IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and AWARD 990

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns a dispute between the parties about the meaning of certain language in paragraph AA7 of Appendix A to the Collective Bargaining Agreement. The case was tried in the Company's offices in East Chicago, Indiana on October 15, 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., Arbitration and Advocacy
G. DeArmond....Contract Admin. Resource., Union Rel
E. Perry.....Dir. Of Op., Fin. And Admin., IIBC
G. Lefco.....Manager, 80" Hot Strip Mill
C. Willoughby..Union Relations Intern

For the Union:

D. Shattuck....Advocate
B. Carey.....International Representative
D. Mosely.....Griever

Background

Paragraph AA7 of Appendix A, the Employment Security Plan, reads as follows:

> In addition, in the event of a significant decrease in the level of plant operations, which for purposes of this Plan is defined as the shutdown of a blast furnace, then employees affected by the decrease in the level of plant operations and eligible for employment security ... may be temporarily scheduled on a thirty-two week basis...."

In Inland Award 988, I found that the plain wording of this language did not require, as the Union claimed, that a shutdown of a blast furnace be caused by a significant decrease in the level of plant operation. Rather, the shutdown itself was a significant decrease in plant operations, though I also observed that in an appropriate case, the Company might have to establish that its action had been taken in good faith.

The instant dispute arises from the same incident that gave rise to Award 988. In February, March, and April, 2001, the Company shut down no. 5 blast furnace for 53 days. In Award 988, I found that this action was governed by AA7, meaning that the Company had the right to schedule "employees affected by the decrease in the level of plant operations and eligible for employment security" for 32 hours. The issue in this case is whether certain employees at the 12" Bar Mill were "affected by the decease in the level of plant operations" during the week that included March 23. That week was one of the weeks during which no. 5 blast furnace was shut down.

There is no dispute that some of the employees at issue in this case were scheduled for 40 hours during that week. On March

22 at approximately 10:30 p.m., the primary gear on the mill failed, thus shutting it down. As a result, the Company canceled the second and third turns on March 23. This meant that some employees with Employment Security were only able to work 32 hours for the week. The Union alleges that this was a violation of the Employment Security provisions, which give most employees the right to earn 40 hours of pay each week. The Company, however, says there was no violation because it could have scheduled these employees for 32 hours under the provisions of AA7. Thus, when they were reduced to 32 hours, there was no violation of Appendix A.

As noted, when there is a shutdown of a blast furnace under AA7, that provision allows the Company to schedule "affected" employees for 32 hours. The employees at issue here, the Company says, were "affected" by the shutdown and, therefore, could have been scheduled for 32 hours. The fact that the Company scheduled them for 40 hours during the week in question did not, it says, waive its rights under AA7. Moreover, the Company points out that under Article 10 it has the right to change schedules in the event of a breakdown, which is what happened here.

The basic issue in the case is whether the Company had the right to schedule the employees at issue here for 32 hours during the week in question. The Union agrees that if the Company had this right, the procedure it used to decrease their hours from 40 to 32 was not defective. But it contests the Company's claim that the employees could have been scheduled for 32 hours

initially, which is another way of saying that these employees were not "affected" by the shutdown of the blast furnace. Indeed, the Union says the fact that they were scheduled for 40 hours demonstrates that they were not affected by the shutdown.

The Company, however, says that all of the employees in the plant were affected by the shutdown because, by definition, the shutdown of a blast furnace is a "significant decrease in the level of operations." Thus, the Company says that if a blast furnace is shutdown, it can schedule all of its employees for 32 hours a week. The Company argues that the Union improperly reads the word "affected" to mean that there has to be some nexus between the shutdown and the employees' jobs. The Company says the proper reading is that employees are affected because they are reduced to 32 hours. It says the majority of employees could argue that they are not directly affected by the shutdown of a blast furnace. But the language at issue would provide no value to the Company if it had to demonstrate a direct nexus between the blast furnace shutdown and particular jobs in order to reduce employees to 32 hours. The Company says that AA7 is best understood as the trigger necessary to reduce all employees in the plant to 32 hours.

The Union argues that the only reason employees in the 12" Bar Mill did not get 40 hours during the week in question was because of the breakdown. The Company's decision to schedule them for 40 hours demonstrated that they were not affected by the shutdown of the blast furnace. The Union disagrees with the

Company's argument that the shutdown of a blast furnace allows the Company to schedule all employees for 32 hours. Rather, it says it can do so only for employees who have been "affected" by the significant decrease in the level of operation. There is no proof in this case that the employees at issue were so affected, except for the Company's evidence that the blast furnace was shut down. The Union also says that Appendix TT, which allows the Company to buy steel, is one way of insuring that the level of operations in the plant isn't affected, even if a blast furnace is shutdown. This was intended to counter the Company's argument that a shutdown itself necessarily means that there is an impact throughout the plant.

Findings and Discussion

In Award 988, I focused on the language of Appendix AA, rejecting the Union's argument that there could only be a blast furnace shutdown when there was a significant decrease in operations. I found that this was simply not what the language said. The same thing is true of the Company's argument in this case. Paragraph AA7 does not say - as it easily could have - that once a blast furnace is shut down, the Company can schedule the entire workforce for 32 hours. The Company can only reduce the schedules for employees who are "affected" by the shutdown. Nor does the provision say that all employees will be affected by a blast furnace shutdown. What the parties said is that when a blast furnace is shut down - which is the definition of a

significant decrease in the level of operations - employees "affected" by the decreased level of plant operations can be scheduled for 32 hours. I have to give this language its ordinary meaning.

The Company's interpretation turns the language on its head. Rather then asking whether employees have been affected by the shutdown so that they can be reduced to 32 hours, the Company reduces them to 32 hours and then says that they are affected by the reduction. Had the parties intended that all employees could be reduced to 32 hours when a blast furnace was shut down, then presumably they would have said just that. In short, there has to be some demonstration that the employees scheduled for 32 hours have been affected by the shutdown.

The Company's argument characterized this demonstration as the requirement to show a "direct nexus." But the language of AA7 is silent about what kind of nexus is required or about what kind of impact must be demonstrated. On this record, I cannot say that the language in AA7 would be worthless to the Company if it is required to show an effect on employees before it can reduce their schedules. I also cannot speculate about what kind of effect must be shown, because there was no evidence of an effect in this case except for the fact that the furnace was shutdown. Finally, this opinion is not intended to endorse the Union's claim that the Company's decision to schedule certain employees for 40 hours in a particular week necessarily means that they were not "affected" by the shutdown of a blast furnace.

In an appropriate case, it could be that the Company would want the employees to work 40 hours or more, even though their jobs had been affected by the decrease in operations.

I need not address these issues in this case because the only argument advanced by the Company was that all employees in the plant are automatically affected by the shutdown of a blast furnace. That is not a proper reading of AA7. The shutdown itself was not enough to reduce the employees below 40 hours for the week. Thus, the Union's grievance will be sustained. The Company will provide make-whole relief for the employees at issue.

AWARD

The grievance is sustained. The Company will provide make whole relief for the employees at issue in the case.

Terry A. Bethel
November 4, 2001