1-7-1965

United States Steel Corporation Gary Steel Works and United Steelworkers of America Local Union 1014

Sylvester Garrett
Chairman

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BOARD OF ARBITRATION

Case USC-1896

January 7, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Gary Steel Works

and

Grievance No. A-63-72

UNITED STEELWORKERS OF AMERICA
Local Union No. 1014

Subject: Incentive Administration.

Statement of the Grievance: "I, Steve Bazin, Grievance Com- mitteeman of Division #4, Local Union #1014, am filing a Union Grievance, contending that Management is in violation of Section 1, 6, and 9 of the April 6, 1962 Labor Agreement, when they installed Incentive Applications Nos. 874 and 875 unilaterally. Included in the installations are Standards Improvement Awards, with a buy-back feature that is contrary to the provisions of Section 9 of the April 6, 1962 Labor Agreement. Therefore, the Union contends Management cannot apply the Standards Improvement Award, nor, the buy-back feature included in Applica- tions Nos. 874 and 875.

"We therefore request that Manage- ment delete from the above Applications those features (Standards Improvement Award, and buy-back of the Plans after six months) that are contrary and in- applicable under our Labor Agreement."
This grievance was filed in the Second Step of the grievance procedure April 11, 1963.


Statement of the Award: The grievance in this case was filed properly as a Union grievance. The requested remedial action cannot be granted, however, and the case is returned to the parties for further consideration in Step 4 in light of the fact that the Company's unilateral policy, protested in this grievance, is in conflict with Sections 9-C and 9-F. If the parties do not dispose of the problem reflected in this case within 90 days from the date of this Award, the case may be returned to the Board for such further proceedings as may be necessary, unless the parties agree to extension of the 90-day period.
This grievance from the 160"/210" Plate Mill Roll Shop, Central Mills Division, Gary Steel Works, claims violation of Sections 1, 6 and 9 of the April 6, 1962 Agreement, because Management installed two Roll Shop incentives with "buy-back" features which the Union deems contrary to the requirements of Section 9-C-2.

The two disputed incentives cover Roll Grinders and Shear Knife Grinders. At issue is the propriety of the following provisions as set forth in the Roll Grinder incentive brochure (and duplicated in the Shear Knife Grinder brochure):

"Section VA - Determination of a Standards Improvement Award"

"The average index of measured performance shall be calculated for all Roll Grinders combined at the conclusion of the first 20 weeks of each 26-week period ending on or about March 1 and September 1 of each year, following the installation of this incentive application. Such a 20-week period will be known as an experience period.

"1. No standards improvement award will be calculated if (a) the average index of measured performance for the experience period is equal to or less than the standards improvement award level; or (b) the incentive application has been inoperative during 10 or more weeks of the experience period as a result of causes such as no scheduled operations or cancellation of the incentive.

"2. The incentive application will be adjusted and a standards improvement award calculated if the average index of measured performance for the experience period is greater than the standards improvement award level.

"a. The extent of adjustment shall be such that when the adjusted incentive is applied to the experience period, the resulting average index of measured performance will be equal to the standards improvement award level. Standard time values may be adjusted selectively or in a uniform amount for all standards to bring about this result, as management deems proper."
"b. The standards improvement award for each job covered by the incentive being adjusted shall equal the total man hours worked on measured work on the job during the 20-week experience period times the difference between the average index of measured performance for the period before and after adjustment times the standard hourly wage rate of the job times 5.

c. The adjusted incentive will be effective as of the start of the first pay period of the next following 26-week period beginning on or about March 1 or Sept. 1 as the case may be.

d. The standards improvement award for each job shall be apportioned among the employees identified as incumbents of the job in accordance with the procedures of the following paragraph 2-e. During the 26-week period immediately preceding the date the adjusted incentive is effective, the hours worked on the job by each such incumbent shall be calculated as a proportion of the total hours worked on the job by all incumbents. The amount due each incumbent shall be this proportion of the total standards improvement award calculated for the job and shall be paid as a lump sum shortly after the adjusted incentive is effective.

"Hours spent on measured or unmeasured work shall be included in these calculations. However, hours spent on non-incentive work or any hours coded using sub code 39 shall be excluded from the calculations.

e. Incumbents of the job for standards improvement award purposes include all employees who worked on the job during the 26-week period immediately preceding the date the adjusted incentive is effective except: (1) those who quit, were discharged, died, retired, or were non-temporarily transferred outside the bargaining units at
the plant during such 26-week period; and (2) those who, as of the date the adjusted incentive is effective, are on leave of absence (other than disability) or in military service.

"Illustration

"Assume the data for a 20-week experience period is as follows:

<table>
<thead>
<tr>
<th>Roll Grinder</th>
<th>Total Actual Hours on Measured Work</th>
<th>Total Earned Standard Hours</th>
<th>Average Index of Measured Performance</th>
<th>Index of Measured Performance After Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1040</td>
<td>1512</td>
<td>135%</td>
<td>130%</td>
</tr>
<tr>
<td>B</td>
<td>208</td>
<td>1120</td>
<td>135%</td>
<td>130%</td>
</tr>
<tr>
<td>C</td>
<td>208</td>
<td>1120</td>
<td>135%</td>
<td>130%</td>
</tr>
</tbody>
</table>

Calculation of the Standards Improvement Award

Total Award = 1120 x (1.35-1.30) x $2.73 x 5 = $764.40

Distribution of the Standards Improvement Award to Individual Employees

<table>
<thead>
<tr>
<th>Roll Grinder</th>
<th>Hours Worked During 26-Week Period</th>
<th>Proportion</th>
<th>Individual Standards Improvement Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1040</td>
<td>.714</td>
<td>$ 545.78</td>
</tr>
<tr>
<td>B</td>
<td>208</td>
<td>.143</td>
<td>109.31</td>
</tr>
<tr>
<td>C</td>
<td>208</td>
<td>.143</td>
<td>109.31</td>
</tr>
</tbody>
</table>

| Totals       | 1456                               | 1.000      | $ 764.40                               |

* Hours of qualified incumbents on measured and unmeasured work only. Non-incentive hours or hours coded 39 are excluded from all the above calculations."
Since its installation in February of 1963, the Knife Grinder incentive (Application No. 875) produced incentive earnings in only a few periods. Meanwhile, the Roll Grinder incentive paid off handsomely: there have been three payments of Standards Improvement Awards, with the standards being revised downward each time. During the first experience period, the Roll Grinder Index of Measured Performance averaged 166.5%, and a total Standards Improvement Award of $3600.15 was paid. Even after two substantial downward revisions of the standards (on September 1, 1963 and March 1, 1964) earnings continued at levels generally above 130%. The average Index of Measured Performance for 13 pay periods ending August 22, 1964 was 141.5%, and produced a third Standards Improvement Award and reduction in standards.

The present grievance was filed by Grievance Committee­man Bazin (Division No. 4), since no employee working under either incentive was willing to file a grievance. The grievance claims failure of Management to observe an obligation to the Union in that the unilateral installation of a Standards Improvement Award incentive violates collectively bargained requirements of the Agreement. It requests deletion of the Standards Improvement Award and "buy-back" provisions from each of the disputed incentives. It is the Union view that Section 9-C-2 does not permit Management to write into an incentive a provision for changing the standards on some basis other than those specified in Section 9-C-2, as follows:

"The following shall apply to the adjustments or replacements of incentives:

"a. The Company shall adjust an incentive to preserve its integrity when it requires modification to reflect new or changed conditions which are not sufficiently extensive to require cancellation and replacement of the incentive and which
result from mechanical improvements made by the Company in the interest of improved methods or products, or from changes in equipment, manufacturing processes or methods, materials processed, or quality or manufacturing standards. Such adjustment shall be made effective as of the date of the new or changed conditions requiring it and shall be established in accordance with the procedure set forth in Section 9-C-5 below.

"b. The Company shall establish a new incentive to replace an existing incentive when such new or changed conditions as defined in Paragraph 2-a above are of such magnitude that replacement of the incentive is required.

c. In the event that an incentive is to be replaced pursuant to Paragraph 2-b above, and such replacement incentive is not ready for installation, the Company shall establish an interim period, until such incentive is applied..."

Since the SIA and "buy-back" provisions in the incentive brochures allow the Company to make periodic revisions and adjustments in the standards even though there are no changed conditions within the scope of Section 9-C-2, the Union believes the violation of the Agreement to be open and palpable in this case.

The Company urges that there is no proper grievance for the Board to consider here since none of the affected employees are grievants. And, in any event, it says, the installation of incentives including SIA and "buy-back" provisions does not violate Section 9-C-2 or any other provision of the Agreement.
The Company stresses that Section 9-C-3-d permits the filing of a grievance (protesting the equitability of earnings under an incentive) only by "employees affected." Since incentives, in the Company view, "are personal to the employees affected," only such employees can grieve as to them. The Company also suggests that installation and administration of incentives can "create no problems which can be identified as being productive of obligations of the Company to the Union as such." The Company here cites decisions in Cases A-332, -343, -344; A-890; N-270; N-315; and T-750.

As to the merits, the Company finds nothing in the Labor Agreement to bar installation of incentives including SIA and "buy-back" provisions. It stresses that Section 9 does not define or limit the types of incentive which Management may install, except to the extent that Section 9-B-2-b contemplates that the established hourly wage rate under Section 9-B-1 shall be the base rate of pay for any incentive applied to the given job after April 22, 1947. The Company relies on earlier Board decisions where the Opinions included the following language:

A-372:

"Any evidence which reasonable men would regard as significant in determining what compensation should be attainable under a new incentive will be received by the Board and given such weight as seems appropriate. The Board rejected both the Company and the Union theories as to how new incentives should be established. It is equally clear that the Board has no authority itself to develop any theory of incentive compensation. The only alternative left to the Board is to apply the test of 'equitable incentive compensation' as best it can under the facts of each individual case and in the light of whatever guidance may be found in the Agreement."

(Underlining supplied.)
USC-316:

"First, Management enjoys the initiative - except as limited by terms of the Agreement - to select the type of incentive which it chooses to install.

"Second, the particular engineering methods developed and applied by the Company in the exercise of its initiative cannot be modified or set aside by the Board except to the extent that they might be shown in a particular grievance to fail to meet the standards established by the Agreement.

"Third, the major criterion in the Agreement for testing the validity of Management action in regard to any given incentive installation is whether it provides 'equitable incentive compensation' in conformity with Section 9-C-3-d.

"Thus the Board cannot, on the basis of an abstract or theoretical line of reasoning, now hold that any given approach of Management to the establishment of standards for various groups of jobs thereby fails to meet the standards of the Agreement."

USC-348:

"In USC-316, the Union urged the Board to test the equitability of an incentive by actual earnings yield, over representative periods, as the only feasible method of evaluating the incentive, in light of all relevant evidence. Now, however, the Union appears to challenge the method by which the Company determines incentive earnings for this group above a certain level."
"But if the Board were to find the particular method applied by the Company to be invalid, this could only be on the basis that some other method for dealing with 'indirect' workers was required by the Agreement.

"The problems in developing incentives for groups of this sort are not easy of solution. Many techniques have been developed and applied throughout industry with varying degrees of success. As far as the Board is aware, no perfect system - invariably producing over-all satisfactory results - yet has been or could be devised. In light of Section 9-C, and the various Board decisions thereunder, the Board cannot now in effect compel the Company to adopt a different method for establishing incentives covering these groups.

"Thus the only question which remains for the Board to settle here is:- Under all of the available evidence, are the earnings attained under the disputed incentive during a representative period 'fair, just and reasonable'?"

Against the background of these decisions the Company asserts that:

(1) The provisions in Sections 9-C-2, 9-C-3, 9-C-4, and 9-C-5 of the Basic Agreement continue fully applicable to the disputed incentives, and the Standards Improvement Award and "buy-back" provisions are merely in addition to these provisions.
(2) The changed conditions described in Section 9-C-2 (as requiring either adjustment or replacement of an incentive) are conditions "external to the incentive," whereas the Standards Improvement Award and "buy-back" provisions "are an integral part of the incentive's operating mechanism."

The Company's elaboration of this point runs as follows:

"This is how these particular incentives were designed, constructed and expected to operate. In a sense it may be said that these internal workings designed to ultimately achieve a proper balance between performance and earnings (and to reward those employees who have worked to achieve such result) have nothing to do with 'incentive...integrity' or earnings protection in the context that those terms are used in Sections 9-C-2, 9-C-3 and 9-C-4. This is not to say that incentive integrity and earnings protection as to these incentives will be ignored. On the contrary, as said before, the external changes impinging on these incentives will result in adjustment or changes accompanied by all the Labor Agreement protections applicable. These, however, will not inhibit the continuous internal workings of the incentive, the periodic awards and the standard time value revisions built into the plan, which by their very nature operate independently of, but still well within, Labor Agreement requirements properly designed for differing circumstances."
Finally, the Company holds that incentives can be protested under Section 9-C-3-d "only by a claim that equitable incentive compensation is not provided." Here it quotes as follows from the Opinion in Cases G-60, -61:

"The argument assumes that the parties locally were called upon under Section 9-C-3 of the 1947 Agreement to reach agreement upon (or pass to the Board for decision) many aspects of the Company's incentive program not related to determining whether the new incentive provided equitable incentive compensation. But under 9-C-3 the only basis for grievance (and the only issue arbitrable) was a claim that the new incentive failed to provide equitable incentive compensation. Section 9-C-3 provided only a procedure to determine questions of equitable incentive compensation, where the employees involved felt that the earnings they received under the incentive were too low and pressed a grievance."

(Emphasis supplied.)

In the Company view, the "buy-back" provisions in the disputed incentive brochures are simply features which are designed to preserve equitable incentive compensation, by tightening standards which experience suggests may be too loose. Thus, argues the Company, the "buy-back" provisions protect both parties against the inequity of earnings which "are greatly in excess of equitable incentive compensation."
FINDINGS

The Company rightly urges that the jurisdictional issue in this case is of primary importance. It appears, however, that determination of whether a proper grievance is before the Board requires essentially the same analysis as is necessary to determine whether there is any basic merit to the case.

The Agreement does not confer on the Union any broad authority to seek compliance with the Agreement, by filing grievances, whenever it believes a violation of some provision has occurred but no individual employee is willing to file a grievance in his own behalf. Relevant provisions of the Agreement were written with care, and must be effectuated in accordance with their reasonable intent. Where provisions require filing of grievances only by affected employees, the Union cannot file a valid grievance.

Thus the key question in this case (both jurisdictionally and substantively) is whether the subject matter of this grievance truly falls within the scope of Section 9-C-3-d so that only "affected employees" are entitled to grieve. On this score the Company advances the view that the "buy-back" provisions in the incentive brochures reflect matters which are "internal" to the incentive, and designed only to provide equitable incentive compensation at all times. Relying on the decision in Case USC-348 (refusing to strike down the tabular process allowance type of incentive) the Company asserts that the Board always has held that it will not tinker with the internal structure of incentives, in passing on issues of equitable incentive compensation under Section 9-C-3-d.

The "buy-back" provisions, however, are not directly involved in the actual determination of an equitable incentive compensation issue under the procedures of Section 9-C-3-d.
Rather, these provisions embody a device to reduce standards which provide equitable incentive compensation, for reasons outside the scope of Section 9-C-2. This seems apparent when it is considered that the "buy-back" provisions may operate after any issue of equitable incentive compensation has been determined (either by agreement or in arbitration) under Section 9-C-3-d. Such a device thus conflicts with the requirement of Section 9-F-2 that incentives (once installed pursuant to Section 9-C) shall remain in effect until replaced or adjusted "in accordance with" Section 9-C.

In three earlier cases the Board has indicated that it will not give effect to efforts to change (or avoid) the principles of Section 9-C by insertions in incentive brochures. The Opinion in Case G-60, -61 included the following:

"The validity of these conclusions is not impaired by the form statement, or footnote, in all post-1947 incentives, and embodies in the brochures here. The Company suggests that each post-1947 incentive brochure constituted a complete and binding local agreement, with the form footnote an integral part. This contention warrants scrutiny and discussion since, if sound, it might control the issues here to an important extent.

"The argument assumes that the parties locally were called upon under Section 9-C-3 of the 1947 Agreement to reach agreement upon (or pass to the Board for decision) many aspects of the Company's incentive program not related to determining whether the new incentive provided equitable incentive compensation. But
under 9-C-3 the only basis for grievance (and the only issue arbitrable) was a claim that the new incentive failed to provide equitable incentive compensation. Section 9-C-3 provided only a procedure to determine questions of equitable incentive compensation, where the employees involved felt that the earnings they received under the incentive were too low and pressed a grievance.

"This limited scope of 9-C-3 was recognized in Case USC-316, where the Board in effect held that issues of claimed arbitrary and unreasonable incentive grouping could be determined only on the basis of whether there was actual failure in any given instance to provide equitable incentive compensation as a result of the protested grouping of jobs under separate incentives.

"Material which Management elects to include in a brochure, but which in no way relates to determination of compensation provided, scarcely could be said thereby to become part of a binding local agreement. To hold otherwise would obstruct application of Section 9-C-2 and -3 by permitting the Company to require agreement - or determination in arbitration - concerning matters not reasonably within the scope of 9-C-3."

In a subsequent major case (USC-571) the Board ruled that the Company's insertion of a "control factor" in an incentive brochure did not, and could not, change application of Sections 9-C-2 and 9-F-2. A similar approach was applied more recently in Case USC-1529, as follows:
"It may well be, of course, that inclusion of language dealing with this latter problem seemed to the Industrial Engineers to be a reasonable precaution at this time, with construction of two major new facilities underway, and since the Accounting Department had suggested that Item VII might be ambiguous as then worded. But if this language was calculated to establish a policy in lieu of that in Section 9-C-2, there is no indication that the Union was so advised either at the March 22, 1960 meeting or thereafter.

"Assistant Grievance Committeeman Smith testified that it was his impression that the March 22, 1960 discussion (to the extent it went beyond the specific grievance) was addressed to the problem which arose when 'Appropriation and Corporation Research and Development Projects' were performed on existing facilities (as, addition of improvements to, or modification of, existing facilities). Under the circumstances, this was not an unreasonable inference on his part. It seems significant that, although he signified acceptance of the Company's answer to his pending grievance, he did not sign to indicate acceptance of the revised language of Section IV, Item VII, which was presented to him some weeks after the meeting.

"It is hardly likely, in any event, that he would have agreed to the new language had he been told in so many words that its effect
was to supplant application of Section 9-C-2 in certain situations, the very intent now claimed in this case. And there is no showing that the new language actually was discussed at all in the March 22, 1960 meeting.

"Finally, to the extent that application of Section 9-C otherwise is clear under the present facts, this result may not be avoided even if Smith had agreed to it on March 22, 1960."

The hearing made clear that the "buy-back" provisions of the present incentive brochures represent merely two local applications of a new Management policy which is applicable in all plants in the bargaining unit. By hearing time, around 40 incentive brochures had been installed with "buy-back" provisions. Some apparently were installed under Section 9-C-1, and others under Section 9-C-2.

It thus appears that, since negotiation of the present Basic Agreement, a major policy change affecting administration of incentives has taken place unilaterally and in conflict with policies embodied in Sections 9-C and 9-F. This reflects not merely an erroneous application of an existing provision of the Agreement; rather it comprises an effort to change the rules established in the Agreement without engaging in the collective bargaining which must precede any such change. Unilateral action of this sort, therefore, raises a question of compliance with the intent of the Recognition clause, since that clause includes the language:
"The provisions of this Agreement constitute the sole procedure for the processing and settlement of any claim by an employee or the Union of a violation by the Company of this Agreement."

(Underscoring added.)

The record here establishes that the Company was not authorized to embrace the SIA and "buy-back" program for incentive administration, during the life of the April 6, 1962 Agreement, without first obtaining agreement of the Union through collective bargaining. The present case thus does not involve simply a violation of an existing provision of the Agreement, but instead protests bypassing of the Union, as the collective bargaining representative of the employees in the bargaining unit, by unilateral adoption of a program so foreign to the negotiated provisions of Sections 9-C and 9-F-2 as to constitute unilateral amendment of the April 6, 1962 Agreement. These circumstances establish violation of an obligation owed to the Union as such. To avoid future misunderstanding, however, it should be emphasized that this holding rests entirely upon the unique facts of this case; it represents no precedent for the view that the Union on its own initiative may process grievances which merely protest erroneous interpretations or applications of existing provisions of the Basic Agreement.

In its present form, however, this case is not ripe for final decision. It may be that such a decision never will become necessary, indeed, since the parties may well dispose of the broad problem underlying this case in current collective bargaining negotiations. The present case does not purport to deal with the numerous incentive brochures throughout the bargaining unit which might present related problems in different contexts. Since the obligation of the Recognition clause runs to the International
Union, and not to any single local Grievance Committee, ultimate determination of the necessary steps to be followed here must rest with the International Union.

It also should be said that the Union's present request for remedial action could not be granted under the facts as they now appear in this record. The Union requests that the two disputed incentives simply be continued in effect, with deletion of the SIA and "buy-back" provisions from the brochure. This proposal overlooks the fact that both incentives were installed in Management's discretion under Section 9-C-1, and that Management regarded the SIA and "buy-back" provisions as an integral part of each incentive. The standards, therefore, cannot be disassociated from the "buy-back" provisions by directive of the Board and continued in effect alone. Thus, the appropriate remedial action in this case, if the Union so requests, would be to direct Management to withdraw the two incentives entirely.

This is not to say that if any future incentive were to be installed after the date of this Award, with a "buy-back" provision, the Board would adopt the same view as to remedial action. Management would be proceeding in such a situation with knowledge that it was not entitled to embody such provisions in incentives unilaterally, and thus reasonably might be deemed to have accepted the risk that any such incentive might be continued in effect, save for deletion of the offensive provisions from the brochure.

AWARD

The grievance in this case was filed properly as a Union grievance. The requested remedial action cannot be granted, however, and the case is returned to the parties for further consideration in Step 4 in light of the fact that the Company's unilateral policy, protested in this grievance, is in conflict
with Sections 9-G and 9-F. If the parties do not dispose of the problem reflected in this case within 90 days from the date of this Award, the case may be returned to the Board for such further proceedings as may be necessary, unless the parties agree to extension of the 90-day period.

BOARD OF ARBITRATION

Sylvester Garrett, Chairman