INLAND STEEL COMPANY	) Grievance Nos. 22-J-61 through 22-J-76
	) Appeal No. 1182
-and-	) Award No. 589
	)
UNITED STEELWORKERS OF AMERICA	)
Local Union 1010	)

Appearances:

For the Company

James T. Hewitt, Arbitration Coordinator, Labor Relations
L. R. Mitchell, Assistant Superintendent, Labor Relations
T. J. Peters, Senior Representative, Labor Relations
L. T. Trilli, Assistant Superintendent, No. 3 Open Hearth
C. T. Bateman, Administrative Foreman, No. 3 Open Hearth

For the Union

Peter Calacci, International Staff Representative
James Balanoff, Chairman, Grievance Committee
William Bennett, President, Local 1010
Joe Gyurko, Grievance Man #30 H.
John Deardorff, Assistant Griever, 2nd Ladleman
Gene Sullivan, First Helper #30 H.
Wayne Patterson, Third Helper #30 H.
Joe Lowry, Ladle Crane Man #30 H.

This case calls for a ruling on a common issue raised by 16 grievances, Nos. 22-J-61 through 22-J-76. The issue in general terms is whether the Company violates Sections 3, 4, 6c or 9 of Article 13 of the Agreement when the twenty-first turn of the week is filled by scheduling one of four crews for a sixth turn rather than by upgrading from the sequence to fill this turn. The grievances all related to the week of September 18, 1966, the grievants challenging the Company's action as indicated and requesting that they be paid at the rate of the higher earnings which they insist they were entitled to under the cited sections of the Agreement.

The No. 3 Open Hearth Department is involved. From 1952-1960 this department operated on a schedule of six days on, two days off, avoiding overtime by using a swing shift. From 1960 until the week of September 18, 1966 an individual scheduling system was used under which the scheduled twenty-first turns were filled by upgrading employees with sequential standing. Since then management has used a crew scheduling plan, rotating the twenty-first turn among the four crews scheduled in this department. Its reason for doing so was that at the high level of operations (six or seven furnace) it was having serious difficulty in obtaining sufficient labor to do the furnace rebuilding and similar things essential in this open hearth department, and by rotating the extra turn of work among the regular four crews instead of engaging in a general upgrading, more laborers were made available, and this promoted the efficiency and productivity of the department.

The Union contends that these twenty-first turns constituted permanent vacancies which should have been filled by upgrading pursuant to Article 13, Section 6c but that the Company ignored the Agreement and scheduled employees in a manner which "destroyed" their rights, - by displacing them from sequential operations and stepping them back to the labor pool and by denying them the opportunity to upgrade to superior job vacancies. The Union urges that this also restricted the employees' promotional opportunities and caused them to lose earnings, and that it prevented labor pool employees from getting the turns which are needed to qualify for sequential standing.

The Company, on the other hand, maintains that these turns were properly filled by the senior employees and that there were in fact no vacancies to be filled, citing Arbitration No. 425 as support. It also contends that Article 10 of the Agreement gives it the sole right in circumstances like those here involved to schedule the work forces as it deems necessary or proper, and that it was motivated here by reasonable production needs and not by caprice or arbitrariness. The Company insists that it has not failed to recognize the sequential rights of all employees: each employee has been scheduled to occupations commensurate with his seniority; junior employees have not been placed in positions to which senior employees are entitled; the protection given by the Agreement to employees on the basis of their seniority has not been overlooked. It stresses, however, that seniority protection is specifically limited by the Agreement to promotions, job security, and reinstatement after layoffs, and not to other matters in which employees may have preferences. The Company pointed out that the employees with the greatest seniority prefer the rotating crew scheduling plan, because otherwise they have to move down into the labor pool in order to work overtime when this department is at a high level of operation, and, finally, that this type of rotating crew schedule is used in other departments and if held improper in this department would cause great confusion through the plant.

There were some changes made in the seniority provisions when the 1965 Agreement was negotiated. Essentially, however, Article 13 still protects on the basis of relative sequential standing or seniority, as defined and implemented, promotional opportunity, job security when decrease of forces takes place, and reinstatements after layoff.

There have been a number of arbitration awards which have construed and applied the provisions in effect under preceeding agreements. The one relied upon most heavily by the Company in this dispute is Award No. 425. That case involved a situation similar to the one in the instant case. The employees in the top jobs were scheduled for six turns in a number of weeks while other employees worked only five. The Union urged that the sixth turn should have been regarded as a vacancy and filled by some employee on a lesser job, basing its claim on Section 6 of the seniority article and on the inconsistent practice followed by the Company throughout the plant. The Union relied on Award No. 167 in which it was held that employees who fill in for employees who are scheduled off to avoid the payment of overtime on the sixth or seventh day accumulate sequential seniority.

Award No. 167 was held, however, not to support the Union's position. As was pointed out in Award No. 425:

"There is nothing in that award [167] suggesting that the managerial rights of the Company as assured by other provisions of the Agreement were to be restricted or denied."

In fact, the Union was reminded that it had conceded in its presentation in No. 167 that the employee on the job had the right to work six or seven turns in a week. Award No. 425 held that there is not ground in the Agreement for ruling that the Company is obligated to create a vacancy by not using the man on the job in overtime or sixth turn work, and consequently that the provisions relating to how vacancies are to be filled are inapplicable to situations of this kind in which there are no vacancies.

In our case the situation is basically the same. The definition of a permanent vacancy in Section 5c (paragraph 13.31) does not specifically cover the facts we face. The openings created by operations beyond 15 turns have been filled by scheduling a fourth crew. The odd twenty-first turn is rotated among the four crews, so that each employee gets this overtime turn only once in four weeks. The changes written into the seniority provisions of the Agreement in 1965 cannot be said to have been intended to meet a situation of this kind.

The effect of the rotating crew schedule as compared with the previous individual scheduling has been hard on junior employees. They have found themselves working at inferior jobs with lower earnings. On the other hand, it has improved the overtime earnings of the senior employees who are enabled to get this overtime turn at their higher rates of pay, in contrast to getting it for overtime work in the labor pool. The Union's position under the circumstances is not an enviable one. It seldom is in a seniority dispute, for the gain of one group must necessarily reflect a loss to another.

The effect of this scheduling has been odd in another respect. Employees with sequential standing have found themselves downgraded into the labor pool when operations have been at a high level and then upgraded when the level of operations declined. This has been caused by the application of the work-sharing provisions of the Agreement (Section 9 of Article 13).

Still, I do not construe the Agreement as restricting the Company in its right to engage in this type of scheduling. It is done in other departments as well, and of course the senior employees find it more desirable. The Company's right to plan and schedule operations, as set forth in Articles 3 and 10, although subject to restrictions that may be set forth elsewhere in the Agreement, are broad discretionary rights and the restrictions thereon are clearly expressed. Here we see no such clear restriction.

If it is felt on balance that this kind of scheduling causes disadvantages to some employees which are greater than the benefits to others and to the Company in terms of more efficient operation, then, short of the negotiation of a clear contract provision on the subject, the parties could consider the making of a local or departmental seniority agreement to cover the situation pursuant to Article 13, Section 6d (paragraph 13.35).

The objection raised to this crew scheduling that it could deny labor pool employees the opportunity to acquire sequential standing or seniority would not be sufficient to overcome the absence of a contract provision restricting the Company's scheduling rights, but, in addition, all the grievants in this dispute have such seniority and the course followed by the Company has not deprived them of their seniority standing. The difficulty is that the grievants are seeking a form of protection by virtue of seniority which the Agreement does not provide.

AWARD

These grievances are denied.

Dated: November 28, 1967

/s/ David L. Cole

David L. Cole, Permanent Arbitrator