Award No. 867
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
USWA LOCAL UNION 1010
Arbitrator: Terry A. Bethel
February 28, 1993
OPINION AND AWARD
Introduction
This is a complex case concerning the extent of the company's obligation to maintain a minimum base force in assigned maintenance forces pursuant to Appendix N of the 1989 collective bargaining agreement. The case was tried in the company's offices on November 19, 1992. Brad Smith represented the company and Jim Robinson presented the union's case. Each side filed a pre-hearing brief. In addition, both parties filed a post hearing brief and a post hearing reply brief.
Appearances
For the company:
B. Smith -- Sen. Rep., Union Relations
R. Cayia -- Manager, Industrial Relations
K. Kantowski -- Manager, Mobile Maintenance Services
R. Balka -- Manager, IS&HRO Maintenance
S. Korthauer -- Section Mgr., Maintenance, 4BOF/CC
J. VanAuken -- Day Supervisor, Maintenance, 4BOF/CC
B. Sprague -- Maintenance Planner, 4BOF/CC
L. Kocel -- HR Generalist, MMS
S. Bogucki -- Business Coordinator, MMS
M. Gronewold -- Section Manager, MMS
For the union:
J. Robinson -- Chair, Grievance Committee
M. Mezo -- President, Local 1010
A. Jacque -- 1st Vice Chair, Grievance Committee
L. Aguilar -- 2nd Vice Chair, Grievance Committee
J. O'Donahue -- Griever, Area 4
T. Hargrove -- Griever, Area 25
J. Strauch -- Safety Committeeman, Area 4
B. Burgess -- Mechanic, 4BOF/#1 Slab Caster
J. Cavalier -- Mechanic, 4BOF/#1 Slab Caster
P. Mares -- Mechanic, 4BOF/#1 Slab Caster
K. West -- Mechanic, 4BOF/#1 Slab Caster
Background and Discussion
1. The Minimum Base Force
This is not the first time I have had occasion to interpret Appendix N. In fact, in the first part of its argument, the company places considerable reliance on my opinion in Inland Award 846. Appendix N, the Assigned Maintenance Agreement, led to the creation of MMS, the mobile maintenance services department. As explained in this and other cases, the purpose of MMS was to create a force of craftsmen that could be used to supplement assigned maintenance forces in time of need. In exchange for the creation of this mobile force, the parties, no doubt at the union's insistence, negotiated certain security provisions for assigned maintenance craftsmen. The introduction to Appendix N cites both of these policies: "The parties recognize the need to substantially improve the efficiency and productivity at the Indiana Harbor Works while assuring employment security for the assigned maintenance forces."
The interests of insuring security were addressed in a number of ways, some of which are relevant to this dispute. For example, the parties created Attachment A, a listing of all employees who constituted the assigned maintenance forces at the Harbor Works on April 15, 1986. However, Attachment A is not limited merely to those employees who were working on April 15, 1986. Rather, as I held in Inland Award 846, attachment A is a "dynamic" document, whose make-up might change by the deletion of some employees and by the addition of others. The security provisions of the Assigned Maintenance Agreement protected Attachment A employees against layoff as a result of the creation of MMS and further provided that such

employees could be laid off only because of departmental shutdowns, technological changes, or decreased operations within a department. They could not be laid off merely because their numbers were too great during periods of operation (which were, thus, periods of reduced maintenance) or because their work might be done more effectively by MMS.

The fact that there are layoff protections does not mean, however, that the number of employees listed on Attachment A could not decrease. AN 2.1 itself recognizes that layoffs can occur in certain circumstances. There are, however, limits to the amount of the reduction, and it is those provisions that are at issue here. In particular, the case turns on an interpretation of AN 5, AN 5.1, and AN 5.2:

AN 5. The company will establish and maintain a minimum base force complement in all assigned mechanical, electrical, and welding sequences. Each of these base force complements will equate to not less than sixty-seven percent (67%) (rounded to the nearest whole number) of the number of employees shown in each maintenance sequence listed in Attachment A.

AN 5.1. Such base force will only be reached in the future by attrition or permanent transfer to other departments or sequences, including the MMS. Sequence employee complements will remain over the base force in accordance with the "No Layoff" provisions of this agreement.

AN 5.2 Whenever an assigned maintenance sequence permanently goes below its base force complement, and after all established employees in such sequence have been recalled, the company will post a notice of permanent vacancy(s). Such vacancy shall be filled in order of continuous plant service.

Although there are significant disagreements about other factual matters, there is no dispute about the facts that call the meaning of these provisions into play in this case. At the time of the creation of Attachment A, there were 163 mechanics working at No. 4 BOF/CC. Subsequently, by agreement of the parties, ten of these craftsman were transferred elsewhere, leaving 153 attachment A mechanics at No. 4 BOF. The union contends that the base force established by AN 5 is to be calculated from this number. Thus, since there were 153 employees listed on Attachment A, the union asserts that the minimum base force of mechanics at No. 4 BOF is 67% of that number, or 102.<FN 1> There is also no dispute that there are currently only 100 mechanics assigned to No. 4 BOF. Thus, the union claims that the company is required to post openings, as provided in AN 5.2.

The company does not deny its obligation to maintain a minimum base force. It disagrees with the union, however, about the number of employees required to be in the base force. Pointing to my holding in Inland Award 846 that Attachment A is a dynamic document, the company urges that changes in the numbers of employees on Attachment A -- in particular, decreases -- must be taken into account in determining the base force required under AN 5.

On the surface, this would seem to mean that the 67% base force complement is an ever-decreasing number that could never be reached. Thus, if the number of employees on Attachment A was 100, the base force would be 67. But if the population on Attachment A was reduced to 90, then the base force would likewise reduce to 60, and so on until, presumably, there was no one left on Attachment A. This, however, misconstrues the thrust of the company's argument. It does not contend that the base force reduces every time the number of employees on Attachment A decreases. But it does contend that there are some reductions that affect the numbers in the base force.

The company relies on language contained in Appendix N, section 1. Paragraph AN.2 is the provision that recognizes Attachment A as "a listing of employees who constitute the assigned maintenance force" and notes that it includes certain craftsmen, including mechanics, who were working on April 15, 1986. Paragraph AN.2.1 places restrictions on the circumstances in which Attachment A employees can be laid off. Paragraph AN 2.2 allows displaced attachment A craftsmen to bump into MMS. Then comes AN.2.3, on which the company places primary reliance:

Except as required in paragraph 4 below, the Company shall not be required to replace any employee listed in Attachment A who transfers out of his craft or is terminated under the provisions of the Collective Bargaining Agreement.

In effect, the company reads this provision to mean that the number of employees on Attachment A decreases as a result of transfers out of the craft or terminations. Because I have held that Attachment A is a dynamic document, the number of employees on Attachment A must be adjusted to reflect out-of-craft transfers and terminations. And, since the number of employees on Attachment A thereby decreases, so too does the number in the base force, which is tied to Attachment A. Under that construction, the company is not in violation of the base force requirement.

There were originally 153 mechanics on Attachment A for No. 4 BOF (following the agreed to reduction of 10 employees). Since that time two have transferred out of the craft and 25 have terminated their

employment in the bargaining unit. thus, the original number of 153 has been reduced to 136.<FN 2> The base force would be 67% of this number, or 91, well under the actual number of 100 currently employed. The company acknowledges that Attachment A does not reduce due to transfers out of the sequence but within the craft, or by attrition, limitations included in AN 5.1 itself. But Attachment A is affected by transfers out of the craft or by terminations, as expressly provided in AN 2.3.

This is a respectable argument and is an understandable reaction to my holding in Award 846 that the numbers on Attachment A can change from time to time. Nevertheless, the company's argument is supported neither by the language nor by the apparent policy of Appendix N.

I agree, as anyone must, that the size of the base force is related to the number of employees on Attachment A. But it does not follow that the base force continues to change as the enrollment on Attachment A fluctuates. When I refer to the "apparent" policy of Appendix N, I mean the intentions of the parties as they can be gleaned from the language they agreed to, since the contact restricts the parties' ability to discuss the substance of the negotiations.

The preamble to the Assigned Maintenance Agreement reveals its intention to create benefits for both parties. Management was to gain the efficiencies of a mobile maintenance force; the union was to achieve job security for certain assigned maintenance employees. The agreement did not guarantee lifetime employment to the assigned maintenance employees, who were the ones most likely to be affected by creation of MMS. Rather, it recognized each active employee by listing him on Attachment A (the 1986 agreement actually included the number of such employees) and provided that he could not be laid off because of MMS.

That did not mean, however, that Attachment A employees were secure from any displacement. They could be laid off because of shutdowns or reduced operations or technological change. And, when that happened, they had certain rights to claim work elsewhere. Moreover, such employees could transfer out of the craft or terminate their employment. In that event, there was no further need to protect them against the advent of the MMS. They were no longer vulnerable to the potential threat posed by a mobile maintenance force and, as AN 2.3 provides, they did not need to be replaced on Attachment A. This is consistent with the idea that the purpose of Attachment A was to protect those who were working in assigned maintenance positions when MMS was created.<FN 3>

It does not follow from this, however, that the numbers of assigned maintenance craftsmen will continue to shrink as they transfer, or quit or die. That is, there is nothing in Appendix N which indicates that MMS was ultimately to supplant assigned maintenance. To the contrary, the entire thrust of Appendix N seems to provide protection against just that eventuality. That, it appears to me, is the purpose of paragraph 4, quoted above as AN 5, 5.1 and 5.2. By agreeing to that language, the drafters seemed to say that while the assigned maintenance forces might get smaller, there was a level below which they could not go. Although the parties in the future might agree to reduce the assigned maintenance forces even further, Appendix N seems clearly intended to stop the attrition at a certain point, namely 67% of the numbers listed on Attachment A.

It seems likely to me that when the parties created the base force complement in AN 5, they did so expressly with reference to the number of employees who were on Attachment A at the outset. They knew that as time went on, the number of assigned craftsmen would change. And they knew that even though there could be replacements on Attachment A, the number of assigned craftsmen was more likely to shrink than expand, especially since laid off employees were to be recalled on a one for two basis. The minimum base force seems designed to stop the attrition of assigned maintenance forces at a predetermined point and to require the company to post openings if numbers fall below that level.

The language of AN 2.3 also seems to reflect this policy. It does say, as the company points out, that the company is not required to replace Attachment A employees who transfer out of the craft or who terminate their employment. But that is not all of the language. The paragraph is introduced with the words "Except as required in paragraph 4 below, the company shall not be required to replace" etc. In my opinion, the words "Except as required in paragraph 4" are of considerable importance. Paragraph 4 is the base force complement. What AN 2.3 seems clearly to say, then, is that ordinarily, the company doesn't have to replace Attachment A employees who transfer out of the craft or terminate their employment. But the company can be required to do so if required by paragraph 4. That is, if the numbers fall below the minimum base force guarantee, then even a transfer or a termination can cause the company to replace an Attachment A employee. I know of no other reasonable meaning to give to the words "Except as required in paragraph 4." The minimum base force established by paragraph 4 is an exception to the ordinary requirement that such employees need not be replaced.

Finally, I have been influenced to some degree by union exhibit 6, a document obtained by the union from the company which shows that, as of May 24, 1990, the company considered the base force of mechanics at 4 BOF to be 109, since reduced by agreement to 102. There was similar evidence in Inland Award 846 in which the company was claiming that Attachment A was static and that assigned craftsmen recalled after April 15, 1986 were on something referred to as "list A," a document of independent significance. In that case, the union introduced two exhibits headed "A list of employees comprising the 1986 base force complement established in the 1986 assigned maintenance agreement. . . ." The lists intermingled Attachment A employees and those the company claimed were on the less significant List A. I observed that "an objective observer would have a hard time concluding that the company's own actions have been consistent with the interpretations proffered at the hearing." A similar interpretation is apt in this case.

In his reply brief, Mr. Smith argues vigorously that union exhibit 6 is of no significance. He notes that it was compiled before my decision in Inland Award 846, when the company thought that Attachment A was static. Since the company believed the list to be static, it measured the base force by taking 67% of the original number of mechanics in 4 BOF, which was 163 (later reduced to 153). It was only after I decided that Attachment A was dynamic that the company reassessed its position and realized that the base force numbers would decrease with the fluxuations of Attachment A.

As I note above, this argument is plausible. But it proves too much. In the first place, Award 846 cannot fairly be read to mean that I originated the idea that Attachment A was dynamic and could change as employees left the list and were replaced. The importance of the evidence from Award 846 cited above is that, despite its position at the hearing, the company was in fact treating Attachment A as dynamic. Award 846, then, did not change the way the company already viewed Attachment A.

Moreover, if the company really believed that Attachment A was static prior to Award 846, presumably it would already have reduced its version of the base force complement. A principal issue in Award 846 was the company's contention that the number of Attachment A employees continued to shrink, with replacements occupying some lesser status on List A. When I observed in Award 846 that the company saw Attachment A as unchanging, that did not mean that the company believed the Attachment A numbers would always remain the same. What the company meant is that employees could not be added to Attachment A. Indeed, that was exactly the company's argument -- it was claiming that the number of Attachment A employees was getting smaller. Since that was its position in Award 846 (and also happens to be its position in this case) one would assume that when it calculated the 67% base force from Attachment A, it would have used only those employees remaining on its version of Attachment A. But that is not what it did. To the contrary, it calculated the base force by reference to the number of employees who were on Attachment A on April 15, 1986. This, then, is evidence that, at least as of May 1990, the company understood the base force complement to be 67% of the original Attachment A, not 67% of a fluxuating number.

I, therefore, reject the company's contention that the base force complement in paragraph 4 of Appendix N decreases as the number of employees on Attachment A fluxuates. That conclusion, however, does not dispose of this case. To the contrary, it makes the decision even harder, for the company's claim is not pinned entirely -- or even principally -- on its construction of AN 5.

Although not contained in paragraph 4 itself, the parties recognized that there were situations when even the base force could be reduced. Thus, Letter IV to Appendix N provides as follows, in pertinent part:

The parties agreed that a department's assigned maintenance sequences may be reduced below the established base force complement(s) level during periods of reduced operations in such department, or for reasons of a partial shutdown of a department or technological change.

This letter obviously indicates that the base force complement was not a guarantee of employment for assigned maintenance employees, for there are occasions when even those in the base force can be laid off. The company claims that this is one of those times, asserting that it can reduce the base force below the 67% guarantee because of technological change. Most of the hearing, in fact, was given over to a description of those changes and the impact claimed by the company. There is, however, yet another issue that must be addressed before consideration of the company's argument.

As already noted, AN 2 creates a document called Attachment A, a listing of all assigned maintenance craftsmen as of April 15, 1986. As I held in Inland Award 846, that list can be supplemented in various ways. Although Attachment A protects assigned maintenance craftsmen from the effects of MMS, it does not shield them from all layoffs. Thus AN 2.1 provides that such craftsmen can be laid off by reason of departmental shutdown, technological change, or decreased operations within a department. These are the same criteria under which Letter IV permits layoff from the base force complement established in AN 5.

The union's position with respect to the proper interpretation of these two provisions -- that is, the layoffs permitted under AN 2.1 and under Letter IV -- is somewhat confusing. The union's pre-hearing brief argues that in order to claim the benefit for technological change under Letter IV, the change must be "reasonably related in time to the company's receipt of the benefit." Later in the brief, the argument is more clearly stated as follows:

The purpose of allowing layoffs and reductions below the established base force as a result of "departmental shutdowns, technological changes, or decreased operations within a department" can only be a limit on the job security guarantee such that the company is not required to employ workers who would have not been needed even absent the creation of the MMD.

Mr. Smith attacks this argument in each of his three briefs, but particularly in his pre-hearing and post hearing briefs. In his pre-hearing brief he notes that the union "has argued that somehow the company is unable to take credit for both attrition and technological changes in reducing the minimum base force." Mr. Smith argues that both AN 2.1 and Letter IV are "clear and unambiguous" and each must be enforced in full. He notes that the contract does not create the "priority system" contended for by the union and that no specific language "requires that the company offset one type of reduction against the other." He also reminds me that I have no legislative powers and that my authority is limited to interpreting the language the parties actually chose.

I agree that I have no authority to impose a bargain on the parties. Nor is that a responsibility I would particularly desire, since I, like other arbitrators, am ill-equipped to make decisions about the management of so substantial an enterprize as the Inland Steel Company. I have noted a number of times, as the company reminds me in its post hearing brief, that my authority is limited to interpreting the words the parties used to express their agreement. That does not mean, however, that I must merely read the words in isolation and attribute meaning to them, oblivious of their context in the agreement. Indeed, the company's brief makes the point well when it quotes Elkouri and Elkouri:

It is said that the primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties. . . .

. . . . Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document. . . .

The company is correct when it observes that no provision of the agreement expressly distinguishes between the layoffs that might occur under AN 2.1 and those permitted under Letter IV. In my view, however, those provisions must be read in the context in which they appear, paying heed to what the parties seemingly tried to accomplish under Appendix N in general. As I have already observed, AN 1 reveals the dual motivation for the Assigned Maintenance Agreement. It allowed the company to gain the efficiencies produced by the creation of a centralized maintenance force and it provided some employment security to the employees who had been performing maintenance under the historic decentralized procedures.

The parties might have agreed that all maintenance work would be performed by a centralized unit and that assigned maintenance employees would simply be eliminated. Or they might have agreed that the new MMS would gradually take over maintenance operations at the Harbor Works and that assigned maintenance employees would be eliminated over time. But Appendix N adopted neither philosophy. As revealed in AN 1, the purpose of MMS was not to replace but to "supplement . . . maintenance work associated with scheduled repair downturns . . . and to minimize the use of outside maintenance forces." This intent to supplement rather than replace, and to limit the use of outside contractors, is a matter of some importance.

Despite its intent to supplement assigned maintenance forces, Appendix N makes it clear that such supplementation cannot cause the layoff of any employee on Attachment A. That is not to say that there could be no attrition or shrinkage of assigned maintenance forces because of the efficiencies gained by MMS. Indeed, it is no doubt true that, at least from the company's perspective, it expected the assigned maintenance forces to shrink over time, as workers disappeared from Attachment A for one reason or another. But that shrinkage could not include layoffs due to the increased efficiencies of a centralized maintenance force. Layoffs of Attachment A employees could occur only due to decreased operations, departmental shutdown or technological change, the sorts of reasons that would have reduced the assigned forces regardless of the advent of MMS.

Although I think the fair reading of Appendix N is that the parties expected the population of assigned maintenance employees to shrink by attrition<FN 4> over time, there was no expectation that assigned maintenance forces would disappear entirely. Thus, the minimum base force created by paragraph 4 indicates that there were to be limits to what could happen by attrition. The company was to "establish and

maintain" a force of assigned maintenance craftsmen that could not fall below 67% of the number of employees on Attachment A. If the number of assigned maintenance employees exceeded the minimum base force, AN 5.1 says the excess numbers were to be protected "in accordance with the 'no layoff' provisions of this agreement." That is, they could be laid off only for reasons of technological change, decreased operations or departmental shutdowns.

Letter IV then goes on to say that even the base force can be reduced for these same reasons. Obviously, this language raises some question about why the parties agreed to a minimum base force at all. After all, the assigned maintenance work forces could already be reduced because of technological change, department closing or reduced operations. What sense did it make to create a base force and then provide that it could be reduced for exactly the same reasons? Presumably, if the company was free to reduce all maintenance forces for the same three reasons, the more efficient course of action would have been just to negotiate AN 2.1 and let it go at that. In short, the base force concept would be meaningless.

I cannot find that the parties negotiated a provision in their contract that was to be devoid of significance. I do not mean to suggest that the provisions of Letter IV are not enforceable. To the contrary, there is no question that by agreeing to Letter IV, the parties recognized that there were circumstances when the base force could be reduced. But it is important to keep in mind that it is a base force, so denominated by the parties themselves. This fact affects the way in which the reasons for layoff can be invoked. In short, Letter IV allows reduction of the base force as a result of technological changes, reductions in operations, or plant closures, but only after the base force has already been reached, either by attrition or by layoffs under AN 2.1.<FN 5>

Letter IV cannot reasonably be read to mean that any technological change can cause the layoff of base force employees. Here, for example, the company claims that its 1989 upgrade of the no. 1 slab caster has lessened the need for assigned mechanics and it has therefore invoked Letter IV as a way of reducing the base force. Although I have no reason to question management's assertion that by the end of 1992 it needed fewer than 102 mechanics assigned to No. 4 BOF, I have difficulty concluding that the slab caster upgrade was the cause of this overstaffing. Obviously, this project was completed more than three years ago. Moreover, evidence submitted by the union and by the company indicated that, whether or not there were layoffs at the time of the upgrade, there has at least been significant attrition between then and now. In fact, a company exhibit indicates that in 1989, the company employed between 110 and 120 mechanics at No. 4 BOF. No doubt some of the attrition between then and now was due to the upgrade. That is, the company did not replace assigned maintenance employees who left because the upgrade reduced its maintenance requirements.

The point is that I cannot make a connection between the present need to reduce the assigned maintenance workforce<FN 6> and the upgrade of the No. 1 slab caster. Letter IV cannot reasonably be read to mean that the department can evaluate its labor needs, find that it is overstaffed, and then point back to a previously-made improvement as a justification for reducing the work force. That is effectively what management has done here and this action is simply inconsistent with the idea of a base force. The base force was to be maintained unless something happened that allowed its reduction. Simply being overstaffed is not such an occurrence. Appendix N is intended to foster efficiency, but it serves the dual motive of job security. Clearly, the base force concept means that a certain level of employees must be maintained, even though a smaller force might do, unless one of three specific things happens.

One of those three things is a technological change, but the upgrade cannot reasonably be claimed as an occurrence that would justify reducing the base force now. It happened more than three years ago. It might have been pointed to at the time as justification for laying off employees above the base force minimum. Indeed, if the base force had already been at minimum levels, the upgrade might have justified a reduction below 67%. But the company cannot now claim that the upgrade was a technological change sufficient to warrant reduction of the base force.

This opinion should not be understood to mean that there is some minimum time period in which the company must act. I understand from the company's evidence that there is sometimes a learning curve, so that the reduced maintenance effects of the upgrade would not necessarily have been felt immediately. Nevertheless, the company must be able to establish that the need to layoff below the base force minimum has a direct relationship to a particular technological improvement. Although its evidence may be sufficient to establish that it can now get by with fewer that 102 mechanics in No. 4 BOF, it is unable to show that something that happened more than three years ago justifies a current reduction. The company, for example, argues that the improvements of the upgrade allowed it to reduce its workforce by 11 mechanics. But more than that number have already left by attrition since 1989.

Accordingly, I find that the company cannot use the upgrade as a justification for reducing the base force below the level of 102 employees. That finding, however, does not resolve this case, for the company also claims that there are other technological changes that support a reduction in the base force. Those changes are summarized in Company Exhibit 4 and were the subject of significant testimony at the hearing. Like the upgrade, many of these changes were also made significantly in advance of April 1992, when the base force fell below 102. Under the same reasoning I have applied to the upgrade, I find that the company cannot rely on the following numbered items from Company Exhibit 4: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 21, 25, 32, 33, 34, 35, 36, 37, 38, and 43. In addition, the company cannot rely on item 2. This is a multipart improvement that was not completed at the time of the hearing, but was begun in 1987. I am unsure how to apportion the manhour savings which, in any event, are di minimis.

In addition, the company cannot claim the reduction attributable to item 15. The company's witness was unable to testify about when this change had occurred. A union witness offered unrebutted testimony that it was in 1987 or 1988. I am also unable to allow the company to credit item 26, since the record does not reflect when this change was made.

The remaining items are all changes that occurred in 1992 and which, therefore, would seem to have some relationship in time to a reduction that occurred in April of the same year. Some of these items, however, are the result of introduction of the Inspection Method of Maintenance, which the parties refer to as IMM. There was significant testimony about this innovation at the hearing, which the union characterizes as a change in procedure from breakdown maintenance to condition-based maintenance. Bruce Sprague described IMM as "a refinement of the things we were doing." The company has always inspected, but IMM has given the mechanics who were trained as inspectors more tools to work with. It also has apparently concentrated people in particular areas who thereby become more familiar with the maintenance needs of particular machinery. Sprague said there were still areas that have breakdown maintenance and that there were inspections even prior to IMM. The inspections now, however, help reduce the need for maintenance, at least in part because of the use of new inspection tools. Moreover, on cross examination, he conceded that there were more inspections now than in the past.

The company characterizes IMM as a technological change for purposes of Letter IV. In support of that assertion, the company tendered Company Exhibit 5, which is its definition of technological change:

Relating to or characterized by a technical method of achieving a practical purpose.

The act, the process or the result from improvements in technical processes; an alteration, a transformation or a substitution; that improves equipment reliability or decreases maintenance requirements, resulting in productivity increases.

The company claims that IMM is a process that improved reliability and decreased the maintenance needs for equipment and that it, therefore, satisfies this definition.

The company's definition is serviceable, but the focus must be on "technological" rather than on "change." There are other changes that might decrease the need for employees in the assigned maintenance force, but only "technological" changes allow a reduction in the base force. Labor arbitrators have sometimes observed that one cannot always discern the meaning parties have given to words in collective bargaining agreements by reference to the dictionary. The language the parties use is often too infused with their own special problems and experiences. Nevertheless, the dictionary definition of "technological" is helpful in this case. I agree, then, with the company's contention that in defining "technological" one should look to improvements in technical or scientific processes that increase the productivity of machines or eliminate manual operations, a definition paraphrased from Websters.

It is not clear to me that IMM satisfies this definition in all respects. The process of inaugurating increased inspection is not a technological change; a shift away from breakdown maintenance is not a technological change. As the union suggests, these "processes," in fact, reflect a new management philosophy for maintaining the company's equipment and for reducing the need for maintenance. That is certainly a laudable objective, but it is not one that allows reduction of the assigned maintenance forces. The parties did not agree in Letter IV that the company could reduce the base force merely because the company figured out a way to use its work force more efficiently. Rather, it is only when those efficiencies are achieved through technology that such reductions can be made.

There is evidence, however, that new technology is a part of IMM. Sprague testified, for example, that the IMM inspectors have new electronic notebooks that read vibration levels and obtain a vibration signature from the machine. The resulting data can give the company information about maintenance needs that it was previously unable to obtain. I have no doubt that this is a technological change, as that term is used in Letter IV. It is the application of a new technical or scientific process to obtain results that men previously

could not obtain from their own observations or from older tools and equipment. Some of IMM, then, qualifies as a technological change, but not all of it.

There was testimony at the hearing that at least some of the remaining changes were due to IMM. In particular, items 16, 23, 39 and 45 were the result of the IMM program. Based on the evidence made available at the hearing, I am unable to determine whether these improvements were the result of increased inspection, or were the result of the application of new scientific tools during that inspection. I am not prepared to believe that all of the improvements generated by IMM are due to the use of new tools. In particular, company witness Seig Korthauer testified on rebuttal that IMM did not involve a significant amount of new training. He characterized IMM as higher level of inspection, although he also said it used new inspection tools.

Because I have applied to IMM a standard the company could not have been aware of at the time this case was tried, I will return this case to the parties to try and resolve which IMM improvements can fairly be attributed to the use of new inspection tools, rather than merely the increased frequency and increased scrutiny of the inspections. In addition, it may be that some of the other remaining items are also attributable to IMM. I will comment on some of the remaining items, and also identify others that do not appear to be the result of technological change.

Item 18 appears to involve the elimination of an employee because of a reduced workload. This is not a technological change. Similarly, item 40 appears to be related to a reduction in workload. I can understand how this would reduce the need for maintenance, but Letter IV does not allow the layoff of employees merely because they are no longer needed. I fail to see how this is a technological change. I also have some question about whether item 29 is a technological change as well as items 28, 30, 42 and 44. These appear, instead, to be changes in procedures for maintaining or using the equipment. Some of them involved changes in design or the addition of covers, but those appear to be related more to maintenance than to the employment of technology.

There are, however, several items that would appear to me to represent technological change. I was impressed by Korthauer's testimony about item 14, and the way in which the increase of refractory life reduced the need for maintenance. Similarly, items 12, 13, 19 and 20 seem to represent the introduction of new, longer-lasting equipment that reduces maintenance demands. The same can be said for item 17, item 24, item 27, and item 41. Some of these items, however, may be related to IMM, particularly item 27. In that event, the company may not be able to claim all the time savings it alleges the improvements produced. Accordingly, the union, which like the company was unaware of the standard I would apply in this case, should have the opportunity to establish the relationship between IMM and these items.

I will, therefore, return this case to the parties for the purpose of discussing whether the findings made with respect to the interpretation of Letter IV and the meaning of technological change will allow them to resolve the few issues remaining in dispute. Obviously, if they cannot do so, they can resubmit those issue to arbitration.

Given the nature and the complexity of this case, and the fact that it is being returned to the parties for further discussion, I see no reason to summarize my findings in a separate award.

/s/ Terry A. Bethel

Terry A. Bethel

February 28, 1993

<FN 1>Actually, my calculator reveals that 67% of 153 is 102.51 which, rounded to the nearest whole number, is 103. Although the parties disagree about the meaning of Appendix N, they seem to agree that, if the union's interpretation is correct, the minimum base force is 102. I will not tamper with that figure.

<FN 2>The company's pre-hearing brief contains an error of calculation. On page 10, Mr. Smith asserts that there were originally 153 employees on Attachment A, that this number was reduced by 10 by agreement, and that it was further reduced by 27 as no-replaceable transfers. However, the number of 153 already includes the agreed to reduction of 10 employees.

<FN 3>And, as I noted in Award 846, the same protections were available to those who replaced original section A employees. I need not detail here the situations in which Attachment A replacements were permitted or required. It is sufficient to note that terminations and transfers out of the craft gave rise to no replacement rights.

<FN 4>I am using the word "attrition" to encompass also transfers to other departments or sequences. Thus, I recognize that AN 5.1 provides that the base force level can only be reached by "attrition or permanent transfer" within the craft.

<FN 5>It may be, of course, that one such change could reduce the workforce first to, and then below, the base force.
<FN 6>I recognize that the company has not necessarily proposed further reductions in the work force. Rather, it simply maintains that it is not required to post openings at this time.