Arbitration Award No. 769
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 2-R-62
Arbitrator: Clare B. McDermott
Opinion and Award
February 26, 1987
Subject: Local Working Condition--Claimed Necessity to Assign An Extra Lidman Per Turn And Per Battery--Special Local Settlement Agreement.
Statement of the Grievance: "The Company violated Local Issue Agreement of 1980 for Coke Plants (to use an extra Lidman between June 15th and Sept. 15th, the summer months) by not putting an extra Lidman on each battery. This agreement was signed in 1980.
"Grievants:
Michael Neeley - 8523
James Govert - 10476
Mario Segura - 21269
Luis Balbosa - 10129
Ronald Hobbs - 10458
Antonia Arroya - XXX 21824*
* Attended meeting
"RELIEF SOUGHT That the company abide by Local Agreement of 1980 crew arrangement and pay all monies lost.
"VIOLATION IS CLAIMED OF ARTICLE 2, Section 2, 3, Section 1, 14, Sections 1 and 6, 1980 Local Agreement Crew Arrangement."
Agreement Provisions Involved: Articles 2, Section 2, and 14, Sections 1 and 6 of the March 1, 1983 Agreement.
Statement of the Award: The grievance is denied.
Chronlolgy
Filed: 2-9-84
Step 3 Hearing: 6-27-84
Step 3 Minutes: 9-5-84
Step 4 Appeal: 9-17-84
Step 4 Hearing: 2-7-86
Step 4 Minutes: 9-12-86
Appeal to Arbitration: 9-4-86
Arbitration Hearing: 10-13 & 14-86
Appearances
Company
October 13 & 14, 1986
Robert B. Castle, Section Manager, Union Relations
Rene Vela, Section Manager, Union Relations
Robert V. Cayia, Arbitration Coordinator, Union Relations
Leland A. Busch, Manager, Plant 2 Coke Battery
Richard Phelps, Manager, Primary Technology (Retired)
Roger K. Scholes, Project Representative, Union Relations
Jeffrey R. Bresemen, Representative, Union Relations
Union
October 13 & 14, 1986
William Trella, Staff Representative
Bobby Joe Thompkins, Second Vice Chairman, Grievance Committee
Urban Smith, Witness

Michael Bridgeman, Witness
Henry H. Mosley, Witness
Gavino Jimenez, Witness
Gavino Galvan, Chairman, Grievance Committee
Melvin Adams, Witness

BACKGROUND

This grievance from No. 2 Coke Plant of Indiana Harbor Works claims violation of Articles 2, 3, and 14 of the March 1, 1983 Agreement and of an August 1, 1980 Local Settlement Agreement, in Management's providing summer Lidman relief by assigning an extra, full-time Lidman per turn for two batteries rather than one per turn per battery.

Number 2 Coke Plant includes Batteries 6, 7, 8, 9, and 10. The parties' Local Settlement Agreement of August 1, 1980 includes a "PROPOSAL BY INLAND STEEL FOR RESOLUTION OF ALL ISSUES RELATED TO COKE PLANTS." It specifies minutes of relief time, including lunch, for certain coke plant employees. It reads as follows:

"PROPOSAL BY INLAND STEEL FOR RESOLUTION OF ALL ISSUES RELATED TO COKE PLANTS

"At the outset, it should be recognized the coke oven equipment, and hence the employees' exposure, differs markedly between the so-called older batteries and the batteries constructed after 1970 which are equipped with advanced pollution control devices. The older batteries at Inland are Nos. 6,7,8, and 9, No. 6 being a 65-oven battery, ten of whose ovens are non-operative, and Nos. 7, 8, and 9 being 87-oven batteries. Battery C and Nos. 10 and 11 have 56, 51, and 69 ovens, respectively.

"I.A. Crew Arrangement

"Generally, Inland uses one Door Cleaner per battery on each side of the ovens. With respect to the number of employees per battery per crew on Batteries Nos. 7, 8, and 9, Inland proposes to add three Door Cleaners; one per battery per turn on Nos. 7, 8, and 9 for a total of 13 additional employees to be utilized for door and jam cleaning for operating levels of 25 or more ovens pushed per turn on each battery.

"With respect to the duties of the employees added to the crew, the Door Cleaners will perform the normal duties of door cleaning and will be expected to perform that work separately or in conjunction with the Door Cleaners already established on the crew, depending upon whether or not either of the currently established Door Cleaners is away from the work station on authorized time away from job, including lunch time.

"B. With respect to relief or time away from work situation on Battery No. 6.

"No. 6 is the oldest battery and currently is pushing approximately 19 to 20 ovens per turn. Specific relief schedules for this battery will be as follows:

OVENS PER TURN	MINUTES OF RELIEF INCLUDING LUNCH
25 and over	60
24 and less	20

"The following occupations will receive the aforementioned relief practice: Pusher Operator, Pusher Operator Helper, Larryman, Lidman, Door Machine Operator, Door Cleaner and Quench Car Operator. In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase to 120 minutes by the addition of an extra summer Lidman.

"C. With respect to relief or time away from work station on Batteries 7, 8, and 9

"New quench cars have been planned and are on order. The new quench cars will result in a significant reduction in the number of ovens pushed per turn, because of the longer cycle time, resulting in less work for the crew and and the need for relief time. Specific relief schedules for these batteries will be as follows:

OVENS PER TURN	MINUTES OF RELIEF INCLUDING LUNCH
33 and over	80
25 to 32	60
24 and less	20

"The following occupations will receive the aforementioned relief practice: Pusher Operator, Pusher Operator Helper, Larryman, Lidman, Door Machine Operator, Door Cleaner, and Quench Car Operator. In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase to 120 minutes by the addition of an extra summer Lidman.

"D. With respect to relief or time away from work station on Battery 10

"Specific relief schedules for this battery will be as follows:

OVENS PER TURN	MINUTES OF RELIEF INCLUDING LUNCH

23 and over	80
19 to 22	60
18 and less	20

"The following occupations will receive the aforementioned relief practice: Pusher Operator, Pusher Operator Helper, Larryman, Lidman, Door Machine Operator, Door Cleaner and Quench Car Operator. In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase to 120 minutes by the addition of an extra summer Lidman.

"E. With respect to relief or time away from work station on Battery 'C' and 11

"These batteries which charge preheat coal and are pipe-line charged will have the following specific relief schedule:

OVENS PER TURN	MINUTES OF RELIEF INCLUDING LUNCH
25 and over	60
24 and less	20

"The following occupations will be covered: Pusher Operator, Pusher Operator Helper, Door Machine Operator, Door Machine Operator Helper, and Quench Car Operator.

"F. With respect to relief or time away from work station on the Preheat Sequence on Batteries 'C' and 11

"Specific relief schedules for the qualified Preheat occupations will be as follows:

MINUTES OF RELIEF INCLUDING LUNCH			
OVENS PER TURN	COAL CHARGER OPERATOR	VALVE TENDER	PIPE CLEANER OPERATOR
33 and over	30	60	60
25 to 32	25	40	40
24 and less	20	20	20

"The Coal Charger Operator will be relieved by the Valve Tender. The Valve Tender and Pipe Cleaner Operator will be relieved by the existing Utilityman occupation.

"G. Plant 2 Wharfman Relief Practice

"Each Wharfman will be relieved 60 minutes per turn including lunch. This relief will be supplied by the scheduled Coke System Operator Helper. Coke System Operator Helper work will be performed by Laborers as deemed necessary.

"II. Incentive Arrangements

"The incentive applicable to the Plant No. 2 Coke oven crews at Inland provided a yield of 120% during a recent three-month pay period. Inland proposes only that the applicable incentives be appropriately adjusted where necessary because of crew size increase and relief time. But such adjustment shall not be designed to increase earnings opportunities over those provided for in the applicable incentives." (Emphasis in original.)

That Local Settlement Agreement has the following sentence, repeated in Sections I-B, -C, and -D, which is crucial to this dispute:

"In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase to 120 minutes by the addition of an extra summer Lidman."

Ordinarily, and entirely aside from application of the 1980 Local Settlement Agreement, two employees per battery, per turn, normally were assigned to the Lidman job in the nonsummer months in the past prior to 1980. With that manning arrangement, Lidmen got from twenty to eighty minutes of relief per turn in nonsummer months. During the 1981 and 1982 summertime, as stated in the above sentence, one additional Lidman was assigned to each battery in order to provide the required additional spell time.

During the 1983 summer schedule and thereafter, the operating rate at the batteries was reduced. The Company says that allowed many employees, including Lidmen, to receive the prescribed relief time without being replaced by another employee, because the necessary relief was scheduled to coincide with coking time, when work requirements allegedly are reduced. Moreover, since 10 Battery was down for a major rebuild in the summer of 1983, only four batteries, and not five, were in operation then, so that Management says it could provide the relief promised by the 1980 Local Settlement Agreement by adjusted staffing. That is, rather than assigning one additional Lidman on each turn at each battery to provide the relief required, as had been done during the 1970s and in 1980, 1981, and 1982 under the Local Settlement Agreement, one additional Lidman was assigned per turn to relieve the regular Lidmen on two batteries. Thus, two additional Lidmen were assigned per turn in the summer period of 1983, rather than four, for the four operating batteries. One of the two extra Lidmen would relieve each of the two regular Lidmen on two

batteries (6 and 7), and the other would relieve the two regular Lidmen on the two other batteries (8 and 9). Battery 10 was down from April to September.

This grievance followed in June of 1983, complaining on behalf of six Lidmen who were at work, that an extra summer Lidman was not being assigned to each battery but one extra Lidman was being assigned between each two batteries, all allegedly in violation of the 1982 Local Settlement Agreement.

The Union argues that, even though each employee who was eligible for relief under the 1980 Local Settlement Agreement, including Lidmen, was getting the total relief time called for on each turn, the regular Lidmen often are required, without the additional Lidman per battery in the summer, to work on top of the battery for one and one-half to two hours before receiving relief. It is always very hot on top of the batteries, and it is said that the surrounding temperature and humidity, which are very high in the summer, subject the Lidmen to heat stress. Examples of extraordinary heat exposure of Lidmen were given. The lid around which Lidmen work often glows red hot from heat radiating from the oven, as does the jumper pipe, which must be positioned from one oven to the other and, on certain batteries, that must be done manually. Placement of the donut around the oven hole is an uncomfortably hot Lidman task. Lidmen must remain within ten ovens of the one being charged, even when not right at specific hot work. Lidmen have to stand next to the "U" tube and standpipe or beside the larry car if the coal should become clogged in the chute, all of which places are hot. Ovens not to be charged are kept at about 2100°. There is little shade on top of the batteries.

There is a policy by which Supervision sometimes assigns more Lidmen than otherwise would be required, in response to unusual conditions. The Union says that discretion is not exercised often enough and, moreover, that Lidmen do not want to depend on Supervisors' discretion on this point.

It is claimed that when No. 3 Coke Plant was shut down, employees not accustomed to work on the battery top were assigned to No. 2 Coke Plant and that some of them were not trained adequately or given sufficient warning about consequences of exposure to excessive heat. This is said to show that Management is more concerned with production than with employee safety. It is argued that the number of ovens pushed should not determine the length of relief because heat exposure is constant, regardless of the number of ovens pushed.

The Union alleges that before 1980 there were oral agreements between the various coke plant supervisors and the Local Union, requiring that between June 15 and September 15 each year an extra Lidman would be--and was--added per battery in order to relieve the regular Lidmen. It is said that during the 1980 Basic Steel negotiations, the International Union President requested each local union to get oral agreements affecting coke plants reduced to writing. Grievance Committeeman Thompkins, a member also of the Local Union's Negotiating Committee in those negotiations, was involved in reducing the coke plant oral agreements to writing, which resulted in the 1980 Local Settlement Agreement, set out above.

The Union stresses that Management adhered to the necessity to assign an extra Lidman per turn, per battery, as formerly had been done pursuant to the oral understanding and adhered to that written agreement also in the 1980, 1981, and 1982 summer seasons at all batteries and at Battery up through July of 1986, but that it failed to do so in 1983 and thereafter at 6, 7, 8, and 9 Batteries.

The Union contends that Management's assigning one extra Lidman for two batteries violated the local working condition established and protected by Article 2, Section 2, and followed in the past according to oral agreements and since 1980 by the above written Agreement. Since the 1980 Local Settlement Agreement was carried out as written in 1980, 1981, and 1982 for all batteries, and through 1983, 1984, 1985, and through July of 1986 at 10 Battery, the Union says the Company cannot claim now that the intent of the parties in assigning an extra summer Lidman was solely to provide total relief time, regardless of the method chosen by Management to provide that relief. The Union says that the method of providing the agreed upon relief is not now open to Management's discretion, since the 1980 Local Settlement Agreement says expressly that the relief will be provided and then goes on to say how it will be provided, that is, ". . . by the addition of an extra summer Lidman."

Several arbitration decisions in other collective bargaining relations are cited by the Union.

The Company insists that the only issue here is whether or not Lidmen received the total relief time called for by the 1980 Local Settlement Agreement during the 1983 summer schedule. The relief time required is 120 minutes per turn during the period from June 15 to September 15. Management stresses that the Union agrees that an extra summer Lidman has been assigned for each two batteries and that regular Lidmen got 120 minutes relief during the summer period. The only complaint is said to be that an extra Lidman has not been assigned to each battery.

The Company says that is not required by the 1980 Local Settlement Agreement. It is argued that the focus of that Agreement is solely on the length of relief time to be afforded to Lidmen, and not on the way to achieve that result.

Management refers to its Article 14 obligation to make reasonable provisions for the safety and health of its employees at the plant. It says that its negotiating with the Union a provision for relief time for Lidmen is such a reasonable provision and, therefore, that no Article 14 violation has been shown.

The Company contends that its Management rights in Article 3 and its authority under Article 10, Section 7, to determine the size of crews, justifies the assignment in dispute, especially in light of the altered production schedule in the summer of 1983 and the shutdown of 10 Battery. Moreover, says the Company, supervisors assign additional Lidmen when in their judgment conditions warrant that.

The Company denies that past assignments, arrangements, or understandings gave rise to a local working condition covered by Article 2, Section 2. In any event, says Management, Inland Award 330 nullifies the Union claim of a local working condition. Moreover, the Company contends that, even should there have been a protected local working condition, Management was justified in changing it by its Article 3 authority (reduced pushing schedule and shutdown of 10 Battery), under Article 2, Section 2.2-d, which allegedly changed the basis of any such local working condition.

The Company says the other Union arguments deal in general with excessive exposure to heat and with training of coke plant employees, which points do not relate to the issue here. It says also that, while the parties might negotiate regarding pushing schedules, that subject does not bear on the problem of this case.

More directly related to this issue, the Company says it would be unreasonable and impracticable to interpret the 1980 Local Settlement Agreement as requiring an extra Lidman per turn and per battery, regardless of necessity to do so in order to provide 120 minutes of relief per Lidman per turn. Such an interpretation allegedly would lead to the absurd result where an extra summer Lidman would have to be scheduled on a full-time basis per battery but would be needed on only a half-time basis in order to the required 120 minutes of relief.

Management says there was no binding local working condition because there had been no consistent scheduling of an extra summer Lidman per turn per battery regardless of operating levels prior to 1980. If there were such a binding local working condition, the Company contends it was superseded by the parties' detailed, written Local Settlement Agreement on the subject in 1980.

The Company notes that the Union could argue that the 1980 Local Settlement Agreement on assignment of extra summer Lidmen merely memorialized the pre-1980 local working condition, since it had the necessary written approval of the high-level representatives of each party. The Company says such a written memorial, signed by high-level representatives, would be required here under Article 2, Section 2.2.5-e, since a fixed, crew-size practice would change or modify its Article 10, Section 7 authority, under which the Company is to exercise its right to determine size of crews and to schedule forces adequate for performance of the work to be done. The Company says no other collective bargaining agreement with a basic steel company has such a provision as Article 10, Section 7, which allegedly was construed in Inland Award No. 330 (1959) as authorizing the Company to make reasonable, unilateral judgments as to what force levels are adequate for the requirements of the operations.

The Company analyzes the 1980 Local Settlement Agreement as divided into several sections, each dealing with different aspects of general coke plant operations. The first subsection (I-A. Crew Arrangement) allegedly establishes crew sizes for jobs other than Lidman to be used at various operating levels. The following subsections (I-B.,-C., and -D.) are said to be concerned solely with and are captioned "With respect to relief or time away from work situation ...." (Emphasis in original) Subsection I-B. deals with 6 Battery, I-C. with 7, 8, and 9 Batteries, and I-D. with 10 Battery. The language is identical in each of the three provisions. It reads as follows:

"In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase to 120 minutes by the addition of an extra summer Lidman."

The Company urges that the sole purpose of the quoted language was to provide 120 minutes of relief for Lidmen in the summer. All Lidmen got that length of relief here, albeit by one fewer extra summer Lidman than had been assigned before. The Company argues that, since all Lidmen got the required relief, the Union has no standing to object to the manner in which the Company provided it, whether by an extra summer Lidman, per turn per battery, or per turn for two batteries. It is said, that is, that the manner of reaching the required level of relief was up to Management.

Number 2 Coke Plant Manager Busch said that as operations (pushing schedule) increases, so does Lidman work, and that as pushing declines, so does Lidman work.

Busch said that nonsummer relief, including lunch, has varied for all relevant coke plant jobs from twenty to eighty minutes, depending upon the number of ovens pushed per turn. Relief for Lidmen, only, has varied seasonally and not with changes in operations, increasing to 120 minutes in the summer, defined as running from June 15 to September 15.

Busch said that prior to 1980, extra summer Lidmen were assigned per turn and per battery and that that would vary depending upon production levels, with the number of pushes per turn varying from thirty-five to forty on the smaller ovens (four meters) and twenty-five to thirty on the larger ovens (six meters) at 10 Battery. The witness said that in 1978 production was down and delays up because new equipment was installed to meet Environmental Protection Agency and Occupational Safety and Health Administration standards. Pushing schedules were changed to prepare for the new equipment, and Busch said in that year extra summer Lidmen were shared across two batteries with the balance of the crew.

Company Exhibit 7 showed annual production records from 1979 through 1985 for No. 2 Coke Plant as a whole. They show that the average number of ovens pushed per day for all of No. 2 Plant declined from 442 in 1979, through 347 in 1980, 364 in 1981, 272 in 1982, 247 in 1983, 283 in 1984, and 312 in 1985. Busch said that 1979 data were representative of earlier years and that they had dropped by 30 or 35 percent by 1983. There no longer are any such records available for pushing schedules for each battery. New and changed equipment and going to "stage charging" were the causes of the decline in ovens pushed. The new larry cars had built-in jumper pipes, which were meant to limit emission of pollutants. "Stage charging" is meant to further reduce emissions, and requires that each hopper be dropped individually and each lid replaced individually, rather than all at once. Moreover, in that arrangement, steam is applied during suction on the oven, with better evacuation of gases.

Another major change was going to a one-spot, gas-cleaning car, which catches coke better and eliminates or reduces pushing emissions. All that slowed production, but the built-in jumper pipes did not work out, and it was necessary to return to moving jumper pipes manually from one oven to the next.

The overall result was that, while the charging cycle had been the limiting factor in the past, with the new equipment and arrangements, the pushing cycle became the bottleneck.

Because of those and other changes, there was a decrease in the number of pushes per turn. With about ten minutes of Lidman work on top per oven pushed and with ovens pushed down from forty to about twenty-four per Lidman per turn, the Company says only 240 Lidman minutes for pushing are required per turn. Busch says he found that the extra summer Lidman per turn could be shared between two batteries and still provide the regular Lidman with at least the agreed 120 minutes of summer relief. He thus felt he had satisfied the 1980 Local Settlement Agreement. After each Lidman had the required 120 minutes of summer relief, Busch would have them assigned to other duties, that is, other duties on their regular battery or on a different battery, and he wants to continue doing that.

Busch insisted that Lidmens' exposure to excessive heat decreases as production goes down. He is not aware of more than one case of a Lidman's suffering heat exhaustion in these years. Before 1978 he says there were one or two per week, even with the extra summer Lidman per turn and per battery. He says, therefore, that the change disputed here brought no greater exposure to heat exhaustion.

Busch says that if he had to continue assigning one extra summer Lidman per turn and per battery at 1983 production levels, the regular Lidmen would receive 180 minutes of summer relief.

Busch referred to the Foreman's discretionary authority, should the heat become excessive, to assign more Lidmen, even more than one, and he says there have been no grievances charging abuse of that discretion.

Busch agreed there were quite a few more ovens in operation in 1985 than in 1980. He agreed also that the 1980 Local Settlement Agreement was applied as written in 1980, 1981, and 1982, and that there were no problems in doing so, even though there had been a decrease in 1982 from 1980 levels.

Coke Plant Grievance Committeeman Thompkins explained that prior to 1980 the practice was to give Lidmen extra summer relief from June 15 to September 15 by scheduling an extra Lidman on each turn and battery. This arrangement simply was done routinely as a practice and was not written. He was told in 1980 to have all Coke Plant practices put in writing. That was done, and the 1980 Local Settlement Agreement expressed what had been done for years by practice. Thompkins had worked at these ovens for eleven and one-half years, and he insists the 1980 written Agreement contains nothing new and expresses only what had been done about extra summer Lidman relief and the way it had been provided in earlier years. He says that relief arrangement had nothing to do with varying production levels before 1980 and that the written expression of it in 1980 was not pegged to production levels. The basis for the Agreement was that it was so much hotter in the summer months that more relief was needed.

Thompkins agrees that the new larry and quench cars have slowed production. The crews used to catch thirty-two ovens or sometimes more and now catch twenty-four or twenty-five. Number 10 Battery was new and different. In the 1970s there were special negotiations about spell time for jobs and the number of employees to be scheduled, and the nonsummer spell time was set at eighty minutes and another Door Cleaner was assigned at 7, 8, and 9 Batteries sometime in the past, for a total of thirteen employees, except for 10 Battery.

Thompkins noted that Subsection I-B of the 1980 Local Settlement Agreement recognized then that there would be a significant reduction in ovens pushed and yet it went on to specify extra summer relief for Lidmen and the way it was to be provided.

Thompkins stressed also that on 10 Battery Management continued to adhere to the 1980 Local Settlement Agreement in 1983, 1984, and 1985, and into July of 1986, even though it had stopped following it three years earlier at the other four batteries.

The witness pointed out that there always was plenty for Lidmen to do, such as cleaning around the scale and, on some batteries, "blanking off," which Lidmen had not done before.

Union witness Adams, a Heater and a Grievance Committeeman for No. 2 Coke Plant, said that the disputed arrangement had one extra summer Lidman between two batteries (6 and 7 Batteries would share one and 8 and 9 would share the other, with one for 10 until sometime in July of 1986) instead of one extra Lidman at each battery. He said the extra Lidman's traveling from one battery to the other sometimes would take about ten minutes and, therefore, would interfere with the regular Lidmen's getting a full 120 minutes of relief.

Adams noted that the surface of the battery tops are so hot that, in addition to all other special equipment Lidmen must wear and use, some Lidmen wear wooden clogs on their shoes to help protect their feet from heat.

Union witnesses said in the past Lidmen in the summer would work four ovens and be off for two, so that it was not a question of minutes of Lidman relief but of regularity of the break.

The Company said that its keeping to the schedule of the extra summer Lidman per turn and per battery at 10 Battery was simply because, mathematically, sharing a Lidman could not be done there with a five-battery arrangement. That Lidman does other duties when not spelling. Busch said that that extra summer Lidman sometimes was shared by 10 and 7 Batteries in the past, when 6 was shut down.

The Company position on the theory of this dispute is that there is no binding local working condition; if there should be one, however, it was superseded by the 1980 Local Settlement Agreement, which allegedly does not establish any set crew size. It is insisted that local working conditions live in the conditions that spawned them and that the reduced operations of 1983 were changes in basis, warranting change in the local working condition.

The Company says, finally, that all six signing grievants were Lidmen who remained at work (not those who would have been assigned as Lidmen if the summer extras had been assigned) and, therefore, even if the Union's view were to prevail here, the only possible remedy would be a cease and desist order or a direction to continue to apply the 1980 Local Settlement Agreement, and that no monetary relief would be due.

Replying to the Company's argument that new equipment reduced operations, the Union notes that Subsection I-C. of the Local Settlement Agreement recognized in 1980 that new quench cars would result in reduction in the number of ovens pushed per turn, resulting also in less work and need for relief. It argues, therefore, that the parties were aware in 1980 when they made that Agreement that operations would be reduced, that they provided for it then, and still required 120 minutes of summer relief to be provided "...by addition of an extra sunder Lidman." Accordingly, the Union says the Company's present claim of a change of basis in 1983 already had been foreseen and provided for in 1980. The Union stresses that the 1980 Local Settlement Agreement does not base its Lidman relief or the way to furnish that relief on number of ovens charged or pushed per turn.

FINDINGS

Without again reciting all evidence and arguments pro and con, it is clear that the parties' behavior in the 1970s gave rise to a practice local working condition requiring that working Lidmen have 120 minutes of relief away from the intense heat on top of the batteries in the defined summertime. The uniform and recurrent response to those underlying circumstances was sufficient to create such a practice local working condition.

It is equally clear that the 1980 Local Settlement Agreement local working condition had the same purpose and accomplished it. It simply codified in writing the practice local working condition arising from events in the 1970s.

Thus, all grieving Lidmen assigned during the summer were and are entitled under both the 1970s practice local working condition and the 1980 Local Settlement Agreement local working condition (if it be such), or both, to 120 minutes of relief, and that relief benefit does not vary with fluctuations in pushing schedules. The Company agrees with all that. In that respect, summer relief was treated differently from nonsummer relief, which did vary with pushing schedules.

But that has little to do with this situation, for that is not the problem here, since all Lidmen assigned in the summertime have received, and these grievants continue to receive, the benefit of that amount of relief. Thus, this case is not about the volume of relief which working Lidmen are entitled to or are getting. It is related rather to whether additional employees are entitled to a benefit of employment as Lidmen so that other, already scheduled Lidmen will be able to enjoy that level of relief. That is, this case is about the method that must be followed to achieve the benefit, 120 minutes of Lidman summertime relief.

There can be no responsible denial that both the volume of Lidman summer relief and the way to provide it have been the same from the 1970s, both under the practice local working condition and under the 1980 Local Settlement Agreement local working condition, up to 1983, and at 10 Battery into July of 1986. It is most important, therefore, to return to the "general principles and procedures" of Article 2, Section 2.2, which "...furnish necessary guideposts for the parties hereto and the impartial arbitrator," in administering the local working condition provisions. They make it quite clear in paragraph 2.2.3 that the elements that shall remain in effect for the term of the Agreement are the "...benefits that are in excess of or in addition to the benefits established by this Agreement...," (Emphasis added.), except as changed by either of two other factors.

This brings up the dispositive point here, and that is that it is beyond rational dispute that the "benefit" protected by the practice local working condition of the 1970s was to assure working Lidmen of adequate summer relief and that it did not develop in order to provide more work for "extra" employees who would not have been scheduled as Lidmen except in order to provide that relief. It is clear enough from all testimony and documents that the 1970s practice local working condition was established in order to get working Lidmen out of the heat and not to furnish additional work for employees who otherwise would not have been scheduled as Lidmen. The entire burden of all testimony from both parties shows that the primary concern of the local parties in the 1970s recognized the signal importance of the fact that the heat on the battery tops was so intense during summer months that Lidmen simply could not reasonably be expected to work there without substantial periods of relief. Recognition of that harsh fact by men and Management gave rise to the practice local working condition that guaranteed scheduled Lidmen 120 minutes of summer relief, out of the heat.

It is clear also that that continued to be the essential message of the written, 1980 Local Settlement Agreement. Its crew-size requirements are stated separately and do not touch Lidmen, but its Lidman relief provisions restate the benefit of the 1970s practice local working condition. The clincher on this point is the testimony of Grievance Committeeman Thompkins who spearheaded the Union effort to have all Coke Plant local working conditions reduced to writing. He made it plain that the 1980 Local Settlement Agreement did nothing more than copy and restate in writing, for easier proof, the 1970s practice local working condition. Thus, both the 1970s practice local working condition and the 1980 Local Settlement Agreement local working condition had the same goal, which was to provide a benefit the necessary volume of summer relief for Lidmen away from the intense heat on top of the batteries. It was not an increased work provision to afford an opportunity for additional employees to be assigned as "relief" Lidmen, who otherwise would not have been scheduled as such.

The Union argues, however, that the 1980 Local Settlement Agreement recognized that there would be reductions in operations and that the parties nevertheless went ahead to state that

"In addition, the Lidman's relief during the summer schedule (June 15 to September 15) will increase 120 minutes by the addition of an extra summer Lidman." (Emphasis added.)

It urges, therefore, that the 1980 Local Settlement Agreement set both the volume of summer Lidman relief and the way to provide it, so that it was not open to Management in 1983 to say it had discretion to alter the way to provide 120 minutes of summer Lidman relief. The Union thus argues that the 1980 Local Settlement Agreement added an element under the Agreement local working condition that might not have been present if this problem had arisen only under the 1970s practice local working condition.

Accordingly, resolution turns on construction of the 1980 Local Settlement Agreement language. It cannot be denied that the sentence quoted immediately above might mean what the Union claims it does. It states the volume of summer relief to be afforded Lidmen and then says it will be provided by addition of an extra summer Lidman.

But, even that text seems to require only "an" extra Lidman, "extra" in the sense argued by the Company of being over and above the regular, nonsummer complement of Lidmen, and that well could mean "one" more Lidman between two batteries, and that many extra summer Lidmen have been scheduled.

That will not wash, however, for the "extra summer Lidman" language is in three different subsections of the 1980 Local Settlement Agreement, one applicable to 6 Battery, one applicable to 10 Battery, and one applicable to 7, 8, and 9 Batteries, as a group. That would require one "extra summer Lidman" for 6 Battery, and one "extra summer Lidman" for 10 Battery, and not even the Company suggests that only one "extra summer Lidman" for 7, 8, and 9 Batteries would be sufficient. It assigned one and one-half there. That is, it assigned one extra summer Lidman for 6 and 7 Batteries, a second extra summer Lidman for 8 and 9 Batteries, and a third extra summer Lidman at 10 Battery. Thus, the Company assigned two (or one and one-half) extra summer Lidmen for 7, 8, and 9 Batteries under the disputed arrangement, which were one or one-half more than its own explanation would call for here.

Thus, reading the 1980 Local Settlement Agreement in its parts as applicable to the three sets of batteries (6 as one unit, 7, 8, and 9 as another group, and 10 as a third group), there is little or no basis for deciding that the 1980 Local Settlement Agreement local working condition called for "an" extra summer Lidman shared between two batteries, with a suggested mathematical exception for 10 Battery, and not an extra summer Lidman per battery, as had been the rule of the prior practice local working condition.

But analysis now is concerned with whether the 1980 Local Settlement Agreement was, for present purposes, a one-commitment agreement, to provide 120 minutes of summertime Lidman relief, and running only to the benefit of already scheduled summer Lidmen, or a two-commitment agreement, that is, to provide, in addition to the relief benefit for scheduled summer Lidmen, another benefit of an increased work opportunity for the additional employees who thus would be scheduled as Lidmen in order to afford that volume of relief, if it were to be supplied only by additional employees.

The "by addition" language may have been the only way to afford 120 minutes of scheduled Lidman relief at that time, so that it is at least equally probable that it was stating simply what had to be done mechanically, under the circumstances then prevailing, to afford that level of relief. Ordinarily it is safer, because more probably an accurate expression of the parties' meaning, to read their language for the least it must mean rather than for the most it might mean.

For example, focusing attention for present purposes solely on the summer Lidman situation, it is clear enough that, if the parties had not been concerned with assuring 120 minutes of relief to scheduled summer Lidmen, there would have been no independent mention in the 1980 Local Settlement Agreement of an extra summer Lidman. The parties never would have referred to any such provision except as an expression of the way to assure scheduled summer Lidmen of 120 minutes of relief. The "by addition" language was not an independent commitment always and in all circumstances to provide that relief by way of another Lidman.

All in all, therefore, the more reasonable conclusion is that the only absolute benefit of the 1980 Local Settlement Agreement was to provide 120 minutes of summer relief to scheduled Lidmen, relating to conditions then existing, and that it did not run as an additional benefit for increased work assignments to other employees who would be scheduled as Lidmen in the summer only as a way to provide the 120 minutes of summer Lidman relief. Thus, the phrase stressed by the Union "...by the addition of an extra summer Lidman," reasonably can be read as stating only a way, perhaps the only efficient way in the 1980 circumstances, to afford the 120 minutes of relief for scheduled summer Lidmen. It cannot reasonably be viewed as a second benefit of the 1980 Local Settlement Agreement, running to non-scheduled Lidmen in order to provide them with additional turns as Lidmen.

Perhaps it should be noted that no decision is made here on whether or not whatever happened in 1978 was sufficient to prevent development of a practice local working condition or to destroy one; whether the 1980 Local Settlement Agreement was only a 2.2 written local working condition or was part of the 1980 master Agreement; or whether, in either event, it would be or was subject to change or elimination by a 2.2.4 change of basis. All that is decided here is reached by a construction of the 1980 Local Settlement Agreement.

So construed, that Agreement did not require assignment of an extra summer Lidman per battery in 1983, when operations were such that the benefit of both the original practice local working condition and the

1980 codification Agreement local working condition easily could be and was continued by assignment of an extra summer Lidman per two batteries.
Accordingly, the grievance will be denied.
AWARD
The grievance is denied.
/s/ Clare B. McDermott
Clare B. McDermott
Arbitrator