

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

AWARD 987

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company violated the Agreement when it notified the Union that it would not hold the annual 25 Year Club Picnic in the summer of 2001. The case was tried in the Company's offices in East Chicago, Indiana on May 15, 2001. Pat Parker represented the Company and Dennis Shattuck 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
D. Wiersbe.....President and CEO - Retired
R. Cayia.....Manager, Union Relations
J. Brett.....Controller
J. Spear.....Staff Rep., Union Relations

the Union:

D. Shattuck....Chairman, Grievance Committee
B. Carey.....International Representative
T. Hargrove....Local Union President

P. King.....Local Union Vice President
S. Wagner.....Recording Secretary
D. Reed.....Secretary, Grievance Committee
D. Lutes.....Witness
A. Pena.....Witness

Background

Since 1939, the Company has held a picnic for its employees and retirees with at least 25 years of service. The location and menu has changed from time to time, but the picnic has been a constant. This case comes to arbitration because of the Company's decision not to hold the picnic in 2001. The Company says its decision was influenced by the economic conditions affecting the domestic steel industry, from which Ispat Inland has not enjoyed immunity. There is no need to recite the Company's current financial condition in detail in this opinion. But as of the date of the hearing, 18 domestic steel producers were in bankruptcy and others (though not including Inland) were rumored to be teetering. Because of oversupply, reduced orders, the increased cost of energy, and, especially, the pressure of imported steel selling at very low prices, most of the domestic industry has not been able to operate at a profit.

The economic outlook for the domestic industry was described by the Company controller as "mixed," which was not an optimistic assessment. Steel companies have had difficulty gaining access to capital funds and some of them have trouble paying current debts. Ispat Inland has taken various measures to reduce costs, including laying off all non-secured employees and offering retirement incentives to management employees. In addition, the

Company says it has idled one of its blast furnaces as a way of reducing costs, though the nature of that decision is contested in another recent arbitration case. One expense eliminated by Inland is the picnic, which cost about \$40,000 in 2000.

This cost did not reflect all of the activity involved with the picnic. Robert Cayia, Manager of Union Relations, testified that the picnic is staffed mostly by volunteers. Historically, the volunteers were mostly management employees, though in recent years, they have been supplemented by bargaining unit volunteers. The Local Union President, in fact, related the Union's activity in building a barbeque grill following a caterer's debacle at a picnic in the early 1990's. Cayia also discussed the nature of the picnic, which he characterized as a Company sponsored social event. All employees - bargaining unit and non-bargaining unit alike - with at least 25 years service are invited to attend. In addition, high level managers and retirees are invited to the picnic. The Company determines the budget, decides when and where the picnic will be, and selects the vendor and menu. At one time, the picnic included small gifts or tokens, though the Company stopped that at some point. The event is not held on Company time, though most of the planning is done during business hours. The picnic has never been a subject of negotiation with the Union and the Union has never grieved any of the changes.

Cayia also said that the Company has sponsored -- and terminated -- other social events over the years. At one time, there was a Christmas party sponsored by the Inland Athletic

Association (IAA). This was funded by the Company and included gifts for the children of Company employees. The event was discontinued in the late 70's or early 80's. There was also an IAA family picnic funded by the Company. This, too, was discontinued in the early 80's. Cayia said for many years, the 25 year picnic was a men-only event and there was a corollary 25 year club women's luncheon. In the late 80's, women employees were given the option to go to the picnic and attendance at the luncheon started to lag. It was stopped in the early 90's. Finally, Cayia said that at one time, the Company gave service awards to employees with 25, 30, 35, 40 and 45 years of service. All of these were stopped about 10 years ago. In all of these cases, the Company acted unilaterally and without challenge from the Union.

On cross examination, Cayia acknowledged that the IAA is an independent organization that has no bargaining relationship with the Union. Non-employees are eligible to join and, apparently, participate in trips and sporting events the IAA sponsors. The IAA is not funded by the Company, though Cayia testified that the Company had paid for the Christmas party and the family picnic "at one time." Cayia also agreed that the 25 year club picnic has been an important event to lots of people, bargaining unit and non-bargaining unit alike.

Bargaining unit witnesses testified about the importance of the picnic to the employees. Local Union President Tom Hargrove said it was an opportunity for employees to get together and see

people they had not seen recently, especially retirees. He said the picnic was one of the highlights of the year for the workers, and that one could notice the excitement in the plant when the badges were mailed out. He agreed that the menu and other details were handled by the Company, but he also said that was not why people attended. Rather, they went to reunite with people with whom they had work relationships over the years. He agreed that it became more difficult for employees to get off for the picnic as the number of employees at the plant was reduced and the percentage of employees with 25 years of service increased. Also, attendance has sometimes suffered over the years, once because of a caterer who served undercooked chicken and, more recently, because the location has made it harder for employees to stop by after work.

Other employees said everyone looked forward to the picnic. In addition, when they started with the Company, the picnic was portrayed as an event they should strive toward. Young employees looked forward to the time when they would be eligible to attend. Also, some retirees plan their vacations around the picnic.

Hargrove testified that in 2000, then Company President and CEO Dale Wiersbe told employees at the opening ceremony that the picnic would continue. Wiersbe said he remembered saying something like this at the 1998 picnic, which was when everyone understood that there would be a change in ownership. He said this was a philosophical statement about the new owners, Ispat, who intended to continue with the picnic, which they did in fact,

in 1998, 1999, and 2000. Wiersbe said he did not make any comments about continuation in 2000 and does not remember talking to Hargrove about this subject at the picnic. He also said that he did not mean his 1998 comments to say that the picnic would go on forever, and he said that financial hardship could cause the Company to re-evaluate the issue. Hargrove, however, said he was certain Wiersbe said the picnic would continue at the 2000 opening ceremony. Another Union witness offered the same testimony.

The Company argues that the picnic was terminated for justifiable financial reasons and that it was within its power to make the decision, especially given the current financial crisis facing the domestic steel industry. The Company notes that it made decisions about the picnic unilaterally and that it had the right to decide to terminate the activity. It also said that Wiersbe's comments, whenever made, were not part of a binding contract, but simply comments made in a social setting. It denies that the picnic is a protected local working condition, which it says must relate to wages, hours of work or conditions of employment. This does not include a social event held off the property. The Company also says that, even if this is a protected local working condition, it can be eliminated by the Company because of changed conditions, which would include the Company's current financial difficulties.

The Union says that even though details concerning the picnic have changed, its fundamental nature has not. It says the

case hinges on one issue -- whether the event is a protected local working condition. It points out that the 62 year history of the picnic even predates the collective bargaining relationship. The employees considered it a major event which has been held regardless of the Company's circumstances. Employees viewed the picnic as a benefit of their employment and one they eagerly anticipated. It also says the NLRB, in a related context, has found that benefits tied to seniority cannot be terminated unilaterally by the Company. As to the Company's financial condition, the Union points out that the Company has not said it is unable to pay. Indeed, the Company's controller testified that the Company could pay for the picnic, though it would require some reallocation of assets. The Union also says that bad financial times will not allow the elimination of the picnic as a changed circumstance unless the Company can show it has only been held in good financial times. But there has always been a picnic since 1939, regardless of the Company's financial performance, until this year. In short, the Union says, picnic was not a gift the Company gave to the employees, but was, rather, part of the bargain for long service workers.

Findings and Discussion

At the outset, it should be clear that as a matter of contract, nothing turns on Wiersbe's comments at the picnic, whether they were made in 1998 or 2000. The Union quite properly stated the issue -- either the picnic is a protected local

working condition or it is not. If it is, it became so long before Wiersbe commented at a recent picnic's opening ceremony. Moreover, if the picnic was not a protected practice at the time of his comments, he could not make it one merely by saying so. Nor were his statements themselves of binding significance. They were not part of any negotiation and they were not exchanged for anything of value. They may have aroused an expectation on the part of those who heard them, but not one that can be addressed in this forum. I turn, then, to the issue of whether the picnic is a protected practice.

There is no easy or obvious solution to problems like this. The tests are familiar and often repeated, as are the positions taken by the competing parties. Employers typically argue that such things as bonuses, parties, and turkeys are gifts, bestowed on workers in appreciation of efforts or from goodness of heart. Unions typically claim that once the offering has been made on a consistent basis, it becomes part of the compensation package for which the employees exchange their services. Under the employer's view, the benefit can be terminated unilaterally at any time; as the Union sees it, the benefit remains until, like any other benefit, it is bargained away.

It is fair to say that Article 2, Section 2 recognizes different kinds of protected practices. Some more easily fit the description of working conditions. Thus, when employees have been allowed to quit work early to wash up over an extended period of time, or when management has consistently assigned

crews of a particular size to perform certain jobs, steel industry arbitrators have often found the practices to be mandatory. They are, in the words of Sylvester Garrett, accepted reaction of employees to a recurring set of circumstances. But arbitrators have also recognized other kinds of practices which are more in the nature of benefits for services performed. The most often cited examples are Christmas bonuses or turkeys.

The cases are far from consistent, as two of the industry cases cited by the parties in this dispute demonstrate. The Company relies in part on a Rockwell Standard Corp. case in which Arbitrator Milton Schmidt found that the employer's habit of providing holiday turkeys was a gratuitous benefit, terminable at will. The Union, on the other hand, points to former Inland Arbitrator Clare McDermott's opinion in Crown Cork and Seal Grievance No. 12-54-90, in which the arbitrator found a picnic for employees with 25 years of service was a protected practice.

As these two cases and countless others demonstrate, opinions themselves are far from illuminating, especially with the benefit cases. Most involve arbitrators simply concluding that certain benefits are not the kinds of things that can become protected practices -- and, therefore, are gifts -- or that they have been legitimately viewed by employees as part of the package and, therefore, are protected.

I understand the Company's contention that this was a gratuity offered to employees to recognize their length of

service and commitment to the Company. But that does not mean it did not become a protected practice. Certainly, the picnic did not begin as a benefit. The important fact here, however, is that it has continued for 62 years without fail. Moreover, this was not a mere token of appreciation given to the employees. Rather, it involved not only a significant sum of money, but also a substantial commitment of time and effort. Obviously, a picnic that hosts thousands is not an incidental or spur-of-the-moment undertaking. It was planned and held each year as a deliberate course of conduct, apparently without serious consideration of any other course of action.

I find, then, that although the picnic may have started as a gift or reward for employees, at some point it became the normal and accepted way of doing things and that it became part of the bargain held out to employees with long service. Sylvester Garrett's comments in the well-known National Tube case are relevant here. The picnic did not become a local working condition simply because the Company held the picnic on multiple occasions. But, it became "the accepted course of conduct characteristically repeated...." And, significantly, it was regarded by the employees as "the normal and proper response to the underlying circumstances presented." In addition, given the testimony from bargaining unit employees in this case, it is clear that the picnic was regarded by the employees as a "significant benefit ... over the years."

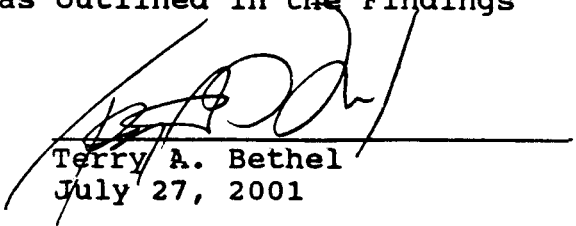
I cannot accept the Company's claim that even if the picnic is a protected practice, the current financial circumstances facing the Company constitute a change in the basis underlying the practice. There was no showing that Company earnings were in any way tied to the Company's decision to hold a picnic and, importantly, no showing that it was suspended in other years when money was tight. The Company's real argument on this score is not a change in the basis underlying the practice but, rather, an argument that its contractual obligations can be modified because of unanticipated and uncontrollable events. Without deciding whether that common law contract principle applies in this collective bargaining relationship, I note that the Company's controller said the Company could afford to pay for the picnic, despite its legitimate interest in controlling costs. I find, then, that this defense is not appropriate in this case.

I will sustain the grievance and order the Company to hold the picnic in 2001. I understand that the Union has already reserved a place for the event. Of course, given testimony that the Company has typically controlled the setting and other logistical matters, I will leave the details to its determination. Moreover, I obviously have no authority to require the Company to order management employees to volunteer their time and, because they are not part of the bargaining unit, I cannot order the Company to invite retirees. My order is

simply that a 25 year club picnic of similar scope be made available to employees in 2001.

AWARD

The grievance is sustained as outlined in the Findings



Terry A. Bethel
July 27, 2001

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¹ I have considered the Company's claim that it terminated the Christmas party and the family picnic. There was no testimony that these events were regarded by Inland bargaining unit employees in the same way as the 25 year club picnic. In addition, I have some confusion about the involvement of the IAA, which apparently was the sponsoring agency, though with funding provided by the Company.