INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 20-F-16
Docket No. 202-197-7/30/57
Arbitration No. 238

Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
O. J. Crepeau, Assistant Superintendent, Mechanical Department
A. T. Anderson, Divisional Supervisor, Labor Relations
J. Nedeff, General Foreman, Machine Shop

For the Union:

Cecil Clifton, International Representative
Alberto Garza, Vice Chairman, Grievance Committee
John Negovetich, Grievance Committee

This is the third case in this series in which Article XIV, Section 5 is raised as an objection to certain actions taken by the Company. This is the local conditions and practices section, and provides:

> "This Agreement shall not be deemed to deprive 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 Fitting Floor Crew in the Machine Shop, Plant No. 1 are named as the grievants. They allege that for some 20 years the practice has been to fill positions on the 12 - 8 turn by volunteers, and that on May 5, 1957 the Company discontinued this practice and instituted what is elsewhere the normal method of scheduling such work by assignment. This, they contend, violates their rights under Article XIV, Section 5, and they request that the Company revert to "the past practice and local conditions."

While not denying that the volunteer system has been in effect, the Company maintains that because the Company's plant and operations have expanded so much it has become necessary to increase the activity and service of the Machine Shop by making it a 24-hour operation, and that to accomplish this it must exercise its general managerial rights and insist on compliance by the employees with the provisions of Article VI, Section 1. This is the section which deals with hours of work, normal work patterns,

and schedules. It also calls attention to Section 8 of Article VI, which states:

> "In the exercise of its rights to determine the size and duties of its crews, it shall be Company policy to schedule forces adequate for the performance of the work to be done. When a force has been scheduled and a scheduled employee is absent from a scheduled turn for any reason, the Company shall fill such a vacancy in the schedule in accordance with the provisions of Article VII, and if the schedule cannot be so filled, the Company shall call out a replacement or hold over another employee, unless the work to be accomplished by or assigned to the short crew can be modified so that it will be within the capacity of such short crew."

The Company urges that these provisions of the contract, together with Article IV, Section 1 (the plant management clause), take priority over Article XIV, Section 5. In the earlier awards in this series on this subject, it was pointed out that Article IV, Section 1 is explicitly made subject to the provisions of the Agreement, and that to the extent that any matter is covered elsewhere in the Agreement, Article IV, Section 1, and not the other provision, must give way.

On the other hand, Article XIV, Section 5, preserves existing local conditions which are more beneficial to the employees than other provisions of the Agreement, provided these local conditions or practices are consistent with the Agreement. "Consistent with" obviously cannot be intended to mean "identical with." If so, there would be no point whatever in having Article XIV, Section 5, because then it would amount merely to repeating language which is already in the Agreement. The key is the expression "more beneficial." Clearly this means different from the other provisions to the degree that they confer some greater benefits on the employees in question. But the rule of consistency also has meaning and materiality. The basic purpose or approach of other contract provisions may not be undermined by this catch-all local conditions and practice section.

Management argues that the local conditions must include only items of lesser importance and can include only conditions or practices which are reasonable, unequivocal, clearly enunciated and agreed upon.

This argument reflects inconsistency in itself. If the items are of such minor importance as not to merit mention in the Agreement, how could they be unequivocal, clearly enunciated and agreed upon? Moreover, where in Article XIV, Section 5 are any such requirements stated?

It is argued by the Company that this section was meant to apply only to coffee breaks, wash-up time, work clothes and safety matters. The language does not suggest this; quite the contrary, it speaks of conditions more beneficial to the employees than other terms or conditions

of the Agreement. Hence, it must refer to the possibility of having by local practice somewhat greater employee benefits with respect to items covered elsewhere in the Agreement. As a matter of fact, Section 1 B of Article VI stipulates the normal workday to consist of eight consecutive hours "except when an unpaid lunch period is provided in accordance with prevailing practices." It does not mention wash-up time, yet the Company contends that a wash-up time practice is protected by Article XIV, Section 5. It is superficially inconsistent but yet understood to be covered.

It is for this reason that I construe the requirement of consistency in Article XIV, Section 5 to mean that the basic purpose or approach of the other contract provision must not be undermined by continuing what appears to be a local condition or practice. In doing so, as has been stated in earlier cases, when the local practice relates to seniority, a subject which is carefully worked out and detailed in Article VII, the employees sponsoring such a local practice will always have the laboring oar when they seek to gain greater or different seniority rights or benefits than those given them in Article VII. One of the reasons for this is that there is a theory of seniority spun through the entire Article VII, and any departure from it in favor of one group or type of employee will necessarily impair the seniority standing or rights of others. Therefore, such local practices are likely to be held not consistent with Article VII.

In this case, it is an undisputed fact that for some years and as of the time when the current Agreement was executed it was the practice on the Fitting Floor of this Machine Shop to fill 12 - 8 turn jobs with employees who volunteered. The basic purpose of Article VI is to enable the Company adequately and fully to man whatever operations it deems necessary, and as to what operations are necessary it alone is the judge. The Agreement makes this perfectly clear, and the Union does not question this. Thus, if the Company desires to operate the Machine Shop 24 hours per day it is free to make whatever assignments it may in line with the scheduling provisions of the Agreement. As indicated, however, there has been a practice which seems to fall within the protection of Article XIV, Section 5. To the extent that this local practice does not interfere with Management's ability to man the necessary jobs and assignments in accordance with its operating needs as it sees them the local practice should be respected and continued.

In response to questions by the Arbitrator at the hearing the Union readily conceded that if in observing and continuing the practice of calling for volunteers for the 12 - 8 turn, the Company should find that it cannot fully and efficiently meet its manning needs then the local condition or practice must be deemed to have been abandoned and nullified. This was evidence of the Union's recognition of the definition of consistency which I have set forth above.

What does this mean in practical terms? If employees insufficient in number and in qualifications volunteer, the local practice is at an end. If the nature of the operations are changed so that the Company can operate under the volunteer system only by paying regularly an otherwise avoidable

amount of overtime pay then also the local practice is ineffective and terminated. It has not been asserted even by Union witnesses that the local practice was in any sense meant or understood to require the Company to pay avoidable overtime premiums.

Since May 5, 1957 when the Company discontinued the volunteer system, a period of more than eight months, it has added to the 12 - 8 turn only two Helpers. This certainly does not support the Company position that it could not in keeping with efficiency and practical needs continue the practice of filling the 12 - 8 turn with employees who volunteer for such work. As time goes on, the circumstances may well change, and the moment the Company finds it cannot meet its reasonable scheduling needs, as outlined above, it will be justified in holding that the local practice in question is then inconsistent with the underlying purposes of the scheduling provisions of the Agreement. This, however, has not yet happened, and I cannot accept the proposition as advocated by the Company which would in effect wipe Article XIV, Section 5 completely out of the Agreement.

AWARD

Subject to the conditions and qualifications stated above, this grievance is granted.

Dated: February 10, 1958

David L. Cole
Permanent Arbitrator