Award No. 834
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEEL WORKERS OF AMERICA,
LOCAL UNION 1010
Grievance No. 14-S-103
Appeal No. 1445
Terry A. Bethel, Arbitrator
October 15, 1990
OPINION AND AWARD

Introduction

This case concerns an interpretation of Appendix W of the collective bargaining agreement. The case was heard at the Company's offices in East Chicago, Indiana on September 6, 1990. Robert Cayia presented the Company's case and Jim Robinson represented the Union. Both sides filed pre-hearing briefs.

Appearances

For the Company
R.V. Cayia, Section Manager, Union Relations
R. Vela, Section Manager, Union Relations
For the Union
Jim Robinson, Arbitration Coordinator
Steve Wagner, Griever
Gary Busick, Griever
Larry Wismeirsh, Witness
Jim O'Donohue, Griever
Ted Rogus, Staff Representative
Don Lutes, Sec. Grievance Committee
Tim Roberts, Assistant Griever

Background

This case involves the Union's claim that Appendix W of the collective bargaining agreement, added by the parties during the 1986 negotiations, requires the Company to pay overtime to non-apprentice employees who are required to attend education or training classes. The full text of Appendix W reads as follows:

The parties agree that an employee required to attend educational and/or training classes and grandfathers who voluntarily attend educational and/or training classes towards the completion of a Company apprenticeship program shall receive his occupation's average straight-time hourly rate of earnings (including applicable incentive earnings but excluding shift differentials and Sunday and overtime premiums) for such hours of classroom attendance. Hours paid for such classroom attendance will not be counted in determining any overtime liability.

The gist of the dispute is whether the qualifying phrase "towards the completion of a Company apprenticeship program," which clearly modifies "grandfathers," also modifies "an employee required to attend education and/or training classes."

The Company asserts that the qualifying phrase applies only to grandfathers, a category of craft employees who achieved journeyman status without completion of the apprenticeship program. Under this reading, then, the company can require employees to attend non-apprenticeship related training in excess of their normal eight hour work schedule but pay them for the training only at straight time rates. The Union, on the other hand, asserts that the Company must pay at the overtime rate for required training sessions beyond the normal work day, unless the class counts "toward the completion of a Company apprenticeship program." Both sides marshaled impressive arguments in support of their positions.

The instant dispute arose on March 29, 1988, as a result of the decision by maintenance supervision in the No. 4 slabbing mill to schedule certain employees for a training session. None of the employees attended the classes in partial fulfillment of apprenticeship requirements. All of the employees had already worked their regularly scheduled eight hour turn. The Company, citing Appendix W, paid them straight time for the one hour training period. The Union asserts that the employees should have been paid at the overtime rate as provided for by contract.

Discussion

Both sides referred me to the inception of Appendix W in the 1986 negotiations and, moreover, to the creation of certain predecessor language contained in the 1977 Job Description and Classification Manual (JDCM). That provision dealt with payment for apprentice related classroom hours and read as follows:
"(2) Credit and Pay for Apprentices for Classroom Attendance Hours in Related Training Classes after 8/1/77:
A training period is 1040 hours of actual work experience which shall include the hours of attendance in outside related training classes in the Company designated Craft Related Instruction Program conducted outside the plant.
Outside the plant classroom attended hours by an apprentice in the Company designated Craft Related Instruction Program shall be paid for in accord with the Standard Hourly Wage Scale rates for the respective job classes set forth in the apprentice rate schedule in the 1977 Collective Bargaining Agreement. In addition, an apprentice shall receive the applicable cost-of-living adjustment set forth in the 1977 Collective Bargaining Agreement for each hour of classroom attendance. It is understood and agreed that:
(a) pay for classroom hours shall include only the pay stipulated in (2) paragraph above. Incentive, shift differential and any other form of pay shall be excluded.
(b) Hours paid for classroom attendance will not be counted as hours worked except for computation of pay for hours worked in excess of 40 hours in a payroll week.
(c) During the periods when an apprentice is attending related education classes, such apprentice shall be scheduled to work in the plant the same number of hours per work day as are scheduled for employees having standing in his promotional sequence.
The number of hours scheduled for an apprentice for work in the plant in any two-workweek period may be modified so that the combination of hours paid for classroom attendance and hours paid for work in the plant equal the number of hours scheduled in the same two-workweek period for employees in the apprentice's promotional sequence."
The provisions which the Company claims have relevance to the current dispute are paragraph (a), which excluded incentive pay from the amount paid for classroom attendance and (b), which allowed classroom attendance hours to count in accumulation of weekly overtime.
Both paragraphs (a) and (b) (as well as another paragraph not related to this dispute) were deleted in the 1986 negotiations. In addition, as set forth in Appendix W, the parties agreed that the wage rate for classroom hours would include incentive earnings. The Company urges that the parties, in effect, traded overtime hours for the inclusion of incentive earnings in the rate paid for classroom attendance in the apprenticeship program.
I have no difficulty drawing that inference. The Company, however, would have me believe that the parties did more than that. It claims the parties not only agreed to exchange apprentice weekly overtime eligibility for the inclusion of incentive pay in class-hours pay; but, the Company urges, they also agreed that no employee attending a training class would have those hours count toward the accumulation of overtime. This, the Company claims, is the effect of Appendix W, which the Company describes as an "umbrella" that covers both the apprenticeship training that had previously been the focus of Article VI, Section 7, paragraph D (2) of the Job Description and Classification Manual, and also any required training attended by non-apprenticeship employees. The Company also points out that apprenticeship employees had never received credit for daily overtime as a result of attending training classes. The JDCM had, in effect, limited accumulation as a result of training to weekly overtime.
In further support of its claim, the Company urges that I should consider the placement of Appendix W. Had it been intended to apply only to overtime accumulation for apprenticeship training, as the Union claims, the language would have been relegated to the Job Description and Classification Manual, which covers craft and apprenticeship issues exclusively. Inclusion of Appendix W in the collective bargaining agreement, the Company argues, signals its applicability to employees generally, and not merely to apprenticeship training. The Company also notes that Appendix W refers to treatment of "employees" and does not use the more restrictive term "apprentices."
The Company also constructed an impressive argument out of a question I asked. That is, I wondered why, if Appendix W is as broad in scope as the Company claimed, it was necessary to include the qualifying clause at all. The Company's response was the Appendix W does more than limit overtime accumulation; it also obligates the Company to pay for certain training time at straight time rates. The only employees it is willing to pay, the Company says, are those it requires to attend classes and grandfathers who attend

apprenticeship classes voluntarily. Other volunteers are not paid. The qualifying language was necessary, then, to distinguish between those volunteers who would and would not receive pay.
Finally, the Company makes a number of grammatical and syntactical arguments. The Union, the Company notes, argues that the qualifying phrase should modify both "employees" and "grandfathers" because of an interpretive tool known as parallelism. The Company claims, however, that the Union's argument is based on false parallelism and that the concept, when used properly, actually supports the Company's interpretation. In addition, the Company offers arguments based on punctuation (although its suggested alternative put the commas in the wrong place) and an interpretive device known as the last antecedent rule.
The Union, too, makes constructional arguments, though less formal than those propounded by the Company. At base, the Union relies on what it calls the "plain meaning" of the language, with particular emphasis on the identical introductory language for each category of worker ("employees" and "grandfathers") to which, it says, the qualifying phrase applies. This, essentially, supports its argument of parallelism.
Decision
I appreciate the effort expended by both parties to convince me of the proper interpretation of Appendix W. Ultimately, however, neither the Company's syntactical arguments nor the Union's plain meaning rule can be dispositive. The fact is that the language makes perfect sense either way. The first time I read Appendix W in the Company's brief (before I knew what the dispute was about) I gave it the Union's interpretation. In the numerous times I have read it since, I have been able to attribute either the Company's or the Union's interpretation with equal dexterity. The dispute, then, cannot be solved by applying rules of grammar or construction. The concepts of parallelism, false parallelism, punctuation, and the last antecedent rule never control the meaning of language. They are merely tools to assist the reader. In this case, however, the tools don't fix the problem. Both sides make equally impressive interpretive arguments. I must, then, look beyond the mere words to reach a decision.
I could be persuaded by the Company's argument about the placement of Appendix W. That is, the Company asserts credibly that, had Appendix W been limited to apprentice employees, the language would not have appeared in the collective bargaining agreement but would have been relegated to the JDCM. The difficulty is that the Company's argument appears to overstate its case. Appendix N admittedly deals only with problems facing craft and apprenticeship employees, yet it appears in the collective bargaining agreement and not in the JDCM, which actually hasn't been republished since 1977. I can't say, of course, why the JDCM has not reappeared since 1977 or exactly why the parties decided to include Appendix W in the collective bargaining agreement. Perhaps, as the Company claims, it was because it was to apply to all employees. Or perhaps, as the Union implies, it was because the failure to republish the JDCM meant that a change in overtime and hourly rate calculation for apprentices could receive proper notice only by inclusion in the collective bargaining agreement. Whatever the reason, the existence of Appendix N indicates that the parties do include in the collective bargaining agreement language intended to apply only to apprentices and craftsmen. I cannot, then, give much significance to the inclusion of Appendix W in the contract itself.
I understand that the parties cannot testify about their intent at the time of negotiation. That doesn't mean, however, that I am forbidden from looking at facts as a way of discovering the intended scope of contractual language. What I find most persuasive in this case is a review of the issue that actually confronted the parties when they negotiated the changes that led to Appendix W.
As even the Company's evidence reveals, the issue was the inclusion of incentive pay in the hourly rate apprentices receive for training. I agree with the Company's assertion that it made that concession in exchange for the Union's agreement to relinquish inclusion of training hours in the accumulation of weekly overtime, the only overtime to which apprentice class hours applied at all. So why, then, does the Company claim it got more than that?
The Company offered no testimony in its case in chief that there had been any problem with the overtime treatment of training hours for non-apprentice employees. I asked the only such question and was told only that practices before 1986 had been somewhat inconsistent. There was no evidence, however, that this inconsistency had led to problems that the parties (or at least the Company) decided to address in negotiations. Rather, it appears to me that the issue under review was whether to include incentive earnings in the training pay of apprentices and, if so, whether to exclude apprentice training hours from all overtime accumulation.
I am persuaded that the parties did both of those things. But I see no warrant for also concluding that they went beyond the subject under negotiation and also excluded from overtime accumulation all required training hours by all employees. In short, read in the context of the issue under negotiation, I think the

parties included Appendix W to reveal their agreement that those employees attending apprenticeship training--whether as grandfathers or not--will receive incentive pay and will not have their training hours accumulate for overtime purposes. That was the issue on the table, that is what they agreed to, and Appendix W is where they memorialized their agreement.

AWARD

The grievance is sustained. Appendix W of the collective bargaining agreement does not limit overtime eligibility for non-apprenticeship employees required to attend educational and/or training classes.

/s/ Terry A. Bethel
Terry A. Bethel, Arbitrator
Bloomington, IN
October 15, 1990