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345 Grove Street
San Francisco, California 94102
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IN ARBITRATION PROCEEDINGS PURSUANT TO THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

Re: Providing On-Call Truck to Line Subforeman.
Case No. 90.

OPINION AND AWARD OF THE BOARD OF ARBITRATION

This Arbitration arises pursuant to Agreement between the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, hereinafter referred to as the "Union," and PACIFIC GAS AND ELECTRIC COMPANY, hereinafter referred to as the "Company," under which ADOLPH M. KOVEN was selected to serve as Chairman of a Board of Arbitration which also included ROGER STALCUP, Union Board Member; VEODIS STAMPS, Union Board Member; I. WAYLAND BONBRIGHT, Company Board Member; and MARGARET SHORTT, Company Board Member; and under which the Award of the Board of Arbitration would be final and binding upon the parties.

Hearing was held July 16, 1981 in San Francisco, California. The parties were afforded full opportunity for the examina-

tion and cross-examination of witnesses, the introduction of relevant exhibits, and for argument. Both parties filed post-hearing briefs.

APPEARANCES:

On behalf of the Union:

PETER D. NUSSBAUM, ESQ.
Neyhart, Anderson, Nussbaum & Reilly
100 Bush Street
San Francisco, California 94104

On behalf of the Company:

LAWRENCE V. BROWN, ESQ.
Pacific Gas and Electric Company
245 Market Street
San Francisco, California 94106

ISSUE

Was the discontinuance of a "call-out" truck to a Fremont Line Subforeman a violation of the Labor Agreement? If so, what is the remedy?

RELEVANT SECTIONS OF THE CONTRACT

Section 7.1 - Management of Company

The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to direct, and supervise the work of its employeed, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandum of understanding clarifying or interpreting this Agreement.

Section 107.1 - Anti Abrogation Clause

Company shall not by reason of the execution of this Agreement (1) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (2) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit Company in

making a change in a condition of employment if such change has been negotiated and agreed to by Company and Union.

BACKGROUND:

At its Fremont yard, the Company had a practice for more than 20 years of furnishing a pickup truck to the line Subforeman who was first on the call-out list for emergency calls, and who volunteered to answer such calls after work hours. The Subforeman who was first on the list would fill up the truck with gas at the Company's yard and use the truck to go back and forth to work during regular hours, as well as to go out on emergency calls. Following a change in supervision, the Company, in 1979, discontinued the practice on the ground that the truck was an "extra frill (that) was not required" and the Company could save money by eliminating the practice.

The Union contends that the Company can better respond to emergency calls when the Subforeman had a Company truck. The truck was equipped with a telephone, enabling the foreman to go directly to the scene of the emergency, and in fact, the Subforeman would proceed directly to the location of the emergency about half of the time that he was called out. At times, the Subforeman could help the Troubleman at the scene to correct the problems, so that the need did not arise to call a crew to deal with the emergency. In addition, the Subforeman could sometimes better assess the requirements for equipment and crew if he was on the scene prior to the time the crew was called out. There was other evidence presented by the Union regarding the advantage in emergency situations to providing a Subforeman with a truck.

Following discontinuance of the practice in Fremont in 1979, the Subforeman who was called in an emergency was required to proceed to the yard, and pick up the necessary equipment and

crew before proceeding to the location of the emergency.

The Company had eliminated the practice of providing Subforemen with a truck for emergencies at other yards. After 35 years, the practice was discontinued in 1977 in Antioch, and in 1979 the practice was discontinued in Livermore and Hayward after 20 years. In Auburn, the practice was discontinued after one year. In none of these cases did the Union file a grievance.

The Union relies upon a Review Committee and arbitration decisions in support of its position. In one Review Committee decision, the Company attempted to reduce the mileage allowance for employee-owned cars used on Company business. The Review Committee, relying upon the provision of Section 107.1 of the Contract that the Company "shall not...change the conditions of employment of any...employee to his disadvantage" disallowed the change on the ground that since the mileage allowance "established a condition of employment to the disadvantage of some bargaining unit employees and has not been agreed to by the Union, the allowance provisions are invalid." (Rev. Comm. Dec. Nos. 1375-74-4; 1378-75-7; 1379-75-8; 1380-75-9.)[1/] The Union relies also on a decision by Arbitrator Morris L. Myers, which prohibited the Company from changing its past practice of allowing a $2.50 a day transportation allowance to certain employees. The contract in question contained an "abrogation clause" similar to Section 107.1. The main ground of the decision was that the employees in question were promised the allowance as an inducement to their acceptance of jobs on the night shift. Therefore, the

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1/ Two other Review Committee decisions relied upon by the Union are less relevant than the decision discussed above. In one, the Committee relied by analogy on a "grandfather" exception of preserving the status quo of employees who would otherwise be affected by a change in practice. (Rev. Comm. File No. 1167-72-44.) In a second Review Committee decision involving the Company's practice of furnishing a certain type of gloves to employees, it is not clear whether the Committee relied upon past practice in its determination that the gloves were to be furnished "where dirty poles are encountered."

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$2.50 was a part of their overall compensation, and the Company could not unilaterally discontinue the payments. However, employees who had never been paid the additional allowance were not entitled to receive it because they were not induced by the promise of the additional $2.50 to accept night shift employment.

It is the Company's position that its conduct was justified under the Management Rights clause of the Contract.

DISCUSSION AND CONCLUSION:

The first question in the resolution of this dispute is whether the Company's prior practice of providing the Subforeman who volunteered for on-call duty with a truck can be deemed a "past practice" in the sense that the practice amounts to a "mutual understanding" of the parties as to the meaning of the Contract. The Company points to the fact that it discontinued the use of the truck by the Subforeman on call, without protest from the Union, at several other locations. The Union claims that its failure to protest these discontinuances amounts to a waiver only as to the locations where the Union did not protest the Company's action.

However, the failure of the Union to grieve these prior changes indicates that the Union inferentially conceded that the Contract was not violated by the Company's action. The effect of this failure of the Union to protest is not to waive the Union's right to grieve the question of the discontinuance; rather, the Union's failure to grieve indicates that the Company's past practice is not so clear and consistent that it provides a strong factor in the Union's favor.

A second issue is whether the practice in question was a "condition of employment" under Section 107.1. The Company claims that the term "condition of employment" covers only major conditions of employment. There is some arbitral authority in support of this view. (See e.g., Phillips Petroleum Co., 24 LA

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191, 194; Association of Shower Door Industries, 47 LA 353, 356.) Other arbitrators have held that an employer may unilaterally abolish practices which fundamentally relate to management's right to control methods of operations, but may not without agreement of the union eliminate a benefit of peculiar personal value to the employees. The type of benefits or working conditions which the Company may not unilaterally abolish include such benefits as wash-up periods, lunch periods, Company-supplied electricity for employee homes, maternity leaves of absences, vacation pay, etc. (See Elkouri & Elkouri, How Arbitration Works (rev.ed.) pp. 271-273.)

In the present case, the benefit was to only one Subforeman each week. Moreover, the Subforeman on call is a volunteer, so that he enjoys the benefit of the use of the truck only if he volunteers for on-call duty. Indeed, the testimony indicates that one reason the Company provided the truck was to induce employees to volunteer for call-in duty.

The Union points out that the practice of providing a truck was significantly beneficial to the Subforeman who volunteered for on-call duty because he was permitted to use the truck not only for emergency or overtime assignments, but also for his regular shift. While the Union is correct that this benefit can amount to a substantial sum of money to a Subforeman who lives some distance from the Company, the reason the Company provided the truck to the Subforeman was not to afford a benefit to him but to enhance the Company's ability to respond to an emergency. The benefit to the Subforeman from the use of the truck was only incidental to that primary purpose. This incidental effect distinguishes the present case from those described above in which the Company was prohibited from unilaterally abolishing a benefit. In those cases, the primary purpose of the practice was to benefit the employee (e.g., providing wash-up and lunch periods

and paid vacations), while in the present case the benefit to the employee was only incidental to the Company's main purpose. The same distinction applies to the Review Committee decision relied upon by the Union in which it was held that a reduction in mileage allowances could not be unilaterally accomplished by the Company.

The prior arbitration decision does not assist the Union. There, although a provision similar to Section 107.1 was held to prohibit the Company from reducing the transportation allowance of certain employees, the basis of the decision was that the employees had been induced to accept work on the night shift because of the extra allowance. It is interesting to note that the decision held also that the Company was not required to pay the additional allowance to employees who had never been paid a transportation allowance. The implication of the decision, therefore, is that the benefit of the "practice" applied only to those who were induced to accept employment by the promise of the additional allowance.

The fact that the Union is of the opinion that the Company's ability to respond to an emergency was enhanced by providing a truck to the Subforeman does not compel the Company to continue its prior practice. The question of whether efficiency is promoted by the allowance of a truck to the Subforeman is one for management to make, and the Union does not have the right to insist on continuance of the practice because of the asserted increased efficiency.

Thus, for all the reasons set forth in the foregoing, the discontinuance of a "call-out" truck to a Fremont Line Subforeman was not a violation of the Labor Agreement. The grievance is denied.

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The grievance is denied. The discontinuance of a "call-out" truck to a Fremont Line Subforeman was not a violation of the Labor Agreement.

DATED: 1/13/82

ADOLPH M. KOVEN, Chairman
Board of Arbitration

CONCUR:

ROGER STALCUP
Union Board Member
Dated:

DISSENT:

ROGER STALCUP
Union Board Member
Dated: 1/5/82

VEODIS STAMPS
Union Board Member
Dated:

VEODIS STAMPS
Union Board Member
Dated: 1-5-82

I. WAYLAND BONBRIGHT
Company Board Member
Dated: 1/4/82

I. WAYLAND BONBRIGHT
Company Board Member
Dated:

MARGARET SHORTT
Company Board Member
Dated: 1/4/82

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