In the Matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local Union 1010

Grievance No. 5-K-29
Appeal No. 1189
Award No. 595

Appearances:

For the Company

T. J. Peters, Senior Labor Relations Representative
W. E. Kahl, Assistant Superintendent, No. 2 Open Hearth
J. L. Federoff, Assistant Superintendent, Labor Relations
G. H. Applegate, Jr., Senior Labor Relations Representative
R. Yagelski, Assistant Mechanical General Foreman, No. 2 Open Hearth
W. C. Wingenroth, Labor Relations Representative
R. E. Ayres, Assistant Director, Industrial Relations

For the Union

Peter Calacci, International Staff Representative
John Shebesh, Griever
Nicholas Corondan, Witness
Russell Kerst, Witness
Peter Beres, Witness

Asserting that there is a recognized local working condition in the No. 2 Open Hearth Department to schedule 11 Mobile Equipment Mechanics per day when there are 14 furnaces in use, the Union charges the Company with violation of Article 2, Section 2 of the August 1, 1968 Agreement for scheduling less than 14 such Mechanics in the week of April 13, 1968 when 14 furnaces were in operation.

The contract provision relied upon in the grievance is under the heading of "Local Working Conditions", and c. of Section 2 of Article 2 provides:

> "Should there be any local working conditions in effect which provide benefits that are in excess of or in addition to the benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are changed or eliminated by mutual agreement or in accordance with paragraph (d) below."

Prior to August 1, 1968 the "Local Conditions and Practices" provision of the parties' Agreement was materially different, stipulating that:

> "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 . . ." [underlining added]

The underlined clause distinguished the Inland Steel provision from the standard form used in most of the steel industry. The standard form was commonly known as 2B, and was a major issue in a lengthy strike in 1959-60.

This difference in the Inland contract provision was the basis of several awards holding that other specific contract provisions restricted Inland employees in the exercise of their local conditions contract rights. This was so with respect to the Company's explicit contractual right to determine the size and duties of its crews (Article 10, Section 7). This difference was emphasized in Arbitration Award No. 330 where in a dispute over the size of a crew in the No. 2 Blooming Mill Department it was stated:

> "It is urged that a five-man crew of Hookers is a local condition or practice. The problem is whether it is a local condition or practice 'consistent with this Agreement' within the protection afforded by Paragraph 262."

After several attempts by Local 1010 in earlier negotiations to have its local practice and conditions provision conformed to those in most of the other steel contracts, this was finally agreed upon in 1968. The Company and Local 1010 were by that time fully aware of the differences and in coming to this agreement they must certainly have intended to adopt the standard industry practice on this subject. From August 1, 1968 on previous rulings predicated on Inland's unusual contract provision were in effect discarded, and the industry contract provisions as construed and applied were adopted and made applicable at Inland. As Article 2, Section 2 states, "benefits that are in excess of or in addition to the benefits established by this Agreement . . . shall remain in effect . . ." No longer is the local working condition provision of the contract subordinate to other provisions of the Inland Agreement.

Management still retains the right to determine the size of its crews, but, having done so, established crew sizes in given circumstances are subject to protection as local working conditions.

Note should be taken, however, of the stipulation in Section 2.d. (paragraph 2.2.4) that the Company has "the right to change or eliminate any local working condition if, as the result of action taken by Management under Article 3-Plant Management, the basis for the existence of the local working condition is changed or eliminated making it unnecessary to continue such local working conditions. . ."

The situation at Inland is now similar to that at other companies, and a brief description of industry rules and practices as reflected in arbitration awards may be helpful.

For the contract provision to come into play there must be a local working condition as defined in the agreement and as construed over the years. A local working condition must exist as a fact, and the Union must be able to demonstrate that it does exist. This does not necessarily require written records of the kind kept by Management but it does require proof by testimony or otherwise sufficiently persuasive to support such a finding. The Company's records are generally of considerable help in ascertaining the facts.

A local working condition is established if over an extended period of time, generally some years, it has been observed and applied regularly, repeatedly, and consistently whenever circumstances of the given kind recur. The condition must have become a definite pattern constituting a manner of performance accepted and understood by the parties.

Note, e.g., the observations on this subject by Chairman Sylvester Garrett and his Assistant, Alfred C. Dybeck, in Award No. USS-7155-H, Johnstown Works, United States Steel Corp., which was issued December 23, 1969.

Once a local working condition has been established, it is protected by Article 2, Section 2, and must be observed. An exception is that in Section 2.d., quoted above, in which case the Company must prove that the basis for this local working condition has been changed or eliminated.

The critical question in this grievance is whether there is in fact a local working condition to have 11 Mobile Equipment Mechanics scheduled in the No. 2 Open Hearth Department during weeks in which 14 furnaces are in use. Union witnesses testified that this has been the practice. The Company, however, submitted a detailed report of all weekly operations starting the first week in January, 1965 and running through the week of April 13, 1969, the week in which this grievance arose, and in not a single instance were there 11 Mechanics scheduled when 14 furnaces were in operation. In only five weeks were there 14 furnaces in use, and the number of Mechanics varied, being 13, 14, 14, 12 and six.

More significantly, the number of Mechanics scheduled in this period of 52 months seemed to have little or no direct relationship to the number of furnaces in operation. In some weeks the number of Mechanics was relatively large although the number of furnaces was smaller than in other weeks, and in some weeks the reverse was true. Since July, 1968 the number of furnaces in use declined, but on the whole the number of Mechanics dropped more sharply. In 11 consecutive weeks of 8, 10, and 11 furnace operations, the number of Mechanics remained constantly at five per week.

This documentary evidence convincingly rebuts the oral statements of Union witnesses that there has been a local practice to have 11 Mechanics scheduled wherever there have been 14 furnaces in operation. In other words, the Union has not demonstrated that the asserted local working condition has been in effect in this department.

This being so, it is not necessary to go into the next question, which, pursuant to Section 2.d. (paragraph 2.2.4), is whether Management has made changes by virtue of which it could contend that even if there were such a local working condition the basis for it has been changed or eliminated. Involved is the conversion to basic oxygen which is under way, but, as stated, it is not necessary to go into this matter in this grievance.

AWARD

This grievance is therefore denied.

Dated: July 22, 1970

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

As stipulated by the parties, the chronology of the grievance is as follows:

1.	Date of filing	April 18, 1969
2.	Dates of appeals and meetings	
	Step 2 hearing	May 6, 1969
	Step 3 appeal	May 16, 1969
	Step 3 hearing	July 16, 1969
	Step 4 appeal	July 30, 1969
	Step 4 hearing	October 15, 22 & 29, 1969 December 10, 1969 January 21, 1970
3.	Date of appeal to arbitration	March 4, 1970
4.	Date of arbitration hearing	June 25, 1970
5.	Date of Award	July 22, 1970