

2-15-1971

United States Steel Corporation Sheet and Tin Operations Pittsburg Works and United Steelworkers of America Local Union 1440

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BOARD OF ARBITRATION

Case USS-7940-S

February 15, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Pittsburg Works

and

Grievance No. SP-70-10

UNITED STEELWORKERS OF AMERICA
Local Union No. 1440

Subject: Alleged Local Working Condition

Statement of the Grievance: "The Union charges Management with violating Past Practice, and in so doing, done away with a condition that has been in effect many, many years, in the closing of C-Gate February 22, 1970.

"The Union contends that Management has closed the C-Gate, removed the Watchman, and that in doing so has deprived certain employees (for the first time in plant history) of this entrance to the Plant. It is now necessary for employees using this gate to drive a distance of two miles to the Easterly side of the plant to make their customary entrance, which is now the only entrance for vehicular traffic.

"The Union requests that the Company re-open the C-Gate, thereby restoring the condition and practice enjoyed over the past."

Contract Provision Involved: Section 2-B of the August 1, 1968 Production and Maintenance Employees Agreement.

Grievance Data:

	<u>Date</u>
Grievance Filed:	February 26, 1970
Step 2 Meeting:	Not Applicable
Appealed to Step 3:	Not Applicable
Step 3 Meeting:	April 7, 1970
Appealed to Step 4:	May 5, 1970
Step 4 Meeting:	June 29, 1970
Appealed to Arbitration:	July 24, 1970
Case Heard:	October 29, 1970
Transcript Received:	None

Statement of the Award:

The grievance is denied.

BACKGROUND

USS-7940-S

In this grievance from Pittsburg Works, the Union protests the Company's closing of C-Gate as a violation of Section 2-B of the August 1, 1968 Production and Maintenance Employees Agreement.

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In recent years the principal gates providing entry into and egress from Pittsburg Works have been the Truck Gate and L-Gate on the easterly side of the plant; C-Gate on the southwest corner and the Main Gate near the employees' parking lot on the south side of the plant. A so-called Third Street Gate located on the northwest corner of the plant apparently has not been used by employees for many years having been closed when the Main Gate was opened in 1958.

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Through the years C-Gate has been used primarily for vehicular traffic. During the three-year period from November 1963 to October 1966, it was open from 6:30 a.m. to 12:30 a.m. daily. Beginning in October 1966, C-Gate was opened only from 7:30 a.m. to 3:30 p.m. Monday through Friday. Vehicular traffic in and out of the plant at other times was through the L-Gate or, in the case of trucks, through the Truck Gate opened in February 1968 and available 21 turns per week. Since February 1968 L-Gate has been open only from 7 a.m. to 5 p.m. Monday through Friday. On February 23, 1970 C-Gate was closed completely and at the same time the Main Gate was opened to vehicular traffic. Since that date the Main Gate has been opened for authorized vehicles 24 hours a day as it always has been for pedestrian traffic and the L-Gate open for vehicular traffic for 10 hours a day Monday through Friday.

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It was the final closing of C-Gate that gave rise to this grievance based essentially on the Union's claim that a local working condition exists requiring that C-Gate continue to be available to employees for their entry into and exit from

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the plant. It is said that with the closing of C-Gate, it became necessary for certain employees entering the plant to travel a considerably farther distance. It is stated further that the closing of that gate creates an access problem for ambulance and fire protection equipment entering the plant.

According to the Company the use of the C-Gate was limited to authorized vehicular traffic and, therefore, used largely by vendors, members of supervision and some salaried employees. Since the only Production and Maintenance employees issued automobile passes are Grievance Committeemen and certain other Local Union officers, the Company would hold that no Production and Maintenance employees as such have been affected by the closing of C-Gate and therefore, has lost no benefit that might be derived from the existence of that gate. It theorizes that these Local Union officers who have been given car passes have been given them not in their capacity as employees but rather as Union officers. These employees have now been given permission to drive in and out of the plant at Main Gate.

Furthermore, the Company contends that the existence or use of a particular gate as a means of entering or leaving the plant is not the kind of practice that can ripen into a Section 2-B local working condition. It notes the Award in USC-354 in which the Board held that the change in gate procedure for salaried employees cannot be barred by the application of Section 2-B. In another Award relied on by the Company, N-460, the Board held that the closing of a gate on weekends did not violate Section 2-B where the employees involved continued to have reasonable access to their work station. Proceeding on the basis that only a few Production and Maintenance employees ever utilize C-Gate and then only when authorized to use their automobiles in the plant, the Company fails to see

how Production and Maintenance employees have been deprived of any benefit under Section 2-B.

At the hearing for the first time, the Union presented evidence indicating that on three days in February 1970 from 29 to 36 pedestrians entered the plant via the C-Gate. It was unable to state how many of these individuals were Production and Maintenance employees but admitted that not all of them were. It was argued, however, that some of these pedestrians were from the City of Pittsburgh located on the southwest corner of the plant from which location the C-Gate represented the closest means of entering the plant. A Union witness asserted that there were from 15 to 20 blank time cards available at C-Gate prior to its being closed for the use of employees if they desired to enter the plant through that gate.

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FINDINGS

The Union's position here is based essentially on its view that a local working condition exists at Pittsburgh Works requiring the continued availability of C-Gate for employees as a means of entering and leaving the plant. As stated in N-146, a custom or practice protected by Section 2-B "...is a usage evolved by men as a normal reaction to a recurring type situation. It must be shown to be the accepted course of conduct characteristically repeated in response to the given set of underlying circumstances..." In the same case the Board stated further as follows:

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"It is also worth noting, particularly in regard to Section 2-B-3, that the local working conditions protected are those which confer benefits upon the employees.

"In determining what constitutes a 'benefit' for this purpose, the Board must apply an objective rather than subjective test. This means that the likes or dislikes of the individual employee or employees will not determine whether a given custom or practice confers a 'benefit'.

"The real question in each case is not whether the particular individual likes the condition in question, but whether an ordinary employee in the same situation reasonably would regard the condition as conferring a substantial benefit upon him in relation to his job."

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The underlying circumstances giving rise to the existence and location of the various gates at Pittsburg Works are not clear. It does appear, however, that there was at least one instance in the past when a gate was closed to the use of employees when in 1948 the Main Gate was built and the Third Street Gate was closed to employees. In addition there have been instances where the hours during which a gate was available to employees were restricted. Thus in 1966 the availability of C-Gate itself was limited to the hours of 7:30 a.m. to 3:30 p.m. Monday through Friday whereas for at least three years prior thereto it had been open from 6:30 a.m. to 12:30 a.m. daily. Likewise, in February 1968 the usage of L-Gate, previously open 21 turns per week, was restricted--with the installation of the Truck Gate--to the hours of 7 a.m. to 5 p.m. Monday through Friday. It is not clear to what extent employees use these various gates including for that matter C-Gate, but this background does indicate that no firm pattern

has existed to the extent any single gate has been kept available.

It is clear that by far the majority of the Production and Maintenance employees enter and leave Pittsburgh Works through the Main Gate. During the grievance procedure, the Union never challenged the Company's assertion of fact that only those certain Local Union officers who have been afforded car passes ever used C-Gate. At the hearing testimony was adduced for the first time indicating that some 29 to 36 pedestrians per day entered the plant through C-Gate based on a survey made over three days in February 1970. It was never established how many of these pedestrians were Production and Maintenance employees as opposed to exempt or nonexempt salaried employees. Nor has it been shown the extent to which these individuals may have used C-Gate as their regular means of access or egress from the plant. If indeed any Production and Maintenance personnel, who are now alleged to have entered the plant on foot, viewed the existence of C-Gate as conferring a "substantial benefit upon him in relation to his job," it would seem that the Union would have developed the necessary facts to establish their position earlier in the grievance procedure and, in any event, have provided sufficient detail at the hearing to justify a finding on the extent to which pedestrian Production and Maintenance employees utilized C-Gate regularly.

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It is clear that certain Local Union officials, who are also Production and Maintenance employees, enjoyed car passes and did utilize C-Gate as a vehicular entrance to the plant. Indeed, the discussions during the grievance procedure were restricted to the subject of their contractual rights to the continued availability of C-Gate. In this connection certain undenied facts should be noted. Certain Local Union officers are the only Production and Maintenance employees issued

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car passes and it is not clear how many of them used C-Gate on a regular basis. It was also noted during the Fourth Step by a Union Representative that when these Local officers entered the plant at C-Gate they would drive within the plant to L-Gate to pick up their time cards. This comment reflects adversely not only on the importance of C-Gate as a means of entry into the plant but also raises some question as to the availability of time cards at that location.

Finally the only benefit that might flow from the continued existence of C-Gate would be that of reasonable access to the employees' work stations. It has not been established here with sufficient clarity that those Production and Maintenance employees who have used C-Gate have been deprived of such reasonable access and this is particularly true with respect to those employees who utilize their automobiles since the closing of C-Gate means only that they may have to drive somewhat farther to the Main Gate. This latter means of entry the Company states authoritatively is now available as a mode of vehicular access to the plant for those Production and Maintenance employees who hold car passes.

Under all these particular circumstances, the grievance will be denied.

AWARD

The grievance is denied.

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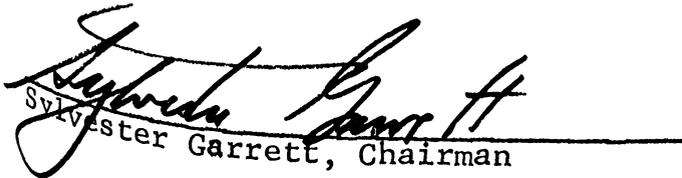
USS-7940-S

Findings and Award recommended
pursuant to Section 7-J of the
Agreement, by



Alfred C. Dybeck
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman