Arbitration Award No. 766
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance Nos. 20-R-54 and 20-R-55
Arbitrator: Clare B. McDermott
Opinion and Award
November 4, 1986
Subject:
Seniority--Claimed Right of Senior Plant-Service Employee to Elect Layoff Rather Than Assignment to Displace Junior-Service Employee in One-Job Sequence.
Statement of the Grievances:
20-R-54 - "Management violated the CBA when it laid off the grievant commencing March 2, 1984 and subsequent.
"Relief Sought - That the grievant be recalled to her sequence and paid all monies lost due to the violation.
"Violation is claimed of Articles 3, Section 1, and 13, Sections 3, 5, 6, and 9."
20-R-55 - "Management violated the CBA when it scheduled the grievant to the Tool Room sequence commencing March 3, 1984 and subsequent.
"Relief Sought - That the grievant be scheduled to his occupation in his sequence or displaced according to Article 13, Section 9.
"Violation is claimed of Articles 3, Section 1, and 13, Sections 3, 5, 6, and 9."
Agreement Provisions Involved: Article 13 (paragraph 13.1), Sections 1 and 5 of the March 1, 1983 Agreement.
Statement of the Award: The grievances are denied.
Chronology
Grievance Filed: 4-13-84
Step 3 Hearing: 8-15-84
Step 3 Minutes: 1-21-86
Step 4 Appeal: 2-7-86
Step 4 Hearing: 5-14-86
Step 4 Minutes: 5-22-86
Appeal to Arbitration: 5-23-86
Arbitration Hearing: 5-29-86
Appearances
Company
Robert B. Castle, Arbitration Coordinator, Labor Relations
William W. Moore, Section Manager, Piping, Field Services
Michael O. Oliver, Senior Representative, Labor Relations
Marion M. Roglich, Senior Representative, Labor Relations
Union
Mike Mezo, Grievance Committeeman
Bill Trella, Staff Representative
Don Lutes, Secretary - Grievance Committee
Louis Aguliar, Assistant Griever
F. Garcia, Grievant
BACKGROUND
These grievances from the Pipe Shop of the Central Mechanical Maintenance Department of Indiana Harbor Works claims (20-R-54) violation of Articles 3 and 13 of the March 1, 1983 Agreement in Management's laying off the junior plant-service grievant Mack from the single-step sequence job of Tool Room Attendant and (20-R-55) in its assigning the senior grievant Garcia, about to be laid off from the Operator, Small Pipe Thread job, to the Tool Room Attendant job.

The basic facts immediately relevant to these movements are not in dispute. Grievant Mack is established on the Tool Room Attendant job in the Pipe Shop and has a plant-service date in 1965. The Tool Room Attendant is the sole job in its sequence.
Grievant Garcia is established on the job of Operator, Small Pipe Thread in the Pipe Shop and has a plant-service date in 1957. Those two jobs are in different sequences of the Pipe Shop.
The Company decided in March of 1984 that there no longer was need for Garcia's services on the Operator, Small Pipe Thread job, and he was removed from it. There is no suggestion that Garcia's removal from that job was in any way improper.
Since Garcia has greater plant service than Mack, Management removed the junior grievant Mack from the Tool Room Attendant job and assigned the senior grievant to it and laid off the junior grievant Mack. That gave rise to these two grievances, with the Union arguing that Mack's displacement by the senior Garcia was improper under Article 13, Section 5, because there was no labor pool in the Pipe Shop, thus depriving Supervision of authority to use Article 13, Section 5 to displace the junior grievant from a job in a single-job sequence by a senior employee. The Union urges that Article 13 gives certain "sequential rights" to employees once they become established in a sequence, and that one of those rights is ability to resist being bumped out of their sequence by nonsequential employees, except under certain clearly defined circumstances. The Union contends that the one exception to those sequential rights lies in the language of Article 13, Section 5, and that it applies allegedly only in situations where the senior employee who was about to be laid off and who would displace the junior, is in a labor pool job and about to be laid off. The Union says that cannot apply here because the Pipe Shop sequences have no labor pool. The uniqueness of departments which have no labor pool is said to be shown by the parties having negotiated a special agreement relative to them about Apprentices who withdraw or fail from the apprentice program.
The Union says also that the Company's argument that there is a labor pool in the Pipe Shop is based only on a paper reference to a labor pool, which ignores the fact that there never has been an employee assigned to a job in such a labor pool.
The Union argued also and in the alternative that, whatever rights lie in a senior employee in these circumstances under Article 13, Section 5, they are his, to be exercised or not at his option, and that they may not be forced upon him by Management. The practical consequence of this argument is that the Union's alternative position is that it was solely up to grievant Garcia, facing layoff, to decide whether he would prefer to displace the junior Mack and work possibly thirty-two hours per week at Job Class 7 or to elect layoff, with Supplemental Unemployment Benefits and Unemployment Compensation payments for not working.
Provisions of the Agreement referred to by the parties read as follows:
"ARTICLE 13
"Seniority
"13.1 The Company and the Union recognize that promotional opportunity, job security when decrease of forces takes place, and reinstatements after layoffs should merit consideration in proportion to length of continuous service. It is also recognized that efficient operation of the plant greatly depends on the ability of the individual on his particular job.
"13.2 Section 1. Definition of Seniority. Employees within the bargaining unit shall be given consideration in respect to promotional opportunity for positions not excluded from said unit, job security upon a decrease of forces, and preference upon reinstatement after layoff, in accord with their seniority status relative to one another."
"Section 5. Labor Pool and Single Job Sequences. Jobs in the labor pool and in single job promotional sequences (considered together as a unit) shall, in each department be governed by the plant length of service, but employees in a single job promotional sequence shall not be displaced by employees in the labor pool having longer continuous length of service unless there are employees in the labor pool in their department with longer plant length of service who are subject to being laid off, in which event employees in the labor pool shall be entitled to move into the single job promotional sequence in accordance with the provisions of this Article."
The Company reads Article 13, Section 5 as requiring its, and not the Union's, result. It notes that when Garcia was displaced, he was subject to layoff out the gate, since the Pipe Shop ordinarily does not schedule employees in the labor pool. Management thus displaced the junior grievant Mack from her Tool Room Attendant job and scheduled the senior Garcia to that occupation, allegedly in accordance with paragraph 13.17, and consistent with the requirements of the preamble and Section 1 of Article 13, requiring that job security in a decrease of forces give consideration to length of continuous service. The

Company urges, moreover, that this application of Article 13 was identical with those used in similar circumstances--absence of a labor pool in the shops--in the past.

The Company says that Article 13, Section 5 is the only provision dealing with force reductions in a single-job sequence. It says that provision treats single-job sequences the same as the labor pool, showing that both are to operate as a safety net for senior employees. If the Union's view were to prevail here, there would be no safety net for senior employees, such as grievant Garcia.

Management denied also the Union position that there was no labor pool in the Pipe Shop, noting that the sequential diagram indicates that there is a labor pool. The Company does acknowledge that employees usually are not scheduled in the labor pool. It is said that generally employees are not scheduled in a labor pool in a maintenance department because there allegedly is less need to fill vacancies caused by absenteeism there on sequential jobs above the pool than there is in operating departments.

The Company characterizes the Union argument as relying solely on what it sees as the very technical ground that, between his removal from his job and his displacing the junior Mack, the senior Garcia was not formally assigned to a labor pool. The Company says that absence of that formal, intermediate step should not be treated here as sufficient to preclude the enhanced job security that Article 13 obviously accords to greater length of Company service.

Management insists, in any event, that the language of paragraph 13.17 does not require that there be a labor pool in order to administer force reductions relating to single-job sequences according to length of plant service. It says the wording indicates that a single-step-sequence job is to be treated in the same fashion as a labor pool job when a decrease of forces occurs, in that, when a drop in operations causes a layoff of employees senior in plant service to those at work on a job in a single-job sequence, the senior employees subject to layoff are to be placed on the job in the single-job sequence.

Replying to the Union's argument that the senior grievant Garcia had an option to displace the junior grievant Mack or to elect layoff, at his discretion, the Company notes that when the parties intend to afford a senior employee an option to exercise or to waive a seniority right, they set out the option in clear language, as in paragraph 13.88.2, dealing with administration of seniority-pool jobs and granting to a senior a right to displace a junior in the pool or to waive that right and elect layoff. The Company argues that absence of similar express waiver language here indicates that the parties intended no such waiver. The Company notes also that the parties have not devised any forms to use in exercising and recording any such option, as they have done in other recognized option situations. Moreover, Management says that provision never has been administered by the parties, or even argued by the Union, as granting any such option. It is said, indeed, that the provision always has been administered in thousands of similar situations since 1947 as the Company has handled it here, with no such option in the senior employee. Management thus insists that the Union is estopped from arguing in this grievance contrary to past administration of the Agreement in these circumstances.

The Union made it clear that it sees Garcia's grievance (20-R-55) as presenting the basic issue here, that is, whether Management had the right unilaterally to assign the senior Garcia, about to be laid off, to the Tool Room Attendant job. If it did not, the Union says the Company then necessarily displaced the junior Mack improperly. It asks that Mack be returned to the Tool Room Attendant job and made whole for any loss of earnings and other contractual benefits and that Garcia be scheduled to his Operator, Small Pipe Thread job or displaced, at his election, as in Article 13, Section 9.

The Union stresses that extensive layoffs of long-service employees is a relatively new event in the Shops. Employment was virtually secure in the past, and broad reductions of forces allegedly did not begin to occur until 1983. It is said, therefore, that there could have been no past practice on this point since there were very few layoffs until only a year or so before these grievances.

The Union then argued what may be the essential basis for Garcia's grievance, that is, that, if the Company were to prevail here, employees subject to layoff from highly rated craft jobs could be forced to work Janitor jobs, perhaps on four-day weeks, in place of electing to waive broad-based labor-pool assignments, and take layoff, and collect SUB and UC until they might be recalled or they would withdraw their waiver. It is said that would be unfair, in that long-service employees would be forced to work lower paying jobs while short-service employees would be laid off and would be collecting the same sums under SUB and UC for not working as the long-service employees would be earning for working. That is pointed out as a greater inequity than the one the Company counters here, of keeping senior employees at work. The Union argues that a right cannot be used by the Company to the detriment of the possessor of the right.

Company witness Senior Labor Relations Representative Oliver agreed that there were not many layoffs in the old Central Maintenance Mechanical Department until about 1980 or 1981. He said he had checked and

found there had been a few situations such as this and that he was advised they had been handled as was this case, that is, that when a senior plant-service employee was subject to layoff and there was a junior-service employee on a job in a single-step sequence, the senior employee was assigned to displace the junior. He detailed ten such situations, in four different Shops in the Central Mechanical Maintenance Department. Four examples occurred in the Mobile Equipment Repair Shop in 1982 and two in October of 1984, two in the Boiler-Fabrication Shop in 1985, one in the Locomotive Shop in 1983, and one in the Weld Shop in 1985 that was pushed by the Union Representative who presented these grievances in arbitration. The same Union Representative complained in December of 1984 that Management had violated the Agreement by failing to bump the senior grievant into a job in a single-step sequence then held by a junior employee, allegedly in violation of Article 13, Section 5.

The Company says those situations saw a senior employee displacing a junior one on a job in a signle-job sequence and that they were not challenged by the Union. Moreover, the Company says this Union Representative urged the Company to do things that way and complained when it did not. Management asserted that the above ten instances were examples, only, and were not exhaustive. Oliver said that the various Section Managers had told him they had handled all like situations the same way. The Company notes that Article 13, Section 5 has read essentially as it does now since 1947.

The Company said at the hearing that its citation of Article 13, Section 17 in the grievance steps was a mistake, since it deals with senior employees about to be laid off from labor-pool jobs and, therefore, does not apply here.

Speaking to the allegedly sorry plight of senior craftsmen who might be moved back from Shops jobs and "forced" to work lower rated jobs for perhaps thirty-two hours per week, in place of layoff, with SUB and UC, the Company says that commonly has happened already under the Agreement with craftsmen in operating departments. They have been assigned to Job Class 2 Laborer and Janitor jobs, so that grievant's situation here was no worse than that of many craftsmen in the operating departments.

Moreover, says the Company, there are contractual provisions, such as the Earnings Protection Plan, designed to protect a craftsman's rate for extended periods of time, should he be cut back to lower rated jobs.

The Union stresses that five of the Company's ten examples of its allegedly consistent handling of like situations arose after these two grievances were filed. It speculates that the five prior cases might be explained on grounds that the employee might not have understood his rights, that the Union official might not have carried out his duty, or that the senior employee might have elected layoff.

The Company notes that the Union has the burden of proof here, and it says it has exhibited no occasions when the Agreement has been applied as the Union seeks to do here. The only testimony came from the Company witness.

FINDINGS

There is no suggestion of any impropriety in grievant Garcia's being removed from the Operator job. The dispute arose largely or solely from Management's thereafter reassigning him, without his having gone through an intermediate, formal assignment to a labor-pool job, to the Tool Room Attendant job. The second and ancillary violation claimed lies in the resulting displacement of grievant Mack from that job. It seems clear from the Union argument and theories, however, that Garcia's reassignment to the Tool Room Attendant was essentially the sole problem, even if Mack had not been displaced.

That is, the Union explained that it saw Garcia's grievance as the main one. Indeed, the Union was refreshingly candid in its detailed arguments in support of that grievance. It made it clear, that is, that his reassignment to the Tool Room Attendant job was the primary complaint, since it prevented him from being laid off to the street, where he could enjoy SUB and UC benefits while not working. Whether or not Garcia was to be the beneficiary of that theory, it was clear also that, if the Company should prevail here, the Union's paramount fear was that in the future craftsmen on highly rated jobs might be displaced in situations where there might be no labor pool and, thus, unless they could refuse reassignment to a job in a single-job sequence, they could not elect layoff and might have to work lower rated jobs for perhaps only thirty-two hours per week rather than receive SUB and UC while not working. This record does not disclose the job class of Garcia's Operator job, and thus it is not clear that he would have benefited in that position.

But, assertion of a contractual right of a senior employee not to perform work he is entitled to perform, so as to be able to remain idle and collect SUB and UC, must be supported by very clear language in the Agreement in order to be adopted, and the language must be considerably clearer than is present here.

That is, Article 13, Section 5 does not say expressly, contrary to the Union argument, that the only time a senior employee about to be laid off could be assigned to a job in a one-job sequence held by a junior employee would be if he had come out of a labor pool job. In any event, grievant Garcia was not assigned out of a labor pool and did not displace grievant Mack from a labor pool.

Article 13's preamble and its Section 1 confer adequate authority for this assignment. They state the essence of seniority rights, that job security and promotional opportunity merit consideration in proportion to length of service. It thus is not necessary to rely on paragraph 13.17 to support this movement of Garcia.

The Union then seeks to bridge the gap by noting that senior employees may waive assignment to pool jobs (paragraph 13.88.3) and apparently go on layoff, with SUB and UC, and urging that it would be unfair if senior employees could not enjoy the same benefits in situations where there is no labor pool. It is said, therefore, that paragraph 13.17 should be read to reach the same result by construing it to prohibit assignment of a senior employee about to be laid off to a job in a one-job sequence. That might be an appropriate result which might round off arrangements and which the parties could reach by negotiation, but the language they did agree upon in paragraph 13.1 and its preamble and in paragraph 13.17 is not strong enough to enable the Arbitrator to do that by decision here.

Finally, without deciding that the relatively few pre-grievance situations that were shown by the Company were sufficient to establish a local working condition in its favor or to estop the Union here from arguing the contrary, they were, indeed, the only examples of application of paragraph 13.17, and there were none to suggest that either party ever had thought of the senior employee's position under that provision as conferring an option on him, at least not the option suggested here. The parties showed in paragraph 13.88.3 that when they meant to create such an election, they knew how to state it very clearly. They did not do so here. Nor have they devised forms to record exercise of any such option. Thus it could not be concluded that Garcia had such an option here.

Accordingly, since no violation of the Agreement arose from Garcia's removal from his Operator job or from his reassignment to the Tool Room Attendant job, there was no violation either in the resulting displacement of Mack. Thus, the grievances must be denied.

AWARD

The grievances are denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator