IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and Award 967

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated Article 13, Section 6.e, mp 13.36.3 of the Agreement when it failed to schedule certain employees in the 80" tandem mill sequence in their home sequence while working more senior sequential employees six or seven days a week. The case was tried in the Company's offices in East Chicago, Indiana on October 19, 1999. Pat Parker represented the Company and Dennis Shattuck presented the Union's case. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy
T. Ribble.....Mgr., No. 3 Cold Strip East
R. Vela.....Area HR Mgr., MMS and FRO
L. Gansho.....Section Mgr., Intermediate Products
R. Hughes.....Contract Admin Res., Union Relations

For the Union:

D. Shattuck....Chairman, Grievance Committee
D. Reed.....Secretary, Grievance Committee
R. Djurich.....Griever
F. Kinsey.....Witness
F. Rodriguez...Grievant

Background

Article 13, Section 6.e allows an employee to have up to three applications on file. The language at issue in this case was added in the 1986 negotiations and, in pertinent part, reads as follows:

> An employee established in a sequence shall designate his/her established sequence first, followed by his/her applications in his/her order of preference. An employee shall be scheduled in his/her established sequence first unless his/her application preference(s) provide a minimum of forty (40) hours for a payroll week when during such payroll week his/her established sequence does not provide a minimum of forty hours. (Emphasis added)

The underscored language presents the principal dispute in this case. The parties agree that previous arbitrators have interpreted the Agreement to mean that the Company has the right to schedule the work. They also agree that, at least until 1986, management could schedule employees to work overtime on a regular basis even though it meant that there was no work in the sequence available for junior employees, who were therefore forced to work outside their sequence. However, the Union says that the underscored language means that if it is possible to schedule employees for 40 hours in their established sequence, the Company is obligated to do so and cannot avoid that obligation by scheduling senior employees to work overtime.

The precise dispute at issue here arose in the 80" tandem mill, which had historically been manned at 15 turns a week. As business increased, management decided to increase the department to 18 to 20 turns a week, which it did by adding a fourth crew. Grievant bid on one of the new jobs and became established at the bottom job in the sequence. In September 1998, the Company decided that it would abandon the fourth crew and man the department by scheduling senior employees to work six or seven days, which meant that there was no longer work available for grievant, who was assigned to work labor. In its opening statement, the Company claimed that it took this action in order to increase production on the tandem mill. However, it does not argue that its right to schedule the mill in this fashion must be justified by such concerns. Nor does the Union claim that the efficiency of the mill is a relevant concern, though it introduced evidence which it says shows that the Company's productivity concerns were ill-founded.

Grievant testified that he had been established in the 12" bar mill and that he transferred to the 80" tandem mill in March of 1998 as a way of advancing his career. He said he had qualified as a bander on the 80" and was being trained as a stocker when, in September of 1998, the Company announced that it would no longer schedule a fourth crew. Grievant was stepped back into labor and was no longer allowed to train in the 80" sequence jobs. On cross examination, grievant acknowledged that he is still established in the 80" tandem mill, though he said he

is trying to find a job in a different mill. He also agreed that the employees continuing to work at the 80" have more sequential standing that he has, though some of them have less total seniority.

The Union says that the cases relied on by the Company were all decided prior to 1986, when the language at issue was added to the Agreement. The right to schedule recognized in those decisions, the Union says, was modified by the amendments to mp 13.36.3. In particular, the Union points to the mandatory nature of the language that says that an employee "shall be scheduled in his established sequence first." The Union concedes that no vacancy exists merely because the Company schedules overtime which freezes out junior employees. However, it says that the disputed language does not depend on the existence of a "vacancy," as that term is used in the Agreement. Rather, it depends on whether the sequence "provides" 40 hours of work. If it does, then an employee must be scheduled in his established sequence; if it does not, then he is to be scheduled in his application sequence if it provides 40 hours of work.

The Union focuses particularly on the word "provides." It notes that the dictionary definition of "provide" includes "to look out for in advance" and "to supply what is needed." The use of this term, the Union says, was intended to mean that the Company would try and maximize the opportunity to give 40 hours of work to the employees who are established in a sequence. In effect, the Union says the Company cannot justify a refusal to

schedule an employee by claiming that there is no vacancy if it would have been possible to give the employee 40 hours of work. That opportunity existed here, the Union points out, because the Company could have scheduled the senior employees for less (or no) overtime, which would have freed up a 40 hour assignment for grievant.

The Union says there is another example in the Agreement of giving an employee the right to work in his sequence when there is no vacancy to be filled. Article 13, Section 9 deals with reductions and it says that when reductions in a sequence are necessary, "employees shall be scheduled for not less than 32 hours per week in their sequence until four consecutive weeks have been worked." After four consecutive weeks, junior employees are laid off and remaining employees are scheduled for 40 hours. The Union points to this and to Arbitrator David Cole's discussion of it in Inland Award 589, as an example of a provision that gave employees greater rights to work in their sequence than they would have had when filling an ordinary vacancy. That, the Union says, is consistent with its argument that the language of 13.36.3 does not depend on the existence of a vacancy. Moreover, the Union notes that Article 13, Section 9 and the disputed language from mp 13.36.3 both say that "An employee shall be scheduled" in a particular manner. Citing Inland Award 468, the Union says that vacancies are created by the language (present in both Article 13, Section 9 and mp 13.36.3) requiring a certain number of hours to be scheduled, not

vice versa. The filling of vacancies is subordinate to and flows from the commitment to schedule employees an agreed to number of hours.

The Company says the mandatory nature of mp 13.36.3 goes to the employee's obligation to work in his established sequence, not to the Company's obligation provide a set number of hours. The Company cited several cases upholding its right to schedule overtime, even if it means that junior employees in a sequence are unable to work in the sequence. The Company argues that the language in dispute was added to insure that employee would work in their established sequence if there was 40 hours of work available for them. Prior to 1986, the Company says, employees could choose to work in their first application choice rather than in their established sequence. That meant that employees could promote up the sequence, but not be trained in the various jobs, because they were not actually working in the sequence. Thus, the Company proposed the language at issue here, which, the Company says, was intended to keep employees in their home sequences if there was work available there for them. It was not intended to diminish the Company's historic right to schedule or to schedule overtime.

Findings and Discussion

The Union places more of a burden on "provide" than it is able to carry. In the context in which it is used, the word cannot reasonably be read to direct the Company's action or limit

its discretion. At base, the disputed language says that an employee shall be scheduled in his established sequence if the sequence provides him with 40 hours of work. Nothing in the section suggests any obligation of the Company to provide 40 hours. Rather, the fair interpretation is that, if the sequence is scheduled so that 40 hours of work are available to an established employee, he must work in that sequence and not in an application sequence. The mandatory language of mp 13.36.3 does not say that the Company "shall provide" a minimum number of hours. Rather, it says that if the home sequence provides - that is, makes available - 40 hours of work, the employee "shall be scheduled" in the home sequence. This is consistent with the Company's avowed "work at home" purpose in making the proposal.

The parties, of course, could have agreed to change the Company's historic right to schedule overtime, even if doing so limited the amount of work available to junior sequential employees. But if that had been the intent, one would think the change would not be tucked away in the seclusion of a paragraph principally devoted to applications. Moreover, one might expect the parties to have used language that more clearly identified the rights being abridged. The Union's claim, after all, is a significant limitation on the Company's managerial freedom. It seems odd that they would have made such a sweeping revision merely by saying that an employee will be scheduled in his home department if it furnishes 40 hours of work.

That is not to suggest that the language at issue is abundantly clear. The drafters used the passive voice to describe the scheduling obligation, and they used a negative form to indicate when the obligation to schedule in the established sequence arises. It is clear, however, that the words chosen do not require the Company to schedule employees for 40 hours. Rather, "sequence" is the subject for the verb "provides." The sequence itself, of course, does not actually provide the work; rather, the Company does so with its scheduling decisions. The construction chosen by the parties, however, suggests that the Company will schedule the sequence as it has traditionally done, and, if those scheduling decisions provide 40 hours for a particular employee established in the sequence, then he must be scheduled there. In that way, the sequence provides the employee with the necessary work to justify the mandatory scheduling. Had the parties intended to require the Company to schedule an employee for 40 hours anytime such scheduling was possible, the parties presumably would have said so with less convoluted language. As it stands, however, I see no evidence that the parties intended to require the scheduling pattern advanced by the Union.

I have read Inland Award 468 and considered the Union's contention that Article 13, Section 9 supports its claim. In my view, however, that language hurts rather than helps the Union's case. Article 13, Section 9 is intended to deal with the special situation that prevails when the workload is reduced. It is, as

the Union described it, a "work sharing" provision, at least for a limited period of time. In the circumstances in which it applies, it directs the Company that it shall schedule each employee for 32 hours. There is, however, no comparable language in mp 13.36.3. That paragraph does contain the words "an employee shall be scheduled" but those words are not followed by the words "forty hours." Rather, they merely direct that an employee be scheduled in his home department when the "sequence" provides the employee with 40 hours of work. Nothing directs the employer to schedule employees for 40 hours of work whenever it is possible.

Because I am unable to read mp 13.36.3 as a direction to the Company to avoid overtime by scheduling sequential employees for 40 hours whenever possible, I must deny the grievance.

AWARD

The grievance is denied.

Terry A. Bethel
December 13, 1999