

Award No. 852
IN THE MATTER OF ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

Grievance Nos. 19-T-38, 22-T-9, and 27-T-14

Appeal No. 1463

Arbitrator: Terry A. Bethel

February 29, 1992

OPINION AND AWARD

Introduction

This case involves three grievances that grew out of action taken by the company to man a new facility known as IN KOTE. There were two full days of hearings on October 17 and 18, 1991. Jim Robinson represented the company and Brad Smith presented the union's case. All three grievants were present and each testified in his own behalf. Each side filed a prehearing brief, a post hearing brief and a reply brief. I received the post hearing briefs on February 19, 1992.

Appearances

For the company:

B.A. Smith -- Sen. Rep., Union Relations
R.V. Cayia -- Manager, Industrial Relations
J.A. Nielsen -- Mgr., Human Resources, I/N KOTE
R.F. Goldsmith -- Sen. Consultant, DDI
G.E. Gatman -- Hum. Res. Consultant, I/N KOTE
J.R. Dobson -- Hum. Res. Consultant, I/N KOTE
B.L. Wagner -- EGL Operations Res., I/N KOTE
P. Waits -- Project Rep., ED&T

For the union:

J. Robinson -- Chair, Grievance Committee
M. Mezo -- Local Union President
R. Budny -- Grievant
K. Ciba -- Grievant
W. Walsh -- Grievant
D. Devreese -- Griever
W. Carey -- Griever
D. Ault -- Witness
D. Rossi -- Witness
D. Shepard -- Witness

Background

This case involves the union's claim that the company violated Appendix F of the collective bargaining agreement when it eliminated grievants from the pool of successful applicants for equipment control personnel at the IN KOTE facility. IN KOTE and IN TECH are new facilities that produce cold reduced steel products, a process that differs significantly from that used at the traditional steelmaking facility at the Harbor Works.

The steelmaking process itself is not the only thing that differs at IN KOTE and IN TECH. John Nielsen is the manager of human resources at both IN TECH and IN KOTE and he testified about the special working environment that exists at the facilities. In particular, Nielsen pointed to a section of the agreement between the union and company that reads as follows:

The guiding principle is that the enterprise, the Union and the employees all share a common goal to be achieved through team work and joint participation. The parties recognize that implementation of this principle will result in continuing improvement in quality and operating efficiency and continuing reduction in cost. For employees, it will produce employment which is both more satisfying and secure. Nielsen described this relationship as "a partnership concerning the ongoing conduct of the business." Nielsen contrasted the work organization at IN TECH and IN KOTE with the hierarchical organization that exists in most American manufacturing facilities, including the Harbor Works. By contrast, IN KOTE and IN TECH are organized by autonomous work teams which, as the collective bargaining agreement says, are

"self-directed, relying on consensus to arrive at decisions regarding the manner in which assigned tasks and responsibilities are to be carried out." In keeping with this philosophy, the teams have no supervisor, as such. Rather, there are management resources who coach and counsel the teams and provide certain kinds of information.

The teams themselves make decisions that, in more traditional environments, are made by supervisors or higher level management. The collective bargaining agreement, for example, says that the team will plan and schedule the work, and that the members will make job assignments. They will control inventories and scrap, have responsibility for safety and training, and even counsel each other about absenteeism and "other problems affecting their work." Nielsen also pointed out that the teams plan maintenance shutdowns, select outside contractors (and terminate them), create budgets, and requisition and purchase materials. In addition to the counseling mentioned above, the employees create their own code of conduct, which regulates behavior at the job through a non disciplinary approach.

Because the work environment of IN TECH and IN KOTE differs substantially from traditional approaches, Nielsen said the company was concerned that it attract and hire workers who were well suited to the new organizational structure. As Mr. Smith said in his opening statement, the company was interested in employees who had "the ability to operate in an environment of team directed work and self directed work." To that end, it hired a company called Development Dimensions International (DDI) to assist in the screening process.

Nielsen said the assistance of DDI was essential because, while the company could identify the technical requirements for the job, it did not know how to identify and evaluate the social and interpersonal characteristics an employee would need to succeed in the new environment. The company selected DDI because of its expertise. Nielsen said the company understood that manning decisions could be challenged and it wanted to insure that the selection process would withstand "legal, contractual, and moral tests."

The contractual challenge about which Nielsen expressed concern comes from a document entitled "Initial Manning Agreement." It applies to both IN TEK and IN KOTE, although this case is confined to a dispute about IN KOTE. With respect to the skill based positions at issue here, the agreement says that 37 of the jobs "will be made available to applicants. . .from the Inland Steel Company - Indiana Harbor Works." The agreement also provides as follows: "The selection process for the above occupations shall be governed by Article 13, section 1 and Appendix F of the 1989 collective bargaining agreement" between the company and the union. It also provides that "Employees of the [company] who make application, if qualified, shall be offered the opportunity to transfer to IN KOTE in accordance with their plant continuous service."

Article 13, section 1 is part of the seniority provision of the agreement, and provides, in relevant part: Employees within the bargaining unit shall be given consideration in respect to promotional opportunity [and layoff and reinstatement] in accord with their seniority status relative to one another. "Seniority" as used herein shall include the following factors:

- a. Length of continuous service. . . ;
- b. Ability to perform the work. . . ;
- c. physical fitness. . . .

It is understood that where factors "b" and "c" are relatively equal, length of continuous service shall govern. In the evaluation of "b" and "c" management shall be the judge, provided that this will not be used for purposes of discrimination against any member of the union.

Appendix F is headed Memorandum of Understanding on Testing. The provision requires, among other things, that the tests be job related and that they be fair in both content and administration.

Robert Goldsmith, senior consultant with DDI, testified about how DDI designed selection procedures for IN TEK and IN KOTE. He said the first step was to do a job analysis, so he would know what people were being selected to do. The project team observed similar facilities and gathered other information as background. They then went to the Harbor Works and observed how similar jobs were performed there. The team then developed what Goldsmith described as a tentative list of "dimensions," which is the term DDI uses to describe a set of attitudes and behaviors important to success on the job. There were then meeting which refined the dimensions and the list of behaviors that accompanied each. Company Exhibit 3 is a list of the dimension. I need not review all of them in detail since the procedure itself is not under review in this arbitration. I will, however, describe the dimensions that were mentioned as having relevance to the three grievances under review.

"Analysis" is defined as "identifying problems, securing relevant information, relating data from different sources, and identifying possible causes of problems." Goldsmith testified that this dimension was related to identifying individuals who can see issues and problems and understand them. He compared it to trouble

shooting. Closely related to analysis is judgment, which DDI defines as "Developing alternative courses of action and making decisions which are based on logical assumptions and which reflect factual information. Readiness to make decisions, render judgments, take action and commit oneself." Goldsmith said this dimension "goes to decisiveness." Does the individual look at alternatives and come up with the best one? "Job Fit/Motivation" is "the degree to which individual's motivations, desires, values, and attitudes toward work match IN TEK's <FN 1> job expectations, organizational practices/policies and culture." Goldsmith described this dimension as a match between what the applicant wants to do and derives satisfaction from and what is available in the work environment. "Work standards" means "setting high goals and standards of performance for self, others and the organization; acting to insure high quality; attending to all details." Goldsmith testified that the concern here is to find applicants who have concern for quality and details and who act to meet high quality standards.

"Technical knowledge" is "level of understanding of technical information and ability to use technical skills." As the definition implies, Goldsmith said there are two components to this dimension, which are what the applicant knows and how he or she uses that knowledge.

Goldsmith described the process of selecting applicants who satisfy the requisite dimensions in some detail. First, all interested individuals were shown a tape about how the new facility would operate. I viewed the tape during the hearing. Some dropped out at that point. The rest were given paper and pencil tests that tested for some of the dimensions. There were three types of tests, one which measured cognitive ability, one called a job fit inventory, and a technical knowledge test. Those who were not screened out by the tests went to the next level, which was the assessment center, where they went through a series of simulations. Individuals who successfully completed the assessment center went to the "targeted selection interviews." It is the results of those interviews that the grievants contest in this case.

Goldsmith said the interviews always tested for at least four dimensions: job fit/motivation, oral communication, work standards, and technical knowledge. In addition, candidates were interviewed for their lowest scored dimension from the assessment center. Goldsmith described the interview process in detail. He said the guiding principle of the process is that past behavior will predict future behavior. To discover past behavior, interviewers are trained to elicit STAR's from interviewees.

Start means "situation, task, action, result." Interviewers ask interviewees for examples of past behavior that describe a situation or task, what they did in that situation or task, and what happened as a result of their action. Although STAR's may come from either work or nonwork environments, interviewers are trained to weigh work examples more heavily.

Although I will not report all of it in this opinion, Goldsmith reviewed in some detail common problems encountered by interviewers and the key principles of targeted selection that control those problems. He also described the training in significant detail, which includes interviewing techniques, note taking training, rating standards, and interpretation or integration of data. Trainees who complete the training successfully are certified by their trainers.

On cross examination, Goldsmith said that the interviewers try to get STARs for each dimension, but that it not always possible. Also, some STARs may affect more than one dimension. Thus, the interviewers "sort" the STARs after the interviews. He said the interviewers are trained to take good notes and to "write down everything" even if it isn't related to a specific STAR.

Following the interview, the three interviewers who have interviewed a candidate meet for what is called a "data integration session." Prior to this time, the individual interviewers should have formed a preliminary impression of the candidate's performance on the dimensions the interviewer covered. All interviewers do not cover the same dimensions, though there is planned overlap. During the data integration session the interviewers approach one dimension at a time. All the behavioral information is put on the table and discussed and the interviewers reach a consensus about how to evaluate that dimension.

Gary Gatman, a human resources generalist for IN TEK and IN KOTE, also testified about the interview process. Gatman participated as one of the interviewers for grievant Walsh and he was involved in making assignments to the interview teams whose results are questioned in this case. He said that when he puts the interview panels together he tries to balance the expertise. He wants two members of the panel to have relevant technical expertise and one to have organizational expertise, which he described as an awareness of the uniqueness of the IN KOTE work culture. He also tries to insure that inexperienced interviewers are paired on teams with two experienced interviewers. Like Goldsmith, Gatman described the training process for interviewers.

The Interviews

There are three grievants in this case, each of whom was eliminated from consideration as the result of information gleaned from interviews and as a result of conclusions drawn from that information by the interviewers. Each grievant was interviewed three times. The grievants testified about their interviews. In addition, the company introduced testimony from one interviewer for each of the three grievants. The parties also introduced as joint exhibits certain documentation that accompanied each interview. I will summarize the testimony about each grievant.

General Considerations

The issue in this case concerns the conclusions drawn from the interviews of three candidates. The controlling language is in Appendix F, which requires that tests (a term which is broad enough to include the interviews) be fair in both make up and administration. That language is subject to varying interpretations. It could mean only that the results of a particular interview cannot be challenged if the interview process, in general, is fair.

In my view, however, the more likely interpretation is that interviews themselves have to be administered fairly for each candidate. Moreover, part of the administration of the interview process is the result drawn from the interview, here principally from discussion in data integration sessions. My task, then, is to review not only what happened in the interview, but also to review the results of the interview.

I do not think, however, that the question before me is whether the interviewers' conclusions were "right." The interviewers are using behavioral examples and generalizing from those to predictions about an applicant's likely future behavior. There is not necessarily a "right" result in each case. Indeed, it is possible that more than one reasonable inference can be drawn from the same information. I do not understand my authority as a search for the most reasonable inference or necessarily for the best result.

The parties have not hired me to make manning decisions for IN KOTE. I know much less than the interviewers about the traits necessary to succeed in that environment. My task is merely to decide whether the inferences drawn by the interviewers are reasonable, which includes an appraisal of whether the conclusions about future behavior are rationally related to the end sought, which is the identification of candidates who can flourish in a non traditional work place. The fact that I might disagree with the interviewers, or that I might think that a contrary inference is also reasonable, is not of great importance. Rather, the guiding consideration is whether the interviewers have acted in a reasonable manner.

I understand that the union has not challenged the targeted selection process itself. Rather, what is at issue in this case are the specific conclusions drawn by the interviewers from information taken from the interviews. I also understand that the union has challenged those conclusions and, therefore, has the burden of persuading me that some or all of the interviewer's conclusions violate the fairness standard of Appendix F. That does not mean, however, that the company undertakes no burden in this case.

The company is the sole repository of information about why the decisions were made. Once the union has put a decision at issue, then, and introduced evidence that raises a prima facie question about the company's determination, the burden of going forward with the evidence shifts to the company to establish not only what it did, but why it did it. Once that information is in evidence, the union bears the burden of persuading me that the company's determination was unreasonable or unfair.

In general, I think the company had some difficulty explaining the basis for some of its decisions, matters that I will discuss in more detail in the specific cases. I am not satisfied with an assertion by interviewers (or by Goldsmith) that the interviewers are not trained to take a transcript of the interview in their notes. I would not expect them to take a transcript. What I do expect, however, is that they will be able to explain adequately what they have done and why they have done it.

This is not a situation in which the union has yielded unilateral control of the manning decision to the company. Rather, the parties agreed that qualified harbor works employees "shall be offered the opportunity to transfer" and that qualifications would be determined under a testing regime that is "fair."

The company's decisions, then, are subject to review and must meet a particular standard. Because the decisions are subject to review, the company bears of the responsibility of being able to describe what it has done.

That does not mean that the company has to take a transcript of the interview, or that the interview reports will be an exhaustive review of each item of discussion in the data integration session. But the company has to be able to point to something to explain its decision making process.

I quite agree with Mr. Smith's assertion in his post hearing brief that the hearing itself was not an opportunity for the grievants to cure defects in their interviews. Nor can my decision be based solely on a determination of whether information provided at the hearing indicates that a grievant is qualified for the job. The company is entitled to make decisions based on information received in the interviews and based

on reasonable conclusions drawn from that information. But along with the right to make decisions based on the interviews, the company shoulders the obligation to explain how that decision was made in each case. One source of such information is the interview report.

I realize that every item of every discussion in a data integration session will not make its way into the interview report. In some ways, however, the process used by the interviewers is similar to the one I will use to decide this case. I heard hours and hours of testimony over a two day period. In addition, I received a substantial amount of documentary evidence. I reviewed all of the testimony and all of the exhibits in some detail. Yet not everything I heard and everything I read will be reflected in this opinion. It is not intended to be a transcript of the hearing or a complete recapitulation of my thought processes. It does, however, contain the information I found most relevant and that was most influential in my decision. Moreover, should the award be challenged, I have to stand or fall on what is written here. I think much the same thing is true of the interviewers.

I cannot say that the interview report should serve exactly the same function as an arbitration opinion. But it is fair to say that, whether it does so in the interview report or not, the company has to be able to explain what it has done and why it has done it. Not all of the company's witnesses were able to do that. Moreover, I am skeptical of claims that a particular piece of information could have played much of a role in the interviewers' decision if they didn't even bother to mention it in the interview report.

I. William Walsh

Grievant Walsh's interviews were conducted on June 19, 1990, by Gatman, John Sepiol (equipment control manager at IN KOTE), and Chuck Porter. The interviewers found Walsh unacceptable in several dimensions.

a. work standards

Gatman testified about the company's evaluation of Walsh. His testimony focused primarily on three instances deemed unacceptable by the company. First, one of the interviewers (not Gatman) asked Walsh to relate an instance in which he hadn't been pleased and what he'd done to correct it. Walsh spoke of a time when he thought there was too much cable in the trays at #4AC station. When asked what he did about the problem, Walsh said he had complained to his supervisor. Although this is cited as an example in "work standards," I note that the incident itself is not mentioned in the work standards section of Walsh's Targeted Interview Report, which was prepared by the interviewers.

Gatman said the interviewers viewed this as an instance in which Walsh did not set goals that were especially high. The interviewers expected that he should have done something other than complain.

Gatman said on cross examination that IN KOTE wants people who go beyond complaining and who try to see that problems get corrected. Gatman, however, was unable to offer examples of alternative courses of action that Walsh might have pursued. He acknowledged that he did not have the technical expertise to speak knowledgeably about the technical problem identified by Walsh. He was also unable to state from his own knowledge that Walsh's supervisors would have been amenable to suggestions from rank and file employees.

I asked whether it was possible that Walsh could have been conditioned not to offer suggestions, a question that obviously is related to whether employees who have been assigned by the company to a hierarchical environment can be expected to have demonstrated certain kinds of initiative. Gatman's response to my question indicated that there were other employees from other departments "who have indicated to us that when they saw a problem what they did was try to take some action." However, he did not offer any examples about the kinds of action other employees took.

In addition to the wire tray example, the interviewers also criticized Walsh for his answer to a question about how he defined doing a good job. Walsh mentioned a time when he went to number 2 coke plant to act as a liaison between management and some contractors. Gatman said Walsh focused on his role as a supervisor and that "his standard of performance was to keep these individuals in line." But the interviewers also "like to see ... standards for the organization, standards for themselves, standards for a team of people and someone who can impact those standards and help meet those standards rather than just supervise or manage or direct or be in charge of. . . ." Gatman said he would rather have seen evidence that Walsh thought he did a good job because he worked with and counseled the contractors, but that Walsh defined his role as that of supervisor.

Finally, Gatman testified that Walsh defined doing a good job as "putting out a product safely and quickly with no surprises," a comment that is also mentioned in the Interview Report. The interviewers criticized this response because it failed to show that "quality workmanship" was a priority. During his testimony,

Gatman said the interviewers were concerned that this response indicated that Walsh had given no thought to improving the process. His standard was to get the job done quickly, not improve the process.

b. analysis

The excess cable in the trays problem was prominent here, as it was in work standards. In his testimony, Gatman characterized Walsh as having demonstrated "an extreme lack of analysis in this situation." He said there was no attempt by Walsh to secure other information to solve the problem. He said there was also evidence that Walsh depended on others to tell him how to do a job, citing as one instance an example in the interview report that said Walsh had had to depend on a supervisor to modify a certain job assignment and that he was frustrated with the supervisor for not having planned the job better to start with. He also mentioned an example in which engineers were testing some stress cones and "William acted upon what he was instructed to do. He didn't try to analyze or do any of the analytical work himself."

Gatman said the issue here was that there was a pattern that Walsh would wait for instructions rather than analyze the situation himself. Moreover, if the work was done wrong, he wouldn't try to analyze why or to secure information about how it could be done right.

On cross examination, Robinson questioned Gatman's conclusion that Walsh did not make recommendations by pointing to a section of Sepiol's notes that say, with respect to one problem, "give recommendation, \$17K -- 8K." Robinson asked whether this meant that Walsh had made a recommendation that saved the company money. Gatman said the notes were not sufficient for him to tell what they meant. Sepiol did not testify.

On redirect, Smith elicited testimony that the purpose of the notes is not to record everything. Rather, it is to record enough information to recall good STARSs. As I have already discussed, I was not much impressed with this testimony. Moreover, it is appropriate to observe that throughout the hearing the company's witnesses tried several times to diminish the significance of their interview notes, sometimes asserting that they were nothing more than memory joggers for the data integration session. This contrasts conspicuously with Goldsmith's testimony that the interviewers are trained to take good notes and to "write down everything." I do not understand that statement to mean that the interviewers are expected to take a transcript of the interview. But it is fair to interpret it as ascribing more significance to the notes than some of the interviewers did.

On recross, Robinson observed that Sepiol had noted that Walsh was a "3+" in planning, and he asked Gatman the difference between planning and analysis. Gatman said that planning is "planning out the process. Looking at a series of events or tasks and trying to sequence them. Analysis ... would be taking that plan ... being able to make conclusions from that information." He said the two were related, but frankly, his attempt to distinguish them failed. I do not necessarily mean to say that there is no difference between planning and analysis, but only that Gatman's testimony failed to identify what that difference might be.

c. job fit/motivation

The interview report questioned Walsh's fitness for the job because he related his experiences as a supervisor of external contractors and because he liked to be "in charge." The report also noted that Walsh had pursued a degree in management and that he wanted to hold a management position, a desire the interviewers found incompatible with IN KOTE's team concept. They also noted that he professed a deficiency in state of the art electronics, but was doing nothing to remedy it.

Gatman reiterated these concerns in his testimony, noting again that grievant had focused his educational concerns in areas that were not necessarily indicative of skills needed to succeed at IN KOTE. Rather, the interviewers thought he really wanted to be a manager. They were also concerned with Walsh's statement that he had learned all he needed to know at IRMC, an attitude that is not well suited for the team concept. Gatman said the interviewers were not criticizing Walsh for his interest in management. Rather, they were merely observing that this desire was not a good job fit for IN KOTE.

On cross, Robinson asked why it was inconsistent for an individual who lacked control over his working life to first try and change that dissatisfaction by looking to move to management and, failing that, to move to a team that at least provided some of the same benefit. Gatman simply did not answer the question. He noted that Walsh was not trying to learn more about electronics, but that was not responsive. The interviewers had criticized Walsh for trying to become a manager and Robinson's only point was that moving to IN KOTE might offer some of the same benefits, i.e., the opportunity to exert some control over one's work environment rather than merely answering the call of supervisors. His question, then, was appropriate and I find it significant that Gatman avoided it.

I understand the interviewers' interest in electronic aptitude, and I think it was an appropriate concern. But they also made judgments about whether Walsh's interest in management was compatible with the team concept. The unstated assumption of the interviewers was that managers want power, and that such people would be frustrated with a team that left them with only one voice among several. But the point of Robinson's question was that it may be just as reasonable to assume that some people with an interest in management simply want input (as opposed to power) and that participation in a team might satisfy that desire. It is, therefore, not reasonable to always equate management interest with an interest in authority.

d. technical proficiency
Gatman's testimony indicated that the interviewers were looking for the ability to apply knowledge. Gatman said the interviewers thought Walsh depended too much on others. He relied on the foreman to tell him what needed to be done and often took directions from others. Both Gatman's testimony and the interview report mentioned the stress cone example again, and Walsh's failure to take state of the art electronics training. Gatman said that IN KOTE requires employees to do the diagnosis themselves and to come up with the solutions themselves. To that extent, Gatman's testimony was almost a duplicate of what he said was required for analysis. Finally, Gatman again noted Walsh's identification of his "in charge" status with the contractors, this time in response to a question about special qualifications that he thought would be of value to IN KOTE.

On cross examination, Gatman said he was not an expert in the technical aspects of the job but that the interviewers thought that Walsh should have participated in the stress cone testing or at least should have understood how the others did the work. He should have gotten involved. Also, there was a conduit problem where his foreman had to instruct him two or three times about how to do the job. Gatman said Walsh should have been able to see the problem and see how to do the work. Again, this sounded very much like the description of the analysis dimension. But Gatman said the interviewers decided Walsh had a lack of technical expertise. Gatman acknowledged that Walsh apparently had the ability to prioritize jobs, but that this ability did not mean he had the technical ability to do the work.

At the end of his testimony about Walsh, Gatman acknowledged that his disqualification had been the result of what he termed the "weight of the evidence." The mere fact that Walsh might have been less than acceptable in one dimension did not mean that he would be disqualified. Rather, the interviewers look at over-all record. Here, however, Walsh was below standards in four dimensions and the consensus of the interviewers was that he had to be eliminated from consideration.

On cross examination, Robinson asked how the weighing process worked. That is, since candidates do not necessarily have to be acceptable in all areas, how do the interviewers evaluate the "weight of the evidence" to know whether a candidate qualifies or not? Gatman was unable to give a satisfactory answer to this question. I do not mean to suggest that he refused to answer. Rather I took his response to mean that the decision is quite subjective and that he was simply unable to explain how it was made.

Gatman said a candidate could be washed out for a deficiency in one area, depending on the severity of the problem. Robinson asked how the interviewers determine where to draw the line. In Walsh's case, for example, the interviews covered eight dimensions. Robinson asked how the interviewers knew when they had reached the point where difficulty in one or more dimensions would eliminate a candidate.

Gatman said there was no formula. The interviewers evaluate the dimensions and evaluate the evidence and determine whether the person will make a good employee. They determined that Walsh had too many deficiencies. Such determinations are made on an evaluation of each individual's answers in each interview by comparing the severity of the deficiency against the definition of the dimension.

This was not responsive to the question asked by Robinson. I have no doubt that the interviewers try to determine whether a particular candidate meets the standards set out by the definitions. Gatman said that numerous times. But that wasn't the question. Rather, since the company acknowledged that a candidate could fail to satisfy fewer than all the dimensions, but still qualify, how do the interviewers know when the candidate is so bad that he has to be eliminated? Gatman did not answer that question. All Gatman really said was that this is a judgment call by the interviewers, but Robinson's question went to how that judgment was exercised and Gatman could not say, although he did acknowledge that the severity of the deficiencies went into the balance.

Walsh's testimony

William Walsh testified in his own behalf. One part of his testimony discussed his assignment to act as liaison between the contractors and supervision at the number 2 coke plant. He described his role as that of "legman," and said he saw himself as the eyes and ears for the maintenance supervisors and planners. He said he did not direct the work of the contractors, a responsibility that fell on their own foreman. He said if

he saw a problem he would try to come up with alternatives and "bounce them off" the general foreman. He also said he had authority to talk to the contractor craftsmen and make certain changes.

Walsh also described his current employment. He said he is paired together with another wireman welder and that their work is self directed. They do not have a supervisor overseeing them every day. Rather, they do the things the no. 4 BOF section manager has them do. On cross examination, Walsh acknowledged that the section manager of the host department tells him what is to be done and that they have to have permission to do the work. However, Walsh said that he and his partner decide how to do the work.

Walsh asserted that he has been doing self directed work since January 1990, and had been engaged in such work for about six months at the time of the interview. He said he talked to the interviewers about his self directed assignments. There is no mention of this assignment in the interview report, an omission that strikes me as odd since the interviewers decided that Walsh was less than acceptable for job fit and motivation. The company offered no evidence to rebut Walsh's assertion that he discussed this facet of his employment with the interviewers. Moreover, Gatman's interview guide contains the notation "new team responsibilities" which is at least some evidence that Walsh mentioned them in the interview.

Walsh described his current employment as "we plan what we're going to do and then we do it." He said this was not the normal work procedure at IRMC.

Walsh also testified about the stress cone testing incident that Gatman and the other interviewers had used as evidence of a lack of technical proficiency. Walsh said that he and his coworkers sometimes pull high voltage cable, which requires the installation of stress cones. They are then tested with a device called a "high powered megger." Walsh asserted that he did not do the testing himself because it has to be done by an electrical engineer. The company offered no witnesses to rebut this testimony, which I accept as true.

Walsh also disagreed with the interviewers' claim that he relies too much on the direction of supervisors, who tell him how to do the work. He acknowledged that he does take direction about what to do from supervisors or from the host department. Hew said that he has been trained to believe that IRMC craftsmen are there to serve the host department. However, Walsh said he has made suggestions and that his suggestions have been accepted. There is some difficulty with his testimony in this regard, as Smith pointed out on cross. At one point, Walsh said that it isn't possible to make suggestions in IRMC, but at another point he asserted that he has done so successfully. He attempted to cure this conflict, not entirely successfully, by asserting that his suggestion are accepted more often than those of his coworkers.

Walsh also testified in detail about the cable tray problem at no. 4AC, where Gatman had criticized him for doing nothing more than complaining. Walsh said there were eight levels of cable trays stacked on each other and that almost all of the cable had been routed into the top four trays. Walsh said he asked the foreman if they could reroute some of the cables into the bottom four trays, a task that could not be performed without permission. After some delay, the foreman reported back that the rerouting would take too long and would cost too much and that he could not secure permission. Despite the inferences drawn by Gatman and the interviewers, the suggestion that they reroute cable through the lower four trays would appear to me to be the suggestion of an alternative.

Walsh also offered testimony about a suggestion he made that was accepted and that saved the company a considerable sum of money. He said that he was once assigned to do a job running a bank of conduit over a long distance, and that the work would have cost \$17,000. He remembered that there was a wire basement in the same area and recommended that they use it as a shortcut. He said he took his foreman and an engineer to the basement to explain his proposal. They ultimately approved the suggestion. The work was done for \$8000, thus saving the company \$9000.

I find it curious that this incident was not mentioned at all in the analysis section of the interview report, particularly since that section criticizes Walsh rather harshly for not solving problems on his own. There is no doubt that Walsh mentioned the incident in the interview since Sepiol's interview guide mentions it expressly in the analysis section. I must question, however, whether the matter was even discussed by the interviewers in the data integration session since Gatman was asked specifically about Sepiol's notes on the matter and seemed to have no memory of them at all.

On cross examination, Walsh acknowledged that he told the interviewers that he does not find his IRMC work to be challenging and that he often puts "his brain on idle". He asserted, however, that the part of the job that is interesting is figuring out shortcuts and better ways of doing the work.

Analysis of Walsh

As I have already observed, in order for me to determine whether the company's actions with respect to Walsh were fair, I have to be able to understand what the company did and why it did it. The only evidence I have is Gatman's testimony, the interview guides, and the interview report. The guides themselves are of

limited usefulness since they contain notes that are not easily understood by someone who didn't write them and which are not always legible, in any event.

a. work standards

The evidence about work standards focused on three different incidents. First, the company concluded that Walsh's failure to offer alternatives to the cable tray problem indicated that he did not set especially high goals. But I understood Walsh's testimony to be that he did offer an alternative, but that it was rejected by the company. No one rebutted Walsh's testimony that he related the event to the interviewers in this fashion. Gatman would have been unable to do so since he didn't discuss the matter with Walsh.

I have some difficulty understanding why this incident is an example of work standards at all, since Gatman testified that formulation of alternatives is the primary criterion of analysis. I am willing to defer to the company's conclusion that a failure to offer alternatives also reveals attitudes about work standards, but if that is the case, then the company has the burden of explaining why it eliminated from consideration other examples in which Walsh did offer an alternative.

Gatman's testimony asserted that the cable tray example indicated that Walsh did not set high goals because he should have looked to alternative courses of action. While I think that rendition of the facts mischaracterizes what Walsh actually did, even if it were accurate, why did the interviewers not also consider the example in which Walsh made the suggestion about rerouting cable? This incident would seem to demonstrate just those qualities that Gatman said the cable tray incident allegedly proved Walsh did not have.

These examples demonstrate one of the major difficulties I have with the company's case. I realize that the targeted selection process itself is not under attack here, and I have no opinion about it. I am troubled, however, by the ability of these nonprofessional interviewers to distinguish between like occurrences and discount some in favor of others. I cannot say that the interviewers do not have this skill. But if they can, in fact, make these distinctions, then they have to be able to explain what they have done.

I cannot and will not review the interviewers' decisions as having been "right" or "wrong" in some abstract sense. I have no such expertise in the evaluation of human behavior. Here, however, the claim made for the interviewers is that they can look at incidents in an applicant's background and, generalizing from those incidents, make reasonable predictions about how the applicant will act in the future. I have no reason to doubt the accuracy of that claim. But I do question whether the interviewers can isolate certain incidents and concentrate on them to the exclusion of other, seemingly similar, occurrences. Here, for example, how were the interviewers able to concentrate on the cable tray incident and ignore the cable rerouting incident? It may be that there is a reasonable explanation for the interviewers' actions. But if there is, it was not explained to me.

In addition to the cable tray incident, the interviewers also relied on Walsh's reaction to his assignment as liaison to the contractors at No. 2 coke plant. The interviewers noted that Walsh had focused on being "in charge," an attitude that is not well suited for the team concept at IN KOTE. I had some difficulty understanding Gatman's explanation about why this experience indicated much about Walsh's work standards. It would seem more apt in an evaluation of job fit/motivation. Nevertheless, I am willing to defer to the interviewers' judgment that it reveals work standards traits as well. Even so, I have some difficulty understanding what the interviewers expected to hear and Gatman's response, quoted above, was not particularly illuminating.

Finally, Gatman said that Walsh's definition of a good job was faulty because he failed to mention quality workmanship. It is not clear to me that an employee who describes his standard as getting a product out "safely, quickly and with no surprises" has failed to articulate anything about quality. I also note that there were at least some mentions of quality in the interviews -- see page 8 of Gatman's guide ("loaded with people who care about the job - quality - but also care about you") and page 8 of Porter's (complaining about jobs that have to be redone and jobs that look bad.) Nevertheless, I am unable to question Gatman's assertion that the overall tone of the interviews focused more on completion of performance than on quality. Walsh was judged as only "somewhat less than acceptable" for work standards. Given the company's inability to explain how it distinguished between like incidents and its failure to articulate why Walsh's "in charge" responses were related to work standards, I am persuaded by the union that the company's evaluation on this dimension was unreasonable and that Walsh should have been rated as acceptable. I might add that I feel somewhat uncomfortable making such determinations on my own, without evidence about traits demonstrated by candidates who were rated acceptable. Nonetheless, the parties have agreed to give me the task of deciding this case, and if they wanted me to make comparative decisions, they could have given me information about other acceptable applicants.

b. analysis

The interview report focused on two incidents, the cable tray incident I discussed under work standards and a conduit example that is described only in general terms and that Gatman did not testify about. Much of Gatman's testimony centered on the cable tray incident. He also mentioned the stress cone incident. He did not mention the occurrence in which Walsh made a suggestion that saved the company money -- indeed, he didn't even seem to be aware of it. The interview report does not mention it either.

I have already determined that the interviewers' characterization of the cable tray incident was inapt. Walsh did, in fact, suggest an alternative and I believed his testimony that he told the interviewers about it. I have also observed that Gatman's rendition of the stress cone incident is inaccurate. It is true that Walsh deferred to an electrical engineer, but in the absence of testimony that bargaining unit employees are permitted to take responsibility for the work of engineers, I fail to see any significance in this occurrence.

Finally, I have already observed that the company has the burden of explaining why it focused on some occurrences to the exclusion of other, similar incidents. I do not know the details of the incident mentioned in the report in which Walsh had to rely on the his supervisor for direction. But there was testimony about a time when he offered an alternative that saved the company several thousand dollars. I do not understand why the interviewers apparently excluded this example from their determination about whether Walsh had the ability to "troubleshoot," which was how Goldsmith defined analysis.

Based on Walsh's testimony about the cable tray incident and the cable rerouting incident (where his suggestion was accepted) and the difficulties mentioned above with the company's appraisal, I conclude that the company's evaluation of Walsh as "less than acceptable" in analysis is unreasonable. In my view, the information he gave the interviewers should have resulted in a rating of "acceptable."

c. job fit/motivation

I have already detailed the colloquy between Robinson and Gatman concerning the question of whether the desire for a management degree is incompatible with a desire to work in a team environment. As I noted above, I was not satisfied with Gatman's responses, which leads me to believe that the interviewers did not consider the issue Robinson brought up. Even so, it is not unreasonable for the interviewers to conclude that someone who pursues a degree in management wants to be a manager. That does not necessarily mean, however, that he is unable to adapt to a team environment, a conclusion that would have to depend on other information available to the interviewers.

In that regard, I cannot understand why the interviewers ignored completely the fact that Walsh had been working in a team environment for six months at the time of the interview (although admittedly, not the same kind of team as at IN KOTE). Smith did get Walsh to concede that the two man team he works on does the work they're told to do by supervision. I think that fact is without relevance. It no doubt describes all of the bargaining unit employees at the Harbor Works, who work in a much different environment than employees at IN KOTE. If Harbor Works employees are to be excluded from consideration merely because they take direction from supervision, then none of them would be eligible, calling into question a much broader issue than the narrow one given to me to decide.

I also have some concerns about Gatman's and the interview report's discussion of the "in charge" issue. This arose in connection with Walsh's assignment as liaison to the contractors. I understand a conclusion that someone who really yearns to be a boss might have difficulty working as a member of the team. But the interviewers furnished more than one description of Walsh's liaison experience.

The same experience was evaluated under the interpersonal cooperation dimension. The report says that Walsh "attended several meetings in this capacity. William provided evidence in the interviews that those who participated in these meetings and this project were willing to listen to the ideas that he would present." I realize that there is a difference between interpersonal cooperation and the other dimensions, but the point is that some STARS are used as evidence in multiple dimensions (indeed, the same ones are used repeatedly in this case) and the explanations about them have to be consistent. I'm willing to believe that Walsh emphasized his status as being "in charge," but he apparently also mentioned his cooperative discussions with others. This is consistent with Walsh's testimony, in which he said he told the interviewers he was a leg man who identified problems which he then "bounced off" the general foreman.

I agree with the company's conclusion that an employee who has not sought training in state of the art electronics may have revealed something about his motivation to hold a job requiring that knowledge. On balance, however, I am persuaded from Walsh's testimony and from the company's inability to explain its action adequately that Walsh should have been rated as acceptable in job fit/motivation.

d. technical proficiency

The interviewers decided that Walsh relies too much on others, but the only concrete example was the stress cone incident, in which the interviewers' characterization of what Walsh should have done was wrong. Walsh's un rebutted testimony was that an electrical engineer had to do the testing. In addition, the interview report again discusses Walsh's assignment to act as liaison for the electrical contractors. The report notes that Walsh acted as a supervisor and then says that he "failed to demonstrate that he was personally capable of accomplishing technical assignments on his own or without relying on others for assistance or having contractors do the actual work." I think this is a grossly unfair assessment. Walsh was assigned to act as liaison for the contractors, not to work as one of them. There is no evidence whatever that the contractors were doing work that he was unable to do, only that they were doing work that he was not supposed to do. Indeed, the mere fact that he was assigned to oversee them is at least some evidence of his technical competence in the area. In short, I find that the interviewers' conclusion is unreasonable. I find reasonable the interviewers' criticism that Walsh had not taken steps to improve his skills in state of the art electronics. At most, however, this deficiency would indicate merely that Walsh was only marginally less than acceptable. Moreover, there was no finding by the interviewers that he was unable to master the technical knowledge necessary to work at IN KOTE.

Summary

Walsh sharpens the concerns identified by Robinson in his cross examination of Gatman about how disqualification decisions are made. Gatman was unable to explain the line drawing process. Goldsmith's rebuttal testimony was not much more successful. He did say, however, that the company might elect to give a chance to someone who just misses satisfying all the dimensions. This was consistent with Gatman's testimony that candidates do not necessarily have to be acceptable in all dimensions and that the standard is whether an applicant is "acceptable now or can become acceptable." As I view the evidence, the union has proven that the Walsh is acceptable in work standards, analysis, and job fit/motivation. He is only marginally unacceptable in technical proficiency. Unless the company can establish that Walsh cannot master the training required to handle the technical work in IN KOTE (an eventuality that seems unlikely), I will order that he be placed in the next available opportunity. Because I think the company has acted in good faith, and because this arbitration applies standards that may have been only imperfectly understood by the interviewers, I do not think an award of back pay or other compensation is appropriate.

II. Kevin Ciba

Jim Dobson, project facilitator at IN KOTE, was one of the interviewers for grievant Kevin Ciba, and Dobson testified about the conclusions drawn from those interviews.

a. analysis

Ciba was rated as less than acceptable in this dimension. The interview report mentions two STARS, both of which were testified about by Dobson. One involved an incident in which Ciba observed a vibrating turnbuckle. He found a burned grease hose and decided that the turnbuckle was vibrating because it hadn't been getting any grease. He replaced the hose and greased the turnbuckle. Both the interview report and Dobson's testimony criticized Ciba for not investigating the problem further and not following up to determine whether he had made the correct decision. Dobson emphasized that the interviewers did not conclude that Ciba had done the wrong thing. Rather, they were interested in the action he took to gain information about the problem, and they found him lacking.

The other incident mentioned in the report was Ciba's answer to the question of what had been the biggest problem he had faced over the last year. His response was that a friend of his had gotten divorced. The interview report, buttressed by Dobson's testimony, criticized Ciba for not being able to identify the "clear issues" that had caused the problem.

I have not attached much weight to the interviewers' conclusions from this STAR. Frankly, I have no idea what they expected to hear from Ciba about the matter, even after asking Dobson questions about it myself. The report's statement that Ciba lacked an understanding of the clear issues that had caused the problem is not particularly meaningful. What problem? The divorce? His friend's reaction to it? Or Ciba's reaction to it? Any of those could have been the problem Ciba faced, but not all of them would necessitate an inquiry into the cause of the divorce, a matter that Ciba could reasonably conclude was none of his business.

These were the issues I tried to ask Dobson about, but his answers were not responsive. He said that if this was the biggest problem Ciba had dealt with he would expect that Ciba "would have done some analysis about why what happened, happened and what the issues were surrounding this." That is not what I asked him. The problem identified by Ciba may have had nothing to do with the cause of the divorce itself. I cannot conclude from the testimony that Ciba acted in a manner that demonstrated a lack of analysis. It is

just as reasonable to conclude that the interviewer asked the question in a manner that did not sharpen the issue sufficiently.

Finally, Dobson testified about another response that influenced the interviewers. This incident was not mentioned in the interview report under analysis, but that it not determinative. What I said above is that the company needs to be able to establish what it did and why it did it. General impressionistic testimony not supported by examples is not of much value, but testimony about specific incidents is probative.

The incident in question involved Dobson's question about the best decision Ciba had made in the past six months. Ciba said it was applying to work for IN KOTE. Dobson, obviously, did not contest the wisdom of the choice, but he did fault the analysis that led to it. He said that Ciba was unable to identify the considerations or the information that led him to make the decision. This does seem to be related to the definition of analysis.

b. judgment

The principal evidence in this dimension was the last item mentioned in analysis, above. Ciba was asked to explain his interest in IN KOTE. Although he did identify some advantages to working for IN KOTE, he did not mention anything the company had not told him in its recruitment process. He had no examples of independent thought about why he wanted to go to IN KOTE or about what the disadvantages of leaving the Harbor Works might be. Dobson testified that Ciba said there were positives and negatives in the decision to move, but that he was unable to say what they were. The company took this as evidence that Ciba does not develop reasonable alternative courses of action, although it is also clearly related to analysis.

c. work standards

Dobson said what the interviewers look for is someone who sets high goals and standards for himself rather than merely meeting standards provided by others. The interview report notes that Ciba said that high standards involves doing a good job, but that he was unable to provide an example of what doing a good job means. The interviewers also thought that the turnbuckle incident indicated a lack of high work standards.

On cross examination Robinson noted the response on one of the interview forms which reported that Ciba had said that doing a good job was accomplishing the objective, doing quality work, guaranteeing the work is done well, and taking pride in doing things right. Robinson asked Dobson for the weakness in that response. The answer was that the interviewers were not looking merely for a definition of work standards, but instead wanted specific examples of work standards. I'm not certain this response is entirely consistent with the testimony of Gatman about grievant Walsh. Walsh was criticized for not giving answers to the same questions that used the word "quality." Ciba did talk about quality, but was criticized for not giving examples.

d. job fit/motivation

I think there are significant problems with the interviewers' evaluation in this dimension. The interview report relates an incident in which Ciba changed a flying divider shear. In his interview, Dobson asked Ciba to relate an incident in which he worked in an environment that was closest to ideal. The interview report says that Ciba's satisfaction with the divider shear work was that the work went well and without problems. The interviewers said Ciba did not indicate that he had derived satisfaction from the work because he met high personal standards or because he had worked with others. Instead, "it was evident that his motivation was to avoid discomfort."

This would be significant evidence for the company, if I believed it. I don't. Most significant here is Dobson's interview form which contains the following notations about Ciba's answer to the question: "everything went well, everyone worked well together, everyone was one step ahead of one another, crew worked well together, was because of right level of knowledge and comfort with coworkers, it wasn't that everything went without problems but great cooperation from crew members." Frankly, I don't understand how Dobson could have gotten from those notes to agreement with the statements in the interview form. Robinson asked that very question but Dobson could not answer it. He seemed surprised by what he had written on the form, he stammered a little, and then he said that the conversation in the data integration convinced him. He also said that Ciba had not indicated that he was involved in planning or in being part of a group. I will address the planning issue below, but the assertion about the group is contradicted by Dobson's own notes.

I don't mean to suggest that Dobson lied. I'm certain, in fact, that he did not. I tended to believe his assertion that the data integration session changed his mind, but I cannot decide this case on such general statements. As I have already observed, only the company knows what it did and why it did it. Since its

decisions are subject to review, the company has the obligation of explaining them. I will not accept general assertions that there were other factors. I want to know what they were. Moreover, I cannot accept an interview report that is flatly contradicted by the notes of the company's principal witness.

Mr. Smith asserted that the union was being unfair in focusing on just one piece of information. Frankly, I'm not certain that this criticism is not more aptly directed at some of the interviews, which used one incident to make points in several dimensions. The point, however, is that almost all of the company's evidence about Ciba's unacceptability in the job fit dimension came from the flying shear STAR. The union cannot attack much more than that because there wasn't much more than that. At least, if there was, it was not put into evidence so that it could be reviewed.

Dobson did indicate that Ciba had not been involved in the planning for the flying shear job. I asked whether such experience was essential and, if so, how the company would evaluate employees who never had the opportunity to be involved in planning. Dobson testified that he did not know whether Ciba had the opportunity to be involved in planning for the shear replacement. I will not, therefore, attribute any significance to the fact that he did not participate in the planning.

e. technical knowledge

The interview report notes that Ciba had claimed to have knowledge about pneumatics and lube systems, but was unable to answer questions about them. In addition, the report says that the interviewers were concerned because, even though Ciba said that improvement in skills was important, he had done little to improve his own.

Dobson admitted forthrightly that this was an area in which he had little personal expertise and that he was, therefore, forced to defer to those on the interview team who did. He acknowledged that applicants who have progressed to the interview stage have satisfied "book knowledge" tests, but that the interview demands more than that. I must say that exactly what it demands is not particularly clear to me.

Like Gatman, Dobson testified at some length about how the interviewers determine whether a particular candidate is acceptable. Responding in part to questions that Robinson had asked of Gatman, Dobson said the standard is that applicants have to be rated as acceptable in all areas. Although he called it the "standard," I don't find that assertion from him any more meaningful than I found it from Gatman or from Goldsmith. All three witnesses admitted that, whatever the standard might be, the company routinely certifies as "acceptable" for IN KOTE employees who have not been judged as acceptable in all dimensions interviewed for. The point of Robinson's questions was, how do you know when to do that?

Dobson's attempt at explanation was somewhat more successful than Gatman's, but ultimately led me to the same conclusion. Accepting employees who are not acceptable in all dimensions is a highly subjective process that depends on factors such as the correctability of or the severity of the deficiency. Moreover, the discretion is exercised on an individual basis.

This may explain what the company does, but it does not necessarily solve the problem addressed by Robinson. Equally important, it leaves me with little guidance in cases, like Walsh's, when I disagreed with some, but not all, of the interviewers' ratings. In Walsh's case, for example, I had little choice but to apply standards that may not conform with those applied by the interviewers.

Ciba's testimony

On the whole, Ciba's efforts to call the interviewers' conclusions into question were less successful than Walsh's. He said that he understood the question about his friend's divorce to mean what was the saddest or worst thing that had happened to him in the previous six months. He said watching the break up of a family had affected him. On cross examination, he acknowledged that helping his friend deal with the divorce was a problem for him.

Ciba also testified about the turnbuckle incident. He described the situation that confronted him when he got to the call and said he concluded that the hose needed to be replaced. He said he replaced the hose and it worked. He did not rebut Dobson's assertion that he did not investigate to see what had caused the problem and that he did not check back later to see if the problem had reappeared. In fact, he told Smith on cross that he assumed the hose was bad because of a previous cobble. He said this was an assumption he made.

Finally, Ciba said he discussed his proficiency in pneumatics and lube systems during the interviews, but that he didn't claim he was an expert. Rather he said that mechanics on call don't see certain types of problems at all.

Analysis of Ciba

a. analysis

I have already explained that I did not view the divorce testimony to be of any significance. I have not attached any weight to it. That does not, however, undermine the company's case. In fact, since the divorce issue was an off the job STAR, the company did not assign great weight to it. The other STAR concerned the turnbuckle incident. Obviously, the technical aspects of this assignment are beyond my comprehension, but the interviewers did not criticize Ciba for making a mistake. Rather, they focused more on his thought processes and what they revealed about his ability to gather data and identify issues. I cannot say that the interviewers' conclusions were unreasonable. Ciba, in fact, did not investigate the cause, and he did not check back to see if his remedy had been effective. Given the company's explanation of traits required for IN KOTE, I think the company could attach significance to this incident.

I am also influenced by Dobson's testimony concerning Ciba's inability to recount how he identified the issues and analyzed data in making the decision to apply for IN KOTE. This, too, seems an apt example, given the special considerations of the new operation. In sum, I find that the union has not been able to prove that the company acted unreasonably in concluding that Ciba's evaluation for this dimension should be less than acceptable.

b. judgment

Likewise, I am persuaded that the company's rating in this dimension was appropriate. Ciba had asserted that there were both positives and negatives in working at IN KOTE, but was unable to identify any, thus calling into question his ability to develop logical courses of action. The union was not able to introduce evidence that undermined this conclusion.

c. work standards

I have some question about whether the interviewers' rating was appropriate for this dimension. Contrary to Dobson's testimony, Ciba did comment about the importance of doing high quality work. It is true, however, that Ciba offered no examples, or STARS, for this dimension.

d. job fit/motivation

I have already indicated that I think there are serious problems with this evaluation. Dobson's notes don't support his testimony or the interview report. Moreover, there is no other testimony or evidence on which to rest the interviewers' conclusions. In my opinion, then, the union succeeded in proving that the company's rating was unreasonable and not supported by evidence. In my view, the rating should have been acceptable.

e. technical knowledge

The union did not really undermine the interviewers' claims here, though I must observe that their conclusions don't seemed to be based on much information. If this dimension were of critical importance in this case, I might be more demanding in the kind of evidence the company needs.

Summary

I think the union has not succeeded in proving that the company's ratings were inappropriate for two of the standards, analysis and judgment. The union has established that the ratings were unreasonable in job fit motivation. Moreover, it has raised questions about both work standards and technical proficiency. On balance, however, I think the ratings in analysis and judgment preclude Ciba from any relief. Company witnesses said that when an applicant is not acceptable in all areas, they look to correctibility. Dobson testified credibly that correctibility is difficult in analysis and judgment. Given Ciba's deficiencies in those areas, and the possible deficiencies in work standards and technical proficiency, I will deny the grievance.

III. Robert Budny

The company called Brian Wagner, operations resource at IN KOTE, to testify about the interviews for grievant Robert Budny.

a. analysis

The interview report lists only one STAR for Budny, although Wagner testified that the interviewers also considered one other STAR. The one in the interview report concerns an incident at the slab caster in which Budny ignored an alarm on a cooling water flow switch because he believed the alarm was malfunctioning. As a matter of analysis, the interviewers faulted Budny for not seeking to develop sources of information but instead relying on a hunch based on his own "unverified assumptions."

The second STAR concerned Budny's decision to move from welding to instrument service. The decision itself was not at issue, but the interviewers thought Budny's analysis of the decision to move was faulty. On direct, Wagner testified that Wagner had given only one reason for the action, which was an excess of supervision in welding. On cross examination, Wagner acknowledged that his notes also showed that Budny had mentioned that welding was a dead end job. This was still not sufficient, according to Wagner.

He said "it seems to me that a career switch is a very big item in one's life" and further that "it seems to me that in order to make that switch many factors would be involved in the decision."

I have significant difficulty attributing much weight to this conclusion, which strikes me as unreasonable. I have no reason to impute to Wagner or to the other interviewers any particular expertise in career change motivation, particularly among nonprofessional employees. Budny articulated two motivations for his decision, both of which would appear to have particular significance. What Wagner said expressly is that the interviewers wanted more reasons. Perhaps there were no more. Why is that bad? Wagner cited nothing, except his own opinion, to prove that such decisions are typically made with more reasons than those offered by Budny.

In response to my questions, Wagner said the interviewers expected that Budny would have mentioned something about job security or monetary gain. But perhaps those were not issues at all. I have no independent knowledge that Budny's security or his pay rate would have been affected adversely (or positively) by his decision. If they would not have been, then they were probably not considerations in the decision. In short, I am not satisfied with the interviewers' assertion that there should have been more thought about other considerations in the absence of evidence that there were other relevant factors. The interviewers' subjective feelings that there should have been more is not enough.

b. judgment

Wagner's testimony on direct was limited to the interview report. It relies on two examples, one of which is the flow meter problem mentioned above. The interviewers noted that in failing to shut down the operation, Budny acted against the advice of a coworker, against proper procedures (Wagner said this on cross examination), and entirely on a hunch. If he had been wrong, his decision could have caused severe damage. On cross examination, Robinson pointed out that one of the interviewers' notes says, with respect to this incident, that Budny first performed a test before acting. Robinson asked whether the interviewers nevertheless proceeded on the assumption that Budny acted solely from a hunch and Wagner said yes. It is, obviously, of significance that the notes do not support the interview report and that the interviewers acted on the basis of information that is contradicted by the notes. I understand, as Smith again elicited from Wagner on redirect, that the notes are not a transcript, but I fail to understand the relevance of that fact here. The interviewers may not write down everything, but they have to be able to explain how what they did write down supports the conclusions they reached.

Robinson also quizzed Wagner about the interviewers' conclusion that it was inappropriate for Budny to act against the advice of a coworker. He said the interviewers "strongly" felt this was not a desirable trait for employees who wanted to work at IN KOTE. Frankly, I didn't think Wagner's explanation was convincing. I don't understand the team concept to mean that employees always have to agree, particularly in those cases in which prompt action is required. Moreover, later testimony contradicted Wagner's assertion that the proper procedure required that the operation be shut down, or at least that was Budny's decision to do so.

The other example mentioned in the interview report concerns the fact that Budny told one interviewer that the most difficult decision he'd made was to apply for IN KOTE because he liked the independence of his present job. But he told another interviewer that applying for IN KOTE was an easy decision because of the group atmosphere it offered. Robinson raised questions about whether these two answers were inconsistent, but I was impressed with Wagner's assertion that judgment relates to logical assumptions that are related to actual information and that Budny had made different assumptions in answering these two questions.

c. work standards

As in the judgment dimension, Wagner's direct testimony was confined to reading the interview report. In response to Smith's question, he said he had nothing to add to it. The only reasonable conclusion, then, is that the interview report accurately summarizes the totality of the interviewers' discussions. In fact, on cross examination, Wagner said the report was a fair summary of the data integration session on work standards. As was the case with both analysis and judgment, the interview report uses the flow switch problem as evidence of Budny's deficiency. The report says that his handling of the situation "does not demonstrate the type of personal work standards desired in team members." In addition, the report criticizes Budny because he said he does not like to ask coworkers for help and because he said he defined a good job as "finishing." The report says that Budny "expresses no concern for ... quality" and that he did not demonstrate the ability to set high goals.

On cross examination, Wagner said the interviewers understood the remark about not wanting to ask others for help to mean that Budny doesn't hold coworkers in high esteem and that he doesn't value them as a

resource. I'm not convinced that this is the most reasonable conclusion or that it is the one I would have drawn from Budny's comment, but I cannot say that it is unreasonable or unfair.

I am less impressed with the interviewers' conclusions with respect to the "finishing" comment. On cross examination, Robinson pointed out that Wagner's notes have a list of comments in response to the question "For your position, how do you define doing a good job?" The list reads "finishing, doing it right, fast and safe." Robinson asked how the interviewers could determine that Budny's only interest was in finishing.

Wagner said that when he asked the question, Budny replied "finishing" immediately, and then added the other two comments only after a pause, which influenced the interviewers' decision.

On redirect, Smith got Wagner to say also that "doing it right" is not a behavioral example. This was not a significant observation. Using that analysis, then, the "finishing" comment should have been ignored as well. In fact, the question did not ask for a behavioral example and, while Smith got Wagner to say that he ordinarily asks follow up questions to get such examples, he admitted he didn't do so here.

It is not unreasonable for the interviewers to conclude that "finishing" is most important to Budny since he mentioned that first (though it is by no means clear that this conclusion is correct.) But I am troubled by the interviewers' decision to discount the rest of the response, especially since the conclusion in the report was that Budny had expressed "no concern for the quality of the final product," a comment that is clearly contradicted by Wagner's own notes. Moreover, I would have appreciated some explanation of why the interviewers discounted the conversation in the Hennings interview.

For the most part, Hennings' notes are illegible. Under work standards, he noted that Budny said something about "communicating with people." In addition, when Budny was asked if he was satisfied with his current performance, Hennings' notes say "fairly satisfied, can always do better." My reading of these notes is not, as Smith characterized similar efforts by Robinson at the hearing, a reference to isolated examples. During his direct examination, Wagner stood entirely on the report, which he said was a fair summary of the data integration session. Since the company has the burden of explaining what it has done, I am entitled to know how these comments were received by the interviewers and why they were discounted.

d. job fit and motivation

Wagner's testimony about this dimension focused primarily on the interview report. The report references several comments made during the interviews which the interviewers interpreted to mean that Budny was more interested in being challenged as an individual than as a member of a group. Wagner also emphasized the importance of this dimension for individuals who applied to work at IN KOTE.

On cross examination, Robinson pointed to statements elicited for the judgment dimension which indicated that Budny had worked as part of a two man team and asked how the interviewers evaluated that information in reaching their conclusion that Budny "never spoke of group or team challenges." At that point, Smith, Robinson and I had a general discussion about the proper role of the notes in this proceeding. While I understand that the notes are not a transcript, I indicated that I thought it was appropriate to ask the interviewers whether something mentioned in the notes was discussed in the data integration session and, particularly if the notation seemingly contradicts the interviewers' conclusions, how it was discounted. This is, in fact, the standard I have applied to the notes throughout this case and nothing in the discussion convinced me that they should be treated otherwise.

Wagner said the notations in Hennings' interview form do indicate that Budny worked with a coworker, but not necessarily in the kind of team environment the interviewers are interested in. For example, there was no indication that the two team members discussed problems or looked for cooperative solutions. Given the other notations about Budny's desire to work alone (not all of which are mentioned in the interview report), and the fact that Budny did not testify about this team assignment, I cannot conclude that the interviewers' conclusions were unreasonable. I must say, however, that given the nature of IN KOTE, I would have thought that an assertion by an applicant that he worked in a two man team would have prompted more questioning about that fact from the interviewer. Wagner's comments about Hennings' notes point to a lack of information about Budny's experiences that Hennings himself could have elicited through follow up questions. In short, it is not clear to me that the lack of detail about the two man team assignment was Budny's fault.

e. technical proficiency

The slab caster incident arose again with respect to this dimension. The interview report says that Budny's action raised concern about his "willingness and ability to apply proper techniques generally." In addition, Wagner explained that the interviewers were troubled by Budny's response to a question about the most complex work assignment he'd had. Budny mentioned his work in repairing a mold level control which required off line calibration. Budny diagnosed the problem correctly but did not do any of the actual

calibration. Wagner said the interviewers did not criticize Budny for what he did and, as I understood the testimony, did not even conclude that he should have done the calibration. Rather, they merely concluded that if this was the most complex problem he'd worked on, he was not involved in the kind of work that would develop the kinds of technical skills they needed. The clear inference was that actually doing the calibration work would have supported the opposite conclusion. Finally, the interviewers questioned whether Budny's experience as a welder was of any value in instrument repair.

Budny's testimony

Budny testified at some length about the slab caster incident that played such an important role in the interviewers' decision. In addition, the union called Dennis Ault, who was Budny's coworker on the project. Ault, of course, had nothing to offer about what Budny told the interviewers. That does not mean, however, that his testimony was of no value. There is a significant discrepancy between what Budny says he told the interviewers and what the interview report concludes. Budny says he told the interviewers a correct description of the events. Ault's testimony helped establish what actually occurred in the slab caster. Budny denied that his conduct was based on a hunch. Rather, he said that when he got to the slab caster he saw an alarm that said there was no flow to one side. He observed, however, that there was pressure. Moreover, there was no temperature differential between the two sides. These readings convinced him that there was flow. The fact that the instrument reading was below zero when there actually was pressure also caused him to suspect that the instrument itself was bad. He and Ault also followed the pipes and discovered that one seemed to have less pressure than the other. But the one that seemed low was not the one that was alarming. This helped confirm that the instrument was bad.

Both Budny and Ault denied that it is their decision to halt casting. Rather, the manual says it is the department's decision. The section manager was there and had seen the same things Budny saw before Budny even arrived. The section manager was the one who made the decision to continue casting, although Budny talked him into slowing the caster down until he could make some checks.

Based on this account, which I find to be credible, there is no way the interviewers could have determined that Budny's action was improper. Indeed, just the opposite is true. I don't know, of course, exactly what Budny told the interviewers. I note, however, that there is no indication in Wagner's notes that he discussed this matter with Budny at all. Given the importance of this example, I think it was incumbent on the company either to rebut Budny's account of what he told the interviewers or to put in evidence that the action he took was, in fact, improper. I think the interviewers seized on the fact that Budny did not stop the operation, without examining adequately everything else he did.

Budny also testified about the calibration example mentioned by Wagner. He said that there must have been some misunderstanding because he, in fact, does do calibrations. He also said that he does not regard calibrations as particularly difficult work, but that he does do the work. He also testified that he told the interviewers about a box other employees had built for testing certain equipment while it was running. The interviewer asked if he had anything to do with that. Budny said he thought the interviewer meant whether he had assisted in building the box, so he said no. It is possible, he said, that the interviewer meant to ask whether Budny had anything to do with calibration. He also testified that he did not tell the interviewers that calibration was the most complex work he'd done. Rather, he said that the automatic mold level control was the most complex system he worked on.

Analysis of Budny

As I have already observed, I think the interview report inaccurately describes what Budny did in the slab caster incident and inaccurately describes what he said during the interview. That is a matter of considerable significance in this grievance because many of the interviewers' conclusions were based on this one incident.

a. analysis

The interviewers' conclusions on analysis were heavily influenced by their view of the slab caster incident. I think their view of the incident was wrong and that their conclusions about it were unreasonable. I base my decision on Budny's description of what happened and his credible assertion that he explained it to the interviewers. In addition to the slab caster incident, the interviewers also used Budny's decision to move from welding to instrument service as evidence of his lack of analysis. I have already observed that I have difficulty attributing much weight to the interviewers' conclusion and I have explained my reasons. Because I can credit neither of the examples used by the interviewers to conclude that Budny was deficient in analysis, and because, to the contrary, his description of the slab caster incident actually showed considerable analysis, I find that the interviewers' conclusions were unreasonable and that Budny is acceptable in this dimension.

b. judgment

Like analysis, the interviewers relied heavily on the slab caster incident to support their conclusion that Budny's judgment was unacceptable. I need not repeat again my reasons for concluding that the interviewers' reading of that incident led them to an unreasonable conclusion. I have also explained some of my other reservations about conclusions drawn by the interviewers.

I think the interviewers were on solid ground, however, when they concluded that Budny showed some deficiency in judgment when he told one interviewer that applying for IN KOTE was an easy decision but told another one that it was his most difficult decision.

This is a difficult dimension to rate. The interviewers said that Budny was unacceptable, but their judgment seemed to have been heavily influenced by the slab caster incident. Note, for example, the following statement from the interview report: "Robert did display a willingness to make decisions throughout the interviews; however his judgment was found to be severely lacking as noted in the first example." The first example was the slab caster incident. Since the slab caster incident should count in favor of judgment rather than against it, I am persuaded that the rating of unacceptable is too harsh. I do not have the entire rating system for guidance so I cannot say exactly what other ratings are possible. At most, Budny is marginally unacceptable in this dimension.

c. work standards

Once again, the interviewers relied on the slab caster incident. As I have already explained, I do not view this as a negative indication. In fact, it should have just the opposite effect. That is, if poor performance is an indication of unacceptable work standards, then good performance should be an indication of acceptable work standards. The slab caster incident, then, should be counted here as a favorable STAR. I have already explained my reservations about the interviewers' conclusions that finishing was Budny's only concern and that he had no concern for the quality of the product.

At base, then, the only evidence that Budny was unacceptable in this dimension is the interviewers' conclusion that he does not like to ask coworkers for help. As I have already observed, I think the interviewers were entitled to draw the inference, but this seems more relevant to job fit than it does to work standards. In any event, I do not think this one observation is sufficient to demonstrate that Budny is unacceptable in the work standards dimension.

d. job fit/motivation

The interviewers based their conclusion that Budny was somewhat less than acceptable on the fact that Budny did not speak of group work or team challenges. As I have already explained, I think the interviewers' conclusions were reasonable.

e. technical proficiency

The slab caster incident was used again to establish that Budny was somewhat less than acceptable in this dimension. In fact, it supports no such conclusion. Indeed, as I observed with respect to work standards, Budny's performance points in exactly the opposite direction. In addition to the slab caster, the interviewers also criticized Budny for not being involved in off line calibration. But Budny asserted that he is, in fact, involved in such work and that the interviewers' contrary conclusion must have been the result of a misunderstanding. I cannot say whether there was a misunderstanding or not, but I cannot conclude that Budny can be rated as less than acceptable when the only evidence cited against him criticizes him for not doing work that he, in fact, does do. At least I cannot do so when I have no basis for believing that he was any more at fault for this mistake than were the interviewers.

Since Budny was rated as only somewhat less than acceptable in this dimension and since the primary evidence against him actually helps him rather than hurts him, I am persuaded that he should have been rated as acceptable.

Summary

I have found, contrary to the interviewers, that Budny meets acceptable levels in the dimensions of analysis, work standards, and technical proficiency. I have approved the interviewers' rating of somewhat less than acceptable in job fit/motivation and I have found that Budny is only marginally unacceptable in judgment. Since he falls below the acceptable level in two dimensions (albeit not by much in either) I find myself unable to determine whether he is qualified for IN KOTE.

The company witnesses did say that a candidate might be unacceptable in one dimension but still be qualified. They did not, however, testify about whether they have made the same decision when a candidate falls slightly short in two areas. Moreover, none of the company witnesses was particularly successful in describing how the decisions are made at all.

Because I cannot understand how such decisions are made, I will order the company to reevaluate Budny's candidacy. The reevaluation, however, should proceed on the understanding that Budny is acceptable in analysis, technical proficiency and work standards. Moreover, he is only somewhat below acceptable levels in judgment and job fit motivation. The evaluation must also proceed with the slab caster incident counting for rather than against Budny in the judgment dimension. The company, of course, is free to disagree with my decision and determine that Budny is acceptable in judgment.

I will retain jurisdiction for the purpose of reviewing the company's reevaluation of Budny's application, a task I will undertake only if requested to do so. I will say, however, that the company will have to be able to explain its decision with respect to Budny and that it may be required to demonstrate that similarly situated employees were treated in a like manner. Otherwise, I have no way of determining whether its action is arbitrary.

IV Conclusion

This was a very difficult case. The parties did a good job of providing me with information in support of their positions. I understand that, in some ways, the company's task was harder than the union's even though the union had the burden of proof.

The company had the task of defending certain decisions that were, for understandable reasons, not always well documented. Nevertheless, the company's witnesses and advocate did about as well as one might expect, given the application of standards that they could not necessarily have anticipated at the time the interviews took place.

AWARD

The grievance of William Walsh is sustained. The company will take the action detailed in the summary section on page 37 of this opinion.

The grievance of Kevin Ciba is denied.

The grievance of Robert Budny is sustained in part. The company will take the action detailed in the summary section on pages 64 and 65 of this opinion.

/s/ Terry A. Bethel

Terry A. Bethel

February 29, 1992

<FN 1> Testimony established that the dimensions applied to the grievants in this case were developed at the time IN TEK was manned, but that they have equal application to IN KOTE.