2-18-1966

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

Sylvester Garrett
Chairman

BOARD OF ARBITRATION

Case No. USC-1896

February 18, 1966

SUPPLEMENTAL OPINION AND AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
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 Committeeman 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 Applications Nos. 874 and 875.

"We therefore request that Management delete from the above Applications those features (Standards Improvement Award, and buy-back of the Plans after six months) that are contrary and inapplicable under our Labor Agreement."

This grievance was filed in the Second Step of the grievance procedure April 11, 1963.

Contract Provisions Involved: Sections 9-C and 9-F of the April 6, 1962 Agreement.

Statement of the Award: The grievance is sustained to the extent that as to each of the incentives here involved Management shall either (1) continue the present incentive in effect but delete therefrom all SIA provisions, or (2) withdraw such incentive in its entirety and proceed promptly to replace it with a new incentive subject to the conditions specified in the foregoing Opinion.

BACKGROUND Case No. USC-1896

On January 7, 1965 the Board issued an Award in this case from Gary Works, stating: 1

> "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."

The Opinion which accompanied the above Award dealt at some length with relevant background facts and contentions of the parties. These need not be repeated or summarized here other than to say that the underlying grievance presented a challenge to the "SIA" and "buy-back" approach to incentive administration which Management unilaterally sought to introduce during the life of the April 6, 1962 Basic Agreement. The Board found such unilateral action to be improper in that it sought to change essential rules for incentive administration embodied in the Basic Agreement and did not result from collective bargaining with the Union. 2

The above quoted Award was written with knowledge that the parties already were engaged in collective bargaining, looking toward a successor Basic Agreement to that then in effect. Thus it seemed distinctly possible to the Board that the parties could dispose of the basic problem reflected in this case in the course of the pending negotiations. 3

Shortly after the Award was issued, however, another SIA payment became due under the Roll Grinding Crew incentive brochure (with attendant reduction of standards) as of February 21, 1965. After informal conferences between the parties' 4th Step representatives, Labor Relations Manager Boughey wrote Staff Representative Howard on February 12, 1965 stating that the Company would "withdraw in their entirety" either or both of the incentives involved in this case <u>if the Union so requested</u>. 4

Mr. Boughey further advised that if the Union did not so request, within a stated period, both incentive applications would be continued in effect, including the SIA features. 5

In so advising Mr. Howard, Mr. Boughey quoted a sentence appearing under the Findings section of the January 7, 1965 Opinion in this case, which read: 6

> "Thus the appropriate remedial action in this case, if the Union so requests, would be to direct Management to withdraw the two incentives entirely."

On February 18 Mr. Howard replied by letter asking the Company to "...give some indication of its intentions with regard to covering the involved jobs with incentives, prior to a request on the Union's part for the withdrawal" of the two incentive applications. Mr. Boughey in turn replied on February 23, 1965, stating in relevant part: 7

> "If the Union requests withdrawal of either one or both of the incentive applications... the question of incentive coverage for jobs that had been covered by the withdrawn incentive would be at the discretion of the Company under the provisions of Section 9-C-1...."

On March 10, 1965, Mr. Howard wrote to the Board seeking to return the case for further proceedings. On March 16, 1965, Chairman Garrett replied stating: 8

> "This will acknowledge and thank you for your March 10, 1965 letter, requesting the Board to reopen the above case for further proceedings.
>
> "The January 7, 1965 Award in this case returned it to Step 4 for further consideration for a 90-day period. This was intended to give both parties a full opportunity to explore all possibilities of realistic settlement of the basic and far-reaching problems involved. Your March 10 letter appears to be a premature effort to return this case to the Board, unless there is some special circumstance present which is not mentioned in your letter.
>
> "Accordingly, I suggest that the parties resume the effort to settle this matter in Step 4 on a realistic basis in light of the Opinion in Case USC-1896. If settlement is not achieved within 90 days, of course, there is the further possibility that the parties will agree to extend the 90-day period in view of the collective bargaining negotiations now in progress. Should the Board ultimately find it necessary to schedule a further hearing in this case, moreover, we will request copies of minutes of all meetings which have been held as a result of the January 7, 1965 Award."

Thereafter the parties agreed to extend the 90-day 9
period (provided for negotiations in the January 7, 1965 Award) up to October 6, 1965. Shortly before expiration of this period the case was re-appealed to the Board.

At a January 7, 1966 hearing, the Union urged that 10
the Company was obliged to continue incentive coverage for the jobs involved, even if the Union requested withdrawal of the brochures including the offensive SIA provisions. In the Union view the jobs had become incentive jobs, since the SIA type incentives were installed, and so thereafter were entitled to all protections of Sections 9-C-2, 9-C-3, 9-C-4, and 9-F-2.

The Company position at the second hearing was rested 11
on a paragraph from the January 7, 1965 Opinion, as follows:

> "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."

After the January 7, 1965 Award, says the Company, the Union was given full opportunity to request withdrawal of the two incentive applications here involved. According to the Company argument, the Award gave the Union only a choice "between two specific alternatives" as to remedial action. The two alternatives available to the Union, under this interpretation of the January 7, 1965 Award, were (a) to request withdrawal of the disputed incentives in their entirety, or (b) to let the disputed incentives (including SIA features) remain in effect. 12

Since Staff Representative Howard did not reply to Mr. Boughey's February 23, 1965 letter, and never requested withdrawal of the two incentives, the Company holds that it was "literally forced" by Union inaction, to continue the two incentives in effect and to pay out Standards Improvement Awards which became due (with concomitant reductions in standards) after the January 7, 1965 Award. Finally, the Company urges that the Award is devoid of any "suggestion that the Company could unilaterally cancel out these incentives." 13

FINDINGS

The January 7, 1965 Award in this case rested on the assumption that if there were to be any fundamental change in application of Sections 9-C and 9-F-2 of the Agreement, this could be effectuated only with approval of appropriate top officials of the Corporation and the Union. 14

At the first hearing, moreover, there was no suggestion that the Company had sought to bargain collectively with appropriate International Officers of the Union as to use of the SIA technique for incentive administration. Since both incentives in this case had been installed in Management's discretion under Section 9-C-1, the Board, at that time, saw no occasion to strike them down in their entirety, on the evidence 15

presented at the first hearing. Rather, it concluded it would be appropriate simply to return the basic problem in the case to the parties so that they could bargain collectively about it to the fullest extent.

The January 7, 1965 Award therefore was not intended 16
to present only two--or any particular--alternatives to the Union. The plain purposes of the Award were to make clear (1) that the grievance properly was a Union grievance, (2) that the SIA features of the disputed incentive were in serious conflict with Sections 9-C and 9-F-2, and (3) that the parties should consider the case further in Step 4 in light of these circumstances. In shaping the Award, the Board was aware that authorized representatives of the parties already were in negotiations looking to a new Basic Agreement; it seemed reasonable to suppose that the parties would recognize that the Company's SIA program for incentive administration might appropriately be considered in such negotiations. As now is obvious, however, the parties' negotiations on this subject produced no agreement. Relevant provisions of Sections 9-C and 9-F-2 remain unchanged in the new Basic Agreement.

Now it is incumbent upon the Board to reach final 17
decision as to the status of these two incentives. The Company argument that the incentives (including the SIA features) must remain in effect, because the Union has not requested their complete withdrawal, is ingenious and understandable in the circumstances. But at the same time it is incorrect.

The argument rests essentially upon the last sentence 18
of Paragraph 25 of the January 7, 1965 Award, already quoted above. This particular sentence cannot be divorced from the rest of Paragraph 25 without obscuring the essential meaning of the full paragraph and the entire Opinion.

The first sentence of Paragraph 25 limits the scope of the entire Paragraph: it (1) refers to the Union's "present request" (i.e., before collective bargaining) and (2) is limited to "the facts as they now appear in this record." The subsequent statement that the standards as installed under Section 9-C-1 could not be disassociated from the buy-back provisions also is further limited specifically by the phrase "by directive of the Board." And finally, there is nothing in Paragraph 25 which purports to deal with the critical question of whether an SIA type incentive so withdrawn (at Union request) subsequently must be replaced with a new incentive omitting SIA features. 19

It is this latter problem which really lies at the heart of the present case. It must be dealt with realistically in light of (1) the relevant provisions of the Agreement, (2) the highly unique history of the Company's effort to introduce the SIA program, and (3) relevant earlier decisions of the Board. 20

In the present case (as well as in USS-5253-H also decided today) Management proceeded on an assumption that the SIA provisions properly might be included in an incentive installed in its discretion, when the alternative for the affected employees might be to have no incentive at all. At the second hearing there was evidence that, some months before the present grievance arose, Company officials had met with representatives of the International Office of the Union to discuss use of the SIA type of incentive. Thus, International Officers of the Union were aware of the Company's desire to introduce the SIA type of incentive, and seemingly left the door open for the Company to proceed to obtain local Union agreement to such installations. As to the present two incentives it seems that the Company hoped to be able to obtain agreement of the local Union, if only by virtue of the fact that no grievance might be filed under Section 9-C-3. 21

What may have been overlooked by some of the parties' representatives in 1962 and 1963 is the fact that no such local agreement could be effectuated without actual approval by an International Officer of the Union and the Industrial Relations Executive of the Company. It was with this in mind, moreover, that the January 7, 1965 Opinion in the present case was written. 22

Against the background of these circumstances, it seems proper to shape the remedial action in the present case on the basis of the facts as they now exist. It is clear that SIA type provisions cannot be applied any longer, either in these incentives or in any other comparable installations, absent approval by an International Officer of the Union. To comply with relevant requirements of Sections 9-C and 9-F-2 from this point forward, therefore, Management may embrace either of the following alternatives as to each of the incentives here involved: (a) continue the present incentive in effect, deleting therefrom (and hereafter giving no effect to) the disputed SIA provisions, or (b) withdraw the incentive in its entirety and replace it promptly with a new incentive in accordance with the procedure of Section 9-C-3. Any such new incentive shall be made effective as of the commencement of the first full pay period following the date of this Award, save that if necessary Management will be entitled to establish an interim period (commencing as of such date and based on average hourly earnings during the preceding three months), using for such purpose the relevant provisions of Section 9-C-2-c. 23

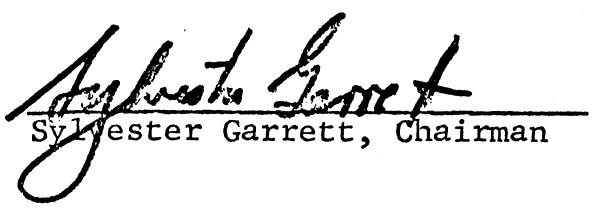
It should be clearly understood that this remedial action is addressed only to the entirely unique situation now in hand, which must be dealt with in a practical way and in all fairness to both parties. While the Company cites a decision in Case N-182 where the Board permitted it to withdraw a Section 9-C-1 incentive installation after ruling that a crew reduction was improper, without any requirement that incentive coverage be 24

continued, that case involved quite different facts from the present. There the improper crew reduction was a condition precedent to installation of any incentive at all. Here the incentives were installed with provisions which violated the Agreement, but which might never have become operative, and which could not in any event become operative until after the 60-day period provided in Section 9-C-3-d for filing a grievance contesting equitability of compensation under the incentive. Other obvious differences between the situation in Case N-182 and the present case need not be belabored here.

AWARD

The grievance is sustained to the extent that as to each of the incentives here involved Management shall either (1) continue the present incentive in effect but delete therefrom all SIA provisions, or (2) withdraw such incentive in its entirety and proceed promptly to replace it with a new incentive subject to the conditions specified in the foregoing Opinion.

BOARD OF ARBITRATION



Sylvester Garrett, Chairman