IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and AWARD 1000

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated Article 2, Section 2 when it eliminated a local working condition that had allowed employees to order fish dinners on Friday. The case was tried in the Company's offices in East Chicago, Indiana on May 14, 2002. 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 Mgr., Arbitration and Advocacy
P. Clinnin.....Section Manager, MHS
T. Kinach.....Section Manager, Union Relations

For the Union:

B. Carey.....International Representative
D. Seifert.....Asst. Griever, Area 20
L. Ross.....Parts Room
M. Sendejas...Loco Shop

B. Aponte.....Fields Forces, ME
M. Nemtuda...Parts Room, ME

Background

The facts are mostly undisputed. For about 15 years, the Company has allowed parts room attendants in the mobile equipment repair shop to order fish dinners from a local restaurant for employees working in the area. This occurs only on day turn. The practice was apparently started by an employee who was later promoted to supervision, and who continued the activity while in that role. When he retired, parts room attendants began operating what the employees refer to as "Fish Friday." They did so with the knowledge of management. Phil Clinnin, Section Manager, testified that he stopped the practice when he got to the area in 1997. He said he thought the activity had gotten out of control, apparently because it was attracting people from outside the area. Also, he said employees were waiting in line to order lunches and then again later, to pick them up. He made some attempts to keep outsiders away, but they would return after a short time and the problems would begin again. Thus, he told the employees to stop ordering lunches. The Union complained and Clinnin subsequently let the practice resume, although apparently with some controls over who could participate. He stopped the activity again in early 2001, which led to the instant grievance. Clinnin said the Company exercised no control over Fish Fridays. It did not direct the parts attendants to run the activity and it did not designate a restaurant as a supplier.

Union witnesses described the activity of Fish Fridays, which included participation from the satellite shops. Questioning from the Company suggested that the Company thought the parts room attendants were operating a for-profit business. However, Union witnesses said they did

not make a profit or even get a free meal from the restaurant. They merely took orders, collected money, picked up the meals, and distributed them to the employees, including supervisors. A witness also said that if he and the other organizer were absent or busy on Friday, they simply would not take orders for the fish. Union witnesses denied that employees spent much time waiting in line.

The Company said the activity had grown too big and that employees were spending too much time on it. Only 30 minutes are allotted for lunch, and the organizers spent more time than that taking orders and picking up the food, which was delivered to a gate by the restaurant. Clinnin said the practice was also causing productivity problems, including time spent standing in lines. The Company says that there can be no protected local working condition in this case because of a conflict with Article 21, Section 2, which gives the Company the right – in consultation with the Union – to make arrangements for in-plant feeding. This language can only be modified in a writing signed by the International Union and the Manager of Union Relations, and there is no such document in this case. The Company also raised concerns about the parameters of the practice and about such issues as liability for illnesses or refunds for bad meals.

The Union said it was an objective benefit for employees to be able to order fish every Friday for 15 years. Much of the Union's argument concerned its response to the Company's claim that any protected local working condition would conflict with Article 21, Section 2, the in-plant feeding provision of the Agreement. The Union offered an exhaustive review of similar claims and the responses of industry arbitrators to them. The Union also says that the Company cannot change the local working condition because of a loss of productivity for two reasons. First, there is no evidence of such a loss. In addition, there is no proof that productivity was part

of the basis of the practice. The Union also cited cases saying that local working conditions cannot be eliminated just because they are abused.

Findings and Discussion

The Company's claim that Article 21 prevents any local working condition in this case raises interesting issues, but I need not resolve them because I cannot understand the practice at issue here to have risen to the level of a local working condition. This is in large part due to the Union's inability to establish exactly what the practice is. The Union's closing argument spoke of the ability of employees to order fish every Friday, as noted above. But is the practice the opportunity for employees to buy a fish dinner on Friday or the ability of certain employees to arrange for the sale and distribution of fish dinners? The latter would seemingly not be a "benefit" as that word is commonly understood, since there was testimony that no one makes a profit and that the organizers do not even receive a free meal. But even if the benefit is the ability of employees to buy a fish dinner on Friday, there are also problems.

A local working condition becomes part of the deal between the parties. However, unlike express agreements, where the terms of the bargain are written for all to see, with local working conditions the terms are defined by practice. What the parties are required to do in the future is determined by what they have done in the past. That is not to say that each eventuality must have occurred in order for a practice to arise. But the parties – and the arbitrator – need to be able to anticipate the contours of the local working condition in order for it to exist and for it to be enforced. In this case, one of the principals testified that if he and his coworker are absent on Friday or if they are too busy, then they simply wouldn't order the fish. But then what is to

become of the practice? What if the principals retired or quit or were discharged for cause? Could the employees insist that the Company permit someone else to take their place? If so, then who designates the substitute? What if a Company-designated substitute refuses to do it? And, because there was testimony that the organizational aspects take longer than the traditional lunch period, what if the substitute organizer could not be spared that day? Does the Company have to insure that someone is available, or does it have to operate Fish Friday on its own? These are not fanciful concerns. Once established, local working conditions endure. It seems anomalous, then, for a practice that is enforceable against the Company to depend on the presence of a particular bargaining unit employee or for the rights of other bargaining unit employees to be subject to a coworker's discretion.

I recognize that there are local working conditions that provide benefits to employees beyond those specified in the Agreement. I was the one, after all, who said the Company had to continue holding its 25 Year Club Picnic. But that practice was under the Company's control, as are things like wash-up time and all of the other practices alleged in the cases submitted by the Union. Typically, protected local working conditions control the Company's ability to enforce inconsistent rules or require the Company to furnish a benefit not specified in the Agreement. Benefits might sometimes be hard to quantify, but they still come from the Company and they concern matters the Company controls or is, at least, involved in. That is not the case here. True, the Company allowed employees to order fish dinners from a local restaurant and it permitted employees to act as organizers. But it played no role in this benefit itself and it has no ability to control the circumstances under which it operates. Suppose the vendor raised the price to $3. Is the practice protected at $2.50? Or suppose a new organizer wanted a different vendor. Do

employees who like onion rings from the former provider have the ability to complain that the practice has been changed? The point is that since the Company plays no role in the practice, it is in no position to insure that the benefit will remain available to employees in anything like its present form.

I cannot order the Company to continue an activity over which it has no control and which is as loosely defined as the one at issue here. It might be different if the Company had itself provided fish dinners for employees on Friday, although this would no doubt implicate the Article 21 issue the Company raised at the hearing. But as to the practice itself, there would be sufficient clarity for an arbitrator to evaluate the alleged practice and, if there was indeed a practice, for the Company to understand how to comply with an order to do so. But that is not the case here. I understand that the employees enjoyed the opportunity to buy outside food one day a week. But not every activity tolerated by management can become a protected local working condition. I find that Fish Friday was not a protected local working condition and I will, therefore, deny the grievance.

AWARD

The grievance is denied.

Terry A. Bethel
October 1, 2002