Award No. 946
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
August 25, 1998
OPINION AND AWARD
Introduction
This case concerns the union's claim that the company violated the health and safety provisions of the contract because it did not take appropriate action for the alleged threatening and abusive conduct of an hourly supervisor. The case was tried in the company' s offices on May 15, 1998. Patrick Parker represented the company and Mike Mezo presented the case for the union. The parties submitted the case on final argument.
Appearances
For the company:
P. Parker -- Section Mgr., Arbitration and Advocacy
C. Lockhart -- Hourly Foreman, Plt. 1 Machine Shop
S. Korthauer -- Section Mgr., Machine Shops
B. Bainbridge -- Senor Planner, Machine Shops
W. Jones -- Section Mgr., Health and Safety
G. DeArmond -- Contract Admin. Resource.
For the union:
M. Mezo -- USWA Fourth Step Rep.
M. Misiukiewicz -- Witness
C. Hoot -- Steward
G. Busick -- Witness
D. Matusiak -- Witness
M. Kulczyk -- Witness
D. Butler -- Witness
J. Schafer -- Witness
T. Hummel -- Witness
A. Lanney -- Witness
J. Robinson -- Sub-District Director, USWA
S. Brinkerhoff -- Legal Intern
M. Beckman -- Assistant Griever
T. Hargrove -- President, Local 1010
D. Shattuck -- Secretary, Grievance Comm.
L. Alcorta -- Witness
J. Woessner -- Witness
M. Momcilovil -- Witness
Background
Curtis Lockhart is a qualified machinist, a member of the bargaining unit, and a member of Local Union 1010. But he also serves the company as an hourly foreman. Allegations about his conduct in that latter role form the basis of this case. The union alleges that sometime in early August, 1997, Lockhart approached machinist Cornell Smith at the end of a break, grabbed Smith's hard hat which was sitting nearby, and threw it at Smith so hard that it careened off a locker and hit Smith in the side of the head. At the same time, Lockhart allegedly said something like, "I told you to keep the son of a bitch on." Smith testified that the break had just ended and he was on his way from the break area to his machine when he stopped under the balcony to talk to another hourly supervisor. He did not see Lockhart approach and did not see him throw the hard hat. He said it bounced off a locker and hit him in the temple. Smith was not injured in the incident and took no immediate action. On Monday of the following week, his supervisor returned from vacation and Smith said he made him aware of the incident. Smith said he decided that his supervisor was not going to take action, so he talked to a griever. The union initiated the grievance process on or about September 8, 1997.

Dennis Matusiak was the hourly foreman with whom Smith was talking when the incident occurred. Matusiak testified that he and Smith were under the balcony talking about a machine when a hard hat "flew by" him, "brushed" Smith and fell to the floor. At about the same time, Lockhart said, "I told you to keep the son of a bitch on." Matusiak said Lockhart did not call out to Smith before he threw the hat. The other witness to the incident was Terry Stanford. Unlike both Smith and Matusiak, Stanford saw Lockhart throw the hard hat. According to Stanford, Lockhart threw it underhanded, but he "fired it." He said it ricocheted off the locker about 12 to 15 feet and that it was still spinning when it hit the ground.

Lockhart testified that he had a continuing problem with Smith's failure or refusal to wear his hard hat. He said he had nearly begged him to wear it. According to Lockhart, on the day in question he walked by machine A16B, where Smith was assigned, and observed that he was not wearing his hard hat. Smith was talking to some other employees. Lockhart said Smith's hard hat was on the bench near the machine, that he picked it up by the dome of the hat, that he said "Cornell," to get his attention, and then tossed it to him underhanded. He said Smith made no attempt to catch the hat and that it bounced off the locker and hit Smith on the arm. At the same time, Lockhart said he told Smith, "Sorry Cornell, you have to wear the hat." Initially on cross examination, Lockhart said Smith was "looking straight at him" and that they made eye contact. Subsequently, however, he said that by "eye contact," he meant that he saw Smith, though he did not mean that Smith saw him. Grievant said that he was not trying to injure Smith and that he merely tossed the hat to him.

In addition to this incident, the union introduced testimony about various other incidents which it characterizes as examples of Lockhart's threatening or abusive conduct toward bargaining unit employees. Stanford said that a few years ago he and Lockhart and another employee were working in the same area and "trading insults." At one point, he said Lockhart told him, "I'll mop the floor with you, you fat fucker." Stanford said he thought Lockhart was kidding so he made a comment in reply and then Lockhart "got in my face" and said he would "kick my ass." Mike Misiukiewicz, who was the area griever from 1993 to 1997, testified that he approached Section Manager Korthauer about a complaint filed by bargaining unit employee Don Sidor, who alleged that Lockhart had yelled at him in a profane and abusive manner. Misiukiewicz said Korthauer replied that he thought the incident was inappropriate, but that Lockhart was his best foreman and that he wanted the matter to be resolved with coaching and counseling. Misiukiewicz said Korthauer gave him assurances that there would be no similar incidents. Korthauer denied the substance of this account, though he said that Misiukiewicz had come to him to complain about the use of "mill vernacular."

Mark Kulczyk testified that four or five years ago he was working on a machine when Lockhart came up to him and said, "I should take you outside and kick your ass." Kulczyk said he responded, "Let's rock," and Lockhart "got hot" and went back to his office. Dave Butler testified that in late 1993 he told another hourly supervisor that there could be some "retaliation" against Lockhart because of the way he acted. Butler said Lockhart called him in and "read him the riot act," and threatened to "kick his ass" and that of anyone else who "messed with him."

Dave Tanner testified that he was once asked to attend a meeting with Lockhart and a dispute developed about whether Tanner was allowed to have union representation. Tanner said Lockhart lied about the request to union relations and, when Tanner asked why he had done so, Lockhart got angry and red faced and clenched his fists. Tanner said he thought Lockhart was about to strike him. Joe Woessner said he once went into Lockhart's office while Lockhart was talking on the telephone. He said he overheard Lockhart say that the way to keep people in line was "3, 5, 7," which he understood to refer to a .357 magnum handgun. Woessner said the incident intimidated him. Todd Hummel said he reported an incident to Bob Bainbridge, the machine shop planner. He testified that Bainbridge told him that he was aware of the problem and that he had mentioned it to Korthauer, who had "slapped him down." Bainbridge denied this incident.

Lockhart denied each of the incidents testified to by bargaining unit employees. He said he never yelled at Sidor, but merely asked him if he felt comfortable running his machine. He said he never threatened Kulczyk, though he often had problems with him roaming out of his work area. He said that he and Kulczyk "exchanged words" several times over roaming and over Kulczyk's habit of cooking breakfast in an electric skillet, but he never threatened Kulczyk. Lockhart denied ever calling Stanford a "fat fucker," and said that Stanford had once told him "you have to decide what side of the fence you're on." He also alleged that Stanford once said, "I'll get you even if I have to lie." Dennis Shattuck, Secretary of the Grievance Committee testified that Lockhart had made no such claim previously in the grievance procedure. Lockhart said that the only employees he had trouble with were the ones who consistently broke the rules.

The union's case is premised on Article 14, Section 1, mp 14.1, which reads as follows:
The company and the union will cooperate in the continuing objective to eliminate accidents and health hazards. The company shall make reasonable provisions for the safety and health of its employees at the plant. The company, the union and the employees recognize their obligations and/or fights under existing federal and state laws with respect to safety and health matters.
The union says this language, particularly the second sentence, obligates the company to take all reasonable steps to eliminate safety hazards. The safety hazard at issue here, the union says, is the threatening and abusive behavior of hourly foreman Lockhart, demonstrated by his behavior with Cornell Smith, but also by his previous pattern of conduct with bargaining unit employees. Because the company has failed to act in response to that hazard, the union says, I have the authority and the responsibility to order an appropriate remedy. The remedy the union seeks in this case is an order precluding the company from assigning Lockhart to work as an hourly foreman.
The company points principally to two provisions of the Agreement. First, it notes that Article 13, Section 14 provides, in relevant part:
employees who are temporarily assigned . . . as temporary foremen shall continue to be considered as employees under this agreement, except that the selection and retention of employees for such job. the terms and conditions of their employment as temporary foremen . . . and their duties and responsibilities . . . shall not be and are not covered by this agreement. (Emphasis added)
In addition, the company points to the limitation of the arbitrator's authority in Article 7, Section 1, mp 7.5. As is typical of such clauses, the Agreement restricts the arbitrator to the interpretation or application of the Agreement. The company reasons that if the selection and retention of hourly foremen is not covered by the Agreement, then the arbitrator has no authority to limit the company's discretion to decide that Lockhart will be so employed. In particular, the company says that if I were to remove Lockhart from his position, the action would be disciplinary in nature and, the company says, there is no question but that the discipline of supervisory personnel is outside the scope of the Agreement. The company also defends Lockhart's actions and suggests that he is the target of a conspiracy by employees who resent his efforts to enforce the rules. However, there was very little evidence that Lockhart has done anything other than try and force employees to wear safety equipment.
The union cites two cases in support of its position. First, it points to a decision by former Inland permanent arbitrator Burt Luskin in a case apparently between the USWA <FN 1> and a company called Chain Belt Co. In that case, decided April 20, 1963 the union alleged that a foreman had directed abusive language at an employee and had pushed him. The union based its claim on the safety and health language, as it does in this case, and argued that the arbitrator had the authority to require the company either to discharge or severely discipline the employee. The arbitrator rejected the company's argument that the case was not arbitrable, reasoning correctly that since the union had alleged a violation of a provision of the agreement, the arbitrator had the authority to determine compliance. Nevertheless, the arbitrability determination did not resolve the issue of whether the arbitrator had the authority to impose the remedy the union requested. Arbitrator Luskin found that the supervisor did "lay hands" on an employee, though he also said that whether or not to impose discipline for that conduct was a matter solely within the company' s discretion. However, he speculated that the company's obligation under the contract to take "every reasonable effort" to correct hazardous conditions "would serve to cover a condition" where there have been repeated instances of abuse by a supervisor. In that case, however, there had been only one such incident. Thus, in effect, the arbitrator found that there was no hazard warranting action by the company. In the instant case, however, the union argues that its evidence does establish a pattern of abuse and that the company' s obligation to protect employees against hazards requires it to remove Lockhart from his hourly foreman position.
The company questions the applicability of this case, since it says it is not apparent that the agreement at issue there contained language similar to that at issue in this case. It is true, as the company argues, that Luskin's opinion does not reproduce the limitations, if any, on the arbitrator's authority, and he does not mention any express limitation on the contract's application to supervisors. Neither matter is of great significance, however, since it is generally accepted - whether expressed overtly or not - that arbitrators are limited to contract interpretation and that the terms and conditions of supervisor employment fall outside the scope of the contract. This is not to suggest that Luskin's opinion is binding. But it does comment upon a similar situation to the one at issue here.
The union also points to Sylvester Garrett's opinion in USS-5286-S. In that case, a general foreman called an employee a "dumb fucking hunkie" and told him to "get the hell out" of his office. The union grieved,

relying on several articles, including the health and safety language. The union requested an apology from the foreman and "an appropriate reprimand." Chairman Garrett recognized that the Board of Arbitration had no authority to discipline a foreman. However, he also said, "if the present case raises any issue within the competence of the Board, it is whether management sufficiently disavowed [the foreman's] action and gave adequate assurance against its repetition." Garrett found that management had met that standard in that case. In the instant case, however, the union says that the company has not even acknowledged the problem, much less disavowed it or given assurances. Thus, it says that I should order it to remove Lockhart from his position to insure that there is no recurrence.

Discussion

There is no real issue about the company's right to control the composition of its supervisory work force. And it is equally clear that an arbitrator has no right to exert influence over those supervisors. Arbitrators cannot interfere with the company's selection of supervisors or order the company to discipline them for misconduct. In USS-5286-S, however, Chairman Garrett seemingly recognized that the company has an obligation to provide a safe work place and that this responsibility may extend to providing assurances that certain supervisory conduct will not recur. I have some doubt about the suggestion the union gleans from arbitrator Luskin's opinion in Chain Belt Co. that an arbitrator may order the removal of a particular supervisor. I need not address that matter in this case, however, because I cannot find that the conduct at issue here presents such a serious threat to employee safety.

Although I agree with Chairman' s Garrett's analysis of the contract provisions in USS- 5286-S, I have difficulty understanding his conclusions about the general foreman's conduct, at least if his opinion was premised principally on the Agreement's safety and health language. Obviously, I do not condone the general foreman's conduct toward the employee in that case. But it is not clear - and Garrett does not explain - how calling and employee a "fucking hunkie" compromises health and safety. It is worth noting that in USS-5286-S, the union did not rely solely on the safety and healthy language of the Agreement. Rather it also asserted that the foreman's conduct was objectionable under a clause that stressed the importance of "friendly, cooperative relationships, . . . proper attitudes, . . . [and] fairness and understanding." In addition, the union cited a violation of the non-discrimination section of the agreement. I believe, then, that Garrett's decision was more concerned with the foreman's racial slur than with a genuine threat to the safety of the employees. Stated differently, I do not read USS-5286-S to have been premised on Garrett's belief that the foreman' s conduct was a threat to the maintenance of a safe work place.

Similarly, I have difficulty finding such a threat in the instant case. That does not mean that I found nothing to believe in the testimony of the employees. I did not find Lockhart to be a particularly credible witness, especially after he said one of the employees threatened to get him, even if he had to lie to do so. I thought this testimony was obviously false and it undermined much of the remainder of his story, despite the company representative' s earnest effort to portray him as a victim. I also note that the sheer volume of the testimony is of some significance. I could believe that one or two employee could have a vendetta against Lockhart; it is harder to accept a wide ranging conspiracy, especially when all of the employees describe similar conduct. It is obvious that the employees do not like Lockhart, though I am unable to find that their disaffection is premised on improper considerations. Lockhart said he had difficulty only with rule breakers, though he did not describe much about their conduct, other than to cite a refusal of some employees to wear safety equipment. In short, I thought the weight of the credible evidence favored the union's claims about Lockhart; the employees were not obviously lying and the company did not really marshal convincing motives for them to tell false stories about him.

Even so, however, I have difficulty seeing Lockhart as a genuine threat to the employees. I believe that he did throw the hard hat toward Cornell Smith and that he did more than toss it, as he claimed. I have some difficulty, however, accepting the claim that the hat ricocheted 15 feet. I also note that while Smith said the hat "hit" him in the head, Matusiak said it merely "brushed" him, which raises a doubt about whether Lockhart actually threw the hat at Smith. I do not mean to suggest that Lockhart's conduct was appropriate or that an employee actually has to be injured in order to establish a threat to safety and health. But I am simply not satisfied that this incident posed any hazard, even if Lockhart used poor judgment. I also believe that Lockhart has sometimes told employees he would take them outside and beat them up. But there is not much reason to believe that the employees took this threat seriously. None of them filed grievances against him and most seemed not even to have reported the conduct. I can also believe that Lockhart used foul language. But I do not understand how this constitutes a threat to the safety of employees or is otherwise a violation of the company' s obligations under Article 14, Section 1. <FN 2> On balance, then, I am persuaded that Lockhart uses profanity and bluster as a management style. Whether the company chooses

to allow such conduct is none of my business, absent proof that he has compromised the employees' contractual right to a safe work place. On this record, I am unable to find that he has done that. I will, therefore, deny the grievance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

August 25, 1998

<FN 1> The company pointed out that the identity of the union is not made known in the decision. However, the decision was reproduced from a book called Steelworker Arbitration Awards, which suggests that the union was USWA

<FN 2> The union also argues that the language of the safety article incorporates the company's obligations under the Occupational Safety and Health Act. Even if it does, however, there is no showing that Lockhart's conduct violates any obligation under that Act.