job" or "the incentive plan in effect for the employees." It seems obvious that the former interpretation is relatively meaningless because incentive earnings are to be applied to employees. Therefore, the latter interpretation is the one which must be made. Because sub-section 5 applies to the earnings of an individual, the Arbitrator concluded that this paragraph of sub-section 5 could be applied to employees whether on a new job or a replacement incentive job.

With this, it is the Arbitrator's opinion that this sub-section refers to the present employees on the job for which a new incentive is to be developed, and does not refer only to employees who may have been on a job previous to the job for which the new incentive is to be developed. In this sense, the sub-section refers to the fact that the employees are to be paid their average hourly earnings based upon the incentive earnings of the job on which they previously worked. This means that the sub-section does not apply to replacement incentives only. The only point in the Company's argument that indicates that the 15½ cents an hour is a frozen rate, concerns the fact that the rate was determined from a 4½ month period rather that the three month period referred to in the sub-section. This seems to be a minor point, but on a technicality the Arbitrator's opinion is that this would help indicate that the 15½ cents is a frozen rate. Therefore, the Arbitrator feels that this sub-section does not really indicate any difference between a new job with an incentive, or a replacement incentive. It is important to recognize, however, that the Arbitrator does not know the intent of the parties in making this agreement. The Arbitrator's opinion results merely from the words in the contract, and not from an analysis of the reasons and purposes for the parties inserting such a statement into the contract.

One other point requires discussion before making the final decision on whether or not these were new jobs. Since the Union contends that the jobs involved in grievance 16-C-305 were replacement jobs, it seems logical to assume that they would continue this contention throughout their interpretation of all parts of the contract. As mentioned above, these jobs were in existance for over three years before an incentive plan was installed. The Arbitrator mentioned that this was an exceptionally long period of time, and that this caused much of the difficulty

involved in determining what the 15½ cents an hour meant. If the jobs were really replacement, as the Union contends, then it seems logical that the Union should have applied the second paragraph of sub-section 5 of Section 5 of Article V, to these jobs. This second paragraph reads "Where an incentive plan become inappropriate because of new or changed conditions resulting from mechanical improvements made by the Company --- and the Company does not develop a new incentive, the employee or employees affected may process a grievance under the provisions of Article VIII of this Agreement and Section 9 of this Article requesting that a new incentive be installed---" Although the Arbitrator does not know the reason why this section was not applied by the Union, the Arbitrator must conclude that the union negates its argument about a replacement job by its failure to apply this paragraph.

It seems that three facts provide the basis for deciding this issue. (1) The duties of the Temper Mill Tractor Operators, although they were part of a previous job, were now separated and differed from the total of the old job. (2) The Union did not exercise its contract rights within a three year period. (3) There is no evidence that there was not a Company-Union agreement about the 15½ cents hourly payment. (It should be emphasized that this point is minor, in the Arbitrator's opinion, in making the decision about this issue.)

Therefore the Arbitrator concludes that jobs 77-2409, 77-2410, and 77-2411 should be considered as new jobs.

Issues not pertinent to the award.

The Union contends (tr. 21-22) that the Company superintendent of the department involved had indicated at the second step reply that "there is no evidence of any of the tractor drivers having received, at any time, any less earnings than the frozen earning rate." (emphasis supplied) (Joint exhibit 2) On the other hand, the Company contends (Company post hearing brief 40-41) that the superintendents answere in the second step reply attempted to convey the fact the earnings were "on the average greater than the fixed payment" of 15½ cents. In addition, the Company maintains that the employees "were paid the 15½ cents where their actual earnings were less than that amount." The statement made by the superintendent can be interpreted in two ways. In a narrow point of view, it indicates that the drivers never did receive less money than indicated by the frozen rate. This, of course, is true. For the broad interpretation, it appears that the drivers "received no less earnings than the frozen rate." Because the word earnings is used, it is more realistic to assume that the latter interpretation is the correct one. Because of this, the company seems to have made an error in discretion which should not be expected in such an important issue as a grievance. However, this fact has no bearing on the decision of the Arbitrator in this case. The superintendent's error does not appear to be one of intent, but rather one of carelessness.

The Union (tr 22-23) indicated that the Company and superintendent portrayed a lackadaisical attitude toward the incentive plan. Evidence for this attitude was cited in relation to the second step reply. Although the Arbitrator concluded this was not an issue in this dispute, it might be worthwhile to point out that this attitude probably results from the attitude of both Company and Union concerning maintainence of time deadlines contained in the contract in relation to grievances. On this basis, any such lackadaisical attitude can be distributed to both the Company and the Union.

The Union contends (tr 33) that the Company relied in the first step reply on the fact that the earnings of these drivers were "equitable in relation to other incentive earnings in the department---" The Union contends that the Company was wrong in applying such a test to the earnings of the employees. However, it seems that the superintendent of the department was relying on the fact that the Company had called this a new job. Because of this, it seemed appropriate to compare earnings on like jobs in the department in answering the first step. In addition, it seems that it would be difficult for the superintendent of this department to make an extensive review of either previous job requirements of the incumbents or previous incentive earnings of the incumbents. This test, according to the agreement, is one that should be applied in questioning incentive earnings. In this regard, there is no reason why one of these tests couldnot be applied at the first reply. This opinion is made in the context of the previous material on deciding whether or not the jobs in dispute were new jobs, and in relation to material to be presented later concerning the definition of equitability.

The Company presented time study material (tr 51-52) to indicate how the incentive base was determined. Time study is an important tool in determining incentive standards, and is in general use throughout industry. However, in this case, time study evidence is not at all required. In a sense, the Arbitrator does not care where the time study procedures are important to the Company and Union for determining and checking standard time and incentive rates. Without these it would be rather difficult to ever start and maintain incentive plans. However, according to the contract the Arbitrator is not required to deal with any such information. The Arbitrator must decide this issue on the basis of the dollar earnings of the employees covered by the incentive plan.

The only point at which time study data plays an important role is in the determination of work loads for jobs. As will be seen later, the issue of work loads has a deciding effect on the award. However work loads for jobs were discussed throughout almost the entire hearing, and the Union did no offer objection to its use or to the way it was determined. This does not mean that the Union subscribes to the part the Company indicates work loads should assume; rather it refers to the fact that the Union used the work load concept in explaining one of its points (that there was an increase in "level of performance"), and at that time, the Union did not question the reliability or validity of the data, arrived at primarily from time study data and production records. Therefore, the Arbitrator will make no decision concerning the validity or usefulness of time study material submitted in this dispute, but will assume the correctness of work load information drawn from time study data.

Along the same lines, the Union contends (tr 33-34) that the Company has in previous situations increased the rate so that the incentive factor could meet previous incentive earnings. Because of this the Union maintained "that the Company in the case of the 22 tractor herein is grievance should have done exactly the same thing to provide earnings at least equal to the previous incentive earnings of the 22 tractor; and that they did not do." This argument does not seem to be pertinent perse, because it pertains directly to changes in time study data, in which, in effect, are not an issue. Of course, it is the intention of the Union to indicate that such a change in time study data would result in the desired effect of a change in incentive earnings. Because the issue of whether or not the rate was right for proper incentive earnings is to be decided in this case,

the Arbitrator must dismiss the contention of the Union the Company should increase its rates so that the earnings are equal to the "previous incentive earnings of the 22 tractor..." In addition, it might be pointed out that the Union did not present any record of previous earnings of the 22 tractor. Even if their contention was permissable, there would be no basis for making the adjustments.

The Union contends (tr 77) that Company exhibit G is an error because no work load is shown for the general tractors. This is contrary to a previous company exhibit earnings, which was introduced as Union exhibit D. This showed the work load for the general tractor group. This point does seem to raise a note of questioning in the Arbitrator's mind. Although the Arbitrator searched the transcript and Company post hearing breif, he could find no reference to the Company position on why the work load was not shown. However, at the time of the hearing, the Arbitrator noted on Company Exhibit G that the reason there was no work load shown was that the general tractors were now considered indirect work. Therefore, no time studies had been taken as yet, and there was no way of knowing what was the work load now on the general tractors. Even this does not seem to be completely explanatory, because the 1950 material submitted as union exhibit D was on the same general tractor group from which the 22, 23, and 24 tractor drivers had been already removed. The only possibility of explanation seems to be that in 1950 the 54" and 72" tandem tractors were included in the general tractor group, whereas in 1951 these 2 tractors were on separate incentive plans. Although not completely satisfactory, the Arbitrator must decide that at the time of the first quarter 1951, there was no way of knowing the work load on the general tractor group.

The Union claims (tr 77) that the 22, 23, and 24 tractors "were separate in 1950, and they say in this meaning that they were a part of the general tractors prior to the installation of this rate." In effect the Union was asking how the job could be separate as shown in Union exhibit D. From all the material presented in the hearing, it is apparent that the reason 22, 23, 24 tractors were separate in 1950, is that the new job was established in May 1948. Therefore, they could not be included in general tractor group in the first quarter of 1950 or 1951.

An error in the records of both the Company and Union exhibits should be pointed out. The original page 3 of plan 77-2409 submitted as Company C differs in it's base rate from the original page 3 of the plan 77-2409 submitted as Union exhibit C. In the Company exhibit $1.78½ is considered base rate, and in the Union exhibit $1.62½ is considered the base rate. It should be pointed out that both are dated effective 11 June 1951. The Arbitrator questioned this (tr 51). because of material presented in Union exhibit C the Arbitrator is going to use $1.62½ as the base rate for this case.

Another error is observed in relation to Company exhibit F and Union exhibit 3, 4 and 5. All these exhibits agree on the incentive earnings for the five pay periods, for the 22, 23 and 24 tractor operator under plan 77-2409. There are only two exceptions; pay periods 15 and 16 for operator 23. The Company indicates that the incentive earnings were $.195 and the Union $.194 for pay period 14. For pay period 16, the Company indicates an earnings of $.191 and the Union earnings of $.192. Because of the smallness of the error, either figure will be used, in subsequent calculations. The effect of using the other figure is negligible.

Fundamental Incentive Policy.

Throughout the contract there is complete agreement between the Company and Union about the desirability of putting as many jobs as possible on incentive. However, nowhere in the contract is there any statement about what is to be considered the proper amount of incentive when such incentives are installed. Even if there is no statement of exact expectancy, there must be some degree of agreement in practice. This information was certainly exceptionally vital when the incentive plans were first introduced in the Company. Today the information about exact incentive expentancy is not as important, because the contract concerns itself with equitability in relation to either present jobs or previous jobs. However, it is important to discover the nature of the original decision sothat a better understanding or equitability is obtained.

The Company contends (Company exhibit D and tr 54) that the incentive expected on a job is 35%. This 35% is in relation to a job which is 100% controlled by the operator, or has a 100% work load. In addition, the Company pointed out that the expected incentive for operations with restricted less, in direct relation to the amount of restricted work present. For example, a 50% work load operation should provide an job with 100% work load could develop 40 to 45% incentive earning. Applying the equitable concept of the contract, the old job would have a basis for grievance, if filed within the stipulated contract time. Even if a grievance were not or could not be filed in this situation, the net effect of such a "minimum" approach would be to raise continually the level of the average present incentive earnings, making a gradual increase in the base for comparing equitable earnings.

In addition, the practical aspects of a minimum expected incentive indicate that there must be some sort of small range of values around this "minimum" expected incentive to permit for the human variations involved. Although the Arbitrator will accept an agreement and intent embodied in the statement that the expected incentive is a minimum, his opinion is going to be affected by the fact that it is impossible to always have exactly a minimum, and that rather a range of values will be acceptable. Naturally this range of values will be smaller around a minimum than it will be around an average. In a sense, this follows the argument of the Company (post hearing brief 31) when it cites the Arbitrator who said that "equitable incentive earnings are provided when these earnings are within the highest and lowest margin earning crews."

Even if the Arbitrator's opinions about minimum versus average and/or a small range around a minimum are not correct (of course, the [redacted] Arbitrator insists they are correct), later discussion will show that these opinions do not affect the award; these opinions and information are included to point out the reasoning used by the Arbitrator reaching a decision.

The Union claims (tr 80) that the work load should have no effect on incentive earnings. In effect, they interpret the contract provision, "previous incentive earnings," as meaning that previous earnings should be met regardless of the work load. The Union also contends (tr 81) that the Company agrees to this philosophy. On the same page of the transcript the Company points out that it does not agree. Also, in the Company post hearing brief many pages

(27-32) were used by the Company to indicate that it does not believe this contention. To support its side, the Company reproduced sections of previous arbitraters' decisions. From this, it can be concluded that the Company contends that the expected incentive must vary with the work load.

From two points of view, the union contention does not seem logical. First of all, an incentive is provided to give the operator something to work for. If an employee is put on a job with a lower work load than his previous one, it becomes illogical to assume he will make the same incentive earnings that he had with the job with the higher work load. Certainly, this reduces the concept of incentive to no meaning at all, and under usual industrial engineering practice cannot be considered as having importance in the realm of incentives.

There is one authority (M.E. Mundel) in the time standards area who recommends providing adjustments (actually, additions) in standard times to provide the same earning opportunity for every operation regardless of work load. That is, if the expected incentive average is 35% for 100% work load, then the standard time or incentive rate or piece rate for a 50% work load job would be adjusted so that a certain amount of earnings is given outright to the worker which, when added to his actual incentive earnings usually expected for a his work load job, will provide him with the same 35% earning oppertunity. This procedure, similar to the Union contention, is not used extensively in industry for one good reason-it can cause more difficulties that it solves. With this procedure, it is possible for an operator on a low work load job to work slower than "normal" and still earn more money than an operator with a high work load job who is working faster than "normal." Neither worker or Union could tolerate this arrangement, which is what would happen if the Union's contention were followed.

The second viewpoint which does not permit the Union interpretation, is the contract itself. The Union interpretation would seem to say that "in relation to... the previous incentive earnings" can be interpreted as applying to the man, not the job. This may be the correct interpretation of this phrase alone, but everywhere in the contract where this phrase is used it is tied directly to the phrase "in relation to... the previous job requirements." This must have some meaning in relation to the amount of work. In effect, this latter phrase can be interpreted as applying the work load concept. Therefore, the the test becomes one of saving whether or not the previous incentive earnings of the operator are proper in relation to the work loads of the previous and new job. Because of these two points, it is apparent that the work load concept in relation to expect incentives is the correct interpretation of the contract.

Definition of Equitability.

In a sense, equitability is defined in the above paragraph. This concerns the relationship between work load and expect incentives. Also, it was related to the definition of expected incentive. But in almost all definitions of equitability, the concept of fairness arises. The concept of fairness supports the Arbitrator's contention that minimum incentive expectancy is not really the usual concept. There must be a small range around this minimum.

Within these basic concepts and opinions, it is now necessary to examine the instant jobs in relation to the contract provisions established to measure the suitability of the incentive rate.

Interpretation of contract provisions on equitability in relation to instant jobs.

The contract states specifically that equitability on jobs with new incentives is to be measured in relation to the department in which the job is located or to like departments, and "the previous requirements and the previous incentive earnings." The Union contends (tr 16) that all four of these criteria are to be used in establishing equitability for the instant jobs. The Company, on the other hand, argues that the only criteria applicable is a comparison with other incentive earnings in the department on comparable jobs (tr 72). The Company takes this stand on the basis that the jobs are new, and not replacement. The Arbitrator has already decided that these jobs are new ones. However, the Arbitrator cannot agree that all these criteria are not applicable when jobs are new.

As pointed out above, it is possible to decide that the phrase "the previous incentive earnings" refers to the operator's earnings. But it was also pointed out that this could not be construed as a ruling that this phrase meant that each operator should earn the same amount of money. Rather the requirement of comparison with "previous job requirements," in effect, work loads is to be considered as a variable affecting previous earnings. Because of this, it is possible to interpret the contract as requiring that new jobs be compared to previous employee incentive earnings when these earnings are directly related to previous job requirements in terms of work loads. This conclusion must also include the concept of a range of possible earnings on the new job when comparing with previous work loads and earnings; those with operators earning less than expected on the 35% incentive and work load basis should not be kept down by the above conclusion, nor should those earning more, expect the exact amount to be maintained in the new incentive plan.

One other problem exists in trying to relate the concepts of equitability to the criteria mentioned in the contract. This pertains to the method of calculating incentives. Both methods are employed by the Union and the Company in the hearing. One method refers to a constant number of cents per hour as the incentive earnings, or ratio of total earnings to base rates. The problem would not arise if the base rates remained the same year after year. However, the base rate in the middle of 1948 was $1.30 and at the time of the grievance was $1.62½. A given number of cents per hour incentive earnings at the old base rate would provide a higher percnet incentive earnings that it would at the new base rate. Most concepts regarding incentive earnings are stated in relation to percent of earnings. However, some of the data in relation to the instant jobs are in terms of cents per hour. In practice today, the percent of incentive earnings is the usual method of calculation. The Arbitrator would be so inclined to use percent as a method of comparison, at the same time the Arbitrator will use the cents per hour basis as a method of comparison with the percent basis. Even though the Arbitrator feels that the percent basis is more commonly used, there are circumstances mitigating such use.

Each criteria will now be examined in relation to the Union and Company position, as well as to the percent earnings ratio and the number of cents per hour earnings.

Department, comparing like jobs.

To support its position that the instant jobs were not earning comparable incentive, the Union submitted (tr 18-19) earnings ratio above base rate for several jobs similar to the instant jobs. The Union contended that these earnings ratios were above the ratios of earnings for the disputed jobs, and therefore, perse, the disputed jobs were not earning sufficient incentive. According to the work load interpretation presented before these figures do not mean much. They are not submitted with the work loads, and therefore, there is no way of relating the various jobs. In effect, the Arbitrator rules that these figures by themselves do not prove that the incentive earnings of the instant jobs are not comparable to like jobs.

However, as a matter of interest and illustration, the Arbitrator decided to learn whether the Union was correct in its contention with these jobs, even though they are not permissible as proof of this criteria. The data submitted were as follows: 1.24 ratio for hallden shear tractor operator, 1.30 for hallden shear tractor operators (66" and 74"), 1.31 for car loading tractor operator, 1.24 for electric fork tractor operators, 1.17 for number 2 and 3 unit tractor operators, 1.134 for 54" and 72" tandem mill tractor operators. The Arbitrator calculated a standard deviation and average for this data, which, of course, assumes that they are all of the same nature (this assumption means that work loads are not considered). This is not the case as was mentioned above. However, the standard deviation of 1071 and average of 1.23 show that the instant incentive earnings ratios of 1.097, 1.117 and 1.123 are to be expected by chance (between 1.088 and 1.372, 95% of the time). This means that the earnings of the 22, 23, 24 tractor operators can easily be expected to fall within the lowest and highest earnings range of similar jobs, even without considering work loads.

On the same basis , the Union contends (tr 25) that although 23 and 24 operators earned above the fixed rate of 15½ cents a hour, this is not equitable to other incentives on like jobs in the department. Because this contention is directly related to the concept of total earnings without consideration of work load, the above statements answer this contention.

The Company contended that a comparison with similar jobs would show that the disputed jobs had equitable earnings. To support this contention, the Company submitted exhibit G which also showed thework loads, because of the decision reached before about work loads affecting incentive earnings, it was important to find the relationship between work loads and the percent incentive earnings. To do this more easily, the Arbitrator plotted graph A. Graph A relates the work load to the percent of base pay earned. The straight line connects the zero, zero point with the 100% work load and 35% incentive pay point. Theoretically, all incentive earnings for different work loads should follow this line. Practically, of course, as discussed above, there will be an expected rage of values about this straight line. The work leads and incentive earnings of the jobs submitted on Company exhibit G are plotted in graph A. In addition three additional points are put on for the five pay periods after the installation of plans of 77-2409, 77-2410 and 77-2411. It can be seen from this graph that the similar jobs are close to the straight line plotted, and that the three jobs in dispute fall close to this straight line for the five pay periods after installation.

Even assuming a very nominal 5% marging for being too tight, the incentive earnings of the disputed jobs are well within this range.

At a point later in the hearing (tr 75) the Union submitted exhibit B. Although the Union did not specifically state so, the Arbitrator can conclude from this submission and discussion about it, that there might be a difference in incentive earnings based on work loads. Basically, the Union felt that these work loads increased job requirements (see criteria 3, job requirements, below). To point up the relationship between work loads and incentive earnings, the data are plotted as graph B. This graph shows that the similar jobs fall pretty close to the expected line relating work loads with incentive pay. In addition, the points plotted for jobs 2409, 2410 and 2411 are plotted with the frozen earnings. It should be noted that two of the jobs, 2409 and 2411, have higher earnings, even with the forzen rates, than might be expected in relation to their work loads. Certainly, the Union would not object to this latter condition.

Graph A could also include another chart plotting the cents per hour earnings versus the work load. However, this is not shown because almost all of the base rates shown on graph A are similar, and therefore plotting the cents per hour chart would merely be duplicating the facts shown on the present graph A. The same concepts apply to graph B.

Because of the above information, this Arbitrator concludes that incentive plans 77-2409, 772410, and 77-2411 do not violate this criteria for measuring equitability.

Like departments.

The Union contends there is no such like department (tr 25); the Company agrees with this. Therefore, this criteria is not suitable for measurement of the equitability of incentives.

Previous job requirements.

The Union contends (tr 26) that the job requirements on operation 22 have increased. To define further job requirements, the Union describes this as an increase in responsibility of the job, an increase in relation to working conditions, etc. No proof is offered for this statement. In addition, it seems to the Arbitrator that these items of responsibility, working conditions, etc. are more properly matters for job evaluation rather than incentive earnings. Incentive earnings are paid in relation to a base rate established for specific responsibilities and duties. Therefore, this contention has no bearing on this case.

In addition, the Union contends that operations 23, 24 have had their work load increased and that the increased incentive earnings is not commensurate with increased effort. Again, there is no proof of this (tr 118), but properly, this matter of increased work load and noncompatibility of incentive earnings, is a matter for criteria 1 (like jobs in department) above, or criteria 4 (previous incentive earnings.)

The Arbitrator concludes that this criteria is not operable in deciding this case, unless taken into consideration on a work load basis with criteria 1 or 4.

Previous Incentive Earnings.

The Union contends (tr 27) that the "increase in earnings of the 23 and 24 tractor operator and a decrease in earnings in the 22 tractor operator is not in conformity with the provisions of Article V, Section 5 of the Agreement...The Union contends that the level of performance of the tractor operators was greater at the time the grievance was filed than was the level of performance under the previous incentive plan, file #83-1-4". The Arbitrator can conclude that the phrase "level of performance" really pertains to work load, and therefore would follow under the provisions of criteria 3 and 4 combined as the Arbitrator has defined above. However, no proof is offered of this contention.

The Company claims (tr 72,101) that this criteria is not applicable. In addition, they claim that the previous incentive earnings refer to the earnings of the job, not to the employee, and they feel that, since this is a new job, this criteria is not applicable in evaluating equitability. As the Arbitrator concluded above, this can be and is considered important as far as employees' earnings are concerned, especially when taken into consideration with the work load. Because of the Arbitrator's conclusion above, it will be necessary to take the figures supplied by the Company and the Union (Company post hearing brief 43-45). It is possible to make some calculations in relation to earnings. At this point it is important to remember the discussion about percent of earnings and cents per hour earnings.

The incentive earnings of the tractor group for the period prior to the establishment of the new jobs, were 15½ cents (Company post hearing brief 43, Company exhibit B). The Company then contends the earnings of the employees on 22, 23 and 24 tractor operator have not had a decrease in earnings. This is shown by the fact that for the five pay periods succeeding the installation of the standard, the incentive earnings were 15.8 cents, 19 cents and 20 cents. However, it is important to point out that at the time of the determination of the orginial 15½ cents, the actual percent of earnings was 15½ cents divided by $1.30, or 12%. At the time of the grievance the percent earnings for the three jobs were 9.7%, 11.7% and 12.3%. It becomes apparent from the percentage figures that job 22 has been reduced in total percent incentive earnings. However, jobs 23 and 24 have about the same amount of percent incentive earnings. Therefore, it should be noticed that, although the cents per hour remains the same or increased after the incentive plan was installed, the percent incentive decreased for one of the jobs.

As mentioned above, the Arbitrator feels that percent incentive earnings should be the true basis for determining the equitability of incentives. However, there are two mitigating circumstances concerning this particular dispute and criteria.

(1) As of 1951, the percent earnings for the operator on job 22 were only slightly smaller that what they were in 1948. This assumes an approximately equal work load between these fractors and the general tractor group (Company post hearing brief 44). The percentage earnings, although smaler in 1951, were not very far from what they were in 1948. In effect, applying the other conclusion reached above that the relationship and compatibility of earnings is

actually in a range rather than one specific figure, it cannot be argued with any seriousness that this small reduction can be considered as being against the spirit of the contract.

(2) Because the new job concept has been found to be applicable in this case, it seems most important in deciding this issue. As has been indicated by graft A, the earnings of the disputed jobs, even the one on #22 mill, agree very well with the earnings in the department, assuming these jobs are like jobs, and with the work load relationship to incentive earnings.

The Arbitrator, therefore, concludes that incentive plans 77-2409, 77-2410 and 77-2411 do not violate this criteria of measuring equitability.

The Award

This Arbitrator finds that the Company did not violate Article V, Section 5 of the 1 December 1950 Collective Bargaining Agreement when it denied grievance 16-C-305. The Company contention that incentive plans 77-2409, 77-2410 and 77-2411 provide equitable incentive earnings in accordance with the provisions of Article V, Section 5 of the 1 December 1950 Collective Bargaining Agreement is sustained. The request of the Union to this Arbitrator is denied.