INLAND STEEL COMPANY	)	Grievance No. 19-E-47
	)	Docket No. IH-5-5-1/20/56
and	)	Arbitration No. 169
	)	
UNITED STEELWORKERS OF AMERICA Local Union 1010	)	Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations Department
L. R. Mitchell, Divisional Supervisor, Labor Relations Department
George Melvick, Assistant Supervisor, Field Force Department

For the Union:

Cecil Clifton, International Representative
Fred A. Gardner, Chairman, Grievance Committee
Alberto Garza, Vice Chairman, Grievance Committee
James O'Connor, Grievance Committeeman

On November 11, 1955, an employee in the Wire Shop, and on November 12, 1955, a Field Force Machinist, were stopped at Plant #1 Clockhouse. One had an Appleton Reelite extension cord in his possession, and the other a pair of hinges. Neither employee had a material pass. Each employee was interrogated in the Plant Protection Department on November 14, 1955 and admitted that the property was being removed for personal use.

Subsequently, and on November 15, 1955, two separate meetings relating to each of these occurrences were held. In attendance at these meetings were the Superintendent and the Assistant Superintendent of the Field Forces Department, the Divisional Supervisor of Labor Relations, the General Foreman of the Field Electric Shop, the General Foreman of the Field Machine Shop, the Field Forces Personnel Clerk, and the two employees. According to the Company's minutes, of this "investigation," each of the employees admitted that "he was aware" that in his removal of the property referred to that "he was breaking a Company rule, in his attempted theft" thereof. In each case, at said meetings a disciplinary suspension of five working days was imposed, and the employees were cautioned that "further violation of Company Rules and Regulations or the Collective Bargaining Agreement would result in more severe disciplinary action, including suspension, subject to possible discharge."

No grievance was filed because of these penalties, but on December 10, 1955 the Union filed a grievance notice which read as follows:

> "Statement of Grievance:
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> "The Company refused two Union members their contractual right of representation by their refusal to call the Grievance Committeeman in a hearing between the Company Supervisors, and the following two employees, ... and ... of the Field Force Machinist Department when they asked that their Griever be called into the meeting.

"Violation of Article 2, Section 1, of the Contract."

"Relief Sought:

> "That the Company comply with the Contract as set forth in Article II, Section 1, and that it is not the Company's right to prohibit and decide whether or not the Union members can have a representative when they ask for it, and that the Company discontinue this practice at once and comply with the Contract as set forth in the above-mentioned Article and Section."

In the Third Step answer the Company pointed out that the "meetings" referred to were to discuss a possible Management action and that when and if the Company and the Union are in disagreement over such action, the Collective Bargaining Agreement provides procedures to which the Union might have recourse. In denying the grievance the Company found no violation of Article II, Section 1, as charged by the Union.

Two preliminary procedural questions were raised and should be disposed of before going into the merits of this case.

The first question stems from the Union's objection to the admissibility and consideration of testimony by witnesses, produced by the Company, that the two employees did not request Union representation at the meetings referred to. The original grievance notice clearly alleges that such requests were made and refused. The record contains no denial of the fact of such requests by the Company until the pre-hearing brief at the arbitration stage. The Union based its objection to consideration of such material on the ground that it is an established rule of procedure that theories or important items of evidence previously in the knowledge or possession of a party may not be put forward by such party or considered by the Arbitrator if not advanced in the previous three steps of the grievance procedure.

The objection of the Union has merit. It may be that the Company was persuaded not to draw the allegation of request for representation into issue during the three steps of the grievance procedure because it preferred to place its reliance on the broad position that what transpires at such meetings of Management personnel is of no concern to the Union and that Union interest and right of representation does not arise until the first step of the grievance procedure after discipline has been meted out. But the request for representation was clearly alleged. It was an important element of the grievance, and it would have been a simple matter for the Company to deny it if it was not a fact. Certainly it had as much knowledge of the facts at the grievance step stages as it possessed at the arbitration level. Nothing prevented the Company from relying on its broad theory of defense to the grievance and claiming, in the alternative, that if that theory should not be sustained the employees, in any event, did not make the requests for representation. It is too late to advance this alternative theory at the arbitration level. Accordingly, in this case, I shall proceed on the assumption that the allegation of requests for representation were made to the Company, and refused.

The second procedural problem relates to the Union's unwillingness, at the request of the Assistant Permanent Arbitrator, who was hearing the case, to furnish evidence that the request for representation at the meetings was in fact made. As it turns out, the evidence would later have been held to have no influence on the decision, for the reasons set forth above. It is not uncommon for this to happen in arbitration proceedings. In most cases one or both parties go into matters which are later held to be immaterial or of little or no consequence to the issue involved. The parties must recognize that the arbitrator must be permitted to control the arbitration hearing. He must be indulged when he requests information which may later be found to be immaterial, whether one of the parties agrees with him at the time or not. The dissenting party will certainly be afforded the opportunity to show why the information requested is of no importance or relevancy. If, however, as the case develops it becomes relevant, there will be no need to re-convene the hearing for the purpose of getting this information. This will expedite the proceeding and lead to an earlier conclusion of the case.

I shall now proceed to a discussion of the merits. The Company's position that there existed no representational interests at the meetings that required to be honored is unsound.

The meetings, held four days after one employee and three days after the other had been intercepted admittedly with Company property in their possession, were clearly for the purpose of interrogating the employees to determine the extent of the penalties to be imposed. Conceivably, the meetings might have concluded with the determination that the ultimate penalty of discharge should be imposed. In such case the Agreement prescribes an entirely different course of procedure than is laid down for the general order of grievances. Instead of the normal three-step consideration provided in Article VIII, Section 2, the employee under Article IX, Section 1, may request a hearing before the Superintendent of Labor Relations, with Union representatives present if he "so chooses;" the Company is to issue its decision within five days after such hearing, if requested; and a written grievance thereon may be filed "under the grievance procedure of Article VIII hereof, beginning with Step Three." Step Three, of course, is a hearing before the Superintendent of Labor Relations (or his authorized representative) who in the normal course has already issued the decision which forms the basis for the grievance.

In this instance Management set up still a third type of meeting at which the employees were required to be present. This third meeting is not to be confused with the discussions which occurred at, or immediately after, the time when the employees were caught with Company property in their possession, when the employees admitted their guilt. That discussion may be designated as part of the plant police function and the Union is not here raising any question concerning the right of the Company to interrogate the employees at that time in the absence of Union representatives. The third meeting, however, was in the presence of policy-making Company officials. Such officials may of course meet as they wish to decide on how to handle the given infraction. But the problem arises when they summon the violating employee to attend. This type of meeting could well end in irrevocable decisions which would tend to make of no purpose the subsequent meetings provided for in Article IX, Section 1. Since this

third type of meeting is not provided for in the Agreement, there is obviously no Contract provision indicating whether the employees are entitled to be represented, thus relegating the problem under consideration to a vague, ambiguous area so far as the Agreement is concerned. We must therefore try to ascertain the reasonable intent of the parties by the rules of Contract construction which may involve an inquiry into the apparent purposes of the parties as expressed in related provisions.

I find it difficult to conclude, under these circumstances, that the parties, when they conferred general representational rights upon the Union (Article II, Section 1) and established steps in the grievance procedure (Article VIII) calling for representation by Union officials in all three steps, when requested, intended at the same time to foreclose requested Union representation by employees required by Management to be present in meetings such as the ones here involved. The careful provision for such representation, where lesser penalties than the ultimate penalty of discharge are involved, to the contrary, strongly urges that the parties intended that in disciplinary cases that could result in discharge the individual employee's and the Union's interests should be deserving of at least equal protection. A contrary inference attributes to the parties a curious lack of logic in the writing of the Agreement. If an individual grieves that his pay has been reduced in some small amount, at Step 1 and Step 2 he is privileged to have his cause presented by his grievance committeeman; but if the Company's position be correct, and he is subject to possible discharge, he is entitled to no similar protection until he finally confronts the Superintendent of Labor Relations.

Accordingly, it is my opinion that at a meeting of the character described, Union representation must be accorded if requested by the employee.

I find that the meetings in the office of the Assistant Superintendent of the Field Forces were of this special character. Inasmuch as the Company did not effectively deny the allegation that the employees requested Union representation in a timely fashion, the decision in this case must sustain the grievance.

AWARD

The grievance is granted.

Dated: April 5, 1957

David L. Cole
Permanent Arbitrator