possession or use of any narcotic drug or drug

In the matter of Arbitration

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| Between | ) | Grievance No. 17-L-13 |
| | ) | Appeal No. 1200 |
| Inland Steel Company | ) | Award No. 606 |
| | ) | |
| and | ) | |
| | ) | Opinion and Award |
| United Steelworkers of America | ) | |
| Local 1010 | ) | |
| | ) | |

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
R. H. Ayres, Assistant Director, Industrial Relations
T. R. Tikalsky, Assistant Superintendent, Labor Relations
D. F. Johnson, Superintendent, No. 1 and No. 2 Cold Strip Mills
S. N. Ranich, Assistant Director, Plant Protection
J. Borbely, Senior Labor Relations Representative
T. L. Kinach, Senior Labor Relations Representative
R. D. Eillis, Labor Relations
C. Belle, Investigator, Plant Protection
M. Pratt, Investigator, Plant Protection
L. Duvall, Labor Relations Representative

For the Union

Theodore J. Rogus, Staff Representative
Alexander W. Bailey, Chairman, Grievance Committee
Gavino Galvan, Secretary, Grievance Committee
Fred Jenkins, Grievance Committeeman
Fred Hall, Assistant Grievance Committeeman

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Grievant, an employee in the Coil Processing Department, was discharged on September 14, 1972, and this grievance questions whether the Company had cause for this action, under Article 8, Section 1 of the Agreement.

The Company based this discharge on grievant's alleged violation of Rule 87b of the Company's General Rules for Safety and Personal Conduct. This rule is as follows:

"87. The following offenses are among those which may be cause for discipline up to and including suspension preliminary to discharge:

. . . .

"b. The unlawful possession or use of any narcotic drug or drugs"

. . . .

The evidence indicating that grievant had had a narcotic drug in his possession was obtained by two plant protection representatives in an interrogation of grievant on August 28, 1972. At the conclusion of that discussion he specifically acknowledged the accuracy of the two page transcript of the questions and answers by his signature at the end thereof.

In this statement he declared that he has used marijuana for several years and has received it in the plant, but he denied ever using it in the plant or selling it there.

The Union contends that the plant protection people pressured him and did not afford him the opportunity to have Union representation pursuant to Article 8, Section 2 of the agreement, and that consequently the evidence thus procured is inadmissible for the purpose it was offered at the hearing.

Grievant, however, had served in Army Security for several years and had himself conducted interrogations. He is unusually intelligent and well educated, having engaged in graduate studies at a university. Moreover, when he appeared at a meeting convened by his department superintendent on August 31st to discuss possible disciplinary action, he was accompanied by his grievance committeeman, and he repeated the essential parts of the statement he had signed three days before. He was suspended preliminary to discharge and requested a suspension hearing. This was held on September 7th. Present were the assistant superintendent of labor relations and the Union's chairman of the grievance committee, as well as the grievant and other Company and Union representatives.

At neither of these meetings did grievant complain that he had been coerced or intimidated at the plant protection interrogation, nor did he contradict any of the material facts in the signed statement.

The Union also protested that neither its representatives nor grievant were given a copy of the plant protection statement until it appeared in the Company's brief.

At our hearing, however, grievant acknowledged that practically the

entire statement was read aloud to him and the Union representatives at the meetings conducted by the department superintendent and by the assistant superintendent of labor relations. He had also read the statement in the plant protection office before he initialed and signed it. Except for a matter of emphasis or implication, grievant testified at the arbitration hearing that the facts in the statement he signed are substantially correct.

The Union's protest about the failure to afford grievant the opportunity to have Union representation when he was being questioned in the plant protection office was not raised until the third step grievance meeting. It was not mentioned in the grievance itself.

This protest is based on Article 8, Section 2. This provision of the 1971 Agreement was the subject of Award No. 602 issued on June 8, 1972. In that dispute it was held that the Company had failed to observe the explicit provisions which are set forth in Section 2 of Article 8, which reads as follows:

> "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."

In the instant case, in contrast to that discussed in Award No. 602, the interview with the plant protection representatives was not one with supervisors, nor was it for the purpose of discussing possible disciplinary action, nor did grievant request representation by his grievance committeeman or his assistant.

The questioning by plant protection was for the purpose of ascertaining facts to be reported to supervision. Disciplinary action, if any, was to be determined by supervision, with no recommendations from plant protection. In the meeting called for the purpose of deciding whether and what disciplinary action should be taken, the department superintendent did not wait for grievant's request but invited the grievance committeeman for the area to attend, and, as stated above, at the suspension hearing a week later grievant was also accompanied by his Union representatives.

Under these facts, the conditions stipulated in Article 8, Section 2 are lacking and by its terms that provision of the contract is not applicable.

A holding by Impartial Umpire Ralph T. Seward in Decision No. 1797 at Bethlehem Steel Corporation, dated November 17, 1970, distinguishes an investigation of facts by the plant patrol office alone and other types of discussions between employees and their supervisors. This distinction is valid and it explains the basis for the contrary ruling of the Board of Arbitration in United States Steel Case Nos. 7562-T, 7563-T, and 7564-T, which involves admissions made in the presence of the employee's supervisors as well as plant protection representatives.

It follows that the admissions made by grievant when he was questioned at plant protection constitute evidence that should be considered. This view is also supported by the fact that on the evidence at our hearing it is clear that at the subsequent meetings at which Union representatives were present grievant substantially corroborated the main parts of his earlier admissions.

The question then is whether on the admitted facts there was cause for this discharge.

The Company's right, indeed duty, to provide for the safety of the employees and the plant is clear. In fact, the Union may question whether the Company is making sufficient provision for this purpose. Rule No. 87b has been in effect since 1967, and it does not appear to have been questioned in negotiations. It has been applied; there have been discharges under this rule.

It is to be noted that the rule relating to drugs is materially different from that which deals with liquor as a possible cause for discharge. Rule 87b states: "The unlawful possession or use of any narcotic drug or drugs." It does not stipulate that this must be in the plant or on Company property, nor that the employee must be under the influence of the drug.

Rule 87d, on the other hand, gives as another cause for possible discharge: "Reporting for work under the influence of liquor, being in possession of liquor while in the Works, or bringing intoxicating liquor into the plant."

The differences between the liquor and drug rules may well be due to the state of the knowledge about the effects or symptoms of each. In any event, it is certainly not for an arbitrator to say he would prefer some other rule than the one the parties have seen fit to employ in trying to maintain safe conditions.

In their discussions at the arbitration hearing the parties seemed to take for granted that the unlawful possession of the drug or drugs must be on Company premises. The rule does not stipulate this, but there is suffi-

cient credible evidence to support the finding that grievant had such a drug on Company premises.

This being so, in keeping with Rule 87b, the Company had cause for the disciplinary action it took.

AWARD

This grievance is denied.

/s/ David L. Cole
David L. Cole, Permanent Arbitrator

Dated: February 7, 1973

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The chronology of this grievance is as follows:

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| Grievance filed (Step 3) | September 15, 1972 |
| Step 3 hearing | September 27, 1972 |
| Step 3 minutes | October 17, 1972 |
| Appeal to Step 4 | October 18, 1972 |
| Step 4 hearing | October 24, 1972 |
| Step 4 minutes | November 10, 1972 |
| Appealed to Arbitration | November 28, 1972 |
| Arbitration hearing date | January 19, 1973 |