IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

Award No. 985
(Procedural Issue)

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company improperly refused to accept grievance PW-W-42 into the third step of the grievance procedure. The case was tried in the Company's offices in East Chicago, Indiana on April 17, 2001. Pat Parker represented the Company and Bill Carey presented the case for the Union. The parties submitted the case on final argument.

Appearances:

For the Company:

P. Parker.....Section Manager of Arbitration and Advocacy
T. Kinach.....Section Manager, Union Relations

For the Union:

B. Carey.....USWA Staff Representative
D. Shattuck.....Chairman of Grievance Committee

Background

Article 6 of the Agreement outlines in some detail the parties' grievance procedure. The issue in this case is the interpretation of marginal paragraph (mp) 6.20.6, which was added to the Agreement in the 1983 negotiations. The language reads as follows:

> Grievances which allege violations directly affecting employees working under more than one department manager shall be discussed initially in Step 3 upon submission by the Union of a written statement containing the identifying number of grievance, statement of grievance, contract provisions cited, relief sought, statement of facts, and brief statement of Union position. The grievance shall then be processed in accordance with the provisions of Article 6. (emphasis added)

The facts in the instant case are not complicated. On March 2, 2001, the Union filed grievance PW-W-42 in the third step claiming that the Company had improperly scheduled certain employees from various departments for 32 hours, in violation of Appendix A, Paragraph AA.5. The Union claimed that the third step filing was appropriate pursuant to mp 6.20.6, quoted above. On March 5, 2001, Section Manager of Union Relations Tim Kinach returned the grievance to the Union, asserting that it was improperly filed in the third step because it was not "a dispute affecting employees working under more than one manager." This was a reference to the underscored language in mp 6.20.6, above. Subsequently, the Union filed grievance PW-W-45, protesting the fact that the Company had refused to process PW-W-42. Kinach returned PW-W-45 asserting that it, too, had been improperly filed in the third step. In addition, he said that the grievance duplicated PW-W-42.

The issue in this case is limited to the proper interpretation of the underscored language in the above quotation of mp 6.20.6. The Company asserts that it was intended to encompass individual employees or groups of employees who were assigned to work under more than one

supervisor. That is, it applies to an employee from a department who might be assigned to work a different department for a period of time. In such cases, the employee could answer to supervisors in more than one department. Because there might be confusion about where to file the grievance, the parties agreed to file it in the third step. The Union, on the other hand, says that language was intended to apply when employees from different departments are affected by some action or policy. In such cases, the Union says, it makes no sense to try and resolve the issue on a piecemeal basis, so the parties agreed to address the issue in the third step of the procedure.

Although the grievance processed to arbitration was PW-W-45, the parties agreed that the issue in the case was whether the Company acted properly when it refused to process Grievance PW-W-42 under mp 6.20.6. This is, then, a procedural issue for Grievance PW-W-42. Although the parties presented enough information about the merits for me to understand the nature of the dispute, there was no detailed evidence and this case is limited to the procedural issue.

Kinach testified that 6.20.6 was added to the agreement in the 1983 negotiations. At that time, Inland was a "much bigger plant," with thousands more employees in the bargaining unit. However, reduced operations had resulted in the transfer of as many as 400 employees to the labor pool. On a weekly basis, employees were assigned from the pool to various areas of the plant. During negotiations, the Union expressed concern about whether it made sense for these workers to file grievances in their home departments or in the department to which they had been temporarily assigned. One problem with filing grievances in the assigned department was that the employees might have moved elsewhere before the grievance could be heard. This, Kinach said, was the impetus behind mp 6.20.6. Employees working in more then one area could simply file a

grievance in the third step and the parties could then "figure out what was needed for the case." In addition, there were employees with permanent assignments who worked under two supervisors. One such example -- which persists today -- is a metallurgical employee who may be assigned to work full time in the blast furnace area and under the direction of the blast furnace supervisor. Kinach said there had been grievances filed under mp 6.20.06 by employees working under more than one supervisor and that some of them were still active.

Kinach also reviewed the circumstances in which the Union had properly filed so-called plant-wide grievances. One involved a mutual agreement covering inspectors and planners in which the mutual agreement itself provided for a filing in the third step. In addition, a letter dated November 23, 1998 recognized that there were eight matters involving the personnel department in which third step grievances could be filed. Finally, Kinach said there were a few cases in which he had agreed with the Union Grievance Chairman to accept a grievance in the plant-wide procedure when something affected "lots of, or all of" the employees and there was no benefit to discussing the matter at the department level. He cited as examples grievances involving profit sharing, the closure of the insurance office, and the discontinuation of the 25 year club picnic. The Company says these cases all raised the same issue for employees throughout the plant. However, it asserts that the subject matter of PW-W-42 does not. The Company pointed to the grievances filed in the first step over the same occurrence and said that not all of the departments affected would answer the grievances in the same way. There would, then, be a benefit to discussion of the grievances at the department level, which was not true of grievances concerning profit sharing or the closure of the insurance department.

On cross examination, the Union tendered a letter dated November 11, 1986, signed by a former Company Step 3 representative. The letter asserted that a grievance filed under mp 6.20.6 was improperly filed in the third step "in that the subject matter of the grievance is clearly limited to a single employee." The Union says this letter indicates that only three years after the inclusion of mp 6.20.6 in the Agreement, the Company apparently did not embrace the interpretation advanced in the instant case. For example, the letter would indicate that the metallurgical employee, used as an example by the Company, could not use mp 6.20.6 since it was to be reserved for groups of employees. And, the Union says, its interpretation is more likely to affect groups of employees.

Dennis Shattuck testified that in February, 2001, he met with Company officials who told him that No. 5 blast furnace would be shut down temporarily. He said that when the Company refused to provide information concerning the financial conditions influencing the decision, and when the Union saw the list of work to be performed while the furnace was down, the Union believed the event was actually an extended repair outage. The important distinction is that with temporary shutdowns because of a "significant decrease" in operations, the Company, under AA.7, can schedule employees "affected by the decrease in the level of plant operations" for 32 hours a week. However, if the event is an extended repair outage, then AA.5 allows schedules to be reduced to 32 hours only by agreement of the parties. The Union claims that the event was governed by AA.5 and, when employees from two different departments were put on 32 hours

because of the shutdown, it filed a grievance in the third step pursuant to mp 6.20.6, arguing that the shutdown affected employees in more than one department.[1]

Shattuck, who was on the 1983 negotiating committee, disagreed with Kinach's view of the impetus for mp 6.20.6. Shattuck testified that the Union had attempted to file plant-wide grievances prior to 1983, but that the Company had refused to accept them. Thus, the Union entered the 1983 negotiations seeking a mechanism to deal with such matters. Shattuck said the Union had been able to file plant-wide grievances following the inclusion of mp 6.20.6 in 1983 and, indeed, that he had filed some himself. He said he neither needed nor sought Kinach's agreement to do so. He also disagreed with Kinach's testimony that a letter outlined the circumstances in which third step grievances could be filed. He said the letter merely recited some grievances that were filed in the third step concerning personnel matters in which the parties thought a first step meeting with the personnel department would be useful.

The Union submitted grievances filed in the third step which it said were consistent with its interpretation of mp 6.20.6. These include Inland Award 973, which concerned whether the Company was obligated to pay employees for the time spent in ID badge replacement. However, the Company says this was one of those cases in which a third step filing was beneficial to both parties, since the project was coordinated at the plant level. Shattuck responded that some of the individual departments actually coordinated the movement of employees to the issue point. As for

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[1] AA.7 speaks of a "shutdown" and AA.5 refers to an "outage." It is difficult to recite the facts in the instant case without using one of these terms. However, the use of the words "shut down" or "outage" in this opinion is not intended to reflect any judgment about whether the events at No. 5 blast furnace are governed by either section and no such inference should be drawn.

the other grievances, the Company asserted that most were either filed by agreement or involved instances in which discussion at the department level would have been pointless.

Shattuck also testified about the Company's example of an employee working for both a metallurgical manager and a blast furnace manager. He said that such employees have always reported to the metallurgical supervisors and, more importantly, that they have not filed grievances in the third step under mp 6.20.6. Rather, they file at the first step, as do other individual employees. Another example, he said, are so-called "bag and baggage" employees, who are maintenance employees assigned around the plant for a period of time. Despite those assignments, such employees file grievances in cental maintenance in the first step. Shattuck also testified that a recent grievance concerning voluntary layoffs was not filed in step 3 until it affected employees in more than one department. The Company did not object to the filing as a plant-wide grievance.

The Company says the obvious reading of mp 6.20.6 means that in order to file a grievance in the third step, an employee or employees must themselves work for more than one supervisor. The only exceptions to this requirement, it says, have been by agreement or in cases where departmental consideration of the grievance makes no sense. The instant grievance, however, would benefit from discussion in the departments, according to the Company. The Union points to the 1986 letter from the Company which refused to accept a grievance in the third step when it applied to only one employee, which it says is inconsistent with the position the Company takes here. The Union also asserts that the Company's interpretation is so narrow as to make the language almost meaningless. By contrast, the Union's interpretation allows a third step

filing in cases in which the same issue confronts different departments, thereby eliminating the possibility of inconsistent action.

Findings and Discussion

I have no question about Kinach's credibility, which means there must have been some discussion in the 1983 negotiations about where labor pool employees should grieve. I note, however, that the parties' Agreement restricts the use of bargaining history, and that this restriction seems apt in this case, where the negotiations occurred 18 years prior to the hearing. The decision, then, must be based on the language and the parties' experience with it.

The Company's interpretation of mp 6.20.6 is possible, if not entirely plausible. The parties could have intended the new language merely to permit temporarily assigned employees to file grievances in the third step. One might wonder, however, why they did not address the issue of multiple or temporary assignments more directly and also why, if the provision was to be so limited, they used the word "employees." Indeed, the Company itself has advocated a position inconsistent with one of its principal examples in this case (the metallurgical employee), since the 1986 grievance response denied that mp 6.20.6 could be used by individual employees. In addition, one might question why the parties would allow any grievance from an individual – no matter how specious – to automatically consume the time of the third step representatives. The first two steps of the grievance procedure, after all, are intended in part to weed out frivolous or insubstantial claims. Finally, it seems reasonable to suggest that if the issue were merely one of venue for individuals or small groups of employees, the parties could have solved the problem short of an amendment to the Agreement.

The Union's interpretation of the underscored language, above, makes more sense and seems to be the one actually adopted by the parties. There are cases in which similar issues affect employees in more than one department – that is, employees working under more than one manager – and in which inconsistent departmental positions are possible. These are the kinds of cases in which the parties may have thought it useful to bypass the first two steps of the procedure and go directly to the third step. In fact, even the Company says there have been grievances where discussion at the department level would be pointless. However, I find no compelling evidence that these grievances were accepted only by agreement from the Company. Kinach may well have thought the Company's silence in the face of such grievances manifested agreement. But I find the language of mp 6.20.6 to be directly in point and to permit the Union to file in the third step when an alleged violation of the Agreement affects employees working in different departments.

The Union's allegation in this case is that the Company's action violated the Agreement and that it directly affected employees working in more than one department. I have no opinion at this juncture about whether there is a violation of the Agreement and, thus, I cannot say whether the Company's action "directly" affected employees working under more than one department manager. But the Union's allegations on their face are sufficient to justify a filing in the third step under Mp 6.20.6, since the Union claims that the Company wrongfully classified a repair outage as a temporary shutdown in order to reduce the work week of employees in different departments. Because the parties did not present the merits of the case, I have no way of knowing whether these allegations are true and, of course, the Company denies them. But this disagreement is what establishes the dispute between the parties which the Union seeks to enter

into the grievance procedure. Perhaps the Company could resist a filing in the third step if it could establish that its action did not affect employees in more than one department. But there is no such claim in this case.

I note the Company's claim that Grievance PW-W-42 would benefit from discussion in the individual departments. I cannot dispute that claim since there is little evidence in this case concerning the merits. Thus, I have no way of knowing whether this case is one in which individual departments might reasonably take inconsistent positions. But mp 6.20.6 does not necessarily foreclose departmental discussion if the parties would find it useful, and it does not mean that the grievance, if it has merit, must afford like treatment to all affected employees. It merely says that such grievances can begin in the third step. I find, then, that the Company acted improperly when it refused to process Grievance PW-W-42 .

AWARD

The grievance protesting the Company's refusal to process Grievance PW-W-42 is sustained.

Terry A. Bethel
May 2, 2001