In the Matter of an Arbitration between LOCAL UNION NO. 1245 of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Complainant, and PACIFIC GAS AND ELECTRIC COMPANY, Respondent.	Case No. 130 Company's Unilateral Termination of a Local Prearranged Overtime Practice

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

JOE VALENTINO and
ROGER STALCUP, Union Members

I. WAYLAND BONBRIGHT and
DAVID BERGMAN, Company Members

ISSUE:

Was the Company's unilateral termination of a local prearranged overtime practice a violation of the Agreement? If so, what is the remedy?

The remedy that the Union is seeking is reinstitution of the former system for prearranged overtime within the affected departments in San Francisco and that all Employees who suffered any losses as a result of the unilateral decision be made whole for their losses.

STIPULATIONS:

> "1. Over at least the last twenty years, most departments in the San Francisco Division have developed local practices for equitably distributing prearranged overtime among employees. Examples of these local practices include the following:
>
> "(a) ELECTRIC UNDERGROUND: Prearranged overtime was offered to all employees on an alphabetical basis. The equity of the distribution of overtime was judged on the basis of the number of opportunities for overtime, not the actual hours worked.
>
> "(b) GAS SERVICE: Prearranged overtime was offered to all employees in the yard before work or over the phone. If more employees volunteered for the overtime than were needed for the job, those employees with the least number of prearranged overtime hours were selected for the work. The equity of the distribution of overtime was thus judged by the hours of overtime worked.
>
> "(c) CUSTOMER SERVICES: Prearranged overtime was offered to employees with the least amount of recorded prearranged overtime hours. Employees volunteered for prearranged

overtime on a weekly basis and recorded prearranged overtime hours were posted on a daily basis. Thus, the equity of the distribution of overtime was judged strictly by the hours of overtime worked or declined.

"2. In some instances there were written local agreements, executed by the union's local business representative and the company's local personnel representative, describing the administration of the local prearranged overtime practice. These local agreements did not contain any language requiring the company to pay an employee for the time which he lost if it was determined that the company made a mistake in the administration of this practice. Notwithstanding, it was the local practice to pay any employee improperly bypassed for prearranged overtime for the time which he or she lost.

"3. The local practices were consistently enforced through the grievance procedure. Most often the settlements were made in the first step of the grievance procedure (shop steward and supervisor), less often at the second step (local investigating committee), and once at the third step (fact finding).

"4. Most of these local practices in the San Francisco Division were in effect from at least 1965. All were in effect prior to the 1974 negotiations which produced the language of section 212 of the physical agreement requiring the company to pay an employee for the time which he lost if it was determined that the company made a mistake in the administration of the contractual emergency overtime procedure.

"5. All of these local practices in the San Francisco Division were in effect until late 1982 or early 1983 when they were gradually discontinued unilaterally by the company; and grievances referred to the LIC were denied by the S.F. IR representtative and in at least two instances with the concurrence of the Union Business Representative. By letter dated December 3, 1984, Manager of Industrial Relations I.W. Bonbright notified the union

that 'effective immediately the Company is canceling and considering null and void all San Francisco Division Prearranged Overtime Procedures.' These changes in the local practice were not negotiated and agreed to by the company and union." (Jt. Ex. 3)

AGREEMENT PROVISIONS:

"Equal Distribution - Prearranged Overtime

"(a) Prearranged overtime work shall be distributed among employees in the same classification and in the same location as equally as is practiable. The Company will post accumulative prearranged overtime worked or credited as worked for each person each month. (Amended 1-1-80)" (Jt. Ex. 1, Sec. 208.16(a), p.126)

* * *

"(b) When it has been determined by the Local Investigating Committee that the Company made a mistake in the administration of this (emergency overtime) procedure, the Company will pay the aggrieved employee for the time that he has lost." (Jt.. Ex. 1, Sec. 212.11(b), p.133)

* * *

"(e) If during an accounting period an employee fails to respond when called on more than six separate occasions, he will be removed from the voluntary call-out list for that period. (Amended 1-1-80)" (Jt. Ex. 1, Sec. 212.11(e), pp. 133-134)

* * *

"107.1 Anti-Abrogation Clause

"Company shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leve policies or its retirement plan, or (b)

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." (Jt. Ex. 1, Sec. 107.1, p.61)

* * *

"102.4 Finality

"The resolution of a timely grievance at any of the steps provided herein shall be final and binding on the Company, Union and the grievant. A resolution at a step below Step Five, while final and binding, is without prejudice to the position of either party, unless mutually agreed to otherwise." (Jt. Ex. 1, Sec. 102.4, p.23)

DISCUSSION:

The Agreement between the Parties makes a clear distinction between "prearranged overtime work" and "emergency overtime." This case concerns "prearranged overtime" in certain departments in the San Francisco Division.

It is the position of the Union that in the San Francisco Division, different departments over a period of years worked out different practices for equitably distributing overtime and that ... "the local practice was to interpret the equitable distribution of prearranged overtime as permitting the payment of employees who were bypassed for prearranged overtime as if they had worked." (Tr. 10) Accordingly, the Union's position is that under the anti-abrogation clauses

of the physical and clerical agreements, there was a firmly established past practice which was to the Employees' benefit of paying people bypassed for prearranged overtime, and that the Company could not unilaterially discontinue such practice under the anti-abrogation clause.

It is the Company's position that the Parties have an integrated Agreement that covers the entire system with reference to all of the provisions of the Agreement; that with the exception of what occurred over a period of time in San Francisco, the prearranged overtime provisions of the Agreement, as well as the emergency overtime provisions, are uniformly applied through the entire system not paying for prearranged overtime; that the decisions that may be made at the first steps of the grievance procedure by the general foreman and the local investigating committee are not binding on the system as a whole, nor is it binding on future settlements of a future issue as provided in Section 102.4; that where the Parties intended to make up pay for missed overtime opportunities in Section 212, the Parties so provided in the case of emergency overtime but not prearranged overtime; that the Company has no quarrel with the procedures that have been entered into locally in the San Francisco Division relative to how to make the determination of equitable distribution of overtime, but that paying for missed overtime in the case of prearranged overtime opportunities is not afforded to all

other Employees of the Company and has been specifically disavowed at the highest step of the Company's grievance procedure short of arbitration, and that it is violative of the Agreement between the Parties.

This case is not concerned with the mechanical method that the Parties may agree to at any level with reference to the equitable distribution of overtime. The issue in this case is specifically limited to whether or not whatever mechanical method of distribution of overtime may have been agreed to at the local level, when a bypass occurs in the instance of prearranged overtime, is it proper to pay the person who was bypassed for such overtime work missed?

An agreement must be read and applied from "all four corners." The anti-abrogation provision of the Agreement upon which the Union relies in this case must be read with reference to the specific provisions of the system-wide Agreement dealing with pay for bypassed overtime in the case of both prearranged overtime and emergency overtime.

In this regard, the language of Section 208.16(a) dealing with prearranged overtime does not provide either specifically or by implication that if such overtime is bypassed that payment will be made for such bypass.

On the other hand, Section 212.11(b) that deals with emergency overtime is specific in that the Parties have agreed that if the Company makes a mistake in the administration of

emergency overtime, i.e., a bypass could be such a mistake, that "the Company will pay the aggrieved employee for the time that he has lost."

It was stated, without contradiction, that the reason for the difference noted above between prearranged overtime and emergency overtime payment was that in the case of emergency overtime volunteers have agreed to restrict their personal off-hours activity in the expectation that their services would be required on immediate notice. While it is possible to equalize bypasses as to prearranged overtime hours, there is no way to restore the time lost and inconvenience to those who have made a commitment to stand by in cases of emergency overtime but were bypassed erroneously. For this reason it was stated, and it remained uncontradicted, that the Parties agreed to the difference in treatment of bypass pay in the case of prearranged overtime and emergency overtime in 1974. And, the Union agreed that the omission of a pay-off provision for prearranged overtime was intentional.

With reference to the binding effect of settlements that had been made previously involving the payment arising out of a bypass of prearranged overtime, these decisions were made at the steps of the grievance procedure below that of Step Five. Their viability, insofar as this case is concerned, is controlled by Section 102.4, which reads as follows:

> "The resolution of a timely grievance at any of the steps provided herein shall be final

and binding on the Company, Union and the grievant. A resolution at a step below Step Five, while final and binding, is without prejudice to the position of either party, unless mutually agreed to otherwise."

In a grievance that did reach Step Five, the Review Committee held that pay in lieu of the missed prearranged overtime opportunity was improper and that the Headquarters of the Company had until the end of the year to make up the time lost (Co. Ex. 4).

A series of arbitration cases were submitted which the Union contends were pivotal with reference to the anti-abrogation clause. None of them are an aid in supporting the Union's position case. In none of them was there a juxtaposition of specific provisions such as in this case, i.e., the clear distinction between bypass pay in prearranged and emergency overtime. The anti-abrogation clause is not available to justify a clear violation of the specific provisions of the system-wide agreement because of the action by a unit within a division.

The anti-abrogation clause is specific as to benefits that the Company may not change, and then provides, "The foregoing limitation shall not limit the Company in making a change in a condition of employment, if such change has been negotiated and agreed to by the Company and Union.

In this case, the Parties did negotiate the bypass pay provisions as to prearranged and emergency overtime in 1974.

The Company did not change a "condition of employment." It acted to enforce what the Parties had agreed to and to make uniform the application of the Agreement system-wide. The anti-abrogation provision does not apply to this case.

SUMMARY:

The specific issue involved in this case, namely, whether or not there shall be pay for bypassed prearranged overtime is covered by the terms of the system-wide Collective Bargaining Agreement. The anti-abrogation provision, upon which the Union relies, is not applicable in this case. Those local practices that were made contrary to the specific terms of the Agreement, prior to Step 5 of the grievance procedure are, by agreement of the Parties, final and binding as to each of those disputes only. However, as indicated hereinabove, those local settlements are not binding on the Parties at the arbitration level. And at the arbitration level, what must be considered are the specific terms of the Agreement that are involved in a specific case.

It is clear that there is no disagreement on the part of the Parties as to the mechanics of how overtime shall be equitably distributed, but this does not include adding a term to the Agreement with reference to pay which was done in the case

of the San Francisco Division, particularly when such action changes specific terms of the system-wide Agreement.

DECISION:

The Company's unilateral termination of a local pre-arranged overtime practice was not a violation of the Agreement between the Parties. The grievances are denied.

Sam Kagel Chairman, Neutral Member	Concur/~~Dissent~~	8/14/85 Date
Roger Statuto Union Member	Concur/Dissent	8/29/85 Date
Joe Valentino Union Member	~~Concur~~/Dissent	8-29-85 Date
[signature] Company Member	Concur/Dissent	8-29-85 Date
[signature] Company Member	Concur/~~Dissent~~	8/29/85 Date