INLAND STEEL COMPANY)
) Grievance No. 8-E-36
and) Docket No. IH-65-65-10/31/56
) Arbitration No. 195
UNITED STEELWORKERS OF AMERICA)
Local Union No. 1010) Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent,
Labor Relations
G. A. Jones, Supervisor, Industrial Engineering

For the Union:

Cecil Clifton, International Staff Representative
Fred A. Gardner, Chairman, Grievance Committee

Bennett R. Robinson applied for a vacancy in the Handyman occupation, the bottom job in the Mechanical Sequence of the Rail Accessories Department. In March, 1956 he was given a screening test, an examination in which he was tested a) on his ability to speak, read, understand and write English; b) his ability to read gauges and make measurements; and c) his ability to make simple arithmetical computations and to draw angles. He had failed to pass a similar test in 1955. He also failed to pass the test in March, 1956. Having been denied promotion, he filed a grievance objecting that

> "The Inland Steel Company has instituted Screening Tests, which a person must pass instead of using the provisions of the Collective Bargaining Agreement."

He requests that he be placed on the job denied to him, that he be paid for all turns lost and that the Company "quit using tests as a method of determining promotions."

The Union claims that it has never agreed to screening tests and examinations. The only tests it countenances are

a) Personnel tests on the occasion of original hiring;
b) Physical examinations (but only because they are necessary for the protection of the employees themselves, the Union reserving the right to protest if physical tests do not serve this purpose; and

c) Tests for qualifying in a journeyman occupation under the Mechanical and Maintenance Agreement.

Presumably the Union also agrees to formal apprenticeship tests, but these were not mentioned at the hearing.

The Union argues that promotion ordinarily is governed by Article VII Section 1 of the 1954 Agreement, and if the personnel records of two aspirants for a job do not establish "a differential in abilities" a reasonable trial period shall be allowed to the senior applicant. It contends that tests outside of the areas mentioned above were not agreed to and if they had been agreed to they would have been mentioned explicitly, as in the case of journeyman promotion. It states that the results of tests improperly given cannot and should not be made a part of the personnel record or considered for promotion. It concludes by observing that failure to pass the screening test was an inadmissable reason for denying promotion to the bottom job in the sequence to Robinson.

The Company argues that under Article VII Section 1 it is the judge of ability to perform the work and of physical fitness; that the tests are not an innovation and, in fact, the identical screening test has been used consistently for five years in screening applicants in the Handyman occupation in this department; that the Union has never previously raised objection to the use of the test, having filed no grievances; that similar screening tests have been used for a variable number of years for the bottom jobs in some thirty-five sequences; that the results of a screening test properly become a part of the personnel record; that nothing in the Collective Agreement prohibits or limits their use; and that Robinson was not discriminated against in having been found to be lacking in ability to do the work by reason of having failed the screening test.

The record does not identify or describe the successful applicant for the job.

As a preliminary manner I shall address myself to a contention of the Union not mentioned above: Article VII Section 2 (Marginal 92) provides

> "Section 2. Personnel Records. Records and ratings as to each employee's service with the Company shall be maintained in the department in which he is employed, and such records and ratings shall include matter relative to an employee's work performance and length of service in such department and in the sequence therein. Each employee shall at all times have access to his personnel record and in case of those employees

whose record indicates unsatisfactory workmanship, the superintendent of the department or his assistant will call the employee in and acquaint him with the reasons for unsatisfactory rating."

The Union argues that "ratings" as used here refers only to "ratings" which may be included in the personnel record relative to an employee's work performance; and that absence of more explicit reference to ratings on examinations or tests demonstrates that they have no place in a personnel record.

Marginal 92 states what shall be maintained in personnel records. It does not purport to give a comprehensive list of the contents of such records. If examinations are permissible by reason of another provision of the Agreement or by reason of general considerations, I find nothing in Marginal 92 that prohibits their results being recorded as part of the personnel record of an employee. This provision does not preclude the inclusion in the personnel record of tests or examinations of apprentices, journeymen, or physical examinations or those at the time of hire, all admittedly proper. It is to be noted that the records required to be maintained by Marginal 92 do not serve as the exclusive source of information as to an employee's "ability to perform the work" as the Union seems to argue in one phase of its approach to the problem. Marginal 94 states that

"These records of the employee's individual performance have much influence on the 'Ability to perform the work' clause in Section 1 of this Article, * * *" (Underscoring supplied)

The crucial provision, here is Article VII Section 1 which provides as follows:

"Section 1. Definition of Seniority. Employees within the bargaining unit shall be given consideration in respect to promotion opportunity for positions not excluded from said unit, job security upon a decrease of forces, and preference upon reinstatement after lay-off, in accord with their seniority status relative to one another. 'Seniority' as used herein shall include the following factors:

"(a) Length of continuous service as hereinafter defined;
"(b) Ability to perform the work; and
"(c) Physical fitness.

"It is understood and agreed that where factors (b) and (c) are relatively equal, length of continuous service as hereinafter defined shall govern. In the evaluation of (b) and (c) Management shall be the judge; provided that this

> will not be used for purposes of discrimination against any member of the Union. If objection is raised to the Management's evaluation, and where personnel records have not established a differential in abilities of two employees, a trial period of not less than thrity (30) days shall be allowed the employee with the longest continuous service record as hereinafter provided."

The language here is explicit, unambiguous and leaves no room for interpretation.

Clearly, the section provides for promotional opportunity, among other things, of employees "in accord with their seniority status relative to one another" (Marginal 87). It proceeds to list ability to perform the work and physical fitness as factors in seniority status (Marginal 89, 90). It then says that where these factors are relatively equal as between two applicants, length of service shall govern (Marginal 91). The section explicitly confers on the Company the authority and responsibility of evaluating ability and physical fitness. It recites that "Management shall be the judge." (Marginal 91)

If Management is to judge ability to perform the work and physical fitness, can there be any doubt that it may employ any fair, reasonable and non-discriminatory way of determining these facts? Presumably, if it desired to do so, it might judge by observing applicants perform in their present jobs; by studying reports of their performance; by asking questions and weighing and evaluating the verbal responses; by requiring applicants to demonstrate through performance their ability to do the new job or their physical stamina or fitness therefor. Also presumably, they might ask for written answers to a proper set of questions reasonably related to the qualifications for the new job. "Evaluation" and acting as a "judge" (Marginal 91) necessarily involve inquiring, questioning, weighing and obtaining information. The fact that it is done through written screening tests of a uniform character does not make it any more questionable than if performed through simple observation or oral questioning. Indeed, it may serve to lessen the possibility of unfair discrimination.

Accordingly, I find that the screening test involved in this case is not prohibited by the Agreement.

Marginal 91 proceeds to deal with the situation in which the Union files objection to Management's evaluation of ability to perform the work or physical fitness. It provides that if objection is raised

> "and where personnel records have not established a differential in abilities of two employees,"

a reasonable trial period shall be allowed the senior employee. This means to me, that when and if the Union objects to an evaluation it becomes necessary to judge the ability and physical fitness of the two applicants on the basis, not only of the test (or whatever other method of judging and evaluation Management might have used) but on the basis of the whole personnel records of the two applicants. If a comparison of such personnel records demonstrates that the junior employee possesses greater ability to perform the sought for job and greater physical fitness, he is entitled to it; if it demonstrates that the senior employee is superior in those respects he is entitled to it; but if it demonstrates no "differential in abilities", the senior employee shall be given the opportunity of a reasonable trial period.

In the instant case, the Company seems to have evaluated Robinson solely on the basis of the screening test. Neither the Union nor the Company representative at the hearing was in a position to state who got the job in his stead, and how, or why. The Union, however, objected to the evaluation within the meaning of Marginal 91. This called for a comparison of the personnel records of the successful and unsuccessful applicants to determine whether there was "a differential in abilities" and then to apply the formula of action prescribed by the Agreement.

This case, accordingly, is remanded to the parties for consideration and action pursuant to the provisions of the Agreement, specifically the cited part of Marginal 91.

AWARD

The matter is remanded to the parties for consideration and action pursuant to Article VII Section 1 as delineated in the opinion. Jurisdiction is reserved and the matter will be placed on the active calendar of arbitration cases upon request of either party if the remand does not have the effect of settling this grievance.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: September 16, 1957