Award No. 853
IN THE MATTER OF ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 31-T-21
Appeal No. 1464
Arbitrator: Terry A. Bethel
December 18, 1991
OPINION AND AWARD

Introduction

This case involves an allegation that the company violated the agreement by reducing the crew size in the cast house of no. 7 blast furnace. The hearing took place at the company's offices in East Chicago, Indiana on October 25, 1991. Patrick Parker represented the company and Jim Robinson presented the union's case. Both sides filed a prehearing brief and the case was submitted on final argument at the close of the hearing.

Appearances

For the company:
P. Parker -- Project Rep., Union Rel.
S. Nelson -- Project Rep., Union Rel.
D. Rosenow -- Section Mgr., No. 7 Blast Furn.
K. Kahl -- Section Mgr. No. 7 Blast Furn.
M. Rayson -- Supervisor, No. 7 Blast Furn.
P. Ladd -- Hum. Resc. Gen., No. 7 Blast Furn.
G. Stucke -- Bus. Analyst, No. 7 Blast Furn.
For the union:
J. Robinson -- Chair, Grievance Comm.
M. Mezo -- President
L. Micou -- Griever
C. Davis -- Ass't. Griever
T. Sanders -- Steward
W. Adoba
D. Williams
G. Reed
J. Campbell

Background

This case concerns the union's allegation that the company acted improperly when it reduced the make up of the cast house crew from one keeper and two keeper helpers per cast house to one keeper and one keeper helper per cast house, with a swing keeper helper who rotates between the two cast houses. At base, the union claims that the parties had established a local working condition requiring the assignment of one keeper and two helpers per cast house and that the company's unilateral action in reducing the crew violated Article 2, section 2 of the agreement (mp 2.2). The company denies the existence of a local working condition with respect to the size of the cast house crew and, alternatively, argues that if such a practice is made out, changed conditions allowed it to change the size of the crew, mp 2.2.4.

Number 7 blast furnace has two cast houses each of which is responsible for two tap holes. The employees in question in this arbitration, the keeper and the keeper helpers, are responsible for tapping the furnace to remove molten iron. At the time the company made the change which is the subject of this arbitration, there were three employees assigned to each cast house, one keeper and two keeper helpers.

Although the employees in each cast house are involved in the same process, i.e., tapping the furnace, they ordinarily do not work together, at least not in the sense of all employees working on the same task at the same time. Rather, the tap holes are cast alternatively, with one group of employees actively involved in the process while the other group prepares to cast when the first group is finished.

Testimony established that it takes approximately two hours to complete a cast, at which time the process begins on the other side of the furnace. The crew that just completed the cast then prepares for another cast, a process that takes less than two hours. There is, then, some idle time between the time when preparation is completed and when casting begins again.

In April, 1991, the company ceased scheduling two keeper helpers in each cast house. It asserts that changes and improvements in the operation of the furnace justified its decision to schedule only one helper in each cast house, with a third helper alternating between the two. Since only one tap hole is in operation at any one time, the swing keeper helper is able to be present whenever the furnace is actually being cast, thus insuring that there will be one keeper and two helpers on those occasions.

Number 7 blast furnace first went on line in 1980. It was shut down for a reline and other improvements in 1987 and went back into operation in November of that year. The company asserts that the changes were so extensive that the furnace should he regarded as a new piece of equipment. As Mr. Parker said on final argument "the blast furnace ... is not, but for its underpinnings, the same blast furnace that stood there before the rebuild." I think the company intends that argument to apply principally to its contention that, should I find the union has established a crew size, there were sufficient changes to warrant modifying that local working condition. Nevertheless, I think the argument has application to both of the issues before me.

The company does not assert that crew size cannot be a protected local working condition under mp 2.2 Rather, it asserts that there was no established crew in this case or, if there was, changed conditions allowed a modification of the local working condition. The parties agree that the union has the burden of proving the establishment of a local working condition, which in this case would be the crew size. Should it succeed, the burden shifts to the company to prove the occurrence of changes that would justify elimination or change of the local working condition. Although some of the evidence at the hearing goes to both issues, for purpose of clarity, I will address them separately.

1. Crew Size

As noted, the parties disagree over whether the keepers and keeper helpers in the cast house represent a crew which can be protected by a local working condition under mp 2.2. In United States Steel Corporation Case No. USS-11,430 the company discontinued the scheduling of a hot roll finishing detail scheduler on third turn by assigning the same employee to second turn. Although the case was ultimately decided on other grounds, Arbitrator Klaus, with the approval of Chairman Garrett, said the manning pattern in the case did not meet the definition of a crew.

The arbitrator noted that the employee did "not work with other jobs as an essential part of a cooperative effort to achieve a joint combined function." Instead, he worked by himself and performed his job "without regard to when and how other employees work at their respective jobs." The arbitrator concluded that there was no "functional interdependence" between the hot roll finishing detail scheduler and the other employees who worked at the same time.

In my view, this is a serviceable definition for the establishment of a crew. Moreover, I don't believe the company could contend successfully that the cast house employees fail to satisfy this definition. Although Mr. Parker asserted in final argument that the existence of a crew must be established by testimony rather than argument (an observation that is obviously correct) there was sufficient testimony in this case to meet the definition.

Testimony established that one of the employees -- usually the keeper -- is occupied with tapping the furnace, with the assistance of one of the helpers, who is located on the casting floor. After the flow of molten material begins, the other of the two helpers operates the tilting runner system that directs the molten iron into the pugh ladle. One of the helpers (apparently not the one who operates the tilting runner system) also takes samples, takes care of the mud gun, calls information into the control room, and performs various other miscellaneous responsibilities. While all of this is going on, the group of employees on the other side of the cast house is preparing to activate another tap hole when the first cast is completed. This procedure allows the furnace to stay in continuous operation.

This process seems clearly to manifest the kind of "functional independence" that the arbitrator had in mind in USS-11,430. The employees do not work by themselves, unmindful of the tasks being performed by those around them. Their work, rather, is a functional part of a cooperative effort to cast the furnace. None of the employees involved can perform his required tasks in isolation. Instead, what each does depends on the actions of the other members of the crew.

The company does not actually contest the interdependence of the employees who work in the cast house. Rather, it asserts that there are other considerations that prevent the union from proving the existence of a crew, or at least a crew size that is protected by mp 2.2. The company assets that I cannot view the cast house employees in isolation. It argues that there are others, namely the bull gang, who also perform many of the same functions and must therefore be considered part of the crew. In addition, the company argues that the crew size has not been static, but has changed with some frequency over the years. This latter

argument, obviously, does not go to the question of functional interdependence, but does affect the union's contention that a crew of one keeper and two helpers per cast house is protected under mp 2.2.

I think the company's evidence did not establish either that the bull gang works interdependently with the cast house employees or that, if it does, such a fact would prove fatal to the union's case. The company's brief asserts that the bull gang has overlapping maintenance responsibilities with the cast house employees. There was evidence about that, but probably not what Mr. Parker had hoped to get.

Both Dale Rosenow, section manager no. 7 blast furnace, and Mike Rayson, operating turn supervisor, testified that the bull gang and the cast house employees do some of the same work. Rayson said that the bull gang can do the cast house job "in emergency situations." He did not say that they did do the work with any regularity or frequency, or that they shared any routine tasks with the cast house employees. Indeed, his testimony drew a distinction between the two groups employees. He said the bull gang totally relines a used system in contrast to the cast house employees, who cast on the system. Rosenow testified, both on direct and on cross, that the bull gang had little overlap with the cast house employees. On direct he said the two groups of employees do some "minor maintenance work" that overlaps. On cross, he reiterated that the overlap was "minimal."

Contrary to the company's assertion, I am unable to find that this testimony established the bull gang members as part of the same crew as the cast house employees. I understand that the bull gang performs work on some of the same equipment used by the cast house employees, but I do not think that fact is sufficient. As the company pointed out, ultimately every employee of the harbor works is involved in the goal of steel production. That may make them part of the same team, but it does not make them part of the same crew for purposes of mp 2.2. The cast house employees act in an interdependent manner to perform a discreet function in the operation of the blast furnace.

Even if the company's evidence had been sufficient to establish some interdependence between the bull gang and the cast house employees, I cannot say that proof of that fact would undermine the union's position. On final argument, Mr. Parker asserted that because the bull gang was only established on day turn, there could be no protected crew size since the number of employees would vary from turn to turn. Thus, the bull gang employees expand the work force on day turn, and the crew is obviously smaller on back turns.

The company, however, did not cite any authority which holds that a variance in the number of employees between different turns necessarily affects the establishment of a local working condition under mp 2.2. As a matter of logic, it would not be irrational to find that the established practice is one which includes bull gang members on one shift but not on others.

The same issue arises with respect to the creation of the milky way, an addition of two keeper helpers on day turn after the start up in 1987. <FN 1> Mr. Parker argued that because there were eight cast house employees on day turn but only six on the back turns, there could be no established crew size. I disagree that the matter is so clear cut. His argument might have force if the number of employees on the crew varied from turn to turn or from day to day, depending on the circumstances. Thus, if management assigned a varying number of employees to the cast house according to its perception of the work load at any given time, the union would be hard pressed to establish a crew size.

Those are not the facts. Rather, management had a consistent practice of assigning eight employees to the day turn and six to the back turns. <FN 2> There was no testimony that this assignment practice varied from the time of start up until the elimination of the milky way. Similarly, management's practice of assigning bull gang members to work on some, but not all turns has been consistent.

There is, in fact, no issue before me about whether the milky way was a protected part of the crew, a matter I will discuss in more detail below. Moreover, I would not resolve issue on this basis without additional argument and an opportunity for the company to put in decisions from other arbitrators, if any, which hold that in order to establish a protected crew size, the working compliment must always be exactly the same on each shift. Nevertheless, the mere fact that there is a consistent variance between the number of employees on different turns is, without more, not enough to convince me that the crew size was unstable, which is essentially what the company contends.

The company's argument that there has been no consistent crew size in the cast house is not limited to its claim that the bull gang and the milky way produced variations in size. It also claims that that number of keeper helpers has diminished over the years. There is no question about the accuracy of this assertion. Rosenow testified, for example, that in 1982 there were one keeper and two keeper helpers in each cast house, and also a swing keeper helper who rotated between the cast houses, apparently much as the swing keeper helper does today. In 1985 the company eliminated the swing keeper helper and put two additional

keeper helpers on the day turn only. This was apparently the beginning of the milky way. This was the same configuration that the company started with after the reline in November 1987.

Although there were changes before the 1987 reline, I am most concerned with what the company has done since start up after the reline. The company argued vigorously, without any real disagreement from the union, that I should regard the rebuilt furnace as a new piece of equipment. I see no reason not to accede to that argument. There was convincing testimony about the significant changes made to the furnace as part of the $31 million rebuild. But the rebuilt furnace is either new equipment or it isn't. If it is, then any crew size practice must date from the time the equipment is put into service, and the way the old equipment was staffed cannot be determinative (although it may be instructive, as I will discuss below). At the time of start up in 1987, the company assigned one keeper and two keeper helpers to each cast house, and an additional two helpers on day turn.

As I have already observed, inclusion of the milky way in the crew of cast house employees is not necessarily fatal to the union's contention that there is a protected practice under mp 2.2. The time for determination of whether that was a protected practice has passed. Nevertheless, the company argues that since the milky way was eliminated without complaint by the union, and since there were other such changes before the reline, the union "has never before claimed the existence of a crew." This argument posits that the union's failure to grieve previous reductions of keeper helpers prejudices its ability to do so now. Past inaction, the company claims, signifies recognition that there was no established crew size.

I understand that arbitrators sometimes hold that rights must be exercised in order to be preserved. I have, on occasion, said that myself. Moreover, I realize that past actions are often trumpeted as examples of how the agreement should be interpreted, an argument that unions typically advance with more vigor than employers. It is, nevertheless, dangerous to infer too much from silence.

As I have already said, I think the company's argument that the furnace is a new piece of equipment means that I am to be most concerned with staffing patterns that developed from November 1987 onward. Rosenow's testimony indicated that there had been only one change in the composition of the cast house crew prior to the one at issue here, which was the elimination of the milky way in January 1990. The union apparently did not grieve that change. That does not necessarily mean, however, that the union conceded the company's right to vary the number of employees in the cast house at will.

Although a consistent pattern of such changes without objection might indicate acquiescence <FN 3>, the union is not obligated to grieve and arbitrate every possible contact violation in order to protect its rights under the contract. The union has significant discretion in choosing the cases it will take to arbitration or otherwise expend resources on. Moreover, at times a union will elect not to grieve a particular company action because it believes that, under the circumstances, the company's conduct does not violate the contract.

In this case, for example, the union might have thought that the elimination of the milky way was justified by the later impact of changed circumstances which resulted from improvements made during the rebuild. In that event, the decision not to grieve would not have been an acknowledgement of the company's view that there was no protected crew. Rather, it would have been only a recognition that changed conditions warranted a reduction of some number of employees from the crew. I don't know, of course, what motivated the union's decision not to file a grievance in 1990. The point, however, is that acquiescence is not necessarily the only reasonable inference to draw from the union's inaction.

In summary, I find that the union has sustained its burden of establishing the existence of protected local working condition consisting of a crew of one keeper and two keeper helpers per cast house.<FN 4> I understand the company's concern that the concept of crew size not be viewed too narrowly under mp 2.2. The argument, of course, works both ways, for it also cannot be viewed too broadly.

Although the evidence does not reveal the presence of any other employees at number 7 blast furnace (other than bull gang), no doubt there are other employees involved in the operation of the furnace. Clearly, the furnace cannot operate unless everyone does his job. The employees of the cast house, then, are not autonomous and they are not isolated from the company's principle occupation. Nevertheless, they alone have been assigned the task of casting the furnace which, as I have already observed, is a discreet function in the operation of that equipment. There was no evidence that the cast house employees are so integrally a part of yet another group of employees that they cannot rationally be regarded as a crew.

2. Changes

Because I have found that the union has carried its burden of establishing a protected local working condition, the burden now shifts to the company to prove that "the basis for the existence of the local working condition is changed or eliminated." The company, in fact, introduced significant testimony in this

regard. Most of it went to changes in operation that followed the 1987 reline. In addition, there was some evidence of more recent change. The thrust of the company's case is that the combined effect of these changes was a reduction in the workload of the cast house crew, sufficient to allow the elimination of one helper per cast house per turn, and the addition of a swing keeper helper on each turn.

A. Changes as a Result of the Rebuild

Rosenow described the scope of the work done to the furnace. He said that eighty percent of the steel shell was replaced, the cooling plate configuration was changed, most of the refractory was changed, a new slag pit was installed, and air cooled troughs were installed. The rebuild cost the company $31 million, and the air cooled troughs added an additional $3 million cost. Rosenow and Rayson both testified about the effects of these and other changes on the work load of the cast house crew.

a. Trough and runner repair

This is the system that carries molten iron away from the furnace. Prior to the reline, the trough system was buried in sand and was not cooled. The new system is suspended in the and is cooled. In addition, the runner system was changed by reducing the slope. This reduced wear and tear on several components and provided easier access for maintenance. Prior to the rebuild the troughs were hand cleaned and half of the system was hand sanded. There was, Rayson said, a lot of maintenance at the tap hole and a lot of clean up. The amount of work was reduced significantly by the reline changes. Rayson estimated that the total work volume has decreased from 30 to 60 man minutes per turn to perhaps as little as 5 man minutes per turn.

b. iron notch improvements

This is an extension that comes out of the furnace and has the effect of extending the tap hole, according to Rosenow's testimony. It is lined with refractory. It is the link between the tap hole and the trough system. The reline corrected a design flaw which had previously led to burn throughs in the system. Prior to the reline there were perhaps five such burn throughs a year. There have been none since the improvement has also reduced tap hole maintenance.

c. tap hole maintenance

Rosenow said the reline significantly reduced the need for tap hole maintenance, principally because of the new trough covers. The new covers come much closer to the furnace. Moreover, other changes keep the face hot so that molten material does not solidify near the tap hole. In addition, design improvements now make it possible for mobile equipment to do more of the maintenance that is required.

d. fluxed iron ore pellets

This improvement has increased the efficiency of the furnace. There are now fewer, but longer caste. Rayson said that the longer casts increase the idle time of the crew that is waiting to cast.

e. trough covers

Rosenow said these were installed principally for pollution control, but that they also had the effect of keeping the molten material hot and preventing it from solidifying. Refractory life has also been improved. These changes, he said, have helped reduce maintenance in the tap hole area.

f. scrap removal

Rosenow said this was a system which pulled solidified iron and slag out of the runner system. Changes in the system, he said, reduced the workload of the cast house employees. At least one of the union witnesses testified, however, that the changes described by Rosenow were actually implemented even before the reline.

g. tuyere life

Rosenow described the tuyeres as water cooled copper castings that direct air blasts into the furnace. He said the reline produced a change in the weld that covers the nose of the tuyere. He said that improvement has improved tuyere life. The number of changes have been reduced by one half, thus reducing the work load of the cast house crew. Rayson said the work is now done only on scheduled shutdowns.

h. casts per day

Several improvement, including the use of improved flux pellets, resulted in fewer casts per day following the reline. Since the cast house crew casts molten material from the furnace, the reduced number of casts necessarily reduced work time, apparently principally when the crew was idle and waiting to begin a cast. Although lower than before the reline, the number of casts per day have been stable since the beginning of 1988.

B. Recent Changes

In addition to the changes that resulted from the rebuild, both Rosenow and Rayson testified to other changes that, the company contends, have reduced the work load of the cast house crew. The company

asserts that these changes have taken place in the years following the reline and closer in time to April, 1991, when the company reduced the cast house crew. The changes are summarized below.

a. iron sumps

The iron sump was a hole in the slag runner that was designed to catch any carry over iron in the slag. The procedure, as described by Rosenow, was to drill a hole in the bottom and drain out the iron. The company removed all four iron sumps in late 1990, meaning that the cast house crew no longer performs this work. A table in the company's brief indicates that in 1985 (before the reline) cast house employees spent, on average, 214 man minutes per turn in this activity. There are no records for 1986 and 1987. In both 1988 and 1989 the average was 94 minutes, which dropped to 54 in 1990 and now, with elimination, has dropped to zero.

b. drills

The drills are used by the cast house crew to open the cast hole. In 1990, the company made a significant design change to the striking bar. The change has reduced drill failures significantly, Rosenow said, and has thereby reduced the work of the cast house crew, which formerly had to switch to another system when the drill failed. Rayson confirmed that testimony.

c. use of mobile equipment

Rosenow testified that changes made as a result of the reline have allowed more use of mobile equipment for clean up, thus reducing the time cast house employees spend on that endeavor. Although there was no testimony about how such time this improvement has saved, Rayson acknowledged on cross examination that this improvement actually dates from the reline. That is, it was changes in the reline that made the use of mobile equipment possible. Thus, the work reduction here is not necessarily the result of a recent change, an important distinction I will discuss below.

d. learning curve

Both Rosenow and Rayson testified that it took some time for the cast house employees to accommodate to the improvements made during the 1987 rebuild. Both said that the employees perform their duties better now than they did then, a phenomenon the company refers to as the learning curve. On cross examination, however, Rayson said that it took the employees about a year to adjust to the new furnace. I took that testimony to mean that the major increase in efficiency took place during that time. As such, the learning curve phenomenon is not really a recent change, although admittedly there may be some marginal increase in efficiency with the passage of time.

e. stabilization of the furnace

There was more testimony about this than most other factors. Both Rosenow and Rayson testified that after the reline, there was a spraying problem at the tap hole that they had been warned to expect. They continued to fight the problem until the fall of 1988 when it was brought under control. The spray caused significant extra work. It burned up the trough covers at a rapid rate and it caused a mess at the tap hole that had to be cleaned up. Rayson said this cleanup took about 40 minutes per cast initially, but after the spraying came under control the time was reduced to about 5 or 10 minutes per cast.

Rosenow also testified that trough life has increased since the reline. The company's brief includes a table which indicates that there was an average trough life of about 17 days in 1988, which was the year after the reline. The trough life has increased steadily so that the average for 1991 was 27.3 days. The company has also reduced the number of trough inspections, again reducing the work load of cast house employees. The average trough life has been about the same for the last two years. As I will discuss below, Rosenow testified that one reason for the milky way was to assist in trough maintenance and inspection. The elimination of the milky way essentially coincides with the marked improvement in trough life.

The most important testimony about furnace stabilization concerned the reduced number of system switches since the reline. As I have already said, I am most concerned only with data since the 1987 reline. The furnace went on line in November of that year. In 1988, the first full year after the reline, there were 42 system switches. This, as both Rosenow and Rayson testified, was the year in which the company encountered the spraying and other start up problems. There were 25 switches in 1989, 30 in 1990 and will be an estimated 27 in 1991. Except for the initial year, then, the number of switches has not changed appreciably since the reline. Indeed, it has been virtually stable for the last three years.

The company introduced both evidence and what it referred to as a time study <FN 5> which were intended to establish that the time involved in a system switch has declined in recent years. The union introduced testimony from cast house employees which raised some question about whether there was, in fact, any savings. That is, union witnesses claimed that the work had never taken as long as the company claimed, so that there were really no significant savings of time.

I don't question the good faith of either the union or the company witnesses who made the estimates. Estimating, necessarily, involves matters of judgment and it is therefore not surprising that union estimates favor the union and company estimates favor the company. When in doubt, most human beings have a tendency to give themselves the benefit of the doubt. In fact, the disparities in the time estimates are not all that significant. The more important measure, the company says, is that there are now fewer system switches than in the past. Indeed, the number has dropped from well above 40 prior to the reline to about 27 for the current year.

I don't think the company's evidence had the effect the company hoped it would. In the first place, there has been almost no change in the number of system switches in the past three years. It seems more reasonable to regard this reduction, then, as an effect of the reline than it does to view it as a recent change. The number of system switches, after all, dropped to its current level almost two and one half years before the company reduced the number of keeper helpers in the cast house.

There is also a significant question about whether the work on the system switches was actually part of the ordinary straight time responsibility of the keeper helper. Although there was some dispute about whether the helper actually did all of the work attributed to him by the company, I am willing to assume that he did. That, however, does not necessarily aid the company's case. On cross examination, Rosenow testified that the cast house crew did not do all of the work involved in a system switch (identified in Company exhibit 13) on straight time. Instead, the company held two helpers over on overtime to do that work. He said the company had changed that practice in the past two months (that is, in the two months prior to the October 25 hearing) and that almost all of the work is now done on straight time.

Union witnesses questioned whether the change to straight time work had actually been implemented. George Reed, for example, said the work had been done on straight time once about two weeks before the hearing, but that the company had then again scheduled the work on overtime. Don Williams said he was unaware that the work was ever done on straight time.

On rebuttal, Rayson said that employees are sometimes held over for clean up and sometimes not. It depends, he said, on the circumstances. Each case is different and the work cannot always be done with a regular crew.

I found the company's insistence that the work is now done on straight time whenever possible to be troubling. As I understand the significance of the system switch testimony, the company's point is that a system switch now takes less time than it did previously and it is also now done less often. Thus, the work load of the cast house crew has been reduced. But that conclusion does not follow at all if Rosenow's testimony is to be believed, and I thought he was a very credible witness. He did say that the system switch takes less time. He also said that they are accomplished less often. The problem is that according to Rosenow they are now done as part of the cast house crew's regular work, and previously they were not.

I took the combined effect of Rosenow's and Rayson's testimony to be that although much of the system switch work used to be done on overtime, the company now intends to have as much of the work as possible done on straight time. In that event, it is not of great consequence that there are fewer system switches than there used to be, since the cast house crew didn't do them on straight time anyway. The company, in fact, is in the incongruous position of having proved an increase rather than a decrease in the cast house crew work load. This conclusion follows because the cast house crew now does system switch work during the work day (a fact the company advanced with much vigor) that was formerly not done during the work day. Rather, it was formerly overtime work. I don't understand how these facts can be interpreted to support the company's contention that the cast house crew now has less work to do.

Discussion

The company argues that the combined effect of the improvements made as a result of the reline and the more recent changes justified its decision to reduce the crew in the cast house. As support for its position, the company points to three arbitration awards. In Armco Steel Corp. Gr. No. K-62-54, the arbitrator observed that the effect of changes is not always felt in one "fell swoop" and that the company is entitled to look to an accumulation of effects and make a crew reduction when it is "feasible." Similarly, in United States Steel Corporation case no. N-297 the arbitrator said that the company was entitled to look to the cumulative effect of changes made over the years. Finally, the company quotes extensively from Granite City Steel Division of National Steel Corporation, Case No. 152-81-3 and 153-81-3. Arbitrator Milton Friedman observed that when the impact of changes has been gradual, the company was free to act when it finally felt the impact. I will discuss this case in more detail below.

As I have already observed, I think the only changes of significance are those that have occurred since the reline. The company says that it deliberately overmanned the facility following the reline. Number 7 blast

furnace is of central importance to the operation of the entire mill. The company acted cautiously following the reline, then, so as not to jeopardize operations. Moreover, the company had been warned to expect the spraying problem which in fact occurred after the start up and which lasted for about a year, or until the fall of 1988.

I have no difficulty accepting the company's assertion that following the reline, it assigned extra employees to the cast house in anticipation of problems. And, as the company claims, since this was essentially a new furnace, it was entitled to some time to establish the appropriate crew size. In my view, however, it was not entitled to as much time as it took.

As I have already said, I am willing to accept the company's argument that this was new equipment. Even so, the company was not totally in the dark about what it would take to man the cast house. The rebuilt furnace, after all, was not a new piece of equipment just out of the packing crate that the company knew nothing about. The furnace was similar in function and design to what had been there before. Based on its experience with the old furnace, the company had significant information about how the new furnace would operate and about how it should be staffed. This previous experience affects the time period during which the company can flesh out an appropriate crew size.

The new furnace went into operation in November, 1987. The change complained of here did not occur until April 1991, which was 42 months after start up. Moreover, the company's assertion that the size of the cast house crew was constantly in a state of flu is simply incorrect. Following the reline, there had been only one other change prior to the one which is the subject of this arbitration.

The old furnace had gone on line in 1980. What the company contends here, then, is that it took a period equal to almost half the useful life of the previous furnace to establish the right sized crew for the new one. Although there was testimony -- which I believed -- about difficulties encountered after the 1987 start up, there was no evidence that would support the company's contention that it needed three and one half years to establish the appropriate crew size in the cast house.

Following the reline, the cast house was manned with one keeper and two helpers per cast house and the two additional day shift helpers known as the milky way. Rosenow testified that the milky way's primary responsibility was to assist in trough inspections, to assist in system switches, and to do general clean up necessitated by the tap hole spray problem. By the end of 1988, the tap hole spray problem was under control and the number of system switches (which had been high through 1988) was on the decline. Moreover, the company's evidence shows that trough life increased in 1988. Obviously, the company expected that this trend would continue since in 19899 it reduced the number of trough inspections. Although the issue is not before me, these changes may have been sufficient to warrant the elimination of the milky way. More important, the evidence would seem to indicate that the extra employees assigned by the company were not the helpers assigned to the cast houses, but the helpers in the milky way. Once the start up problems were brought under control, the milky way was eliminated, leaving the established crew of one keeper and two helpers per cast house.

The question, then, is whether either the recent changes or the changes brought about by the reline (or the combined effect of both) are sufficient for the company to change the crew size in the cast house. The recent changes, standing alone, are clearly not sufficient to warrant the company's action. In fact, those changes are not of much significance at all.

As noted above, the company cites as examples of recent changes the elimination of the iron sump, the new design for the drill, increased use of mobile equipment, the learning curve phenomenon, and the stabilization of the blast furnace. Of these, however, only the iron sump and the drill can be considered recent changes.

As already detailed above, the increased use of mobile equipment results from changes made during the reline. There was credible testimony from company witnesses that mobile equipment now does more work than previously, but the testimony does not indicate that anything has happened to cause this development except the reline itself. Similarly, testimony indicates that the learning curve phenomenon was realized within about a year after the reline, when the tap hole spray problem came under control. It may be that there have been marginal improvements in efficiency since that time, but there was no evidence of any that were significant.

Finally, I have already expressed doubt about whether the company's evidence over furnace stabilization does anything to advance its case. Much of the testimony had to do with tap hole spray, a problem brought under control in the year following the reline. In addition, there was substantial testimony about system switches, but it is not clear to me that this development has reduced the work load of the cast house crew.

The only recent changes, then, are elimination of the iron sump and the drill. There was no testimony from either Rosenow or Rayson about how much time drill failures cost the cast house crew prior to the new design. Thus, there is no way to estimate the effect of the improvements. The testimony was simply that a drill failure necessitated a system switch. There is evidence about how much time that takes, but there is a dispute about how much of the clean up the cast house crew actually did, at least until recently. Moreover, there was no testimony about how often a drill failure occurred.

The elimination of the iron sump did save time for the cast house crew, although the full time savings wasn't realized recently. Rosenow testified that effective with the 1987 start up, this work was only performed on the midnight turn. The work load was reduced to once every other day prior to elimination.

In contrast to the recent changes, the changes effected as the result of the reline were significant. Company testimony indicated that the cast house crew realized substantial time savings as a result of improvements to the trough system, a reduction in the number of casts, reduced tap hole maintenance and others. The real question in this case, then, is whether the company can still point to those efficiencies, all of which were realized at or soon after the 1987 reline, in order to justify a crew reduction three and one half years later. I think it cannot.

The company paces great reliance on Arbitrator Friedman's opinion in the Granite City Steel case. He observed that "where changes ... have been gradual, it cannot be flatly stated that the company should have acted early if there was no established impact, but there is one now." Later in the same opinion he discussed the cumulative impact of change. Even though it may take time for the impact to become apparent, "if the impact is not there until years later, it may reasonably be acted on . . . ."

In my view, these statements by Friedman do not describe the facts of this case. I agree that there was a series of changes as a result of the reline. It is not accurate, however, to assert that the impact of those changes was not felt until much later. The impact of some changes was felt almost immediately. In all cases, moreover, both Rayson and Rosenow agreed that the effects of the reline were apparent at least within a year. The company, however, did not take the action complained of here until two and a half years later, which was three and a half years after the reline.

Although I agree that the company must have time to evaluate change and the effect it has on staffing, I think the limit of its discretion is bounded by reasonableness. As arbitrator Killingsworth observed in Youngstown Sheet and Tube Co. Decision 113: "A practice that has been continued for a long time under new or changed circumstances must be presumed to have acquired a new basis for its existence, in the absence of any factors that would explain or justify the delay in making a change. . . ." The practice of assigning one keeper and two helpers to each cast house was continued for a long time after the impact of the changes was clear. There was no justification for waiting two and a half years after those changes were felt to act. As is ordinarily the case in making reasonableness determinations, it is difficult to say just where the line is. It is sufficient to say that it has been crossed in this case.

The company, however, asserts that the recent changes were simply a continuation of the changes that resulted from the reline and that the cumulative effect of all of those changes justified its action. Thus, even though neither the reline changes or the recent changes might alone justify the company's decision, the combined effect of both changes would. In that regard, it cites Arbitrator Friedman's statement that:

. . . it is not the first modification necessarily nor the second, but the consequences of a number of them, if that is what it takes before there is proof that a local working condition has outlived its original basis. . . . After all, despite the previous burden of straw heaped on the proverbial camel, it was only the last straw that broke the camel's back.

I am not persuaded that this logic supports the company's position in this case. In the first place, it is not clear to me that the reline changes would not have justified the action the company took here, had it not waited so long to effect them. Thus, this case seems closer to Friedman's observation that concluded that above quotation:

A series of changes is altogether different from instituting a particular change, doing nothing for years to modify a working condition, and then suddenly relying on the ancient event.

I have grave reservations, then, about whether the changes made by the reline can still be used as part of a series of changes that would warrant modification of the crew size. I need not decide this issue, however, because I think the recent changes were not sufficient to justify the company's action, even when added to the earlier changes. As even Friedman's quotation recognizes, the recent changes in the series must be of some significance. They must do more than stagger the camel. That is not the case here. The changes as a result of the iron sump and the drill were modest at best and, in my view, did not add appreciably to the camel's burden.

Conclusion

As the length of this opinion will attest, this has been a difficult case to resolve. I am not unsympathetic to the company's position. Although not as fully informed as the parties, I nonetheless understand that the steel industry faces difficult financial times. I recognize the company's desire to economize, wherever possible. It may also be the case that the cast house can operate efficiently with the changes implemented by the company. That, however, is not an issue I have any authority to resolve.

The question before me is not one of optimal crew size. Rather, the issue is whether the parties, through a long course of conduct, have established a local working condition and, if so, whether changes justify a modification in that condition. Such determinations do not always reach a conclusion that makes the most sense economically. But, as I have observed in other cases, collective bargaining agreements do not always promote efficiency at the expense of other values in the work place. They sometimes serve security or stability instead. Perhaps that is the effect of this opinion. In any event, I find that the union has established a local working condition of a cast house crew of one keeper and two helpers per crew and that the company has not established change that would warrant elimination or modification of that local working condition.

I will sustain the grievance and order the company to provide a make whole remedy. In the past, the parties have agreed that, in the event I order make whole relief, they will work out the specifics of the remedy and I need not discuss them in the opinion.

AWARD

The grievance is sustained. The company is ordered to provide a make whole remedy.

/s/ Terry A. Bethel

Terry A. Bethel

Bloomington, IN

December 18, 1991

<FN 1> Actually, the milky way was established even before the reline but, as I will discuss below, that fact is of no particular significance to this arbitration.

<FN 2> I found no support in the evidence for Mr. Parker's argument that there was no difference in the amount of work to be performed on the three shifts. Rather, I took the testimony of company witnesses to mean that there was sufficient work to justify the scheduling of both the bull gang and the milky way, but that there was not enough additional work to warrant their presence on each shift. The fact that there is work for additional employees on some shifts does not necessarily undermine a claim that there is a protected crew size. Rather, it could simply mean that the crew is larger on some shifts than others.

<FN 3> Although the issue is not before me, I have some doubt about whether the changes in the cast house crew testified to by Rosenow would be sufficient to indicate such acquiescence, even if I were willing to consider changes made before 1987. Rosenow testified that there were three keepers at the time the furnace first went on line in 1980. He did not say whether that staffing pattern endured for any period of time or whether it was simply a precaution taken at start up. He testified about only one other change. He said there was a swing keeper helper when he arrived in 1982. That position was eliminated in 1985 when the milky way was established. He did not indicate the reasons the company made the change.

<FN 4> The company introduced evidence that the cast house employees sometimes trade responsibilities, a contention denied by some of the union witnesses. I do not understand why that fact, if it is a fact, is of any significance to this case. The fact that the three person crew sometimes performs different functions does not mean that it is not a crew. It does not make the tasks to be performed any less interdependent. Nor does it affect the cooperative effort of the three employees toward a common goal.

<FN 5> I am willing to credit testimony about the time study for what it appears to be. I do not question that company representatives observed the work and that the work took the amounts of time the document reports. It is not, however, a time study, as that term is commonly understood. In the first place, it contains estimated times for activities that were not, or could not, be performed. More important, it appears to report the results of only one observation. No one can do any task in exactly the same way or in exactly the same amount of time every time. Moreover, the employees observed are not the only ones who perform these tasks. In short, the time study does not account for sufficient variables to be considered representative. I am willing to accept it as an accurate refection of the times spent on the day the company made its observation.