Award No. 832
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 32-T-2
Appeal No. 1443
Terry A. Bethel, Arbitrator
September 10, 1990
OPINION AND AWARD
Introduction
The hearing in this case was held in East Chicago, Indiana on July 23, 1990. Following a full day of testimony, the parties reconvened on July 25 for final arguments. Each party filed a prehearing brief. Grievant was present for the hearing and testified in his own behalf.
Appearances
For the Company
Robert Cayia, Section Manager
R. Vela, Section Manager, Union Relations
J. Sepiol, Equipment Technology and Control Manager
F. Wright, Maintenance Planner, Mobile Maintenance
F. Scrbacic, Staff Coordinator
K. Pokrajac. Specialist, Grievance Information
For the Union
Mike Mezo, President Local 1010
Jim Robinson, Arbitration Coordinator
S. Ketchum, Grievant
R. Flahardy, Griever
D. Lutes, Secty. Griev. Proc.
T. Hargrove, Griever
S. Wagner, Griever
Background
Although there is some dispute about relevant facts, there is no significant disagreement about what happened to grievant and why he filed the underlying grievance. In 1984, the company and union agreed to a document titled "Mutual Agreement . . . concerning Craft Administrative Guidelines" (CAG). As testified to by union president Mezo, this document was in reaction to national agreements entered into between the USWA and the SCCC in 1979. Specific provisions of the CAG will be discussed below.
In 1987, the union and company agreed to a document entitled "Memorandum of Understanding concerning the Shortage of Journeyman Electricians." This document, referred to at the hearing as the "Mutual Agreement," was intended to address the company's shortage of qualified journeyman electricians and to provide a short term solution which, to some extent, circumvented the ordinary apprenticeship program.
In pertinent part, the mutual agreement allowed the company to hire electricians who were already qualified electricians and to assign them temporarily to the mobile maintenance department. The employees were to be slotted in as Motor Inspector "Starts" and were to remain on probation for a period of 1040 hours. After that time, they were to be given a promotional test to determine if they could progress to the rate of Standard. The mutual agreement then provides
If an employee fails to pass the promotional test to the standard level, he shall be given counselling and one opportunity to retake that promotional test. Failure to pass the retest shall result in the employee's removal from the craft program and the Mobile Maintenance Services Department. . . .
The mutual agreement was effective January 15, 1987.
On July 8, 1987, the parties agreed to the following two paragraphs as a part of an agreement that dealt with several other issues not directly relevant to this case:
5. The mutual agreement regarding the Shortage of Journeyman Electricians, dated January 15, 1987, shall be expanded to allow the company to hire temporary electricians through the VMI-III level.
6. These understandings shall remain in effect until December 31, 1987.

As had been the case with the mutual agreement itself, this amendment (which the parties call the "addendum") was intended to allow the company, to a limited extent, to hire outside the ordinary apprenticeship program.

The regular apprenticeship program entails completion of seven on the job training periods of 1040 hours each, or a period of approximately three and one-half years. In the typical case, an employee would enter the program as a VMI-VII and progress through the levels to VMI-I and then to journeyman. The addendum allowed the company to hire at the VMI-III level as a way obtaining employees who were obviously farther along in training and ability than new apprentices. This would have the effect both of adding employees with increased skill levels and also of obtaining additional journeymen in a shorter period of time than under the full apprenticeship program.

Following the addendum, the company determined that it would seek employees for the program who had previous training and experience. It developed guidelines to assist in implementation of the addendum. Those specific guidelines were discussed at the hearing, but are not in dispute in this case. Consistent with the guidelines, the company employed grievant on January 4, 1988, and, taking into account his previous training and experience and his performance on a slotting exam, assigned him to the VMI-III level.

The company claims that it has used so-called step tests as a way of qualifying employees to move from one level to another at least for the last twenty years. In fact, the promotional exam referred to in the mutual agreement itself is an example of such a step test. In accordance with that practice, the company administers the exam after the employee has completed 1040 hours at the appropriate level. If the employee passes the test, he is promoted to the next higher level. If he fails, he is given counseling and an opportunity to retake the exam. If he passes the second test, he is promoted to the next level. If he fails the retest, however, he is disqualified and removed from the apprenticeship program.

The company asserts that grievant and similarly situated employees were not required to take the classroom portion of the apprenticeship program because they had already received comparable training elsewhere, a fact ascertained by the company before it hired them in the first place. In the company's view, then, all that was required of them was completion of the various on the job training steps (e.g., VMI-III to VMI-II. VMI-II to VMI-I, etc.) including, of course, successful completion of the step tests in order to move from one level to another.

On August 16, 1988, grievant took the step test to move from VMI-III to VMI-II. He failed. He was counseled by maintenance supervisor Frank Wright On September 21, 1988 and retook the exam on November 3, 1988. This time he passed the test and was moved to VMI-II. Subsequently, on June 1, 1989, he took the step test for promotion to VMI-I and failed it. As had occurred with his previous promotional exam, grievant received counseling from Frank Wright. He was retested on July 25 and again failed the exam. On August 21, the company notified grievant that he had been disqualified from the program. The company Craft Committee upheld that decision and so notified grievant on September 1, 1989. Grievant filed his grievance on September 11, 1989. Following the parties' inability to settle the matter, the grievance was reduced to writing on September 28, 1989.

The grievance alleges simply that grievant was unjustly removed from the electrical apprentice program. The union advances several arguments in support of this contention. All of the union's substantive arguments call for interpretation of the CAG. First, the union claims that the company had an obligation, under section V of the CAG, to insure that grievant had on-the-job and classroom training appropriate to the examination administered him. Section V reads as follows:

No apprentice shall, as a condition for normal progression and satisfactory completion of the Apprenticeship Training Program for a particular craft, be required to successfully complete Trade Knowledge Questionnaires or Representative Performance Assignments for which the apprentice has not received the craft-related on-the-job and classroom training.

As noted earlier, the company offered no formal classroom training to grievant or to other similarly situated employees, since they had received such training prior to their employment by the company.

In addition, the union points to section IV, D of the CAG, which provides as follows:

If an apprentice fails to successfully complete one or more Basic Knowledge Questionnaires, Trade Knowledge Assignments or Representative Performance Assignments, the apprentice will be granted Non-Credit hours equal to 20% of the credit hours for the unit of instruction involved, for remedial training purposes. Such remedial training will commence as soon as practicable after the performance review and, upon its completion, the apprentice will be retested. An apprentice who fails to successfully complete a retest may be dropped from the apprenticeship training program.

Grievant failed the initial step test from VMI-II to VMI-I. Although he was retested, he did not receive remedial training as specified in section IV,D. Rather, in accordance with the company's procedure on step tests, he was counseled by his supervisor and given training manuals to study. A principal issue in this case, then, is whether the protections set forth in section IV, D and section V of the CAG applied to the step test administered to grievant.

Timeliness

At the outset, the company argues that the union's grievance is untimely. As noted, the union claims both that the training grievant received prior to his first VMI-II to VMI-I step test was insufficient. Moreover, the union claims that grievant received improper remedial training following his failure of the first test. Grievant's 1040 hour training period at the VMI-II level began in November 1988, after his successful completion of the step test from VMI-III to VMI-II. He first took the step test for VMI-I on June 1, 1989. Following his failure of that test, he received counseling (but no other structured retraining) on July 13, 1989. He took the test for the second time on July 25 and learned of his failure on August 21. Grievant filed his grievance on September 11, 1989, having been informed of his removal from the program 11 days earlier. In the company's view, grievant waited much too long to complain.

The company points out that it had informed grievant of the training he would receive and of the disqualification procedures that would apply to him when he entered the program in January 1988. Company Exhibit 13 is a document entitled Testing Policy and Rules Governing The Vocational Motor Inspector Training Program. The document, which the company also furnished to the union, states clearly that employees will undergo periodic step tests, that they will receiving counseling as a form of remediation if they fail, and that they will be eliminated from the program after a second failure. If grievant objected to those procedures, the company claims, he should have filed his grievance at the time of notification. Moreover, the company asserts that grievant made no complaint about the form of remediation he received after his failure of the VMI-I step test. Since grievant now claims that the counseling was insufficient remediation, the company urges that he should have filed his grievance at the time the counseling occurred.

I understand the company's argument and I believe that it makes a plausible claim. Nevertheless, I think grievant's real complaint has to do with his removal from the program and that it was therefore appropriate for him to wait until after that occurred to file a grievance. Grievant does claim now that his training was improper. He also asserts that the remediation offered him violated the CAG. Nevertheless, those claims are not made in the abstract. Grievant's real complaint is not that he was insufficiently trained and therefore knows less than he otherwise would. Rather, his claim is that the company's failure to train him disadvantaged him in a particular way. That is, he asserts that the company's failure to train him disadvantaged him because it led to his removal from the apprenticeship program. Prior to that event, he could not know that his allegedly improper training would affect him at all.

Moreover, despite the position the company now takes, had grievant complained about his training early on, the company might well have said claimed that his grievance was premature. Reasonable minds, after all, might disagree about what is sufficient training and what isn't. No one could know, the company might well have argued, whether the training program was sufficient until it was put to the test.

In any event, for grievant the training was not merely a quest for knowledge. Rather, it was the means to an end. That does not mean that he could have ignored all aspects of his apprenticeship experience and filed a complaint only after disqualification from the program. But under these circumstances, I don't think the company can fairly characterize grievant as lying in the weeds. He could not know whether the training was sufficient for qualification purposes until after he failed the exam and was eliminated from the program. In my view, then, the disqualification was the event that triggered the dispute. His grievance was, therefore, filed within the appropriate time limit.

Discussion

This case does not yield an easy solution. As is not uncommon in litigated cases, there is no obvious answer either in the testimony or in the various documents presented by the parties. I understand the union's concern that grievant could not be examined over material that had not been a part of his training and I also have sympathy for its assertion that apprentice employees receive proper remediation. And I believe the parties intended the CAG to address both of these concerns. I am unable to conclude, however, that the company violated the agreements between the parties when it administered the VMI-II to VMI-I step test in this case, and subsequently disqualified grievant when he failed the retest.

Interestingly, the union does not assert that the company is unable to administer a step test. There is, in fact, no mention of step tests (or promotional examinations) in the CAG. A casual reader of the document would believe, then, that the only tests allowed are Basic Knowledge Questionnaires (BKQ's), Trade Knowledge

Questionnaires (TKQ's), and Representative Performance Assignments (RPA's). Each of these examination forms is defined in the CAG itself.

The company, of course, points to paragraph 2 of the letter implementing the CAG, which reads as follows: "Except where limited by this agreement and the agreed to Guidelines as set forth in Attachment A [which are the craft administrative guidelines], all craft administration policies and procedures will continue to be in effect." The company agues that it had a long standing practice of administering promotional step tests, a procedure that had been applied to hundreds of employees in apprenticeship programs, and that this language allowed it to continue that practice.

In my view, the language the parties agreed to does not, of itself, make it clear that the company had the right to administer step tests. I realize that the company had used those tests in the past and also that the CAG implementation letter allowed the continuation of some previous practices and policies. The letter, however, was not a blank check to the company. It could continue only those policies that were not "limited" by the CAG. Clearly, the CAG is silent about step tests. It is not, however, silent about testing and one might well argue that the testing regiment negotiated into the CAG was intended to be exclusive. There apparently had been some concern with the type and content of tests administered to apprentices. Moreover, the CAG creates three different types of tests that are to be administered at different times in an apprentice's experience and that examine him over various aspects of his training. In short, the CAG on its face appears to provide a comprehensive testing scheme and it does not reveal an obvious need for a promotional step test.

This reading, however, fails to take account of what the parties have actually done, which is, of course, one way of getting at what they intended the negotiated language to mean. Despite what the CAG might be read to mean, the parties have not abandoned the use of step tests. Indeed, even the union does not assert that the company cannot give such tests. Rather, it argues that the procedures of the CAG, in particular, sections IV,D and V, apply to such tests. The company, on the other hand, claims not only that step tests are allowed, despite the existence of the CAG, but also that the counseling and disqualification procedures that accompany them are permitted, notwithstanding the CAG.

As noted, the company asserts, without significant dispute from the union, that it has a practice of using step tests that extends back twenty years. That evidence is relevant to a determination of whether there was, in fact, a previous practice or policy as those terms are used in the implementation letter to the CAG. It is not, however, particularly relevant to what I think of as a principal issue in the case -- that is, whether the use of a step test is consistent with the CAG and, therefore, not limited by the CAG. If the use of such tests is consistent with the CAG, then the company has proved the requisite previous practice or policy and its continued use of the step test would not violate the Craft Administrative Guidelines. For purposes of determining consistency, however, I am more concerned with what the company has done with step tests since the implementation of the CAG. The evidence of practice here is not as overwhelming but is, in my view, sufficient.

The Craft Administrative Guidelines were effective in October 1984. There were not, however, many apprentices employed under them prior to 1987 because of economic conditions affecting the steel industry. Mr. Cayia did say in final argument that hundreds of employees had taken step tests in that time period, but I understood him to really mean that hundreds had taken such tests over the previous twenty years, a misstatement that he corrected in his response to the union's argument. It does appear, however, that at least some apprentices hired after October 1984 were subjected to step tests. The union, however, claims that it has grieved at least those instances when the step test and its resulting disqualification procedure has disadvantaged an employee.

The union introduced Union Exhibits 6 through 10 in response to the company's claim that the union was estopped to contest its practice of administering step tests, a claim that is closely related to the question of whether the company can establish a pattern of that activity. Each exhibit represents a grievance of an employee who was disqualified from the apprenticeship program following the second failure of a step test. Union Exhibit 6 concerns the grievance of J. Cardenas who failed the promotional retest from VMI-II to VMI-I, the same test at issue here. He did not grieve the fact that the company administered a step test. Indeed, the union concedes that it is not contesting the company's right to use such tests, notwithstanding the fact that the CAG does not refer to them. Rather, the union asserts that if step tests are to be given, the CAG procedures apply to them. In particular, the union claims that the remedial training provisions of section IV, D should apply.

The union did not actually raise those concerns, however, in the Cardenas grievance. It did claim that the disqualification was inconsistent with the CAG and it asserted that grievant did not receive proper remedial

training. But the grievance did not allege that Cardenas should have been afforded non-credit hours equal to 20% of the unit of instruction, as required by the CAG. Rather, the claim was that he had insufficient manuals and that his co-workers were not helpful. It seems clear, then, that the primary attack in Union Exhibit 6 was not that the use of a step test and the ordinary disqualification procedures that accompany it was improper. Rather, the claim was that the company failed to follow those step test procedures. The union did not contend that those procedures should not have applied at all or that the CAG section IV,D procedures were appropriate.

Union Exhibit 7 is another grievance from the same employee, this one protesting what was apparently a later removal from the apprenticeship program. The principal claim in this grievance was disparate treatment. It is true that the third step minutes assert that grievant received improper remedial training and that counseling (the form of remediation used for step tests) was insufficient, the same contention advanced by the union in the instant case. Nevertheless, this claim was made in the third step for the first time, in a meeting that occurred in January 1990, after the filing of the grievance in this case. It does not, then, represent an attack on the company's step test practices as they existed before their application to the grievant in the instant case.

Union Exhibit 8 also represents a claim of disparate treatment. It, too, was filed after the grievance at issue here. Moreover, it does not cite the applicability of section IV,D of the CAG. Union Exhibit 9 is similar to Exhibit 8. Union Exhibit 10 alleges that the grievant in that case should have received "additional training to help him pass the step test." The grievance, however, does not cite the applicability of sections IV, D or V. The third step minutes do recite that counseling is an insufficient form of remediation but, like Exhibit 7, those minutes were not prepared until after the instant grievance had been filed. Thus, exhibit 10 is not evidence that the union had grieved step test counseling and disqualification procedures before this grievance was filed.

In my view, then, the union exhibits do little to demonstrate that the union had mounted an attack on the company's step test, counseling, and disqualification procedures prior to the time it filed this grievance. I must say, however, that from the company's side, there is little evidence that it had used those procedures to any significant extent between the effective date of the CAG and the instant grievance. Clearly, it had used the procedures on the grievants in the cases represented by union exhibits 6 through 10. But the evidence of a widespread pattern, complete with union recognition of the practice, is not as significant as the company would have liked. In any event, there was no other documentary evidence from the company about the extent to which the disputed step test procedures had been used after the effective date of the CAG.

There is, however, some other evidence that the parties continued to recognize the existence of the company's step test practices, notwithstanding their negotiation of the CAG. As I have noted earlier, the parties executed a Mutual Agreement in January 1987, which was amended significantly in July of the same year. The amendment itself is important for reasons I will discuss below, having to do with the company's right to hire apprentices through the VMI-III level. I also note, however, that the agreement settled at least some of the grievances represented by union exhibits 6 through 10. One requirement of that settlement was that the affected employees pass the VMI-III step test. This, clearly, is recognition by both parties that step tests existed alongside the tests described in the CAG.

The union, of course, says that it doesn't contest the company's right to give step tests. Obviously, it could hardly claim otherwise, since it filed no grievances over the fact that step tests were given and it recognized their existence in the grievance settlement contained in the addendum to the Mutual Agreement. The union asserts, however, that this concession about the right to give step tests does not prejudice its position in this arbitration. Its primary claim, it says, is not that such tests are forbidden but that, if given, they must conform to the procedures of CAG sections IV,D and V.

I am not able to accept this contention. As noted, the union was obviously aware at the time it agreed to the CAG that the company administered step tests to apprentice employees. Moreover, it has not contested the company's right to continue that practice, despite language in the CAG that might have supported such a claim. I can only conclude, then, that the parties did not intend the CAG to discontinue the practice of promotional step tests. Having agreed that step tests can continue, however, I think the union is also stuck with the practices that accompany the step tests -- that is, with counseling as the form of remediation and with the disqualification procedures.

The CAG is a specific document. Section IV,D, for example, unambiguously provides for remedial training when employees fail BKQ's, TKQ's or RPA's. The CAG identifies those tests by name and provides definitions for them. It says nothing about step tests. Since the parties were clearly aware that step tests existed at the time they agreed to the CAG, and, indeed, since it appears to have been their intent to have

them continue, then the obvious inference is that they would have included them in the CAG if they had intended it to apply. As written, however, section IV,D of the CAG on its face covers only three specific types of tests.

As I have said, one might have read the CAG to mean that no other type of test was to exist, but that is not what has happened. Presumably, then, the parties omitted mention of the step test because they did not intend the same procedures to apply to it. In any event, I can hardly read the specific language of section IV, D and section V to encompass another type of test, well known to the parties, that is not mentioned there.<FN 1>

I also think the existence of the addendum to the mutual agreement supports the same result. The mutual agreement itself did not encompass employees like grievant. That document applied only to journeymen. Under the mutual agreement, they could be hired as starts and then, after 1040 hours, tested to see if they could progress to the rate of standard. The agreement provided that, should they fail the step test to standard, they were to be counseled and then retested. Failing the retest would result in disqualification. This, of course, is the procedure the company had used before the CAG and, as I have found, the procedure the parties recognized the company would continue to use after the CAG.

Unlike the Mutual Agreement itself, the addendum does not specify procedures in detail. It says only (in relevant part) that the mutual agreement "shall be expanded to allow the company to hire temporary electricians through the VMI-III level." It was this document, of course, that led to the grievant's employment with the company.

The union asserts that the addendum has limited effect. It claims its sole purpose was to allow the company to hire apprentices through the VMI-III level. Once hired, however, the employees are apprentices and, as such, their training is regulated by the CAG. The company, of course, does not contest the union's claim that the employees hired under the addendum are apprentices. But it advances a number of arguments about why it nevertheless had the right to administer a step test to grievant, to use counseling as a form of remediation, and to disqualify him after he failed the retest.

The most obvious argument, of course, is the one I detail above. That is, that despite the existence of the comprehensive testing scheme under the CAG, the parties have apparently agreed that the company can continue to administer step tests. Furthermore, because such tests are not identified in the CAG, the CAG remediation and disqualification procedures do not apply. In addition to that argument, the company has a plausible claim based on the addendum itself. As noted, the Mutual Agreement sets out in detail the step test procedure, including counseling and disqualification procedures. The company argues that the parties intended that the same procedures would be followed to advance apprentices hired under the addendum. That is, that such apprentices would advance from one level to the next higher level by taking step tests. Moreover, the company says the addendum means that apprentices hired under its provisions would receive counseling if they failed a test and be disqualified if they failed a retest.

There is no way to know, of course, exactly what the parties intended. They may have meant simply that the company had the authority to hire at various apprentice levels, as the union contends. In my view, it is also reasonable to read the addendum more broadly, as the company urges is appropriate. Moreover, I think the language chosen by the parties is of some importance here. That is, they did not say that the Mutual Agreement would be "amended" to allow the hiring of certain apprentices. Use of the word "amend" might be taken to mean that merely that another type of hiring is being authorized.

The parties, however, chose to say that the Mutual Agreement would be "expanded." I don't mean to push the significance of this word choice too far, but the fact is that the words the parties chose are all I have to work with and it is my responsibility to decide what they mean. Use of the word "expanded" can be read to mean that the procedures detailed in the Mutual Agreement would be enlarged to encompass more, and different, types of employees. Under this reading, then, the parties recognized that the same step testing procedure used in the Mutual Agreement would be applied to apprentices hired under the addendum. Whether this distinction between "amend" and "expand" is of significance or not, it is at least clear that the company's reading of the addendum is reasonable. Moreover, given the past practice of using step tests and the parties' apparent recognition that they would continue, I find the company's interpretation more likely to have been intended by the parties than the reading proffered by the union.

I realize that the union argues it would have been unnecessary for the parties to detail this step test procedure in the mutual agreement if, as the company contends, it was already recognized practice. I think there are two responses to that argument. First, the company's argument that the mutual agreement and the addendum allow step testing and counseling does not necessarily depend on a conclusion that such procedures are consistent with the CAG. That is, the company could argue that whether step testing

procedures are allowed by the CAG or not, the mutual agreement and the addendum specifically provide for step testing as a result of the negotiations leading to 1987 agreements. This position, obviously, is an alternative argument to the company's claim that step testing is consistent with the CAG.

The second response, in effect, turns the union's argument around. That is, the union says that if the parties believed that the step testing procedures at issue here were consistent with the CAG, there would have been no reason for them to include them in the Mutual Agreement. Their inclusion, then, demonstrates that, absent specific agreement to the contrary, the CAG applies to all tests given by the company. And, of course, the union denies that the addendum includes the step testing procedure outlined in the Mutual Agreement itself.

It may be, however, that the parties included the step testing procedure in the Mutual Agreement, not to provide for an exception, but rather to make it clear that the "ordinary" step test process would apply to this unusual method of hiring journeymen. The Mutual Agreement itself allowed the company to hire journeymen off the street, something it had apparently not done before. They were not, however, automatically classified as journeymen. Rather, they began at the start level, and progressed to the standard level only after a period of time. Presumably, the parties had never before negotiated a procedure for making a journeyman out of someone who was already qualified to be a journeyman. In response to that problem, they negotiated a testing procedure. But it is reasonable to believe that the procedure they chose was similar to the procedure the company already used to qualify apprentices along the road to journeyman. In short, it is reasonable to believe that the Mutual Agreement does not, as the union contends, represent an attempt to design a new process outside the CAG. Rather, it may be nothing more than an effort to apply a familiar testing process to a unique type of employee who would otherwise not be covered by any testing procedure.<FN 2>

Under this reading, it wouldn't necessarily matter whether the addendum adopted the language of the Mutual Agreement about testing or not. This reading, instead, supports the company's claim that step tests are consistent with the CAG and have been so recognized by the parties. That would mean, then, that the step testing procedures used by the company would apply in any event, even if they were not specifically incorporated by the addendum.<FN 3>

Under either argument, I think the union's case falls. That is, I think the company makes a plausible claim that the addendum incorporates the step testing procedures described in the Mutual Agreement. Even more significantly, I think the union's concession that the company can give step tests undermines its assertion that sections IV,D and V of the CAG apply to those tests.

This conclusion does not mean that I have no sympathy for the union's situation in this case. Although it argues that the CAG applies to the step tests, I think the union's real concern is not so much with the step tests alone, but with its belief that the step tests, existing outside the CAG are, in effect, allowing the company to circumvent the CAG.

Testimony at the hearing revealed that the company has not developed TKQ's or RPA's for the higher levels of the VMI apprenticeship program. There was also testimony that after having developed such tests in another trade, the company eliminated the use of step tests altogether. I do not mean to attribute bad faith to the company. Indeed, I attribute no motive to it at all since there was no testimony about why it has been unable to develop the tests specified in the CAG for the VMI program. In my view, however, the union's real complaint here is that the testing procedures agreed to by the parties in the CAG have not been applied in the VMI program because the company has relied on step tests to the exclusion of the tests outlined in the CAG.

I have no opinion about whether that action violates any agreement between the parties. That was not the grievance filed in this case and I have insufficient information to address the question. The issue actually tried to me was narrower and, in my view, revealed no breach of contract. The company had the right to administer a step test to grievant and to apply to him the counseling and disqualification procedures that have typically accompanied such test. Moreover, the union has shown no violation of those procedures. There was no showing of any defect in the test itself. I also credit Frank Wright's testimony over grievant's about the extent of the counseling session. The only possible defect is the fact that grievant did not receive certain manuals until after he had failed the first test. But he understood that the manuals were available and elected not to ask for them because he thought he didn't need them. This does not represent a failure of any obligation owed to grievant by the company.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel
Bloomington, IN
September 10, 1990

<FN 1>The union did make an attempt to read the CAG definitions as encompassing step tests. But because step tests were well known to the parties by name, it seems reasonable to conclude that they would have included them by name in the CAG, were it to apply to them.

<FN 2>The union also argues that even if the addendum allows the company to use step tests, the agreement, by its own terms, expired on December 31, 1988. Since the company did not administer the step test in question until after that date, the union asserts that it was not sheltered by the addendum. As I have already explained, the company's right to give the step test did not depend on the addendum. But even if it did, the expiration date of December 1988 would not have affected grievant. I understand the expiration date to mean only that employees may no longer be hired under the conditions set out in the addendum after December 1988. But employees hired before that time will be governed by the terms set forth in the addendum and the mutual agreement.

<FN 3>Even if the CAG applies, the company also argues that language within the CAG allowed it to modify the training program to include step tests. In particular, the company relies on language from the CAG introduction that says that "special requirements from certain crafts . . . may require that the training provided to apprentices be modified." The same provision also says that the company may make modifications to meet "special requirements." This language might be relevant for two reasons. First, it could mean that, notwithstanding the CAG, the company could use step tests in the special situation of the apprentices hired under the addendum. Second, the company relies on this modification to allow it to, in effect, eliminate the classroom training of employees hired under the addendum, since they had already received that phase of their training elsewhere. I think the language does support this latter claim. But my ruling that the parties have recognized the continued existence of step tests and their accompanying procedures makes it unnecessary for me to address this argument in detail.