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United States Steel Corporation Sheet and Tin Operations Geneva Works and United Steelworkers of America Local Union 2701

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UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Geneva Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Subject: Seniority - Bidding.

Statement of the Grievance: "We, Ray Lindsay #43206 and Ragnar A. Samuelsen #44133, contend Management denied us our continuous service rights to fill the job of Maintenance Labor. The job of Maintenance Labor was put up for bid to all people at the Labor level. Management filled the job with younger employees and denied our bids.

"We request that Management give us the job of Maintenance Labor and pay us all monies lost as a result of this denial."

This grievance was filed in the Second Step of the grievance procedure April 25, 1964.


Statement of the Award: The grievance is denied.
In this grievance from the Open Hearth Department of the Geneva Works the Union contends that grievants Ray Lindsay and Ragner A. Samuelsen were denied their seniority rights to a permanent opening in the job of Maintenance Labor, Job Class 4.

The Maintenance Labor position is the bottom job of the Assigned Maintenance line of progression. At the time of the posting of the Maintenance Labor vacancies the grievants were employed in another line of progression in the Open Hearth Department, the Ladle Lining Unit, Lindsay as a Job Class 2 Stopper Maker Helper and Samuelsen as a Job Class 5 Iron Ladle Liner Helper. According to the Company, Lindsay was classified as a Stopper Maker Helper, September 25, 1955 and Samuelson as a Job Class 5 Stopper Maker on September 18, 1955.

The Maintenance Labor openings were posted April 7, 1964 with a closing date for application of April 11. (Only bottom jobs are filled by posting.) The posted notice also stated that "All employees working on the Labor level or employees currently working as Maintenance Labor on a temporary basis, are eligible to bid on these permanent openings." The successful applicants were placed on the job as of April 19. Several days later the grievants, who had not submitted bids prior to the closing date, applied for the promotions (Lindsay on April 22 and Samuelsen on April 23).

The Company's position is twofold: (1) that the grievants did not file timely bids and are therefore not entitled to consideration for the openings; and (2) that bidding across lines of progression is prohibited under the June 9, 1949 Local Seniority Agreement. The Union argues to the contrary on both questions.

THE UNION'S ARGUMENTS

With respect to the question of timeliness of the bids, the Union relies on Section B of the June 9, 1949 Seniority Agreement, which reads:
"Any grievance involving promotion, demotion, increase or decrease of forces, to be considered must be presented to the Company in writing within a period of thirty calendar days after such movement has taken place, or in the case of promotion to any position where it is the practice as of the date of this agreement to post a notification of job opening, within a period of thirty calendar days after the posting of the notification of job opening or the actual promotion, whichever is the later."

The Union argues that under this provision, as well as under the Basic Agreement, an employee has 30 days within which to assert his seniority rights and he is therefore not precluded from bidding for a job within that period regardless of the closing date; that the closing date of a posting cannot set aside the language of the Local or Basic Agreements; that an employee may be out ill or on vacation during the period of the posting; that any agreement at the department level of time limits for filing of bids must comply with the 30-day period for filing of grievances on seniority questions; and that the established practice throughout the Mill supports the Union's position.

Concerning practice, Assistant Grievanceman Hubert L. Greenland, who has held his office since 1960 and has been employed in the Open Hearth Department for 17 years, testified that there is no set period of time for which posted jobs are held open; that openings have been posted for seven or ten days and some have remained posted after the closing date. Greenland cited his own experience in 1950, when he had been notified that he was the successful bidder on a Weigher vacancy and the job was subsequently awarded to an employee (Jack Harmon), who had applied after the closing date.

Greenland referred also to a posting for a Crane Hooker opening, which he says occurred in 1964, about three or four months before the instant grievance was filed, and in which the
successful bidder, A. M. Argyle, applied after the closing date. He testified that it is his understanding that Argle waited until the job was awarded; and that the opening having been given to a less senior employee than Argyle, the latter then bid for the job; that the Company's action was grieved in Step 1 and discussed with General Foreman Harold Hardman; that Hardman said that the 30-day limit for filing of seniority grievances should also apply to the submission of bids in order to give employees who may be off or on vacation an opportunity to bid; that he informed Hardman that he would have to consult with his Grievance-man, Lavere Tippets; that after conferring with Tippets, he reported to Hardman that it was acceptable to the Union to apply a 30-day limit for filing of bids in accordance with the Seniority Agreement; and that it was on the basis of this understanding with Hardman that he advised the grievants in the case at hand that they still had time to submit bids even though the specified closing date had elapsed.

On the issue of cross bidding, the Union maintains that an employee in any line of progression, regardless of where he is on the line, may bid into the bottom job of any other line of progression in accordance with Section E of the Local Seniority Agreement. This Section, titled Promotion, reads:

"1. In the case of promotion to fill a permanent vacancy (where ability and physical fitness have been determined as relatively equal) continuous service shall be considered in the following order among the employees within that department.

a. Occupational continuous service on the vacant position.

b. Occupational continuous service on the position immediately below that on which the vacancy occurs in the established promotional sequence.

c. Unit continuous service.

d. Departmental continuous service.

e. Plant continuous service."
The Union argues that inasmuch as none of the bidders had an occupational date on the Maintenance Labor job, the grievants should have been awarded the openings under item "b" by reason of their greater continuous service on Labor, the job immediately below the vacancy.

The Union contends further that Labor is the starting point of all lines of progression; that an employee retains his Labor date at whatever step he occupies in a line of progression; that an employee's Labor date can no more be taken from him for purposes of promotion that it can for purposes of layoff or recall; that, therefore, an employee in any line or progression may use his Labor continuous service to bid for a promotion in another line of progression as though he were physically in the Plant Labor Pool; that contrary to the Company's contention, there is nothing in the Local Seniority Agreement that requires an employee to demote to the Labor Pool in order to be eligible to bid into another line of progression; and that under the Company's construction of the Seniority Agreement, all unsuccessful applicants for a promotion from other lines of progression lose their seniority rights to the jobs from which they demote and remain in the Labor Pool, a result with which the Union cannot live; and that further, should all employees in a line of progression decide to apply for an opening in another line and demote to be eligible, the Company, under its interpretation, would have no employees in the vacated unit.

To establish that the Seniority Agreement has been applied in accordance with the Union's interpretation Greenland testified that in August 1950 he bid for the Mixing Pan Helper job, the lowest step in one of the lines of progression, while holding the Job Class 7 job of Pump Operator in another line of progression; that he was awarded the job after he grieved and discussed the matter with the Labor Relations Staff Assistant assigned to the Open Hearth Department, Albert Freestone; that at that time he was informed that three other employees (T. Bird, R. Monson and M. Whitby) went in 1950 from Transfer Car to Third Helper, the lowest job in another line of progression, without demoting to Labor; and that it was for this reason that he won the Mixing Pan job.
Concerning timeliness, the Company contends that in accordance with Section 13-H of the April 6, 1962 Basic Agreement, quoted below in part, it may adopt reasonable regulations in administering the posting of job openings:

"When a vacancy develops, or is expected to develop (other than a temporary vacancy) in the promotional line in any seniority unit, Management shall, to the greatest degree practicable, post notice of such vacancy or expected vacancy, or job assignments where such is the present practice, for such period of time and in such manner as may be appropriate at each plant.

"Employees in the seniority unit who wish to apply for the vacancy or expected vacancy may do so in writing in accordance with rules developed by Management at each plant."

The Company argues that it has been the practice in the Open Hearth Department to post notices of job openings for five or six days and not to consider bids submitted after the closing date; that the time limitation specified on the posting in question was reasonable and consistent with this practice; that Management is permitted to impose, and insist upon adherence to, requirements of timeliness in accordance with the following express language of Section 13-H, "Management shall... post notice of such vacancies... for such period of time and in such manner as may be appropriate at each plant"; that if operations are to be conducted smoothly, positions should be filled and job assignments made without delay and without being subject to reopenings; and that employees who have been alert enough to file bids before the closing date should not be displaced by those who submit untimely bids.
General Foreman Hardman denied that he told Assistant Grievanceman Greenland that employees had 30 days within which to bid regardless of the posted closing date. According to his testimony, he informed Greenland that the expiration date specified on a posting was the last day for acceptance of bids and that the 30-day limit had to do with filing of grievances. Company witness Freestone, who testified concerning posting and bidding practice in the Open Hearth Department, stated that an understanding on filing of bids such as that alleged by Greenland would be contrary to established practice; and that agreements in the area of seniority are normally concluded by top level Management and the Grievance Committee.

As to the second issue in this case, the Company relies on the following Sections, among others, of the Local Seniority Agreement:

Section A-1

"The word 'unit' as used throughout this Agreement is considered to be a subdivision of the plant, and for the purposes of this Agreement is defined as a series of occupations as created by means of an established line of progression. The line of progression within the unit governs the normal movement of employees in that unit in cases of promotion, demotion, increase or decrease of forces, etc. The units to which the continuous service factor shall be applied are those presently in effect as indicated by established lines of progression in the various departments and may be changed at the request of either party by agreement between the Company and the Grievance Committee...."
Section H-2-a

"If, for justifiable reasons, an employee desires to exercise his occupational continuous service on a lower occupation within his present line of progression, he may do so, provided a permanent vacancy exists on such occupation. He cannot, however, voluntarily exercise occupational continuous service on an occupation in any other line of progression. If, in the opinion of the Company, the application of the above privilege should result in a situation not consistent with efficient operations, this privilege may be denied, in which case the employee shall have recourse to the grievance procedure to assure him full consideration of his rights under the May 7, 1947 Agreement." (Underscoring supplied by the Company.)

The Company argues that under these provisions, as consistently applied, employees may not voluntarily cross bid from one unit to another, the movement of employees being up or down a line of progression; that invariably, as established by the evidence introduced through Staff Assistant Freestone, notices of openings for first level jobs have limited bids to employees at the Labor level or the equivalent; that had Management unilaterally elected to open up the bidding to employees occupying permanent positions above the Labor level in other lines of progression, it would have violated Section 13-B of the Agreement inasmuch as Management would have unilaterally modified the "rules for application of the seniority factors," as these rules have long been followed.

In support of its position the Company points to the fact that the agreed upon Open Hearth Line of Progression Chart (Company Exhibit A, dated November 3, 1960) shows that employees may promote to the Third Helper job from the Stocker job or from the Checker Blower line of progression. It argues that if bidding across lines of progression were permitted, the parties would have no need to set forth these two exceptions to cross bidding.
Concerning the Union complaint that an employee must give up his seniority rights in a line of progression to be eligible to bid, the Company says that employees virtually always know, with the help of the grievancemen, if necessary, what their seniority standing is with respect to the jobs for which they bid. As to the other possible consequence of the prohibition against cross bidding pointed out by the Union, the Company argues that it can protect itself against the eventual­ity of all employees in a unit demoting to Labor by invoking Section H-2-a of the Local Seniority Agreement (quoted above), which permits the Company to deny the privilege of demotion, subject to the grievance procedure, where its application "should result in a situation not consistent with efficient operations."

Finally, the Company contends that the issue of cross­bidding had been raised before in the Youd grievance (No. OH-15­107-57), which was denied; that the Union withdrew the grievance in Step 4 without prejudice and the Company therefore does not point to it as a binding precedent; that however, this grievance is illustrative of long-standing practice in the Open Hearth Department; that since 1958, when this grievance was filed, there have been other instances of employees who were denied the right to bid across lines of progression, as evidenced by the Company's testimony.

FINDINGS

Concerning the timeliness of the grievants' bids, the Union does not rely on the alleged existence of an understand­ing or agreement between Assistant Grievanceman Greenland and General Foreman Hardman on a time limit for filing of bids; therefore resolution of the conflicting testimony is not neces­sary. As the Union's argument and the testimony of Grievance­man Tippets make clear, the Union's position is based squarely on the Agreement, specifically Section B of the Local Seniority Agreement, which provides a time limit of 30 calendar days for the filing of grievances involving promotion, demotion and increase or decrease of forces.
Thus, under direct examination Tippets testified as follows:

"Q. Do you have any agreement at the department level as to the time permitted to bid on job postings?

"A. There is no agreement at the department level on this basis. If there were such an agreement, it must comply with the 30 days."

And under cross-examination Tippets gave the following testimony:

"Q. ...are you contending that Mr. Hardman made an agreement to this effect, that this was an agreement, a valid agreement between the Company represented by Mr. Hardman and the Union represented by Mr. Greenland?

"A. I'm only stating that, from my knowledge of the conversation and my memory of it, that when I was approached with the problem that had arisen down there and was apprised of the conversation between Mr. Hardman and Mr. Greenland, that I told Mr. Greenland that it was within the bounds of the agreement and had always been there and that what Mr. Hardman was proceeding was acceptable because it was by agreement.

"Q. Then are you saying that Mr. Hardman could have proposed something else that would have been acceptable?

"A. Well, I think that if he had proposed anything else, that there would have had to have been a special agreement, either less than thirty days or more, to have been of any validity, because the agreement specifically states that.
"Q. And you are saying that Mr. Hardman's indication or his feelings on the matter in your opinion didn't make any difference; is that correct?

"A. Well, I think they made a difference, in that it eliminated a possible grievance. If he was willing to abide by the agreement, it eliminated a possible grievance."

The Union's reliance on Section B of the Local Seniority Agreement, however, is misplaced. This Section just does not make any reference to time limits for the submission of bids; the language is clearly limited to the matter of a time limit for the filing of grievances. As the Company argues, the parties' language which deals with the period of time for which openings are to be posted is found in Section 13-H of the Basic Agreement. There the parties agreed that Management shall post vacancies "for such period of time and in such manner as may be appropriate at each plant" and that employees who wish to apply may do so "in accordance with rules developed by Management at each plant."

And the evidence is that the parties have found five or six days a reasonable period for posting of available job openings. In the record are examples of postings, one or two from each year from 1950 to 1964 (26 in all), which show that the closing dates for the vacancies were five or six days from the date of the notice. Prior to September 1950 the removal date of the notice was considered the closing date; since that date the notices have the language, "Please apply to... not later than..."

In fact, the Union does not contend that the notices of openings did not specify a closing date. Tippets stated under cross-examination that: "I testified that they put a date that the jobs are open and a date that they remove the bids and that they have written on the posting that employees must submit bids within a certain length of time." He points
out that postings have been extended where there were not enough applicants for the vacancies. But he agrees that a new notice was posted in such cases, again specifying a closing date.

Accordingly, it must be found that one of the rules for posting of vacancies developed by Management for the Open Hearth Department, and accepted by the Union as appropriate, is that bids for a vacancy be submitted no later than five or six days after the date of posting. And in the apparently few instances that employees have disregarded the rule, their bids have been rejected as untimely. The Company cites two such instances: one in 1959, when an employee (S. J. Francom) applied for an opening six days after the specified closing date and was declared "Ineligible, bid after expiration date"; and the second in 1956, where an employee's bid (P. H. Leonhardt), filed 30 days late, was rejected. In the latter case the employee was the most senior of the eligible applicants.

The Company has made allowances for employees who are out ill or on vacation during the posting period. Company witness Freestone refers to two cases in which bids submitted after the closing date were accepted. One was from an employee who returned from an absence due to illness one day after the posting was removed; the other was from an employee who had been on vacation for a couple of weeks, during which time the notice of an opening had been posted.

One of the two instances cited by Union witness Greenland as practice in support of the Union position on timeliness evidently falls in this category. In testifying concerning his own experience in which a vacancy awarded him was subsequently given an employee who had applied after the expiration date, Greenland said: "They told me that I had got the job; and then they came back and changed the schedule again and said that I didn't have it, that this guy was older than I was, and he was off on a day off or something." (Underscoring supplied.)

The one remaining instance of the acceptance of a late bid, concerning which Greenland testified, cannot serve to overcome the clear language of Section 13-H and the posting
practice which has developed in the Open Hearth Department under that language. It is hardly reasonable to find that the Company has been consistently posting vacancies for five or six days since at least 1950 without insisting on adherence to the closing dates specified on the notices. It must therefore be found that, as a general proposition, the Company's position regarding the time limits for bids is the correct one, and that in a normal case the timeliness requirement would bar late bids, failing some such showing as absence from the plant during the relevant period.

In the present case, however, a special factor is present which requires, in this instance, that the bids not be barred on the timeliness basis. Specifically, it must be noted that the Company posting of April 7, 1964 specifically excluded the grievants from eligibility for bidding, by limiting the potential bidders to "All employees working on the Labor level or employees currently working as Maintenance Labor on a temporary basis." The present grievants did not fall in the latter category, and the essential issue of this grievance is the Union's challenge of that limitation. The grievants could have questioned the limitation by not bidding at all, and merely filing a grievance against the limitation, within the 30-day period. Plainly, the fact that they also filed belated bids cannot prejudice the right which they would have had, in any event, to question the limitation spelled out by the Company on the posting which is basically the issue in this proceeding. Under the circumstances, the merits of the case must here be considered by the Board.

The Maintenance Helper jobs posted April 7, 1964 were permanent vacancies. According to the Company's testimony, four Maintenance Labor jobs are normally scheduled and three of them were occupied on a temporary basis at the time of the posting, by employees without occupational service in the Maintenance line of progression. Had the grievants been in the Labor Pool at that time there is no question, of course, that they would have been eligible to bid and would have been entitled to the openings on the basis of their greater departmental service. (None of the other bidders had occupational service in the
Maintenance line of progression.) Or, had the grievants been filling temporary vacancies in another line of progression, they would have been eligible to bid for the openings in question.

Company witness Freestone maintained that these two employees would not have been eligible even if they were filling temporary vacancies in the Ladle Lining line of progression because they have occupational service in that line. He testified that it is his understanding that an employee who is filling a temporary vacancy on the basis of his occupational service is considered as having permanent status in the job. No ruling on this question is made here. For the fact is that the grievants were filling permanent vacancies in the Ladle Lining unit when they applied for the Maintenance Labor openings. Freestone testified that Open Hearth operations had been increased to nine furnaces March 22, 1964 and continued on that level through May 30, 1964, within which period the vacancies in question had been posted; and that the grievants were scheduled and worked five days a week in the Ladle Lining unit during this period, as evidenced by the posted schedules. The Union in its cross-examination of Freestone suggests that the grievants may have been filling temporary vacancies but submits no testimony or evidence to establish this point.

Thus, the issue here is joined on this question: whether an employee occupying a permanent vacancy in one line of progression must demote to the Labor Pool to be eligible to bid for a permanent opening in the bottom job of another line of progression - in short, whether lateral bids, from one line of progression to another, are prohibited under the Local Seniority Agreement. As the Company points out, were lateral bids permitted under this Agreement the parties would not have had to spell out in the agreed-upon Open Hearth Line of Progression Chart that employees in the Stocker job and in the Checker Blower line of progression may move laterally to the bottom job in the Helper line of progression. Grievanceman Tippets testified that he believes that the Company had trouble filling the Helper jobs and therefore made arrangements with the Union for these lateral moves. But again, as the Company argues, if employees were free to bid across unit lines, the Third Helper job would be open to employees in any line of progression.
Thus, the Union is not persuasive when it argues that the Company's construction of the Seniority Agreement brings about a situation with which it cannot live - the fact that an employee must waive his seniority rights in a line of progression by demoting to Labor in order to bid into another line of progression. This is precisely how the parties have interpreted and applied the Seniority Agreement over the years. In evidence are five instances of employees who demoted to Labor in order to be able to bid for jobs in other lines of progression (one in 1955, two in 1957, one in 1958 and one in 1962). They signed voluntary demotion forms, which have the language, "I understand that in doing this I demoting to Labor I relinquish all seniority rights in the" vacated line of progression. One of these employees is grievant Lindsay, who, according to the uncontradicted testimony of Freestone, demoted to Labor in 1955 from the Third Helper job to bid for the Stopper Maker Helper job.

Also in the record are five cases of employees who bid for bottom jobs in various lines of progression between 1948 and 1956 and who would have been entitled to the openings on the basis of their length of service. In each case the employee was disqualified because he was classified in an occupation in a line of progression other than that in which the opening became available. Finally, the 26 examples of postings for the bottom jobs between 1950 and 1964, referred to above, have always included language limiting applicants to employees in the Labor job or its equivalent.

The Union relies on two instances of seemingly opposing practice. As to the first, Greenland testified that he bid from the Pump Operator job to the bottom job of another line of progression. But, according to Freestone, Greenland was a Laborer at the time, filling temporary vacancies during the vacation period. He would therefore have been eligible as a Laborer to bid into the bottom job of any line of progression. Concerning the second case, which involved three employees, the Company suggests that they also could have moved up from Labor on a temporary basis or that there may not have been other bidders for the vacancy. In the light of the Company's evidence and the explanation for Greenland's experience, there is a strong presumption that one or the other of the suggested reasons accounts for this one instance.
The Union also refers to the fact that in connection with the withdrawal of the Youd grievance, which involved the same question of cross bidding raised here, it was agreed that, "The parties at the local level will meet promptly to attempt to resolve the issue presented by this grievance." (Company letter to Union, dated February 3, 1960, Company Exhibit G.) This action, the Union argues, means that no practice regarding lateral bidding had developed by that date and that the matter was referred to the parties at the local level for negotiation. The Union adds that while the parties have since discussed the question, no agreement has been concluded. And Grievanceman Tippets testified that in Step 2 of the instant grievance the Company "indicated that there was a possibility of an agreement to be worked out on this problem, since we had instituted another grievance, that it obviously was still a question and a problem that had to be solved."

But in view of the fact that the Seniority Agreement has been consistently applied, both before and since the withdrawal of the Youd grievance, to prohibit lateral bids, the Union's contention is not persuasive. A more reasonable explanation is that the prohibition against cross bidding has become a problem for the Union and that the Company agreed to meet with the Union in an attempt to reach agreement on a modification of the Seniority Agreement which would solve this problem.

Until the parties themselves change the Agreement, however, the Board has no alternative but to decide the grievance under the Agreement, as it has been interpreted and applied with respect to cross bidding. Accordingly, the grievance must be denied, since the grievants were not eligible to bid for the openings in question while they held permanent jobs in another line of progression.
AWARD

The grievance is denied.

Findings and Award recommended by

Eli Rock, Arbitrator

This is a decision of the Board of Arbitration, recommended in accordance with Section 7-J of the Agreement.

Sylvester Garrett, Chairman