In the Matter of a Controversy between INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245, Complainant and PACIFIC GAS AND ELECTRIC COMPANY, Respondent RE: Demotion and Discharge of [redacted]	]]]]]]]]]]]]]]]	Arbitration Case No. 52

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Neutral Member

I. W. BONBRIGHT, Company Member

D. J. BERGMAN, Company Member

L. N. FOSS, Union Member

J. J. WILDER, Union Member

June 28, 1974
San Francisco, California

ISSUE:

Under the facts of this case, may the Grievant now (1) elect to exercise any option provided under Section 19.5, or (2) raise any issue with respect thereto?

STIPULATED FACTS:

"1. The grievant, [redacted], was hired March 9, 1953, as a Machine Operator B, General Office. On June 15, 1953, she was appointed a Clerk D and then Clerk C December 15, 1953. The grievant submitted a bid in 1964 to transfer to a Clerk C vacancy in the District Electric Superintendent's office, San Mateo, to which she was appointed November 30, 1964. Sometime thereafter, she submitted a bid for appointment as a Clerk C, Customer Services Department, San Mateo, and was appointed to that position June 3, 1968. She worked in that capacity until November 30, 1971, when she was demoted to Clerk D, Customer Services Department, San Mateo, and continued in that classification until her discharge October 27, 1972.

"2. The Clerk C Electric Operating Department headquarters is located at 916 South Claremont, San Mateo, 94401.

"3. The headquarters for the Peninsula District Customer Service clerks is 87 East Third Street, San Mateo, 94401.

"4. The grievant's bid as a Clerk C, Electric Operating Department, to Clerk C, Customer Services Department, was entitled to consideration for appointment under the provisions of Section 18.8(d); and the appointment was made pursuant to that section.

"5. The grievant's qualifications for appointment to a Customer Services Clerk C were not challenged prior to or

at the time of the appointment under either Section 18.11 of 18.13.

"6. Sometime shortly before the meeting of November 19, 1971, District Personnel Representative Gene Satrap contacted Joseph Weber, District Electric Superintendent, to inquire as to the grievant's status with regard to Section 19.5 should she request such a transfer in lieu of demotion. Company concluded that, for the reasons they demoted her, Section 19.5 would be inapplicable.

"7. On or about October 13, 1971, Mr. Satrap and Union Business Representative Orville Owen discussed several possibilities concerning the future employment status of the grievant. Among the possibilities discussed were those of (1) implementing a training program as a Customer Service Clerk, (2) discharge, (3) demotion, (4) transfer back to Electric Operating or the Comptroller's Department. A Company decision not to transfer the grievant to Electric Operating was made known in some fashion to Mr. Owen. During the discussion, neither party raised or referred to Section 19.5.

"8. On November 19, 1971, the grievant, in the presence of several others including Shop Steward [redacted] and Shop Steward [redacted], was informed that she would be demoted November 30, 1971, and the reasons therefor. This was confirmed by a letter dated December 1, 1971, signed by W. B. Clinch, District Manager, a copy of which is attached hereto and incorporated herein (Attachment A).

"9. At the November 19, 1971, meeting, the grievant was also informed that following her demotion she would be given a "retraining program" in all pertinent phases of the work required of a Clerk D and Clerk C, Customer Services Department. She was further informed that the purpose of the retraining would

be qualify her to regain her Clerk C position...

"10. The grievant was allowed to take two weeks' vacation after the November 19, 1971, meeting to consider the offered retraining program. Following her return, the retraining program commenced November 30, 1971, and culminated on or shortly before her discharge October 27, 1972.

"11. On November 23, 1971, Union Business Representative Orville Owen filed a grievance dated November 19, 1971, on behalf of [redacted]. The stated basis of the grievance was: 'On November 19, 1971, the Company notified the Grievant that effective November 30, 1971, she will be demoted to Clerk D.' And the correction asked for was: 'That Company rescind their notification of demotion and, further, restore and reimburse to the Grievant all wages and benefits she will be denied as a result of Company's action in this case.' The correction asked for was denied by Company's answer of November 29, 1971,...

"12. Except as set forth in Item 13 below, at no time following the November 19, 1971, meeting has the grievant, the Union Business Representative or Shop Steward, or any other person acting in an official Union capacity requested that the employee be transferred back to her former classification as a Clerk C, Electric Operating Department.

"13. An alleged violation of Section 19.5 upon which the Board must rule was first raised by Union's proposed 'Review Committee Decision' which was received by the Company on August 23, 1973, and further expanded on in Union's 'Opinion' dated December 7, 1973,... At no time until shortly before the proposed Review Committee Decision did the applicability of such Section 19.5 to the grievant's demotion or discharge occur to any Union official or any authorized person acting on its behalf.

"14. On November 19, 1971, the former position held by [redacted] in the Electric Department, San Mateo, was occupied at the time of her demotion by [redacted], whose employment date (Company seniority) is August 26, 1963. Since October 15, 1973, the position has been held by [redacted], whose employment date is July 30, 1969."

AGREEMENT PROVISIONS:

"TITLE 19. DISPLACEMENT, DEMOTION AND LAYOFF

"19.5(a) A regular full-time employee may exercise either of the following decisions in lieu of a demotion under this Title:

"(1) He may return to his last previous office or clerical job and classification provided that:

"1 such job is in the Division in which he is employed;

"2 he held such job for at least 6 months;

"3 he was not demoted from such job; and

"4 he does not thereby displace an employee whose employment date is earlier than his own.

"(2) If in the Division in which he is employed there are one or more employees in jobs in beginner's classifications which he is qualified to perform, he may displace that employee who has the latest employment date, provided it is not earlier than his own...

"19.8 Company shall give an employee who is to be demoted under the provisions of

this Title as much notice as possible, but not less than 5 calendar days prior to the effective date of the demotion." (July 1, 1970, Agreement)

POSITION OF THE PARTIES:

Position of the Union:

That the Union was unaware of the applicability of Section 19.5 to the Grievant's demotion; that there is an implied contractual obligation on the part of the Company affirmatively to inform an Employee of her options under Section 19.5; that only the Company has the seniority information to determine whether or not an option even exists; that the implication of the notice of a demotion requirement under Section 19.8 is that an Employee should have as much time as possible to consider which of the available options under the Agreement would be most advantageous to him and to choose from those options; that there is little additional burden on the Company to inform the Grievant the options available in terms of transfer at the same time; that the Company must present such options to the Employee since only it has access to the information necessary to determine whether the options even exist; that since it will know whether or not, under Section 19.5(a)(1), there is an Employee who can be displaced who was junior to the demoted Employee, it has the obligation to inform

the Employee of his options; that since the Company has the requirement to inform Employees of vacancies upon which they can bid for promotion, it should similarly be required to inform them of their options when they are to be demoted; that sound labor relations policy requires the Company affirmatively to present options to an Employee who is about to be demoted; that the Union's failure to raise Section 19.5 until its proposed decision of August, 1973, does not render the Section inapplicable; that the grievances were timely filed herein and that all time limitations under the Agreement have been met; that the Company's defense is in the nature of laches and the Company has established no prejudice allowing it to invoke that defense except the possibility of monetary damages which can be ameliorated by the finding that the Company would not have to pay any back pay.

Position of the Company:

That the Grievant and the Union had ample opportunity to raise any questions concerning Section 19.5 herein; that the provision is straight forward and understandable and was available to the Grievant at all times; that there is nothing in the language of Section 19 requiring any notice, but the several obligations contained therein on the part of the Company have been spelled out in detail by the Parties; that when the

Parties have agreed to notice provisions such as Section 19.8 and 9, they have so agreed; that under the facts the Union knew that the Company did not believe the Grievant could exercise any rights under Section 19.5(a) because it alleged that she lacked the qualifications to displace into her former job; that notice to the Union representative must be held as notice to the Employee; that the issue of whether or not the Company would accept a transfer under Section 19.5 for the Grievant is not untimely.

DISCUSSION:

Limitations of the Case:

This case is limited to determining whether or not the Company had the obligation to notify an Employee who is demoted of that Employee's options under Section 19.5(a), and if it did have the obligation, whether or not in this case the Union is entitled to assert the Company's failure to provide notice of the option. The case does not present the question, as claimed by the Company, as to whether or not the Grievant would have been entitled to exercise such an option based on the Company's views of the Grievant's qualifications. Unless, according to the Union, the Grievant had knowledge of her right to attempt to exercise an option, the question of whether or not she would have been

entitled to do so is not relevant at this point.

Analysis of Agreement:

Under Section 19.8 of the Agreement an Employee must be given as much "notice" as possible of a demotion, which must be at least five days' notice that such action was to occur. The question presented in this case is whether or not that notice of demotion should also inform the Employee being demoted that that Employee may have other rights under the Agreement.

In this case the Grievant, who had at that point more than 18 years seniority with the Company, may or may not have been aware of her rights under Section 19.5(a). Since the Company must give notice of demotion, it does not appear onerous, but it does appear to be within the intent of that provision, to require it to further give notice to Employees of their right of instead of taking the demotion, to attempt to exercise the elections provided under Section 19.5(a). The content of the Company's notice to the Grievant is clear that the Grievant will be demoted from one classification to another classification and there is no choice. That there is an opportunity to attempt to exercise a choice is also clear under Section 19.5(a). Thus, at least when there is a notice provided by the Company of a demotion, the Company should further notify the Employees of all the possible effects of the demotion, not just

part of them, including the right not to accept the demotion, but to exercise the election provided in the Agreement.

Otherwise, unless an Employee is made fully aware of the total contents provided by the Agreement, when faced by a demotion the Employee is, in effect, without knowledge waiving rights the Parties intended he should have. Having a right without knowledge of it is the equivalent of having no right at all. Since the Employer is the moving Party by initiating a demotion, it triggers the possible application of rights of the Employee directly related to a proposed demotion. Thus, the essence of Section 19.5(a), when coupled with the notice requirement of Section 19.8, requires the notice sought here, such notice to be given by the Employer since it is the moving Party.

Right of Union to Assert Notice Claim:

The facts establish that Union officials who are charged with knowledge of the Agreement did not, at the time the matter was discussed between Company and Union officials or at the time the grievance was filed, nor in fact at any other time until its proposed Review Committee decision, raise the question that the Grievant was not notified of any Section 19.5(a) rights. The error of the Union herein is candidly recognized by the

Union in its brief.

The failure of the Union to raise the question of options cannot be asserted against the individual Employee. The options available in a demotion matter are personal to the Employee and, in fairness, must be protected whereas in this case the Employee filed a timely grievance as to her demotion.

As stated, this decision does not determine whether or not the Grievant would have exercised rights under Section 19.5(a) had she been notified of them nor the question of any requirement of the Company to afford her the rights provided under Section 19.5(a). These are matters which must be determined under all of the circumstances of the case. But, it is clear that it was the intent of the Agreement, when the Company provided a notice of demotion, to provide Employees with knowledge of the Employees' rights at that particular point in time. Therefore, Section 19.5(a) should have been pointed out to the Grievant at that time. The matter must be remanded to the Parties to determine how the failure to do so in this case affected subsequent events.

DECISION:

The Company was required to notify the Grievant of her rights under Section 19.5(a) of the Agreement.

Sam Kagel — Concur/~~Dissent~~ — June 28, 1974
Neutral Member — Date

G.H. Boutwright — ~~Concur~~/Dissent — 28 June 1974
Company Member — Date

David Bumgarner — ~~Concur~~/Dissent — Jun 28 1974
Company Member — Date

Lawrence N. Jose — Concur/~~Dissent~~ — 6-28-74
Union Member — Date

John Wilder — Concur/~~Dissent~~ — 6-28-74
Union Member — Date

PACIFIC GAS AND ELECTRIC COMPANY

PG and E — 245 MARKET STREET • SAN FRANCISCO, CALIFORNIA 94106 • (415) 781-4211 • TWX 910-372-6587

I. WAYLAND BONBRIGHT
MANAGER
INDUSTRIAL RELATIONS

July 22, 1974

Mr. L. N. Foss, Secretary
Review Committee
Local 1245, I.B.E.W., AFL-CIO
P. O. Box 4790
Walnut Creek, California 94596

Dear Mr. Foss:

To complete your file on Arbitration Case No. 52, we are enclosing a Xerox copy of the signed letter agreement dated July 12, 1974 between this Company and Mrs. [redacted].

Yours very truly,

I W Bonbright

IWB:RS
Encl.

PACIFIC GAS AND ELECTRIC COMPANY

PG&E

245 MARKET STREET • SAN FRANCISCO, CALIFORNIA 94106 • (415) 781-4211 • TWX 910-372-6587

July 12, 1974

Mrs. [redacted]
Box 147B
Cohasset Stage
Chico, California 95926

Dear Mrs. [redacted]:

In Arbitration Case No. 52, a copy of which is attached, you were awarded the right to a Clerk C job in the Electric Department in San Mateo, California. It is our understanding that in lieu of exercising this right you wish to start receiving monthly payments of $158.67, under the following conditions:

1. Your status will be considered to be a former employee with a vested annuity, and this Company will pay you $158.67 per month, commencing with the month of July 1974 and ending with the payment for the month of February 1977. A vested annuity certificate is attached.

2. On March 1, 1977 you will have the options of electing (i) a Variable Annuity, (ii) a Joint Pension, and (iii) withdrawal of your contributions to the retirement plan. If you do not elect any of these options, your monthly payments will continue unchanged. However, if you elect any or all of these options your monthly payments will be altered and/or reduced as indicated in this Company's pension plan.

3. Your participation in the Savings Fund Plan will terminate on December 31, 1974.

4. You may elect to convert all or part of your Group Life Insurance in accordance with the terms of the Group Life Insurance Plan. Appropriate papers, including the name and address of the Chico agent of the Equitable Life Assurance Society, are attached.

5. You will receive a 20-year service award bracelet, which will be available in about three weeks.

6. Also enclosed is a "To Whom it May Concern" letter with respect to your employment with this Company and the Company agrees to divulge no further information with respect to your employment to any potential employer.

7. In consideration of the above, you hereby release and discharge this Company from any and all claims, demands or causes of action arising out of your employment with this Company and your discharge therefrom, and irrevocably waive all rights awarded by Arbitration Case No. 52. As a further consideration you agree, represent and warrant that this is a full and final release applying to all unknown and unanticipated damages arising out of said event, as well as to those now known or disclosed, and you waive all rights or benefits which you now have, or in the future may have, under the terms of Section 1542 of the Civil Code of the State of California, which said section reads as follows:

> "A general release does not extend to the claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Yours very truly,

PACIFIC GAS AND ELECTRIC COMPANY

By _____
Manager of Industrial Relations

I have read the above, agree thereto and accept the Pacific Gas and Electric Company's offer as a full and final release.

July 18, 1974

[redacted]