Award No. 677
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 10-N-32
Appeal No. 1278
Arbitrator: Burt L. Luskin
December 5, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on September 17, 1980. Pre-hearing briefs and statements of position had been filed by the parties and exchanged between them prior to the date of the hearing.

APPEARANCES

For the Company:
Mr. Henry M. Thullen, Attorney for the Company
Vedder, Price, Kaufman and Kammholz, of Counsel
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. R. A. Senour, Superintendent, Plant No. 1 Mills
Mr. T. J. Peters, Assistant Superintendent, Labor Relations
Mr. J. E. Blair, Captain, Plant Protection
Mr. J. A. Nielsen, Labor Relations Representative
Mr. R. B. Castle, Senior Representative, Labor Relations
For the Union:
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Theodore J. Rogus, Staff Representative
Mr. William Andrews, President, Local 1010
Mr. Don Lutes, Secretary, Grievance Committee
Ms. Mary M. Hopper, Recording Secretary
Mr. Fedro Hicks, Grievance Committeeman
Mr. Keith Anwar, Grievant

BACKGROUND

Keith Anwar was employed by the Company on January 24, 1978. Anwar became a vocational mechanic (apprentice) in the Company's Plant No. 1 Mills Department's mechanical section.

The Apex Baler Company processes scrap steel that is compressed into bales by hydraulic presses. The baled scrap steel is thereafter delivered to Inland for use in Inland's open hearth and electric furnaces. The facilities used by Apex are located on Inland property adjacent to the Company's No. 3 open hearth furnace. Apex has approximately 38 employees who are members of a bargaining unit (United Steelworkers of America, Local 8180) completely different from the bargaining unit that represents approximately 19,000 persons at the four plants of the Company's Indiana Harbor Works.

On May 1, 1979, Apex Baler Company's bargaining unit employees engaged in an economic strike that terminated on June 18, 1979. When the Apex strike commenced, pickets from Local 8180's bargaining unit appeared at two locations outside of the Inland plant. One group was near an overpass leading to Plant No. 2. A second group of Apex pickets appeared at a site on Michigan Avenue near the intersection of Guthrie Street (an area adjacent to a second entrance to the plant).

Anwar was scheduled to report for work on the 8:00 A.M. to 4:00 P.M. turn on May 3, 1979. He called the plant, spoke with a foreman, and informed the foreman that he would not be reporting for work because he intended to honor the Apex Baler picket line. On May 4, 1979, Anwar again reported off for the same reason. On May 4, 1979, the superintendent of Plant No. 1 Mills (Senour) wrote to Anwar, called Anwar's attention to his failure to report for work on May 3, 1979, and advised Anwar that the reason given by Anwar for his absence was "not satisfactory to the Company under the circumstances." The letter directed Anwar to report for work as scheduled, and Anwar was informed that a failure to report for work within five days after May 4, 1979, would be cause for the Company to suspend Anwar preliminary to discharge. Anwar did not report for work, and he was thereafter informed that he would be suspended preliminary to discharge on May 10, 1979. Anwar requested a suspension hearing. On May 15, 1979, Anwar was

informed that his request had been granted and the hearing would be held at 10:00 A.M. on Thursday, May 17, 1979, ". . . at the Labor Relations Department Bldg. located at the corners of Block and Watling." Anwar did not attend the suspension hearing. Anwar had requested that the hearing be delayed until the Apex strike had been concluded or, in the alternative, that the suspension hearing be held on "neutral" ground. It was Anwar's contention that the Company's Labor Relations Department would have to be considered to be located on Company property and he would, therefore, be required to pass a picket line and enter Company property that was being legally picketed in order that he might attend a suspension hearing. The Company denied Anwar's request, and the hearing was held. Anwar was represented at that hearing by Union officers. On May 18, 1979, Anwar was informed that a suspension hearing had been held on May 17, 1979, that was attended by Company representatives and by the Chairman of the Grievance Committee (Gyurko) and the Secretary of the Grievance Committee (Lutes). The Company informed Anwar that there were no circumstances present that would justify altering the decision of the Department's superintendent, and Anwar was informed that he had been terminated from employment.

On May 23, 1979, Anwar filed a grievance contending that the action taken by the Company on May 18, 1979, that resulted in the conversion of Anwar's suspension to the penalty of termination from employment, was "unjust and unwarranted in light of the circumstances." Anwar requested reinstatement to employment and pay for all moneys that he was caused to lose. The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

Anwar filed a charge (Case 13-CA-18759) before the National Labor Relations Board (Region 13) contending that the Company had committed an unfair labor practice when it terminated his services. On June 29, 1979, Regional Director Barbour informed the attorney for the grievant, the attorney for the Company, and the grievant that he was declining to issue a complaint on the charge ". . . based on my determination that further proceedings on the charge should be administratively deferred to arbitration." The deferral was based upon the Regional Director's findings that the dispute that gave rise to the unfair labor practice charge was also currently the subject of a pending grievance ". . . and that, in all likelihood, the issue will be submitted to an arbitrator." The parties were informed by the Regional Director that when the dispute underlying the charge was resolved by arbitration, the charging party could obtain a review of the arbitrator's final award in order to determine "whether the arbitral proceedings were fair and regular; whether the unfair labor practice issues which gave rise to the charge were considered and decided by the arbitrator; and whether the award is consonant with the purposes and policies of the Labor Management Relations Act. Spielberg Mfg. Co., 112 NLRB 1080."

DISCUSSION

The provisions of the Agreement cited by the parties as directly or indirectly applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 3

"PLANT MANAGEMENT

3.1 "SECTION 1. Except as limited by the provisions of this Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, . . . provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union.

"ARTICLE 4

"RESPONSIBILITIES OF THE PARTIES

4.1 "SECTION 1. Each employee, regardless of whether he is a member, nonmember, officer, grievance committeeman, agent or other representative of the Union, shall observe and abide by the terms and conditions of this Agreement. All representatives of Management shall observe and abide by the terms and conditions of this Agreement.

"SECTION 5.

4.5 "a. The Union agrees that neither it nor its officers, agents, representatives, or members will authorize, instigate, cause, aid, sanction or take part in any strike, work stoppage, sit-down, stay-in, slowdown, or other interruption or impeding of work.

4.6 "b. Should there be a violation of subparagraph 'a' of this Section 5, there shall be no discussion or negotiation regarding the difference or dispute during the existence of such violation, or before normal work has been resumed.

4.7 "c. The Union representatives will take affirmative action to prevent employees from engaging in the prohibited activities set forth in this Section 5, it being understood, however, that the Company shall not have the right to discipline such representatives for failure to take such affirmative action. . . .
4.8 "SECTION 6. There shall be no lockout of employees by the Company.
"ARTICLE 6
"ADJUSTMENT OF COMPLAINTS AND GRIEVANCES
6.2 "SECTION 2. DEFINITION OF GRIEVANCE. 'Grievance' as used in this Agreement is limited to a complaint or request which involves the interpretation or application of or compliance with the provisions of this Agreement.
"ARTICLE 7
"ARBITRATION
7.1 "SECTION 1.
7.4 "It is understood and agreed that the arbitrator shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement. He shall have no power to add to, detract from or alter in any way the provisions of this Agreement.
"ARTICLE 8
"DISCHARGES AND DISCIPLINES
8.1 "SECTION 1. In the exercise of its right to discharge employees for cause, as set forth in Article 3, the Company agrees that an employee shall not be peremptorily discharged, but in all instances in which the Company may conclude that discharge is warranted, he shall first be suspended for five (5) calendar days and notified in writing that he is subject to discharge at the end of such period. A copy of such notice shall be furnished to such employee's grievance committeeman promptly. During such five-day period, if the employee believes that he has been unjustly dealt with, he may request a hearing and statement of his offense before the Superintendent of Labor Relations, or his designated representative, with the employee's grievance committeeman and officers of Union present if the employee so chooses. At such hearing, facts and circumstances shall be disclosed to and by both parties. . . ."
The basic facts are not in dispute. Anwar had been employed with the Company for a little more than fifteen months. While driving to work on May 3, 1979, be noted the presence of a number of persons holding picket signs which read "Apex Baler on Strike." Anwar stopped his car and spoke with several of the persons holding the picket signs. Anwar had never heard of "Apex Baler" and he was unaware of the fact that Apex Baler operated a facility located in an area within the Company's Indiana Harbor Works. Anwar did not drive to an area where he would normally have entered the plant at a Plant No. 1 gate. There were no pickets adjacent to the Plant No. 1 gate and there is evidence in the record that one group of pickets located approximately one mile from the entrance to Plant No. 1 and one group of pickets was on a public street some three blocks from the Plant No. 1 entrance.
Anwar then called the plant, spoke to a member of supervision and informed him that Anwar would not be coming to work because be intended to honor a picket line. Anwar testified that he later joined the Apex Baler picketing employees and he also appeared at Local 1010 meetings and urged members and officials of his Local Union to support the Apex Baler employees who were engaged in an economic strike against Apex Baler Company. Those persons were members of Local 8180 of the United Steelworkers of America. There were no pickets stationed in an area reasonably adjacent to the entrance to Plant No. 1 where Anwar was employed. The record would indicate that a normal work complement out of the approximately 19,000 employees regularly entered the plant and left the plant without incident on the days during which Anwar engaged in a sympathy strike against Inland.
It should be noted that neither Apex Baler Company nor its employees had any affiliation with Inland Steel Company. The two companies are engaged in a business relationship whereby Apex Baler provides a service to Inland that is performed on Inland property by persons employed by Apex Baler and supervised by Apex Baler. There are 34 different contractors who regularly work within the geographic area encompassed by Inland Steel's Indiana Harbor Works. Members of 15 unions are employed by different contractors and perform services on Inland Steel's premises. None of those persons have any contractual relationship with Inland Steel Company. There are a number of Inland Steel employees who are members of Bricklayers Local 6 and that Union separately engages in collective bargaining with inland Steel Company.
The evidence clearly and unequivocably establishes the fact that within the knowledge of the Company no Inland Steel employee who is a member of Local 1010 of the United Steelworkers of America has ever refused to report for work because he did not wish to cross a picket line established by striking employees

of a company that performed services on Inland Steel premises. The no strike-no lockout provision of the Collective Bargaining Agreements between the parties has appeared in Collective Bargaining Agreements for a period of approximately 35 years. In all of that time the Union has never raised a contention that it should be permitted (by virtue of external law or by virtue of the terms and provisions of the Collective Bargaining Agreements) to honor picket lines established by employees of a different company performing services on Inland Steel Company's premises. There have been innumerable instances when employees of companies who perform services on Inland Steel premises have engaged in legal picketing. In no instance, however, did Local 1010 ever urge or suggest to the membership that they should or could engage in a sympathy strike.

The language appearing in Article 4, Section 5, has appeared in Collective Bargaining Agreements between the parties for more than 30 years. During that entire period of time the parties have, by their conduct, construed the provisions in a manner which would constitute a waiver of an employee's otherwise protected right under the National Labor Relations Act to refuse to cross a picket line and to enter the plant premises where striking employees worked. The no strike clause as it appears in this Collective Bargaining Agreement has, therefore, been uniformly construed by the action of the parties as a waiver (for the life of the Collective Bargaining Agreement) of any protection that the employees might otherwise have by virtue of the application of the National Labor Relations Act to engage in a sympathy action by refusing to cross a picket line to enter their place of employment.

Very few of the decisions cited by the parties in support of their respective positions would have direct applicability to the facts in this case. Anwar was in no way precluded from entering Plant No. 1 to report for work. He had never heard of Apex Baler Company prior to May 3, 1979, and he was made aware of the fact that the striking Apex Baler Company employees' picketing activities were not directed toward Inland Steel. Anwar's curiosity was aroused when he was driving to the plant on May 3, 1979, and saw the pickets. Anwar knew or should have known that the appropriate language appearing in the Collective Bargaining Agreement between United Steelworkers of America and Inland Steel Company would have required that he refrain from engaging in a work stoppage or concerted activity designed to impede or interrupt work at the Inland Steel plant.

For many years the Company has had a consistent and uniform practice whereby employees who absent themselves from work without an acceptable excuse are informed by letter that they must report for work within five days or subject themselves to suspension and ultimate termination from employment. The procedure that the Company followed in this case is no different than that followed by the Company in literally hundreds of situations where employees do not present the Company with reasons for absences which the Company considers to be reasonable.

Anwar called the Company twice to inform it of his impending absences, and on each occasion he was told that the Company could not accept his reason for his absences. The Company then sent Anwar a letter informing Anwar to either report within five days or be subject to suspension and termination from employment. When Anwar failed to report for work as scheduled within the prescribed period of time, the Company informed him that he was suspended from employment pending discharge. Anwar was treated no differently than were hundreds of other employees who had similarly failed or refused to report for work as scheduled and had been notified of the consequences that would flow from their refusal to carry out the directions of the Company.

Anwar contended that an identical situation had developed in June, 1978, when Anwar did not report for work because be would not cross a picket line established by members of Bricklayers Local 6 who were Inland Steel employees and who were engaged in an economic strike. Anwar contended that a letter of discipline issued to him was made the subject of a grievance and the grievance was resolved after the Company withdrew the letter of reprimand.

The evidence would indicate that in June, 1978, Anwar had reported off from work because of illness. The Company did not become aware of the fact that Anwar had extended his absence because he refused to cross the Bricklayers' picket until after Anwar had returned to work. There is evidence in the record that during the pendency of Anwar's 1978 grievance, the Company concluded that Anwar's attendance had improved and that the application of the principle of corrective discipline would justify the removal of that letter of reprimand from Anwar's personnel file. The circumstances involved in that case cannot possibly be considered to have established a precedent that would have required the Company to excuse Anwar's refusal to report for work in May, 1979, because he was engaging in a sympathy strike with persons who were employed by Apex Baler and who were members of a different Local of the United Steelworkers of America.

Anwar has raised a procedural question involving the Company's alleged refusal to hold the suspension hearing at a site other than the Labor Relations Department located in the Plant No. 1 Clock House Building at 3210 Watling Street, East Chicago, Indiana. In the alternative, Anwar had requested that the hearing be postponed until such time as the Apex Baler Company dispute with its employees had been resolved. The Company had refused to change the site of the hearing and had refused to postpone the hearing for an indefinite period of time. Anwar contended that he was, therefore, deprived of the procedural due process to which he was entitled by virtue of the terms and provisions of the Collective Bargaining Agreement.

The language appearing in Article 8, Section 1 (Discharges and Disciplines), is clear and unambiguous. An employee who is suspended for five days and who is informed that he is subject to discharge at the end of that period, has a contractual right to request a hearing and to be informed of the nature of the changes. That hearing is to be held "before the Superintendent of Labor Relations, or his designated representative. . . ." Company witnesses testified that the provision relied upon by Anwar has appeared in Collective Bargaining Agreements for approximately 35 years, and for the past 32 years every suspension and discharge hearing held pursuant to the provision of the Collective Bargaining Agreements have been conducted by the Superintendent of Labor Relations (or his designated representative) in an office located at 3210 Watling Street, East Chicago, Indiana, that houses the office of the Superintendent of Labor Relations.

The Labor Relations Department office building was never picketed. The nearest Apex Baler Company picketing employees were on a public street some three blocks from that structure. There was no reasonable justification for Anwar's contention that "his" suspension hearing would have to be held at a different site because he refused to cross what he deemed to be a picket line established by employees of a different company and who were not engaged in any strike involving Inland Steel Company.

Hundreds upon hundreds of suspension and discharge hearings have been held in the same building where the Company scheduled the suspension hearing for Anwar. The Company was under no contractual obligation to move the hearing to a different site and the Company was under no contractual obligation to postpone the hearing for an indefinite period of time. There have been instances where suspension hearings have been postponed, but in all such instances they involved employee or witness illnesses or other unique circumstances that would have reasonably justified a delay.

The hearing was held as scheduled. Anwar was represented by the Chairman of the Bargaining Committee and the Secretary of Local 1010. They served as advocates for Anwar's position and they raised contentions, arguments and justifications in support of Anwar's position in exactly the same manner as those contentions were raised and advanced in all subsequent steps of the grievance procedure that were attended by Anwar. Anwar was not denied due process, and Anwar was in no way prejudiced by the fact that he elected not to attend that hearing. Anwar and the Union representative advanced the same basic fundamental arguments and contentions at the arbitration hearing that they advanced in the grievance hearings. The same arguments and contentions were advanced on Anwars behalf by able and competent Union representatives at the suspension hearing. The arbitrator must find that Anwar's contention that he was denied contractual due process is without merit and must be denied.

The National Labor Relations Act has been uniformly construed by the National Labor Relations Board and by Circuit Court of Appeals decisions in a manner which protects an employee' s right to refuse to cross a picket line and enter his place of employment because of his sympathy with the action being taken by the striking employees. There are various cited Circuit Court of Appeals decisions which provide that the right to refuse to cross a picket line may be waived by appropriate contractual language or under certain circumstances described therein.

The no strike-no lockout clauses of this Collective Bargaining Agreement must be read together with the contractual grievance and arbitration procedures established by the parties. Anwar had adequate and ample opportunity to protest the directions of supervision by recourse to the grievance procedure. If he believed that his contractual rights were being violated when he was ordered and directed to report to work as scheduled, he should have honored that request and thereafter protested the Company's action in the grievance procedure. In the opinion of this arbitrator, Anwar's conduct was blatantly insubordinate and defiant. He was warned of the consequences that would flow from his continued refusal to report to work as scheduled. He was told that he would subject himself to termination. He elected to continue to support a strike by Apex Baler Company employees by refusing to carry out his contractual obligations to report for employment to Inland Steel as he was required to do in conformance with posted work schedules. Anwar had been employed with the Company for approximately 15 months. He knew his basic and fundamental

contractual rights and he knew what his obligations were as an Inland employee based upon the terms and provisions of the Collective Bargaining Agreement negotiated between Inland Steel and United Steelworkers (Local 1010).

The language of the no strike clause (Article 4, Section 5) has appeared in every Collective Bargaining Agreement negotiated between the parties for over 35 years. In that period of time the Union never formally contended that its members had either a contractual right (or a right guaranteed to them by virtue of the application of the provisions of the National Labor Relations Act) to refuse to cross a picket line established at or near Inland Steel property that did not in any way involve Inland Steel Company employees who were members of this Local Union. The arbitrator must conclude that the language of Article 4, Section 5, would support the construction placed upon that language by the parties themselves and would serve to constitute an effective and appropriate waiver of an employee's right to engage in a sympathy strike.

The arbitrator has been made aware of the fact that the unfair labor practice charges filed by Anwar before the National Labor Relations Board have been deferred pending the issuance of the award in this case. The arbitrator did take into consideration the application of external law and it is his opinion that the language of the Contract, supported by the uniform and consistent application thereof by the parties themselves, constitutes an effective bar to an Inland Steel employee's right to engage in a sympathy strike and to withhold his services to the Company.

Anwar committed an offense so serious in nature as to constitute just cause for his termination from employment. He placed into jeopardy the economic wellbeing of his employer and some 19,000 employees. The Company had the right to apply its uniform and consistent practice of terminating employees who are absent from work for reasons that have never been considered to be acceptable. Anwar was warned of the consequences that would flow from his continued defiance of the Company's request that he return to work. Under those circumstances, the termination was justifiable and the grievance would have to be denied.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 677

Grievance No. 10-N-32

The Company had just cause for terminating Kieth Anwar from employment. The grievance is hereby denied.

/s/ Burt L. Luskin

ARBITRATOR

December 5, 1980