Arbitration Award No. 768
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 25-R-2
Arbitrator: Clare B. McDermott
Opinion and Award
January 6, 1987
Subject: Safety--Inability of Employee to Understand Spoken or Written English.
Statement of the Grievance: "The Company is discriminating against J C. Irizarry, #4270, by denying him his contractual right to work in the 80" Hot Strip Department.
"RELIEF SOUGHT: That the Company return the grievant to the 80" Hot Strip Labor Pool. That all monies lost be paid.
"Violation is claimed of Articles 3, Section 1, and 4, Section 4."
Agreement Provisions Involved: Articles 3 and 14 of the August 1, 1980 Agreement.
Statement of The Award: The grievance is sustained as stated in the last paragraph of the accompanying Opinion, and the local parties will have to examine pertinent records to determine times and amounts for which grievant must be made whole.
Chronology
Grievance Filed: 3-25-83
Step 3 Hearing: 5-12-83
Step 3 Minutes: 10-19-83
Step 4 Appeal: 10-25-83
Step 4 Hearing: 5-2-86
Step 4 Minutes: 8-25-86
Appeal to Arbitration: 9- 4-86
Arbitration Hearing: 11-11-86
Appearances
Company
R. V. Cayia, Arbitration Coordinator, Union Relations
Norbert Chmura, Section Manager, 100" Plate Mill Department
Robert G. Kosakowski, Section Manager, Labor & Services, 80" Hot Strip Mill Department
Michael O. Oliver, Staff Coordinator, Union Relations
Michael E. Ryan, Safety Engineer, Field Services Department
Joseph Sucec, Retired Labor Supervisor, 80" Hot Strip Mill Dept.
Robert D. White, Supervisor, Employment, Personnel Dept.
Roseanne Cabrera, Computer Specialist, Union Relations
Union
Bill Trella, Staff Representative
Gavino Galvan, Chairman Grievance Committee
Bill Gailes, 1st. Vice-Chairman Grievance Committee
Don Lutes, Secretary Grievance Committee
Araldo Manzo, Witness
Joe Gutierrez, Griever
Gavino Jiminez, Griever
Chris Solis, Steward
Julio Irizarry, Grievant
Patricia Narin, Observer
Tracy Whorton, Observer
Martha Berry, Office Secretary
Grievance No. 25-R-2
BACKGROUND

This grievance from Indiana Harbor Works claims violation of Articles 3 and 4 of the March 1, 1983 Agreement in Management's removing grievant from work at the 80" Hot Strip Mill because of safety and work factors said to arise there from his inability to understand English.

Grievant began with the Company in March of 1971 at the 100" Plate Mill and worked there for over eleven years on Laborer, Sweeper, and Janitor jobs until he was laid off in a force reduction in September of 1982. On October 12, he was recalled to a Laborer job in the 80" Mill in administration of the seniority-pool provisions of the Agreement. Grievant worked as Laborer at the 80" Mill until October 31, when he was removed from work, as will be explained below.

Day turn on what the Company thinks but is not sure was October 18 was a downturn on the Mill, and then Labor Supervisor Sucec says he directed grievant and a co-worker to use a water hose and pinch bars to clean scale and slivers from under the table roll line between Nos. 2 and 3 roughing mills. Sucec took grievant and the other employee to the area and showed them what had to be cleaned. There was a slab (about 40" x 20') on the roll line, and it had to be moved to the south toward No. 2 roughing mill to get it out of the way. Since both employees were "bumpers" to the 80" Mill and thus were without experience on this specific task, Sucec told them how to hook up the hose and not to turn it on until the nozzle was opened. Sucec says he told both employees to stay on the mill floor and do nothing until he would return, while he went off to get someone to operate the rolls to move the slab and then to have the rolls locked out. Sucec left to get a Roughing Foreman to have the slab moved and the equipment locked out. He returned in ten or fifteen minutes, with the slab not yet moved and the line not yet locked out, and saw grievant standing on the slab, which was on the roll line, washing scale away with the hose. The other employee still was on the floor. Sucec waved grievant down. He reviewed his instructions with the two employees and asked grievant why he was standing on the slab. Grievant did not answer, and Sucec says that was his first awareness that grievant could not speak or understand English. He had not supervised grievant before this. Grievant is Puerto Rican and speaks Spanish. The other employee speaks English, and Sucec asked him why grievant was up on the slab, and he shrugged and said he was not the boss. Sucec admonished that employee for not telling grievant to keep off the slab.

Sucec explained that an employee standing on the slab could be injured by falling down between the rolls if they had been operated. The slab was to be used later by these employees as a platform in their cleaning work, but only after it had been moved and the line locked out. Sucec says grievant's being on the slab violated 80" Hot Strip Mill Safety Rule 451, reading as follows:

"451. Do not start to work until you have been instructed concerning the proper and safe work procedures for any job with which you are unfamiliar."

Grievant and his fellow worker continued with this task for the balance of the turn, with Sucec observing them, which he says he normally does not do.

Sucec says this precise scale-cleaning chore is done perhaps every four or six weeks. He agrees that a reprimand is given for a first violation of a safety rule and could have been given for this incident. He was not aware whether or not grievant was warned or reprimanded for this event.

Sucec reported all this, including that grievant could not understand English, to then General Foreman Labor and Cranes Kosakowski. Kosakowski called grievant to his office for a monthly audit on October 27. He says he found then that he could not communicate with grievant. He got his Spanish-speaking Secretary to interpret for him and grievant, and in that way got some concepts across.

Kosakowski asked Safety Engineer Ryan to observe grievant's work. He did so on October 28 and watched grievant emptying trash cans, requiring that he walk through the Department, that is, through the Slab Yard, Mill, and Furnace areas. A Spanish-speaking employee was working with grievant that day, and Ryan had him interpret to grievant what Ryan was doing. Ryan saw grievant do nothing unsafe on that turn and checked the "Satisfactory" box on his report, but he reported in writing his concern that, if grievant had to work alone, he would not understand warning signs, such as those reading "No Smoking" or other danger signs.

Also on October 28 Turn Foreman Ezzel reported to Kosakowski that he had tried orally and in writing to communicate with grievant, who was unable to respond, and that Ezzel felt grievant was a hazard to himself and to his co-workers. Kosakowski learned also that Personnel Clerk Reed had had a problem trying to communicate with grievant when he came into the Department and had to get a Spanish-speaking employee to help him get grievant's telephone number and address.

Because of all the above, Kosakowski and the Department Superintendent decided to remove grievant from the 80" Mill because he presented an excessive safety risk. Kosakowski had notified the Personnel Department that he was going to remove grievant from work on the ground that his inability to understand

English created a significant safety problem. Personnel did not honor that suggestion immediately, however. A meeting on the subject was held with 80" Mill Supervisor Kaiser, General Foreman Kosakowski, Foreman Sucec, Personnel Representative Lawson, Personnel Employment Supervisor White, and a representative of the 80" Administrative Section. White said this meeting was held in order to be sure that the decision was not an arbitrary one. The Department asked what would happen to grievant, and the participants thus discussed his going back into the seniority pool bumping process and his eligibility for Unemployment Compensation and Supplemental Unemployment Benefits.

Grievant was removed from duty on October 31, and this grievance followed, with the Union arguing that he clearly was able to work safely in an industrial environment, as shown by his having done so with no problems for eleven years at the 100" Plate Mill. He worked there as a Sweeper, which took him from the furnace area through the rotary shear and to the hot bed and grinder, allegedly presenting risks from falling plates. The Union said there was only one Spanish-speaking supervisor at the 100" Mill, and it claimed that there was a bilingual work force at the 80" Mill. The Union contended that Management was discriminating against grievant.

The Union says the Company was aware grievant could not understand English when it hired him in 1971 and then suffered his working safely and satisfactorily for the next eleven years with that handicap, so that it now has an affirmative obligation to assist him to be able to continue working, rather than putting him out of work.

The Union stresses Management's past emphasis in other grievances on the very full, one-week safety orientation it allegedly gives employees assigned to some departments from another area, contending that it must use that opportunity with bilingual speech and writing to make grievant aware of potential safety problems at the 80" Mill. It insists that grievant's one safety incident in the twelve turns he worked at the 80" Mill (Laborers were on four-day weeks.) does not justify his being relieved from work there. It wonders, if grievant's inability to understand English presents such severe risks as Management claims, how he has kept a spotless safety record for eleven years. On the other hand, if his problem was so severe, it asks why grievant was allowed to work so many turns after the October 18 event. The Union urges that the Company has obvious ways to communicate with grievant through bilingual supervisors and employees in the Department.

The Company answered that, although grievant was a General Laborer, employees assigned to that job often are required to move up to fill temporary vacancies on various sequential jobs above the pool, and that it would reduce efficiency if Laborers were unable to promote into sequential jobs because of inability to communicate. The Company says it cannot insure that grievant always would be assigned with bilingual employees. It says there were no Spanish-speaking supervisors or labor leaders in the 80" Department at the time.

Management urges that it has clear authority to remove an employee who presents a hazard to himself and others because he cannot communicate with them or understand safety directions. It believes that principle was affirmed in Inland Award No. 174 (1957), when it denied a promotion to an employee who could not communicate in English. The Company cites Inland Award No. 378 (1960) for the view that the judgment of General Foreman Kosakowski that grievant did present a safety risk must be given greater weight than the contrary position of grievant or Union representatives.

The Company says grievant's working in the Department for twelve turns could not preclude it from removing him from the schedule, citing Inland Award No. 304 (1959). It relies also on Inland Award No. 625 (1975) for the proposition that Management need not wait until after an accident has occurred in order to make reasonable provisions for safety and health of employees.

Management insists also that grievant's clean safety record for eleven years at the 100" Plate Mill is not relevant because it is smaller, and it claims that the majority of the Labor Leaders at the 100" Mill are bilingual, which is not true of the 80" Mill.

The Company relies on its 14-1 authority "...to make reasonable provisions for the safety and health of its employees. . . .

The Company says there is no Union evidence to support the charge of discrimination, noting that Inland Award No. 623 (1975) requires the Union to back up such a claim.

Upon being released from the 80" Mill on October 31, 1982, grievant was returned to the Personnel Department for placement on what the Company says would be a more suitable assignment under the seniority pool bumping procedures or to await recall to the 100" Mill. In the intervening years grievant apparently was recalled to the 100" Mill and then was laid off again several times. Thus, he has worked since that time, apparently at the 100" Mill, No. 2 BOF, No. 3 Cold Mill, Plant 4, in an Electric Shop, and 4

BOF, but never again at the 80" Mill. Thus, although he did work for the Company since the October 31, 1982 event, he also had months on layoff.

The relief requested thus is that grievant's release from duty be held to have been improper and that he be reimbursed for all earnings and other contractual benefits lost by reason of his release from work.

Kosakowski explained that Management did not release grievant from work right after the event with Foreman Sucec, which Management thought, but was not sure, had occurred on October 18, because he thought he had a moral obligation to be sure he was doing the right thing before he put grievant out of his livelihood. He said he thinks grievant got regular orientation and safety contact given to employees new to the Department, but he was not sure of that.

Kosakowski said that the 80" Mill covered twenty-five or thirty acres under roof and perhaps thirty acres outside, and that grievant could be assigned as a Laborer anywhere in that entire area.

The Union suggested that grievant surely could be assigned to the Janitor job without concern for his and others' safety. Kosakowski disagreed, saying that on that job grievant would have to go into several buildings where he would encounter warning signs, and would not be limited to just one area, as he would have to do also on the "trash" assignment. Examples of such signs were one at the finishing mill stands, reading:

"DANGER FLYING SCRAP FROM TAIL ENDS"

The other example was a sign in the Slab Yard reading,

"DANGER FALLING SCRAP FROM CRANE WHEELS AVOID THE WALKWAY WHEN A CRANE PASSES OVERHEAD."

Kosakowski said grievant could encounter these and other similar signs in the regular progress of his work as a Laborer or as a Janitor. He agreed also that not all employees heed the latter sign.

Company Exhibit 18 is the Position Safety Orientation for the Restroom Detail of the Laborer job, which is performed by an employee working alone. It has six paragraphs, four of which warn of safety requirements and two of which deal with proper job performance. The safety items require walking on designated walkways, wearing of hard hat, safety glasses (mono-goggles), metatarsal safety shoes, rubber gloves, and long sleeve shirt, warn of necessity to watch for crane and mobile equipment movements, oil and grease on floors and stairs, open holes, moving conveyors, hot coils, flying scrap, scale, water spray, and steam, and the last makes Safety Rules #467 through 472 apply to this task. The witness said there are many similar Position Safety Orientations for other Laborer tasks.

Kosakowski noted that as a Janitor grievant would have to use chemical preparations to clean bathroom facilities. The chemical containers have precautionary statements, advising of hazards to humans, physical and chemical hazards from pressure and temperature, and directions for use. The Company says grievant would have to be able to read those statements in order to perform the Janitor job and to do it safely.

There are thirty-one bathrooms in the 80" area, and a map was exhibited, showing where they are. Kosakowski says, without a translation, grievant could not understand the map.

Kosakowski agreed every employee need not read the map of the thirty-one bathrooms. He agreed also that the chemical preparations, with written warnings and directions, are used all over the plant and are not peculiar to the 80" Mill.

Management says there would be no way to insure that grievant always could be assigned to work along with a bilingual employee, since the latter might be ill, farmed out, or filling sequential vacancies. In any event, the Company says it cannot pass on this heavy responsibility to Turn Foremen and that a bilingual employee would have to be practically chained to grievant, even on the trash detail. Moreover, the Company urges that would be inefficient, requiring two employees for a one-employee assignment.

Section Manager of the 100" Plate Mill Chmura explained that the mill was built in 1913 and covers about four acres under roof. He said it was more labor-intensive and less automated than the 80" Mill. In late 1982 it employed 425 or 450 employees. He said grievant worked in the Labor Pool there, sweeping, picking up blocks from the shipping floor, and dumping garbage. The witness said that about 50 percent of the employees there were of Spanish origin and that communicating with grievant was done by Spanish-speaking foremen and labor leaders. He agreed grievant had had no accidents and had committed no unsafe acts because of inability to understand English in his eleven years there. Chmura said grievant's inability to understand English was well known at the 100" Mill, so that Supervision routinely used interpreters to communicate with him. The witness said there were some other employees there who had problems understanding English but were not Spanish-speaking, and that the 100" Mill had found some way to work out those difficulties, an example being that such employees would bring their own interpreters to the office when formal communication became necessary.

Company Exhibit 21 shows the national origin of the seniority-pool employees assigned to the 80" Mill in October of 1982, with 174 employees, of which 72 (over 40 percent) were Hispanic, 50 Black, and 52 White. The Personnel witness said the Hispanic percentage for the plant as a whole was 22 percent, so that the 30-percent rate for the 80" Mill as a whole (about 800 employees) and for the Labor Pool there hardly was discriminating against Hispanics.

The Union stresses that when grievant was relieved from work and while he was on layoff, others were left in active employment at the 80" Mill with less seniority than grievant. The Company agrees, but insists its relieving grievant from work was not based on seniority considerations.

Grievance Committeeman Manzo named several Spanish-speaking foremen and labor leaders in various areas of the 80" Mill, who he thinks were there in late 1982. These were Rodrigues, Castinerra, Ortiz, Veja, Salines, Castillo, and Flores. Manzo said he had seen signs posted in other departments in two languages, such as at the Open Hearth and Yard Departments, and has seen whole booklets translated to Spanish. He said that, aside from the Washroom and Trash assignments, all other Laborer chores are team tasks. He never heard of any other employee in the 80" Mill or in the whole plant who was relieved from work for inability to understand English.

Union witness Jimenez, who speaks English, has twenty years with the Company. He has heard instructions in his Transportation Department given in Spanish by supervisors and fellow employees. Non-Spanish-speaking supervisors would give their directions, and then bilingual employees would translate them into Spanish for other employees whose English was limited. He said a lot of safety meetings in Transportation are given in Spanish.

The witness said the Company actively had recruited Mexicans in the 1920s and after World War II. Some could not speak English. He named a thirty-four-year service employee who could not and said his father had forty-four years at the 100" Mill and had no English until after he retired. The witness said there were signs posted in the plant in English and Spanish. The Yard Department had such signs in 1966, and some were still up in the Locker Room.

The witness agreed that the percentage of Latin employees was much greater in the Transportation Department than in the 80" Mill. He said also that some departments put a stripe on the hard hats of employees new to the department, so that experienced employees would be aware of them and would be cautious and also would help them in certain situations. The Company says that is done throughout the plant.

Union witness Gutierez represents the 100" Mill employees. He now speaks English and has worked with the Company for twenty-eight years at No. 3 Cold Mill, Galvanize, and at the 24" Mill. He said there were a number of Latins in Galvanize who had virtually no English. In such situations and when there were no Latin foremen, the foremen would use a broom to point, and the employees with little English would understand they were to clean the area. The witness said the 100" Mill makes allowances for employees who have no English. Some foremen pick up some Spanish, and communications are carried on also by way of co-workers. Gutierez said that was true also of the No. 3 Cold Mill in 1959 when he worked there under Supervisor Kosakowski, when the witness had no English. His father came from Mexico and was hired without English and worked for seven years with the Company. He estimated the Hispanic population of the Galvanize Department was perhaps 35 percent of the force.

Grievance Committee Chairman Lutes has thirty-two years with the Company and has worked in Galvanize, Nos. 1 and 2 Cold Mills, the Tin Mill, and the 44", 76", 28", 10", 14" and 100" Mills. He said there were employees in those departments with limited English and that most communications with them were made by bilingual persons, some of whom were labor leaders. Lutes said Company employees without English come to the Union Hall and that the Union Secretary interprets for them. He said the Galvanize Department does that now also.

Grievant testified, by way of an interpreter on both direct and cross-examination, that he got instructions at other departments from a fellow worker and that on some assignments, Janitor for example, he knew the duties, areas, and safety problems simply from having done the work in the past. Sometimes he was assigned with other Spanish-speaking employees. Grievant says he understands "No Smoking" signs and those saying "No Unauthorized Persons." He received four letters of good conduct from the Company, in English.

Grievant agreed there was more machinery at the 80" than at the 100" Mill and that the former thus was more hazardous. He said he has come to understand the Safety Booklet, in English, at the 100" Mill from his son's reading it to him.

The Company says the very narrow issue is whether it violated Articles 3 or 4, Section 4 (no discrimination) by removing grievant from work at the 80" Mill. It urges that grievant's working at other areas of the plant after this removal is irrelevant. It sees the Union as arguing that all areas and departments present essentially the same safety concerns, so that grievant allegedly faced hazards in those areas equal to or greater than those encountered at the 80" Mill. The Company says that is not accurate and that the Union has the burden of proving that charge by clear and convincing evidence. Management insists the only relevant comparison is between the 80" and the 100" Mills. The Company notes that the 100" has a greater ratio of Spanish-speaking supervisors, labor leaders, and employees.

Management says this is not a seniority case and indeed, that Article 13 (paragraph 13.88) would help its position, in that the employees assigned under the seniority pool provisions, as grievant was, would have to be "qualified" on the job.

The Company said the situation of a deaf employee would be handled through the Medical Department. The record does not explain what has been or would be done from a safety standpoint about an English-illiterate or a totally illiterate employee.

The Union argues that Article 14, Section 1 cannot be used by Management solely as a shield behind which to retreat by saying that the only way to "...make reasonable provisions for the safety and health of its employees at the plant," would be to put an employee out of work. The Union insists that in some situations, including especially this one, 14-1 requires that Management keep the employee at work and rearrange its facilities and systems so as to make his continuing employment reasonably safe.

The Union charges that no reasonable effort was made by 80" Management to communicate with grievant here, such as by using Spanish-speaking supervisors, labor leaders, or by translation by fellow employees, which many other departments of the plant routinely have done over the years for this grievant and for other employees, as well. It is said, therefore, that the Union is not asking that special provisions be established just for this one employee, but that it is merely seeking application to this grievant at this location of procedures already established for other employees all over the plant.

After the hearing, the Arbitrator visited the plant with representatives of the parties and toured and observed in some detail all relevant areas of the 80" and 100" Mills and looked at some conditions of work environment at No. 4 BOF.

FINDINGS

Two basic conclusions are clear and admitted on this record.

The first is that grievant understands very little or no spoken or written English. That is the core of the Company position. It says in that posture he presents a significant safety hazard to himself and to others working with or near him in the 80" Mill. It sees concrete proof of that charge in the event on or about October 18, 1982, when grievant got up on the slab and hosed scale in spite of his having been told to stay on the floor and do nothing until Foreman Sucec should return and after the slab would be moved and the line locked out.

At the hearing grievant appeared to deny that he was up on the slab then, but that cannot be accepted, not because grievant is not to be believed, as the Company there suggested, but because it was obvious that he was confused by the language barrier and perhaps by the Company interpreter. Thus, it must be found that he did commit an unsafe act in being up on the slab, from which he could have been injured seriously by falling from it between the rolls and into the pit or flume ten to fifteen feet below, should the slab have been moved by someone's pushing the wrong button in the unoccupied pulpit of the shutdown Mill. It must be found also that grievant did that, not in deliberate or careless violation of Sucec's direction, but because he did not understand that direction.

Management argued that as a credibility dispute, but it is willing to accept also the other view, which Sucec and Kosakowski accepted at the time, that grievant got up on the slab to work because he was unable to understand Sucec's English order not to do so before the line should be locked out. The Company says that view goes to show only what it is pressing here, that grievant's inability to understand spoken or written English makes it unsafe in violation of Article 14-1 for him to work in the 80" force.

It cannot be denied that, as things were done in October of 1982, that event does tend to support the Company argument. Accordingly, if this were a case where grievant had come directly from the street to the 80" Mill on October 12 and had been put out of it on October 31 for this reason, it well might be that the grievance would have to be denied, on grounds of Management's authority under Article 14-1 or 13, or both.

But that is not this case. Grievant did not just appear suddenly at the 80" Mill from the street. That presents the second basic fact here and it, when coupled with other considerations, militates even more strongly against the Company position.

That is, the hard fact that cannot be blinked is that grievant already had over eleven years of spotless work, both from a job-performance and from a safety standpoint, at the 100" Mill before he came to the 80" Mill. That shows beyond reasonable argument to the contrary that he is able to work well and reasonably safely in a heavy industrial environment. It is sufficient, moreover, to cast considerable doubt on the Company argument that the 80" Mill presents numerous and very serious hazards, substantially more dangerous in this respect than those encountered at other areas and especially more risky than those at the 100" Mill. In light of grievant's long and successful service at other areas of this plant, it is the Company that must establish by a preponderance of the evidence that the 80" Mill presents so many and such serious safety hazards, significantly beyond those at other heavy mill and furnace operations in the plant where grievant already has worked safely and satisfactorily, to render such past experience worthless as a consideration in this dispute.

The Company would put that burden on the Union, but that would stand this matter on its head. Grievant had worked well and safely for the Company for eleven years before this problem arose at an area of heavy industrial activity. Nothing about his personal situation had changed in 1982. It is not said that Management did not know grievant could not understand English. Supervision at the 100" Mill knew it and accommodated to it. The Company at the 80" simply began charging that a condition peculiar to him--inability to understand English which had existed when he was hired and for all of the intervening eleven years without change, suddenly rendered him unable to work for it any longer because of circumstances allegedly peculiar to the 80" Mill. It thus was a necessary part of Management's case to back up that point.

The same conclusion would have to be drawn in any event in the ordinary operation of Article 13. In such a situation an employee entitled by his continuous service to a given job can be put out of it only by the Company's establishing that he no longer is fit, able, or qualified to perform it. Nothing changed on grievant's part here. The only change was that in late 1982 he began working in a different area, and it thus was necessary for the Company to show such significantly different safety hazards there as to upset the obvious teaching from grievant's past eleven years of satisfactory and safe performance of work in another roughly similar, heavy mill-operating area with this Company.

Nothing said here should be seen, however, as putting undue stress on procedural matters such as burdens of proof. These very important problems rarely should be allowed to turn on such nuances. The clear force of the basic facts here is so strong as to obviate necessity for reliance on burdens of proof.

The conclusion that emerges inescapably from the record as a whole is that grievant is able to work satisfactorily and reasonably safely as a Laborer in an atmosphere of heavy mill activities and that the 80" area is not so substantially more hazardous than the 100" and all other departments in which grievant has performed safely over the years as to change that conclusion. It simply cannot be found that 80" Supervision is such an isolated fortress of safety in the plant than is Supervision at other similar operations, which the present Company argument indirectly would picture as necessarily more careless of employee safety by having allowed grievant to work there.

The Company is one entity for this purpose, and it cannot seek to raise safety standards at one area after an employee has worked satisfactorily and safely for eleven years at many other, at least reasonably similar areas, unless the specific area presents substantially greater hazards than the others. The record does not establish that. There is nothing that would leap to the mind to support a view that a smaller, 1913, less automated and more labor-intensive plate mill was substantially safer than a larger, 1965 hot-strip mill. It well might be the other way around, from an equipment point of view. Moreover, there are many danger signs at both areas, and there are Spanish-speaking supervisors or employees at each. Surely, whatever statistical conclusions might be drawn for other purposes from a difference between a 50 percent Spanish-speaking force at the 100" and a 30 percent Spanish-speaking force at the 80" could not bear conclusively on this problem.

Accordingly, with roughly the same degree of accommodation in seeking to have supervisory instructions put into Spanish and some signs made bilingual, as has been done with success and without noticeable inconvenience at other areas, grievant can work as satisfactorily and safely at the 80" as he has done at those other areas, and as other employees without English apparently continue to do.

The fact that grievant was not excluded for claimed safety reasons from any of the other operating areas to which his service brought him after his removal, some of which areas are at least roughly comparable to the 80" Mill in hazards, suggests that 80" Supervision might be attempting to exaggerate the risks of its

surroundings or to erect an unrealistically elevated safety standard at its areas, in comparison to the other pertinent areas of this plant. If grievant could not work with reasonable safety at the 80" Mill, how was his peculiar disadvantage accommodated properly under the same standard of 14-1 at 2 BOF, No. 3 Cold Mill, 100" Mill, or 4 BOF? The Company argues, indeed, that that question should be answered by concluding that the other departments perhaps were wrong and the 80" right. That is legitimate argument, but the evidence does not support it.

It is clear from General Foreman Kosakowski's testimony that this is a safety case under Article 14 and not a job-performance case under Article 13. In spite of that, however, Kosakowski did urge that efficiency of the Laborer job would be affected adversely by grievant's presence on it because he claimed that the primary purpose of the Laborer job was to fill from it temporary vacancies on various sequential jobs above it. If grievant could not move up to those sequential jobs because his inability to understand English would make him unable to perform their duties, the witness said the Department's efficiency would be reduced. The difficulty with that is, however, that paragraph 13.88 entitles the senior employee to a job in the pool "...for which he is qualified ....," and, therefore, he may not be held off a job for which he is qualified by his inability to perform other jobs above it.

The 80" Mill does cover a larger area than does the 100" Mill, but that does not establish that it is significantly more dangerous for this purpose than other plant areas of heavy industrial activity. There are many signs in English in each of the 80" and 100" Mills, designating a large container hanging on a wall as holding a fire hose. Such containers can be seen to hold a hose, even without a sign. Similarly, there are many "Safety Island" signs at each Mill, with red crosses on them. Putting aside all signs like the "Fire Hose" and "Safety Island" ones, the Arbitrator counted eighty-four safety signs at the 80" area and forty-six at the 100". There probably are some that he missed, but not enough to blunt the conclusion drawn above. The signs at each area state various warnings, for example, of ear, eye, and head hazards, and they require that related and customary protection be worn; that only authorized personnel enter certain areas; prohibit boarding crane stairs absent certain conditions; prohibit smoking; warn of acid; state that certain areas are not passageways; and convey other information. There were two bilingual signs (English and Spanish) at the 100" Mill and none at the 80". There were at least six signs at the 80", saying that ear protection was required and three such signs at the 100" but, except for two employees at the 100" area, no other employees or supervisors were seen wearing ear protection. Hard hats and side-shield safety glasses were, with one exception, worn by everybody.

The Company's reliance on Inland Award No. 174 is misplaced. That decision sustained Management's denying a promotion to an employee whose inability to understand English made him incapable of performing the basic duties of the Hooker job to which he sought to promote, and which required that he read and hear instructions in English as to what material to get, in what order to get it, where it was, and where to place other material, all of which changed constantly and most of which were in written English. That grievant apparently never had performed the Hooker job which he sought. That is an entirely different situation.

Nor is this problem similar to Inland Award No. 625, where a progressively deteriorating hearing condition made grievant unable to hear directions and signals, so that he could not perform the job's duties properly or with appropriate concern for safety of others.

The Company is right, of course, in noting that it need not wait for an accident to happen before it would have authority to move to eliminate or reduce hazards. Article 14 is alive with concepts of foresightedness. But that does not render irrelevant the very strong impressions arising from long years of past experience. Here, eleven years of Management's and grievant's common experience are much more convincing on this question than is the alleged peculiarly hazardous character of the 80" Mill.

There is no evidence of any Management desire to discriminate against grievant on grounds of national origin and, therefore, there was no violation of Article 4-4.

In countering Union arguments of discrimination against grievant as an Hispanic, however, the Company did stress the 30 percent ratio of Hispanic employees at the 80" Mill as a whole and in the labor pool, and said that constituted a "...significant concentration of Hispanics in the department ...." and, thus, that there could have been no such discrimination.

But that argument cuts the other way, as well, in that such a significant concentration of Hispanics in this department surely would contain sufficient numbers of English-Spanish, bilingual employees to make it not unreasonably difficult to arrange for translations of spoken and written directions for grievant, as other areas have done for long periods. It is of related interest that there is no suggestion that the 100" Mill was made in any way inefficient by its accommodation of grievant's situation over the years.

The Company's reliance on the second sentence of 14-1 is not helpful here. Of course, it must "...make reasonable provisions for the safety and health of its employees at the plant," and, in some other circumstances that well might justify putting a senior employee out of work on the ground that something about his condition made it clear that he no longer could perform the work with reasonable safety to himself or others, or both. A classic example of that was seen in Inland Award No. 744 (1983), where an employee's progressive and seriously deteriorating vision, to the extent of his becoming industrially blind in one eye, rendered him unable safely to perform jobs in the Switching Sequence. But that is not this case. Consequently, on the basis of the particular facts of this record it could not be concluded by a preponderance of the evidence that grievant's inability to understand English presented such an unsafe situation at the 80" Mill as to justify his being put out of its Laborer work force under Articles 3, 13, or 14. Thus, the grievance will be sustained, and grievant shall be made whole from October 31, 1982 for all earnings and other contractual benefits lost for all times when, but for 80" Supervision's refusal to allow him to work there, his seniority would have entitled him to do so, and during which he was as a result laid off out the gate and unable according to his service to work at any other area of the plant.

AWARD

The grievance is sustained as stated in the last paragraph of the accompanying Opinion, and the local parties will have to examine pertinent records to determine times and amounts for which grievant must be made whole.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator