INLAND STEEL COMPANY)
) Grievance No. 20-E-33
and) Docket No. IH-44-44-9/13/56
) Arbitration No. 192
UNITED STEELWORKERS OF AMERICA)
Local Union No. 1010) Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent,
Labor Relations
A. T. Anderson, Divisional Superintendent,
Labor Relations

For the Union:

Cecil Clifton, International Staff Representative
Fred A. Gardner, Chairman, Grievance Committee
S. Logan, Acting Vice Chairman, Grievance Committee

William Sheppard, the grievant, was a lathe operator in the machine shop since 1945. For some time he had rotated on morning and afternoon turns. Subsequently, and for a number of years prior to May 14, 1956 Mr. Sheppard worked steadily on the 8 A.M. - 4 P.M. day turn. On that day his assignment was changed to require him to work alternately each week on day and then on night turns. The grievance filed on June 11, 1956 complains that this constituted "an arbitrary schedule change in his posted schedule." He requests that "the schedule operative prior to the week of May 14, 1956 be restored."

It appears that there are forty-nine employees in the sequence with greater seniority than Mr. Sheppard. Twenty-four of these employees are regularly on swing shifts, whether because of their own preference or because of Company assignments, does not appear in the record. A. Mr. Manowski is the seventh senior employee in the sequence. Up to May 14, 1956 Manowski had been working on the afternoon turn. When Sheppard was changed to rotating turns Manowski was assigned steadily to day turns. It also appears that for a period of time not disclosed, Sheppard's lathe was operated by an apprentice on the day turn. It was testified that it is Company practice to assign older machines to apprentices and newer machines to senior employees. Sheppard, when assigned to the afternoon turn on a rotating basis, was also assigned to a newer machine.

The Union claims that the change in assignment of Sheppard involves a violation of Article VI Section 5 which reads as follows:

"Section 5. (a) 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 (b) below.

"(b) Determination of the daily and weekly work schedules shall be made by the Company and such schedules may be changed by the Company from time to time. In the non-continuous operating departments the Company shall, where practicable, make reasonable effort to schedule employees so as to avoid working them on Sunday.

" To accommodate the off-period planning of employees, the Company shall, insofar as reasonably possible and consistent with proper, efficient and economical operation of the plant, post work schedules for periods not less than a work week in locations where they can be readily observed by those affected twenty-four (24) hours before the end of their last turn worked in the work week preceding the work week for which the schedule is posted. Changes in such posted schedules may be made at any time, provided that arbitrary changes shall not be made. In this connection it is recognized by the Union that 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 in schedules and that such causes may require changes therein at any time. If it is alleged that arbitrary schedule changes have been made, they may be made the subject of a grievance, including arbitration. The Company shall notify the employee or employees involved of changes in the posted schedules as far in advance of the time effective as is reasonably possible.

" General departmental changes in schedules shall be made known to the Union Grievance Committeeman for the department involved as far in advance as is reasonably possible."

The Union also claims a violation of Article XIV Section 6 providing:

"Section 6. Local Conditions and Practices. This Agreement shall not be deemed to de-

> prive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect at the time it is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

The Union, in contending that the change of schedule was an arbitrary one and an unlawful departure from the provisions of Article VI Section 5, points out that although the Company for the first time in the third step stated that it was made for "operational reasons",

> "the Company did not at any time say what the operational reasons were for making this change, and it is the position of the Union that there was no change in the work load; there was no change in the availability of qualified employees; there wasn't any operational reason advanced by the Company which would have required a change in schedule."

Apropos of this contention, in its pre-hearing brief and at the hearing the Company also referred to operational needs and the requirement of flexibility of assignments, especially in view of the expansion of the machine shop. My inquiry of the Company representative and witnesses as to what "operational reasons" (referring to the third step letter) or need for flexibility in assignments prompted this particular change affecting William Sheppard were unavailing. When asked why "it was not operationally possible to continue Mr. Sheppard" the reasons given me were

> "Because of production problems known to management. It is a right that management has to direct their working forces, Mr. Arbitrator."
>
> * * *
>
> "And we have to have that right in order to operate in a competing industry."
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> * * *
>
> "Well, we still operate the plant, Mr. Arbitrator, and it is our decision to make whether or not it /the change in assignment/ should be done or should not be done." (Transcript p. 72)

Thus, the Company gives the short and direct answer to the Union that under Article VI Section 5 the determination of the daily and weekly work schedules (and particularly the turn to which an employee is assigned on a day) is a management prerogative (Marginal Paragraph 72) and it is not obliged to account for the operational reasons which prompt it to change the turn to which an employee is assigned in the absence of circumstances referred to in Marginal Paragraph 73 where a schedule posted in the preceding work week is changed for allegedly arbitrary reasons.

The Union's argument addresses itself to the labor relations implications of this position of freedom from accountability and the necessity of explaining the reasons for changes, disturbing to employees, who have accustomed themselves to a particular routine. The Arbitrator must confine himself to interpreting and applying the Agreement. The Agreement supports the Company's position. "Determination 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." (Marginal Paragraph 72). Marginal Paragraph 71 freezing "schedules now operative throughout the plant" for "the life of this Agreement" means the schedules of work in the departments and divisions of the plant. It does not address itself to the right of individuals to be assigned to particular turns. Marginal Paragraph 73 deals with arbitrary changes from schedules posted the preceding week and not to such changes as were made in Sheppard's assignment to rotating turns. Departures from posted schedules may not be made arbitrarily and capriciously; but we do not have here a case involving changes in a posted schedule.

The Company witnesses themselves referred to "labor relations" reasons for changing Sheppard's assignments but did not elaborate on this beyond commenting that it was a practice to give turn preference to senior employees when it was operationally possible to do so. This was said in explanation of Manowski's change to day work at the time Sheppard was transferred to a rotating shift. Whether or not such a "practice" exists I do not know because there was no proof thereof beyond a bare statement of the fact. Such a statement is insufficient to establish a practice, whether contended for by the Company or the Union. Furthermore, there was Union evidence that Manowski did not, in fact, desire the change to the day turn and only refrained from complaining of it "because he was more or less scared to talk to the boss." The Union Grievance Committeeman who spoke to Manowski stated, at the hearing, that "He /Manowski/ felt maybe he /the foreman/ might get sore if he requested to go back on the 4-12". There was contradictory testimony given by the Assistant General Foreman of the Mechanical Department who stated on examination by me that Manowski requested the change. However, there was no cross-examination of the Union witnesses on this point, nor of the Company witness. Where there is a direct conflict of evidence the representatives of the parties should undertake to establish the relative credibility of witnesses, if the point in

question is important. In the instant situation it is impossible on the meager record to decide whether or not Manowski expressed a desire or not to be on the day turn.

The Union claims violation of a past practice, protected by Article XIV Section 6. The practice contended for, variously expressed, appears to be that a senior employee will be accommodated with respect to his shift or turn preferences, (but not to bump junior employees in the preferred shift or turn). The Union representative stated that "it has been a local practice that the oldest employee desiring a steady day turn job had been given a day turn job," and that "it has been a past practice that the longer service employees were given the opportunity to bid for and hold steady turn jobs if they desired them". This "past practice," if it existed, only differs from that referred to by the Company witnesses in that the Company states that the senior employee was sought to be accommodated if it were operationally practicable to do so. The Union presented no more proof of the existence of the practice on which it relied than did the Company. Practices are demonstrated to have existed not by assertion but by proof. In any event, assuming that the practice did exist, there is no showing here that the Company violated it. Manowski was senior in the sequence to Sheppard. It has not been shown that he "bumped" Sheppard in any respect. Sheppard still works every other week on the day turn. The record does not show that Manowski displaced Sheppard in his day turn assignment. Indeed, it was the Union's contention in the grievance steps and in the early stages of the hearing that Sheppard was displaced by an apprentice. This, however, does not seem to be in accord with the facts.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: September 16, 1957