Award No. 846
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Appeal 1457
Arbitrator: Terry A. Bethel
October 29, 1991
OPINION AND AWARD
Introduction
This case is before me on a stipulated issue that reads as follows:
This understanding sets forth the parties' stipulation of the issue to be resolved in this arbitration hearing. The issue in dispute in this case is whether the Company violated Article 3, Section 1 or Appendix N of the August 1, 1989 Collective Bargaining Agreement by the manner in which it laid off mechanics temporarily assigned to the Mobile Maintenance Services Department (M.M.S.) beginning the week of February 24, 1991.
This dispute has been heard in Step 1 of the grievance procedure without resolution. The parties have agreed to waive the provisions set forth in Article 6 of the Collective Bargaining Agreement relative to the processing of complaints and grievances in the grievance procedure and to appeal this dispute directly to arbitration for final determination.
The case was tried at the company's offices in East Chicago, Indiana on May 17, 1991. Robert Cayia, section manager union relations, represented the company. Mike Mezo, president of local 1010, presented the union's case.
In addition to the arguments advanced at the hearing, the parties filed a total of 6 briefs. Both sides filed a pre-hearing brief, a post hearing brief, and a post hearing reply brief.
Appearances
For the company:
Robert Cayia -- Section manager, Union Relations
Rene Vela -- Section Manager
Ken Kantowski -- Manager, MMS
Joe Griffin -- Manager of Maintenance
Sheila Bogucki -- Supervisor, MMS
Laura Kocel -- Representative, Union Relations
For the union:
Mike Mezo -- President, Local 1010
Jim Robinson -- Arbitration Coordinator
R. Flahardy
M. Adams
T. Hargrove
D. Walton
Background
The facts are not complicated, although that observation certainly cannot be made about the case itself. The dispute involves an interpretation of various provisions of Appendix N to the collective bargaining agreement, also known as the Assigned Maintenance Agreement. That agreement dates back to the 1986 contract. Assigned maintenance forces, as the name implies, are craftsmen who are assigned to various departments throughout the company's facility. After a review of the results achieved from this arrangement, the company decided that concentration of maintenance forces in particular departments was inefficient. In brief, this practice left the company with too few maintenance employees during down turns, when major maintenance activity was undertaken, and too many maintenance forces in operating turns. The company and the union addressed this situation during the negotiations leading to the 1986 agreement. The result was Appendix N. The principal benefit achieved by the company was the creation of the Mobile Maintenance Department, since changed to Mobile Maintenance Services Department (hereafter, MMD or MMS). It is not necessary to reproduce here the complete details of Appendix N. In brief, the company was entitled to establish a centralized maintenance force, which it could use to supplement assigned forces in times of need. As I will detail below, MMD was composed of both permanent and temporary positions.

What is principally at issue here is whether laid off permanent employees have superior rights to temporary positions in the MMS held by assigned maintenance employees who cannot be laid off from their sequence in their home departments.

In exchange for the creation of the MMD, the union secured certain job security guarantees that it had not enjoyed before. In particular, Appendix N created a list of more than 2700 maintenance employees who could not be laid off (these are the attachment A or list A employees, to be discussed below), except in certain limited circumstances. In addition, employees who had suffered those occurrences and who had therefore been displaced from their home departments into temporary positions could bump in the MMD. This exchange of company efficiency for union job security is recognized in AN 1, which is essentially the preamble to Appendix N: "The parties recognize the need to substantially improve the efficiency and productivity at the Indiana Harbor Works while assuring employment security for assigned maintenance employees."

The particular dispute at issue here involves an interpretation of three provisions of Appendix N, each of which is reproduced below, in relevant part. In addition, the company places great reliance on the terms of a mutual agreement entered into on September 19, 1986, the terms of which are discussed below. The relevant provisions of Appendix N are as follows:

AN 2.1 The employees listed on Attachment A shall not be laid off or demoted as a result of the MMS or any provision of this Assigned Maintenance Agreement. Layoffs or demotions may occur only by reason of departmental shutdowns, technological changes, or decreased operations within a department. . . .

AN 2.2 In the event any of the employees listed on Attachment A is displaced from his assigned maintenance sequence because of departmental shutdowns, technological change, or decreased operations, he shall have the right to be assigned to the MMS in accordance with his plant continuous length of service and, where applicable, displace junior craftsmen temporarily assigned. . . .

AN 9 Temporary vacancies in the MMS shall be filled by volunteers. All assigned maintenance craftsmen who wish to fill temporary vacancies shall make use of an application system to be established by the parties for this purpose. In the event additional vacancies must be filled, the company may assign on a temporary basis an employee other than those protected in the minimum base force, from any department identified in Attachment A to the MMS. . . .

As these provisions make clear, employees may work temporary assignments in the MMS under either of two routes. Craftsmen laid off pursuant to the criteria in AN 2.1 may claim such temporary jobs according to their seniority. In addition, AN 9 allows the company to make temporary assignments under certain circumstances. Those circumstances form part of the issue in this case. The AN 9 assignments to MMS are referred to by the parties as management transfers.

The issue in this case concerns a number of List A or Attachment A employees who had claimed jobs in the MMS after being displaced from their departments under AN 2.1. There is no issue about whether one of the three criteria AN 2.1 was satisfied, at least not in this arbitration. Rather, the issue concerns the inability of at least some of the grievants (the record does not reveal how many) to hold temporary jobs in the MMS under AN 2.2.

As the language quoted above makes clear, employees laid off under AN 2.1 can claim temporary jobs in the MMS, if any are available, and can bump junior craftsmen. In this case, the grievants had done just that. Subsequently, however, the company decided to reduce the numbers of employees temporarily assigned to the MMS. In order to do so, it simply listed all craftsmen holding temporary assignments, and reduced their numbers on the basis of seniority. The company asserts that displacement on the basis of seniority is the keystone of its layoff policy, as recognized in Article 13 of the contract. Moreover, AN 18 provides that if layoffs are necessary in the MMS, "the provisions of Article 13, section 9 shall apply. . . ."

The difficulty is that some of the employees in the MMS at the time numbers were reduced were there on AN 9 management transfer. The company included them in the overall layoff process. Thus, in some instances, management transfer employees had greater seniority than employees who had claimed temporary jobs under AN 2.2. The result is that the AN 2.2 employees were laid off, while AN 9 management transfers continued to hold temporary jobs in MMS, even though, if they had been forced to leave MMS, they would not have been laid off. Rather, they would merely have returned to their home departments.

The union claims that when it became necessary to reduce manpower in the MMS, the company erred in considering the seniority of all temporarily assigned employees, without regard to the nature of their assignment. Rather, the union asserts that before laying off any employees, the company was obligated to return management transfers to their home departments. If further reductions were necessary, they would

then have been in the order of seniority of the remaining temporary employees, all of whom would have found their way to the MMS by virtue of AN 2.2

Discussion

The company advances two defenses in opposition to the union's claim. First, and most important, it asserts that the terms of appendix N provide no refuge for the union. Rather, the company contends that the language of the appendix, as well as the terms of the September 19 agreement, permit it -- indeed, require it -- to reduce the MMS temporary forces solely by reference to seniority. The company's prehearing brief focuses exclusively on this argument. During the hearing, however, a second defense surfaced as a result of the testimony of company witness Rene Vela.

a. Attachment A and List A

As noted above, AN 2.1 provides that the 2752 employees listed on Attachment A can be laid off only as the result of the occurrence of one of three listed reasons: departmental shutdown, technological change, or decreased operations within a department. In the event of displacement from a sequence of "any of the 2752 employees listed on Attachment A" the employee or employees so affected has the right to bump into MMS and displace junior craftsmen temporarily assigned there. There is no question that some such employees are grievants in this case. That is, some of the employees laid off were among the 2752 craftsmen originally listed on Attachment A in 1986. For them, resolution of this case involves an interpretation of the meaning of AN 2.2 and AN 9. Clearly, the employees who were originally listed on Attachment A have the rights spelled out in AN 2.2, and my task is to determine what those rights are. But the company claims that not all of the grievants have AN 2.2 coverage.

As identified in the collective bargaining agreement, Attachment A is a listing of 2752 named employees. The company asserts, as a result of Vela's testimony, that the specific employees named on Attachment A are the only ones who have the protections afforded in AN 2.2, whatever that protection might be. Although I do not have precise numbers, there is no question that at least some of the grievants are not on Attachment A. That is, they were not among the 2752 craftsmen specifically named as working on April 15, 1986. They do, however, appear on a document identified as List A.

In brief, the union asserts that List A is merely a periodic update of Attachment A, which it says is a dynamic document. The company, on the other hand, says Attachment A does not change, save for a few specific exceptions identified in the contract. One is either on Attachment A or he is not. If not, then he is listed on some other document and does not enjoy the rights spelled out in AN 2.2, since those are reserved for Attachment A employees.

Although the 1986 agreement refers to a finite universe of 2752 specifically named employees as the residents of Attachment A, there is no question that there has been at least some revision of that listing. The September 19 mutual agreement, for example, reflects that the Attachment had been revised, apparently to include some employees who should have been listed originally and to exclude others who should not have been. If that was the intention, then the revision was more in the nature of a correction than it was a dynamic change. But the agreement itself reveals that there was at least one change that was not a mere correction.

Letter agreement III on page 250 and 252 of the 1986 agreement confirms the parties' agreement that the company would recall up to 100 laid off craftsmen to replace, on a one-for-one basis, certain craftsmen who retired pursuant to an agreement for enhanced pensions. The company asserts that the key word here is "replace." Thus, the recalled craftsmen simply take the place of specifically named individuals who were on Attachment A, but elected to retire. This arrangement, since it was on a one-to-one basis, kept the number of employees on Attachment A at 2752, at least unless someone left the work force for some other reason.

Letter IV of the same agreement dealt with the parties' agreement "regarding the recall of displaced craftsmen to fill vacancies due to normal attrition." There are two different categories dealt with in this letter. Laid off craftsmen not listed in Attachment A can be recalled by seniority to fill temporary vacancies in their departments or in the MMD. It would be difficult to have conclude that such temporarily recalled employees have Attachment A rights. But the letter then continues as follows:

In addition, as employees listed in Attachment A are terminated over the life of the 1986 Basic Labor Agreement through normal attrition (not including 70/80 retirement pensions) the company will recall such employees to their craft in accordance with plant continuous service on a ratio of one laid-off employee recalled for every two Attachment A employees terminated through normal attrition.

This language, the company contends, demonstrates the parties' intent to vest the recalled employees with something less than the rights of Attachment A employees. The company points out that, while employees

recalled as a result of enhanced pensions "replace" workers originally on Attachment A, no such language appears in letter IV. Rather, as Mr. Cayia argues in his first post hearing brief, "The second letter agreement [letter IV]. . .defines the employment security rights of employees who were not members of the 'original' Attachment A listing. Their employment security rights are rights to be recalled to their craft to fill temporary vacancies in their departments or in the mobile maintenance department."

Thus, the company argues that the parties did not intend to bestow on recalled employees the rights Appendix N gave to original Attachment A employees. Specifically, the company asserts that recalled employees (other then those recalled as replacements for Attachment A workers taking enhanced pensions) do not have the rights spelled out in AN 2.2. At least with respect to the recalled employees, then, the company argues that, no matter what AN 2.2 means, those grievants must have their claims dismissed. They have pointed only to AN 2.2 as a source of protection and, as the company sees it, that provision does not apply to employees who were not originally on Attachment A or who did not replace Attachment A workers pursuant to letter III.

I think the company's argument overlooks an important distinction in Letter IV itself. That document does not say, as Mr. Cayia contends, that all recalled craftsmen will be recalled to fill temporary vacancies. To the contrary, it says that laid off craftsmen will be recalled to fill temporary vacancies, but then creates as a separate category of recalls ("in addition"): craftsmen recalled as a result of ordinary attrition of Attachment A employees. Nothing is said about having this second category of recall fill "temporary vacancies" in the MMD or elsewhere. Granted, they are recalled "to their craft" and the word "replace" is not used, as it is in Letter III. That does not necessarily mean, however, that these recalled workers have inferior rights.

The impetus for the recall is the disappearance of employees on Attachment A. Moreover, it seems clear that the 2 for 1 recalls are not there merely to fill temporary vacancies, since that language was used expressly in the first part of the letter but omitted in the part referring to them. It is reasonable, then, to conclude that the purpose of Letter IV is to identify how changes are made to Attachment A. Moreover, this reading is not inconsistent with Vela's assertion that the parties expected the numbers of employees with Attachment A status to diminish over time. Letter IV itself says that the recalls are made only on a 2 for 1 basis.

I also note that, despite denials, an objective observer would have a hard time concluding that the company's own actions have been consistent with the interpretation proffered at the hearing. Thus, Union Exhibits 4 and 5 are company documents headed "A List employees comprising the 67% base force complement established in the 1988 assigned maintenance agreement as of August 1, 1989." Union Exhibit 4 is for the No. 2 coke plant and Union Exhibit 5 is for No. 7 blast furnace. These lists include employees recalled after the establishment of original Attachment A.

It is, then, difficult to accept the company's claim that it maintains both a List A and an Attachment A. In the first place, nothing in the contract recognizes the creation of a List A. Moreover, if there were to be two lists, there is no reason why List A would intermingle the two groups of employees, especially since the company claims that the two groups have radically different rights. If the company's assertion were correct, then List A should include only those workers recalled since 1986 and should exclude those who were originally on Attachment A.

Also significant is company exhibit 6, the minutes of a meeting held September 2, 1986, only about a month after the effective date of the 1986 contract. The first part of the meeting concerned revisions to or corrections of original Attachment A, which is referred to not as "attachment A" but as "A list." The minutes also contain the following significant sentence: "The lists will also be periodically updated to reflect retirements and replacements under the one-for-one and two-for-one recall obligations." This was apparently a record of a comment made by Vela. The clear implication is that no distinction was to be made between the one-for-one replacements referenced in letter III and the two-for-one replacements mentioned in letter IV. Each category of recall was to receive Attachment A status.

In short, I think the claim that there is a difference between List A and Attachment A is an exercise in excess literalism. Granted, Union Exhibits 4 and 5 are not headed "Attachment A." But AN 2 itself begins by saying that "Attachment A is a listing. . . ." And I think it is reasonable to conclude that other provisions of the agreement -- specifically, letters III and IV -- were intended by the parties to demonstrate that over time, the numbers would diminish and the faces might change, but that Appendix N would continue to apply to those on the list. I conclude then, that whether appearing on List A or, original Attachment A, the laid off craftsmen in this case have the rights spelled out in AN 2.2.

Having rejected the company's defense that Appendix N rights are inapplicable to some of the grievants does not resolve the controversy. It simply means that whatever the ramifications of AN 2.1 and AN 2.2, they apply equally to those employees originally listed on Attachment A and those added since as a result of letters III and IV. The task now is to determine whether Appendix N, specifically AN 2.1 and 2.2, provide the protection claimed by the union.

b. Appendix N

Resolution of the union's claim depends principally on an interpretation of AN 2.1, 2.2 and AN 9. Also relevant is the agreement of September 19, 1986. At base, the union asserts that before it can lay off employees from MMS the company must first return to their home departments all craftsmen temporarily assigned pursuant to AN 9. The remaining craftsmen would then be displaced from MMS in the order of their seniority. It could be, of course, that no further displacements from MMS would be necessary, which is no doubt what the union hopes. Indeed, the principal dispute in this case is not really about layoff in the order of seniority, but about how many people will be laid off at all.

AN 7 provides for a total of 100 permanent vacancies in MMS. That number, however, is not the totality of the MMS work force. AN 9 recognizes that there may be temporary vacancies and establishes a procedure for filling them. It says that such temporary vacancies will be filled by volunteers and references an application system (as yet, non-existent) for that purpose. "Additional vacancies" -- which I understand to mean temporary vacancies the company has been unable to fill with volunteers -- are staffed by temporary assignment of employees on Attachment (or List) A "other then those protected in the minimum base force."

The minimum base force is identified in AN 5 as a number of employees equal to 67% of the number of employees shown in the sequence on Attachment A. In round numbers, then, if there are 100 employees shown in a particular sequence on Attachment A, there are 67 in the base force. The remaining 33 can be assigned temporarily to the MMS pursuant to AN 9. The union asserts that before any employees can be laid off out of the MMS, these craftsmen temporarily assigned under AN 9 must be returned to their home departments. Once there, the returned craftsmen can only be laid off if the company satisfies one of the three criteria of AN 2.1: departmental shutdown, technological change or decreased operations in the department. Meanwhile, the company can reduce the numbers of temporary employees remaining in the MMS, but once the AN 9 employees are removed, that may not be necessary. Thus, if the union's interpretation prevails, the likelihood is that fewer employees will actually be laid off.

Although it makes other arguments, the crux of the union's case really depends on a construction of AN 9. In particular, the union points principally to the first sentence, which says "Temporary vacancies in the MMS shall be filled by volunteers." The provision then says that those interested in volunteering are to use an application system established by the parties. As of the time of the hearing, the parties had not yet reached agreement on any such application system. Then, if "additional vacancies must be filled" -- that is, vacancies that have not been filled by volunteers -- the company can assign craftsmen under AN 9. The critical provision, the union urges, is that these AN 9 assignments cannot be made until the company determines that there are insufficient volunteers to fill the temporary vacancies.

This is important in this case because the employees being laid off out of their departments would, presumably, be willing to volunteer for temporary vacancies in the MMS rather than be out of work altogether. And, the union claims, there must be temporary work available there for them because there are craftsmen in the MMS working pursuant to AN 9 assignments and that can only occur when there are temporary vacancies that must be filled. In short, the union claims that the employees assigned under AN 9 must give way to employees who want to volunteer for temporary assignments in the MMS. The AN 9 employees, after all, are only there because no one volunteered in the first place. Now, however, someone is willing to volunteer, since the alternative is to be laid off.

This is a plausible argument. AN 9 does say that the method of filling temporary vacancies in the MMS is by volunteer and it limits so-called management transfers to additional vacancies that volunteers did not fill. If the slate were otherwise clean, I would be strongly inclined to adopt the union's position. The slate, however, is not clean.

I don't know, frankly, exactly what the parties contemplated when they agreed in AN 9 that temporary vacancies would be filled by volunteers. At the hearing, Vela testified that, even though there is no agreed to application procedure, the company interprets AN 9 to mean that volunteers are to come from active employees. The gist of the union's case is to the contrary. What it asserts, essentially, is that employees who are laid off from their departments have the right to, in effect, bump into the MMS and displace not only

those who are junior to them, but also any employee whose presence there is the result of a management transfer. Although equity might support such a result, I cannot read the applicable language to require it. AN 2.2, on which the union places much reliance, does not absolutely guarantee laid off craftsmen a place in the MMS. Under AN 2.1, craftsmen can be laid off only if one of three events occurs, as spelled out above. If there is a departmental shutdown, a technological change, or decreased operations in a department, and if the result of that occurrence is displacement from a sequence, AN 2.2 allows assignment to the MMS in accordance with seniority. That includes the right to bump temporarily assigned "junior craftsmen." This language is important. It does not say that craftsmen assigned temporarily under certain provisions of the contract must be displaced. Rather, it entitles employees laid off under AN 2.1 the opportunity to claim jobs temporarily held by junior employees.

The union, however, would read "junior craftsmen," as that term is used in AN 2.2, to include only similarly situated junior craftsmen. That is, the union would limit the term to other craftsmen laid off under AN 2.1 who had then claimed temporary jobs in the MMS. Read only in connection with the union's construction of the volunteer system referenced in AN 9, this is a plausible interpretation. But I think other provisions of agreements between the parties demonstrate that the "junior craftsmen" referenced in AN 2.2 include management transfers under AN 9.

This arbitration is not the union's first occasion to assert that AN 9 employees must be returned to their home department before the temporary forces of MMD can be laid off. Company exhibit 6 is the minutes from a meeting held between company and union officials on September 2, 1986, about a month after the effective date of the 1986 agreement. R. Vela and R. Cayia represented the company and R. Persons, E. Cieslak and J. Gyurko represented the union. Part of the meeting concerned the identity of employees making up original Attachment A and the way in which that list would be updated, which is summarized above. The parties then discussed other matters and then turned to a situation similar to that at issue here. After some discussion, union representative Persons "suggested that . . . any future temporary vacancies be filled according to the following order of priority: 1) employees on the inactive A list, 2) volunteers in the selected department, 3) if no volunteers, then the most junior employees in the selected department." This is exactly the same reading of Appendix N that the union proffers in the instant case, with volunteers having the first right of assignment.

As noted above, this is a plausible interpretation of the contract, but it is not the only interpretation. Company representatives present at the September 2 meeting did not accede to the union's view that day. Rather, Vela responded that the company "would review the union's suggestion." Subsequently, the parties entered into an agreement that is memorialized by a memorandum dated September 19, 1986, introduced into evidence as company exhibit 3. Although obviously downplayed by the union, this document of great significance to this proceeding.

The document is comprised of nine paragraphs, of which only paragraphs 2 and 3 are relevant to this inquiry:

To date, the following understandings have been reached between the parties regarding the implementation of the Assigned Maintenance Agreement:

2. Craftsmen temporarily reassigned to the MMD or a SWAT are subject to being bumped only by senior craftsmen (by craft) who are inactive and on List A

3. A craftsman temporarily reassigned to the MMD or a SWAT who is displaced by a senior craftsman in accordance with 2 above, shall return to his parent department's craft sequence if the levels of operation in that department have not been reduced (as compared to April 13, 1986), there has been no technological change or shutdown and such craftsman is shown on list A in his parent department's craft sequence.

In the company's view -- which I accept -- this agreement shows quite clearly that the parties did not agree to the union's September 2 proposal.

Mr. Mezo's cross examination of Vela concerning paragraph 2 of the September 19 agreement was quite skillful. Vela was forced to acknowledge that, with one exception, this paragraph does little more than restate the provisions of AN 2.2. Both the September 19 agreement and AN 2.2 recognize that laid off craftsmen can bump junior craftsmen temporarily assigned to the MMS. In the union's view, then, the September 19 agreement added nothing to the contract other than a recognition that, whatever AN 2.2 means, it now applies to SWAT assignments (omitted from the terms of AN 2.2 itself) as well as to temporary assignments to MMS.

The difficulty is not what AN 2.2 or paragraph 2 of the September 19 agreement say. Rather, the problem with the union's case is the existence of paragraph 3 of the mutual agreement. The company argues that the September 2 meeting produced disagreement about how employees temporarily assigned to the MMS

should be displaced. That disagreement, the Company claims, was resolved in the September 19 mutual agreement by abandonment of the union's position in favor of a procedure that operated solely on the basis of the seniority of the temporarily assigned employees.

It is conceivable (though I suspect unlikely) that the parties agreed to paragraphs 2 and 3 principally to incorporate SWAT into the provisions of Appendix N, as the union claims. Even if they did, however, paragraph 3 would at least be a recitation of what they understood those Appendix N rights to be. That is, even if the union is correct that paragraphs 2 and 3 of the mutual agreement merely restate what the new contract required, and were negotiated as a way of bringing SWAT assignments under that umbrella, what they said in those paragraphs would be important to this case. The contract negotiations resulting in Appendix N had just been concluded. If the September 19 mutual agreement described what the parties had just done, then the inference is strong that the mutual agreement accurately reports their intent. In short, the key to this case depends on an interpretation of paragraphs 2 and 3 of the mutual, whether it merely restates and incorporates SWAT, as the union claims, or whether it resolves a disputed interpretation of AN 2.2, as the company argues.

Obviously, paragraphs 2 and 3 of the mutual agreement are meant to be read together. Paragraph 2, as the union points out merely says what AN 2.2 already says -- that inactive A list employees can bump junior "craftsmen temporarily reassigned to the MMD. . . ." The dispute is how to define that pool of junior craftsmen who can be bumped. As noted above, the union argues that the craftsmen mentioned in paragraph 2 are similarly situated craftsmen -- that is, junior craftsmen whose presence in the MMS was by way of the AN 2.2 route. But paragraph 3 of the mutual shows quite clearly that the junior craftsmen described in paragraph 2 of the mutual agreement -- and by extension, under AN 2.2 -- include not only craftsmen who journeyed to the MMS via 2.2 but those who traveled under AN 9 as well.

Craftsmen who reach the MMS under AN 2.2 have already been displaced from their department because of either a departmental shutdown, a technological change, or reduced operations in the department. The MMS, in short, is all that stands between them and the street. If they cannot secure a place in the MMS, or if they are bumped out of the MMS, they are simply out of work. <FN 1> If bumped, they do not return to their department because, in order to get into MMS under AN 2.2 in the first place, their job in their department had to be gone.

Paragraph 3 of the mutual agreement, however, recognizes that the bumped temporarily reassigned craftsmen mentioned in paragraph 2 can -- indeed, "shall" -- return to their department, unless in their absence one of the three events has occurred that would justify displacement from the department. Obviously, this language could not apply to craftsmen who had bumped into the MMS under AN 2.2, since one (or conceivably than one) of those three events has already happened, else they wouldn't have been in MMS to start with. There is, thus, no way that they "shall" be returned to their home department since their job there is already gone.

It is clear to me, then, that when the parties used the words "temporarily reassigned craftsmen" in paragraph 2 of the mutual agreement, they were not limiting coverage to those craftsmen who had bumped into the MMS under AN 2.2. If so, then paragraph 3 of the mutual agreement would be superfluous. I cannot assume that the parties explain what was already in negotiated language (whether to the contract or to define new rights) for which there was to be no use. Rather, the inference is inescapable that the temporarily reassigned craftsmen who can be bumped under paragraph 2 of the mutual agreement include craftsmen who were temporarily assigned to the MMS under AN 9.

This reading -- which is the only one that gives Paragraph 3 any reasonable function -- defeats the union's claim. The union's principal assertion is that, when laid off craftsmen try to bump into the MMS under AN 2.2, they displace junior craftsmen who are also there as a result of the same process. Seniority, however, does not control their right to displace craftsmen assigned by management transfer under AN 9. Those employees, the union asserts, are not bumped by seniority. Rather, regardless of their seniority, they must yield their temporary positions in MMS in favor of laid off craftsmen.

The mutual agreement, however, does not limit the craftsmen who are bumped on the basis of seniority to those whose assignment depends on AN 2.2. Paragraph 3 recognizes that at least some of the bumped craftsmen will return to their home department, but only after they are bumped on the basis of seniority. The mutual agreement does not say that they return to their home department merely because laid off craftsmen are trying to bump in.

I think the intent of paragraph 3 was to provide for the treatment accorded bumped craftsmen who had been assigned to the MMS under AN 9. Unlike their counterparts who got there under AN 2.2, they do not go out of the mill. Rather, they go back to their home department, but only after they are bumped on the basis

of their seniority. This means, then, that there are not two different pools of temporarily assigned craftsmen, only one of which is bumped on the basis of seniority. Rather, in the event the MMS temporary forces need to be reduced, the layoffs proceed on the basis of seniority, as spelled out in Article 13 of the agreement.

c. AN 2.1

In addition to its reading of AN 2.2, the union asserts that further protection is found in the first sentence of AN 2.1: "The employees listed on Attachment A shall not be laid-off or demoted as a result of the MMS or any provision of this Assigned Maintenance Agreement." The union asserts that if AN 2.2 (and the September 19 mutual agreement) are read to include AN 9 management transfers in the pool of temporarily assigned craftsmen subject to bumping under AN 2.2, then the grievants in this case who are junior to those management transfers will have been laid off as a result of the assigned maintenance agreement.

As Vela admitted on cross examination by Mezo, the union's position is literally true but, as I found with respect to the company's claim about a distinction between List A and Attachment A, this is an exercise in excess literalism. Pushed to the ultimate, AN 2.1 would be completely contradictory and make no sense at all. The first sentence does say that no employee will be laid off as a result of the assigned maintenance agreement. The second sentence of AN 2.1, however, provides three instances in which craftsmen can be laid off: departmental shutdown, decreased operations, or technological change. Yet even this sentence is "a provision of this assigned maintenance agreement."

It cannot be the case, then, that the assigned maintenance agreement (appendix N) forbids all layoffs or that there can never be a lay off pursuant to the terms of that agreement. Indeed, a significant part of Appendix N details how layoffs are to be accomplished. AN 2.2 is part of that procedure.

I think the first sentence of AN 2.1 was intended to mean that the creation of the MMS was not to make it easier for the company to lay off craftsmen. In particular, they were not to be laid off just because the parties had negotiated an agreement to use maintenance forces in a more efficient manner. In that way, both of the interests of AN 1 ("substantially improve efficiency . . . while assuring employment security") were served. Accordingly, there was an agreement that certain employees --those on List A -- were not to be laid off at all, unless (and as usual, this is a big word) certain things happened. Those things are detailed in the second sentence of AN 2.1.

When there is a layoff, as AN 2.1 contemplates can happen, the affected employees have the rights spelled out in AN 2.2. But those rights are not as absolute as the union would have them. The do not, for example, include an absolute right to continue working if there is temporary work in the MMS. Rather, the right to claim such temporary work depends on the laid off craftsman's seniority. This conclusion is the result of the construction I have applied to AN 2.2, as informed by what the parties said when they negotiated the September 19 agreement.

This means, of course, that Mr. Mezo is correct if one considers only the literal language of AN 2.1. The grievants in this case have been laid off because AN 9 allows the company to assign craftsmen temporarily to the MMS, even though they have not been laid off from their departments, and AN 2.2 allows those temporarily assigned craftsmen to be bumped only on the basis of seniority. But this is what the parties agreed to, as the mutual agreement makes quite clear. It cannot be the case that the first sentence of AN 2.1 voids significant portions of the rest of the assigned maintenance agreement.

In my view, the grievants were not laid off because of a provision of the assigned maintenance agreement, as that terminology was used by the parties. The company, indeed, followed the procedures agreed to by the parties. Those procedures simply do not require the company to adopt a methodology that will result in the fewest number of layoffs. The union's position, as I noted above, might seem a more equitable solution to the problem, But, as I have observed before, labor arbitrators do not have roving commissions to do good. Rather, I am confined to an interpretation of what the parties have done.

Granted, in this case, that is the parties have agreed to language not easily reconciled. But if I accede to the union's interpretation of AN 2.1, I would have to effectively void other express agreements. I think I am obliged to adopt a construction of the contract that gives meaning to the entirely of the parties' agreements. Accordingly, I cannot accept the union's interpretation of AN 2.1.

d. Volunteers

The most troubling aspect of the union's case is not the union's interpretation of AN 2.1, but reconciling the company's interpretation with the first sentence of AN 9: "Temporary vacancies in the MMS shall be filled by volunteers." As I noted above, the parties were to negotiate a procedure for selecting volunteers and, as yet, have not done so. I don't know, frankly, whether the lack of an agreement results from an inability to agree about the terms of such a program or whether, given other problems and limited time, the parties

have not been able to complete the work. In any event, the lack of an agreement leaves me with some significant difficulty in this case.

As I observed earlier in this opinion, the company's assertion that the volunteer system is to be limited to active employees is a plausible interpretation, especially in light of AN 2.2, which discusses the rights of laid off craftsmen without mentioning the ability to bump management transfers out of the MMS. But the union's reading is also of some force. In short, the union claims that AN 9 recognizes that volunteers get the first crack at temporary work in the MMS and such work must be available if management has transferred active List A craftsmen there under AN 9.

There is no tidy solution to this problem because no provision of the collective bargaining agreement addresses it directly. I am left, then, to speculate about what the parties intended when they agreed in AN 9 that volunteers, under some system yet to be negotiated, would staff temporary vacancies in the MMS.

I am not the first arbitrator to decide a case that interprets portions of AN 9. Arbitrator McDermott construed the same provision in Inland Award No. 812, decided September 5, 1990. The problem before Arbitrator McDermott differed somewhat from the one at issue in this case, but the issue arose there as well. Like this case, Award 812 involved a union claim that the company improperly administered AN 9. There, the union asserted that in order to staff temporary vacancies in the MMS, the company was obliged to seek volunteers plant wide, even from sequences that had no surplus maintenance employees. McDermott rejected that claim.

In addition, however, the union raised an issue quite similar to this case. In Award 812, the company had assigned junior craftsmen from the No. 7 blast furnace to the MMS under AN 9. At the hearing, but apparently not before, the union claimed that the company's action was improper because there were other craftsmen laid off who should have been canvassed as volunteers before effecting management transfers. This, the union claimed, is consistent with the language of AN 9 that says that volunteers will fill such temporary assignments and, failing volunteers, "additional vacancies" can be filled by management transfer.

Thus, in Award 812 the union raised a claim nearly identical to the one at issue here. McDermott demurred. After noting that there were no laid off employees among the grievants, he said the following:

This problem of the laid off employees who were not canvassed might be troublesome in some other record. It seems clear enough, however, that it was not thought of as critical or of any significance here, since nothing was said about it in the grievance proceedings, and it was not brought out in fact until cross examination of the company witness. In light of that approach, it cannot be allowed to be determinative here, especially since there is no evidence that any such employees have complained and since both parties have failed in establishing an "application system" that well might have clarified all this by providing a ready list of volunteers.

The union makes much of this language. It notes that McDermott limited his decision to the facts before him. It also asserts, quite correctly, that the omission noted by McDermott in 812 is not present in this case. Unlike 812, the grievants in this case are laid off employees. The company, on the other hand, dismisses McDermott's comments as "vague dicta."

Two comments about Award 812 are appropriate. First, whatever he might have thought, McDermott did not say how he would have ruled if the instant case were before him. I understand that those with a partisan interest in a proceeding sometimes discern hints not necessarily apparent to a disinterested observer. Whatever others may find there, I am unable to discover in McDermott's opinion any clue about how he would have decided this case. Equally important, even if his comments were more forthright, he limited the effect of his decision to the precise facts before him. I cannot conclude that such action necessarily benefits either party to this case. To the contrary, the call is mine, with little to be learned from the previous case.

I do, however, agree with McDermott's observation that the inability of the parties to reach agreement on the volunteer application system makes this a more difficult decision. I am not indifferent to the union's argument. In the final analysis, however, I simply cannot reconcile the position that management transfers must yield in favor of volunteers with the parties' September 19 agreement.

The union's reading of AN 9 is simply inconsistent with the mutual agreement, especially with paragraph 3. The mutual agreement clearly contemplates that, when laid off craftsmen try to exercise their AN 2.2 bumping rights, the MMS temporary forces will include AN 9 management transfers who can only be displaced by seniority. This recognition, reduced to writing by the parties less than two months after the effective date of the agreement, undercuts the union's claim that AN 9 requires management transfers to yield to employees bumping under AN 2.2.

As I have already observed, I don't know exactly what the parties contemplated when they agreed that temporary vacancies in the MMS would be filled by volunteers. But the mutual agreement is strong evidence that they did not contemplate the union's position in this case. If their intent was to displace AN 9 management transfers in favor of laid off employees seeking to exercise AN 2.2 bumping rights, then they would not have negotiated Paragraph 3 of the mutual agreement. That agreement, then, helps shape my understanding of what the first sentence of AN 9 was intended to mean.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

Bloomington, IN

October 29, 1991

<FN 1> It may be that such employees have the right to claim other work elsewhere in the mill under other provisions of the agreement. No such provisions were presented at the hearing and none is relevant to the issue in this case. The point is that, whatever else may or may not be available to them (a matter about which I have no opinion) AN 2.2 represents their last opportunity to work in their craft.