IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and Award No. 982

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 refused to allow certain secured employees who had been displaced from their core pools to elect a voluntary lay off (VLO). In addition to the four employees who claimed the right to a VLO, the grievances at issue here cover unsecured employees who were laid off and who, the Union claims, should have been entitled to work during the periods when the secured Grievants were on VLO. The case was tried in the Company's offices on March 19, 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
E. Cooper.....Manager, Personnel Services
S. Bogucki.....Business Generalist, Mfg. Maint.

For the Union:

D. Shattuck.....Chair, Grievance Committee
J. Robinson.....Assistant to District Dir.
L. Aguilar.....Vice Chair, Grievance Comm.
A. Jacque.....International Rep.
D. Mosely.....Griever
L. Walton.....Grievant
W. Bonilla.....Grievant
A. Vera.....Grievant

Background

Article 13, Section 5(a) of the parties' Agreement provides for the creation of several core pools and a plant wide pool. That section of the Agreement says that the core pools will be used to

> facilitate, in so far as practicable, the parties understanding that employees' skills will be utilized to the fullest extent possible by assigning those employees to work in specific departments where those skills can best be utilized.

Both Company and Union witnesses testified about the purpose of the core pool, which was to increase Company flexibility by allowing it to draw on a wider base of employees in order to fill temporary vacancies. Unlike the situation that prevailed prior to 1993, various core pools service the needs of a number of departments. Jim Robinson, one of the negotiators for the Union in 1993, testified that the Union was willing to accommodate this legitimate employer interest in exchange for increased job security.

The problem in the instant case occurred when four members of core pools were displaced from their pools. All four of these employees had employment security, meaning that they could not be

laid off, at least absent circumstances not present in this case. Once displaced from their core pools, however, the employees were assigned to work in a different core pool. These facts are not disputed. What is at issue is whether the displacement from the core pool created an opportunity for these employees to elect to take a VLO. Marginal paragraph 13.88.12 provides that, once a year, employees with employment security who are assigned to the plant wide pool can elect to take a VLO "from" that pool. An issue tried at some length in this case is whether the Grievants were actually assigned to the plant wide pool.

The Union says the case is relatively simple. Article 13, Section 5 defines "plant wide pool" by saying that it will be "comprised of employees displaced from core pools and all other non-core pool employees." The Grievants in the instant case were, the Company acknowledges, displaced from their core pool. Thus, by definition, the Union says, they went to the plant wide pool. And, since they were in the plant wide pool, they had the right to elect a voluntary lay off under mp 13.88.12. The Company says the case is more complicated.

It notes that under mp 13.88.12, employees can take a voluntary layoff "from" the plant wide pool. The word "from," the Company says, is significant. Under the Agreement, the parties meet once a year to determine the number of employees who will have status in each core pool. The Company says, however, that a core pool is not merely a status, but that it is also a place. Thus, employees have status in a particular core pool and

that pool typically fills the needs of the departments assigned to that pool. But the employees do not necessarily work in those departments exclusively. In a given week, a core pool employee could work in one of the departments of a different core pool. This is what the Company means by "place" -- a place where one works.

The argument about status and place has the most relevance to the plant wide pool. Like the core pools, the Company argues that the plant wide pool is both a status and a place. Employees who do not have status in a core pool are statused in the plant wide pool. Only rarely, however, do employees actually work in the plant wide pool "place." For the most part, plant wide pool employees are assigned to work in one of the departments serviced by core pools. They are not there merely for make-work but, rather, because their services in those departments are needed. There have been, however, some instances in which there was no need for plant wide pool employees in any of the departments served by core pools. In such cases, the Company has found other work for them, like general clean up work or planting flowers.

Employees engaged in such activities, the Company says, are working in the plant wide pool "place." And it is these employees -- and only these employees -- who can elect a VLO under mp 13.88.12. The Company says this conclusion is mandated both by the language of the agreement and the policy that attends VLO's. As to the language, the Company points to the word "from." The plant wide pool is both a status and a place, but

employees cannot be laid off from a status; they can only be laid off from a place. Thus, employees actually have to be working in the plant wide pool to be laid off "from" it. But if they are statused in the plant wide pool and filling a vacancy in a core pool, they are not working in the plant wide pool. In addition, the Company points to the second sentence of mp 13.88.12, which it says limits the availability of VLO's. I will address that issue in more detail below.

The Company says its interpretation makes sense when one considers the purpose of layoffs. Because there is no work for them in any of the departments, the employees working in the plant wide pool are surplus but, because they have employment security, they cannot be laid off by the Company. The Company does not argue that the work performed by the plant wide pool is make-work. It is, however, work the Company probably would not have elected to do, were it not for the obligation to keep the employees on active status. These are the employees, then, who ought to be able to elect a VLO. The Company says that it cannot lay them off, but the possibility of a VLO is one of the "safety valves" included in the Agreement for the elimination of surplus employees. Employees like these Grievants, who were statused in the plant wide pool and filling vacancies in core pools, however, were needed by the Company and, thus, should not have been able to elect a VLO.

In the alternative, the Company also argues that the four Grievants in the instant case were never even in the plant wide

pool. The Company's witness acknowledged that the employees were displaced from their core pools. However, the Company argues that they never went to the plant wide pool. Rather, they were simply reassigned to other core pools, where they were needed. The Company's witness said this is a routine procedure. Because they were never in the plant wide pool, then, the employees did not have a right to elect a VLO under 13.88.12.

Even if I were to find that the four employees with employment security had a right to elect a VLO, so that its action in this case violated the Agreement, the Company denies that a monetary remedy would be appropriate. The Union, in fact, does not ask for a monetary remedy for the employees who were denied a VLO. Obviously, they continued to work and had no economic loss. Rather, what the Union seeks for them is an interpretation of their rights under the Agreement. The Union claims, however, that since these Grievants could have elected a VLO, and since the Company's case acknowledges that employees were needed to work in those time periods, some of the employees without employment security who were laid off should be made whole for their losses.

The Company says that none of the employees without employment security would have been retained in any event. Because the Company has been affected by the significant economic problems that face virtually the entire domestic steel industry, it has taken numerous cost cutting measures. In January of 2001, the Company began terminating all probationary employees. The

Company also began laying off all unsecured employees, apparently starting with those with less than six months service. The Company's witness testified forthrightly that the Company did so to avoid possible WARN Act implications in the event a partial shutdown occurred later in the year. The unsecured employees who are laid off are also not eligible for Supplemental Unemployment Benefits (SUB) under the Agreement. Thus, the Company argues that no make-whole relief was appropriate for any laid off employee because the Company, essentially as a matter of policy, laid off all employees who could be laid off. Thus, even if the Grievants had taken a VLO, the Company would not have used unsecured employees to replace them.

The Union argues that the Company misused the core pool provisions of the Agreement by denying a VLO to secured employees in order to insure that it did not have to keep other employees and, at the same time, pay SUB to the Grievants. Article 13, Section 5(a), quoted above, means that when an employee is displaced from a core pool, he goes into the plant wide pool. The Union does not deny that such employees usually end up working in core pools. But, the Union says, that does not mean that those employees are in that core pool. Rather, it points to mp 13.17.4, which says that employees in the plant wide pool will be used to "supplement work assignments in the various departments ... and to accomplish other non-traditional labor work."

The fact that these employees fill vacancies, then, does not mean that they have somehow become part of a different core pool. They merely do so as a member of the plant wide pool. The Union says, in fact, that it never heard the Company's argument that employees could go directly from one core pool to another until this case. Union witnesses testified that they had always understood that employees displaced from a core pool went to the plant wide pool and that the Company had administered the system in this way. Moreover, the Union says that even if an employee could be assigned to a different core pool after being displaced from his own, he would first have to pass through the plant wide pool, from which he could elect a VLO. The Union also says that there is no warrant in the Agreement for the Company's contention that only surplus employees can elect a VLO. The Agreement gives this right to any secured employee who has been displaced to the plant wide pool.

The parties also cite other provisions of the Agreement and other exhibits in support of their positions. The Union points to mp 13.18.3.4, which says that core pool employees "can work across core pools as needed by operations only in order to fill out their work week." This, the Union says, means that the Company could not, as it claims, merely transfer employees from one core pool to another based on need. In addition, the Union points to an exhibit indicating that there are more employees working in core pools than are actually assigned to the pools -- in some cases, many more. This means, the Union says, that these

employees are actually assigned to the plant wide pool and are simply being used to support other departments, which is one of the functions listed for the plant wide pool, as quoted above.

The Company points to mp 13.62.2, which says that employees displaced from their core pool and assigned to a job in a different core pool, and employees assigned to the plant wide pool to work in a core pool, cannot submit applications within 30 days of their assignment to a core pool. Frankly, I am not certain about the relevance of this section, except that it appears to distinguish between employees who are assigned from one core pool to another and employees who are put in the plant wide pool and then assigned to a core pool. The Company also points to an exhibit tendered by the Union in which the parties agreed that "Employees in the plant wide pool will be performing labor work only...." The Company says this recognizes that employees who are assigned to departments from the plant wide pool are not really in the plant wide pool "place."

Findings and Discussion

The Union's argument does not focus on whether the Company needed the Grievants for continued operations in the weeks in which they would have elected a VLO. Rather, the Union reads the first sentence of mp 13.88.12 to mean that employees in the plant wide pool have what amounts to a guaranteed once-a-year option to elect a VLO. And, it says, the Grievants were in the plant wide pool because they had been displaced from their core pools.

Thus, the Union says the Grievants had the right to elect a VLO without regard to such matters as need or surplus.

I need not determine in this case whether the Company is right when it says that employees can be displaced from their core pools and immediately be assigned to another one without passing through the plant wide pool. Nor do I have to consider whether the plant wide pool is, as the Company says, both a place and a status, although I note that the argument that one can only be laid off from a place may put more stress on the preposition than it needs to carry. Unlike the Union, however, I am not able to determine that the concept of need is divorced from the analysis in this case.

As noted, the Union finds the Grievants' right to a VLO in the first sentence of mp 13.88.12. But I find that the second sentence of that paragraph is of particular significance in this case. The first sentence, on which the Union relies, establishes the VLO option for employees in the plant wide pool. The second sentence then says:

> Such voluntary layoff or continued layoff will not be allowed when such layoff or continuation of layoff would result in less than the minimum number of plant-wide or core pool employees available to perform the work the company considers necessary.

During the hearing, and in response to my question, the Company's advocate indicated that the Company relied on this sentence in this case as part of its argument that no VLO could be permitted because it needed the Grievants to continue working.

The second sentence obviously addresses the question of whether the employees who want to elect a VLO are needed. I need not decide whether these Grievants were in a core pool or in the plant wide pool. If the Grievants were in a core pool, they obviously were not eligible for a VLO, since 13.88.12 is limited to core pool employees. Even though mp 13.88.12 creates an opportunity for plant wide pool employees to take a VLO, it is clear from the reading of the entire paragraph that, despite the Union's argument, that right is not absolute. Even if they were in the plant wide pool, the Grievants were eligible for a VLO only if they were not needed by the Company. And, because the evidence supports a finding that these Grievants <u>were</u> needed by the Company, they were not eligible for a VLO.

The second sentence of mp 13.88.12 clearly limits the right granted in the first sentence by saying, in effect, that even if an employee in the plant wide pool wants to elect a VLO, he cannot do so if the VLO would leave the Company with less than the minimum number employees to perform the necessary work. That, at base, is the Company's argument here. There was work available and, whether the Grievants were in the plant wide pool or not, it could not permit them to take a VLO because they were needed.

The Union's response is that the Company <u>could</u> have insured that it had the minimum number of employees it needed and still have permitted the Grievants to elect a VLO. Thus, it could have retained some of the unsecured or probationary employees it laid

off and it could have assigned them to the necessary work. Then, the Grievants could have taken a VLO. The Company, of course, could have done this. But I find nothing in the Agreement that required it to do so.

I understand the Union's argument, and its interest in securing employment opportunity for as many employees as possible. No one doubts that these are difficult times in the steel industry. Even before the current economic climate, employment levels at the plant had fallen significantly in recent years. If these Grievants could have taken a VLO and collected SUB benefits, other employees might have continued to work.

I find, however, that the Company was not required to take this action by any provision of the Agreement. As the parties recognized in another recent case, the Company's discretion to terminate probationary employees is not subject to significant limitation and none of the limits that do exist are present in this case. There can be no argument, then, that the Company was required to maintain probationary employees so that Grievants would not be needed. The same thing is true of unsecured employees. The employment security provisions of the Agreement are not really at issue in this case. It is clear, however, that the Union's ability to negotiate security for most of the bargaining unit was a significant achievement. But the Union has pointed to nothing that also guarantees continued employment for unsecured employees, where the Company did retain the discretion to lay off. The Union cannot remove that discretion by claiming

that the Company must keep employees who have no guarantee of continued employment so that employees who do have such a guarantee can be laid off.

The only thing that comes close to making the Union's argument is the first sentence of mp 13.88.12. But that sentence cannot be divorced from the rest of the paragraph, which is essentially what the Union does. Read in context, mp 13.88.12 says that employees in the plant wide pool can take a VLO unless doing so would leave the Company without the minimum number of employees it needs. This provision, then, is not a guarantee that any employee in the plant wide pool can elect a VLO. Plant wide pool employees with employment security can elect a VLO only when they are not needed to perform the necessary work. The Company is not required to create a surplus by retaining unsecured employees in order to fill its needs. Because I find that the Grievants in this case were needed by the Company in the weeks in which they wanted a VLO, I find they had no right to elect one under mp 13.88.12. I will, therefore, deny the grievance.

AWARD

The grievance is denied.

Terry A. Bethel
June 3, 2001