In the matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local 1010

Grievance No. 21-K-103
Appeal No. 1197
Award No. 602

Appearances:

For the Company:

T. J. Peters, Arbitration Coordinator, Labor Relations
R. H. Ayres, Assistant Director, Industrial Relations
J. L. Federoff, Assistant Superintendent, Labor Relations
T. L. Kinach, Senior Labor Relations Representative
G. H. Applegate, Jr., Senior Labor Relations Representative
W. P. Boehler, Labor Relations Representative
K. R. Mattson, Superintendent, Metallurgical Department
E. Fabrici, Senior Metallurgist, Metallurgical Department

For the Union:

Theodore J. Rogus, Staff Representative
Jesse Arrendondo, President, Local 1010
Alexander W. Bailey, Chairman, Grievance Committee
Gavino Galvan, Secretary, Grievance Committee
Donald Lutes, Grievant

The grievant, Donald Lutes, protests as unjust and unwarranted the penalty imposed on him because of an incident that occurred on June 16, 1971. As outlined in the Company's disciplinary statement issued to him on June 17, he left his work area and attempted to join in a discussion between two bargaining unit employees and their supervisor, although he was informed the purpose of the meeting about to take place with the superintendent was not to discuss possible disciplinary action.

Grievant is the grievance committeeman in Area No. 21. One of the two employees requested him to accompany them to the office of the superintendent of the Metallurgical Department where they were being taken by E. Fabrici, the supervising metallurgist, their supervisor. Mr. Fabrici told grievant the employees had no right to have a union representative because no disciplinary action was to be discussed. When grievant differed and insisted on going he was ordered to return to work and when he objected he was ordered to leave the plant.

The penalty imposed on him was the loss of the remainder of that turn and three additional turns. Grievant requests that he be paid for this lost time.

This incident grew out of that at the TOPS presentation meeting of May 28, 1971, which is described in Award No. 601. Grievant was charged with inducing five employees to leave that meeting. The five employees insisted he had not asked them to leave with him, but that one of them had made the suggestion. Three of the five were questioned by the superintendent on June 7, and on June 14 statements were placed in their personnel files, signed by the superintendent, saying:

> "This is to confirm that on June 7, 1971 you were interviewed by me concerning your conduct at the TOPS presentation held at the Quality Control Center on May 28, 1971. You were informed that your conduct as displayed during this meeting was entirely unjustified and will not be tolerated."

The employee who requested grievant to accompany him to the superintendent's office was aware of the fact that after the first three employees were questioned by the superintendent the above statement, called a "VODG," (verbal orders don't go), had been made part of their personnel record. Mr. Fabrici was also aware of this, but he testified, nevertheless, that he did not consider such action against an employee as disciplinary action.

Article 8, Section 2 of the parties' agreement stipulates:

> "An employee who is summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by his Grievance Committeeman or Assistant Grievance Committeeman if he requests such representation, provided such representative is then available, and provided further that, if such representative is not then available, the employee's required attendance at such meeting shall be deferred only for such time during that shift as is necessary to provide opportunity for him to secure the attendance of such representative.
>
> 'The Company in arbitration proceedings will not make use of any personnel records of previous disciplinary action against the employee involved where the disciplinary action occurred five (5) or more years prior to the date of the event which is the subject of such arbitration."

It is made perfectly clear by this provision of the basic agreement that the Company has no choice but must grant an employee's request for

representation by his grievance committeeman when the employee is summoned to meet with management for the purpose of possible disciplinary action.

The Company's only answer has been that the meeting with the superintendent was not for the purpose of discussing possible disciplinary action. Yet three other employees who had been subjected to identical questioning as to their conduct at the same TOPS meeting were known to have had VODG's placed in their records. In these it was stated that their conduct was entirely unjustified and could not be tolerated. This is certainly a reprimand and a warning as well as a finding of delinquency on the part of the employee in question.

In Article 13, Section 2 department superintendents are directed to "continue the program of acquainting the employee with written notices of discipline or warning to stop practices infringing on regulations or improper workmanship. These letters are recorded on the personnel cards." It is provided in this section that these "records of the employee's individual performance have much influence on the 'ability to perform the work' clause in Section 1.

Finally, it is stipulated in the concluding sentence of this section that: "Should any dispute arise over the accuracy of the personnel record, it shall be disposed of through the normal grievance procedure."

In fact, this is precisely what was done. All five employees filed grievances objecting to the accuracy of these warnings, and the Company on July 22, 1971 granted the grievances and expunged them from the personnel records.

How one could maintain that such management action did not constitute a form of disciplinary action is difficult to understand. The secondary question then is, if a supervisor declares that this is not a form of disciplinary action, is that sufficient to deny employees the contractual representation or due process guaranteed them in Article 8, Section 2?

I believe not. The policy favoring the orderly resolution of disputes through the grievance procedure does not extend so far as to permit supervision to deny the obvious in circumstances of this kind. In more serious situations the failure to inform an employee of his right to have union representation has been held to be fatal to the Company's case when it found the employee guilty of the offense charged and imposed the penalty on him.

Here the attempt was made to avoid letting the employee have union representation even when he requested it, by the simple device of saying that a reprimand and warning is not disciplinary action. Yet, upon reflection, Company representatives entertained grievances objecting to this very disciplinary action.

In such circumstances, the company is not warranted in imposing a disciplinary penalty on the union representative when he insists upon the right of representation explicitly granted by the parties' agreement. It is not sufficient in such a case for the Company to take the position that the em-

ployee or the union representative must do as supervision directs and then file a grievance. That approach seems inappropriate in such a case.

One other aspect of this dispute should be mentioned. It is mentioned because of the outstanding record the parties have had in making their grievance procedure function effectively, and the hope that the record will continue.

At the arbitration hearing the Company for the first time asserted that grievant left his place of work without permission. This was not mentioned in the disciplinary statement, in any of the grievance steps so far as the minutes reveal, nor even in the brief. Moreover, that the five employees had filed grievances protesting the VOBG's or warnings placed in their personnel files, and that these grievances had been granted, was also not mentioned in the grievance discussions. Why these facts were not frankly described so that a full and fair consideration could take place in the grievance steps, is not clear. I call attention to this only because I am most anxious to see that the effectiveness of the grievance procedure in this relationship is safeguarded and not permitted to be impaired.

AWARD

This grievance is granted.

Dated: June 8, 1972

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Oral discussion	July 8, 1971
Oral discussion	July 13, 1971
Date Filed	July 26, 1971
Reply	August 5, 1971
Appeal to Step 3	August 10, 1971
Step 3 Hearing	November 24, 1971
Step 3 Minutes	January 28, 1972
Appeal to Step 4	February 1, 1972
Step 4 Hearing	February 10, 1972
Step 4 Minutes	February 29, 1972
Appeal to Arbitration	March 2, 1972