

Award No. 693  
In the Matter of Arbitration Between  
INLAND STEEL COMPANY  
AND  
UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010

Grievance No. 20-N-48

Appeal No. 1298

Arbitrator: Bert L. Luskin

February 4, 1981

#### INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on November 17, 1980. Pre-hearing briefs were filed on behalf of the respective parties.

#### APPEARANCES

For the Company:

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations

Mr. R. Castle, Senior Representative, Labor Relations

Mr. J. Santini, Assistant Superintendent, Central Mechanical Maintenance

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. M. W. Pratt, Captain, Plant Protection

Mr. R. M. Puhek, Lieutenant, Plant Protection

Mr. D. W. Sharp, Lieutenant, Plant Protection

Ms. E. Clock, Secretary, Plant Protection

Mr. S. Iczkowski, General Foreman, Pipe Shop, Central Mechanical Maintenance

Ms. B. Page, Industrial Relations Trainee

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Jim Robinson, Grievance Committeeman

Mr. Erwin G. Bircher, Grievance Committeeman

Mr. Michael Mezo, Grievance Committee

Mr. James E. Hester, Grievant

#### BACKGROUND

James E. Hester was employed by the Company on April 26, 1972, and was assigned to the No. 3 Blooming Mill. On September 22, 1975, he transferred to the Central Mechanical Maintenance Pipe Shop. He continued in employment thereafter until he was suspended preliminarily to discharge on February 1, 1980, as a result of an incident which had occurred on January 25, 1980.

Following the occurrence of the incident of January 25, 1980, Hester and a fellow employee named Ben Davis, Jr., were questioned by Plant Protection officers. Davis thereafter voluntarily terminated his employment with the Company on January 29, 1980. A superintendent's investigation was conducted on January 30, 1980, concerning Hester's alleged participation in an attempt by Davis and Hester to steal a number of brass bushings belonging to the Company. Hester was thereafter suspended preliminary to discharge for violation of Rule No. 127-j of the Company's General Rules for Safety and Personal Conduct and for his overall poor work record. Hester requested a hearing pursuant to the procedures set forth in Article 8, Section 1, of the Collective Bargaining Agreement. That hearing was held on February 8, 1980, and on February 20, 1980, Hester was informed that his suspension had been converted to discharge. A grievance was filed protesting Hester's suspension and termination from employment contending that the discharge was unjust and unwarranted "in light of the circumstances." The grievant requested restoration to employment and pay for all moneys lost.

The Union contended that the evidence upon which the Company relied was not sufficient to justify a conclusion or finding that Hester was guilty of the offense with which he was charged. The Union further contended that the Company had committed a serious procedural error when it failed to follow the procedures outlined in Article 8, Section 2, of the Collective Bargaining Agreement.

The Union contended that Hester was interrogated by several members of the Company's Plant Protection Department under circumstances where Hester was not preliminarily informed that he was entitled to

Union representation. The Union contended that Hester requested and was denied Union representation during the period of time when he was being questioned by members of the Plant Protection Department concerning his activities on January 25, 1980. The Union contended that the procedural violations committed by the Company resulted in denying Hester his rights of representation under circumstances where the facts elicited during the questioning period constituted the basis upon which the Company immediately suspended Hester and subsequently terminated Hester from employment.

The Union contended that the language appearing in Article 8, Section 2, is identical with similar provisions appearing in Collective Bargaining Agreements between the Coordinating Steel Companies and the United Steelworkers of America. The Union contended that there are substantial numbers of arbitration awards that expressly provide that the language in question would require that any employee who is being interrogated as a result of the possible commission of an offense which could result in discipline, must be informed that he is entitled to Union representation. The Union contended that the employee cannot be denied Union representation after he has made a request that any interrogation be conducted in the presence of a Union representative.

The Company contended that it had followed the procedures outlined in Article 8, Section 2, and that in no instance had Hester been denied his contractual rights to representation. The Company concluded that it had just and ample cause for suspending and terminating Hester based upon the admitted facts and circumstances present in this case and the employment record accumulated by Hester. The Company contended that it in part relied upon admissions by Hester and Davis made in the presence of Plant Protection employees and a clerical employee member of the Plant Protection Department.

The Company contended that it has uniformly followed the procedures outlined in Article 8, Section 2, ever since the provision first appeared in a Collective Bargaining Agreement between the parties in 1965. The Company contended that an identical issue was raised in a grievance which became the subject matter of an arbitration hearing before Permanent Arbitrator David L. Cole. The Company contended that Arbitrator Cole issued Award No. 606 on February 7, 1973, that completely supported the position advanced by the Company and found that the procedures followed by the Company were consistent with and in accordance with the contractual procedures set forth in Article 8, Section 2, of the Collective Bargaining Agreement. The procedure issue and the issue on the merits became the subject matter of this arbitration proceeding.

#### DISCUSSION

The Union raised a procedural defense, contending that the Company had failed to follow the procedures set forth in Article 8, Section 2, of the Collective Bargaining Agreement. That provision is hereinafter set forth as follows:

"ARTICLE 8

#### "DISCHARGES AND DISCIPLINES

8.4 "Section 2. An employee who is summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by his grievance committeeman or assistant grievance committeeman if he requests such representation, provided such representative is then available, and provided further that, if such representative is not then available, the employee's required attendance at such meeting shall be deferred only for such time during that shift as is necessary to provide opportunity for him to secure the attendance of such representative."

Hester was charged with a violation of Rule No. 127-j of the Company's "General Rules for Safety and Personal Conduct." That rule is hereinafter set forth as follows:

"The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"j . Stealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company, and the destruction, damaging or pilfering of vending machines or any equipment made available to employees for the purposes of in-plant feeding."

Certain portions of the testimony offered by Company witnesses concerning the events which preceded the apprehension of Davis in the act of allegedly attempting to commit a theft of Company property and Hester's alleged complicity in the commission of that offense are based upon the following facts and circumstances.

At approximately 6:00 A.M. on January 25, 1980, the Plant Protection Department received a call from a person identifying himself as a contractor's employee (Furnco) working on Company premises. That person stated that a possible theft was in progress at the No. 2 B.O.F. Mechanical Storage Building. He stated that

the two persons he saw were the same persons whom he had seen acting in a suspicious manner in the same area on January 14, 1980.

Two Plant Protection officers were immediately dispatched to the scene. Other Plant Protection officers followed. The first two officers who arrived at the area found a black Plymouth automobile parked facing the Storage Building. They looked in the car and saw a person lying prone across the front seat of the car. They saw a large brass bushing in front of the passenger's seat of the car and they saw a second large brass bushing in the back of the car behind the driver's seat. An additional bushing was on the ground near a wheel of the car. Another additional bushing was on the ground outside of a broken window leading to the area where the bushings had been stored. The two bushings found in the car weighed approximately 150 pounds each and were later determined to have a total scrap value of in excess of \$300.

Davis was identified as a temporary foreman who was not scheduled to work on January 25, 1980. The Plant Protection officers found two timecards on the front seat of the Plymouth (dated January 25, 1980) indicating punch-in times of 5.7 hours. That time would have translated to a punch-in time between 5:42 A.M. and 5:48 A.M. It should be noted that Hester had a scheduled starting time of 7:00 A.M.

The Plant Protection officers asked Davis to identify himself. He did so and he claimed ownership of the car. The officers asked his permission to search the car and Davis granted them that permission. A search of the car disclosed the presence of drug paraphernalia in the glove compartment of the car. Davis denied ownership of that material.

Davis agreed to make a statement. A clerk employee took verbatim shorthand notes of the interrogation and immediately thereafter transcribed her notes. Davis read the transcript, made a correction of a typographical error which he noted on page 2, and thereafter signed the statement in the presence of Lieutenants Sharp and Puhek and Captain Pratt of the Company's Plant Protection Department.

In his statement Davis made the following representations. He stated that he had been employed with the Company since 1970 and his most recent position was that of a gasoline repair man working as an hourly foreman in the Power and Fuels Department. Davis stated that January 25, 1980, would have been an extra day of work since he was not scheduled to work on that day and his scheduled starting time was normally 6:30 A.M. Since Davis was working as an hourly foreman, he had a pass permitting him to drive directly into the plant. He conceded ownership of the 1969 two-door Plymouth car, the same car that was found parked outside of the Storage Building.

Davis stated that he had picked Hester up at his home, drove to the plant and entered the plant at about 5:50 A.M. together with James Hester. He stated that Hester left the car at the plant 2 gate, entered the clockhouse, returned to the car, and Davis then proceeded to drive the car to the No. 2 B.O.F. where he parked the car. He stated that his purpose in parking the car in that location was to obtain some brass he had seen on the ground on the day before. He stated that Hester had informed him of the location of the brass and that approximately one week prior thereto they had gone to that area and looked at the brass.

Davis identified Hester as an employee of the Central Mechanical Pipe Shop. He stated that he and Hester had made final plans (on the preceding day) to take some bushings. He stated that they intended to come to work a little earlier than usual on January 25, 1980, park the car, pick up the piece of brass that they had noted on the ground on the preceding day and place it in the car. He stated that on the morning of January 25, 1980, he picked up the bushing that he had seen on the ground and placed it on the passenger's side of his car. He stated that Hester entered the storage area through the broken window and threw another bushing outside. Davis picked that up also and placed it behind the driver's seat in order to balance the weight of the car. He stated that he then informed Hester that they "had enough" and Hester then pushed another piece out of the window. Davis stated that he noted a car coming down the street, whereupon he pushed the last piece of brass under the rear of the car to hide it. He then called to Hester and told Hester to "hold it and come on out," whereupon Hester threw another bushing out of the window. Davis stated that he rolled that bushing away from the window. Davis then saw a bus come down the road, whereupon he entered his car and laid down on the front seat "out of sight." He then heard a number of cars driving up, saw flashlights and saw members of the Company's Plant Protection Department. He did not know, at that time, what had happened to Hester. Davis stated that he was asked to come out of the car, was asked for identification, and was asked what he was doing in that area. He stated that, since he had been "caught already," he informed them that he had been getting the brass and he thereupon consented to the search of his car by a plant guard. He stated that there were two pieces of brass in the car. He stated that his timecard and Hester's timecard were in the car and that the guards found a bag containing a hypodermic needle, a pop-top cooker and some cotton swabs in the glove compartment. He stated that those items belonged to a friend who did not work at Inland. Davis conceded that he had used hard drugs for some three years. Davis

stated that he and Hester intended to remove the brass from the plant and to thereafter sell it at a junkyard. He stated that he and Hester intended to share the money and he stated that he had, in the past, taken "a few screws, nuts and bolts." He conceded that he knew that what he had done constituted an act of theft, and he stated that no one had made any promises to him regarding his job in connection with the taking of statement or his execution of the written statement. Davis signed the statement together with an affirmation that the answers were true and correct and that the statement had been freely and voluntarily made. When Davis' statement was completed, Hester was asked to come to the Plant Protection office. Hester was told that he was to be asked some questions in connection with an attempted theft of Company property. Hester was asked questions and he provided answers to those questions in the presence of several members of the Company's Plant Protection Department, including the clerk who made a verbatim transcript of the questions asked of Hester and his answers thereto. Immediately upon the conclusion of the interview, the clerk transcribed her notes, typed the entire statement, and Hester was then asked to sign the statement. Hester read the statement, acknowledged that the statement accurately reflected the questions that were asked of him and his answers to those questions, but he refused to sign the statement.

Hester stated, during the course of his interview, that he was a pipe fitter who worked out of the Central Mechanical Pipe Shop. He stated that he was scheduled to start work at 7:00 A.M. on January 25, 1980, and that he came to the plant as a passenger in a car owned and driven by Davis. He stated that when the Davis car arrived at the plant, he (Hester) entered through the clockhouse and Davis then picked him up on the other side of the street. He stated that they then proceeded to drive to a building near the No. 2 B.O.F. Labor Office. He stated that approximately two weeks prior thereto he had seen some brass on a pallet and showed Davis the brass and they had discussed between themselves "taking the brass." Hester stated that they had returned that day in order to "get the brass." Hester stated that final plans had been made with Davis on the preceding day at Hester's house. He had informed Davis that Hester's sister had called from California and needed some money because "she was stranded." He stated that they had a prearranged signal for a pick-up if Hester wanted Davis to pick him up on the morning of the 25th. He stated that they arrived at the plant, drove into the plant, parked, and proceeded to obtain the brass. Hester stated that he had entered the Storage Building through a broken window and had removed and placed four brass bushings outside the building. He stated that he had seen some car lights and that he then proceeded to walk out of the north end of the building through the old No. 2 Open Hearth Building, after which he walked down the railroad between the old No. 2 Open Hearth and the No. 2 Bloomer to his shop. He stated that he had left his timecard in Davis' car and later reported to his foreman that he had lost his timecard. He stated that he informed the Plant Protection officer that he intended to sell the brass, obtain the money and send it to his sister. He stated that he informed the Plant Protection officer that Davis was expected to take the brass out of the plant in his car, after which the brass would be sold at a junkyard. He stated that he was aware that the taking of the brass constituted an act of theft and he informed Plant Protection officers that no promises had been made to him concerning his job at Inland before the statement had been taken. Hester's foreman was contacted and stated that Hester had reported losing his timecard on that morning. Hester had reported for work more than 1/2 hour before the scheduled start of his shift.

A member of the Plant Protection Department then communicated with the superintendent of Hester's Department. The superintendent was informed of the preliminary investigation and Plant Protection was asked by the superintendent to lift Hester's gate pass and to send Hester home pending any further action that the Company might take. The superintendent's investigation took place on January 30, 1980. Hester was represented by two Union representatives. At the conclusion of the superintendent's investigation Hester was suspended (on January 30, 1980) with intent to discharge. Hester received a discharge hearing on February 8, 1980, and on February 20, 1980, Hester was informed that he had been terminated from employment.

Following the submission of Hester's grievance, Davis appeared at the Step 3 hearing and denied that either he or Hester had been involved in any way with the theft or attempted theft of Company property. He denied that Hester was in any way implicated in any attempted theft of Company property. Davis in the interim had voluntarily terminated his employment with the Company. At that same hearing Hester denied any complicity in an attempted theft of Company property. He denied making any of the statements attributed to him by members of the Plant Protection Department at the time that Hester was interviewed on January 25, 1980. He denied reading any admissions of guilt and he contended that before he was interviewed on the afternoon of January 25, 1980, he had asked the members of the Company's Plant Protection Department who were present at the time to provide him with Union representation. He contended that he was refused Union representation.

Those members of the Plant Protection Department who were present during the course of the Hester interview on the afternoon of January 25, 1980, denied that Hester had made any request for the presence of a Union representative until after the interview had been completed, the verbatim transcript of the statement had been prepared, and Hester had been asked to sign the statement. The Plant Protection officers testified that Hester, for the first time, stated that he would not sign the statement until and unless he had Union representation. Hester was present at the arbitration hearing and he elected not to offer any testimony concerning his activities on January 25, 1980. He elected not to testify and he was not required to testify. The Company offered the testimony of a member of the Plant Protection Department (Lieutenant Sharp) who testified concerning the events which had led up to the apprehension of Davis, the taking of the Davis statement, the investigation concerning the time of Hester's arrival at the plant, the information concerning Hester's false statement to his foreman that he had lost his timecard, and the procedures followed by members of the Plant Protection Department when the statements of Davis and Hester were taken in the presence of a stenographer who thereafter transcribed her shorthand notes, after which the statements were submitted to Davis and Hester for signature.

The stenographer who took the notes testified that she had been employed with the Company for some seventeen years and had taken notes during the course of hundreds of interrogations. She testified that she was present when Hester read the statement he had made and had stated that all of the questions set forth therein had been asked of him and all of the answers were his answers freely and voluntarily made. There is nothing in this record that would in any way indicate that Hester was coerced, threatened, intimidated or in any way forced to make a statement concerning his activities on the morning of January 25, 1980. The arbitrator must find from all of the competent evidence in this record that Hester's statements were voluntarily made and that Hester did, in fact, admit that he and an employee named Davis participated in an attempt to commit a theft of Company property. Hester provided the Company with a motive for the attempted theft of Company property when he informed the Company that he needed the money in order to assist his sister who was "stranded" in California without funds.

The only conclusion that can be drawn from all of the evidence in the record is that Hester, together with Davis, committed an attempted theft of Company property. The evidence establishes Hester's guilt beyond any reasonable doubt. Although the Company in part relied upon prior warnings, reprimands and disciplines issued to Hester, the act committed by Hester on January 25, 1980, would in and of itself have justified the imposition of the penalty of discharge that was subsequently imposed against Hester.

A procedural issue raised by the Union in this case is identical with the procedural issue that was raised in an arbitration hearing held before Arbitrator Cole in Grievance No. 17-L-13 that became the subject matter of Award No. 606. The Union in that case contended that evidence concerning an employee's possession of narcotics in the plant was obtained by Plant Protection representatives during the course of an interrogation of the employee on August 28, 1972. The questions put to the grievant and his answers thereto were covered in a transcript followed by the grievant's signature appended to the transcript that had been prepared by a clerk. The procedure followed in that case was similar to and almost identical with the procedure followed in this case. The Union in that case contended that the grievant had been "pressured" by Plant Protection people who did not afford him the opportunity to have Union representation present at the time that he was interrogated. The Union contended that the evidence obtained during the course of that interrogation was inadmissible. Arbitrator Cole found no evidence of coercion or intimidation by members of the Plant Protection Department during the course of that interrogation.

Arbitrator Cole analyzed the application of the language appearing in Article 8, Section 2, of the Collective Bargaining Agreement (the identical provision relied upon by the Union in this case). Arbitrator Cole found that the interview with the Plant Protection representatives "was not one with supervisors nor was it for the purpose of discussing possible disciplinary action nor did grievant request representation by a grievance committeeman or his assistant." Arbitrator Cole found that the grievant in that case was questioned by Plant Protection for the purpose of ascertaining facts that would later be reported to supervision. He found that any disciplinary action would be determined by supervision without any recommendations from Plant Protection. He further found that in a subsequent meeting called for the purpose of deciding whether any disciplinary action should be taken, the department superintendent invited the grievance committeeman to be present and that at the suspension hearing the grievant was again accompanied by Union representatives. Arbitrator Cole found that on the basis of those facts, the conditions stipulated in Article 8, Section 2, were lacking and the provision was, therefore, not applicable.

Arbitrator Cole further distinguished between the fact situation involved in that grievance and a similar type of situation involving a grievance at Bethlehem Steel Corporation that led to the issuance of an award

by Impartial Umpire Seward (Decision No. 1797). He distinguished between fact investigations by Plant Protection officers and other types of discussions between employees and their supervisors. He noted that the distinction made in the Seward award was valid and, in his opinion, explained the basis for what may have appeared to be contrary rulings made by the Board of Arbitration in United States Steel case Nos. 7562-T, 7563-T and 7564-T where admissions were made in the presence of an employee's supervisor as well as in the presence of Plant Protection representatives.

All of the competent evidence in this record would indicate that Plant Protection officers have for many years conducted investigations of the type that was conducted on January 25, 1980, after Davis had been apprehended in the act of attempting to commit a theft of Company property and after Davis had implicated Hester in the commission of that act. The contractual language appearing in Article 8, Section 2, concerns itself with the rights of an employee who is "summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action ....." Under those circumstances, he is entitled to be accompanied by a committeeman "if he requests such representation ....." In the instant case the evidence would conclusively demonstrate that the Plant Protection officers were not acting in a supervisory capacity when they conducted a preliminary investigation concerning attempted theft of Company property under circumstances where their presence interrupted the commission of the theft. They were led to Hester's alleged complicity by a voluntary statement attributed to Davis and by the presence of a timecard which Hester had punched that morning and had left in Davis' car. Davis freely went with the Plant Protection officers to the office where the interview was conducted.

All of the competent evidence in the record would indicate conclusively that Hester did not ask for the presence of a Union representative until such time as the interview had been completed and his oral statements had been made to members of the Plant Protection Department in the presence of a stenographer who was taking shorthand notes of the interview.

Hester was not suspended by Plant Protection officers. They did not in any way determine that Hester would be suspended. They merely reported their preliminary findings to the superintendent of Hester's department who thereafter directed Plant Protection officers to send Hester from the plant until such time as an investigation could be conducted by departmental supervision and a decision reached with respect to whether discipline would or would not be invoked.

This arbitrator is not prepared to find that the Company would have a right to deny an employee Union representation under every conceivable set of facts and circumstances in instances when an employee is being interviewed by members of the Plant Protection Department. The fact remains, however, that Hester had not requested Union representation before making an oral statement. He was never made the subject of threats, coercion or intimidation. He was offered no inducements to make his oral statements. He was provided with Union representation at the investigation conducted by departmental supervision prior to any formal suspension, and he was provided with Union representation at the hearing that was held before the suspension was converted to discharge.

The Company did not violate the provisions of Article 8, Section 2. The interview between Hester and members of the Plant Protection Department did not constitute a meeting of an employee "in an office with a supervisor for the purpose of discussing possible disciplinary action." Hester did not ask for Union representation until the interview had been completed, the statement prepared and read by Hester, after which Hester declined to sign the statement. In substance, the arbitrator will find that Hester participated in an attempt to commit a theft of Company property on January 25, 1980. The interview conducted on the same day by members of the Plant Protection Department did not constitute a violation of Article 8, Section 2. Hester did not request Union representation until the interview had been completed. The arbitrator must, therefore, find that the Company did not commit a procedural violation that would in any way justify sustaining the grievance in this case.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 693

Grievance No. 20-N-48

The Company had just and proper cause for terminating James E. Hester from employment. The grievance is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

February 4, 1981