

**PG and E**

**FOR INTRA-COMPANY USES**

From Division or Department      **ELECTRIC TRANSMISSION AND DISTRIBUTION  
GAS DISTRIBUTION**

To Division or Department

FILE NO.                                **741.2**

RE: LETTER OF SUBJECT                                **Arbitration Case No. 123  
Supervisors Performing  
Bargaining Unit Work**

NOTED  
FEB 4 1985  
L.W.B.

Follow-up:		IWB	CFP
<del>DNB</del>	INDUSTRIAL RELATIONS		SJS
JPB	FEB 4 1985		MAS
<del>LVB</del>	LDB	LSC	DMS
AMK	DH		LMT
PNL	SEE ME	REPLY FOR MY SIGN	MML
JAM	FYI	FOR YOUR RECOMM.	FILE
			RLS

February 1, 1985

**REGIONAL MANAGERS:**

Attached is a copy of the "Opinion and Decision of Board of Arbitration" for Arbitration Case No. 123. This case involved the use of Construction Representatives for inspecting the work performed by outside contractors.

Based upon the decision of the Arbitration Board, inspection work formerly assigned to Bargaining Unit Classifications should continue to be assigned to Bargaining Unit Classifications. Further discussions will be held with the I.B.E.W. Local Union No. 1245.

*M. E. Bennett*      *R. C. Buchholz*  
 M. E. BENNETT      R. C. BUCHHOLZ

OJPlum(222-1276):skm

- cc: JSCooper
- EBLangley, Jr.
- RADraeger
- JRHerrera
- EFKaprielian
- HMMKinley
- PCHeilmann
- Regional Electric Superintendents
- Regional Gas Superintendents
- ✓IWBonbright) w/o Attachment
- LVBrown ) w/o Attachment

Attachment

In the Matter of an Arbitration

between

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

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent.

Arbitration Case  
No. 123

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

KENNETH L. BALL, JR. and  
~~BILL TWOMEY~~, Union Members  
~~Roger Stalcup~~

I. WAYLAND BONBRIGHT and  
JOHN P. BRENNAN, Company Members

ISSUE:

Are the assignments in question to non-bargaining unit supervisors in violation of the Agreement?

AGREEMENT PROVISIONS:

"In 1952, the National Labor Relations Board certified the Union as the collective bargaining representative of

"All employees in the physical or outside forces of the Employer including (a) all outside field employees and field clerks, workers employed in generating stations, substations, gas plants, steam plants, and other shops and plants, clerks in generating stations, salesmen, mappers, inspectors, building service employees and working foremen; (b) all employees in the outside forces of the Gas Supply and Control Department, including outside field employees, workers employed in pumping stations, substations, gas plants and other shops and plants, mappers, inspectors, building service employees and working foremen.

\* \* \*

Section 2.1 [RECOGNITION] of the current collective bargaining agreement between the parties (Joint Exhibit 1), provides as follows:

"For the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment Company recognizes Union as the exclusive representative of those employees for whom the National Labor Relations Board certified Union as such representative in Case No. 20-RC-1454, but further including clerks in the offices of electric department foremen and technical clerks in steam generation, and excluding system dispatchers, assistant system dispatchers and rodman-chainman.

\* \* \*

"Section 7.1 [MANAGEMENT OF COMPANY] of the collective bargaining agreement provides as follows:

"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 employees, 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 memorandums of understanding clarifying or interpreting this Agreement.

"Section 7.2 [BARGAINING UNIT WORK BY SUPERVISORS] of the contract provides as follows:

"Supervisors and other employees shall not perform work usually assigned to employees in IBEW 1245 bargaining unit classification except:

- "(a) Such assignments are not to be deliberately made for the purpose of reducing the number of employees performing work within the bargaining unit classification.
- "(b) Historical assignments recognized by the NLRB and those involving continued Company practices with respect to overlapping duties of non-bargaining unit classifications are to be maintained unless otherwise resolved by Company and Union.
- "(c) Other than the above (a) and (b), such work assignments should be limited to work performed in:
  - "(1) Emergency situations.

- "(2) Training of employees and demonstrating work methods.
- "(3) Incidental assistance and de minimis assignments. (Added 1-1-80)

\* \* \*

**BACKGROUND:**

This case involves the creation by the Company of a classification entitled "Construction Representative" as an exempt position from the Collective Bargaining Unit. The work of the Construction Representative relates to construction and maintenance of the Company's distribution facilities in providing electric and gas service to residential, commercial, agricultural, and industrial users.

Virtually all of the construction, modification and maintenance of new or existing gas and electric service facilities until 1983 was performed by IBEW members, either division or general construction Employees. The crew performing such work was supervised and inspected by Working Foremen, also represented by the IBEW, either Electric Department Sub-foreman or Gas Department Light Crew Foreman.

With reference to inspecting work performed by Contractors in conjunction with PG&E construction or modification projects, bargaining unit members were used--primarily three classifications--Electric Department Inspectors, and Fitters or Light Crew Foremen in the Gas Department.

The Company, on July 25, 1983, announced its decision to contract out certain of the distribution construction previously performed almost exclusively by bargaining unit work forces.

Mr. Langley's policy revision, dated June 5, 1984, pointed out that new division construction, reconstruction and maintenance work would first be assigned to Division operating forces to the extent that they are fully utilized, then to available General Construction forces (both as in the past), and then only would bids be solicited from outside contractors to build the facilities in their entirety. According to the Company, this latter point marks the major distinction between past and future work practices.

**POSITION OF THE COMPANY:**

The Company contends that the issue in this case is more specific, namely, can the Company contract out distribution work formerly performed by bargaining unit gas and electric crews under the field supervision of bargaining unit Supervisors and assign the field supervision of the contractor work to non-bargaining unit Construction Representatives; that the Union has chosen not to question this issue, namely the contracting of a portion of the distribution work formerly performed exclusively by bargaining unit Employees rather than restaff the construction forces with the laid-off Employees;

that replacing the exempt Construction Representative with a bargaining unit Supervisor or Journeyman would fly in the face of the negotiated job definitions; that "apart from a crew, a bargaining unit employee's 'inspection' of owner/developer contract work are carefully confined to trench, backfill and substructure conformance to Company engineering specifications. While they may recommend rejection of the owner/developer construction, in the face of a dispute the final say rests with the bargaining unit employee's exempt supervisor." (Co. Br., p.12); that the Construction Representative has further defined responsibilities unique to a managerial function as follows:

"This position is PGandE's field representative for the installation of gas and electric utility facilities by an applicant or by PGand E's contractor. This person will assure that such facility installations meet or exceed applicable PGandE standards when the facilities become part of PGandE operating distribution system(s). This includes the following:

- "1. Coordination of construction activities between the applicant/contractor and appropriate Division/District organizations.
- "2. Documentation for as-built records, welder/plastic joiner qualifications, welding/fusing inspection, leaking testing records, job progress reporting, contractual records, and inspection charges due from the applicant/contractor.
- "3. Inspection of non-utility construction is in accordance with established procedures to verify that all work meets or exceeds the requirements of applicable CPUC General Orders and PGandE standards." (Co. Br., pp.14-15)

POSITION OF THE UNION:

That the issue in this case does not include the subject of sub-contracting; that the Company's contention that the duties of the Construction Representative are "managerial duties" is work which PG&E crews formerly performed; that bargaining unit Foremen have historically supervised and inspected work performed by PG&E crews identical to the work now performed by contractor crews; that bargaining unit Inspectors have historically inspected work performed by contractors identical to the work now being performed by contractors working for PG&E; that the Company's motivation in creating the Construction Representative position is purely economic since the Construction Representative is expected to work more than eight hours per day and on Saturday and is not paid overtime; that since the Company contends the Construction Representative's position is exempt, the contractual bidding and transfer procedures would not apply to that position and that the Company could therefore select whomever it wants for the position without regard to seniority or contractual lines of progression; that however legitimate the Company's interest may be in avoiding overtime or having the flexibility to appoint to the position, the bargaining table is the place for these arguments, not the grievance procedure, on transferring bargaining unit duties outside the bargaining unit on all jobs involving contractors performing distribution

construction work; that the Company violated the Agreement with the IBEW; that the relief sought is that the status prior to the Company's unilateral action should be restored.

**DISCUSSION:**

The issue in this case does not include the contention of the Company with reference to its right to contract out the distribution work formerly performed exclusively by bargaining unit Employees. This issue is not included in the Submission Agreement.

What must be considered in this case is whether the Construction Representative duties and responsibilities include the work of bargaining unit Inspectors or other bargaining unit Employees.

Union Exhibit 5, which contains the Company's description of the Construction Representative position, states:

"The design and installation of electric and gas distributing facilities is relatively standard and is normally performed by prescribed rules and procedures. An occasional need to interpret the rules or permit a variance affords some opportunity for original thinking."

Union Exhibit 5 further states:

"Ensure that gas and overhead and underground electric distribution facilities installed by the applicant or by PGandE's contractor are in accordance with company specifications, Standard Drawings, Standard Practices, T&D Bulletins and CPUC General Orders."

The content of the Construction Representative's position is hereafter compared with bargaining unit Inspectors or other bargaining unit Employees' work as to each of the following items.

Invoice Approval:

Company witness McLoughlin testified that it is the responsibility of the Construction Representative to "approve all of the invoices from the contractor." He points out that this duty is not mentioned in either the Construction Representative's Inspection Manual (Co. Ex. 9) or the Construction Representative position description (Un. Ex. 5).

Mr. Culligan, a bargaining unit Employee, testified that he had approved and signed invoices on job-sited materials, both as a bargaining unit Inspector and while serving as an exempt Construction Representative. Jim McCauley, as a bargaining unit Light Crew Foreman, had the the absolute and final right to approve invoices for materials used on jobs involving his crew. The testimony of Culligan and McCauley was not contradicted.

Inspection:

McLoughlin stated that the Construction Representative is to "approve or disapprove the progress payments for work performed in the field." This particular duty is not listed in the Inspection Manual or the Position Description; however,

the essential component field inspection is listed. The Position Description notes the inspection duties of a Construction Representative as follows:

Union Exhibit 5 states:

"Performs inspections which are closely controlled by procedures, but has the latitude of scheduling inspections commensurate with applicant/contractor deadlines."

The Union points out that a bargaining unit Inspector or Fitter has the authority to accept or reject a contractor's work after inspecting it.

The Company document entitled "Standard Practice" (Un. Ex. 3) reads, in part, as follows:

"The Inspector will reject all work that does not meet PGandE Standards or Specifications. Such rejections must be promptly reported to the immediate Supervisor and to the Marketing Representative if no immediate commitment is made by the contractor or customer to correct it.

"\* \* \* It is important that no other Company Representative be involved in the inspection, approval, or rejection process without the Inspector's knowledge. Any communications to developers, contractors or customers involving inspection, approval or rejection by other Company Representatives should be reviewed with the Inspector prior to such communication." (Un. Br., pp. 11-12)

McLoughlin testified that a Construction Representative reports deficiencies in a contractor's work to a Company Marketing Representative and to other Supervisors. This is also true as to bargaining unit Inspectors.

Minor Contract Modifications:

McLoughlin testified that a Construction Representative has "some authority to make changes" in the Contract. He further testified that the authority of the Construction Representative in this regard is limited, never to exceed \$2,000 on even the biggest jobs, and on smaller jobs as little as several hundred dollars.

Union witness Hughes testified that as an Inspector he could authorize contractors to make minor contract modifications. This was similar to the testimony of Inspector Paul Schoneman.

The Company's standard practice (Un. Ex. 3) states:

"The Inspector may approve minor deviations from Construction Drawings if the cost, operation, maintenance, safety, appearance and the life expectancy of the system are not appreciably affected."

Witness McCauley testified that a Light Crew Foreman may make modifications on the job. His testimony was as follows:

"A. Every job that I get the standard is if I overrun the job by 10 percent or underrun by 10 percent I have to write a story as to why that happened.

"Q. Do you have the authority to go over 10 percent and then explain it later?

"A. Yes, if it becomes disastrous, though, I have to get somebody else involved in it. (Tr. 109)

Evaluation:

McLoughlin testified that the Construction Representative also has the responsibility "to document the contractor's performance and to fill out a ... performance evaluation form"; that the Construction Representative is asked to rate a contractor's work as poor, good, or excellent, to describe his completion time as per contract or late, and to describe his settlement of claims as uncooperative, cooperative, slow, or prompt (Tr. 39, lines 18-21; Un. Ex. 4).

McLoughlin further testified that "there is informal feedback received" from bargaining unit Inspectors with respect to contractors (Tr. 57), and that the bargaining unit Light Crew Foreman has to rate plumbing contractors on a daily basis (Tr. 111).

Job Shutdown:

The authority of a Construction Representative to shut down a job is set forth in the Inspection Manual (Co. Ex. 9) as follows:

"The Construction Representative may stop the work but only with the provisions of Article 10 of the Medium Form General Conditions (or Article 20 of the Long Form General Conditions) and only as the last resort if the Contractor refuses to abide with provisions governing the work. This provision should only be employed with full concurrence and knowledge of the PGandE Contract Negotiator. It is recommended that the written notification to the Contractor that he is failing to comply with Contract be authorized by the PGandE Contract Negotiator." (Un. Br., p.15)

McLoughlin testified that the Construction Representative has "the authority to shut down the job ... if he encountered an unsafe condition or a gross departure from specifications."

(Tr. 40)

Hughes testified that a bargaining unit Inspector may shut down the job if a contractor is working in the proximity of Company property and appears to be endangering Company property; that he may tell a contractor to stop work if there is a gross departure from PGandE specifications.

Witness Culligan testified that as an Inspector his authority was as follows:

"If the job wasn't being built as you felt it should be built or if a problem came up in the field that may cause somebody danger or injury, I would shut it down." (Tr. 91)

This was also testified to by Inspector Schoneman.

The evidence indicates that a bargaining unit Subforeman in an electric crew, or a Light Crew Foreman in a gas crew could shut down a job for safety reasons, such as inclement weather or for disciplinary reasons; that a Light Crew Foreman working with a contractor on a joint trench could also shut down the contractor's crew if he believed that the contract was not performing his work up to PGandE standards.

Materials:

The Construction Representative includes in his duties the obligation to arrange for the delivery of PGandE materials to a job site and, in the case of vendor-delivered materials,

"to obtain the documentation of the material that was delivered and was used on the job site was in fact up to ...

[Company] specifications."

Union witness Hughes, a bargaining unit Inspector, testified that the Inspector is responsible for auditing job-sited materials and, if they are vendor-supplied, checking them "to make sure they come to the construction standards of PG&E." (Tr. 80); that the same authority is vested in bargaining unit Subforemen and Light Crew Foreman.

Qualification and Certification of Contractor Employees:

McLoughlin testified that the Construction Representative has the responsibility of "qualifying and the certification of the contractor and the contractor's employees at the job site." The Union points out that the Inspection Manual limits the certification to "verification of welder's/plastic fuser's qualifications," while the Position Description includes as a major area of responsibility the obligation to "provide evidence of certification and qualification of personnel engaged in welding plastic pipe fusion."

The record establishes<sup>u</sup> that bargaining unit Employees test and certify other bargaining unit Employees in plastic fusion after undergoing a two-day training session. It was pointed out that bargaining unit Subforemen have the authority to approve or disapprove Apprentices for certain types of work,

and that Light Crew Foremen have similar authority with respect to the use of Helpers.

The Union points out that "certification of plastic fusion is performed by bargaining unit employees, leaving only welding certification as a Construction Representative duty formerly performed by an exempt position." (Un. Br., p.18)

Documentation:

McLoughlin testified that "the work procedures and work practices that were followed by the contractor need to be documented ... and it needs to be documented by the Construction Representative that it was done according to code and it's a part of our job record."

Hughes testified that as an Inspector he kept "a daily log ... on all work he [the contractor] does." Shonnenman testified that as an Inspector he kept a daily log; and Culligan testified that his record-keeping as an Inspector was no different than when he was acting as a Construction Representative. Light Crew Foreman McCauley testified that he must keep extensive records on his crew's work and on the contractor whose work he inspects.

Both the Inspector and the Construction Representative must make "as-built" drawings. The Inspection Manual for Construction Representative states:

"The Construction Representative is responsible for the preparation of as-built drawings that describe the location, footages, and dimensions

of the installed facilities." (Co. Ex. 9, p.7, Sec. 1.7.2.1.)

The Company Engineering Standard No. 99 provides similarly:

"It shall be the responsibility of Inspector to maintain a detailed list of material installed and an as-built set of drawings, including field changes, to adequately describe and locate facilities for record purposes and to be included as list of material on sketch used in deed of conveyance to be executed by developer." (Un. Ex. 7, paragraph 6)

Coordination with Other Utilities:

McLoughlin testified that the Construction Representative must coordinate "with Pacific Telephone, with cable TV companies, and other utilities involved with the trench."

Bargaining unit Inspectors, electric Subforemen, and gas Light Crew Foremen routinely coordinate installation directly with representatives of other utilities.

Specification Interpretation:

McLoughlin testified that the Construction Representative was "responsible for interpreting the specifications" to the contractor. The record indicates that bargaining unit Inspectors, electric Subforemen, and gas Light Crew Foremen interpret specifications and explain PG&E procedures to contractors. A Company witness in a San Jose case (Un. Ex. 8) estimated that the interpretation of specifications constituted 85 percent of a Construction Representative's job; that such work is routinely performed by bargaining unit Employees.

Job Scheduling:

It was testified that another responsibility of the Construction Representative is that of "updating our job scheduling program ... [which is] a way of reporting the job status to other departments in the Company." Company Exhibit 9, the Inspection Manual, states that the Construction Representative acts "as the field liason to keep the other functional departments informed of the job progress and any activity that may require their attention."

Schonneman testified that as an Inspector he attended formal job scheduling meetings. Hughes testified that while he does not attend actual job scheduling meetings as an Inspector, information which he provides the Company is used to update the job scheduling program.

Awarding Contract:

The Company, in its Opening Brief, claims that the Construction Representative has the authority "to accept or reject the bid of a particular contractor." The Company Standard Practice specifies that "the Manager shall award the Contract to the Contractor." McLoughlin testified that while the Construction Representative might participate in the bid selection process, he does not have the final decision as to awarding the contract.

Construction Representative Culligan testified that all he did was to "put together a standardized type form package

which included the job that was going out for bid as well as any drawings that I felt would pertain to that job." (Tr. 97).

Presence on the Job Site and at Pre-Job Meeting:

According to Union Exhibit 5, the Construction Representative is expected to attend pre-job meetings and spend almost all of his time actually at the job site once work has started.

The role played by the Construction Representative at the pre-job meeting was described by Construction Representative Culligan as to "make the phone calls and schedule the meeting," where other Company Representatives "could answer any question that may arise for the contractor." Gas department Light Crew Foremen attend pre-job meetings and act as the principal spokesperson for the Company at these meetings.

On larger jobs Hughes, as an Inspector, testified as follows:

"Q. As an Inspector, were you on the job all day?

"A. As much as possible, yes.

"Q. As the Construction Representative, were you on the job all day?

"A. As much as possible.

"Q. Was there any significant difference between the amount of time you spent on the job as Inspector as opposed to a Construction Representative?

"A. Not really, no." (Tr. 94)

Light Crew Foreman McCauley testified that he is on the job supervising contractors digging joint trenches all day.

SUMMARY:

The record in this case establishes that the Construction Representative has a great many responsibilities and duties that were performed by bargaining unit Employees.

The Local Investigating Committee Report, Grievance No. 18-838-83-91 (Coast Valley Division) under "Facts of the Case" includes the following agreed-to fact:

"Additionally, the line construction supervisor did the required administrative work associated with the contract project. It was agreed, however, that the inspection work performed was that which would normally be completed by a bargaining unit employee (inspector)."

The "Facts of the Case" further sets forth that on November 1, 1983, a lineman was upgraded "to the position of Construction Representative"; that Mr. Pembroke [District Electric Superintendent] stated "that since October 31, 1983, the grieved work for the contracted job was almost entirely that which would normally be performed by a bargaining unit inspector."

(Un. Ex. 8)

Section 7.2 provides:

"Supervisors ... shall not perform work usually assigned to employees in IBEW 1245 bargaining unit classifications except:

"...

"(c)(3) Incidental assistance and de minimis assignments."

In this case exempt Supervisors, i.e., Construction Representatives are performing far more than de minimus assignments of unit work.

Whatever reasons the Company had to create the position of Construction Representative, the evidence establishes that the largest bulk of duties and responsibilities of that position consists of unit work.

The Company, of course, may have a Construction Representative position, but not at the expense of unit work. Even though no unit Employees have been laid off because of the creation of the Construction Representative position does not justify moving unit work into an exempt position. The Agreement recognizes that unit work is to be retained within the Agreement for unit Employees. And, the assignment of unit work to the Construction Representative is far more than a de minimus assignment.

**DECISION:**

1. The Company has violated the Agreement in assigning unit work to Construction Representatives. Such assignments shall cease immediately.

2. The Union and Company shall meet immediately to agree on a specific identification of unit work that shall not be assigned to Construction Representatives.

3. This Board retains jurisdiction over any question or dispute that may arise out of the implementation of the above Decision.

Sam Kogel  
Chairman

Roger Stalup  
Union Member

Kenneth L. Ball  
Union Member

John P. Brenne Dissent  
Company Member

Albert Bright - Dissenting  
Company Member

Dated: January 31, 1985  
San Francisco, California