IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY

and **Award No. 930**

UNITED STEELWORKERS OF AMERICA

LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the union's claim that grievant Anthony Tolin should have been permitted to retract his decision to permanently demote himself from his position in the coil processing line sequence at the 80" hot strip mill. The case was tried in the company's offices on August 13, 1997. Pat Parker represented the company and Alexander Jacque presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.

Appearances

For the company:

P. Parker	Arb. Coord., Union Rel.
P. Berklich	Project Rep., Union Rel.

For the union:

A. Jacque	Chairman, Grievance Comm.
L. Aguilar	Vice Chrm., Grievance Comm.
J. Vitela	Griever
A. Tolin	Grievant

Background

In 1989, the parties agreed to Article 13, section 8.d, mp 13.44.2, which reads, in pertinent part:

> ... an employee shall be allowed to permanently demote himself/herself from his/her promotional sequence during the period from September 16 - September 30 of each year. Such request for demotion shall be submitted in writing on a form to be provided by the company, and shall be effective immediately upon receipt by the company. The company reserves the right to continue scheduling that employee in his/her former sequence until suitable replacement can be trained. In no event, however, will an employee be retained in his/her former sequence beyond Sunday of the first full week of the next calendar year.

There is no dispute that grievant signed the appropriate company form demoting himself from his sequence and that he turned it into the company on September 20, 1995. Grievant says -- and the company does not really dispute it -- that he changed his mind about the demotion and attempted to retract his decision on September 22, 1995. However, the clerk he spoke to said she was unaware of any such procedure and referred him to the day supervisor who sent him to the section manager, Kevin Crary. Crary told grievant that he didn't know what to do, so he referred him to the union.

Grievant sought the assistance of Alexander Jacque, chairman of the union's grievance committee. Mr. Jacque testified that he called union relations section manager Tim Kinach. According to Jacque's unrebutted testimony, Kinach said that he had did not object to grievant withdrawing his demotion notice, as long as he was still within the time period for making the decision, which runs from September 16 to September 30. However, Kinach did not tell Jacque that he would take care of the matter. Rather, he told Jacque to take the issue up with the section manager, Crary. Jacque said he spoke with Crary the next day and that Crary said he had no problem with grievant's decision to withdraw the demotion notice. At that point, Jacque said, he thought the matter was resolved, so he forgot about it.

Despite Crary's comments, the company did not retract grievant's demotion notice. Company records indicate that grievant's position in the processing line sequence was offered to another bargaining unit employee on September 21, 1995, the day after grievant filed his demotion form and the day before he attempted to revoke it. However, the new employee was not scheduled to be released from his old department until October 2, 1995. In accordance with the contract language quoted above, grievant continued to work on the processing line during that time period. However, he was moved to the labor gang, apparently on October 22. At some point in October, grievant called Jacque and asked when the retraction of his demotion notice would be effective. It is not clear exactly when this occurred. Jacque's best recollection was that it was "several weeks" after his discussions with Kinach and Crary. That time frame is consistent with the time of grievant's assignment to labor, an event that should have signaled to him that he was no longer in his old sequence.

In any event, Jacque called Crary to find out what had happened. Crary referred him to Betty Adkins, the human resources generalist for the hot strip mill. Adkins told Jacque that she thought grievant could not revoke his demotion notice. The two discussed the matter further, with Adkins promising to call back the following week with her decision. She called the next week and told Jacque that she interpreted the contract to mean that grievant's decision became final when he filed his demotion notice with the company and that it could not be revoked. The union then filed the instant grievance.

The union offers a number of arguments. First, it notes that the contract language quoted above from section 8.d is silent about the right to retract the notice. Thus, the union suggests that I look to the similar procedure provided in Article 13, Section 6.e, which covers applications for temporary vacancies. As is true of section 8.d, which is at issue here, section 6.e provides that applications are to filed within an enumerated period of about two weeks (there are two such periods spelled out in section 6.e). However, the union says that employees commonly change their mind about applications filed during this period and, so long as the time period has not expired, the company permits them to retract or revise applications. Since both sections are silent about retractions, the union urges that the procedure followed for applications should also apply for demotion notices.

The union also points to one other experience with section 8.d in grievant's department. In that case, an employee named Bana had filed a demotion notice and then was permitted to retract it. In that case, the retraction occurred long after the period for filing demotion notices had expired. The union grieved, fearing that the retraction would mean that the employee who had received employment security after Bana's departure would lose it. The parties settled the grievance at the first step and the company says that, as such, it creates no precedent and cannot even be cited by the union. As I understand the union's argument, however, it does not claim that the grievance settlement itself is relevant to this case. Rather, the union points to the Bana case as an example of a case in which the company permitted a retraction (even before the union grieved), which it says the company should also do here. Otherwise, the union says, grievant would be subjected to disparate treatment.

Finally, the union says that Adkins was the motivating force behind the company's decision to disallow the retraction and that she was influenced by concern about grievant's back injury. Though it is true that grievant initially considered demoting himself because of concerns about his back, there is no showing that he is unable to perform his old job. Indeed, the union says that grievant's current job is more strenuous than his old one. Thus, the union says it was improper for the company to deny grievant's request to retract his demotion because of worry over his back.

The company argues that the grievance was untimely since it was not filed until November 3, more than 30 days after grievant filed his demotion notice. Although Jacque spoke with Kinach about the matter in September, the company points out that Kinach did not waive the time limit for filing grievances. Thus, the company says that the grievance should be dismissed. In the alternative, the company points to the language in section 8.d which says that a demotion "shall be effective immediately upon receipt by the company." It makes no sense, the company says, to argue that an employee can retract a decision to demote himself when the contract says expressly that the decision is "effective immediately." The contract does not say, the company points out, that the decision is effective at the close of the period on September 30. Thus, grievant's decision was effective on September 20, 1995 and it could not be retracted.

Discussion

a. The Timeliness Issue

It is true, as the company alleges, that grievant did not file his grievance within 30 days of his demotion. But there is no reason to believe that the date of the demotion was the appropriate time to start the clock. Grievant's complaint here is that the company refused to allow him to retract his demotion notice. He first attempted to do so on September 22. Initially, the company did not allow him to do so on that date, though it was reasonable for grievant to believe he had been given permission following Jacque's talks with Kinach and Crary. I was persuaded by Jacque's testimony that he spoke with both Kinach and Crary and both told him they had no problem with grievant's retraction as long as he did so before the end of the filing period. At that point, as Jacque testified, he thought the matter was resolved.

No doubt it would have been better for grievant to do something to force the issue in September. Nevertheless, it was not unreasonable for him to assume that, following Jacque's calls to Kinach and Crary, the issue was settled. He did, after all, continue to work in the same job as before until late October. It was only after he was moved to the labor gang that he knew something was wrong. At that point, he promptly contacted Jacque who just as promptly contacted the company. It was not until a week later that the company, through Adkins, told Jacque that it would not allow grievant to rescind his demotion. The union

then filed its grievance. On these facts, I am persuaded that the grievance clock began running when Adkins gave Jacque her decision. It is clear that the union filed within 30 days of that notification. Thus, the grievance was timely <FN1>.

b. The Merits

The fact that the grievance was filed in a timely manner does not mean that the union's case has merit. My function is limited to interpreting the contract and the pertinent contract language is clear. It says unambiguously that an employee's decision to demote himself "shall be effective immediately upon receipt by the company." This means that the demotion form grievant filed was not merely to sit in a drawer and become effective at the end of the filing period. Rather, it went into effect on September 20, as soon as grievant filed it. This conclusion is reinforced by what the company did when it got the form from grievant. The company did not defer action to a later date. Rather, the very next day the company informed another employee that he had grievant's old job and it made arrangements to transfer him to the processing line.

Other language in section 8.d is also significant. Not only does that section say that the demotion is effective immediately, but it also refers to the demoted employee's "former sequence." The parties apparently recognized that even though a demotion was effective immediately, some transition time might be necessary in order to fill the job. Thus, they said that the company could continue to schedule the demoted employee for a limited period of time. However, the contract says specifically that the employee will continue to work in his "former sequence," which emphasizes the fact that the demotion took effect immediately, meaning that the employee is no longer part of the sequence.

This interpretation is also strengthened by comparing section 8.d to section 6.e. The union urges that, since both provisions are silent about retractions and since the company allows retractions during the filing period under 6.e, it should do the same thing under section 8.d. But section 6.e is significantly different from section 8.d Section 6.e provides for two 15 day filing periods for applications. The language then says:

> Promptly following the close of each such application period, the manager of the department shall post ... a list of the applications and the sequences applied for which are currently on file in the department.

Thus, in section 6.e, the parties contemplated that applications filed during the application period would be held until the end of the period, at which time the company is to take certain action. Since the company is merely holding the applications and waiting for the period to end, it makes sense to think that an employee can retract or change an application during that period. But that is not true of section 8.d. The demotion notices are not held for action at the end of the filing period. Rather, they are "effective immediately upon receipt by the company." I find that this difference in wording clarifies the fact that the parties did not intend that demotion notices could be retracted <FN2>.

I understand that the company previously allowed Bana to reclaim his old position after having demoted himself, and that its action in that case is inconsistent with the interpretation it presses here. It is clear, however, that one instance does not amount to a past practice. One might also question whether even a consistent practice could bind the company here, where the contract language is not ambiguous. In any event, the fact that the company once misapplied the contract does not mean that it is always bound to do so. Indeed, even the union recognized that the treatment of Bana was improper, since it filed a grievance to protest the move, which it later settled on a non-precedent basis.

Nor am I persuaded that the company's refusal to let grievant rescind his demotion was influenced by an improper concern about his physical condition. I cannot, of course, know whether the company had such concerns, but the contract language is clear and the company is entitled to insist on that interpretation.

Because I find that the contract language clearly makes demotions under section 8.d effective immediately, I must also find that grievant had no contractual right to revoke his demotion. Thus, I must deny the grievance.

AWARD

The grievance is denied.

s/Terry A. Bethel
Terry A. Bethel
August 21, 1997

<FN1> Although the company's interpretation of section 8.d is at odds with the initial comments made to Jacque by Kinach and Crary, the union said at the hearing that it was not arguing that the company was bound by those comments. Rather, the union raised the comments of Kinach and Crary only in conjunction with the timeliness issue. It bases its argument on the merits on other factors, discussed below.

<FN2> In the grievance minutes, as well as in its opening statement, the company argued that the union could not place reliance on Article 13, Section 8.b. However, the union raised no such argument at the hearing. Thus, I have not considered that contention and nothing I say here should be taken as an interpretation of section 8.b.