United States Steel Corporation Sheet and Tin Operations Gary Sheet and Tin Works and United Steelworkers of America Local Union 1066

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BOARD OF ARBITRATION

Case USS-4910-S

August 5, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Sheet and Tin Operations
Gary Sheet and Tin Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1066

Grievance No. A-64-65

Subject: Determination of Appropriate Seniority Units and Incentive Administration.

Statement of the Grievance: "We the undersigned, for ourselves and on behalf of all other employees similarly affected, employees of the Sheet Mill Finishing Dept., Sheet Mill Cold Reduction Dept., and Metallurgical and Inspection Dept., request that the jobs established in the North Sheet Mill be incorporated in the appropriate seniority units of the affected departments. We further request compensation for all money lost, rates of pay to be based on the average earnings of the jobs being replaced."

This grievance was filed in the Third Step of the grievance procedure April 4, 1964.

Statement of the Award: The grievance is denied insofar as it seeks application of Section 9-C-2-(b) and Section 9-C-4 to jobs in the new North Sheet Mill facilities. It is returned to the parties for negotiation and settlement of problems under Section 13-B, in light of this Opinion. If the parties are unable to reach agreement on the Section 13-B issues within 90 days from the date of this Award, the case may be returned to the Board for final decision.
This grievance from the Sheet Mill Finishing Department, of the Sheet Mill Cold Reduction Department, and the Metallurgical and Inspection Department of the Gary Sheet and Tin Works involves incentive coverage and seniority problems under Section 9-C and Section 13-A and -B of the April 6, 1962 Agreement, as amended June 29, 1963.

The problems stem from activation of an entirely new Sheet Mill facility (known as the North Sheet Mill) about a third of a mile from older Gary Sheet and Tin facilities of like nature. The new North Sheet Mill facility went into operation about January of 1964, more than 6 months after the parties began to meet locally to deal with the seniority problems which could be anticipated as requiring solution in connection with manning the new jobs. No agreement was reached on the key issue of the "most appropriate" seniority unit or units under Section 13-B. Another problem is whether jobs in the new North Sheet Mill should be covered by incentives based upon the existing incentives in the similar old facilities and subject to the earnings protection of Section 9-C-4.

Construction of the new North Sheet Mill commenced late in 1962. This was a multi-million dollar installation, including a 4-High, 5-Stand 80" Cold Reduction Mill, a 4-High 80" Coil Temper Mill, a Slitter Line, a Recoil Line, annealing equipment, and associated roll shop, warehouse, and shipping facilities. The new facility was built to meet increasing customer demand for cold rolled product of uniform and consistent quality as to shape, thickness, surface, and metallurgical specifications greater than the capabilities of existing Gary Sheet and Tin Works units. When the new North Sheet Mill first went into operation, it seemingly was the only one of its kind in the industry capable of producing extra wide cold rolled sheet steel in thinner gauges. The new mill can produce sheets 74 inches wide in lighter gauges for which fabricators of appliances, containers, furniture, and automotive
parts have created a greatly increased demand in recent years. The new Mill can go down to .0135 in 48" wide, .015 in 62" wide, and .018 in 74" wide product. Such gauges could not be attained on the old Gary Sheet and Tin units.

A major factor in attaining superior flatness on the new facilities is the new 5-Stand Cold Reduction Mill which spreads reduction of the strip over five stands, instead of three or four. This permits light loading of the final stand, and much closer control of shape, gauge and finish than formerly possible. The size of this unit also permits closer thickness uniformity than on the older units, and the fifth stand provides additional flatness and surface control. This unit is highly automated in contrast to older facilities, with gauge control capable of more rapid response than earlier control systems.

The new 80" 4-High Coil Temper Mill unit features speeds up to 4500 feet per minute, individual back-up roll drives, and hydraulic roll contour control. It produces a hitherto unattainable high degree of quality as to flatness and metallurgical requirements on strip up to 74" wide.

 Auxiliary units in the North Mill also have features which distinguish them from the older units, such as the Slitter, capable of side trimming and slitting sheet product up to 74" wide and involving 12 strands.

It is not clear just when the parties first began to consider the seniority problems which would arise in manning the new facilities. There was some exchange of correspondence as early as April 9, 1963, with the Union requesting an early meeting, and Management ultimately suggesting that a meeting
be held July 1, 1963. Local President Kranz meanwhile appointed a "special committee" to meet with Management for the purpose of working out the necessary seniority arrangements. Management initially refused to meet with the special committee because it included members other than the Grievance Committee. The original special committee was reduced to four persons who also were members of the Grievance Committee, but they still apparently were designated by Local President Kranz rather than by the Grievance Committee itself. The Grievance Committee at Gary Sheet and Tin includes 10 members.

The first meeting between Management and the special committee took place on July 1, 1963. At the outset, the special committee chairman, Philip Linoski, in part stated that the existing seniority units in the Gary Sheet and Tin facilities should be extended to cover the comparable operations in the new North Sheet Mill. As to this the Company replied negatively, stressing that the facilities were entirely new and designed to bring new business to Gary Sheet and Tin Mill. Company Minutes of this meeting reveal that Personnel Services Superintendent Leeming here "emphasized Management's intention to set up the new operating area as a separate and distinct seniority unit composed of new jobs on new units installed to increase plant product capacity." The Company Minutes also include the following:

"Mr. Leeming commented that these new facilities are intended to obtain for us a share of the sheet business which we have never before gotten. He stressed the fact that these are additional facilities which will enable us to produce a product which will compete on the open market for business which we have not been able to attract."
Copies of Company Minutes of this and subsequent meetings with the special committee were not provided to the Union until about a week before the hearing in this case. A second meeting with the special committee took place on August 3, 1963, and the following excerpts from the Company Minutes seem particularly pertinent for present purposes:

"Mr. Linoski asked which of the current sections of the plant will be affected the most by operation of the new facilities. Mr. Bills replied that if Mr. Linoski were inquiring in terms of elimination of jobs, there need not be any relationship since this new area provides additional equipment expected to attract extra business which we have never been able to get. He said that, on the other hand, if Mr. Linoski were referring to similarity of operations indicating the possibility of filling most of the new jobs from these areas, he would say that the primary relationships were with the present Sheet Cold Reduction and Sheet Finishing areas. He added that Messrs. Bokash and Monroney represent employees manning the great bulk of presently similar operations. Mr. Linoski asked how many employees would ultimately be involved in the new area. Mr. Bills replied that it would be difficult to predict an exact figure since many factors, such as rate of operations, unit performance, and other variables, are involved. He added that the best educated guess made early in the game was that 350 people total would be required at normal.
"Mr. Sourlis said that the Union is deeply interested in the manner in which people will be selected to go into the new jobs. Mr. Leeming pointed out that since this is new and additional equipment, the manner in which these employees are chosen falls under the coverage of Section 13-N of the Basic Labor Agreement. Since probably no employees will be displaced as a result of the operation of this equipment, 13-N-1-a & b will not be applicable which leaves groups covered by 13-N-1-c & d to be given full attention. Mr. Leeming added that since these are new jobs they will be described and classified and negotiated with the Union following a reasonable shake-down period. Base rates so established will be used to pay the new employees; no incentives will be in effect immediately and when they are they will be installed under the provisions of 9-C-1 with no relationship to existing plans in other areas; and no new incentive differential. He said that we intend to post the availability of jobs probably at the gates and at the Employment Office. Mr. Linoski suggested that the new jobs be posted in areas of similar operations in the same locations where work schedules are posted since this is where the matter will receive the most attention. Messrs. Bills and Leeming agreed that this approach would be okay and that perhaps we should skip the gate posting. Mr. Sutherland interposed that he favors gate posting since at least one of these locations would be near the Employment Office where requests for transfer could be filed.
"Messrs. Monroney and Linoski said that they realized that the Company is not expending enormous sums of money for nothing and they suggested that to further assure the success of the venture the parties should make sure that displaced employees are given every consideration for placement in the new area. Mr. Leeming repeated that the situation definitely falls under the provisions of 13-N of the Agreement and he pointed out that we have certain matters requiring deliberation under that section. For example, he said, the parties must seek agreement on whether the length of service considered should be plant, department, unit, or job service. They should seek agreement on standards to determine qualifications on which selection of assignees will be based. He said that should the parties fail to agree on such standards Management has the right to require applicants to have necessary qualifications for performing the job, for absorbing such training as is to be offered, and for advancement in the promotional sequence to the extent necessary to assure efficient operation of the new facilities.

"Mr. Sourlis inquired as to whether we are contemplating a complete separate organization comprised of new seniority units. Mr. Leeming replied that these are our plans. New units will be set up and the Local Seniority Agreement amended accordingly. We will at the proper time, he said, discuss and negotiate promotional charts. These developments, he stated, can be
handled by the individual Grievance Committee-man and the Superintendents involved; whereas this group should continue to meet to discuss broad scale problems.

"Mr. Linoski said at the conclusion of this meeting the Union members would return to the Union Hall for a discussion of the whole matter. He asked for an early meeting with Management to again exchange information and attempt to reach conclusions. Mr. Leeming requested that Mr. Linoski call him early Monday morning, August 12, to make an appointment for the next meeting."

(Emphasis supplied.)

At the next meeting on August 13, some of the salient points of discussion are reflected in the following excerpts from the Company Minutes:

"Mr. Leeming stated that it should be clearly understood by the Union representatives that in manning these new facilities Management intends to follow the provisions of Section 13-N of the Basic Labor Agreement. He also stated that in manning these new facilities there are other factors beside service to be considered.

... ... ...
"Mr. Bokash stated that he was interested in discussing the question of rates of pay for the jobs in the new area. Mr. Leeming stated that all of the positions connected with these new facilities would be new jobs. He stated that as new jobs on new facilities it would be Management's intention of covering these jobs with an incentive plan as soon as it became practical to do so.

"Mr. Linoski stated that another item of concern to the Union involves the status of employees who request and are given transfers to the new area. He said the question is whether this employee immediately gives up his seniority list status in the area from which transferred or is there to be a trial period. Considerable discussion ensued on this point with Mr. Hinchman expressing a preference of permitting the transferred employee to return to his former job within a limited period of time if he became dissatisfied in the new area. Mr. Sutherland favored a two week trial period while Mr. Bokash said that two weeks was not long enough.

"Mr. Leeming said that Management could go along with no seniority list changes for a period of approximately two weeks. He said that in addition to the employee wanting to return to his former job, there may be a situation where Management may determine during this period that the employee cannot
satisfactorily perform the new job and must be returned to his former job. Mr. Leeming then suggested that before arriving at any definite understanding we should proceed to post certain job openings and then wait to see what the response will be from the employees. He said Management will interview the job applicants and as a result of this action we can determine the best course to follow. He said that if the employee response is favorable and qualified employees apply, the parties can then agree on procedures."

Another meeting occurred on August 28, with Company Minutes indicating the following:

"Mr. Leeming at this point stated that it is realized that several approaches might be used in filling personnel needs for additional crews. For example, he said, we might post at this time only until the crews needed at present are filled and then, in effect, repost to select additional crews as needed. On the other hand, he stated, we could maintain the current posting in effect until all personnel requirements for normal operations have been met with the understanding that personnel for the second and third crews would not be physically transferred to the new area until actually needed. Mr. Linoski remarked that this latter method might serve to avoid subsequent penalties to people going into the area on the earlier transfers in the event that a cutback in operations ensues. He
said that one of the fears that the Union has about this matter is that some employees will hold back on requesting transfers until they see how the operation is going, and then seek to move into the new area at some time in the future and remain there in the event of a cut-back under the protection of relatively high plant seniority. In other words, he said, this might provide a chance for them to use their plant seniority to their best advantage in the two areas at one time, whereas if the crews are all chosen now, even though some are not taken into the new area until later, the relative seniority situation will be settled once and for all in the beginning. Mr. Leeming remarked that he understood Mr. Linoski's reservations concerning the possibility of unfavorable conflicts in the future but added that he is certain that many of these unfavorable aspects posed by Mr. Linoski are a product of our seniority system in this plant and can not be avoided entirely. He pointed out that this is why he had originally, as required in Section 13-N of the Labor Agreement, questioned the Union concerning their thoughts on whether or not the length of service considered in this situation should be plant, department, unit, or job service. He said that job seniority would obviously supply the greatest protection to employees making early application to transfer. Mr. Linoski quickly made it apparent that the Union could not agree to a change from plant service in this situation. Mr. Hinchman said it appeared to him that the net result of this discussion seemed to be agreement that the right course is to select three crews at once and take them over as needed. This statement was not disputed.
"Mr. Leeming then asked if the parties could agree on criteria for qualifications for the new jobs. He quoted the provisions of 13-N-2 of the Basic Labor Agreement requiring that the parties seek agreement on such standards. In the event of failure to reach agreement on this matter, he said, Management shall have the right to require applicants to not only have the necessary qualifications for performing a job in question but, in addition, may require that such employees be able to absorb training which may be offered and to make advancement in the promotional sequence to the extent necessary to assure efficient operation of the new facilities. Mr. Linoski commented that the Union's position is and always has been that anyone can do a job if given a chance and the proper training. Mr. Monroney added that the Union can not be in a position of helping Management to select personnel and then bear the brunt of later repercussions if such arise. Mr. Leeming replied that he is aware of the classic Union position in this matter and made it clear that he was attempting to conform to the requirements of 13-N. Mr. Monroney stated that there is only one criteria in these matters and that is plant seniority. He said that if an employee has done a job on like equipment or in like areas of requirement before, he can do it again. Mr. Leeming at this point asked the Union's feeling with respect to a time limit for final regular job status in the new area. Mr. Linoski said that the Union will probably advocate regular list status for employees being transferred as soon as they go over to the new area. He stated that the final Union position would be expressed later.
"Mr. Monroney pointed out that he had on occasions in the recent past disabused the minds of employees of the idea that Management might ultimately be forced into the position of requesting qualified employees to transfer to the new jobs and so be required to afford these people average job earnings protection. He said that he had advised these people not to labor under that illusion since he was certain that the required personnel would be selected and trained without the necessity of Management requesting certain individuals to go over, in effect, at Management's request. Mr. Hinchman interposed that there should be no misconceptions in anybody's mind about the pay situation. He said that the rates of pay situation in both the old and the new areas is explained in detail in each case during the initial interview with employees seeking transfer."

Company Minutes of a September 30, 1963 meeting include the following points of particular interest for present purposes:

"Mr. Leeming observed that postings for certain operating and departmental maintenance jobs in the new Sheet Mill area have been in effect for some time. At this point Management is about ready to select personnel for the Temper Mill crews and for some Maintenance and Roll Shop jobs. He added that agreement should be sought at the present time on two items concerning transfer of people: (1) should a time limit be established for irrevocability of transfer to the new area; (2) how long will the postings remain in effect."
"With respect to item one, Mr. Linoski agreed that the matter was left open with the tentative thought that a two-week interval be set as a time limit for both the prospective transferree and Management to reach decision that the transfer was final and binding. He further stated that the Union now feels that once an employee elects the transfer, the decision is immediately final. He pointed out that in other cases involving transfers from one unit to another in the plant, an immediate decision is required of the employee. Mr. Bills observed that he could visualize problems occurring no matter which way we went in the matter. Mr. Hinchman added that he had at one time felt that some time should be allowed for final decision on the part of both parties; however, his position in the matter is not as firm as it had been since many employees who applied for transfer shortly after posting occurred and who had something to lose from an earnings standpoint have, for the most part, rescinded application for transfer and thus there doesn't appear to be great possibility for employees to be unhappy about the matter of earnings later on in the game. Mr. Leeming added that this unanimity of opinion seemed to resolve the problem to the effect that once transferred to the new area an employee is immediately added to a seniority list in that area and removed from the seniority list in his prior area. He stated that as a matter of administration the regular transfer form will be used for personnel record purposes."
"Mr. Sourlis asked how we would pick Rollers from among employees who have had no similar experience and Mr. Linoski added that most people from Sheet Finishing have some knowledge of temper mill operations because of the volume of transfers during periods of fluctuating operations. Mr. Leeming referred to section 13-N as providing the basis on which selections are to be made by Management. He stated that we will go over these selections with the Union when choices are finally made and indicate the basis on which they were made. Mr. Hinchman added that we will look over each candidate's mill experience, education, and demonstrated capabilities. Mr. Sourlis asked about the possibility of future consideration for transfer of people from the old area if and when they are affected by a decrease in operations in those areas. Mr. Linoski interjected that it would be too late to help them then. He pointed out that they have their chance at the present to weigh future effects and they should take advantage of that opportunity. If they do not, he said, they have no one but themselves to blame.

"Various Union members questioned Management's intentions in connection with incentives in the new area. Mr. Bills pointed out that with respect to producing units, Management will have to obtain proper engineering data in order to establish incentive standards. He stated that it is of critical importance that incentive plans are devised to accommodate operating procedures which will satisfy
customers with respect to quality and delivery requirements and at the same time permit Management to operate the unit profitably in accordance with unit specifications. He said that he could not predict what length of time would be required to establish such standards after the startup of the equipment and added that it was his desire to avoid some of the pitfalls encountered in other areas following the startup of new equipment.

... ... ...

"Mr. Monroney inquired as to whether seniority lists would be established immediately. Mr. Leeming replied that they would be, but he pointed out that no promotional sequence charts could be established until the working groups in the operation are solidified.

... ... ...

"At this point Mr. Linoski stated that the Union committee wished to recess to the Union Hall for a discussion of all matters covered in this meeting and asked if the Union committee could reconvene with Management at 1:30 P.M. Management agreed.

"The same group representing Union and Management reconvened at 1:30 P.M. Mr. Linoski said that he had one more question which he phrased as follows: 'If you had a qualified Roller apply for a job on the new unit, would you choose him?' Mr. Hinchman replied that this was our intention. At this point Mr. Linoski remarked that the Union could see nothing wrong with Management's proposals. He said that it was the group's intention to publicize the matter in the Union paper to be printed..."
later on today. They also plan to bring the matter up for discussion on the floor during the Union meeting on October 15. Mr. Linoski inquired as to when we intend to remove job postings. Mr. Hinchman replied that it is our intention to do so when sufficient numbers for the required crews are selected. Mr. Monroney asked if we have enough applicants for two crews on jobs already posted. Mr. Hinchman replied that it appeared that we do. Mr. Linoski requested that job posting be left up until after the Union meeting on October 15."

(Emphasis supplied.)

On October 10, Local President Kranz phoned Assistant Superintendent Fissinger (Personnel Services) to advise that he had dissolved the special committee and that he would like to meet personally with Management representatives, and bring along Linoski (Chairman of the dissolved committee). Kranz explained that some employees were concerned about their lack of knowledge of Management's approach to manning the new facilities and that the Union accordingly had scheduled a special meeting to discuss the Company's plans. Kranz asserted that members of the special committee had failed to keep notes or records of the joint discussions and so were unable to report accurately on the results of their meetings.

Next day Management representatives met with Kranz and Linoski, with Chairman Wilkins of the Grievance Committee also on hand. Linoski then asked for a memorandum from the Company summarizing the results of discussion at the five meetings with the special committee. The Company later delivered the following to Linoski:
The following is a brief resume of understandings reached with the Union concerning union representation with respect to the new North Sheet Mill in five meetings dated July 1, August 8, August 13, August 28, and September 30, 1963, between Management and a Grievance Committee subcommittee of Local Union 1066.

1. Management made it clear from the outset that the new facilities represented new capacity and that new seniority unit or units would be established.

2. The Union proposed a reapportionment of Grievance Committeemen for use at the next election which would serve the double purpose of providing permanent representation for the new area as well as provide a more even balance of the number of employees represented by the various Grievance Committeemen. Management made a counter-proposal. To date no agreement has been reached excepting that during the interim period representation for the new area will be as outlined in 3 below.

3. Union representation for the new North Sheet Mill area will be handled on the basis of having like units or assignments represented by the Grievance Committeeman now associated with the similar existing area. For example, Mr. Bokash would represent the cold reduction operation including annealing, maintenance, and roll shop, while Mr.
Monroney would represent the finishing area; the same type determination would also be made for Mr. Sutherland as it pertains to accounting clerical employees and Mr. Sourlis as it pertains to metallurgical and inspection employees of the new area.

"4. Understanding was reached that persons electing to transfer to the new unit would lose their status immediately in the old unit and their names placed on a seniority list in the new area; however, promotional sequence charts and the make-up of the unit or units would be established sometime following actual startup of operations."

(Emphasis supplied.)

On October 14, Local Vice President Comer wrote Superintendent Leeming seeking a meeting to discuss Union appointment of a "committee on transfer to the new unit." This overture led to a meeting on October 22 with Leeming, Fissinger, Comer, and Wilkins present. Company Minutes of this meeting include the following items of particular interest here:

"Mr. Wilkins, Chairman of the Grievance Committee, accompanied Mr. Comer to Mr. Leeming's office on October 22. Mr. Leeming explained that he had been somewhat puzzled by the suggestion contained in Mr. Comer's letter that
a 'committee on transfer to the new unit' be established since it is well known by the Local Union that Management at Gary Sheet and Tin Mill has always held to the principle that dealings with the Union are conducted through the Grievance Committee except in cases wherein the labor agreement specifically provides otherwise. Examples of these exceptional situations, he said, are matters pertaining to job classification, contracting out, and joint safety committee meetings. He pointed out that the Local Union president had earlier in the year made a proposal for a special committee to study the matter of manning the new sheet facilities and following discussions with Management had limited membership on this committee to grievance committee personnel. This approach was accepted by Management at that time.

"Mr. Leeming further pointed out that Management has since that time held five meetings with this committee in full discussion of all matters relating to the start-up in the new area and attendant personnel problems. Mr. Leeming said that at least 10 hours had been devoted to these meetings and much additional time had been spent in developing answers to questions raised by the Union representatives which covered every conceivable aspect of the matter. He said that in addition to these question and answer sessions he had, in response to a request from Mr. Linoski, chairman of that committee, given Mr. Linoski a resume of understandings reached with the Union with respect
to the new North Sheet Mill. He added that in consideration of all these attempts made by Management to keep the Union properly and completely informed, he could see nothing to be gained from starting discussions all over again with a new group even if Management were willing to forego the principle that problems of joint importance are properly the business of the grievance committee."

(Emphasis supplied.)

During and after these discussions, Management proceeded to fill the jobs in the new North Sheet Mill in accordance with its understanding of the requirements of Section 13-N, reading:

"Manning of New Facilities"

"1. In the manning of jobs on new facilities in existing plants, the jobs shall be filled by qualified employees who apply for such jobs in the order of length of service from the following categories in the following order but subject to paragraph 2 below.

"a) Employees displaced from any facility being replaced in the plant by the new facilities.

"b) Employees being displaced as the result of the installation of the new facilities."
"c) Employees presently employed on like facilities in the plant.

d) Employees presently on layoff from like facilities in the plant.

2. The local parties shall meet to seek agreement on whether the length of service considered shall be plant service, department service, unit service or job service; and on the standards to be used to determine the qualifications entitling employees otherwise eligible to be assigned to the jobs in question.

Should the local parties fail to agree on the standards for determining qualifications, Management shall have the right to require applicants to have the necessary qualifications for performing the job, for absorbing such training as is to be offered and for advancement in the promotional sequence to the extent necessary to assure efficient operation of the new facilities.

3. Should Management deem it necessary to assign an employee to his regular job on the old facility in order to continue its efficient operation, it may do so on the basis of establishing such employee on the new job and temporarily assigning him to his former job until a suitable replacement can be trained for the job or its performance is no longer required. In such event, such employee shall be entitled to earnings not less than what he would have made had he been working on the job on which he has been established."
There seems to be no question that throughout all of these meetings discussion proceeded on the basis of Management's indication that the North Sheet Mill was to be an entirely new operation, representing additional facilities, and not in any sense a replacement of existing units. Although the parties considered various problems in connection with application of Section 13-N at length, there was no significant negotiation as to the matter of appropriate seniority units for the new jobs under Section 13-B.

The record is unclear as to what happened after October 22, 1963, but the present grievance was filed in Step 3 on April 4, 1964, signed by 218 employees. The grievance reflects the original Union position that jobs in the new facility should be included in the same seniority units as jobs in like existing facilities. It also requests that the incentive coverage on the existing facilities should be extended to the new facilities.

When jobs were filled under Section 13-N, very few Rollers or Assistant Rollers in the old mill applied, and Management accordingly had to select, and train, applicants who did not have rolling experience to fill the key rolling jobs on the new facilities. Among factors deterring employees in the old facilities from bidding for the new jobs were (1) the absence of incentives on the new jobs, (2) the advice given them that transfer to the presumably new seniority units would result in a loss of their accrued seniority rights in the existing units, and (3) the assurance that the North Sheet Mill represented new, additional capacity. The employees at this time apparently were in the dark as to what products would be run on the new equipment and as to its possible impact upon their job security because the new facility could produce the same product as produced on the existing facilities, only better.
Management seems to believe that its various discussions with the "special committee" produced binding agreements or understandings which should be of controlling importance on the Section 13-E aspect of this case. It asserts that the discussions covered establishment of new jobs to operate and service the new equipment, determination of the most appropriate seniority units for such jobs, and the establishment of incentives in its discretion under Section 9-C-1-a of the Basic Agreement rather than in accordance with Section 9-C-2-b. The Company stresses that during these meetings the Union representatives raised no serious question as to the propriety of Management's approach.

Noting that the Union representatives "participated freely in discussions relative to the problems of advertising job openings for manning the facilities under Section 13-N of the Basic Labor Agreement," the Company also suggests that the Union committee insisted that employees who accepted transfer into the new facilities should lose their accrued seniority in their old seniority units and have no right to return. The Company brief further claims that it was not until "subsequent discussions of a general reapportionment of plant seniority sections" that the Union took the position that it would not agree that the North Sheet Mill jobs should be in separate seniority units from those covering the similar pre-existing facilities.

To support its original and basic position that the new jobs should be in separate new seniority units, the Company claims that, by implication, the Union recognized that such an approach was proper. Since the new North Sheet facilities are about one-third of a mile from the older facilities, the Company stresses that this would make the filling of crew vacancies on either a daily or scheduled basis very cumbersome and administratively difficult under the existing Local Seniority
Agreement and practices. This problem is aggravated by the definite differences in operating characteristics between the old equipment and the new. Indiscriminate assignments between the two areas would be impossible, without cross training of the crews. The Company feels that such cross-assignment would endanger necessary crew specialization vital to success in market penetration for cold reduced business.

The Union relies on a claimed established practice to the effect that whenever new equipment had been placed in operation at Gary Sheet and Tin, it had been covered by pre-existing seniority units where the same, or similar, equipment was already in operation. The most recent example of this, says the Union, was the addition of a 66" Pickle Line to the old Pickle Unit in 1959. The Pickle Department had four Lines prior to the 1959 installation, all in one seniority unit. The new 66" Pickle Line was housed in a new building about 250 yards from the site of the old Lines, yet the new Line was covered by the seniority units applicable to the four old Lines.

The Union stresses that under Section 13-A of the Basic Agreement, the parties make clear that job security should increase in proportion to length of continuous service. In the Union view, it is essential to the future job security of the grievances in the older mills that they be able to move onto the jobs in the new facility. Thus the Union urges that the new equipment should be "attached to their seniority units because fluctuations in operations caused by the operation of the new equipment or elimination of jobs caused by the introduction of new equipment will adversely affect their seniority rights." The Union bears down heavily on the point that the Company from the beginning has held that the new facilities would produce new product, and seek new markets, and in no sense would replace the old facilities. The Union emphasizes that--in fact--the product of the new facilities is nearly identical to that produced on the old.
Under Section 9-C-2-b, the Union also relies on past practice of handling like problems, and asserts that in 1947 and 1948, when substantial new facilities were added at Sheet and Tin, the parties negotiated interim agreements (under Section 9-C-2) to provide earnings protection to affected employees, and the Company thereafter installed incentives which were based upon the incentive earnings experience under pre-existing incentives. In reply, the Company stresses that the 1947-48 situation was radically different from the present, since no entirely new integrated unit was added to Gary Sheet and Tin at that time. In 1947, the problem was modernization of existing equipment which, for the most part, then was abandoned. The new North Sheet Mill, in contrast, represents additional facilities, and there is no thought of abandoning the pre-existing facilities.

FINDINGS

All but a small percentage of the product run thus far on the new North Sheet Mill facilities also can be run on the pre-existing facilities at Gary Sheet and Tin, although the quality of the product might not be the same as to a more substantial percentage. Conversely, it appears that all of the product which can be run on the old facilities can be run on the new North Sheet Mill. Scheduled production has been diverted from the old facilities to the new, and vice versa. There have been slight curtailments of operations on the old facilities (and demotion of some grievants) since the new Mill went into operation, but not of a prolonged nature in view of sustained customer demand. There is no doubt that the new facilities represent added capacity, and that the Company has no intention of abandoning the older facilities since it seeks actively to expand its total market for Gary Sheet and Tin product. On the other hand, no one can predict that there will be no adverse impact of the new facilities upon the job security of employees who continue to man the old, particularly in periods of slack demand over the years ahead.
Thus it is apparent that employees in both the old and the new Sheet Mill facilities have a vital interest in sound determination of "appropriate seniority unit" issues under Section 13-B of the Basic Agreement. Insofar as here relevant, Section 13-B states:

"Determination of Seniority Units

"Seniority shall be applied in the seniority units, which may be an entire plant or any subdivision thereof, as established or agreed upon. A job may be in one seniority unit for one purpose, such as promotions, and may be in a different seniority unit for another purpose, such as layoffs.

... ...

"In any case in which local agreement cannot be consummated as to the seniority units in which a new job or new jobs are to be placed, Management shall include such job or jobs in the most appropriate seniority unit or, if more appropriate, establish a new seniority unit, subject to the grievance procedure of this Agreement."

The hard problem in this case today is precisely the same as it has been since July 1, 1963: proper determination of appropriate seniority units for the new North Sheet Mill jobs, as required under Section 13-B of the April 6, 1962 Agreement, as amended June 29, 1963.
The record here indicates, however, that the local parties have never made a serious effort to negotiate on this basic and difficult matter. This they now will have to do, since it would be entirely unsound for the Board to try to achieve what the parties should do by agreement if at all possible. Nonetheless there have been fundamental misconceptions by each party which have stood in the way of realistic negotiations under Section 13-B which now should be clarified, as follows:

1. The new North Sheet Mill operations need not be covered by new incentives within the scope of Sections 9-C-2 and 9-C-4; these new jobs instead fall under Section 9-C-1-(a).

2. The responsibility to negotiate agreements under Section 13-B falls upon the Grievance Committee, and is not subject to direction or control by the Local Union President. Any special committee established for detailed review or discussion in this connection should be appointed by, and responsible to, the Grievance Committee rather than the Local Union President.

3. There is no substance to the Company claim that the Union acquiesced in the view—or agreed by implication—that entirely separate seniority units should be established for the new North Sheet Mill jobs. The lack of such acquiescence or agreement is clear, in that

a. The Company at no time sought to negotiate on this point, but rather sought to avoid such negotiations.

b. The Company at all relevant times assured the Union that the new North Sheet Mill represented new and additional capacity to make product entirely new for Gary Sheet and Tin, and intended to capture new markets. Since all product of the old Sheet Mill can be run on the new facilities and some product now is run interchangeably, existence of the new North Sheet Mill might affect employment levels on the older facilities seriously in future periods of curtailed operations.
c. The "special committee" in any event had no authority to agree, even if any such proposal had been made by the Company; any such agreement must be made by the Grievance Committee.

4. There as yet has been no valid agreement that employees moving onto new North Sheet Mill jobs thereby terminated their seniority rights in the units from which they moved. The Local Seniority Agreement (Section V-C) indicates that such a loss of accrued seniority occurs when an employee transfers from one seniority unit into another seniority unit. As yet there has been no final determination here that the North Sheet Mill jobs fall into separate seniority units for any or all relevant purposes. Until such basic questions have been settled properly in accordance with Section 13-B, no "special committee" could agree to cut off accrued unit seniority rights of employees bidding successfully to fill new jobs in the North Sheet Mill. Since the Company insisted at all relevant times that the North Sheet Mills would be in a separate unit, the application of Section V-C of the Local Agreement would be automatic if this view were correct. Thus, as the Company presented the matter to the special committee, the only issue to "negotiate" on this point was whether operation of Section V-C should be waived or stayed. The special committee, in effect, refused to accede to either.

5. There is no substance to the Union claim that an established local working condition requires that the new North Sheet Mill facilities be included in existing seniority units. The evidence does not reveal any clear practice which could apply to the situation here involved. It is dubious, moreover, that a claimed established practice could relieve either party from the obligation to negotiate under Section 13-B. Past actions of the parties in dealing with like situations may be relevant for this purpose, but cannot be made a basis for refusal to negotiate in good faith.
6. Jobs in the new North Sheet Mill, in whole or in part, conceivably could-be in one seniority unit for promotional purposes and in another unit for layoff purposes, as specified in Section 13-B. Basic practical considerations which might make it unsound to include such jobs in the same units as the old Sheet Mill jobs for purposes of filling day-to-day or temporary vacancies, promotions, or short-range demotions in force reductions might not apply with equal force in case of long-range contractions of employment involving demotions or layoffs in either the new or old Sheet Mill facilities.

7. In negotiating as to appropriate seniority units under Section 13-B, the parties are obliged to give due consideration to the policy expressed in the initial paragraph of Section 13, as follows:

"The parties recognize that promotional opportunity and job security in event of promotions, decrease of forces, and recalls after layoffs should increase in proportion to length of continuous service, and that in the administration of this Section the intent will be that wherever practicable full consideration shall be given continuous service in such cases."

8. In view of the many and varied aspects of seniority problems which can arise in operations such as these, and the complicated nature of the Local Seniority Agreement and practices thereunder, the Board will not undertake to decide the Section 13-B issues here without a fully detailed presentation, which would reveal how the Local Seniority Agreement would apply to all phases of the problems under consideration.
9. Nothing set forth in this Opinion should be taken to indicate any fixed view by the Board as to ultimate proper disposition of the basic appropriate seniority unit problems under Section 13-B. It seems probable that the parties will recognize their mutual interest in reaching full agreement in light of this Opinion. If they are unable to shoulder this responsibility, the Board then will deal with unsettled problems in the most practical manner possible in light of Section 13-B and detailed evidence ultimately to be presented by the parties.

AWARD

The grievance is denied insofar as it seeks application of Section 9-C-2-(b) and Section 9-C-4 to jobs in the new North Sheet Mill facilities. It is returned to the parties for negotiation and settlement of problems under Section 13-B, in light of this Opinion. If the parties are unable to reach agreement on the Section 13-B issues within 90 days from the date of this Award, the case may be returned to the Board for final decision.

BOARD OF ARBITRATION

Sylvestor Garrett, Chairman