INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 14-F-11
Docket No. IH-107-107-1/10/57
Arbitration No. 203

Opinion and Award

Appearances:

For the Company:

William A. Dillon, Assistant Superintendent, Labor Relations

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Secretary, Grievance Committee
Frank Patlyek, Grievance Committeeman

The grievant, O. Skanfor, asserts that the Company improperly withheld overtime pay from him for work performed on October 23, 1956 because, while he notified his foreman of his claim for overtime, he refused to do so in writing. The facts are not in dispute, and this grievance calls simply for an interpretation of a contract provision which was new in the 1956 Agreement.

Section 2 C of Article VI is entitled "Conditions Under Which Overtime Rates Shall Be Paid," and sub-section (1) (d) thereof is as follows:

> "(1) Overtime at the rate of one and one-half times the regular rate of pay shall be paid for:
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> . . . . . .
>
> (d) Hours worked on the sixth or seventh workday of a 7-consecutive-day period during which the first five (5) days were worked, whether or not all of such days fall within the same payroll week, except when worked pursuant to schedules mutually agreed to as provided for in Subsection D of Section 1 -- Hours of Work; provided, however, that no overtime will be due under such circumstances unless the employee shall notify his foreman of a claim for overtime within a period of one week after such sixth or seventh day is worked; and provided further that on shift changes the 7-consecutive-day period of one hundred and sixty-eight (168) consecutive hours may become one hundred and fifty-two (152) consecutive hours depending upon the change in the shift. For the purposes of this Subsection C (1) (d) all working schedules now normally used in any

> department of any plant shall be deemed to have been approved by the grievance committeeman of the department involved. Such approval may be withdrawn by the grievance committeeman of the department involved by giving sixty (60) days' prior written notice thereof to the Company."

The overtime in question would not be payable under the Fair Labor Standards Act. It should be observed that, by virtue of sub-section 1 (a), (b), and (c), overtime pay is payable, without any special claim therefor by the employee, for hours in excess of eight in a workday or 40 in a payroll week and for hours worked on the sixth or seventh workday in a payroll week during which the employee has performed work, as defined, on five other workdays. There is the special condition stipulated in sub-section (d), however, that overtime pay for work on the sixth or seventh day of a 7-consecutive-day period will not be due "unless the employee shall notify his foreman of a claim for /such/ overtime within a period of one week ... ".

Grievant admittedly notified his foreman of his overtime claim in due time, but he flatly refused to fill out the form prepared by the Company for this purpose, insisting that the oral notification was sufficient.

The Company's view is that it has the right to set up a reasonable and proper procedure for carrying out the new obligation imposed by this contract provision, that the contract does not say the notification in question shall not be in written form, and that under a similar provision in the United States Steel Corporation labor agreement written notification has been required since 1946 and has not been questioned by the Union. The Company also makes the point that such written forms of claim are necessary to avoid disputes, both as to the timeliness and fact of notification, and its insistence on the use of the form is justified under the general management clause of the Agreement (Article IV, Section 1).

The Union agrees that such forms are desirable, in fact states that the employees need them to have evidence that their claims have been duly filed, and that it has so advised the employees. It maintains, nevertheless, that the contract provision does not call for notification in writing and that the Company is being arbitrary in making the written form mandatory.

The Union has offered to stipulate as an amendment to the Agreement that these overtime claims be submitted in writing, but the Company has declined, holding that the Agreement is sufficient in its present form. The Company has offered even now to accept and honor grievant's overtime claim, waiving the time limitation, if he will present it on the printed form the Company has prepared.

All other employees apparently use the written form but this grievant insists on a literal interpretation of the contract provision. The temptation is to compel him as a member of the Inland industrial community to conform to the desirable and orderly procedure observed by all others. If there had been an established and accepted procedure for filing overtime claims of some years standing at this plant, it would be reasonable to say

that such a procedure constituted a practice which was implicitly and intentionally incorporated by the parties in the new contract provision. Prior to August 5, 1956, however, there was no practice on this subject; indeed, even since then overtime, except of the kind here involved, is paid for without the employee making a specific claim therefor in writing or otherwise. Overtime pay in certain circumstances is mandatory by force of the Fair Labor Standards Act, whether the employee files a claim or not.

Regardless, then, of the desirability of having an orderly procedure, it cannot be found as a fact that by virtue of a pre-existing practice the parties intended in sub-section (1) (d) that the notification to the foreman be in written form. It is noteworthy that this very paragraph explicitly recognizes the difference between notification and written notice. In the last sentence of the paragraph approval of working schedules in the department "deemed to have been approved by the grievance committeeman" may be withdrawn by giving "60 days' prior written notice thereof to the Company."

The inclusion of this requirement of a specified written notice in another part of the very paragraph of the Agreement which we are construing eliminates any ambiguity. In the absence of ambiguity we may not in the process of interpretation add a requirement which the parties chose not to include in the language they used in the Agreement. As a matter of fact, when there is no such ambiguity marginal Paragraph 200 (Article VIII, Section 2) denies the arbitrator the jurisdiction or authority to do so.

The question, then, is not whether the Company is reasonable in insisting on the use of a written form or whether this grievant is not unreasonable and uncooperative in adhering to his own non-conforming position, or whether it would not be better to use the written form. This dispute could have been obviated by a simple exchange of letters agreeing that the notification in question must be in writing, which the Union has been and is willing to do.

AWARD

This grievance is sustained.

Dated: September 24, 1957

David L. Cole
Permanent Arbitrator