IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and Award 966

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 retained bargaining unit employee Curt Lockhart as a temporary foreman for a period of more than ten consecutive months. The case was tried in the Company's offices in East Chicago, Indiana on October 18, 1999. Pat Parker represented the Company and Mike Mezo presented the Union's case. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy
N. Fodness.....Contract Admin. Resource, U. Rel.
R. Vela.....Area Hr Mgr., MMS and FRO
R. Allen.....Area HR Mgr., Steelmaking, Purch., Fin.
D. Perez.....Area HR Mgr., Plan/Logistics/Systems
J. Medellin....Area HR Mgr., Bar Co., Sales and Mkting.

For the Union:

M. Mezo.....Staff Rep., USWA
C. Hoot.....Steward
M. Beckman.....Steward
E. Reed.....Secretary, Grievance Committee
D. Jones

Background

In 1986, the parties added mp 13.78.3 to their Agreement, which, in pertinent part, reads as follows:

> An employee shall not be assigned as a temporary foreman ... for a period of more than ten consecutive months, provided, however, that such period shall be extended in view of special circumstances.

The parties agree that employee Curt Lockhart has routinely been assigned as a working foreman in the machine shop for periods exceeding ten months. In addition, the Company submitted evidence that employees in other parts of the mill have also had consecutive periods of assignment in excess of ten months. The Company does not claim in this case that there were any special circumstances warranting an extension of Lockhart's assignment. However, as I understand the parties' agreement concerning the issue, the Company has not conceded that there are no special circumstances. The parties simply did not make special circumstances an issue in this case. Rather, the Company looks elsewhere to justify its action.

The Company put on several witnesses who testified that departments throughout the mill have regularly used working foremen for consecutive periods in excess of ten months. It is true, as the Union claims, that the documentation introduced by

the Company included a period of only about six months prior to the instant grievance and that most of the consecutive periods occurred after the grievance. As I understood the Company's evidence, however, the exhibit was merely representative of the way in which the Company has used working foremen. Moreover, the Union did not rebut the Company's claim that it has often used working foremen in excess of ten consecutive months ever since the disputed language was included in 1986. The Company also says that the Union has often not protested these actions, at least until relatively recently. On the occasions when there was a protest, the parties have typically settled the matter in the first step by agreeing that the Company would assign the working foreman to the bargaining unit for a week or two before returning him to another stint as working foreman. The Company's position in this case, then, is that it will not break a working foreman assignment, even if it exceeds ten consecutive months, unless the Union grieves. If it does, the Company says that it is sufficient to reassign the employee to a bargaining unit job for one week and that it can then return him to a working foreman assignment for an additional consecutive period of ten months.

The Union says that there is no direct evidence that the Company has a practice of routinely using temporary foremen for more than ten consecutive months without some justifying "special circumstances." Moreover, the Union denies that it has acquiesced in the Company's tactic of working employees as temporary foremen for ten months and then relieving them of the

assignment for a week or two before returning them for another period of consecutive service. The Union does not deny the Company's ability to use an employee "sporadically" as a temporary foreman after a ten month consecutive period has expired. However, it says there must be some break in service as a temporary foreman for long enough to insure that the period of consecutive assignment is over. It suggests that this period should be a month, but asserts that some other period could be appropriate.

The Union relies not just on the language of m.p. 13.78.3, quoted above, but also points to the language of m.p. 13.78. In pertinent part, that language says:

> Employees who are temporarily assigned ... as temporary foremen shall continue to be considered as employees under this Agreement, except that the selection and retention of employees for such job, the terms and conditions of their employment as temporary foremen ... and their duties and responsibilities as temporary foremen ... shall not be and are not covered by this Agreement.

The Union says this language gives the Company virtually unfettered discretion about whom to select as a temporary foreman, though there are some limitations. Thus, m.p. 13.87.1 says that an employee cannot be designated as a temporary foreman merely to avoid being laid off. And, the Union says, m.p. 13.78.3 limits an employee to one ten month consecutive assignment, presumably in a career -- or, at least, for the term of the Agreement. After that, the Union says, the employee can be assigned only for shorter, sporadic periods, assuming there

has been enough of a break to indicate that the period of consecutive assignment is over.

The Company says the Union's real motivation in this case is simply to remove Curt Lockhart as a temporary foreman, something it tried more directly, and without success, in Inland Award 947, where the Union argued that Lockhart was a safety hazard. The Union says that after the Union's complaint about the length of Lockhart's assignment (which apparently went on for several years), he was reassigned for one week to a bargaining unit position. Afterwards, he was reassigned as temporary foreman. The Company claims the right to make successive assignments for up to ten consecutive months, providing the employee is removed to a bargaining unit position for at least a week. It also says that it is improper for the Union to try and upset its historic pattern of assignment merely because of a dispute with one temporary foreman.

Findings and Discussion

The real issue in this case is whether the Company has the right to repeatedly assign an employee as a temporary foreman for successive periods of up to ten consecutive months, with a break as short as one week in between such assignments. I am not prepared to say that the Union has waived any right to protest the Company's assignments under m.p.13.78.3, merely because it has not raised them until this case. This is, after all, an express provision of the Agreement. There is no allegation of an

express waiver and there is no precedential grievance settlement interpreting the disputed language. Thus, the issue before me is simply what the language says.

It is true, as the Union claims, that m.p. 13.78.3 limits the assignment of temporary foreman to a period of not more than ten consecutive months. I find nothing in the Agreement, however, that limits an employee to one period of service as a temporary foreman. Indeed, the Union concedes that an employee can be reassigned as a temporary foreman after completing ten consecutive months, though it says the new assignment can only be for relatively short periods. But where is there any such limitation in the Agreement? Marginal paragraph 13.78, which the Union cites, says that the Company is to have the right to select and retain the employees who will be temporary foremen. That right, as the Union says, is not unlimited. Marginal paragraph 13.78.3 says expressly that the period of retention shall not exceed ten consecutive months. The question is what happens after that.

The problem with the Union's theory is the word "consecutive." The parties did not say that an employee was limited to a total of ten months as a temporary foreman during the term of the Agreement. Rather, they said an assignment could not exceed ten consecutive months. Equally important, they did not say there could only be one assignment, and, in fact, the Union does not urge any such interpretation, as noted above. Thus, the language seems to say that an employee can have

numerous assignments as a temporary foreman, though none of them can exceed ten consecutive months. This is how I understand the interplay between mp 13.78 and m.p. 13.78.3. In particular, I see nothing that limits the Company from assigning an employee to be a working foreman more than once and I see nothing that limits the number of ten month assignments .

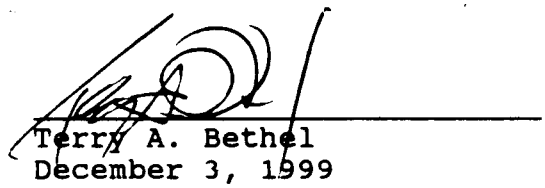
The parties could have limited the Company by allowing employees only one ten month assignment per year, or per contract term, or per career, had that been their intent. It may be, as the Union claims, that successive ten month assignments separated by only a week undermine the parties' obvious intent to impose a limitation. However, because they did not limit the number of assignments, it is not for me to determine what the necessary waiting period should be between assignments. The Company has said that it will remove employees from the temporary foreman assignment and return them to the bargaining unit for a period of one week. As I understand these parties' practices, it is not uncommon for work assignments to be made on a one week basis. It would seem reasonable, then, to say that once an employee has been out of the working foreman position for a week, he can be reassigned. If the parties want more of a limitation, they will have to bargain it themselves.

I find nothing in the cases submitted by the Union to suggest that I should interpret 13.78.3 to mean that only one consecutive ten month period is allowed. In the first place, as the Union itself notes, the U.S. Steel language is more

restrictive since it limits the Company to making assignments of up to ten months only in the event of "operating requirements over and above the normal level." However, even that language does not say that there might not be more than one occasion during a contract term when operating requirements meet this standard. In any event, as I read USS-11,608, the Board merely found that the Company had made assignments in excess of the ten month time limit. It did not address whether a later similar assignment might be made. Similarly, in USS-7676-S, the Board found that there were no special circumstances to justify an appointment in excess of ten months. It did not discuss whether there could be more than one ten month appointment.

AWARD

The grievance is denied.



Terry A. Bethel
December 3, 1999