

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

AWARD 991

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns a dispute over the manner in which the Company has filled vacancies in core pools. The case was tried in the Company's offices in East Chicago, Indiana on November 12, 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
E. Cooper.....Manager - Personnel Services
D. Hines.....Bus. Gen., Mfg. Maint. And Plt. Services
K. Koch.....Sr. Rep., Personnel Serv. - Retired
C. Willoughby..Union Relations Intern

For the Union:

D. Shattuck....Advocate
B. Carey.....International Representative
D. Reed.....Secretary, Grievance Committee

Background

As part of the 1993 Agreement, the parties created eight core pools.¹ According to Article 13, Section 5-a, each core pool was to serve a number of departments and provide them with "temporary sequential needs." Since the inception of the system, the Company has determined the number of employees who are assigned to each core pool through a process that is not at issue in this case. Such employees are "stated" in the core pool and they can file applications to fill temporary vacancies in various departments served by the core pool. In addition to the core pools, the parties also provided for a plant-wide pool. Marginal Paragraph 13.17.3 says that "The plant-wide pool will be comprised of employees displaced from core pools and all other non-core pool employees."

Article 13, Section 5-b establishes procedures for operation of the core pools. At issue here is paragraph b-1-d (mp 13.18.1.4), which reads as follows:

Any permanent vacancies in a core pool shall be filled by the most senior employee without core pool status then in the plant-wide pool.

The Union relies on this language and says that when a vacancy in a core pool arises, the senior employee not assigned to a core pool should get the assignment. The Company, however, says that mp 13.18.1.4 does not apply. The language speaks not only of employees who do not have core pool status, but also says the

¹ In the interval between 1993 and the present, department closures have reduced the number of core pools to seven, plus the plant wide pool. That reduction does not affect this case.

employee must then be "in" the plant-wide pool. But the Company says there are no employees "in" the plant-wide pool, in the sense of actually working in that location.

Section 5 says that plant-wide pool employees will be used to supplement work assignments in departments and to perform "other non-traditional labor assignments." The evidence in this case - as well as the evidence in Inland Award 982, another recent case - indicates that plant-wide pool employees have seldom been used as a distinct work force. Rather, they are assigned to work in a core pool, even though they do not have status in any core pool. To that extent, the Company says, they do not differ all that much from employees who do have status in a core pool but may be assigned to work in a different core pool. In addition, the employees statused in the plant-wide pool but assigned to work in a core pool file applications, just as the core-pool-statused employees do. The Company also points to mp 13.17.3, quoted above. This, too, means there are no employees in the plant-wide pool, the Company says, because there are no non-core pool employees, all of them having been assigned to work in a core pool, whether they have core pool status or not.

Because no employees are actually working in the plant-wide pool, the Company says there are no employees "in" the plant-wide pool. This is consistent with the Company's claim, advanced here and in Inland Award 982, that the plant-wide pool is both a status and a place. There are employees statused in the plant-wide pool, but none are working there. This means, the Company

says, that MP 13.18.1.4, quoted above, does not apply, since it refers to employees who are "in" the plant-wide pool. Moreover, the Company says that ever since 1993, its practice has been to assign to core pool vacancies the senior employee working in the core pool without core pool status.² Thus, the senior employee who is stasured in the plant-wide pool but who is normally assigned to the core pool gets the vacancy, meaning that he becomes stasured in the core pool. The Company also points out that this is the procedure that makes the most sense. The non-stasured employees normally working in the core pool are the ones who have acquired the skills to be of most use to the departments served by the core pool.

The Union, however, says that the language of mp 13.18.1.4 is not ambiguous. If there is a core pool vacancy, it does not go to the senior non-stasured person working in that core pool but, rather, to the senior employee "without core pool status then in the plant-wide pool." The Union says that any employee not assigned to a core pool is necessarily in the plant-wide pool. In short, the Union argues that the vacancy must be filled by seniority among employees in the plant-wide pool and that an assignment to work in a particular core pool is not a relevant consideration. The Union says this is important because having core pool status can affect an employee's right to continued employment.

² This does not include employees who have been temporarily transferred to the core pool to help with outages or for other special need.

The Company stresses the length of time that it has utilized the procedure at issue in this case without challenge from the Union. However, the Company does not argue that a consistent practice could overcome unambiguous contract language. Rather, its argument is that the contract language cited by the Union does not apply in this case because there is no one in the plant-wide pool. Thus, the Company argues that because the Agreement does not indicate how core pool vacancies are to be filled when there are no employees in the plant-wide pool, the parties have effectively agreed to the procedure the Company has used. In that regard, the Company says that it has notified the Union of this methodology in the past and had never received a challenge until the instant grievance. The Union, however, disputed whether the Company sent it regular reports, though it agreed that the information was available on request.

Findings and Discussion

Although I expressed some doubt about the argument, in Inland Award 982, I was able to avoid confronting the Company's claim that the plant-wide pool is both a status and a place and, more importantly, that this distinction is one of significance. There is no reason to question the Company's claim that the individuals who administer the core pool system think of the plant-wide pool in terms of both status and place. But that conception is not controlling unless it finds support in the Agreement itself.

The Company's contention here depends completely on its argument that there is no one "in" the plant-wide pool because no employees are assigned to work from that "place." But I find nothing in the Agreement which requires that employees actually be working in any such "place." Marginal paragraph 13.17.4 says that the plant-wide pool is comprised of employees who are displaced from core pools and other "non-core pool employees." But this does not mean, as the Company argues, that core pool employees are those working in a core pool, regardless of their status. Section 5(a) deals with whether employees have core pool status. If they have been displaced from their core pool, they do not. The parties clearly understand "displaced" to refer to the loss of core pool status. Thus, an employee who loses core pool status is in the plant-wide pool, even if he continues to work in the core pool after losing his status.

I recognize that there are no employees who are displaced from their core pools. But this understanding of how the language works helps give meaning to the terminology "other non-core pool employees." These words refer to employees who do not have status in a core pool. How this occurs is not of great importance to this case. Conceivably, an employee could be without core pool status because there were more non-sequential employees than there were core pool slots. Or, an employee may not have core pool status because he was hired into the plant-wide pool. Whatever the reason, the key is not where the employee is working but whether he has status in a core pool.

Employees without status in a core pool are "in" the plant-wide pool.³

I find, then, that mp 13.18.1.4 is not ambiguous. It clearly says that permanent vacancies in a core pool are to be filled "by the most senior employee without core pool status then in the plant-wide pool." This does not, as the Company claims, incorporate two different requirements. Rather, the language is descriptive -- an employee without core pool status is necessarily "then in the plant-wide pool." Stated differently, an employee is "in" the plant-wide pool for purposes of this language if he does not have core pool status. The Company has no right to give the vacancies in a core pool to the senior plant-wide-pool-statused employee then working in the core pool, unless, of course, that person also happened to be the senior person in the plant-wide pool.

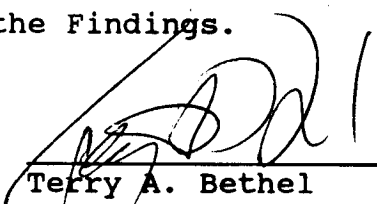
As noted above, the Company does not argue that its pattern of assignment can override unambiguous contract language. As arbitrators have often recognized, the parties do not lose their contractual rights simply because they have delayed enforcing them. I recognize that the Union has not previously objected to the Company's assignment practice. That might be of significance

³ I find nothing in Section 5 that makes the actual place of assignment relevant to any issue in this case. However, even if it were, one might argue that using a plant-wide pool employee in a core pool is not inconsistent with the language in mp 13.17.4, which says that plant-wide pool employees will be used to "supplement work assignments in various departments...." Thus, it may be that a plant-wide pool employee assigned to a core pool is still working in the plant-wide pool "place" since assignment to a core pool is recognized as part of what the plant-wide pool is supposed to do.

if the language were ambiguous or if the Union sought a monetary remedy. But here, the Union seeks only a prospective order that the Company comply with the contract language. I also understand the Company's argument that its assignment practice is the one that makes the most sense. That may be, but I do not have the authority to revise the Agreement, even if there is a more efficient procedure. I must then, sustain, the grievance.

AWARD

The grievance is sustained. The Company is ordered to cease filling core pool vacancies on the basis of core pool assignment. The vacancies are to be given to the senior employee then in the plant-wide pool, as explained in the Findings.



Terry A. Bethel
January 25, 2002