Award No. 838
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Stipulated Issue
Arbitrator: Terry A. Bethel
January 2, 1991
OPINION AND AWARD
Introduction
This case was tried on a stipulated issue which is set forth in full below. The hearing was held in the company's offices in East Chicago, Indiana on December 13, 1990. Robert Cayia represented the company and Jim Robinson presented the union's case. The stipulation of issue reads as follows:
This understanding sets forth the parties' stipulation of the issue to be resolved in this arbitration hearing. The parties dispute involves the proper interpretation of Paragraph No. 7 of the Mutual Agreement concerning the Shape Products Organization dated August 12, 1988. A copy of this Agreement is attached. Specifically, Paragraph No. 7 states:
"All entry level permanent vacancies in the Shape Products Organization shall be filled first by the senior qualified (in accordance with Article 13, Section 1) bidder established as of May 1, 1988 or thereafter within the Shape Products Organization. If there are no bidders such vacancies shall be filled in accordance with the Collective Bargaining Agreement. However, beginning 1/1/92, permanent vacancies shall be filled in accordance with the Collective Bargaining Agreement."
The Union contends that the above paragraph only applies to entry level permanent vacancies in non-craft sequences and that the process for filling permanent vacancies in craft sequences within the Shape Products Organization is governed by Article 13, Section 6 of the Collective Bargaining Agreement. The Company contends that the above paragraph applies to entry level permanent vacancies in all bargaining unit sequences, craft and non-craft, that arise within the Shape Products Organization. Stated another way the parties disagree as to the types of entry level permanent vacancies for which employees established within the Shape Products Organization are to be afforded preferential bidder status vis a vie other bargaining unit employees in the plant.
In agreeing to present this dispute to be resolved by means of a declaratory opinion, the parties have agreed to waive the provisions set forth in Article 6 of the Collective Bargaining Agreement relative to the processing of complaints and grievances in the grievance procedure.
The union filed a brief at the hearing. Mr. Cayia submitted a reply brief that I received on December 28.
Background
This case involves an interpretation of a Mutual Agreement entered into between the parties on August 12, 1988. The agreement gave rise to what was then called the Shape Products Organization, now known as the Inland Bar and Structural Company. Bar and Structural is, essentially, an autonomous entity within the umbrella of Inland Steel Company. I don't know whether it has separate legal status, although that fact would be of no importance to this case. What is important to this case are certain aspects of the Mutual Agreement that provide for exceptions to the collective bargaining agreement. Of particular importance is paragraph 7, which reads as follows:
All entry level permanent vacancies in the Shape Products Organization shall be filled by the senior qualified (in accordance with Article 13, Section 1) bidder established as of May 1, 1988 or thereafter within the Shape Products Organization. If there are no bidders, such vacancies shall be filled in accordance with the Collective Bargaining Agreement. However, beginning 1/1/92, permanent vacancies shall be filled in accordance with the Collective Bargaining Agreement.
The issue in this case is whether the preferential bidding rights created by paragraph 7 of the mutual agreement apply to both craft and non-craft employees of Bar and Structural.
Although the parties disagree about the meaning of paragraph 7, there is not much dispute about the facts surrounding this case. The mutual agreement was intended to make the company competitive in the bar and structural steel market. The successful negotiation for the mutual agreement resulted in a company investment of over $100,000,000. As described by Vice President for Operations Jack Cox, Bar and Structural is a separate company that has its own profits and losses, its own mission, its own capital

programs, its own purchasing, human resources, customer servicing, and other departments. It was, obviously, created from the larger Inland Steel Company.

The company's desire to form a separate company did not, of course, escape the attention of the union, which opposed any attempt to separate Bar and Structural from the existing bargaining unit with a separate contract. Ultimately, however, the parties agreed to the mutual agreement, which maintained the integrity of the overall bargaining unit, but made some concessions to the separate nature of Bar and Structural. As Cox explained, it was a condition of the company's willingness to undertake the investment that the union agree that the company could operate in a different way.

I need not detail here all of the changes made by the mutual agreement. One of the significant changes, however, was the development of skill based occupations, which gave the company greater flexibility in the use of its work force. In return, the employees are paid at the highest level for which they're trained, regardless of the work they do within the sequence. In addition, other provisions of the mutual agreement create a scheme for employee participation and, in general, a cooperative working environment.

Paragraph 7, as explained by Cox, was intended to take advantage of this new work culture. Both parties understood at the outset that there would be some shut downs resulting in the elimination of some jobs. Cox said the company was trying to establish a new entity with a separate philosophy and culture. Paragraph 7 was intended, in part, to provide job opportunity for the employees whose jobs would be lost. But it was also intended to allow the company to keep people in Bar and Structural who had already been accustomed to the new working environment. That environment included some cooperative arrangements, as explained above. But it also made some fairly basic changes to parts of the collective bargaining relationship between the parties -- in particular the skill based occupations -- and, at base, the company wanted to keep in Bar and Structural employees who had already accepted that philosophy.

Cox asserted, and the company claims, that paragraph 7 was intended to apply to both craft and non-craft jobs. Cox said there was extensive discussion of all aspects of the mutual agreement, a fact that would seem evident from the scope of the changes it made in the parties' relationship. There was no discussion, however, about any intention to distinguish between craft and non-craft in paragraph 7. In fact, Cox said that everything that was intended to be excluded from the operation of the mutual agreement was excluded expressly.

Cox's interpretation of paragraph 7 was supported by two other company witnesses, Bob Sanger, the manager of maintenance for Bar and Structural, and Rene Vela, section manager, union relations, who was involved in much of the drafting of the mutual agreement. Sanger reiterated that there was significant discussion of paragraph 7 and that there was no mention of a distinction between craft and non-craft, a difference he would have opposed. Vela confirmed that testimony. Vela also pointed out that several sections of the mutual agreement distinguished expressly between craft and non-craft occupations, a distinction that could easily have been carried over to paragraph 7, had the parties intended to create it.

Vela also offered testimony about use of the term "entry level vacancy" in the collective bargaining agreement. That term is defined in m.p. 13.32.8 as follows:

The term entry level job refers to the job or jobs in a seniority unit or line of promotion in which permanent vacancies remain after all employees with incumbency status in such unit or line have exercised their promotional and other seniority rights.

As explained by Vela, the entry level is the point of entry into the department. It can be synonymous with the lowest job in the department, but it doesn't have to be. That is, under certain circumstances, employees can enter a department in other than the lowest job.

A significant issue -- indeed, to my mind, the real issue -- in this case is whether the term "entry level" applies to craft jobs. Vela and the company claim that it does. Vela points to m.p. 13.32.3.1, which provides in part:

When posting a notice of a permanent vacancy within a craft sequence, the Standard level of such craft occupation will be posted in accordance with this section.

The union reads much significance into the wording of this section, but Vela claims that the standard level referenced by this paragraph is actually the entry level, as defined by 13.32.8, because it becomes the point at which employees enter the department. The union, as I will explain below, believes the terms entry level and standard level were used consciously by the parties to apply to different things. In short, the union believes that the term entry level job has no application to craft jobs. Thus, while in the company's view the language of paragraph 7 of the mutual agreement applies to both craft and non-craft jobs, the union asserts that it applies only to craft jobs.

Union president Mike Mezo was as firm in his belief as was Cox in his. Mezo said the union understood the term "entry level" to apply only to non-craft positions. The union did not oppose the company's desire to post some positions only in Bar and Structural for a limited period of time, but it never intended to include craft vacancies in that arrangement, something that Mezo described as a "deal breaker."

Discussion

Although the parties differ with respect to the interpretations they attach to paragraph 7, I find no credibility problems with their positions. That is, I believed Jack Cox when he said that he genuinely thought paragraph 7 applied to both craft and non-craft jobs and I believed Mike Mezo when he said he thought the same language applied only to non-craft positions. Although there was no subjective agreement -- the so-called meeting of the minds -- that failure does not preclude a contract, for the fact is the parties did agree to the same language. Moreover, there is no question that the parties understood the language to address the same subject, i.e., a limitation on the scope of job postings occurring in Bar and Structural. There is, then, objective mutual agreement, which is all the law of contract requires. The fact that each party understood the words to mean something different is not dispositive. Rather, the question I have to decide is what the words they used would mean to a reasonable person in the circumstances.

I spent a good part of the hearing believing the company was correct. Paragraph 7, after all, says that "All entry level permanent vacancies" will be posted only within Bar and Structural and the word "all" is powerful and unambiguous. One might perceive the union as arguing "we agreed to post all vacancies in Bar and Structural, but we thought you understood that we were only talking about all non-craft vacancies." Given the use of the term "all," that argument could clearly not prevail. The union, however, argues that the language chosen by the parties reveals that they did not agree that "all" vacancies would receive this special treatment. Rather, they agreed that all "entry level" vacancies would be so treated. The question, then, is whether the addition of the words "entry level" imposes a limitation on the scope of the jobs subject to paragraph 7.

The company does not necessarily disagree with this observation. It asserts, however, that the definition of "entry level" encompasses the posting of craft vacancies. I agree that the general language used in m.p. 13.32.8 is broad enough to capture the procedure used to fill craft vacancies. Obviously, no matter what the job or the sequence, everyone has to enter at some point. In my view, however, the wording used in 13.32.8 does not describe what actually happens when craft vacancies are filled and was not intended by the parties to do so. Moreover, I find that the parties have previously used the term "entry level" to apply only to non-craft vacancies.

In my view, the collective bargaining agreement itself provides an important distinction. I have been unable to find anyplace in the contract -- and I have not been directed to anyplace in the contract -- that uses the term "entry level" in connection with craft vacancies. Indeed, it appears to me that every time the term is used, it makes reference only to non-craft positions. Equally important, when the parties addressed the posting of craft vacancies specifically, they did not use the term "entry level." Rather, they used the words "standard level." Not only is the choice of the different terminology significant in itself, but the words chosen are more descriptive of what actually happens than is the more general definition of "entry level."

Rene Vela testified at some length about the manner in which vacancies are posted in both craft and non-craft jobs. In non-craft sequences, the posted position is usually, but not necessarily, the lowest job in the sequence. In fact, m.p. 13.16 provides expressly that "In all cases, the employee must enter a sequence in the lowest job at the sequence" unless employees eligible to move up waive their right to do so or unless other employees in the sequence are not qualified for promotion. As explained by Vela, employees entering a non-craft sequence typically start at the bottom, even if they were at the top of their previous sequence.

Vela also testified that entry level for craft employees is defined in m.p. 13.32.3.1 as the "standard level" at which all jobs are to be posted. In my view, however, this was an attempt merely to explain away the use of the term standard level as opposed to entry level. I think the terms mean something different and that the difference is significant.

I understand Vela's testimony that entry level is the point of entry into the department and that it is not necessarily the lowest point in the department. It seems clear to me, however, that the parties expected it to be the lowest point in the ordinary case. M.p. 13.32.8 itself defines entry level as the job that remains after all employees already in the sequence have exercised their promotional and seniority rights, that is, after they have already moved up. And m.p. 13.16 creates what amounts to a presumption ("In all cases") that an employee entering a sequence will enter at the lowest level unless there is no one qualified to promote or qualified employees refuse to be promoted. While it is possible, then, that the entry level will not be the lowest job, the system the parties negotiated seems clearly intended to produce just that result. The

expectation revealed in the contract is that everyone will move up and the new bidder will start at the bottom. That design is frustrated only in those situations where there is no one in the sequence to promote. Craft vacancies present different considerations. Unlike non-craft sequences, there is no expectation that a craftsman will enter the lowest job in a sequence only after everyone else there has already been promoted. Rather, craft vacancies are posted at the standard level, everyone enters the sequence at that level, and everyone is paid at that level, no matter what they do. It is true that the definition of entry level, as interpreted by Vela, would encompass in general the entry of an employee into the craft. That is, Vela interprets 13.32.8 to say that the entry level is the point at which an employee enters a sequence and obviously everyone, craft and non-craft alike, enters a sequence at some point. The problem is that the contract does not use the words Vela uses to define entry level.

The contract doesn't say that the entry level is the point at which an employee enters the sequence; it says the entry level is the job that remains after "all employees . . . have exercised their promotional and other seniority rights." This last phrase -- a critical element in the determination of an entry level position -- clearly was not intended to apply to craft vacancies, which are not filled in that manner. Rather, it was intended to describe the way in which non-craft openings are filled. In my view, then, when the parties negotiated 13.32.8, they did not intend that it would apply to craft vacancies.

Nor can I find any other place in the contract where the term "entry level" is used with reference to craft vacancies. The parties agreed that m.p. 13.32.10 has no application to the crafts. It is true that m.p. 13.32.9 references section 6-c (4) and that section 6-c (4) applies to jobs in a promotional sequence leading to "craft or special purpose maintenance jobs," but I do not understand that section to apply to the problem under consideration here. Although the sequence may lead to a craft job at the top, the lower positions in the craft are not craft jobs. The entry level jobs referred to in 13.32.9, then, are not craft vacancies.

I have also reviewed the union's historical evidence and find that it, too, supports the union's assertion that the term "entry level" was not intended by the parties to apply to craft vacancies. What I find most significant is Appendix S, added by the parties in the 1986 negotiations, leading to the contract that was in effect at the time the mutual agreement at issue in this case was negotiated.

Appendix S was an experimental agreement providing for the posting of all "entry level jobs" on a plant wide basis. Most important for purposes of this case is that the parties used the term "entry level" in exactly the way I think the contract intended that it be used. There is no disagreement that Appendix S applied only to non-craft jobs. The document, however, does not use the words "non-craft" because it didn't need to. The parties, I believe, understood that by identifying the jobs as "entry level" they had sufficiently identified them as non-craft. I think that same understanding carried forward to the negotiation of the mutual agreement about two years later. In short, while the parties clearly had the ability to identify the vacancies referred to in paragraph 7 as craft or non-craft if they chose to do so, they recognized that such identification was unnecessary. Use of the term "entry level" had already been accepted by them to be restricted to non-craft vacancies.

I don't mean this opinion to imply that Cox or his negotiating team knowingly agreed to exclude craft vacancies and are now trying to renege. As I stated above, I'm perfectly willing to believe that the company understood the agreement to include craft postings. The fact is, however, that the subjective intentions of the parties don't control, at least when there is disagreement about what the intention was. As an objective third party, I can't be guided in this case by what either party thought, since their declarations are at odds. All I can do is interpret what they said and, as I have explained, the words they chose support the union's position.

I understand that another key to the parties' intent is the situation to which the language was to apply. In this case, for example, Cox testified that the parties understood the difficulties of creating a new entity within the existing company and that they intended to retain within that new structure employees who had already accepted the changes. There was no testimony, however, that the work of craft employees in Bar and Structural differed significantly from what it was and is in the rest of the Inland operation. Rather, the significant change is the skill based occupation, which gives Bar and Structural the flexibility to use employees in more productive ways. I can understand the desire of the parties -- or at least the company -- to retain employees who have already worked under that system. But the skill based occupations are non-craft jobs. Moreover, there was no testimony that excluding craft employees from paragraph 7 would somehow undermine the new company's working structure. In my view, then, restricting paragraph 7 to non-craft jobs is not only supported by the unambiguous language chosen by the parties, but it is also consistent with the underlying intention of the mutual agreement.

AWARD

The grievance is sustained. The entry level permanent vacancies referred to in paragraph 7 of the August 12, 1988 Mutual Agreement are limited to non-craft sequences.
/s/ Terry A. Bethel
Terry A. Bethel
Bloomington, IN
January 2, 1991