

In Re Arbitration

between

PACIFIC GAS & ELECTRIC COMPANY,

Employer,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION 1245,

Union.

OPINION AND AWARD

Arbitration Case No. 50

BOARD OF ARBITRATION

MORRIS L. MYERS, Chairman
DAVID J. BERGMAN, Employer Member
I. W. BONBRIGHT, Employer Member
LAWRENCE N. FOSS, Union Member
FRANK A. QUADROS, Union Member

BACKGROUND

In February, 1974, a hearing was conducted before the Board of Arbitration (herein called the "Board") in this Case No. 50, involving the interpretation of Section 3.5 of the Agreement then existing between the parties related to the right to temporary upgrades of Mr. [REDACTED] H [REDACTED] and another grievant. Basically, it was the Employer's contention that Section 3.5 applied both to temporary upgrades and permanent upgrades, whereas the Union maintained that Section 3.5 was not applicable to temporary upgrades, and that, in any event, H [REDACTED] lived within the "community" as that word had been used by the parties historically. However, before the February, 1974 hearing was completed, the Company and the Union agreed to recess it because it was believed that the case might be resolved in negotiations between the parties that were then in progress.

The negotiations resulted in an amendment to Section 3.5 by

defining "community" as meaning that an employee's residence must be located no more than 30 minutes automotive travel time from the employee's headquarters. However, Section 3.5 was not changed so as to clarify whether it applied to temporary as well as to permanent upgrades. Nevertheless, the parties entered into a Memorandum of Understanding (Jt. Ex. 2) which stated as follows:

Re: I.B.E.W., Local 1245, vs. Pacific Gas and Electric Company
Arbitration Case No. 50

The undersigned agree and understand that the above subject Arbitration Case No. 50 (R. C. Case Nos. 961 and 1162) will be reinstated on the Review Committee agenda pursuant to the following terms and conditions:

1. The Review Committee will endeavor to settle all issues involved in the said Arbitration Case No. 50 and issue a Decision with respect thereto within 30 days of the execution of this Memorandum of Understanding.

2. The Decision referred to in the foregoing Item 1 will resolve the question of temporary upgrades occurring after the date of execution of this Memorandum of Understanding as follows:

"An employee who is otherwise entitled to fill a Troublemaker or Servicemen vacancy, pursuant to the provisions of Subsections 205.3(a) and (b) of the Agreement, shall not be denied such temporary assignment because he does not reside within a commutable distance from the headquarters where the temporary vacancy occurs for the days when:

1. the schedule of the employee he is replacing does not require that he be on-call, or
2. if on such on-call days, other employees in such classification at the headquarters have volunteered to replace him on the on-call schedule."

"Schedule adjustments resulting from changes agreed to under Item 2 above shall not result in the payment of overtime during the regular hours of work of such schedule unless required by law."

"A 'commutable distance', for the purpose of this Decision shall mean not more than 30 minutes automotive travel time, under ordinary conditions, from the employee's home to the headquarters where he is filling the temporary vacancy."

3. In the event that a Review Committee Decision has not been issued within the time provided for above, the Board of Arbitration established, pursuant to the Submission Agreement in Arbitration Case No. 50, dated February 5, 1974, shall be reconvened at the earliest date upon which the parties' and the arbitrator can agree for further proceedings pursuant to said Submission Agreement.

S/ L. L. Mitchell
L. L. Mitchell
Business Manager

July 1, 1974
Date

S/ I. W. Bonbright
I. Wayland Bonbright
Manager of Industrial Relations

June 13, 1974
Date

When the above-quoted Memorandum of Understanding was transmitted to the Review Committee, its members went over the records related to H [redacted]'s case. (The other grievant's case, No. 961, in Arbitration Case No. 50 was disposed of, without prejudice, by the parties and no longer is in issue.) The Review Committee members, after such review, determined that, assuming the applicability of the quoted portion of Item 2 of the above Memorandum of Understanding to H [redacted]'s case, H [redacted] would be entitled to back pay in the amount of \$4,800.00. However, the parties--i.e., the members of the Review Committee as well as the Company and the Union as entities--disagreed as to the applicability of the quoted portion of Item 2 of the Memorandum of Understanding to the H [redacted] case, the Union taking the position that it was applicable, the Company taking the position that it was not. More specifically, the Company took the position that such quoted provisions are to be applicable only to "temporary upgrades occurring after the date of execution of this Memorandum of Understanding...",

thus excluding the H [redacted] case, whereas the Union took the position that inasmuch as the Memorandum of Understanding was identified as related to Arbitration Case No. 50, the quoted provisions are applicable to the H [redacted] case as well as to all future temporary upgrade situations.

Accordingly, a hearing was conducted before the Board on May 12, 1975, and evidence was taken at the hearing related solely to the issue as to whether or not the quoted provisions of the Memorandum of Understanding are applicable to the H [redacted] case. Post-hearing briefs were filed by the parties on or about June 23, 1975. Based upon such evidence and argument, the Board finds as follows:

DISCUSSION

It is undisputed that the Memorandum of Understanding was drafted by the Company (Tr. p. 34). Thus, based upon the well-accepted principal that in the event of an ambiguity in a contract, it should be construed against the party responsible for the language in that contract, the Board believes that the Union's position in this case must be upheld. This belief is predicated upon the following considerations.

First, the entire Memorandum of Understanding is under the heading "Re: IBEW, Local 1245, vs. Pacific Gas and Electric Company, Arbitration Case No. 50" [emphasis supplied]. Thus, it is reasonable to infer that the subject matter of the Memorandum of Understanding would pertain to that case, which involved H [redacted].

Secondly, Item 1 of the Memorandum states that the Review Committee "will...issue a Decision" in Arbitration Case No. 50, and Item 2 of the Memorandum states that "The Decision referred to in the

foregoing Item 1 will resolve the question of temporary upgrades occurring after the execution of this Memorandum of Understanding as follows:" [emphasis supplied]. Significantly, it does not state that the Decision referred to in Item 1 will resolve the question of temporary upgrades only occurring after the date of execution of the Memorandum of Understanding. Since the Decision contemplated to be issued by the Review Committee was related to Arbitration Case No. 50, the Union could, and obviously did, reasonably expect that the quoted provisions of Item 2 of the Memorandum of Understanding would govern the disposition of the Harte case and that the only remaining job of the Review Committee was to perform the mechanical task of reviewing H [REDACTED]'s records to ascertain the amount of back pay liability. In fact, that is what the Review Committee did, with no other question being raised until that job was completed.

In light of the above, the Award in this case is as follows:

AWARD

The quoted provisions in Item 2 of the Memorandum of Understanding (Jt. Ex. 2) are applicable to the Harte case. Accordingly, [REDACTED] H [REDACTED] is hereby awarded a back pay amount of \$4,800.

Respectfully submitted,

BOARD OF ARBITRATION

Dated: December 8, 1975

Morris L. Myers

Morris L. Myers, Chairman

David J. Bergman - dissent

David J. Bergman, Employer Member

I. W. Bonbright - dissent

I. W. Bonbright, Employer Member

Lawrence N. Foss - concur

Lawrence N. Foss, Union Member

Frank A. Quadros concur

Frank A. Quadros, Union Member

MEMORANDUM OF UNDERSTANDING

Re: I.B.E.W., Local 1245, vs. Pacific Gas and Electric Company
Arbitration Case No. 50

The undersigned agree and understand that the above subject Arbitration Case No. 50 (R. C. Case Nos. 961 and 1162) will be reinstated on the Review Committee agenda pursuant to the following terms and conditions:

1. The Review Committee will endeavor to settle all issues involved in the said Arbitration Case No. 50 and issue a Decision with respect thereto within 30 days of the execution of this Memorandum of Understanding.

2. The Decision referred to in the foregoing Item 1 will resolve the question of temporary upgrades occurring after the date of execution of this Memorandum of Understanding as follows:

"An employee who is otherwise entitled to fill a Troublemaker or Serviceman vacancy, pursuant to the provisions of Subsections 205.3(a) and (b) of the Agreement, shall not be denied such temporary assignment because he does not reside within a commutable distance from the headquarters where the temporary vacancy occurs for the days when:

1. the schedule of the employee he is replacing does not require that he be on-call, or
2. if on such on-call days, other employees in such classification at the headquarters have volunteered to replace him on the on-call schedule."

"Schedule adjustments resulting from changes agreed to under Item 2 above shall not result in the payment of overtime during the regular hours of work of such schedule unless required by law."

"A 'commutable distance,' for the purpose of this Decision shall mean not more than 30 minutes automotive travel time, under ordinary conditions, from the employee's home to the headquarters where he is filling the temporary vacancy."

3. In the event that a Review Committee Decision has not been issued within the time provided for above, the Board of Arbitration established, pursuant to the Submission Agreement in Arbitration Case No. 50, dated February 5, 1974, shall be reconvened at the earliest date upon which the parties' and the arbitrator can agree for further proceedings pursuant to said Submission Agreement.

L. L. Mitchell

L. L. Mitchell
Business Manager

July 1, 1974

Date

I. Wayland Bonbright

I. Wayland Bonbright
Manager of Industrial Relations

June 13, 1974

Date