INLAND STEEL COMPANY	)	
	)	Grievance No. 4-F-18
and	)	Docket No. IH 332-323-5/26/58
	)	Arbitration No. 273
UNITED STEELWORKERS OF AMERICA	)	
Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Peter Calacci, President, Local 1010
Fred A. Gardner, Chairman, Grievance Committee
Nick Koleff, Grievanceman

For the Company:

Henry Thullen, Attorney
William Price, Attorney
William G. Caples, Vice President, Industrial Relations
Glenn Gardiner, Medical Director, Indiana Harbor Works
L. E. Davidson, Assistant Superintendent, Labor Relations
R. H. Werntz, Divisional Supervisor, Labor Relations
J. J. Fahey, Personnel Foreman, #1 Open Hearth Dept.

Mrs. X was a Production Clerk in #1 Open Hearth Department and had 14 years of service with the Company. In March, 1958 she was discharged for wilfully violating the Company's rule on maternity leave, in that she first notified the Company of her pregnancy only 74 days before the child was born, whereas the rule requires that she report such a condition 120 days before the expected date of birth. She claims that she first consulted her physician in January, 1958, not having known, prior thereto, that she was pregnant. She first informed the Company of her condition on February 4. The birth took place on April 19.

No uniform policy or practice had been followed with respect to maternity leaves in the period prior to the current Agreement of the parties. In the negotiations leading up to the execution of that Agreement the Union demanded an amendment to Article VII, Section 15 (Leaves of Absence) dealing with that subject matter. The Company was loth to incorporate a maternity leave clause in the Agreement and the issue was resolved by the parties agreeing that the Company would formulate a reasonable policy and procedure, notice of which would be given to the Union and to female employees who might be affected. After consulting with its medical advisors and personnel and after con-

sidering area and industry practice and its own experience with respect to employees not in the bargaining unit, the Company issued the following rule:

> "Request for Leave of Absence
> An employee desiring a leave of absence for reasons of pregnancy must apply for such leave through her supervisor. A leave may be granted subject to the advice and approval of the Medical Department, the employee's department and Labor Relations Department. It shall cover a period extending from 90 calendar days prior to the expected date of birth to the 90th calendar day following the actual date of birth.
>
> "A leave of absence will not be granted to any employee who fails to report her pregnancy 120 days prior to the expected date of birth or to employees who fail to make proper application for such a leave.
>
> "Return to Work
> No employee will be permitted to return to work less than 90 calendar days following the actual date of birth. Upon termination of the leave of absence and prior to returning to work, the employee must report to the Medical Department for a physical examination. On the basis of this examination and the opinion of her attending physician, a determination will be made concerning the employee's ability to return to work. Where necessary, extensions of leave of absence may be granted upon the advice and counsel of the Medical Department and the Labor Relations Department.
>
> "Failure to report to the Medical Department at the end of the leave of absence period, or failure to report for work as directed will result in termination of the employee.
>
> "As in most cases involving health and safety of the employee, there arise many things which are regarded as special cases,

> and deviations may result. In this regard, approval of both the Medical and Labor Relations Departments must be obtained for disposition."

On November 13, 1957 the Company, by letter addressed to the President of the Local Union, informed the Union of this rule quoting it in full. No subsequent communication on the subject-matter was received from the Union by the Company. The grievant concedes that she had knowledge of the rule and that she failed to comply with its provisions but claims that the rule is unreasonable and that even if it should be regarded as reasonable, she should not be disciplined for non-compliance because she did not know that she was pregnant until a date within the 120 day notification period and, therefor, could not have complied.

First, it is decided that the terms of the maternity leave policy are reasonable and consistent with the understandings of the parties. The time periods referred to therein, both before and after an anticipated birth, are in line with informed medical-industrial opinion. They are well designed to protect the health of the pregnant employee, the child and other employees and the Company whose interests might be adversely affected by a female employee working too long before and returning to work too soon after delivery. The rule is well designed to deal with the generality of situations when normal and healthy pregnancy is experienced. It wisely recognizes, in its last paragraph, that special situations requiring exceptions or deviations may occur and indicates the procedure that should be followed in such instances. Accordingly, the Union's attack on the rule itself cannot be upheld.

Mrs. X has had two children and suffered one premature delivery. She is literate, experienced and it appears reasonable to assume that she is informed on the physiological phenomena relating to pregnancy and child-birth. The medical history of her pregnancy which she gave to the Medical Director of the Company's Clinic on March 10, 1958 led him to testify that he was "confident" that she knew that she was pregnant before January, 1958 when she first consulted her physician. This confidence in his opinion was based upon medical details, symptoms and indications upon which it is unnecessary to dilate here. The Medical Director's naked statement, however, cannot be regarded as conclusive proof of what Mrs. X actually knew (a position taken by the Company) because this is a subjective fact not susceptible to proof by such expert medical opinion as has been presented. I am satisfied, however, on the basis of his testimony (not made a part of the transcript of the proceedings) and my observation and examination of the grievant that it is reasonable to find that she should have known of her pregnant condition - and that if she were ignorant of it the reasons may be found in

her emotional condition and disturbed marital relations which induced her to close her eyes to facts that she was fully competent to identify and interpret.

Mrs. X delivered her child on April 19, 1958. On February 4, 1958 (74 days before the actual date of delivery) she first informed the Company of her pregnant condition when she asked for a two week vacation, adding that she was going to have a baby and would have to be leaving for a while. Her request was granted but she was requested to report to the Company's Medical Department to make arrangements for a leave of absence. She did so, and on February 4, 1958 informed a physician in that department that she was pregnant. She was asked on that occasion to obtain a statement from her attending physician as to the fact of pregnancy and the expected date of delivery. Despite her previous communication to the Company of her condition it was not until March 4, 1958 that the grievant formally requested a leave of absence for pregnancy. This was refused because of a failure to give notice 120 days prior to the expected delivery date, as required by the rule. She was redirected to the Medical Department for further examination with reference to her claim of ignorance of her condition and, as related above, failed to convince the Medical Director thereof.

Mrs. X, with knowledge of the rule, and with knowledge of her pregnancy which the facts require me to find, failed to comply with it. The Company has just cause for disciplining her because of this failure. It has a right to expect that when it subjects itself to the administrative inconvenience of rules issued for the accommodation of pregnant employees, those employees will abide by reasonable notice requirements. The discipline meted out, however, is too severe.

First, it should be noted that we do not have here the violation of a provision of the Agreement but a rule promulgated by the Company shortly before the 120 day period of notification, in the case of this grievant, began to run. True, she was aware of the rule, but it seems proper to give consideration to these circumstances and the nature of the subject-matter covered by the rule in evaluating the appropriateness of the disciplinary penalty.

Second, the fourth paragraph of the rule provides explicitly that failure to report to the Medical Department at the <u>end</u> of the leave of absence period "will result in termination of the employee". Although notification of pregnancy 120 days before the expected date of delivery is clearly required in the second paragraph of the rule, no similar termination penalty is provided for failure to comply with this requirement. The only penalty for failure to report a pregnancy within the period prescribed is that a leave of absence will not be granted. Thus, the rule provides for two types of penalties for infrac-

tions, one of which applies to a rule violation during pregnancy and one after pregnancy. The Company has elected to impose the penalty for infractions after pregnancy to a rule violation that took place during pregnancy.

In a proper case, termination of employment may be regarded as an appropriate measure even if the rule allegedly violated does not specifically provide for that punishment. In this case, however, the circumstances referred to above, together with an absence of evidence of anything unfavorable in the grievant's personnel record and the fact that the rule itself prescribes a less drastic penalty than discharge for reporting failures during pregnancy, lead to the conclusion that the grievant, although at fault, is being punished excessively.

The integrity of the rule will be amply protected, its future observance reasonably assured, the grievant's infraction appropriately dealt with and the needs of justice and equity in the premises properly served by a disciplinary suspension of thirty calendar days to be in force starting with the first day on which she might have returned to work had she satisfied the 120 day notice requirement.

AWARD

The grievant is to be reinstated, without back pay, provided she satisfies the physical examination and other conditions of the "Return to Work" paragraph in the Maternity Leave Rule, as of August 17, 1958. The period of time elapsing between the date of the termination of her employment and July 18, 1958 is to be regarded as absence with leave for maternity reasons.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: July 30, 1958