In the Matter of a Controversy)

between)

LOCAL UNION NO. 1245 of INTERNATIONAL BROTHERHOOD OF ELECTRIAL WORKERS, AFL-CIO,)

Complainant,)

and)

PACIFIC GAS AND ELECTRIC COMPANY)

Respondent,)

involving: Was the Company's change in the hours of Design-Drafting Clerical Unit employees a violation of the parties' Clerical Agreement?)

Joseph W. Garbarino
Arbitrator

September 29, 1978

Hearings: June 20, 1978, July 7, 1978

Briefs: August 25, 1978, Sept. 5, 1978

Statement of the Issue

The parties have agreed to a statement of the issue as follows:

Was the Company's change in the hours of Design-Drafting Clerical Unit employees a violation of the parties' Clerical Agreement?

In accordance with the submission agreement (Joint Exhibit 2) the grievance is to be decided by an Arbitration Board composed of I. Wayland Bonbright and Patrick N. Long representing Pacific Gas and Electric and Manuel A. Mederos and Lawrence N. Foss representing Local 1245, I.B.E.W., with Joseph W. Garbarino as Chairman. The procedure to be followed in reaching a decision is outlined in the submission agreement.

The Company was represented by Lawrence V. Brown. The Union was represented by Neyhart, Anderson and Nussbaum, Peter D.Nussbaum and John L. Anderson appearing.

Background

The Design and Drafting Clerical Unit is a unit of Pacific Gas and Electric Company employees made up of approximately forty persons. They are employed to provide a variety of clerical and service support for the engineering supervisors, design-drafting engineers and draftsmen in the department.

The clerical employees had been working a schedule of hours from 8:00 a.m. to 4:45 p.m. prior to 1975. In that year they were changed to a "flextime" schedule of hours under which work began at 7:00 a.m. and ended at 6:00 p.m. with all employees being required to be present during a "core time" of 9:00 to 11:00 a.m. and 1:00 to 3:00 p.m. At other times employees were permitted to vary their attendance provided that a stipulated total of daily and weekly hours were worked.[1]

There is evidence that the new schedule was regarded as successful by the supervisors of the Department and that it was popular with the employees.

---

[1]A second shift existed until the summer of 1977 when it was eliminated and their hours are not at issue in this case.

On about August 1, 1976, a new chief of the Design-Drafting Department was appointed. He held a negative view of the flextime program.

In January 1977 Local 1245 asked for voluntary recognition from the Company as the bargaining representative for the clerical employees of the records section. The Company refused and a formal petition was filed with the N.L.R.B. On February 15, 1977, a meeting between representatives of the Union, the Company and the N.L.R.B. was held.

As a result of that meeting the Company offerred to agree to a consent election provided that the records unit was included in the larger clerical unit for which bargaining relations already existed. The larger unit at that time did not have a flextime schedule. The Union was concerned about the continuation of the flextime schedule for the clerical employees of the Design-Drafting department and asked for assurances that flextime would be continued if "folding in" occurred. It was agreed that the Design-Drafting clerical employees would be included in the overall clerical unit if the Union won the election and that after the election the parties would meet "to reach agreement" as to the hours of work of the clerical employees of Design-Drafting. It was also agreed that there would be "no reduction in the wages, benefits, and other uniform conditions of employment of unit employees" as a result of the employees vote. (Company Exhibit 1.)

After the election the parties met pursuant to the letter agreement. The Union took the position that the letter of agreement (Company Exhibit 1) called for the continuation of the existing flextime scheduled unchanged. The Company took the position that the letter contemplated that the parties

would negotiate over the working schedule for the clerical employees of the Design-Drafting unit "to reach agreement."

When the parties were unable to agree, the Company introduced a new flextime schedule on August 15, 1977, as described in Company Exhibit 10. The filing of the present grievance followed.

The relevant language in the February 16, 1977 letter of agreement (Company Exhibit 1) is as follows:

"It is further agreed that if a majority of those voting elect to be represented, the Company will meet with the Union to reach agreement as to their hours of work, which are not presently provided for in the Labor Agreement and Lines of Progression. There shall be no reduction in the wages, benefits, and other uniform conditions of employment of unit employees by reason of the employees voting to be included in the unit."

Position of the Union

The Union contends that:

1. The Union knew that the existing flextime system was very popular with the employees. In its organizing campaign, it was made clear that retention of flextime was of primary importance to the potential membership. The Union was determined to retain flextime and would not have risked its loss knowingly.

2. The Union had abundant reason to believe that the Company believed flextime was advantageous to it. In fact, of the supervisors with experience with the system, only George Aster, the relatively new section chief, had or has any criticism of its operation.

3. At no time prior to the signing of the letter agreement of February 16, 1977, (Company Exhibit 1) did any Company spokesman indicate a desire to end or substantially modify the flextime system. On the contrary, spokesmen stated there was no intention of eliminating flextime.

4. The Union realized the implication of "folding in" the Design-Drafting group to the clerical contract without provision for the continuance of flextime. The language in the letter agreement on the maintenance of conditions was intended to insure the retention of the existing schedules.

5. The Union agreed to the "reach agreement" language in the letter agreement because their representatives were not sure of the exact schedules then in effect and specification of these hours to be the substance of the agreement that was to be reached.

6. At no time at the meeting on Feburary 15 were the words "bargain" or "negotiate" used to describe the process of reaching agreement although these words are the usual method of describing the process the Company claims is referred to in the phrase to "reach agreement."

7. The Union did not officially object to the Company's employee communication of February 23 (Company Exhibit 12) referring to the negotiation of hours of work because it knew it could correct this misstatement in personal conversation with the employees.

8. When the Company appeared at the meeting after the election it demanded the elimination of flextime. Although the Union felt this violated the understanding, it engaged in an exchange of proposals to show good faith without conceding its position.

9. The Company drafted the letter agreement and since it is the party responsible for whatever ambiguity exists, any question of interpretation should be resolve against it.

10. Because of the above circumstances the arbitrator should either rule that

a. The Company agreed to continue flextime as it existed by the language of the letter agreement: or

b. No agreement was reached and the parties must bargain about all the terms of employment: or

c. The Union entered into an agreement to bargain over flextime based on a mistake in material facts induced by the Company's actions and therefore the contract should be rescinded and bargaining required on all the conditions of employment of the clerical employees.

Position of the Company

The Company contends that:

1. The Company had concluded that the flextime schedule created problems of clerical support prior to the Union's campaign to represent the employees. It went into the February 15 meeting with the objective of retaining its right to propose changes. The language agreed to preserves that right.

2. The letter of agreement of February 16 provides that . . ."the Company will meet with the Union to reach agreement as to their hours of work . . ." if the Union won the representation election. This language clearly indicates that agreement did not exist but would be reached by discussion or negotiation between the parties at a later date.

3. Prior to the election on February 23, the Company circulated a letter to the employees (Company Exhibit 12) which stated in part ". . ."We have agreed to sit down with the Union and negotiate your hours of work. . ." The Union did not object to this statement describing the Company's interpretation of the situation.

4. When the parties did meet, the Union did participate in negotiations about hours of work, including making counterproposals in a number of meetings. The Union did not reject negotiations and go directly to arbitration on its position.

5. The Union's letter of August 10, 1977 (Company Exhibit 9) indicates that not only did negotiations occur but that agreement had been reached on the hours of work of all but 13 employees and there the differences amounted to a disagreement of one-half hour on the ending of core time. A flextime system is in effect currently.

6. If no such agreement were deemed to exist then the employees would revert to the working hours of the main Clerical Agreement since that agreement requires a separate agreement to be concluded to deviate from the clerical schedule.

7. The Union claim that the sentence in the February 16 letter of agreement providing that ". . .there shall be no reduction in the wages, benefits and other uniform conditions of employment of unit employees by reason of the employees' voting to be included in the unit . . ." precludes change is without merit. The hours of work question is dealt with separately in the preceding sentence calling for meetings "to reach agreement" as to hours. The changes implemented are not the results of the voting, but the results of the negotiations between the parties.

The Board of Arbitration should therefore conclude that the change in the hours of the Design-Drafting employees was not a violation of the Clerical Agreement. Because of the limitations of the authority of the Board to change the provisions of the Agreement, contrary conclusion would mean that the hours of work in the Clerical Agreement would become applicable.

Discussion

The lengthy testimony and the other evidence in this case leads to the conclusion that the parties avoided a clear-cut confrontation on the issue of the exact status of the flextime schedule in the meeting of February 15. It would have been easy for either party to propose unambiguous language to achieve the simple and limited goals they separately held in this issue. It is not unusual in collective bargaining for the parties to avoid a direct confrontation on an issue by devising language that conveys general agreement and leaves the problem of interpretation for settlement through later negotiations or the grievance procedure.

In this instance the Union at one point did propose that the Company write its willingness to continue the flextime schedule into the letter of agreement. (Tr. p. 22.) When the Company declined to do so it should have, and apparently did, raise a warning signal to the Union negotiators. The Company proposed the language calling for meetings "to reach agreement" on the hours of work. The Union countered by securing the insertion of the second sentence of that paragraph in the letter of agreement calling for the maintenance of benefits.[2]

---

[2]There is a conflict of testimony as to who proposed the maintenance of benefits clause. Mr. Anderson suggested (p. 21) that the Company made that proposal while Mr. Brown testified (p. 97) that the Union proposed that language. It is more plausible that a clause of this type would come from the Union and other evidence reinforces that belief.

At this point each party apparently felt that the language of the letter could be interpreted to support their position and the letter of agreement was signed. It is the task of the Board of Arbitration to arrive at a decision as to the meaning to be attached to this language in the light of the evidence and the subsequent behavior of the parties.

Standing on its own, the language of the letter of agreement is not really ambiguous. The phrase "the Company will meet with the Union to reach agreement as to their hours of work" implies that the process of reaching agreement could involve negotiation. "To reach agreement" suggests clearly that the parties are not currently in agreement.

The Company argues in effect that this language can be regarded as a specific provision which removes the subject matter specified from the protection of the general provision in the second sentence providing that "there shall be no reduction in the wages, benefits, and other uniform conditions of employment of unit employees by reason of the employees' voting to be included in the unit." The Company argues that the two sentences considered together contemplate the possibility of a different flextime schedule being agreed to by the parties as a result of the negotiations provided for in the first sentence. Any changes would be the result of these negotiations not "by reason of the employees' voting to be included in the unit" and thereby coming under the provisions of general Clerical Agreement.

The Union argues that there was an understanding that the phrase "to reach agreement" meant the recognition of the work schedule that already existed and its embodiment in a formal agreement without change. The sentence on the maintenance of benefits was their way of emphasizing that "to reach agreement" did not contemplate a change in hours scheduled.

There are several reasons, none of them convincing singly but persuasive in combination, for selecting the Company's interpretation as the correct one.

1. There were more subjects to be settled at the meetings contemplated by the first sentence than hours of work and lines of progression. The usual example cited in the record was meals for employees. The Union apparently raised no objection to negotiating on meals although presumably they would have been covered by the maintenance clause.[3]

2. One week after the promulgation of the letter of agreement and before the election, the Company publicly described its intention to "negotiate" hours of work after the election. This clearly indicated its interpretation of the language in question to the Union. The Union did not challenge this interpretation.

3. When the parties did meet, the Company proposed the abandonment of flextime. The Union was "shocked," but entered into negotiations and made counter-proposals over several meetings.

---

[3]Tr. p. 74 lists seven subjects discussed in negotiations.

This pattern of behavior weakens the Union's argument that at this point it can return to the position that the original letter of agreement contemplated no negotiations and that this interpretation should be supported by the Board of Arbitration at this stage in the evolution of this dispute.

The result of this analysis calls for a decision in favor of the Company.

Award

The Company's change in the hours of the Design-Drafting Clerical Unit employees was not a violation of the parties' Clerical Agreement.

J. W. Garbarino
Chairman: Board of Arbitration

Concur:

I. W. Bonbright
For Pacific Gas and Electric Company

P. N. Long
For Pacific Gas and Electric Company

Dissent:

M. A. Mederos
For Local Union 1245, International Brotherhood of Electrical Workers

L. N. Foss
For Local Union 1245, International Brotherhood of Electrical Workers