

International Brotherhood of
Electrical Workers
Local 1245

and

Pacific Gas & Electric Company

Review Case #177

San Francisco Grievance #85

Arbitration Case #8

Issue: Was the award of Job
Vacancy #2:73 to Mr. John E.
Shapansky in violation of Sec-
tion 205.14 of the Agreement
entered into by Pacific Gas &
Electric Company and Local 1245,
International Brotherhood of
Electrical Workers, AFL-CIO,
dated September 1, 1952, as
amended?

Date of Opinion: January 25, 1960

A decision on Arbitration Case #8 (involving the award of a Line Sub-foreman job to a junior bidder by reason that he was demonstrably better qualified) which agreed with the Union's position that the Company had violated Section 205.14, was handed down by the Arbitrator, Dr. Ross, on January 25, 1960.

The decision declares that "a bare recital of the procedure which led to the appointment is sufficient to show that the senior bidders were never really considered." He then points out that the Company used a poll of the Foremen without even laying a proper foundation for the ballot; no review was made of the candidates' experience, ability and qualifications, and the Foremen were not generally familiar with the work of the senior Linemen. He stated, "Few, if any, of those present were familiar with all the candidates. Nothing was done to remedy these deficiencies. The bidders were not identified; their records were not presented; their strong and weak points were not discussed. Thus, no basis was established for meaningful comparisons."

Ross then asks the question, "What should the Company have done?" In answering this question, he outlines the points which our Stewards should bear in mind when faced with filing a grievance on a by-pass of a senior bidder to those jobs where Section 205.14 is used by the Company.

"What 'consideration' does Section 205.14 require? It is not necessary to devise an elaborate system and build a voluminous record. Procedures can be reasonable and expeditious, but every bidder must be assured that ability and personal qualifications are really taken into account. The decision-making group should be familiar with the requirements of the job to be filled. The candidates should be identified. Their experience, merits and demerits should be examined. If some are obviously less qualified than others, the former can be set aside after a preliminary appraisal while the latter are considered more intensively. If a junior bidder is selected, the Company should be prepared to state why his ability and personal qualifications are considered demonstrably superior. The Company should satisfy itself on this point when the decision is made, without waiting for a grievance to be filed."

Arbitration Case #8

A principle argument of the Union that the Company must show evidence of comparisons before the decision was made was sustained. "Building the case from scratch after the grievance has been filed is another matter altogether. In that event the material must necessarily be discounted to some extent, having been developed for the sole purpose of winning an argument. Common sense tells us that after a promotion has been awarded, supervisors will not show the same impartiality as they would have shown if they had been called upon to evaluate the bidders before the fact.

"The letters supplied to the Electrical Superintendent are a good case in point. There are five of these letters. They speak highly of the junior bidder. However, under the circumstances they cannot be given great weight. They were not solicited until after the job had been awarded and the Union had filed a grievance. Not all of the Foremen replied. Furthermore, not all of the replies were submitted. The Superintendent 'discarded' some of them because he didn't consider them 'of value'."

Quoting from one of his own previous statements in the opinion rendered in Arbitration Case #4 between the Pacific Gas and Electric Company and Local Union #1245, I.B.E.W., "Considerable weight should be given to bona fide conclusions of supervisors when supported by factual evidence. In the first place, a supervisor is responsible for the efficient performance of his unit and has a legitimate concern that employees be properly assigned to achieve this objective. In the second place, he has a deeper and more intimate acquaintance with the men under his charge than an arbitrator can acquire in a brief hearing."

"In the present case, however, most of the Foremen were not equipped to make significant comparisons." He stated further that all the Foremen express a high opinion of the junior bidder, "but, 'demonstrable superiority' is a comparative concept, and the foundation was never laid for a proper comparison."

While the decision was in favor of the Union, it should be noted that where proper procedures are followed and proper evaluation of employment record indicates "demonstrable superiority", Section 205.14 can be used to make an appointment to certain jobs.

/s/ A. M. Hansen - Concur
/s/ E. C. Hersam - Dissent
/s/ D. J. McPeak - Concur
/s/ R. J. Tilson - Dissent
/s/ Arthur M. Ross, Chairman

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Review Case #177
Arbitration Case #8

In the Matter of Arbitration

between

Pacific Gas and Electric Company
San Francisco, California

and

International Brotherhood of Electrical Workers
Local Union No. 1245, AFL-CIO

ARBITRATION CASE NO. 8: APPOINTMENT

TO SUB-FOREMAN

Opinion of the Chairman

The issue to be decided in this case has been defined in the following terms:

QUESTION FOR SUBMISSION TO ARBITRATION:

Was the award of job vacancy Number 2173 to Mr. John E. Stapanek in violation of Section 205:14 of the Agreement entered into by Pacific Gas and Electric Company and Local 1245, International Brotherhood of Electrical Workers, AFL-CIO, dated September 1, 1952, as amended?

The parties have further agreed as follows:

3. If said issue is determined in Union's favor, Company will reward job vacancy Number 2173 (Line Subforeman) and will credit the employee awarded the job vacancy with classification seniority from the date Mr. Stapanek was awarded the job vacancy. (Joint Ex. 1 (a).)

Title 205 of the Agreement is entitled "Job Bidding and Promotion."

The general policy governing promotions is set forth in Section 205.1:

205.1 The following formula shall govern the interpretation of the provisions of this Title:

The factors of length of service in a department, as well as in a Division and in the System, shall be given consideration in cases of promotion, transfer to a vacancy, demotion, or lay-off. When employees within a classification are qualified by knowledge, skill and efficiency, and are physically able to perform the job, the employee with the greater length of service shall receive preference in promotion or transfer to a vacancy, and protection against demotion or lay-off on the following basis: Division lines shall not constitute an arbitrary measure or limitation in consideration of seniority, but whenever there shall be an opening in a given Division consideration will be given to the seniority of the employees within the Division before transfers to vacancies or promotions are made into such Divisions, to the end that the employees shall not be unreasonably impeded in their normal advancement within the Division. Any alleged arbitrary or discriminatory disregard of this policy shall be subject to review under the grievance procedure.

Under this Section senior bidders are given preference when they "are qualified by knowledge, skill and efficiency, and are physically able to perform the job." These requirements are underscored in Section 205.11:

205.11 Notwithstanding anything contained in this Title, Company may reject the bid of any employee who does not possess the knowledge, skill, efficiency, adaptability and physical ability required for the job on which the bid is made.

An exception to the general rule is made in Section 205.14 for three special types of jobs:

205.14 In making appointments to vacancies in jobs involving personal contact by the employee with the public, or technical jobs, or jobs in which the employee must exercise supervisory duties Company shall consider the bids of employees submitted as herein provided, but Company may nevertheless make appointment to such vacancies on the basis of ability and personal qualifications.

The job of Line Subforeman is a job "in which the employee must exercise supervisory duties" and is therefore covered by Section 205.14.

The duties of this job have been defined as follows:

LINE SUPERVISOR

An employee who is a working foreman in charge of a crew of not more than four men (exclusive of himself) engaged in construction and maintenance of overhead lines and providing electric service to customers; may be required to drive the truck. He shall have the personal qualifications of leadership and supervisory ability, the craft qualifications of a lineman and be familiar with the Company's construction and safety standards, G.O. 95, accounting procedures and other applicable rules and procedures. (Joint Ex. 5.)

Job vacancy No. 2:73 was an opening for Line Subforeman in the Electric Overhead Department, San Francisco Division. The vacancy was published April 1, 1958. Later that month John E. Szpanzky was selected for the post. Szpanzky was the seventh bidder in line of seniority, as indicated by the following tabulation:

| <u>Name</u> | <u>Classification</u> | <u>Classification Seniority Date</u> |
|--------------------|-----------------------|--|
| Arthur Szpanzky | Lineman | 11-4-48 |
| Larry Schumacher | Troublemaker | 12-6-48 |
| Walter L. Campbell | Troublemaker | 7-11-49 |
| John E. Owen, Jr. | Lineman | 10-30-50 |
| Elden F. Bigler | Lineman | 10-30-50 |
| Richard H. Butler | Lineman | 1-22-51 |
| John E. Szpanzky | Lineman | 5-28-51 |

The Union contested Szpanzky's appointment, while the Company defended it under Section 205.14. The dispute was referred to a Local Investigating Committee, which filed its report on September 3, 1958. (During this period Arthur Szpanzky withdrew his bid.) The grievance was still unsettled when 1959 contract negotiations began. Although Section 205.14 was discussed during these negotiations, no change was made. Finally the grievance was submitted to arbitration in the present proceeding.

Requirements of Section 205.14

Section 205.14, as already noted, provides that in filling "jobs in which the employee must exercise supervisory duties," the Company must

"consider the bids of employees submitted as herein provided," but "may nevertheless make appointment to such vacancies on the basis of ability and qualifications." Arbitrator Arthur C. Miller construed this language in an award of January 23, 1956 (Arbitration Case No. 6). As to the procedure for filling vacancies, he held that "the verb 'consider' and its noun 'consideration' clearly import something more than hypothetical deliberations over the bids..." On the contrary, he said, the Company has "an affirmative obligation...that it consider the bidders according to the sequence of their seniority as provided in other provisions of the Title." As to criteria for selection, he ruled that "Section 205.14 limits the seniority rights of bidders...not only by authorizing the Company to reject the bid of an employee lacking the necessary ability and personal qualifications, but by authorizing it also to appoint, from among those so qualified, an employee who demonstrably possesses ability and personal qualifications superior to those of any bidder who may be senior to him." (Joint Ex. 4, pp. 14, 17, 19.) Thus a junior bidder may be chosen only on the basis of demonstrable superiority after all bidders have been considered.

The Company was dissatisfied with the Miller award and endeavored, in the 1959 negotiations, to amend Section 205.14 in order to "exclude from the job bidding procedure all jobs involving supervisory duties." The Union initially acquiesced, but the tentative agreement failed of ratification; and the proposed amendment to Section 205.14 was dropped in the final version. Therefore the Miller award is still part of the contract, as it were. It is still binding upon the parties, and needless to say is still binding upon arbitrators.

Contentions of the Parties

The Union contends that the Shapansky appointment violates Section 205.14 in two principal respects. First, senior bidders were not given any real consideration. Second, there has not been any showing that Shapansky's ability and personal qualifications were demonstrably superior. The Company replies that its selection procedure was in conformity with Section 205.14, and that Shapansky's superiority was amply demonstrated to the Local Investigating Committee as well as the Board of Arbitration.

Lack of Consideration

A bare recital of the procedure which led to Shapansky's appointment is sufficient to show that the senior bidders were never really considered. The Electrical Superintendent called a meeting of thirteen Foremen. None of the Foremen from the Northern San Mateo (Colma) district were included, despite the fact that three bidders (Campbell, Haigler and Butler) were stationed at Colma. (Haigler and Butler had been transferred to that station in 1956.)

The Superintendent testifies that he had intended to discuss the qualifications of the various applicants, but decided on the spur of the moment to take a poll. Without mentioning any names, he asked the Foremen to write down the name of any applicant who, in their opinion, possessed outstanding qualifications above all others. All the votes except one were for Shapansky. The remaining choice was for Owens. The Foreman who had named Owens was asked why he had done so. He replied that he thought he was supposed to name the outstanding individual in his own crew. When the situation was clarified, he changed his vote and made it unanimous for Shapansky.

Foremen who testified at the hearing made it plain that no proper foundation for the ballot had been laid. The names of the bidders were not revealed. Their experience, ability and qualifications were not reviewed. And as indicated below, the Foremen were not generally familiar with the work of the senior Linemen. Quite the contrary.

A Company representative quotes the Superintendent as having remarked, during the investigation of the grievance, that the Colma foremen were not invited because they had never supervised Shapansky. (Transcript, p. 119.) The Superintendent does not recall making such a remark (Transcript, p. 127), but there is little doubt that he himself was convinced, before taking the poll, that Shapansky should be promoted.

It is self-evident that this meeting did not constitute "consideration" as required by Section 205.14. Foremen who were best equipped to evaluate several senior bidders were not even present. Few if any of those present were sufficiently acquainted with all the candidates. Nothing was done to remedy these deficiencies. The bidders were not identified; their records were not presented; their strong and weak points were not discussed. Thus no basis was established for meaningful comparisons.

The Company suggests that the Awards Committee, which formally selected Shapansky after the Electrical Superintendent had made his recommendation, may have compared and considered the various bidders. Not a shred of evidence was introduced concerning the deliberations of the Awards Committee, however. We may safely assume that if these deliberations had been significant, testimony to that effect would have been offered.

What should the Company have done? What "consideration" does Section 205.14 require? It is not necessary to devise an elaborate system and build a voluminous record. Procedures can be reasonable and expeditious, but every bidder must be assured that his ability and personal qualifications are really taken into account. The decision-making group should be familiar with the requirements of the job to be filled. The candidates should be identified. Their experiences, merits and demerits should be examined. If some are obviously less qualified than others, the former can be set aside after a preliminary appraisal while the latter are considered more intensively. If a junior bidder is selected, the Company should be prepared to state why his ability and personal qualifications are considered demonstrably superior. The Company should satisfy itself on this point when the decision is made, without waiting for a grievance to be filed.

Evaluation of "Troubleshooters"

Lines of progression have been negotiated by the parties, under which Troubleshooters and Linemen are equally entitled to bid for Line Subforeman jobs. The parties have agreed that "Troubleshooters shall accrue classification seniority in the Lineman classification for bidding to Line Subforeman." (Union Ex. 5.)

The job descriptions for Troubleshooter and Lineman are as follows:

TROUBLESHOOTER

An employee who has the qualifications of a lineman and is engaged in performing alone any work in connection with providing and maintaining service to the public, such as installing services and meters, replacing line and transformer fuses, patrolling, switching, restoring service on "no light" and "no power" calls,

handling routine gas and water maintenance, operation and complaints. In trouble and emergency work involving immediate hazard to life or property, may be required to work alone to cut circuits of over 750 volts in the clear; may be required to collect deposits and bills.

LIBERMAN

An employee who is a journeyman and is engaged in performing all classes of transmission and distribution line work. His background of apprenticeship and experience must be such as to qualify him to perform these duties with skill and efficiency.

Notwithstanding the line of progression, Electrical Overhead supervision considers Troublemakers unqualified, as a group, for Line Subforeman positions. The reasoning is that they lose contact with line construction standards as set forth in General Order 95. (Transcript, pp. 121-122, 214.)

It is perfectly true that Line Subforemen must be familiar with construction standards; the job description says so. Certainly it is possible that some Troublemakers will lose familiarity with the standards. It cannot be assumed, however, that all will do so. So long as Troublemakers remain in the line of progression, they are entitled to be judged as individuals in accordance with their respective ability and qualifications. Categorical exclusion is not permissible.

As noted above, two Troublemakers (Schumaker and Campbell) bid for the job in question. It is my view that several other bidders (Rigler, Butler, Owens and Shapansky) were demonstrably superior to Schumaker and Campbell. This opinion is based on the evidence as to ability and personal qualifications, however, and not merely on the fact that Schumaker and Campbell were Troublemakers.

Relative Ability and Qualifications

The Company endeavors to demonstrate Shapansky's superiority through several types of evidence. a) The Electrical Overhead Superintendent asked the Foremen who had attended his meeting to furnish letters explaining their choice of Shapansky. b) The Joint Investigating Committee interviewed eight members of supervision. c) Several Foremen testified at the hearing.

The Union argues that "the evidence of relative ability offered by the Company, which was evidence that did not enter into the making of the award but which was assembled later in an effort to justify the award, should be inadmissible." According to the Union, "tested simply by intuitive notions of jurisprudence such evidence should not now, for the first time, be considered in determining whether the award was made to a demonstrably superior employee." (Union Brief, p. 5.) The Company replies that "the evidence was not developed after the award -- it was only documented to prove the Company case." The Company urges that "the Union's argument is impractical...because it would impose upon Management the burden of needless investigations and record-keeping processes." In this connection the Company points out that senior bidders are promoted to Subforemen jobs in most cases; and even when a junior bidder is selected, the Union does not always file a grievance. (Company Brief, pp. 7-8.)

The Company's argument would be stronger if the various bidders had really been considered and compared before Shepansky's appointment was made. As noted above, elaborate procedures and extensive documentation are not necessary at that stage. If the candidates' ability and qualifications are properly evaluated, then the substance of the evaluation can be formalized and documented later, should it develop that a grievance must be investigated. But building the case from scratch after the grievance has been filed is another matter altogether. In that event the material must necessarily be discounted to some extent, having been developed for the sole purpose of winning an argument. Common sense tells us that after a promotion has been awarded, supervisors will not show the same impartiality as they would have shown if they had been called upon to evaluate the bidders before the fact.

The letters supplied to the Electrical Superintendent are a good case in point. There are five of these letters. (Joint Exhibit G.) They speak highly of Shepansky. However, under the circumstances they cannot be given great weight. They were not solicited until after the job had been awarded and the Union had filed a grievance. Not all of the Foremen replied. Furthermore not all of the replies were submitted. The Superintendent "discarded" some of them because he didn't consider them "of value." (Transcript, p. 141.)

As noted above, a group of Foremen who had participated in the Superintendent's meeting were witnesses at the hearing. Supervisory opinions are certainly entitled to weight in problems of this kind. In a previous arbitration between the same parties I observed:

"Considerable weight should be given to bona fide conclusions of supervisors when supported by factual evidence. In the first place, a supervisor is responsible for the efficient performance of his unit and has a legitimate concern that employees be properly assigned to achieve this objective. In the second place, he has a deeper and more intimate acquaintance with the men under his charge than an arbitrator can acquire in a brief hearing." (Pacific Gas and Electric Company, 23 LA 596, 598.)

In the present case, however, most of the Foremen were not equipped to make significant comparisons. As noted above, the bidders were not identified at the Superintendent's meeting and their qualifications were not discussed. Foreman Robinson states he did not know who they were. Foreman Regan had little knowledge of Stagnansky's work until after the award. He concedes that Schrammer, Campbell, Owens and Butler have never worked for him. He does know Haigler and considers him qualified. Foreman Grubb states that he is not in a position to compare Butler with Stagnansky. He supervised Haigler only on one occasion in 1954 or 1955. He has had little contact with Schrammer since they were Linemen together in 1947. He is not familiar with Campbell. Foreman O'Mara was Stagnansky's supervisor, but had little recent acquaintance with several of the senior bidders. (Transcript, pp. 205-29.) All these Foremen express a very high opinion of Stagnansky. But "demonstrable superiority" is a comparative concept, and the foundation was never laid for a proper comparison.

Finally there are the statements made to the Joint Investigating Committee during its study of the case between May and September of 1956. (Union Exhibit 6.) Aside from the Electrical Superintendent, eight supervisors were interviewed. Two of these testified at the hearing; the other six did not. Their comments indicate that Stagnansky was

demonstrably superior to Schmaaker and Campbell. However, there is no clear showing of superiority over Owens, Haigler or Butler.

General Foreman Bohn considered Owens qualified to become a Subforeman. Foreman Jellene stressed his great improvement and willing attitude, saying that he "anticipates work and prepares for next move." Owens was promoted to Subforeman June 6, 1958.

Turning to Haigler, we find that District Superintendent Vaccini and Assistant General Foreman McPherson both considered him qualified. They praised his work when temporarily upgraded to Subforeman. McPherson said it was like having a regular Heavy Crew Foreman. According to Foreman Beck, Haigler was well liked, worked well without supervision, and performed satisfactorily when upgraded to Foreman.

Butler was also commended by Vaccini and McPherson. They described him as qualified to be Subforeman. Foreman Wayrens stated that Butler understood the work, went right ahead, never shirked his duties and was as capable as Shapansky. He pointed out that Butler had studied at home to learn the clerical phases of the work.

As for Shapansky, General Foreman Bohn and Technical Assistant Callup each mentioned an incident in which he had performed well. Bohn said that he knows what to do in cases of trouble and assists others in carrying out the work. Foreman O'Mara, who supervised Shapansky for two and a half years, praised him enthusiastically, citing specific occurrences as well as general occurrences.

Undoubtedly Shapansky is well qualified to serve as Subforeman. The Company has not shown, however, that he was demonstrably superior to several senior bidders; nor that the senior bidders were properly

considered for the promotion. Accordingly the question submitted to arbitration must be answered in the affirmative.

DECISION

The award of job vacancy No. 2173 to Mr. John E. Szapansky was in violation of Section 205:14 of the Agreement entered into by Pacific Gas and Electric Company and Local 1245, International Brotherhood of Electrical Workers, AFL-CIO, dated September 1, 1972, as amended.

A. M. Hansen - Concur
A. M. Hansen

E. C. Hanson - Dissent
E. C. Hanson

D. J. McPeak - Concur
D. J. McPeak

R. F. Tilson - Dissent
R. F. Tilson

Arthur M. Ross
Arthur M. Ross