Arbitration Award No. 802
IN THE MATTER OF ARBITRATION Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance Nos. 30-S-36, 30-S-37, 30-S-38, and 30-S-39
Arbitrator: Clare B. McDermott
May 10, 1989
Opinion and Award
Subject: Discharge--Charge of Stealing--Use of Alleged Statements of Unidentified Informer--Motion for Arbitrator to Conduct Private Interview of Informer--Motion to Sequester Grievants from Hearing Room During Testimony of Other Grievants.
Statement of the Grievances:
30-S-36 "The aggrieved Dale L. Hamilton, Check No. 20725 contends the action taken by the Company when on December 8, 1988 his suspension culminated by discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought - The aggrieved requests that he be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."
30-S-37 - "The aggrieved Kevin D. Peto, CK#5510 contends the action taken by the Company when on December 1, 1988, his suspension culminated by discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought - The aggrieved requests that he be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."
30-S-38 - "The aggrieved Donald E. Gordon, Jr. Check No. 28072 contends the action taken by the Company when on December 19, 1988 his suspension culminated in discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought - The aggrieved requests that he be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."
30-S-39 - "The aggrieved, Bobby J. Young, Check No. 7797 contends the action taken by the Company when on December 19, 1988 his suspension culminated in discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought - The aggrieved requests that he be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."
Agreement Provisions Involved: Articles 3, 6, Section 5, and 8, Section 1 of the August 1, 1986 Agreement.
Statement of the Award: The grievances are sustained, and grievants shall be reinstated to their employment relationship with full seniority intact:, and they shall be made whole for all earnings and other contractual benefits (including Profit Sharing) lost by reason of their improper suspensions and discharges.

Chronology

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| Grievance Filed: | 30-S-36 - 12-13-88 |
| | 30-S-37 - 12-13-88 |
| | 30-S-38 - 12-20-88 |
| | 30-S-39 - 12-22-88 |
| Step 3 Hearing: | 30-S-36 - 12-22-88 |
| | 30-S-37 - 12-22-88 |
| | 30-S-38 - 1-10-89 |
| | 30-S-39 - 1-10-89 |
| Step 3 Minutes: | 2-21-89 |
| Step 4 Appeal: | 2-21-89 |
| Step 4 Hearing: | 2-21-89 |
| Step 4 Minutes: | 2-21-89 |
| Appeal to Arbitration: | 2-21-89 |
| Arbitration Hearing: | 2-23-89 |
| | 2-24-89 |

2-25-89
2-27-89

Appearances

Company

2/23, 2/24, 2/25/89

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|---|---|
| Mike Roumell | Attorney |
| Bob Nanney | Captain, Plant Protection Services |
| *Herbert Harth | Officer, Plant Protection Services |
| Gary Wright | Planner, No. 11 Coke Battery |
| Philip Bickerstaff | Supervisor, No. 11 Coke Battery |
| Bob Castle | Section Manager, Union Relations |
| Steve Nelson | Representative, Union Relations |
| Art Flores | Project Coordinator, Maintenance & Equipment Technology |
| Dennis Pigg | Section Manager, Project Shield |

*(In attendance 2/23 only.)

2/27/89

Mike Roumell
Gary Wright
Philip Bickerstaff
Bob Castle
Dennis Pigg

Union

2/23, 2/24, 2/25/89

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|---|---|
| Jim Robinson | Arbitration Coordinator |
| Mike Mezo | President |
| Don Lutes | Sect. Grievance Comm. |
| Don Gordon | Grievant |
| Kevin Peto | Grievant |
| James Ross | Griever |
| Bobby Young | Grievant |
| Dale Hamilton | Grievant |
| Mike Wagner | Witness |
| Emmett Crawford | Witness |
| Eddis Clark, Jr. | Witness |
| Richard Flahardy | Griever |
| Joe Gutierrez | Base Rate Chairman |
| Richard Bailey | Witness |
| Gordon C. Murray | Witness |
| Steve Wagner | Griever |
| Tom Hargrove | Griever |
| Luis Aguilar | Griever |
| *Don Jones | Safety Comm. |
| *J. C. Porter | V. Chairman Gr. Comm. |

*(In attendance 2/25 only.)

2/27/89

Jim Robinson
Mike Mezo
J. Ross
J. C. Porter
Don Lutes
Dale Hamilton
Kevin Peto
Bobby Young
Don Gordon

BACKGROUND

These four grievances from the Maintenance Section of No. 11 Coke Battery at Plant 2 claim that the suspension and discharge of the four grievants were without cause, in violation of Article 3 and contrary to the procedural requirements of Article 8, Section 1 of the August 1, 1986 Agreement. This Opinion is written and issued in explanation of the Award in these grievances telegrammed to the parties on April 28, 1989.

The charges against grievants varied. Those against Hamilton and Peto were stealing (initial charge), leaving their working place, and overall unsatisfactory work records. Those against Gordon were stealing (initial charge), and an overall unsatisfactory work record, and the initial charge against Young was stealing.

The record is long and very detailed and was made over a four-day hearing. Following the course of events and alleged events may be easier if the parties' versions are stated separately, at least as to the basic assertions.

The Company says that for several years there had been a major problem of theft in the Maintenance Section at No. 11 Battery. This included stealing of employees' personal possessions and Company property and equipment, including small (suitcase) welding machines, grinders, an air compressor, and tools. Captain of Investigations Nanney, with twenty-two years in plant security, said investigations of this problem had gotten nowhere. Nanney said the theft problem at 11 Battery amounted to thousands of dollars worth of items a year and was not just petty pilferage.

In October of 1987, Nanney got a telephone call from Section Manager of Maintenance Pigg, who said there was a bargaining unit employee who had contacted Pigg about the thefts, and Pigg wanted Nanney to speak to him. Pigg and the person came to Nanney's office, and Nanney said he was able to shed light on the theft problem, with names. Nanney had tried to discern how things were being taken out, without success, but Nanney says the person told of another way that was being done. Nanney asked the person if he would be willing to cooperate in this and to give information, and he says the person agreed. The person was reluctant, however, and would not do so unless he could remain anonymous, so that no one but Pigg and Nanney would know his identity. Nanney says the person said he was afraid of suffering bodily harm if he were found out. The person said he had not been threatened. Nanney says the person said he simply was concerned that tools were missing to the extent that he sometimes could not do his job, and he thought that morally wrong.

Nanney set up a procedure, including a telephone number in the plant, for the person to call and keep Nanney informed. Nanney says he offered no incentive to the person for his information. He says he relied upon Section Manager Pigg to review that person's disciplinary record, and Nanney discussed it with Pigg, in order to see that the person was a good worker and was not just trying to get even with other employees. Nanney says Pigg said he found that the person was clean on both those counts.

Nanney says the informer called him early in the morning a few days after that meeting and said he had heard employees talking about a plan to take equipment and tools that day. Nanney set up three surveillance units to watch for one of two trucks leaving the plant. He saw a truck leave, driven by Grievant Peto, with an unknown passenger, and he followed it to its apparent destination, which turned out to be fast-food places (Burger-King and a Mexican restaurant) where many lunches were bought and brought back to the plant. Thus, nothing wrong or suspicious was seen in that event. Pigg told Nanney there was an arrangement to allow employees to go out once a week to pick up lunches for the crews.

Two or three weeks later the informer called Nanney again and said "They [with no names] were going to take stuff out in a truck." Nanney set up surveillance units again, but no truck came. Nanney says he found out later that a different vehicle had been used and that it again went out for lunches and involved the same people as on the earlier occasion.

About two months later (February or March of 1988) the informer called again, allegedly saying that he saw employees around a truck that morning, and he allegedly felt something would be taken that day. Nanney again set up surveillance units, but again no truck showed up. Nanney called Pigg about that and asked him to check. He says Pigg called back and said there had been a major breakdown in operations, which was the reason that no truck went out.

Nothing more was heard from the informer until November of 1988.

Nanney said that at 10:07 a.m. on November 17 he got a telephone call from the informer who said he saw employees (no names) loading stainless steel plates under the bed liner of a Marcus rental truck. Nanney says the informer spoke very rapidly and seemed in a hurry. He says the informer said "They" and "those employees." Nanney asked which employees they were, and he says the informer said "those." Nanney says the informer said "they" were going to leave very soon and that Nanney should check on them. This

conversation took about one minute. Nanney says he asked the informer who "they" were and that the informer said "the same ones he had talked of before." Nanney says he took that to refer to six people he says the informer had named "before."

As its name suggests, the bed liner is a plastic, protective cover for the bed of the less than half-ton, pick-up truck. It lies on the bed and is not bolted down but does have small plastic pins. It may be lifted. The truck had a "Marcus" sign but no indication that it was an Inland vehicle.

Nanney called the Plant Protection Desk Sergeant to get Officer Harth, an employee of outside contractor Guardsmark. Harth had twenty-five years in Plant Protection as a Company employee. Nanney went to Plant Protection, met Harth, and told him to drive in his Company security vehicle, marked as such, to the South Gate, the only exit from Plant 2. Nanney and Harth went to and parked across from the gate. They went into the Gate House. In about five or six minutes a tan Marcus truck approached the gate. Harth stopped it. There were two people in it, Grievant Hamilton driving and Grievant Peto in the passenger seat. Harth motioned to Hamilton to pull the truck out of the line of traffic and to park, and he nodded to Nanney. Nanney came and asked the driver where he was going. Hamilton said he was going to the Plant 1 Weld Shop to have two plates on the bed of the truck bent and sheared for a toolbox for that truck. Nanney asked if he had a material pass, and Hamilton and Peto said they did not.

Nanney said that some trucks might not be stopped by the Guards at the gate, especially if there were heavy traffic at the time, as at shift change and late in the morning. Some Marcus trucks are used by contractors and are not leased by the Company.

Nanney said he and Harth stopped this truck rather than allowing it to go out and following it to see where it would go because he had had only a few minutes to get to the gate and had had no time to arrange for security assistance. He said, moreover, in reply to a very leading question, that he and Harth were in a clearly marked Company security truck, so that the persons being followed would be well aware of that fact.

Nanney says he did not drive to the South Gate in his personal vehicle, so he could follow the Marcus truck out of the plant, because his car had been in an accident the previous week, and its whole side was destroyed, and he felt the people would know they were being followed. He agreed there are a lot of wrecked cars being driven about in this area, but he felt the people would suspect something if a wrecked car were to follow them for two or three miles. He thus got the marked Plant Protection security vehicle, which has a "jukebox" light-bar across the roof.

Nanney agreed, as head of investigations at the plant, that he cannot say that all tools, equipment, and other property that go out the gate in trucks have a proper material pass. A lot of Company trucks must go out the gate of one of the four plants and to and into that of another plant, and the Guards simply become accustomed to that and do not always check. Nanney said that, if he and Harth had not stopped it, this Marcus truck very likely would have gone out without being stopped. Nanney says that, if Hamilton and Peto had gone through the gate, as they might have, they would not have been discovered or suspected outside the plant because Marcus trucks are not uncommon in the area and carry no Inland markings.

There were two stainless steel plates (4' x 4' x 1/8") on the bed of the truck. Nanney asked Hamilton if he had authority to take them out of the plant, and Peto replied that a Foreman Mikula had given authority. Nanney had Hamilton and Peto go into the Gate House, and he asked Hamilton for Mikula's number. Nanney called and told Mikula he had two 11 Battery Mechanical employees in a Marcus truck trying to leave the plant with two stainless steel plates which they said they were taking to the Weld Shop in Plant 1. He asked Mikula if he had authorized that, and Mikula said he had not.

Mikula was an hourly supervisor, and Nanney thus asked him to get a salaried one, and he gave Supervisor Pigg's number. Nanney called that number, but Pigg was not in then. He spoke to Maintenance Planning Supervisor Wright. He told Wright all the above and said he had a problem since the employees were stealing. Wright said he would check to see if another supervisor might have given authority.

Nanney went out to the truck, looked under it, let down the tailgate, and says he could see the ends of six plates (2' x 4' x 1/8") under the bed liner. He said that substantiated the informer's account. He went inside the Gate House and questioned Hamilton and Peto about the six plates, and they said they knew nothing about them and had not known they were there. Nanney asked what they were going to do with the two plates on top of the liner, and Peto said they were making a toolbox for that truck and were taking the two plates to the Weld Shop in Plant 1 to have them bent and to the Craft Weld Training Shop there, where they had an appointment with a Supervisor Flores to have the plates welded.

Nanney contacted Flores later, and he said he knew Peto but was unaware he was coming to see him.

Nanney felt Hamilton and Peto were guilty of theft. He called Wright, who had no additional information. He drove the security vehicle, with Peto, to Plant Protection, and Hamilton drove there in the Marcus truck, with Harth.
They arrived at Plant Protection at about 10:40 or 10:45 a.m. Nanney called Wright again, but he had found no one who had authorized Hamilton and Peto to take out plates.
Nanney interviewed Peto first and separately. Peto gave his name, check number, job, department, and said he and Hamilton had loaded the two plates in the Marcus truck from the layout table in the middle of the Mechanical Shop at about 10:15 or 10:20 a.m. Peto then said he had no authority to take any plates out. Peto said he knew nothing about the six plates under the liner. Nanney says Peto then said nothing about a lid for the toolbox.
Nanney then interviewed Hamilton and received the same information, but Hamilton said they had loaded the two plates on the truck at about 10:00 a.m. Hamilton said they were going to Plant 1, but he was not sure where, but that Peto was. Hamilton said they were going to make a toolbox for the Marcus truck, but he, too, said nothing then about a lid for it. Hamilton said he knew nothing about the six plates under the liner.
Nanney had sent Harth to inspect the Marcus truck during his interviews of Peto and Hamilton. Harth returned and said he had found two, one-gallon cans of paint concealed behind the passenger seat of the Marcus truck. They were Sherwin-Williams, machine-gray, industrial, coating paint and appeared to Nanney to be identical to paint cans issued by the Company Storeroom. He called Sherwin-Williams, the Storeroom, and Wright to check on that and learned the two cans were of the type and code numbers of Inland paint cans. Hamilton and Peto said they knew nothing about the paint.
Nanney asked Wright to come to Plant Protection, and he did, just after noon. Wright spoke to Hamilton and Peto briefly and then said he would send them home for the balance of the turn until he could investigate this matter. Harth escorted them out of the plant at about 1:30 p.m.
An investigative meeting was held on November 21. Nanney was on vacation then, but he returned for the meeting. There were several Management representatives present, as were a Union representative, Hamilton and Peto, and Grievants Gordon and Young. Gordon and Young were there because they had worked in the Mechanical Shop on November 17.
Nanney says Gordon and Young said at that meeting that they had helped get, lay out, and cut material for the toolbox. All grievants said they were unaware of the six plates under the liner of the truck and of the paint behind the passenger seat.
At the end of that meeting, Manager Hussey said he would decide within five days what to do about this and in the interim Hamilton and Peto would be suspended. At that meeting Nanney did not say that he had an informer on this event. Hamilton and Peto later were suspended for five days, subject to discharge, effective November 23. On December 8 they were discharged.
Nanney says that on November 30 he called Section Manager Pigg and asked him to have the informer call him because he wanted to finish his report and to learn where the informer said he was when he saw the plates being loaded. Nanney says the informer called him that day and said Nanney had caught two of them but that two more were involved, and Nanney had not gotten them. Nanney says the informer said he observed Grievants Young and Gordon helping to load and hide the plates under the bed liner on November 17. Nanney says the informer said the truck was parked in the middle of the Shop, near the Fabrication area, where employees lay out and fabricate materials. Nanney said the informer said he had not called Pigg about the two other employees during the time from November 17 to 30, while Nanney had been on vacation, because he (informer) said he was not able to get in touch with Pigg. Nanney agreed that Pigg seemed to have no trouble getting in touch with the informer immediately on November 30.
Nanney told the Company Union Relations Department about Young and Gordon, saying they had been seen helping to load the plates.
On December 6 an investigative meeting was held regarding Young and Gordon. They said there that they had not helped in loading any stainless plate but had helped in getting materials, including stainless plates, to be cut. Manager Hussey then suspended Young and Gordon until he could decide what to do. At this investigative meeting Nanney did not tell anyone that he had information from an informer about Young and Gordon. Gordon and Young were suspended for five days, subject to discharge, effective December 7. On December 8 they were discharged.
Nanney says that after that meeting he had several conversations with the informer, trying to get him to come forward, identify himself, and testify to what he had seen. Nanney says that each time the informer was more nervous than he had been the prior time. Nanney says during the last conversation the informer

was very scared that his identity would come out. Nanney and Pigg said they would not disclose his name. Nanney says the informer was scared about physical harm and death to himself and his family. Nanney says the informer said he had heard of accusations of threats made to other employees in the department, and that everybody was trying to find out who the informer was. Nanney said the informer said he was scared because of rumors he had heard against informers. Nanney said that Wright and Pigg had told him that on a couple of occasions employees in the Shop were receiving harassing and threatening telephone calls. Wright did not say what the calls were about.

Nanney said that after these four grievants were suspended, but before Christmas, there was a meeting with Union Relations and Supervisor Mikula about these threats, attended by seven Company representatives and one 11 Battery bargaining unit employee named Hall. Hall repeated the threatening and annoying telephone calls he had been receiving. Nanney could not recall what Supervisor Mikula said there. Hall and someone said they were suspected of being the informer. Someone said the anonymous callers would say, "I'm going to get you," but Nanney could recall no more details. The callers did not say these persons were suspected of being the informer. They just felt that was the reason for the calls. No reasons were given in the calls. Hall and Mikula said the voices were not familiar. Nanney did not check to see if those people were feuding with neighbors, had political differences, or were in messy divorce situations. Nanney said, in reply to an outrageously leading question, that someone said a caller's voice said, "This is Inland Steel. Fuck you."

The result was that a tap was put on the Company telephone in the Shop, and the attendees at that meeting were told to do the same at their homes. The Union Relations people said they would call the Union Hall and tell the Union of the tap. Nanney said there were no more threatening calls after that, at least not to him.

Nanney says at one point he considered revealing the informer's identity, but that the informer was afraid, and Nanney did not want it on his conscience, if anything should happen to the informer. He would not reveal the informer's name on cross-examination at this hearing. Nanney has been in investigations for twenty-two years and says he has heard of no one's being murdered or hurt. He said he has testified against employees in theft cases over those years and has been threatened about six times, but no threats ever were carried out.

Security Officer Harth confirmed what Nanney had stated, to the extent that Harth was involved. Harth said, while standing inside the Gate House when Nanney walked out to the truck and opened the tailgate, he could see the ends of the plates under the liner.

Harth says he was told to search the truck. He did and, when he pulled the bench seat forward, he saw two cans of Sherwin-Williams paint in a concealed position. He said the cans had been pushed in so tightly behind the passenger backrest that they had left an imprint on and had cut a gash in the vinyl.

Eleven Battery Maintenance Planning Supervisor Wright said there were about 300 employees in the Department and 120 in Maintenance, with 86 Maintenance Mechanics, 7 Mechanic Welders, 7 Welders, and 24 Electricians. There are 8 salaried supervisors and 2 hourly supervisors.

Grievant Peto was a Welder at the Main Mechanical Shop, assigned on November 17 to weld a braze beam; Grievant Hamilton was a Mechanic assigned part-time to the Steam Team, which requires regular use of a vehicle. A three-quarter-ton truck had been on order for the Steam Team for about a year but had not come. This Marcus truck (less than one-half ton) was being used until the other should arrive. The Marcus truck had arrived on November 14.

Grievants Young and Gordon were Mechanics, assigned in the Fabrication area in the Main Shop on November 17.

Mikula was an hourly supervisor and had been there in that capacity for about five months before this incident. He supervised Peto, Gordon, and Young. Hamilton had a different supervisor.

Wright said when he finally got Mikula on November 17 the latter said he had no idea why Peto was going out the gate, saying he thought Peto was welding the braze beam.

Mikula, as an hourly supervisor, is prohibited by paragraph 13.78 of the Agreement from being called by either party to testify as a witness regarding any events involving reprimands or disciplines which occurred while he was assigned as a temporary foremen. Since he could not testify, Wright had him give a written statement. He did so, and it said Hamilton had come to him about 7:00 a.m. on November 17 and asked if he could have assistance from the Fabrication Shop to help make a toolbox for the Marcus truck. Mikula told Hamilton that should be no problem since the shop was in between jobs. Mikula walked out to the lunchroom and asked Young and Gordon if they would help Hamilton in that, and they agreed they would. No mention was made of the kind of material to be used. Mikula wrote that he did not assign Peto to this

because he was planning to line him up to weld the braze beam, and he later did so. Mikula did not supervise Hamilton but only gave him two employees to assist him in making the toolbox.
Wright and others went to Plant Protection where the Marcus truck then was and saw the two plates on the bed. Wright measured them and they were 1/2" x 4' x 4'. They lowered the tailgate and saw the plates under the liner. Wright said the two plates on the bed had been cut with a plasma torch. He said he learned later when he measured them back at the Shop that the six plates from under the liner had been sheared. Shearing gives a clean, straight edge, different from a cut by a plasma torch. The six plates from under the liner were 2' x 6'.
Wright said he did not know the identity of the informer.
Hamilton and Peto told Wright they knew nothing about the plates under the liner and had never seen the paint cans before. Wright then had Hamilton and Peto escorted out of the plant for leaving their work areas. Wright assumed Hamilton and Peto were trying to take out all eight plates and that the two 4' x 4' plates were on top of the liner because they would not fit under it. The Company does not make stainless steel, and Wright said the plates cost $1,100 when the Company bought them.
Wright said it was not common practice to use stainless steel to make a toolbox because it is five times more expensive than carbon steel. He said toolboxes would be made of carbon steel, wood, or TY-Bar plastic.
The Maintenance Section of 11 Battery has no shear, but 7 Blast Furnace Department does, and it shares the same building. Employees from 11 Battery had used 7 Blast Furnace's shear in the past, but it had been alleged they had damaged it and, therefore, 7 Blast Furnace had forbidden 11 Battery employees to use it. Wright said that shear is about twelve feet inside the dividing line in the building between 7 Blast Furnace and 11 Battery areas. There is supervision at 7 Blast Furnace only on days. Wright said he checked their work schedules and saw that Peto had worked the 3-11 turn on November 14 and Young had done so November 15, both as overtime holdovers. Wright said the 7 Blast Furnace shear sometimes is locked out and cannot be operated without getting the key from the 7 Blast Furnace Toolroom, which is not manned on the back turns. Wright was not aware if it was manned on the 3-11 turn on November 14 and Wright said stainless steel plates are locked on the second floor and that the 7 Blast Furnace shear is about twenty feet away on the ground floor. Wright said it would be unusual to find stainless steel at that shear because 7 Blast Furnace uses hardly any stainless.
Wright had area Maintenance Supervisor Bickerstaff check the 7 Blast Furnace shear area on November 17 to see if there were stainless tailings there. Bickerstaff checked the scrap box at the 7 Blast Furnace shear and said there were stainless strips (2" or 3" wide and 48" long) in it. His opinion was that those strips had been sheared very recently because they were on or nearly on the top of the scrap. Bickerstaff said he thought the scrap box had been dumped within a week or two before his checking, and he thought so because there was only a little scrap in it. He said that shear is used every day and that he never had seen stainless sheared on it. Wright went with Bickerstaff on this trip to the shear and said he knew the scrap box had been cleaned out one or two weeks before November 17 because he keeps an eye on it since 7 Blast Furnace takes better care of its equipment than 11 Battery does of its.
Wright noted that Plant Rule 132-n prohibits employees from leaving their work area without permission. He said it is applied in this Department. The permission need not be written. He has warned employees orally for violating that rule and has given a written warning for that offense within the last two years, and he gave an oral warning in the week before this incident. Wright said the Department had no great problem about this. There are exceptions to a strict application of the Rule, especially on back turns when there are Production supervisors but no Maintenance supervisors present. There were six supervisors assigned here on day turn of November 17.
Wright said employees must have a written Shop Order or a written Materials Pass to take things out, but in a "rush" case the authority could be oral. Such authority is required for inter-plant movements of materials. There is a regular, day-turn employee (Alverado) who drives a truck to make runs from plant to plant. Wright said Alverado could have done this transporting and that it was not common for Mechanics to take material from one plant to another.
Wright said there was no way to know how long the leased Marcus truck would be in the department. It was on a month-to-month lease. The larger, permanent truck had been ordered a year before this event. Wright noted that the toolbox being built here would not fit perfectly in the truck on order, since it would be bigger than the Marcus truck. Wright said Hamilton knew the Marcus truck was only temporary, because one day in the office he had seen a paper stating its cost.

Wright said carbon steel was available in the plate rack in the Main Machine Shop. If the right size were not in the rack, Alverado could have gotten the right plates or they could have been obtained from 7 Blast Furnace.
Wright speculated that there were private, personal uses for stainless steel outside the plant, such as for bumpers on trucks and wood-burning stoves. It is attractive for those uses for its anti-corrosive property. Wright said also that stainless is harder to work with. He agreed that its corrosion-resistant tendency would be a factor for a toolbox at a Coke Plant, but he said it would not be necessary, because even a carbon-steel toolbox, if painted, would last seven to ten years and that a stainless toolbox would outlast the truck. Wright said, moreover, that this toolbox could have been made in the Mechanical Shop, as has been done in the past. The material would be cut with a plasma torch, ground on a grinder, and welded. There might be need for use of a shear for some of the work, which would give a straighter edge, and which would not require grinding. This surely was not an emergency or high-priority task. Wright agreed, however, that the Department has gone to other sources for a lot of toolboxes, especially when the operation began. In those cases, however, a print or sketch was needed, along with a bill of materials, a work order, or a purchase order.
Wright had a measurement of the Marcus truck bed taken and then he made a sketch of it, and made a scale model of a toolbox in pieces of cardboard, matching them (scaled down) from the pieces of stainless plate he said he found at the layout table, having been cut there apparently by Gordon. They would be sufficient he said for the bottom (2 pieces), sides (2 pieces), ends (2 pieces), and top (1 piece). That would leave an "L"-shaped piece which, with one more cut, Wright said could be a top.
With that arrangement, Wright said he could see no reason for having to use the two plates Hamilton and Peto were taking out on the bed liner, since there would have been too much extra plate. If the L-shaped piece at the layout table were not used, it would be necessary to cut and use both plates on the liner. Wright said, if he were making a toolbox, the first thing he would do would be to measure the truck bed and make a sketch. He also would make the box part first, and not the lid, as Peto said he was doing. Wright said at the Step 3 hearing for Hamilton and Peto, that the latter said he would cut the two 4' x 4' plates into fourteen different pieces. Wright could not understand that, saying it made no sense to do that for a lid.
The witness said three or four employees could make a toolbox like this in about twelve elapsed hours, or one and one-half turns. Since grievants had other assignments that day, this would be fill-in work. Wright would not assign four employees to make such a toolbox. One Mechanic and one Welder would be sufficient.
Wright was asked by Nanney to check on the paint cans. He had Bickerstaff go to the Storeroom to check back a week or so. Bickerstaff had the Storeroom Supervisor check paint withdrawals charged to 11 Battery, back for two or three weeks and found three tickets charged to 11 Battery. Two were initialed by Hamilton, one for two cans of gray enamel signed out on November 4 and one for one can of black enamel signed out on November 8. Bickerstaff was shown the two cans signed out by a Carpenter, but he could not find where the can of black paint signed out by Hamilton went. He said the two cans found in the truck had the same kind of paint as that signed out by Hamilton, but he could not say the two cans found were the same cans as Hamilton had checked out. There is no code number to identify them can for can. Wright said someone also had asked Hamilton what had happened to the paint he signed out, and the other had said Hamilton said he used it on something but was not clear.
Wright said five employees, four of whom he named, had come to him after this November 17 incident, very upset because they had been harassed at work and called at home. They said their wives and children had received obscene telephone calls, and they believed they were a direct result of this event. They began about a week after Hamilton and Peto were suspended. One (Hall) had changed to an unlisted number. Wright said those employees thought they were thought of as the informer. All came to him from November 17 to the end of December, some more than once. Wright said Mikula had received such calls at work and at home, the voice saying, "I'm going to get you," and accusing him of being the informer. Wright said Hall had been accused of being the informer in those calls. Employee Signoni was harassed in the Shop, accused of being the informer, and suffered damage to his tool locker. Wright said employee Schrock was harassed in the Shop and received a lot of accusations that he was the informer. Wright said Schrock is worried. Wright said employee Milenke was harassed in the Shop and received obscene calls at his home, some answered by his daughter. None of the five employees gave names of the callers. They thought the calls were related to this event. Wright asked why they thought that, and they said they did not know.

The Union noted that Hamilton and Peto could not have done the harassing of the three employees on the job, since they were not at work then.
Wright said an obscene call had come to his home after November 17. He has a recorder on his telephone at home, and he told his wife to keep it on. He said his wife answered the telephone once and a voice said something in a low tone which she could not understand and finished with the word "pussy." Wright recieved no threatening calls, he thinks because his recorder always was on.
The witness said grievants were terminated for three reasons, each of which may result in discharge: (1) stealing (all four); (2) leaving their work area without authority (Hamilton and Peto); and (3) leaving the plant (Hamilton and Peto). All but Young were charged also with overall unsatisfactory work records.
Wright agreed all 120 Maintenance employees and the 7 Blast Furnace people would have access to this truck, which is parked (locked cab) overnight at the far west Mechanical lot.
Wright agreed that Young and Gordon were lined up by Foreman Mikula to fabricate this toolbox and also, he thinks, to clean a storage rack.
Wright admitted that Hamilton is not closely supervised on his Steam Teamwork, and that the general direction which the Company is trying to encourage employees to take is to exercise their own initiative and responsibility. Management seeks to have employees think, "Let's get it done," and not, "It's not my job."
Wright explained that craftsmen sometimes do "Government jobs," meaning work for the private benefit of another employee whose property has been broken and would need to be welded. He has seen a barbecue grill made of stainless steel in the department, as a "Government job."
Bickerstaff was asked by Wright to check about the Marcus truck and what might have come with it. He called the Marcus number and a woman checked with a Marcus Maintenance Manager, and she told Bickerstaff that that person had had the truck cleaned thoroughly before it was sent to the Company and that it had no paint cans or plates in it then. Bickerstaff said the Marcus truck appeared clean when he received it at 3:00 p.m. on November 14. It was parked and locked behind the Maintenance Office, and Bickerstaff took the key. He gave it to an employee (Kingsbury, permanently on the Steam Team) on November 15. Kingsbury parks the truck outside and locks it at the end of the day turn and brings Bickerstaff the key.
Maintenance and Equipment Technician for Craft Training Flores said his operation does work for other departments but must have authority to do so, except for an emergency. Flores said when welding stainless, it may be necessary to use a special welder for thicknesses under 1/8". He saw no reason why a toolbox could not be made at 11 Battery. He said he was not contacted by anyone from 11 Battery to weld for this toolbox. He knows Peto but had no appointment with him on November 17. Flores said it was not common for employees from other departments to ask his people to do some welding but that it does happen. They would call the supervisor of the other department.
Flores said his operation would give a Mechanic-Welder about forty hours of training on welding stainless, but that it would take much more training than that for an employee to be competent at that. The Apprentice Program for a Standard Welder affords two to three months of training in welding stainless.
Before proceeding to grievants' and the Union's account of these events, it is necessary to state and explain two motions made by the Company at the beginning of this arbitration hearing.
The first motion (written) recited in general much of the above information. It said Management relied in part for its suspension and discharge decisions on information from an employee informant, who had been working for over a year with Nanney on the theft problem at 11 Battery. It said that, since the termination of grievants, employees in the Department had been threatened and harassed by anonymous callers, so that the situation was extremely tense. It said the informant fears, if his identity were disclosed, his life and the lives of his family members would be put in serious jeopardy. It said Nanney and Pigg had pleaded with the informant to come forward, but he has refused to do so because of his legitimate fears, and that Nanney and Pigg cannot disclose his identity because they also believe disclosure would place his life in serious jeopardy. The motion recited that the Company could not utilize the Arbitrator's subpoena power here because, even if the informant's identity were disclosed, he could not be called by it as a witness to testify in this hearing because Article 7, Section 1 of the Agreement prohibits use by the Company of an employee as a witness in arbitration. Management argued it thus had done all in its power to try to persuade the informant to testify. It said that, although he would not agree to testify in an "open" forum, he had said to Company representatives that he would agree to meet with the Arbitrator in confidence and in private, without attendance or participation of Company or Union representatives or grievants, in which meeting the

Arbitrator could make a first-hand assessment of his credibility. The motion was, then, that the Arbitrator conduct a private and confidential interview with the informant either before or shortly after the hearing.
During oral introduction of, and argument on, the motion, the Company conceded the arbitral authority against its position, but it said there was some arbitral authority for the Arbitrator's arranging to have the informant present behind a screen and, with a device which would alter his voice to keep his identity secret, so that the parties could submit written questions to test his credibility. It said it would be satisfied with either of the two versions of this motion.
Management asserted it had adequate evidence to support its action against all four grievants even without the informer's testimony but said its case would be stronger with that testimony.
The Union objected vigorously to both arms of the Company motion. It said adoption of either would establish procedures totally contrary to the fairness demanded of these proceedings and would undermine the trust employees must have in arbitration if it is to be accepted as an effective, private dispute-resolution system.
The Union notes the Company's assertion that the informer's alleged statements are corroborated by its finding the plates and paint in the truck. That is not enough, says the Union, for all testimony corroborates something. This is said to be the worst kind of hearsay and it allegedly is not purified by its being corroborated by what the Company found. The Union stresses grievants' right to face and see their accuser, which is basic to fair play.
The Union cited a number of decisions in other collective bargaining relationships and several statements by eminent arbitrators tending against granting the Company motion, which it said was offensive.
The Company replied that it was surprised at the Union's being offended, arguing that nothing could be more fair in getting at the truth, which should be the parties' joint goal in arbitration. By not hearing the informer, the Company said the Arbitrator would be selling both the Company and Union short.
On the hearsay nature of the informer's alleged statements, the Company noted that arbitration does not react so rigidly as would a court, in that arbitration rather uniformly admits hearsay and then uses care in assessing the proper weight to be accorded it. Management argued that the companies in some of the arbitration decisions cited by the Union did not have the strong and compelling justification of threats against the informer that are said to be present here.
The Union could not believe the Company assertions of real fear of death. It said it was offended by that, too, insisting that the bargaining unit is not made up of murderers. It noted that employees have testified against others in the past, and no one has been killed. It says that the goal of this motion is a basic departure from ordinary proceedings and was an open-end invitation to all kinds of mischief.
The Arbitrator reserved decision on the motion until the conclusion of the Company's case in chief, at which time he denied it. The motion sought so extraordinary a procedure as to put a clear and enormously heavy burden on the movant. The reasons stated for denying the motion were that the Arbitrator had no magic wand to use in determining in a relatively short interview of the informer whether he were a pillar of truth or a pit of deception; that truth is to be pursued in arbitration, of course, but to the extent the parties have agreed. Here, as in paragraph 8.1 of the Agreement, they have agreed that an employee suspended for five days subject to discharge is to have a hearing if he requests one, and "At such hearing, facts and circumstances shall be disclosed to and by the parties." In much the same vein, paragraph 6.18, imposes similar obligations upon the parties, as follows:
6.18 "At all steps in the grievance procedure, and particularly at Step 3 and above, the grievant and the Union representative should materially expedite the solution to the complaint or grievance by disclosing to the Company representatives a full and detailed statement of the facts relied upon. In the same manner, Company representatives should disclose all the pertinent facts relied upon by the Company."
Those express provisions confirm also the signal importance, in getting at the truth, of an opportunity in hotly contested assertions of "fact" to engage in sharp, aggressive, and, even at times, combative cross-examination of the other party's witnesses. With rare exceptions, that can be done effectively only by the parties.
Indeed, the motion begged the question, in that it assumed that the informer was a font of truth, and he might have been, but the Arbitrator is not armed with any devices that could discern that on his own initiative in a relatively short meeting,
The result is that these cases have to be analyzed in light of whatever weight, if any, ultimately should be accorded to the unknown informer's hearsay statements.
At the close of its opening argument, the Company made a second motion. It was to exclude each grievant from the hearing room during the testimony of each of the other three grievants.

The Company argued that, since it was not seeking to exclude grievants from the entire hearing, there would be no denial of due process. It said there were glaring inconsistencies in the accounts of whom it was that said and did things and when they were said and done. The Company argued that, if grievants were allowed to listen to the testimony of the others, they would be enabled to learn each other's account and to synchronize their stories as they testified here. Management urged that granting its motion thus would be the only way effectively to test grievants' credibility.

The Union objected vigorously to this motion, urging that many of its reasons stated in resistance to the first motion applied here, as well. It said granting this motion would violate basic and fundamental fairness rights of grievants and of the Union.

The Arbitrator indicated tentative caution about this motion, and the Company then said it would withdraw it. In any event, the motion was denied.

The Union account is as follows.

Four Mechanical Maintenance Section employees at 11 Battery (one Welder, two Mechanics, and one Mechanic Welder), with many years in the Maintenance Section, testified that they have left their work areas and the plant without seeking permission of their foreman. If they were performing a maintenance task and needed parts, equipment, or tools which they did not have, they would use the Shop truck to go to Plant 1, 10" Mill, 14" Mill, Electric Furnace Scrapyard, Plant 3 Coke Plant, Main Storeroom at Plant 2, Plant 4, 80" Mill, and the Safety Center in Plant 1 without telling their supervisors. They said they had gone out for lunch. They were not disciplined. They said some of these events occurred on day turn. They said some supervisors appeared not to care whether or not employees sought permission from them in these cases. All were aware of the rule, and three said, if the supervisor were there when they were going out, they would ask permission. They agreed there was very little supervision on back turns and that some of their departures without permission had occurred on those turns.

Some of the witnesses said that, since the suspensions of these grievants, Supervision had told employees they were not to go out of the plant for lunches in Company trucks but that they could go out in their own cars.

Grievant Hamilton began with the Company in 1972. He is a Mechanic and a part-time member of the Steam Team, responsible for keeping the steam system in good order. As such, he is not closely supervised. The Steam Team has a truck assigned to it.

Hamilton said that on the early morning of November 17 he went to the lunchroom where employees Peto, Young, Gordon, and Bailey were sitting. Somebody said there was not much to do that day. Hamilton asked would they mind making a toolbox, and the others said "OK," but he would have to ask Foreman Mikula. Hamilton went to Mikula and said he understood there was not a lot for the Fabrication Crew to do and asked if he could, with Gordon and Young, make a toolbox for the Marcus truck. Nothing was said about the size of the box or how it would be made. Hamilton says he finished his talk with Mikula at about 7:00 a.m. He says he did not ask for a specific number of employees to do the toolbox, but asked only if the Fabrication Crew could help. Mikula said they could and came out of his office to the lunchroom and lined up Peto, Young, and Gordon to work on that. Hamilton says Mikula said, "Yeah, be all right. Go ahead." Peto, Young, and he went to measure the truck bed. Hamilton told Peto he wanted a two-sided box, one for tools and one for parts.

Hamilton then went about his steam duties. He returned to the Shop, and Peto asked him to drive to the Pre-Heat Mechanic Shop to get and bring back a welding machine, weighing about 100 pounds. Hamilton agreed the tailgate of his truck was opened to load that machine, but he says he saw no plates under the liner then. Hamilton got the welding machine and returned to steam work. He returned to the Shop at about 9:45 a.m. Peto asked if he would take him and some plates to Plant 1 to have the plates sheared and bent for the toolbox. Peto and he loaded two plates on the bed of the Marcus truck, lifting them in over the side and without lowering the tailgate.

Hamilton says he was not aware of paint in the truck. He drove with Peto to the South Gate, where they were stopped by Harth, as described above.

At the Plant Protection office Nanney asked Hamilton what he would say if Nanney were to tell him he had a witness who said he saw "them" load plates under the bed liner. Hamilton said all he was aware of were the two plates he and Peto had put on the liner. Nanney took Hamilton outside, lowered the tailgate, and asked him about the plates under the liner, and Hamilton said he knew nothing of them.

Hamilton admitted that he initialed the Stores Tickets exhibited by the Company for one can of black paint and two of gray paint, and he says he took them upstairs to the Pump Repair Area for future use.

Hamilton agreed the Marcus truck was a temporary one and that a permanent one had been ordered, but he did not know when it would arrive. He agreed the truck on order would be bigger than the less than one-half-ton Marcus truck and, therefore, that the proposed toolbox would not fit the permanent truck.
Hamilton agrees he never had any trouble with Mikula and could not explain why the latter would say he had not authorized Peto to work on this toolbox.
Hamilton agrees he did not ask for permission to take out the 4' x 4' plates, and he denied knowledge of the other six plates and the paint. He was aware of the rule against leaving his work area without permission and of the necessary procedure for removing property.
Hamilton says Peto, Young, and he took rough measurements of the truck, just after 7:00 a.m. They were not trying to be exact and did not lower the tailgate. Hamilton says no one saw him measure the truck, and he assumes Gordon was inside then, meaning not in the Fabrication area.
The Company notes that at Step 3 the Union said either Gordon, Young, or Hamilton had measured the truck. The Company suggested that Hamilton must have known of the plates under the liner and paint behind the passenger seat because, as he drove the truck over some unpaved roads, both must have rattled and jingled and signaled their presence.
The Union replied that the six plates under the liner were held fast in place and that Officer Harth had made it clear that the paint cans were forced too firmly in place to move and make any sound. Hamilton said he heard no rattle when he drove the truck that day.
Hamilton said that when Peto asked him to take plates to Plant 1 to have them sheared and bent, he backed the truck one-half way into the Shop, got out, and he and Peto put two plates on the truck bed, each lifting one plate over the side. He said they weigh forty or fifty pounds each. He said at that time Young was by the drill press, fifteen or twenty feet away, and Gordon was in the lunchroom. Hamilton drove with Peto, with the latter saying where they were going and why.
Hamilton denied that he ever bought stainless steel from the Company, but he agreed he had bought carbon steel in 1980 and had made a wood-burning stove from it. He has made a barbecue pit from stainless steel. He never has seen a toolbox made at the plant from stainless. Hamilton has a boat, but he said it is not painted gray. He says he never threatened anyone on the job and that he made no obscene telephone calls.
Grievant Peto began with the Company in 1975 and was a Welder in the Fabrication Shop in November of 1988. He says he was lined up by Mikula to work on the toolbox and to weld the braze beam that day. He was in the lunchroom in the early morning with Young and Gordon when Mikula came and told them to work with Hamilton on the toolbox. He left the lunchroom, and Young and Hamilton measured the truck. He says there was no thin plate in the rack and, therefore, Young and he got stainless plates and put them on the layout table.
Peto says he told Gordon the measurements, who wrote them on the plate. He could not remember the dimensions.
Peto asked Hamilton to get the torch from Plant 1 and, when it came, he helped set it up. Mikula came by and cautioned him about attending to the wear strips on the braze beam. He welded the beam until they began to warp. He then saw Hamilton and asked him to take him and two plates to Plant 1 to have them sheared and bent. He and Hamilton loaded two plates on the truck over the side. He saw no paint. They left the building and were stopped at the South Gate.
Peto says he never said he had an "appointment" with Flores, insisting he said only that he was going to get the plates worked on by Flores. He knows Flores from his time as Welder Apprentice, when he was trained at the Weld Shop by Flores.
Peto said the plates had to be bent on a "breaker" and that 11 Battery had none. There is one at 7 Blast Furnace, but 11 Battery employees were not allowed to use it. All the same was true of the necessity for a shear.
Peto said the top and lid of the toolbox he envisioned were not the same. Hamilton wanted a two-lid toolbox. The top would fit there, and the lid would be on top of it so that no water would get in. Thus, two frames were needed for each of the two lids, and the side pieces.
Peto said he could make the lid first and then the box.
Peto said he had gone on the truck to the Boiler-Weld Shop and to the Plant 4 Storeroom for parts in the past when he had pieces to be sheared and had gone out to eat, and in cases where a foreman had not said to do that. He was lined up only once on the task and, as such a trip would become necessary to finish his assignment, he would go to Plant 1, without fresh authority from his foreman and without a work order.
Peto said he made no threats or obscene telephone calls and had no knowledge of plates under the bed or of the paint.

On cross-examination, the Company had Peto draw how he would have made the lid and top of the toolbox. He said he would use eight pieces of long, thin plate for the top and six for the lid, and he was going to use the two-pieces on the truck bed for them. He never had made a toolbox like that before.
Peto said he had a rough estimate of the truck bed and intended to make the toolbox smaller. He did not know the size of the side pieces at the hearing. He said would have taken both plates on the truck bed to make the top and lid and, if any were left over, they would be left as scrap ends at the shear.
Peto says he told Gordon to cut on the layout table the one stainless plate brought over. Young went up to the rack, and Peto ran the crane. They lifted down a full sheet, 6' x 10', or 6' x 12'. Peto said Foreman Mikula came out to the lunchroom that morning and said they (Peto, Gordon, and Young) were to work with Hamilton on the toolbox.
Peto never had a reprimand or any trouble with Foreman Mikula, who denies he assigned Peto to this task, and Peto knows no reason for Mikula to lie about that.
After Mikula assigned them to the toolbox task, Peto went out with Young and Hamilton and made a rough measurement. He said he was not sure then whether the spare tire in the side of the truck bed would stay there or not.
He returned to the Shop and saw that all plates in the rack were thicker than 1/8" and it was all carbon steel. He did not go to the Storeroom but decided to use stainless. Young went upstairs and got a piece of stainless and Peto stayed on the floor to operate the crane. Peto told Gordon the dimensions of the toolbox, and Gordon wrote them on the plate. Hamilton then returned with the torch, and Young and Peto set it up. Peto did not watch Gordon cut the plate.
Hamilton then backed the truck in and he and Peto put the two 4' x 4' plates that Gordon had cut in the truck, sharing the lifting. That was about 9:45 a.m.
Peto says he and Hamilton arrived at the South Gate at about 10:00 a.m., but it could have been later.
Grievant Young began with the Company in 1976 and was a Mechanic at 11 Battery. He says he was lined up with Peto and Gordon by Foreman Mikula on November 17 to make this toolbox and to clean the area.
Young says Hamilton came to the lunchroom early in the morning and asked if those three could build a toolbox. They said that must be lined up with Mikula. He later came out and asked them if they would do that. They said, "No way," as a joke, and then said, "Of course."
Young looked in the Shop for materials, and Hamilton and Peto walked to the truck. The bed was measured. He does not recall that he did the measuring and does not remember who did. He looked in the plate rack, and there was no thin plate there. He went to the Toolroom and got Peto to operate the crane to pull one large plate onto the fab table. Young made only one lift, which could have held two plates, but he thinks not, since the chances of a plate slipping out are greater if two are lifted at once. He helped set up the torch, and Gordon checked it. Gordon needed a straight edge, and Young got a 1" x 2" piece of wood from a Carpenter and gave it to Gordon, who cut the plate. The torch does not make a nice, clean cut. Peto said he would try to have this stuff bent and sheared for the lids.
Hamilton then backed the truck into the middle of the Shop. Young did not see the truck loaded, being back at the drill press and the saw, with the truck in the middle of the Shop behind the plate rack from Young.
Young says he did not load any stainless plate on the truck and put no paint there and was not aware of either item.
Young stresses that as of the November 21 date of the investigation hearing for Hamilton and Peto, he was not accused of anything. It was three weeks later before he became aware of a charge against him.
Young says he never threatened anyone and made no obscene telephone calls.
He saw Hamilton back the truck into the Shop, but did not see anyone loading materials on it. He was not sure but thought he saw the truck leave, but he does know the large, east door was left open. After the truck left, there still was stainless left there, that is, some of the parts that Gordon had cut.
Grievant Gordon began with the Company in 1975 and was a Mill Mechanic in November of 1988. He says he was assigned on November 17 to measure the toolbox and clean the pipe rack. He was in the lunchroom with Peto and Young when Hamilton came in and asked if they could help him make a toolbox, and someone said he should ask Mikula. Hamilton and Mikula later came out and asked about their making a toolbox, and Young said in jest, "Not without a shop order." Mikula repeated his request, and they agreed, at which Mikula said, "Do it!"
Gordon looked and saw only 1/4" plate, and someone said they should use stainless, and Mikula said nothing at that.
Gordon went to the bathroom and then for coffee and, when he came back, a sheet was on the fab table. Peto gave the dimensions, and Gordon put them on the sheet.

Young had the torch and a wooden straight edge, and Gordon cut the stainless plate, and Mikula saw him doing so and said nothing.
Gordon did not see the truck come in but saw it there. He went to the lunchroom for lunch (ordinarily 10:00 a.m. to 10:30 a.m.). Gordon did not see the truck loaded and had nothing to do with that. He had no knowledge of stainless plates under the liner or of the paint.
He was at Hamilton's and Peto's investigation meeting on November 21, and nothing was said then about suspending Young and him. He became aware of that only on December 6.
Gordon says he never threatened anyone and never made any obscene telephone calls.
The Union noted that Gordon was suspended and discharged in part because of an alleged overall unsatisfactory work record. It then introduced its Exhibits 3 through 10, showing the Tops Program Certificates of Recognition for Gordon for pitching in and doing unusually good work stints in special cases and one for assisting in reviving a fellow employee who had become overcome by heat. The latter was about to be administered a chemical respirator instead of oxygen. Gordon quickly got a proper oxygen kit and assisted in reviving the employee. These ranged back to 1977.
The Company objected that, since paragraph 8.5 of the Agreement prohibits it from making use of personal records of previous discipline against the employee where it occurred five or more years before the date of the current event, the Union should be prohibited from going back more than five years to cite good employee conduct or, if that were not successful, that the effect of the Union's doing that should be held to allow the Company to go back over five years to bring up poor employee behavior.
There was a break, and the Union then agreed that the Company's "waiver" argument was the view that had been taken by the parties when the five-year rule was negotiated, and it agreed the Company thus could go back over five years because the Union had done so. The Company thus was free to cite and rely on bad past behavior by Gordon, even though more than five years before November 17, 1988.
The Company agreed Union Exhibits 3 through 10 were commendable. It then introduced a reprimand for absenteeism, a one-day suspension for absenteeism, a reprimand for not reporting off and absenteeism, a loss of one turn for leaving early and absenteeism, and a loss of the balance of a turn for insubordination, involving Gordon, all occurring over five years before November 17, 1988. It then noted that, while Gordon was being given awards for good performance, he was also being disciplined for poor performance.
Gordon rode to work with Young on November 17. He went to the lunchroom, and there were several employees there, including Peto, Young, and Bailey. Hamilton came in later. There was a general conversation, including the statement that there was not much to do then. Hamilton said, since they had the time, would they help with a toolbox for the truck. Someone said he should ask Mikula. Mikula had assigned Gordon to clean the rack, and he would need permission to deal with the toolbox.
Hamilton went to Mikula's office and both then came out, and Mikula said they should help Hamilton build a toolbox. Someone said, "Fuck, no, not until he got a shop order." Everybody laughed at that, and Mikula asked again, and they agreed. Mikula said, "Go for it!"
Gordon went for coffee and then to the plate rack, looking for mild (low-carbon) steel, which they would use if available in thin gauges. Only 1/4" carbon was in the rack. Gordon agrees the Storeroom has 1/8" carbon steel, but he did not go there, feeling it was a waste of time. Alverado, with his truck, was not in the Shop then.
Gordon says Young, Peto, and he thus decided to use stainless, and he thinks he went to Mikula and told him there was no 1/8" carbon plate and, therefore, that they would use stainless, and he says Mikula did not respond. Gordon told Young and Peto they would use stainless.
Gordon has made toolboxes before but not out of stainless. He did not measure the truck. Peto stated the dimensions and the number of plates to him, and he wrote the dimensions on the plate. He does not recall the number of pieces he was supposed to cut. Gordon says he cut only one sheet, into several pieces. He says he was not going to build this toolbox but was only cutting the parts. He thinks the one big piece was 4' x 10' or 6' x 12'. It took him forty-five or sixty minutes to cut the pieces, and he finished about 9:30 or 9:45 a.m. He says Peto and Young brought the steel to the fab table.
Gordon said he was in the lunchroom until about 10:45 a.m. and thus did not see the truck pull out.
Welder Aguilar said he had done welding for employees from other areas and was not always lined up on it by his foreman and did not always have a work order. These tasks included welding lawnmower blades, a fender for a mini-bike, propellers for boats, anchors, and fish-fry grills. All those were "Government jobs." He would not do "Government jobs" that would take two or three eight-hour turns but, if the person were willing to leave the item, so that he could work on it from time to time, he would do so as he had free time.

If a supervisor saw him cutting stainless, he would ask about it, and the witness would say it was a "Government job," and the supervisor would walk away.
Welder Bailey was lined up and working on bulkheads on November 17 on the northwest bench in the Main Shop. Some of his necessary materials were not ready, and he thus came to the layout table and heard Hamilton speak about this toolbox for the truck, and Mikula said, "Whatever it takes. Go for it!"
Bailey says he left the lunchroom at about 9:50 or 9:55 a.m. and he heard the east door open. He turned and saw a small, tan pickup truck with a Marcus sign being backed in by Hamilton. He then saw Hamilton and Peto go behind the plate rack and carry stainless steel plates, one at a time and sharing the effort, to and lifting them over the right side of the truck. He said they loaded nothing else. Hamilton then drove out at about 10:00 a.m., with Peto.
Bailey agrees he wears a hood when actually welding, but he said it does not cover his ears, so he still could hear, and he noted he lifts the hood in order to change rods.
Training Supervisor Flores was recalled by the Company on rebuttal and said, if he were making a good toolbox, he first would make a sketch. That would minimize welding, which would reduce costs and save time, and would allow bending, in order to eliminate seams. He would have itemized all necessary pieces and the needed stock. The sketch should include details of bending, radii, tangent points, and neutrals. Flores said six dimensions would be required for the wrapper, and a total of about eighteen or twenty dimensions, in all.
Flores said also that it made no sense to him for Peto and Hamilton to take only two pieces (their account) to the Weld Shop at Plant 1, since that did not seem to him to be enough material.
The witness said the night before he testified he went to Plant Protection where the pieces cut by Gordon had been kept. He rearranged them as in putting a jigsaw puzzle together. Aside from narrow strips, he said they made one big sheet of 12 gauge (slightly under 1/2"), measuring 6' x 12'.
Floras said he examined also the six 2' x 4' plates from under the bed liner and the two on top of it, and he concluded, judging from markings on the edges, that five of the six were cut from the same sheet. He said the sixth plate matched one of the 4' x 4' sheets, and reasoned that it and one of the 4' x 4' plates came from the same sheet. Putting the five pieces together, he said they came from a sheet 6' x 10' or 6' x 12'
Floras said also that numbers stamped on some plates were in sequence with numbers on others. There also were perfect matches he said from shear drag marks on the bottom of the plate on several sheets. Floras said also that he saw a cambar in some of the plates that seemed to him to match, indicating that they had come from the same large plate, whose cambar had been caused by blocking on which it had been stored. Floras said he had worked so long with this kind of material that he could match the plates from their cutting marks, so as to fit them into one large piece. The Company did not present Floras as an "expert" witness on these matters.
Flores explained that after the second day of testimony, he went to examine the plates and their numbers and cutting marks, from which he drew his conclusions.
The Union objected to Management's bringing in such testimony in rebuttal, near the end of the third day of testimony, and it argued that Management had withheld evidence, again in violation of paragraph 8.1 of the Agreement. It cautioned that it would look very carefully at the plates during the plant visit, which was scheduled and took place after that day's testimony. The Union also questioned Company evidence on chain-of-custody of these plates.
Flores said that in a stack of plates only the top sheet ordinarily would be stamped, two or three times, with numbers, and that the lower ones in the stack are not stamped.
The witness said it was impossible to make this toolbox from dimensions held only in his head.
Maintenance Manager Pigg was called on rebuttal. He said he attended the November 21 investigative meeting on Hamilton and Peto, at which Gordon and Young also testified. He said minutes of that meeting had been taken by a Kelly Girl in shorthand, were transcribed, and given to Manager Hussey. They were presented here as Company Exhibit 28. Pigg said he reviewed those minutes. He says the "November 20" date at the top of the first page is wrong and should be "November 21," and that some persons' initials were wrong, as with Steve Nelson. He thought those minutes were reasonably accurate, otherwise.
The Company's purpose on this was to establish one leg of what it says were inconsistencies in grievants' statements between that meeting and later times, including this hearing, which it said would destroy their credibility. The Company spokesman said those inconsistencies provided an additional reason for grievants' discharges.
The Union objected on the ground that this proceeding was then near the end of its third day of testimony, and the Company only then was introducing minutes it never had mentioned it had before. Moreover, the

Union felt outraged that so late in this arbitration proceeding the Company would be asserting another reason for the discharges, not mentioned before at any stage of the suspension-period hearings, the grievance proceedings, or this arbitration hearing. That, too, was said to be another Company violation of the last sentence of paragraph 8.1 of the Agreement.

The Company then withdrew its statement that the alleged inconsistencies were an additional ground for the discharges, and it said they were introduced more to attack grievants' credibility.

Following the testimony the party representatives and the Arbitrator visited the plant and saw the Shop and its surroundings and equipment, including the 7 Blast Furnace shear, heard the east door opening and closing, saw the South Gate House and area, examined the Marcus truck, its bed liner, and the paint cans and their position behind the passenger side where they were squeezed in. The Arbitrator sat on the passenger side with the cans in place behind him, in order to test whether presence of the cans likely would have been felt against his back so as to suggest to an ordinary reasonable person that some foreign object was back there. (It did not.) Detailed examination was made also of all the plates so as to see whether or not Flores's conclusions about cutting marks, numbers, and camber on them would be confirmed.

The formal charges against all four grievants included violation of Rule 132-1 "Stealing." That was the sole charge against Young, but there were additional charges against the other three grievants. In its motion at the beginning of the hearing and in closing argument, the Company said several times that the common charge was "attempted theft."

Management said it need not prove these charges "beyond a reasonable doubt," and that circumstantial evidence is sufficient to make out a charge of theft, citing arbitration decisions in this and other bargaining relationships. Against that standard, the Company says the evidence here is sufficient to establish that all grievants were guilty of theft of the two stainless plates on the bed liner, the six under it, and the two cans of paint.

The Company stresses Nanney's testimony that the informer called him and said the employees previously mentioned were in the process of sliding stainless plates under the bed liner of the truck and probably would be leaving soon. The informer sounded hurried. It argues that its finding of six plates under the bed liner substantiates the informer's alleged message. The paint cans were identified as from Company stock, and Hamilton had signed out two cans of that color two weeks before.

The Company notes also that Hamilton and Peto did not have authority to be away from their work areas nor to take materials out of the plant.

Management says the Union's explanation for grievants' taking material from the plant and their statements about the toolbox are not sufficiently reasonable to be believed. Details of that general position are that at the South Gate House Peto said he was taking the two plates to Plant 1 for a lid; that no one had known before of a toolbox made of stainless steel, a much more costly material than carbon steel; that the alleged toolbox was being made for a temporary leased truck, while a larger, permanent truck was on order, which this toolbox would not fit; that, even though no 1/8" carbon plates might have been in the plate rack, that would not justify use of stainless, because carbon plates could have been obtained from the Storeroom; that all grievants admitted this was not a rush or emergency task; that, although there was some Union testimony that Mikula saw Gordon and Young with stainless, all admitted that Mikula did not tell them to use stainless; that Gordon's testimony that he told Mikula he was going to use stainless is not credible because: (1) at the November 21 meeting it was said that grievants talked it over with Mikula, but no other grievant corroborated him on that; (2) at this hearing Gordon said he told Mikula of that, which Mikula denied in his written statement; (3) Young said at Step 3 that he decided to use stainless; and (4) there was enough stainless from the pieces cut by Gordon and, therefore, no need to use any additional pieces, that is, the two plates on top of the bed liner.

The Company stresses Wright's testimony that the large L-shaped piece was enough to make the toolbox, so that there was no reason to use the two other pieces Hamilton and Peto were attempting to take out.

The Company thinks it ludicrous that the plates were being taken to Plant 1 even though the dimensions of the toolbox were not yet decided and that it would be ridiculous to make a lid before the size of the box was settled.

Management says that Peto's testimony that he had all necessary dimensions in his head is unbelievable because even he said that at least ten measurements would be necessary, while Flores said that up to twenty would be more accurate. It argues that even the most skilled craftsmen could not remember all those necessary dimensions.

The Company says that at the Step 3 hearing Peto said it had not yet been decided whether or not the spare tire in the truck bed would remain there or would be taken out and that that is why he told Gordon to cut two sizes. Without the box size being settled first, the Company says the lid size could not be determined. Management is sure that a Welder as experienced as Peto would have made a sketch first.
The Company says that at this arbitration hearing Peto and Young said that Young got one sheet of stainless from the Toolroom and that Peto operated the crane for that lift. The Company says at Step 3 the Union position said that Peto got the stainless sheet and operated the crane, with no Union claim that Young had any part in that.
The Company says that at the Step 3 meeting for Young and Gordon, Union witnesses said Young went to the Toolroom and got two pieces and asked the Attendant to lower them to the floor, with no mention of Peto, and that Young said Peto was not even in the area then.
Moreover, the Company insists that the evidence shows that at least two large sheets and one large, L-shaped piece were left over, indicating that there was plenty of material left to make the lid and top without the 4' x 4' plates on top of the liner.
The Company says that at the November 21 meeting for Hamilton and Peto, four days after this event, Young said he measured the truck bed but at Step 3 and arbitration he changed that and said he had not taken those measurements.
Management said that Peto contradicted himself when he said at Step 3 that he would make the top by cutting each 4' x 4' into six pieces, for a total of twelve, which he allegedly changed at this hearing to fourteen pieces, to get the flanges.
The Company stresses that Mikula's written statement denies that he assigned Peto to this toolbox task.
Management notes that Hamilton did not deny that he signed out two cans of gray paint, which evidence shows is of the same kind as that found in the truck. That, plus the Storeroom tickets, and Hamilton's and Management's ability to trace the fate of the paint Hamilton signed out raises a strong implication that the paint cans behind the seat of the truck were those Hamilton had signed for two weeks earlier.
Management says the weight of all direct and circumstantial evidence convicts all four grievants. There is evidence that the Marcus truck when it arrived at the Company was clean and contained no plates or paint. The single most important fact on this is said to be that Hamilton admitted he lowered the tailgate of the truck in order to load the torch, and yet he did not see the plates under the liner. The Company stresses the testimony of Nanney and Harth that when the plates were discovered by them they were sticking out 1/4" from the bed, and that the stack of six plates was 1" or 2" high, so that they could be seen easily when the tailgate was down. Indeed, Harth said he could see them from inside the Gate House.
The Union calculated that 1/8" times 6 would equal 3/4".
Management notes that Hamilton's testimony shows that he had control and custody of the Marcus truck almost constantly from 8:00 to 10:25 a.m. on November 21, so that it would have been very nearly impossible for anyone else to put six plates under the liner.
The Company stresses that at this arbitration hearing Hamilton and Peto both said they had loaded the two places on top of the bed at 9:45 a.m., and yet it says Peto said at another time that was done at 9:47 a.m.
Management says Gordon testified that he was in the lunchroom with Bailey when Hamilton backed the truck into the Shop, and yet Bailey said here that he saw the truck pull in while he was in the Shop.
The Company notes Bailey's saying he could hear the east door open and close, but it asserts the plant visit showed that the door's movement was not sufficiently loud to be heard. (That was not the Arbitrator's impression.)
The Company surmises that Hamilton and Peto got in the truck just before 10:00 a.m. and left and then came back again and loaded all plates at 10:07 a.m. and left again, without Bailey's noticing the second departure. The Company says that scenario is more likely when the times are considered. It says it is not disputed that Hamilton and Peto got to the South Gate at 10:25 a.m. Company and Union witnesses agree it takes no more than fifteen minutes to drive from this Shop to the South Gate, and Hamilton and Peto said they drove directly there. The Company says there is no explanation for it to take them thirty or forty minutes to make that run if they left before 10:00 a.m., but that leaving at 10:07 a.m. would get them to the South Gate ac 10:25 a.m., fifteen or seventeen minutes later.
The Company said the informer's alleged message was corroborated by its finding six plates under the liner, and it argues that arbitrators have recognized hearsay and given it weight when it was corroborated by nonhearsay evidence.
The Company argues that the Union's suggested theory of a "set-up" here is fatally flawed because it would be difficult to find a set-up when it was Peto's spontaneous request to go to Plant 1 that brought all this on.

If there were a set-up, the Company wonders how the one who did it would have known that Hamilton and Peto were going to go to Plant 1.
As to information in or not in the suspension-period meeting, the Company says this relationship has not treated that meeting as a full, adversary confrontation, as the USX relationship seems to have done.
The Union characterizes the case as a doughnut, with a big hole in the middle, the hole being where the evidence should be that would prove the alleged theft. It says the only Company evidence of theft is that of the mystery informer.
The Company witness says the informer is one of good moral character, but the Union asks how it or the Arbitrator is to know that. The Company answer is because Nanney spoke to him once face to face and a few times by telephone and because Pigg looked at his personnel file and allegedly found nothing that would show bad faith. It is said that is not sufficient evidence to have the informer fired if it were all negative, and it wonders how it could be sufficient to get these four grievants fired just because it is not negative.
The Company said the informer's statement was corroborated by its catching Hamilton and Peto red-handed with the six plates under the bed liner. The Union asks how the informer's two or three "wild goose chases" could show corroboration of anything.
The Company said the informer was reliable, but the Union cannot see any reliability in a statement that a group of employees were standing around a truck.
The Union asks how it is to know that the informer is not carrying a grudge for some wrong, real or imagined; how it is to know he is not paranoid and acting out some fantasy; or how it is to be known that the informer, himself is not involved in some theft scheme and might be using this occasion to divert suspicion from himself. Without knowing his identity and, therefore, unable to discern his character the Union says it cannot know any of that, as the Arbitrator too, cannot. Without knowing that, the Union argues the unidentified informer's hearsay statements cannot support grievants' discharges.
It is stressed that the Company never has said where the informer was standing when he allegedly saw the loading of the truck. It must not know. The Union says it thus cannot know whether he was in position to see much of anything or, indeed, whether his eyesight is any good, whether he might have to wear glasses to see accurately, and, if so, whether he had them on then. Union witness Bailey stated where he was when he did not see grievants do anything like that, but the informer did not and, therefore, there was no way to test his allegations.
The Union insists, therefore, that the hearsay testimony of the unidentified informer should be ignored and given no weight. Without those hearsay statements, the Union says the Company has nothing but circumstantial evidence against Hamilton and Peto and no evidence at all against Young and Gordon. The Union suggests it is odd that Young and Gordon were not suspended at the hearing for Hamilton and Peto and that it was not until several weeks later that they were accused.
The Union notes Company arguments of inconsistencies in statements of Young and Gordon. One was the number of sheets that were brought down from the Storeroom. The testimony in the arbitration hearing was that one sheet was brought down. The Union says the only relevant statement in Company Exhibit 28 is that by Peto, saying he brought down "1 set stainless." It is said that does not contradict the arbitration testimony.
The Company says there were contradictions on the one that measured the truck. Young said, in answer to a question as to what he did, "took measurements." The Union says that may mean that Young did that or that someone in the group did so. The Union asks why anyone should care, since it would not be cause even for a reprimand not to recall whether one held a tape measure. It says that is not independent establishment of anything important here. Union says most people do not remember all mundane details of any events.
As to alleged inconsistencies about work done for the toolbox, the Union notes that this is not a charge of poor work performance in making this toolbox. This is a charge of theft.
The Company suggests that it is totally unreasonable that a toolbox for this truck would be made of stainless, and that the only reason it was selected was that it would be more valuable when stolen. Company arguments would suggest that expensive stainless is scarce, closely guarded, and used only rarely.
To the contrary, the Union says that Wright testified that barbecue grills had been made for Management from stainless and admitted that stainless was used more than Company arguments would allow. The Union notes that the plant visit disclosed stainless plates in the rack, allegedly tagged after this incident, as well as pieces lying around after the event. Moreover, two doors for the Shop, made of stainless, were leaning

against a wall, as were sheets of stainless in the open and accessible to anyone in 7 Blast Furnace area.
Finally, on this point, the Union stresses that Gordon and Young said here that Foreman Mikula authorized use of stainless for this toolbox and saw stainless being cut for it without objection. It noted, indeed, that at page 4 of Company Exhibit 28, introduced by the Company to exploit alleged inconsistencies between grievants' statements, Foreman Mikula agreed that he saw these employees cutting stainless for this toolbox.
The Company says grievants' method of making this toolbox was incredible. Much of that came from Flores's testimony, but the Union notes that Flores said Peto was one of the Company's better Welders. The Union says Flores's point does not show that Peto's plan was unworkable but only that his would be better for a quality job. Again, the Union stresses this is not a poor work-performance case, and that Wright agreed here that the pieces could be assembled to make a toolbox and that the two plates on the truck bed could be used for the lid if cut to size.
Finally, on this point, the Union argues that the overall credibility of Flores's opinions was put in serious doubt upon the plant visit's disclosing that his testimony about numbers on plates and matching them from cutting marks and camber collapsed. The Union suggests that, if Hamilton and Peto had doubts about measurements when they got to Plant 1, they could have measured the truck which they had with them and then called back to the Shop to get the toolbox measurements from Gordon.
Getting to the physical evidence, the Union notes that Stores tickets cannot identify any individual can of paint, but can identify only color. It says those two cans could have been picked up by any employee. The Company investigation of this went back only two or three weeks, and the Union surmises, with the volume of gray paint used in this department, that a longer search would have disclosed gray paint withdrawn by many other employees.
As to the six plates found under the bed liner, the Union insists it cannot be tied to grievants or to anyone. It says Flores's "forensic" scientific testimony was not supported by observation at the plant visit, as Flores admitted then.
The evidence, from the Company, indeed, (Nanney) was that the six plates were wedged securely under the liner, and the Union says, therefore, they would not move and rattle as the truck was driven.
The Union argues that circumstantial evidence of theft, in order to convict in arbitration, must lead to no conclusion other than guilt. It is said not to be sufficient if it allows another reasonable conclusion consistent with innocence.
The Union says there is simply no evidence of theft by Young and, since there was no other charge against him, his grievance must be sustained.
As to Gordon, although he was charged with theft and an overall unsatisfactory work record, absent the theft, the Union urges that the Company probably would not have acted against him. The Union then stresses that his unsatisfactory record disclosed only absenteeism and one suspension for the balance of the turn for insubordination many years ago. It notes there were also many more commendations in his record for outstanding work.
The unsatisfactory work in the files of Hamilton also were absenteeism and one balance-of-turn for insubordination, with Peto having two reprimands for absenteeism and one for insubordination. None of those offenses were related in any way to theft and, without this theft charge, the Union says there would be no basis for current discharges.
The same must be said, argues the Union, of the charge of leaving the work area. It is said the Company cannot allow a rule to be neglected by lack of enforcement for sometime and then suddenly enforce it. It is argued that all witnesses seem to have agreed that for some years at 11 Battery the rule actually applied was, "If you need it, go get it," so that these craftsmen went about their work without seeing foremen before going for tools and parts, even through the gate to other plants of the Harbor Works. The trend, as Wright testified, was to encourage employee initiative. Employees commonly left the plant to go and get lunches, as well, some of which were eaten by foremen.
The Union argues that the governing command of paragraph 8.1 to disclose the facts and circumstances is of such crucial importance to successful operation of these grievance and arbitration proceedings in five-day suspension and discharge cases that Management's failure to abide by it fully is, of itself, sufficient ground for the Arbitrator to grant these grievances, since it would not identify the informer. It cites arbitration decisions for the view that that provision gives the discharged employee the right to have all major items of information against him disclosed. Those decisions say that failure to disclose identity of an informer violates that contractual requirement.

Another alternative for that Company failure, argues the Union, would be to give the alleged hearsay statements of the unidentified informer no weight at all. Without those statements, the Union says there is only weak, circumstantial cases against Hamilton and Peto and no case at all against Young and Gordon.
As to the Company's inconsistency arguments, the Union says Management is putting undue weight on its desire for very specific details, and that it is not natural for people to recall whether an event happened at 10:45 or 10:47 a.m.
The Company replies that, if 8.1 operates so inexorably as the Union argues, then it should bear against the Union, too, and that it violated that requirement when it denied the Company the opportunity to question Gordon and Young when it chose not to call those two sequestered witnesses at the Step 3 hearing of Hamilton and Peto.
As to Nanney's and Pigg's interviewing of the unidentified informer and Pigg's going over his record to see, somehow, whether he was reliable, the Union urges that no matter how implacable a foe of theft they might be, they have not been established here as the fact-finders by agreement of these parties. The Arbitrator has been agreed upon for that role, and not Nanney or Pigg, and without disclosure of the identity of the informer to the Union, the Arbitrator cannot perform his assigned role because the Union has been deprived of the background information it would need to assess and to argue that the informer is not trustworthy.
FINDINGS
Brooding over this entire problem has been the matter of the alleged statements of the unidentified informer, which statements were put in the grievance proceedings and before this arbitration hearing by the second- and sometimes third- hand hearsay testimony of Security Chief Nanney.
The Union takes at least two positions respecting that. The first and more severe is that Management's refusal to disclose at the suspension-period hearing that an unidentified informer even existed and had played a part in starting this whole affair was such a significant violation of the Company's disclosure duty stated in the last sentence of paragraph 8.1 as to require that all four grievances be sustained, out of hand and without additional arguments or consideration.
The second Union position is that the refusal to disclose existence of the alleged, unidentified informer at the suspension-period hearing and the Company's refusal to identify the informer at Step 3 and arbitration, after his existence had become known, made it impossible for the Union to do the essential checking into his reputation for truth and veracity, so as to frustrate its discharging its representational duties on grievants' behalf and, therefore, that, if the grievances are not to be sustained automatically, then all hearsay supposedly supplied by the unidentified informer should be ignored.
Without such hearsay, the Union argues that there is no case at all against Grievants Gordon and Young, so that their grievances must be sustained and, without that hearsay, the Union urges that the cases against Grievants Hamilton and Peto are reduced to nothing but the physical evidence of the plates and paint in the truck stopped at the South Gate, which it says grievants have explained satisfactorily, so that their grievances, too, must be sustained.
It will be unnecessary here to employ the severe remedy of sustaining these grievances automatically because of Management's use, undisclosed at grievants' suspension-period hearings, of an informer's hearsay statements and its refusal to disclose his identity in the grievance proceedings and in arbitration.
The Company alleged in closing that Gordon and Young were aware at their suspension-period hearing that there was an informer. There was no evidence to support that.
This is not to say that there may not be circumstances in other disputes where that extreme remedy would be warranted or demanded, but that in the present circumstances it would appear more practical to accept the once- and sometimes twice-removed hearsay statements alleged by the informer, by way of Security Chief Nanney, and to evaluate them for what they reasonably may be taken as establishing.
In doing so, it is necessary to point out that the Company is right in arguing that the arbitration process, including this one, rather routinely accepts hearsay and then assesses the weight to be given it.
But there is a significant difference between admission and use, if any, of ordinary hearsay evidence and the unique problem presented here. That is, even with ordinary hearsay, admitted, weighed, and perhaps sometimes relied upon in some arbitrations, that would have no bearing on resolution of this peculiar problem.
In general, hearsay ordinarily presents witness "A" telling the trier (orally or by documents) what he says "B" said to him about a matter heard or seen by "B," to prove the truth of the fact asserted. Discussion about admitting or not admitting such a statement by "A" is light years removed from this situation.
Here, witness "A," Security Chief Nanney, is not presenting to this arbitration proceeding what he says "B" told him. Here, there is no "B," at least not identified as such or, indeed, identified at all. There is only

Nanney's saying what he says a mysterious, unidentified informer said to him. That is a far cry from considerations that arise out of the fear of relying upon, or caution in admitting, hearsay statements. Hearsay statements by a known human being are one thing. Reliance upon hearsay statements by an unknown person frustrates any and all attempts by a conscientious Union representative seeking to find out whether or not an informer is a person to be trusted. Thus, this is not just a situation of grievants' not being able to face their accuser and to have him subjected to searching cross-examination.

For all those reasons and also because of the Arbitrator's serious discomfort in being part of a proceeding that is less than patently fair, the alleged statements (rank hearsay) of the unidentified informer presented here by Nanney will be accorded no weight, not because of slavish adherence to some universal rule of law, but because the Arbitrator believes they are entitled to none in a proceeding established by these parties as their private dispute-resolution system that simply must continue to be, and to appear to be, fundamentally fair in its operation in resolution of vastly important and serious problems, such as these discharges. Should faith in the basic fairness of this arbitration procedure be lost, bargaining unit employees and Management personnel no longer would accept its actions and ultimate decisions as final and binding, so that they would lose the force of law. If that should happen, this arbitration process would become worthless, and the parties would be required to resort to the enormously greater expense and delay of the law, from which they withdrew quite deliberately decades ago, or they would be relegated to the law of force, in the streets.

But, says the Company, what was it to do? It had a serious theft problem in the Department, and a person came along and volunteered to help bring it to a stop by informing on those who were committing it. Nanney says he and Pigg tried earnestly to convince the unidentified informer to come forward, but he would not, pleading an allegedly genuine fear for his and his family's physical safety and, indeed, lives, should his identity become known. Nanney says he and Pigg believe that, too.

Some of the evidence of threatening, annoying, and obscene telephone calls and of harassment of employees at work was subject to much the same infirmity as was the situation of Nanney's saying what he said the unidentified informer had said to him. That is, much of the testimony of Nanney and Wright on this subject was about what "someone" said about annoying or obscene telephone calls to his home, or that "someone" said anonymous callers said. "I'm going to get you," or "someone" said, "This is Inland Steel, fuck you." Nanney said the unidentified informer said he was scared because he had heard (rumors) from others of accusations of threats made to other employees. Wright and Pigg said to Nanney that they had heard of threats to employees by telephone and harassment in the Shop.

Some of the hearsay and even the nonhearsay testimony (Wright) dealt with annoying and obscene telephone calls and not with threats. Wright said he got no threatening calls. Wright's testimony was the only nonhearsay evidence on these points.

Hamilton and Peto, of course, could not have been the ones harassing employees at work for they were not at work after November 17, and that can be said also of Gordon and Young, after December 6.

When all Company testimony on this point is examined carefully, it is seen that nearly all of it was more hearsay, some dealing with other unidentified persons who allegedly were called, or that "someone" was called, or that "someone" said others were. Moreover, much of it dealt with annoying or obscene telephone calls.

This is said not to discount how unsettling that can be, but to point out that there was hardly any nonhearsay testimony about real threats against named persons who had received them and, aside from Wright, none of the testimony was by the person who received the calls.

There was a residue of probably reliable testimony, even though hearsay, of threats to other employees, although there was none to say that the unidentified informer received annoying, obscene, or threatening calls. Accordingly, that there may have been an atmosphere of suspicion and forboding and a sense by some that they were being threatened is clear enough. It cannot be concluded, however, that any such sense was so reasonably strong in its operation on the unidentified informer as to justify his refusal to have his identity known. That he did not want his name revealed is obvious, but that could have stemmed in some part at least from other emotional sources. The critical point is that there is no evidence, not even hearsay, that the unidentified informer ever was threatened by anybody. Indeed, Nanney said that the unidentified informer told him he had not been threatened.

The Company says it put a tap on the telephone in the Shop, made that known to the Union, and that there were no more threatening calls on that telephone, at least none to Nanney. That would support its argued implication that, once word of a tap was out, whoever had been making the calls backed off, probably from fear of detection. The upshot of all this is, however, that the unidentified informer's concern about being identified made him refuse to identify himself and to come forward and state directly and in person what he

says he saw. That surely was not the Company's fault. It did nothing to cause that problem, and though it tried, it could not solve it.
That still is not sufficient, however, to approve a make-shift effort to "cure" this problem, which "cure" would have created more problems for the continued fundamental fairness of operation of these grievance and arbitration proceedings than could be accepted.
Even if the unidentified informer had come forward, however, it is less than clear what could have been done to get his statements into this record because, as the Company pointed out in its motion for the Arbitrator to conduct a confidential interview with him, the Company could not subpoena or call him, an employee from the bargaining unit, as a witness in arbitration, because of the prohibition of Article 7, Section 1-a of the Agreement. If the unidentified informer had agreed to be named, it is probable that his statements would have been presented by the Company in some form of written affidavit, and the parties then would have argued about what weight should be accorded to such written statements.
The problems surrounding this matter are unfortunate, at least, and to be regretted and condemned. They put the Company in an untenable position. They cannot be tolerated in any grievance and arbitration proceeding that wishes to survive. The Union expresses offense at the unidentified informer's suggestion that its members are thugs and murderers, and there is nothing even to suggest that the Union had any part in these threats.
But, the Harbor Works is in a way a small-sized town, and thus likely has its share of fools and psychopaths among both men and Management. Absent evidence, not easy to come by, of identity of those who made the threats, so they could be severely disciplined for that, if they were bargaining unit employees, the arbitration process now is powerless to stop that in this situation. Even so, however, it cannot abide the substitution offered here to make up for the Company's understandable inability to present the kind of reliable and persuasive evidence essential to proceedings in which employment is on the line.
Accordingly, without the unidentified informer's statements and with no other evidence connecting Gordon and Young with these plates and paint, there is no basis on which to conclude by a preponderance of the evidence that they were guilty of "stealing" or "attempted theft." Indeed, since the rank hearsay of the unidentified informer is the only ground on which to connect Gordon and Young to these events, it could not be found that they stole or attempted to do so, even giving full weight to the rank hearsay of the unidentified informer, since even a very embracing attitude toward admission and reliance on hearsay would say that no conclusion in arbitration should be based entirely on hearsay, with nothing else to support it. They were not charged with leaving their work area.
Thus, the grievances of Gordon and Young will be sustained.
Management argues, however, that it caught Hamilton and Peto "red-handed" trying to take the plates and paint out of the plant.
The Union replies that grievants have satisfactorily explained where they were going and why, so satisfactorily, it is said, that the suggestion of attempted theft no longer reasonably could be indulged.
The Company meets that argument head on. It sees the entire toolbox scenario here as only a ruse, developed by all four grievants to coat with apparent legitimacy a criminal conspiracy to steal these plates and paint. The Company says also that many of the details brought forward by grievants, individually and collectively, about how, when, where, and why, they were making this toolbox, and what it would be made of and why, are downright ridiculous, so patently so that their only defense must fail and, after that defensive failure, there would be no alternative for the Arbitrator but to accept the Company charge of stealing.
They are weighty and difficult arguments to deal with, since there is something to nearly every one of them, and no resolution is so clear as to be without some uncertainty. The Arbitrator must do the best he can with the materials at hand, however.
First, while it is possible that grievants' toolbox statements are only a pretext, the evidence as a whole would not support such a conclusion.
All grievants stated their positions on the toolbox, immediately upon being stopped and questioned. It is not an account that is impossible or improbable on its face.
Management cannot accept grievants' making a toolbox for a truck out of the very much more expensive stainless steel. It alleged that material was relatively scarce, very closely guarded, and simply not used for such trivial purposes.
The Union thought that ridiculous. Its witnesses told of much more common use of stainless at the plant for many rather ordinary purposes, and the plant visit disclosed that as the better supported of the two opposing views on this matter.

It is true that Hamilton suggested the toolbox, but he had the truck, and his initiating the request is not a sufficiently guilty act, of itself, as to support anything more than suspicion, and suspicion will not do.
Finally, the evidence from both parties shows that Foreman Mikula lined up at least two and possibly three grievants on this toolbox task early that morning, at a time of somewhat reduced activity in the Shop. The clincher is that evidence from both parties agrees also that Foreman Mikula saw some grievants cutting stainless plate for this project and thus was aware they were using stainless and he did not object.
Foreman Mikula, too, might have been in a somewhat ambiguous position here, as an hourly Supervisor, but, whatever his posture, there is nothing to suggest that he was part of whatever illegal or improper activity Management might suspect grievants to have been engaged in.
The Company's argument of inconsistencies in grievants' statements is perhaps its strongest point, for there are such inconsistencies. Some may be put aside immediately, however, for they would have very fundamental conclusions depend upon one grievant's saying something happened at 10:45 a.m., as opposed to another's saying it took place at 10:47 a.m. Fact finding on disputed evidence in matters such as this cannot be made to swing on such unnatural and mechanical precision of time estimations.
But there are more significant differences, such as who it was that measured the truck bed, whether one or two stainless plates were obtained from the Toolroom, who it was that operated the crane, and what time it was when Hamilton and Peto left the Shop. Although more significant, those differences are not so incongruous as to justify a finding of attempted theft.
Even more serious are the Company's arguments that what grievants said they were doing and the way they were doing it were so highly improbable as to undercut all else they said. For example, the Company wonders how grievants, as skilled and experienced craftsmen. could have expected to make a decent toolbox with fourteen, sixteen, or twenty dimensions in their heads, without a preliminary sketch; why Peto would take the two plates to the shear at Plant 1 for a lid before deciding on the size of the box part. There were others, but they were answered sufficiently, so that resolution of them would be no more than a testimonial standoff in a case of this nature. Greater certainty that grievants' explanations really were absurd would be required before it could be concluded that their accounts were a pretext for attempted theft of the materials. That could not be found here.
The Company relied heavily on testimony by Flores, saying that numbers on the plates, shear markings on their cut edges, and camber showed they were cut from pieces different from what grievants had said. Examination of all that at the plant visit, however, failed to support Flores's conclusions, as he admitted.
Accordingly, when all the dust has settled, it must be concluded that, even as to Hamilton and Peto, the evidence as a whole does not support a conclusion by a preponderance that they were guilty of "stealing" or "attempted theft." Hamilton and Peto did leave their work areas (not the plant) and attempted to take materials (two plates) out of the plant. Both offenses were somewhat explained, however, by testimony, largely Union but including some Company corroboration, that such events occur without this level of reaction. There is nothing to suggest that, without the strong Company suspicion of attempted theft, this incident would have erupted to suspension and discharge status.
Consequently, the grievances will be sustained, and grievants shall be reinstated to their employment relationship with full seniority intact, and they shall be made whole for all earnings and other contractual benefits (including Profit Sharing) lost by reason of their improper suspensions and discharges.

AWARD

The grievances are sustained, and grievants shall be reinstated to their employment relationship with full seniority intact, and they shall be made whole for all earnings and other contractual benefits (including Profit Sharing) lost by reason of their improper suspensions and discharges.

/s/ Clare B. McDermott
Clare B. McDermott
Arbitrator