

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And

Award 961

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case involves the Union's claim that the Company violated a protected past practice when it denied employees a fifteen minute wash-up time at the end of the turn. The case was tried in the Company's offices on December 16, 1998. Pat Parker represented the Company and Mike Mezo presented the case for grievant and the Union. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Manager, Arbitration and Advocacy
W. Boos.....Senior Representative, Union Relations
J. Gratton.....Section Mgr., Steelmaking, 4BOF
J. Bradley.....Section Mgr., Steelmaking, 2BOF
J. Blatsioris.....Acting Day Supervisor, 4BOF
J. Masterson.....Supervisor, Ladle Met, 4BOF
G. Rocha.....Day Supervisor, Steelmaking, 4BOF

R. Rubesha.....Supervisor, 4BOF, retired
C. Brooks.....Sequence Support, 4BOF

For the Union:

M. Mezo.....USWA Staff Representative
J. O'Donohue.....Griever
J. Strauch.....Assistant Griever
R. Salinas.....Witness
D. Lachene.....Witness
H. Mendoza.....Witness
R. Polomo.....Witness
J. McNish.....Witness

Background

There are two grievances at issue. In 4-V-62, the Union protests the decision of No. 4 BOF management to eliminate the wash-up time for the employees in the mobile equipment group; in 4-V-63, the Union protests the elimination of the wash-up period for laborers in 4BOF. There is no material difference in the evidence for the two grievances and I will not distinguish between them in this opinion. The Union says the problem arose in late 1997 when section manager Gratton observed employees leaving their job site early and, subsequently, informed employees that they were to stay on the job until the end of the turn. Prior to that time, the Union says, employees had left their work sites 15 minutes before the end of the shift, a practice that dated from the period before 1993, when employees appeared at the labor supervisor's office 15 minutes before the end of the shift in order to receive their time cards. Despite the use of the term "wash-up time," the Union does not claim that employees have the right to be in the locker room 15 minutes before the end of the shift. Rather, the Union's claim is that both before and after the swipe system, the parties understood that the last 15 minutes of the shift were the

employees' time, which they could use to wash up or prepare to leave. It was not time in which the employer could ordinarily require them to perform other work.

Much of the testimony at the hearing had to do with the situation that existed prior to 1993, when employees received a time card when entering the plant through the gate house. The employees surrendered the card to their supervisor and received it back at the end of the day. They then used the card to exit the plant. As described in Inland Award 889, the time card was the equivalent of an exit ticket, with the supervisor obviously exercising control over when the employees were able to stop work and leave the plant. There was conflicting testimony from the parties about the practice of handing out the time cards at the end of the turn, though everyone acknowledged that employees had to quit work prior to the end of the turn in order to get them on time.

Jeff Gratton, currently section manager of steelmaking at 4BOF, testified that he was a labor supervisor in the facility in the late 1970's for a period of between a year and two years. At the time, there were significantly more laborers than there are today and there were also more supervisors, with one on every shift. Today, there is a labor supervisor on day turn only. Gratton said when he was a labor supervisor, his practice was to hand out the cards as close as possible to the end of the turn, which was then 3 p.m. on day turn. He said that when he arrived to hand out the cards, the employees had already put their tools away and were "milling around" outside the office. At that time, there were about 50 laborers and they would typically get their cards by a "couple of minutes of 3:00" (though he said it was a "few minutes" on cross examination) and would then start the 5 to 7 minute walk to the locker room. Gratton said he was careful not to hand out the cards early because the general foreman made it a point to monitor the time

employees left. He acknowledged that there were some occasions – like when employees had done an exceptionally good job or were covered with lime – when he would allow them the privilege of an early wash-up time. Gratton said that when he returned to the BOF as section manager in 1996, he instructed the labor supervisors and labor leaders that everyone was to remain on the job site until the end of the turn.

Jim Bradley, now section manager of steelmaking at 2BOF, formerly had the same job at 4BOF. In addition, he had worked at 4BOF as a laborer, as a mobile equipment operator, and as a labor leader. When he was a laborer and a mobile equipment operator – which is when time cards were still distributed at the end of the shift – he said he always got his card within a few minutes of the end of the shift. As a labor leader, he was instructed to distribute cards within 5 minutes of the end of the shift, except for projects like relines, when employees relieved each other face-to-face. Bradley said he continued the policy of distributing cards within a few minutes before the end of the shift when he was section manager at 4BOF. He also testified that there were occasional safety meetings which typically lasted until the end of the turn or very nearly the end of the turn. The significance of this was that employees did not get up to leave the meetings 15 minutes before the end of the turn. Bradley said his policy about quitting time did not change after time cards were eliminated and the swipe system was installed. He still expected employees to work until shortly before the end of the shift, when they could leave the job site to put away tools. He also said it was harder to control the time when employees left the work site after the swipe system, since he no longer had a time card to control their exit time. On cross examination, Bradley acknowledged that employees were typically at the labor office to receive their cards at 5 minutes before the end of the shift and that, if they were working some distance away, they may

have left the job as early as 15 minutes before the scheduled end of the turn in order to get to the labor office at that time. He also said, however, that some employees worked close to the office and did not need to leave more than a minute or two early.

Jim Blatsioris testified that when he was a laborer, he received his time card at about 5 minutes before shift end. As an hourly supervisor between 1984 and 1992, that is also when he distributed the cards. He agreed that employees would have to leave the job site early in order to put tools away or walk to the labor office, though he said that was still working time and the Company points out that employees were still under the control of management at that time.

Union witness Dennis Lachene testified that laborers always received their time cards 15 minutes prior to the end of the shift. Moreover, when he was an hourly foreman, that is when he handed out the cards. The employees would get the cards at the supervisor's office and then walk to the locker room. After the swipe system began, employees no longer need to obtain time cards, but they routinely left the job site 15 minutes before the end of the shift (after putting away their tools) in order to go to the locker room. He acknowledged that employees would get in trouble if they actually appeared in the locker room 15 minutes before the end of the shift.

Rocky Salinas also testified that laborers received their time cards 15 minutes before the end of the shift. Jim McNish said that the swipe system was already in place when he came to the BOF, but that the practice had been to put the tools away and start for the locker room 15 minutes before the end of the shift. Griever Jim O'Donohue testified that he approached management because, with the mechanics and laborers and mobile equipment operators all having a 15 minute wash up time (there is no dispute here that the mechanics enjoyed this practice), the locker room was too crowded. He said he was able to talk Bradley into changing the shift time of laborers

from 6:30 until 2:30, in order to relieve congestion in the locker room. The Union's point is that no such change would have been necessary unless laborers were entitled to get to the locker room early since, if they did not get there until the end of the shift, the mechanics would have already showered.

The Company called Gabriel Rocha on rebuttal. He testified that when he was a laborer and labor leader, employees received their time cards at 5 minutes before the shift ended, a fact that Bradley emphasized to him. However, he also acknowledged that he had no direct knowledge of the time laborers left the work site between 1981 and 1996.

The Union says that the record supports a finding that employees were permitted to quit work before the end of the shift, even after 1993, when it was no longer necessary to collect a time card. The Union says the practice was that employees would stop work in order to have their tools put away and be at the supervisor's office by 15 minutes before the end of the shift. They would then get their cards and start the walk to the locker room. After 1993, employees would put their tools away and start the walk to the locker room by 15 minutes before the end of the shift. This means, the Union says, that employees always got to the locker room at about the same time. The finding the Union requests in this case is that I find that employees can stop work and put their tools away so that they can start for the locker room 15 minutes before the end of the shift.

The Company denies the existence of any such practice. It says that if a practice of stopping work early had existed, the Union would have mentioned it in the arbitration leading to Inland Award 889, in which I found that the Company could prevent employees from swiping out sooner than 8 minutes after the scheduled end of their shift. The Company's point is that if these

employees were allowed to leave early, then it would have been possible for them to work as long as the Company expected and still get to the swipe out station before 8 minutes after shift end. But the Union said nothing about the practice in that case, the Company says, because there was no such practice. The Company says the evidence supports a finding that employees quit work soon enough to arrive at the supervisor's office about 5 minutes before the end of the shift prior to 1993, when the Company required them to obtain a time card. But since that time, the Company has expected them to work on site until the end of the shift. The Company also points out that a protected local working condition can not arise merely from the beliefs or acts of one party. Rather, it says the Company and Union must agree to such customs.

Findings and Discussion

I am not able to accept the Union's witnesses' claim that prior to the swipe system, employees regularly left the work site so as to be at the supervisor's office by 15 minutes before the end of the shift. That is not to say that it never happened or that labor leaders did not sometimes – maybe often – distribute the cards before they were supposed to, which may account for the perception the witness testified to. But I cannot discount entirely the testimony of Gratton and Bradley, as well as the other Company witnesses. In particular, I believed Bradley's claim that his expectation was to have the cards distributed a few minutes before the end of the shift and that he acted aggressively to enforce that with his subordinate supervisors. This is not entirely inconsistent with the testimony of the Union witnesses. In this case, as well as in others I have heard from 4BOF, the Company points out that the number of supervisors has declined significantly over the years. It could be, then, that employees were sometimes given their cards

early without the knowledge of upper management. But such actions do not rise to the level of a protected local working condition. Frankly, I have trouble believing that the quitting time of the laborers was a daily concern of Bradley's or Gratton's. When it did come to their attention, however, they acted to insure that employees worked until near the end of the shift.

I also do not discount all of the testimony from the Union witnesses, who testified that they quit working before the end of the shift. I think the most likely scenario is that employees regularly quit working at about 15 minutes before the end of the shift in order to put their tools away and make the trek to the supervisor's office to get their time cards. I believed the Company's evidence that cards were supposed to be distributed at 5 minutes before shift end and I cannot believe that employees milled around outside for ten minutes everyday without challenge. I do suspect, however, that they probably arrived a few minutes before 5 minutes till shift end, since it seems likely that they sometimes got their cards early. What caused the problem that led to this case was the Company's discontinuance of time cards in 1993. At that time, employees continued to quit at about the same time, but, instead of going to the supervisor's office, they went directly to the locker room. This did not put them in the locker room at 15 minutes before the end of the hour and, indeed, the Union witnesses did not claim they were there that early. But it did mean that they arrived in the locker room sooner than they had before the swipe system, since they no longer had to stop and collect a time card. This would also explain O'Donohue's un rebutted testimony that he talked Bradley into changing the work hours of laborers because of congestion in the locker room. The year in which he made that change is not in the record, but if employees began going directly to the locker room after quitting work 15 minutes early – which is

what Lachene said – then it follows that sometime in 1993 or after, they began arriving in the locker room earlier than they had in the past. This could have accounted for the congestion.

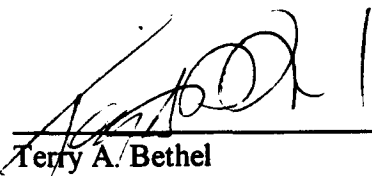
The narrow issue before me is whether the employees have enjoyed a practice of a fifteen minute period on Company time to walk to the locker room and to wash up (or mill around) once there. Based on the evidence, I am not able to find that the employees enjoyed such a fifteen minute period prior to 1993, when they received their time cards at about 5 minutes before shift end. They may have left the job 15 minutes early to get to the supervisors's office but, because an appearance at the supervisor's office was a required part of the job, the employees were acting at the employer's direction and were not on their own time during that period. This was not an early release from work. Rather, the Company used a time control system that required it to pay employees for walking to the supervisor's office and that obviously took time away from productive activity. There is no longer a requirement that employees appear at the supervisor's office before the shift ends. As noted, it seems likely that employees have been leaving the work site about 15 minutes early anyway, just as they did in the days of the time card. I have difficulty concluding, however, that this practice is a local working condition that developed between sometime in 1993 and 1996. In the first place, the Union says the practice arose before 1993, when employees congregated early at the time office. But, as I have found, there was no such practice, a finding that cuts off the roots of the practice claimed by the Union. Moreover, I am unable to find that Bradley or other top management at 4BOF understood that employees were regularly leaving the work place early after 1993. Bradley, who was in charge most of that time, said he expected the employees would work an entire shift, though he obviously knew they would quit early to put tools away which, like the old requirement to pick up the time cards, is a part of

their work activity. There is no reason to doubt that he expected supervision to be carrying out that instruction.

It is also of great significance that the Company regularly called safety meetings during the last fifteen minutes of the turn after 1993. Indeed, one Union witness said they occurred so frequently that he considered them "harassment." Obviously, this is an indication of the Company's belief that the last 15 minutes of the turn were not free time, but were subject to the control of the Company. This is exactly the same position the Company held before 1993, when it directed employees to spend part of their last 15 minutes walking to the supervisor's office and collecting time cards. I find, then, that the parties have not implicitly or explicitly acknowledged that the last 15 minutes of the turn are the employee's own time, to do with as he or she pleases; it was not an "understood and accepted way of doing things" (Steelworkers Handbook, p. 153). I will, then, deny the grievance.

AWARD

The grievance is denied.



Terry A. Bethel
February 9, 1999