

Award No. 883
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

Arbitrator: Terry A. Bethel

December 22, 1993

OPINION AND AWARD

Introduction

This case concerns an interpretation of the Shape Products Organization Mutual Agreement, entered into between the parties on August 12, 1988. The case was tried in the company's offices in East Chicago, Indiana on November 18, 1993. Brad Smith represented the company and Mike Mezo presented the union's case. Both parties filed pre-hearing briefs and submitted the case on final argument.

Appearances

For the company:

B. Smith -- Arb. Coord., Union Relations
D. Urban -- Mgr., Elec. Furn. & Bil. Cast.
D. Diehl -- Mgr., Tech Serv., ISBC
D. Kruse -- Caster Sec. Mgr.
T. Martin -- Cast Prod. Analyst
B. Block -- Industrial Eng.

For the union:

M. Mezo -- President, Local 1010
B. Gilbert -- Griever, Area 27
D. Shattuck -- Asst. Griever, Area 27
F. Boilek -- Griever, Area 7
R. Puente -- Grievant
L. Parish -- Grievant
E. Garcia -- Grievant
K. Bryant -- Grievant
R. Fugger -- Grievant

Background

The case was tried pursuant to a stipulation that reads as follows:

This understanding sets forth the parties' stipulation of the issue to be resolved in this arbitration hearing. The sole question before the arbitrator in the instant case is whether the company violated either the collective bargaining agreement or the shape products mutual agreement when it placed distinct duties from the former casting sequence occupations in the new leader occupation of the new skill-based casting sequence at the electric furnace and billet caster department.

In agreeing to present this dispute to be resolved by means of arbitration, the parties have agreed to waive the provisions set forth in Article 6 of the collective bargaining agreement relative to the processing of complaints and grievances in the grievance procedure.

The company's brief quotes from my 1991 opinion in Inland Award 838 as background for the negotiations leading to the Shape Products Mutual Agreement. The union, too, quoted from the award in its opening statement. Rather than review the negotiations in detail, then, I will simply quote the pertinent passage from that opinion as background for the instant case:

The mutual agreement was intended to make the company competitive in the bar and structural steel market. The successful negotiation for the mutual agreement resulted in a company investment of over \$100,000,000. As described by Vice President for Operations Jack Cox, Bar and Structural is a separate company that has its own profits and losses, its own mission, its own capital programs, its own purchasing, human resources, customer servicing, and other departments. It was, obviously, created from the larger Inland Steel Company.

The company's desire to form a separate company did not, of course, escape the attention of the union, which opposed any attempt to separate Bar and Structural from the existing bargaining unit with a separate contract. Ultimately, however, the parties agreed to the mutual agreement, which maintained the integrity of the overall bargaining unit, but made some concessions to the separate nature of Bar and Structural. As

Cox explained, it was a condition of the company's willingness to undertake the investment that the union agree that the company could operate in a different way.

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

This dispute concerns the creation of skill-based occupations in the Electric Furnace and Billet Caster Department. Although the parties disagree vigorously about the interpretation of the mutual agreement, there is no real dispute about the facts of this case.

When the parties executed the mutual agreement in August, 1988, the casting sequence in the Electric Furnace and Billet casting Department included 5 occupations. Ranging from top to bottom, they were: 1st caster, 2nd caster, tundishman, tundishman helper, and tundishman cleaner. Paragraph 4 of the mutual agreement reads, in pertinent part, as follows:

New sequences consisting of skill-based occupations as shown in attachment B shall be established as soon as practicable. Skill levels within the new skill-based occupations will constitute the duties of the former occupations comprising such new skill-based occupations. Job classifications for the new occupations shall be established in accordance with Article 9, Section 6 of the collective bargaining agreement.

Attachment B, referred to in the above passage, is a multipage document headed "Proposed Sequence Diagrams." In general, the pages that make up Attachment B show the existing sequences (as of the time of the mutual agreement) and compare it to what the parties believed the future sequence diagram would look like. For example, page 6 of the attachment shows the electric furnace material handling sequence that existed at the time of the agreement, which was composed of five different occupations. The parties contemplated that, in the future, the sequence would consist of the skill-based occupation of "operator," an occupation that would include the skills of all five previous occupations.

In addition to their agreement to create skill-based occupations, the parties also agreed to create a new leader occupation in some sequences. Paragraph 9 of the mutual agreement reads, in pertinent part, as follows:

A leader occupation shall be established in certain sequences as determined by the company. Job descriptions shall be established in accordance with Article 9, Section 6 of the collective bargaining agreement. Leaders shall be responsible for directing the crew members, planning the work and performing other administrative functions as well as actively working as a member of the crew.

As noted above, the sequence at issue in this case is the electric furnace casting sequence, which included 5 occupations. At the time of the mutual agreement, the parties contemplated that the new skill-based sequence would have the position of caster, which would include all of the skills of the five occupations of the old sequence. In addition, the proposed sequence indicates that the sequence would include a casting leader.

At the time of the mutual, the parties knew that the caster would be upgraded. Don Diehl, who was manager of the electric furnace at the time, testified that the equipment was technologically outdated and that it would have to be updated if the company was to compete. At the time of the mutual, however, no one knew what the scope or effects of the upgrade would be. There were some estimates about what would be done, but the company had not developed any detailed plans. Diehl testified, then, that the proposed skill-based casting sequence reflected in Attachment B was merely a "best guess" about how things would look.

The upgrade turned out to be quite substantial and effectively automated the casting process. These changes allowed the company to produce a much higher quality product and to compete for business at the top end of the market. The changes also affected the manner in which the company wanted to operate the caster. Prior to the upgrade, the 1st casting operator had directed the work of the crew, had been responsible for setting up the caster, and had had overall responsibility for all four ribbons. The 2nd casting operator had the responsibility for one of the four strands; the tundishman controlled the flow of hot metal into the tundish; the tundishman helper assisted the tundishman; and the tundish cleaner cleaned the tundish and helped prepare for the next cast.

After the upgrade, the company and union had not reached agreement on how the new skill-based system should be implemented for this sequence. Consequently, the company inaugurated a traditional sequence, with new titles and job descriptions that reflected some of the changes wrought by the upgrade. There were no longer any occupations known as 1st casting operator and 2nd casting operator. Instead, there was a

billet caster and an assistant billet caster. As described by Diehl, the billet caster became the heart of the operation. From his location in the pulpit he controlled all four strands. This was in contrast to the previous operation where there had been a 2nd casting operator in control of each strand. The billet caster set up the computer and "controls everything as far as the casting process goes."

The assistant billet caster, according to Diehl, sets up and monitors equipment outside of the strand, which I understood to mean that the assistant has no responsibility for the stands themselves. The post-upgrade sequence also included a tundishman, whose duties were similar to the same occupation prior to the upgrade. In addition, the post-upgrade sequence included a utility gateman, or tundish gate assembler who prepares the tundish gate assembly and assists the tundishman, when requested. Finally, there was a tundish cleaner, whose duties were about the same as the similar occupation under the previous system.

Diehl testified that there was no discussion of the casting sequence for some time after the mutual, apparently because of the upgrade. However, the parties began discussions in early 1990, some 9 or 10 months before the upgrade was finished in November of that same year. The parties had hoped to implement the new skill-based sequence at the time the upgrade was finished, but they were unable to reach agreement. Accordingly, the company implemented the new traditional system, described above. This case concerns the company's decision to unilaterally implement a new skill-based sequence on August 23, 1992. Unlike the proposed skill-based sequence in Attachment 1 of the mutual agreement, the system implemented by the company does not transfer all of the skills of the previous sequence to one new skill-based occupation. Rather, the duties of the former billet caster were transferred exclusively to the casting leader. The remaining skills were transferred to the new position of Auxiliary I, which is supplemented by a training position of Auxiliary II. The union's grievance contests the company's right to transfer skills exclusively to the leader occupation, thereby affecting the earnings potential of the other members of the sequence, who are in the auxiliary classification. Because employees are compensated at their highest level of training, the transfer of the highest paid duties exclusively to the casting leader means that the other employees in the casting sequence do not receive that training and, therefore, do not receive that pay level. The union urges that the key to the case is in the second sentence of paragraph 4 of the mutual: "Skill levels within the new skill-based occupations will constitute the duties of the former occupations comprising such new skill-based occupations." Essentially, the union reads this to mean that the skills existing under the old sequences are to be folded into a skill based occupation in the new system. This, the union says, is consistent with the basic idea of the skill based system. The union gave up its traditional occupations -- and the security they created for workers -- and received in exchange an opportunity for the employees to increase their range of skills and, thereby, increase their income.

This quid pro quo is threatened, the union argues, if the company is free to exclude certain skills from the skill-based occupations that include the bulk of the workers. Here, for example, the highest paid skills were those of the billet caster. By segregating them into the casting leader occupation, the company was able to deny the availability of this skill to the bulk of the employees in the casting sequence. This action, the union contends, is contrary to the intent and the spirit of the mutual agreement. That document, the union argues, should be read to mean that, unless the parties agree to the contrary, the skill-based occupations should include all of the skills in the old sequence.

The union acknowledges that there are skill-based sequences that have more than one occupation. Those sequences divide the skills from the old occupations between two (or maybe more) skill-based occupations in the new sequences. Although this arrangement obviously does not fit the pattern argued for by the union in this case, the union is quick to point out that the other sequences that include more than one skill-based occupation were created by the agreement of the parties. Similarly, the union acknowledges that some of the new skill-based sequences have leader positions that include skills not available to other occupations in the sequence. Except for cases in which the union has filed grievances (like this one), those sequences, too, were created by agreement of the parties. In this case, the union contends, the problem is that the company acted unilaterally.

Like the union, the company also relies on the second sentence of paragraph 4 of the mutual. That sentence, the company points out, refers to skill-based occupations. It does not say that there will be only one skill-based occupation in each sequence. While the company acknowledges that the sequences which have multiple skill-based occupations were created by agreement, it uses that fact as evidence that the parties understood that multiple occupations were contemplated by the mutual. In addition, the company contends that nothing in the mutual agreement restricts its ability to create more than one skill-based occupation in a sequence. Indeed, the company asserts that the management rights clause gives it just that right, unless some provision of the contract -- or in this case the mutual -- restricts it. No such provision exists, the

company argues. Moreover, the company asserts that its action in this case complies with the requirements of paragraph 4. Thus, there are two skill-based occupations in the casting sequence and the skill levels within those occupations are the duties of the former occupations. The mutual, the company says, does not restrict the company's ability to restrict a particular skill level to one of those occupations.

Also of relevance in this case is Addendum I to the mutual. This document, effective on December 11, 1990, contains "modifications . . . and understandings" concerning the mutual agreement. Attachment C to Addendum I is a document detailing the "general duties" of the leader. Again, both sides are able to point to portions of this agreement. The company, for example, notes that the attachment describes general duties, but not all of the duties of a leader. In that regard, the third sentence of the attachment reads as follows: "Separate job descriptions for Leader will be written for each sequence containing the Leader position to set specific duties of that sequence." This language, the company contends, clearly does not restrict the leader to what the company describes as the "generic" duties described in the attachment. Rather, it recognizes specifically that other duties can be added.

While the union does not contest the company's ability to utilize a leader, it denies that leaders can have discrete duties. Rather, the union sees the leader as, essentially, the first among equals. That is, unless the parties agree otherwise, the union sees the leader as someone who performs the same skills as the other members of the sequence, but who also has certain administrative and leadership responsibilities. In support of this contention, the union points to the "note" that introduces the leader's "typical duties" spelled out in the attachment: "The Leader duties are in addition to the job assignment of the employee. The Leader will be scheduled as a working member of the crew."

Discussion

It is appropriate to understand at the outset what is at issue here. The parties agree that the question is whether the company had the right unilaterally to implement a skill based system in the casting sequence that segregated some duties exclusively to the leader occupation. This is not, however, an issue of the company's obligation to bargain under the law. Rather, the question is whether the contract somehow restricts the company's ability to act. In his final argument, Mr. Mezo conceded, grudgingly, that the company's right of assignment in Article 9, Section 6 might carry the day here, were it not for the Shape Products Agreement. The logical inference to draw, then, is that the union reads the agreement to limit the company's freedom to make the assignment at issue here.

Basically, the union advances two arguments about how the Shape Product Agreement restricts the company's right. One is a policy argument in which the union asserts that the company's action would hold the agreement for naught. In addition, the union seeks refuge in certain language, especially paragraph 4. It is to that argument that I turn first.

The union relies particularly on the second sentence of paragraph 4: "Skill levels within the new skill-based occupations will constitute the duties of the former occupations comprising such new skill-based occupations." From the company's perspective, this sentence describes the situation in the casting sequence. The new skill based occupations are Auxiliary and Casting Leader. The duties of those two occupations include all of the duties formerly performed by the occupations that made up the casting sequence. The union, however, argues that the intent was to create only one skill-based occupation in a sequence unless the parties expressly agreed to the contrary. It concedes that the parties have agreed to sequences which include more than one skill-based occupation, but the union urges that the company has no power to do so unilaterally. The union finds support for its interpretation in the language of the above quoted sentence of paragraph 4. As noted, the company reads it to mean that one or more skill-based occupations can be created to take over the duties of the former sequence.

The union, however, finds no significance in the plural "occupations," which it sees merely as a recognition that many skill-based occupations would be created, not as an agreement that there could be more than one skill-based occupation in a particular sequence. Essentially, the union reads the second sentence of paragraph 4 to mean that the leader job is not a skill-based occupation. This is because paragraph 4 says that the skill levels of the skill-based occupations will be the duties of the former occupations. The leader's duties, however, were not among the duties of the former occupations. If the leader is not a skill-based occupation, then the union urges that there is no warrant for assigning to the leader exclusively a part of the duties that belonged to the former occupations in the sequence because those duties must go to the new skill-based occupations.

Paragraph 9 of the mutual agreement provides that, in addition to the leader duties, the leader shall work actively "as a member of the crew." The union reads this to mean that the leader is to perform the same duties as the other members of the crew, not as a license to segregate out duties that can be given to the

leader exclusively. The company says that the leader is a member of the crew who, in addition to acting as such, also has some "generic" leader duties. The company also points to Section II.E.2 of Addendum I to the Shape Products Agreement, which says that the pay grade for leaders can be adjusted "in sequences where the Leader occupation has distinct duties from the job below it." The company sees this as a recognition that the leader occupation can have skill duties distinct from the rest of the crew. The union, however, dismisses it as merely a recognition that the parties had already agreed to some such instances. It denies that it recognizes the company's ability to take the action unilaterally.

As is often the case, both sides make thoughtful arguments, and choosing between them is no easy task. At base, however, the issue here is whether I can find in the Shape Products Agreement a restriction on the company's ability to assign exclusive duties to the leader in the casting sequence. I cannot read the word "crew" as narrowly as does the union. Paragraph 4 does not say that there will be only one skill-based occupation. Rather, it says that the duties of the former occupations will constitute the duties of the new skill-based occupations. The use of the plural "occupations" obviously creates problems for the union. Moreover, paragraph 9, which provides for the creation of the leader, does not support the union's case. It does say that the leader will work as a member of the crew. But I cannot understand the word "crew" to mean that the leader must do the same thing as the other skill-based employees.

As I have noted in other opinions, these are intelligent, experienced negotiators who can be presumed to choose their words with great care. These parties have a history of using the word "crew" in a way that does not limit it to a single occupation sequence. To the contrary, "crew" is often used to describe several different occupations. The mere use of the term "crew," then, is not sufficient to imply an intent that there be only one skill-based job. Moreover, whatever may have been the intent in Addendum I, section II.E.2 does recognize that leaders might have duties distinct from other employees in the crew.

Even if the express language does not restrict the company, the union argues that its action violates the policy of the agreement. During final argument, Mr. Mezo contended that if the company's interpretation in this case is correct, it will render the Shape Products Mutual Agreement useless, at least from the union's perspective. He argued that, if the company's action here is sustained, it will mean that the company has the ability to take any skill outside the domain of most of the members of the crew and assign it as it sees fit. The leader in this case, Mezo contended, was merely "convenient," a ready-made occupation in which to house the duties. But the rights the company argues for would, by logical extension, allow it to take the same action in other areas as well, whether there was a leader classification or not.

I might view this case differently if I thought Mr. Mezo's characterization accurately depicted the company's action in this case, or its plan for the future. I understand the union's concern and its apprehension about the company's motives. Nevertheless, I think the union's case overstates the effect of the right claimed by the company and the rights reserved to it by the parties' agreements.

I agree with the union's claim that, in construing the meaning of the Shape Products Agreement, one must keep in mind the underlying purposes and policies of the parties. Thus, if the company were merely trying to substitute one set of limited function occupations for another, the union's case might have merit. I need not decide here, however, whether the company can create more than one skill based classification in any sequence, for those are not the facts before me. Here, the parties understood that the casting sequence would include a leader and they understood that the leader's occupation could include distinct duties. The company's narrow and specific action in this case does not foreshadow a scheme to undo the policy of the Shape Products Agreement.

Indeed, the company does not claim the right feared by the union. Not only did it justify its action specifically with reference to the language surrounding the creation of a leader, but the company also conceded at hearing that its action must be reasonable. In my view, it carried its burden of demonstrating reasonableness through testimony about how the casting occupation changed following the upgrade, about the increased duties and responsibilities of the billet caster, about the difficulty of parceling out those duties, about the necessity for one person -- the leader -- to stay in control and to remain in a position where that control was always possible, and about the difficulty of maintaining the required level of efficiency among a large number of employees. One might question whether the company could marshal such evidence of need in many other sequences.

My conclusion, then, is that the Shape Products Agreement does not prohibit the company from taking the action it took in this case. The company's action is in accordance with the language of section 4 and its limited action here does not violate the policy of the agreement.

AWARD

The grievance is denied.

/s/ Terry A. Bethel
Terry A. Bethel
December 22, 1993