INLAND STEEL COMPANY	)	
	)	Grievance Nos. 22-E-22
and	)	22-E-23
	)	22-E-24
UNITED STEELWORKERS OF AMERICA	)	Docket Nos. IH-48-48-9/20/56
Local Union No. 1010	)	IH-49-49-9/20/56
		IH-50-50-9/20/56
		Arbitration No. 201

Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
W. L. Ryan, Assistant Superintendent, Labor Relations

For the Union:

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

The three grievances identified above were presented at the hearing as representing a single problem. Having been argued as one case they will be similarly treated for the purpose of this opinion and the award. All references to factual situations, herein, relate to Grievance No. 22-E-22, which the parties regarded as the pilot case.

In Arbitration No. 167 and in succeeding and associated cases (Arbitration Nos. 178, 179 and others) the dispute involved the question whether thirty turns worked on "extended operations" conferred sequential seniority rights on employees working those turns. The instant cases differ from the others in this respect: in the previously decided cases the turns were worked on "operations" not required, in their nature, to be maintained continuously; in the instant cases the grievances involve the No. 3 Open Hearth Department, the four furnaces in which, except for emergency breakdowns and rebuilding operations, are regularly scheduled for 21 turns (three turns per day, seven turns per week).

The grievance filed by "#3 Open Hearth Employees", (not otherwise identified) complains that two named individuals appeared on a list of employees having sequential seniority in the Floor Sequence of the Department. It is requested that these two individuals be listed as Labor Pool employees with no sequential seniority.

The Union claims that the case falls within the principles established in the previously decided cases on extended operations. It regards the two individuals as having "filled in" on other than permanent vacancies when promoted from the Labor Pool to Third Helper jobs in the Floor Sequence. It takes the position that under the previously decided cases it would have been justified in having regarded the "filling-in" of all vacancies on jobs over and above those required for a 40 hour a week schedule for the individuals on the regular crews for the four furnaces as temporary and not conferring sequential seniority -- but because of the "special operating problems", and "for the purposes of clarity and in line with the past practices of the parties" it prefers to regard 75 per cent utilization of existing facilities as "normal operation" and anything above that to be in the nature of "extended operations" as that term was employed in the previously decided cases.

The 75 per cent figure appears to relate to an arrangement which on at least one occasion in the past, had been applied as a practical formula for administration of Article VII Section 9 of the 1954 Agreement having to do with layoffs and crew reductions due to decreased business activity. As explained at the hearing, this formula called for lay-offs until 75 per cent of the normal facilities were operating with crews working 40 hours a week and in the event of further closing down of facilities the remaining crews would share the work on a predetermined basis. Apparently, some such arrangement had been placed into effect at one time with respect to the No. 2 Open Hearth Department which has 24 furnaces. Further, the Company states that a similar practical interpretation (or a rewriting) of the cited provision was suggested by it in the 1956 negotiations as applicable to all or a variety of "continuous operation" situations (the record is not clear on this point) but the Union did not acquiesce.

Before going into further ramifications of the case it seems desirable to deal at this point with the 75 per cent proposal. The Union representative put it forth as a proposal applicable to all "continuous operating units" going beyond those involved in the instant grievances -- that any employees filling in on any continuous operations unit absorbing or requiring more than 40 hours of work for the regular crew would be working at temporary "fill-in" turns only when in excess of 75 per cent of the regular facilities and equipment were utilized. Although the Company did not formally object to the acceptance of testimony and argument based on this proposal, it did observe that however appropriate it might be as a basis

for agreement between the parties, it finds no support in the collective agreement itself. When questioned as to whether the Union position was that the Arbitrator "could use that figure of 75 per cent in a determination of this case", the Union representative responded

> "Yes. As evidence that the parties themselves considered it as a normal operation for reduction in force."

I do not regard it to be within my authority to determine these grievances on the basis of any temporary formula adopted by the parties for administering layoffs and reductions in force because of decreased business activity, which is governed by Article VII Section 9. The parties themselves, from time to time, are competent to vary and modify their written understandings and established practices by mutual agreement. The Arbitrator has no such latitude and may only interpret and apply their agreement, as he finds it, to the facts presented. Further, the circumstance that the parties had reached a temporary agreement which may indicate what they "themselves considered as a normal operation for reduction in force" in No. 2 Open Hearth Department, does not alter my position. The Company denies that 75 per cent or any other per centage of operations of open hearth furnaces is "normal" as the Union employs the term. It denies that there is any "normal" number of turns for open hearth furnaces other than that each furnace is "regularly" scheduled for three turns a day for seven turns in a week (excepting in case of emergency closedown and rebuilding operations). Accordingly, it becomes necessary to examine more closely the nature and character of the scheduling and assignments here involved.

The Floor Sequence calls for three occupations stemming from the Labor Pool: Third Helper, Second Helper and First Helper, respectively, in ascending order. "Continuous operation" of the four furnaces calls for 84 First Helper turns a week. The Master Schedule calls for six days on and two days off for each of four crews (A,B,C and D). When broken down to a five day - 40 hour stint for the regular members of each crew, the schedule produces only 16 First Helpers at 5 days a week, or 80 turns, leaving a deficiency of only four First Helper turns to be filled by Second Helpers promoted on specified days in the week for that purpose.

The 84 Second Helper turns called for by the Master Schedule are augmented to 88 by the necessity, stated above, of assigning 4 Second Helper turns to the First Helper schedule. The regular crew of 17 Second Helpers at 5 turns a week, produce 85 turns or a deficiency of three turns which, as in the case of the deficiency of First Helper turns is made up by promotion of employees lower in the sequence (Third Helpers) to Second Helper turns.

The 84 turns required for Third Helper are increased to 87 turns by reason of the three Third Helper turns used to fill out the Second Helper Schedule. Again, the 85 turns produced by 17 Third Helpers working five days a week is two turns short of meeting the requirement of 87 turns to be filled. Accordingly, one employee is assigned out of the Labor Pool to work two turns as Third Helper each week and three turns in the Labor Pool.

The grievance here involves the question whether such employees, assigned from the Labor Pool are filling temporary or permanent jobs.

It seems clear to me that the character of the vacancy in such a scheduling arrangement as described above, does not change when it is a Second Helper "filling in" for a vacancy in the First Helper schedule, a Third Helper for a vacancy in the Second Helper schedule, or a Labor Pool man "filling in" on the Third Helper Schedule in a vacancy occasioned by the need to upgrade Third Helpers to three turns in the Second Helper schedule. In each case, the vacancy is a regularly recurring one and an integral part of the established schedule. The vacancy does not come about by reason of the "extension" or expansion of operations beyond the previously established number of turns, because at all times (with exceptions not material here) the furnaces operate continuously (21 turns per week). Thus, there is no element of uncertainty as to whether any of the helper vacancies will be required to be filled in the future. Each furnace unit is known to, and must necessarily, operate continuously.

Furnaces, it is true, do not operate forever and must shut down for needed repair and rebuilding. Even in such circumstances, however, as I understand it, the element of uncertainty and irregularity is considerably less than that accompanying non-continuous operations, in that to some degree, these shut-downs are scheduled. We have no picture of unforseeable change and variation of the level of operations such as characterized the scheduling in the units involved in Arbitration No. 167 and the related cases.

In Arbitration No. 167 the Permanent Arbitrator placed emphasis upon the mixed past practices of the Company in situations where operations had been stepped up. No evidence has been produced of such mixed practices where continuous operations similar to those involved in the instant grievances are involved. In further explanation of the rationale of that decision in Arbitration No. 178 it was stated

> "When operations are stepped up and extended operations result no definite information is possessed as to the duration of time the extended operations will be required. This will depend on business activity and other factors. One who occupies such a vacancy fills a 'temporary vacancy'. The thirty-

> turn provision confers no sequential standing upon an employee who fills a vacancy created by such 'extended operations'. It would be otherwise if a vacancy should develop under any of the circumstances specified in Marginal 103 and 104 and an employee should fill such a permanent vacancy." (p.3). (Underscoring supplied).

The absence of mixed practices in the past and the relative regularity, forseeability and reasonable anticipation of the necessity of filling the types of vacancies presented in this case distinguish it on its facts from those in the other cases previously decided. None of the others were necessarily continuous in nature. These differences justify the conclusion that we are dealing here with permanent vacancies as distinguished from those designated as temporary in the earlier cases.

One must be aware that in other circumstances the permanent character of the operations in question in this case may be changed. Nevertheless, the practice of the parties has been consistent in this open hearth operation, unlike the situations involved in the earlier awards, and the undisputed evidence is that these open hearth furnaces must be operated continuously when they are operated at all. The use of the 75 per cent figure in a reduction of force situation, which is controlled by a totally different contract provision, has no bearing on the problem under consideration.

Consequently, this case presents facts clearly distinguishable from those presented in Arbitration No. 167.

AWARD

This grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: September 16, 1957