IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and Award No. 958

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated the Agreement when it failed to schedule field forces employees for five consecutive days during certain holiday weeks. The case was tried in the Company's offices on March 20, 2001. Pat Parker represented the Company and Dennis Shattuck presented the case for the Union. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arb. and Advocacy
J. Spear.....Staff Rep., Union Relations
M. Krueger.....Section Manager, Mfg. Maintenance
J. Castro.....Planner, Mfg. Maintenance

For the Union:

D. Shattuck.....Chair, Grievance Committee
B. Carey.....International Rep.
M. Florey.....Grievance Committeeman
T. Allen.....Assistant Grievance Committeeman
J. Schultz.....Witness
L. McMahon.....Witness

Background

Prior to 1993, most field force employees were scheduled from Monday through Friday and could not be scheduled for overtime. This was the result of Appendix AC 6, which required that scheduling practices for field forces would remain in effect for the life of the Agreement. As explained more fully in Inland Award 908, this created a problem for the Company in insuring weekend coverage, when needed. During the 1993 negotiations, the parties agreed to the Mega Maintenance Agreement. Part of that document contains the following provision:

> Within IRMC AC.6 scheduling practices for the Wireman, Fabricator and Machinist Sequences are modified as follows:
>
> > All employees shall be available for twenty-one turn scheduling as defined below.
> >
> > Each group shall be divided into two equal groups, A&B at management discretion....
> >
> > ***
> >
> > When Tuesday-Saturday or Sunday-Thursday schedules are required the group at bat shall be scheduled first....
> >
> > Within both groups (A&B) and to the extent possible, management will distribute the Tuesday-Saturday and Sunday-Thursday schedules in an equitable manner....

The parties agree that this gave management three options for scheduling field force employees, whereas previously there had been only one. The employees could be scheduled Monday - Friday; Tuesday - Saturday; or Sunday - Thursday. The Mega Maintenance Agreement (MMA) did not change the practice that restricted the Company from requiring field force employees to work scheduled

overtime. This much is not in dispute. The problem here is the schedule to be worked during a holiday week.

Under the Agreement, employees receive eight hours pay for the holiday even if it is not a scheduled day. Thus, an employee scheduled Tuesday - Saturday would be paid for a Monday holiday, even though that was not a scheduled day. Another significant part of this case, at least from the Company's perspective, is the Employment Security Plan outlined in Appendix A. Most of that Appendix is not at issue here. At base, it guarantees certain employees the opportunity to earn 40 hours pay each week. What is important for purposes of this case, the Company argues, is that paragraph AA.8 says the 40 hour guarantees includes "hours paid for but not worked." This means, the Company contends, that the paid holiday can be used for purposes of the 40 hour guarantee in weeks in which the holiday falls. Thus, in the week containing President's Day in 1995, the Company scheduled some field forces employees to work Wednesday through Saturday. These four work days accounted for 32 hours pay. And, when the Monday holiday pay was added, the Company met the 40 hour guarantee that week.

In a second grievance at issue in this case, the holiday fell during Christmas week. The Agreement provides that both Christmas Eve and Christmas Day are holidays. In 1995, those holidays were celebrated on Monday and Tuesday. The Company wanted coverage on Saturday, so it scheduled employees to work

three consecutive days, Thursday through Saturday. The forty hour guarantee was made up by the 16 hours of holiday pay.

The Union does not question that, in general, holiday pay is counted in the 40 hour guarantee. However, what is at issue here, the Union says, is not the forty hour guarantee, but, rather, the language quoted above from the MMA. That language on its face, the Union argues, restricts the Company to only three scheduling alternatives, and each of those alternatives is for five consecutive days. The vice of the Company's action in the instant case, the Union argues, is that it scheduled employees for only four working days in the President's Day week and only three working days in the Christmas week. But, the Union contends, the MMA permits no such scheduling. It refer only to Sunday through Thursday or Tuesday through Saturday scheduling and, according to the literal language of the Agreement, those are the Company's only scheduling options.[1]

The Company's scheduling decisions would not be at issue if the holiday had actually fallen on one of the scheduled days. Thus, if an employee was scheduled Tuesday through Saturday and the holiday was on Wednesday, the Union would not have grieved, whether the employee worked on Wednesday or not. The problem here is that a holiday that fell on an otherwise unscheduled day was substituted for one of the days that the Union says the

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[1] Although not mentioned expressly in the section of the Mega Maintenance Agreement creating the other schedules, the parties apparently also agree that the Company could schedule employees Monday through Friday. However, that is not an issue in this case and nothing said here should be interpreted to make any such finding.

Company was required to schedule. In the President's Day week, for example, an employee working the Tuesday through Saturday schedule obviously would not be scheduled to work on the holiday, which was on Monday. The Union says the Company was therefore required to pay the holiday pay and then schedule the employee for his regular Tuesday through Saturday work week. In effect, this would mean that the employee would receive 48 hours pay that week. But the Union says the Company had no right to substitute an unscheduled holiday for one of the days required to be scheduled under the MMA.

The Company says that it scheduled employees in this fashion prior to the MMA and that it continued to do so afterward. Company Exhibit 1 included schedules for various holiday weeks both before and after the MMA. For example, in 1992 the July 4 holiday fell on Saturday. At that time, field forces employees could only be scheduled Monday through Friday. In 1992, the Company scheduled them to work Monday through Thursday, with Friday scheduled as an off day. The employees, then, received 40 ours pay for the week, counting the Saturday holiday. Similarly, in Thanksgiving week 1993 (which was after the MMA), the holidays were celebrated on Thursday and Friday. Some employees were scheduled to work Sunday through Tuesday, with the Thursday and Friday holidays making up the rest of the 40 hour guarantee. There were similar examples of this kind of scheduling in other holiday weeks.

The Company points out that this 1993 example is exactly the type of scheduling in one of the grievances at issue in this case. Despite the existence of the MMA, the Company did not schedule employees to work on five consecutive days. Rather, it scheduled them for three consecutive days and then used the non-consecutive holidays to make up the 40 hour guarantee. In fact, the records indicate that the Company did this in the holiday weeks of Thanksgiving 1993, Christmas 1993, New Years 1993, Labor Day 1994, Thanksgiving 1994, and Christmas 1994, all without protest from the Union. It was not until the President's Day holiday in 1995 that the Union filed a grievance protesting the Company's right to schedule in this fashion.

The Company notes that AC 6 protects the field forces scheduling practices, as modified by the MMA. But, the Company says, its Exhibit 1 indicates that there was no practice prior to 1993 which restricted it to scheduling for fewer than five consecutive days. It was restricted to a Monday through Friday schedule, but there were instances in which it scheduled employees for fewer days and substituted a non-consecutive holiday for one of the working days. The Company also says that nothing in the 1993 MMA changed its right to do this. The MMA does not say that employees must be scheduled to work on five consecutive days. The references to Sunday through Thursday and Tuesday through Saturday scheduling are merely definitional, outlining the kinds of scheduling alternatives available to the Company. Moreover, the Company says that in some instances, the

Union's interpretation would require the scheduling of overtime, which is prohibited for the field forces.

Under the parties' Agreement, an employee who works a Tuesday through Saturday schedule is not entitled to overtime if there was a Monday holiday. The employee would receive 48 hours pay for that week (counting the holiday) but Friday would not be considered a premium day. There is no dispute about this schedule in this case. However, if a holiday falls on Friday, an employee scheduled to work Sunday through Thursday would receive time and a half for Thursday. This is the result because in this instance, the holiday falling at the end of the week counts in the computation of overtime. The Company says that AC 6 prohibits this kind of scheduling. Thus, the Company says it would have to schedule the employee to work only four days that week.

The Union presented witnesses who said that both before and after the MMA, employees and department Union officials often met with management to negotiate long weekends during holiday weeks. Thus, the Union contends that the weeks shown on Company Exhibit 1 were often the product of agreement and did not represent a Company decision to schedule employees for less than five consecutive days during holiday weeks. One witness said it was much easier to fashion long weekends by agreement after the MMA because the department was less centralized. Also, it was harder for the Union to monitor what was going on because the schedule was 50 pages long and there were "secret" schedules that differed

from the posted schedules. A griever testified that before 1993, everyone had the same schedule. However, after 1993, there were too many groups to keep track of the various schedules. He also said there were "handshake" agreements made to get long weekends in holiday weeks. None of these agreements were in writing. He also testified that prior to 1993, the Company sometimes scheduled employees to work Monday through Friday in weeks when the holiday fell on a Sunday. Another Union witness said that no one had ever complained to him about the schedule until the President's Day holiday at issue in this case. Finally, the Union relies on Inland Award 908, which involved the application of the MMA and the Union's claim for sixth and seventh day overtime. In that case, the Union says, the Company pushed for a literal reading of the MMA; the same thing should apply here, the Union says.

Findings and Discussion

No one questions the need for a literal reading of the language of the parties' Agreement, including the MMA. These parties are experienced negotiators who have developed a comprehensive and complex series of agreements over a long bargaining history. The agreements obviously mean what they say and it is not the arbitrator's function to provide creative interpretations that ignore the parties' intent. The "literal" meaning in labor relations, however, is not merely the dictionary definition of words. Words do not stand alone and their meaning

to the parties cannot always be gleaned from generic descriptions. Rather, the meaning given to particular words must be understood not only from the dictionary but also from the context in which they appear and from which they originated.

The Union's case hinges on its claim that the MMA creates a scheduling regime in which the Company is required to schedule employees for five consecutive days each week. The words "five consecutive days" are not used in the relevant section of the MMA. Nor does anything in the MMA says that employees will actually work 40 hours a week. Rather, the Union's case depends on language that says that the Company can schedule employees to work weeks running from Sunday to Thursday or from Tuesday to Saturday. Actually, the relevant section does not even say that these work weeks have been created by the parties' negotiations, though that is implicit in the instructions about how assignments to those weeks are to be made.

What the parties meant by the scheduling language in the MMA must be understood by the way they had used such language in the past. Prior to 1993, the parties agree that the Company was restricted to a Monday through Friday schedule. The MMA obviously brought a new scheduling system to the field forces. No longer would the Company be restricted to Monday through Friday schedules; it could now also schedule employees to work Sunday through Thursday or Tuesday through Saturday. To that extent, the language in the MMA appears to be descriptive, as the Company contends. That is, it outlines the kinds of options now

available for scheduling field forces. But does it also mean that the employees must be scheduled to work on each of those days?

A direction to schedule only in certain patterns does not necessarily mean - and here it does not expressly say - that each of the days in that pattern must be worked. Although a Union witness said the Company sometimes adhered to a Monday through Friday schedule even when there was a Sunday holiday, the Union did not really contend in this case that employees were always scheduled to work all five days in holiday weeks prior to the MMA. Moreover, there was credible evidence from the Company that during holiday weeks, employees were sometimes scheduled to work only four days, with the unscheduled weekend holidays substituting for the other work day.

I believed Union testimony that some of these schedules were the result of handshake deals between managers and employees or departmental Union representatives. But that does not mean all of them were. Nor does it mean that the Company - or the departmental Union representatives - necessarily understood that the scheduling practices protected by AC 6 meant that employees were required to work five consecutive days every week. Presumably, in fact, the departmental Union representatives would not try to induce managers to ignore the Agreement. Rather, it seems likely that they tried to influence them to exercise their discretion in a manner permitted by the Agreement.

The point here is not that the Union waived any rights it might have had by failing to protest the Company's holiday schedules either before or after the MMA. Rather, the evidence simply does not establish that prior to 1993, the field forces scheduling practices were understood by the parties to mean that, during holiday weeks, employees had to be scheduled to work every day on the required Monday through Friday schedule. And this obviously would have influenced how the parties understood the MMA provisions allowing Sunday through Thursday and Tuesday through Saturday schedules.

The MMA does not say expressly that employees would always be scheduled to work five consecutive days. Rather, it merely expanded the list of scheduling options available to the Company. Previously, it could schedule only Monday through Friday. It now had the ability to schedule employees in two other patterns that would allow weekend schedules. There is, in short, nothing in the MMA which suggests that it was to impose requirements on the Company concerning the actual hours to be worked that did not exist before. If, prior to the MMA, Monday through Friday schedules were not understood to mean that employees had to be scheduled on each one of those days in holiday weeks - and the evidence indicates that this was the understanding[2] - then language about the new schedules did not mean that either.

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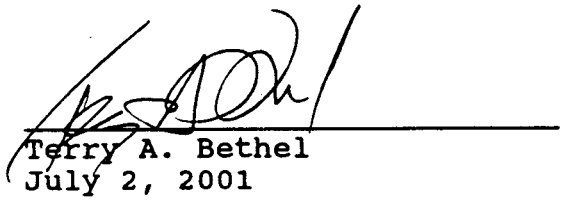
[2] A Union witness said, in fact, that it was easier to keep track of schedules prior to 1993, because everyone was on the same schedule.

I find it important that the relevant section of the MMA was merely intended to change the field forces' scheduling practices protected by AC 6. If the parties had intended to guarantee that all five days would always be scheduled in holiday weeks, then presumably they would have said so directly, since that would have been a change from the previous practice. This is especially true, given the fact that the Employment Security provisions were agreed to in the same negotiations. Those provisions not only guaranteed 40 hours, but they also said that holiday pay could be counted in that tabulation. The Union's interpretation of the MMA, however, would effectively guarantee 48 hours pay in holiday weeks. The addition of two new scheduling options is not sufficient to create this change in practice.

This finding is not inconsistent with Inland Award 908. That case concerned the interplay between the MMA and a sixth and seventh day overtime provision. I did find, as the Union points out, that the Company was stuck with what it had negotiated. But it is incorrect to suggest that this was merely a literal reading of the language in the MMA, which did not actually address the issue in dispute.

AWARD

The grievance is denied.



Terry A. Bethel
July 2, 2001