In the Matter of an Arbitration

between

LOCAL UNION 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent.

Re: Case No. 134

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Company Members: Kent Anderson
I. W. Bonbright

Union Members: Ed Caruso
Roger Stalcup

Neutral Member: John Kagel

ISSUE:

The Board of Arbitration:

In a previous decision of the Board concerning this case, the Board decided as follows:

> "DECISION:
>
> "The Company violated the Agreement in assigning Employees from Martin to Shotwell, between March 8, 1983 and November 15, 1985, including the violation of the Headquarters Letter Agreement dated October 18, 1967.
>
> "The remedy for the Company's violation is remanded to the Parties for consideration in light of the Decision for this matter, the Board of Arbitration retaining jurisdiction in the event there is any dispute." (Jt. Ex. 4).

The Parties, being unable to agree upon a remedy in this matter, have invoked the retained jurisdiction of the Board to determine the appropriate remedy for the Employer's Agreement violation which was decided in the above Decision.

AGREEMENT PROVISIONS:

> "TITLE 102. GRIEVANCE PROCEDURE
>
> "...
>
> "102.4 Finality
>
> "...

"(c) Provided further that nothing contained herein shall restrict or inhibit the parties or the Board of Arbitration from reducing the amount of a retroactive wage adjustment to an otherwise successful grievant where, in their absolute discretion, the equities of the situation do not call for the employee to receive a full retroactive wage adjustment. ...

"PART II

"DIVISION EMPLOYEES ONLY

"...

"201.6 Personal Vehicle

"An employee who is authorized by Company to use his personal vehicle in connection with his duties shall be entitled to a vehicle mileage allowance at the mileage rates negotiated by Company and Union from time to time. (Amended 1-1-80) ...

"TITLE 202. HOURS

"...

"202.19 Regular Headquarters

"Except as provided in Sections 202.20 to 202.23, inclusive, an employee shall report to a Company headquarters to which he has been regularly assigned and he shall return thereto at the conclusion of the day's work. The time spent in traveling between such headquarters and the job site shall be considered as time worked. ...

"202.23 Temporary Headquarters - Commuting

"Section 202.19 hereof shall not apply to an employee who has been temporarily assigned to work at a regularly established Company headquarters other than his regularly assigned work headquarters and who, by voluntary arrangement approved by the Company supervisor in charge, reports directly to such temporary headquarters. Under the provisions of this Section, travel to and from an employee's home and such temporary headquarters shall be considered as time worked. The provisions of Section 201.6 shall apply to the use of an employee's personal vehicle. ...

"206.17 Relocation Other Than For Lack Of Work

"When it becomes necessary to relocate individuals, crews, or groups of employees in headquarters/office due to the closing of a reporting headquarters/office or when such relocation is necessitated by a shift of workload or other economic consideration, either of which is expected to be permanent, and where the number and the classification of jobs in the Division will be unchanged, the following procedure shall be followed:

"(a) All employees in a headquarters-office, including those on leaves of absences, off sick, on vacation, or off on disability, shall be considered on the basis of Service, as defined in Section 106.3, in the following Subsections:

"(b) Employees with the greater Service shall be given the first opportunity to relocate.

"(c) In the event there are insufficient volunteer(s) for such relocation, the employee(s) with the least Service in the affected classifications shall be relocated.

"(d) Each employee in Subsection (c) above shall be given as much notice as possible of the impeding relocation and such employee may elect either:

"(1) to fill any vacancy in the employee's classification in the Division in which the employee is assigned, notwithstanding Subsection 205.6(a) or

"(2) to fill the vacancy in the employee's classification created at the new location where such job is relocated.

"(e) An employee so displaced in Subsection (b) and (c) above shall be given preferential consideration under Section 206.9 to return to such employee's former headquarters/office.

"(f) An employee relocated in accordance with Subsection (b) or (c) above shall be entitled, when appropriate, to the provisions of Section 206.8.

"(g) Unassigned classifications, as provided for in the Master Apprenticeship Agreement, relocated under the provisions of this Section shall be immediately reclassified as 'Assigned' to the headquarters/office where such job is to be relocated.

"(h) Company shall not implement the provisions of this Section for the purpose of subverting Titles 201, 202, or 205. (Entire Section added 1-1-80)" (Jt. Ex. 1).

POSITION OF THE PARTIES:

Position of the Company:

That while the Company does not dispute the findings of the Board that the 1983 Shotwell transfers were not carried out in complete conformance with the Agreement, the question on remedy should be what are the real measured damages to each Employee who reported to Shotwell on April 11, 1983, in reliance on the Company's assertion at the time that Shotwell became their permanent, separate and distinct reporting headquarters; that there were no Martin Employees who were bypassed in the Company's assignment; that none of the original 1981 tranferees from Shotwell to Martin protested the original transfers or filed bids when Shotwell was properly established as a Headquarters in 1985; that, the Division met the central purposes of Section 206.17 by soliciting volunteers for that April 11, 1983, Shotwell assignment; that, therefore, the Division's technical failure to comply with the requirements of the Agreement was, at worst, a harmless error that did not work to

the detriment of any Employee; that the Union's proposed punitive remedy is contrary to the facts and past practice; that the Union's sought for remedy would give a windfall which bears no relationship to the Employees' out-of-pocket expenses or inconvenience with the majority of the original group of 1983 transferees incurring less commute time and mileage by reason of their volunteering to change their supposed permanent reporting headquarters at Shotwell; that one example would pay a pre-tax fee recovery of $33,621.40 to an Employee whose voluntary transfer saved him both commute time and travel expense; that there are other similiar examples, including examples of Employees who were hired and first assigned at Shotwell; that an equitable solution would be that the Company recompensate Employees out-of-pocket monetary losses based upon the individual facts of where their residence is located with reference to the Shotwell location; that the Company be required to pay an additional $5,000.00 to a charity designated by the Board of Arbitration; that the Board of Arbitration has the authority under Section 102.4(c) to dispose of this matter on equitable grounds which included dealing with mileage as well as wages; that the charitable contribution proposed by the Company would be well-publicized

by the Union and would have the effect of acting as a deterrent for future agreement violations on the part of the Company.

Position of the Union:

That Section 102.4(c) should not be invoked in this matter for it has not been used by the Parties since its adoption in 1980, and would be inapplicable in this case since there is no equitable considerations involved in the Company's conduct; that the Company position pointing to equitable considerations with respect to windfalls to be received by Employees is inapplicable because the remedy is required by the Agreement and that when the different groups of Employees are considered, the original group of 15 Employees, whether volunteers or assigned, all have the expectations of receiving the pay set forth in the Agreement which similar considerations apply to Employees who were intermittently assigned from Martin to Shotwell on an irregular basis to replace Employees on a temporary basis or supplement the original 15 Employees; that, if there is any equity argument, it would apply to new hires, hired after April 11, 1983, and assigned to work at Shotwell on the first day of their employment or those who transferred

by bid to Shotwell or for those Employees on hiring or accepting the bid who had expectations that they would be required to report to Shotwell; that notwithstanding the Company's failure to designate Shotwell as a regular headquarters, Shotwell could be considered these Employees' regular headquarters, and they had no vested interest in Martin as a headquarters and perhaps no reasonable expectations of being paid travel time or mileage; that even if an equitable reduction is appropriate, then they should receive any pay that they would have received had they been required to report to Martin for Martin should be considered as a temporary headquarters as far as they were concerned; that there is no grounds for reduction of the Company's overall financial obligation.

DISCUSSION:

Equity:

Section 102.4(c) gives the Board of Arbitration the "absolute discretion" to deal with equities in any given situation with respect to reducing the amount of a retroactive wage adjustment. Obviously, the questions of "absolute discretion" would be based on an exercise of that discretion

applied to the facts of each individual case. It would not constitute any precedent for any other case.

Award on the Merits:

The award on the merits of this case is specific, namely that the Company violated the Agreement in assigning Employees from Martin to Shotwell between March 8, 1983 and November 15, 1985. The Agreement itself is also specific as to what the consequences of that assignment are, namely, the pay and mileage set forth in Section 202.23. There is nothing in that provision about what happens when a temporary headquarters results in less out-of-pocket expenses for an Employee.

Where the Agreement is specific, and the award is specific as to whom it applies, equitable considerations would have little to do with the remedy involved. The Board can fairly assume that the Parties knew the consequences of their own bargain, including the fact that there may have been Employees who had gained economically by a temporary assignment. The Parties, in their Agreement, did not limit the payment or consideration of commute time as time worked or mileage expenses to be paid under that provision only in the event that it was economically more costly to the Employee to

go to the temporary headquarters rather than the regular headquarters.

It is significant that these same Parties in their Office and Clerical Agreement, Union Exhibit 16, Section 10.8, page 41, specifically provided that in similar circumstances under that Agreement, an Employee would be paid for the amount of travel time in excess of the time normally taken in traveling to his regular headquarters in determining additional compensation due the Employee. In this case, however, the Agreement does not include such a provision. Presumably, had the Parties intended that such a measure of compensation was to be applicable, they would have so agreed. Not having done so, the Board of Arbitration cannot ignore the provisions of the Agreement by the application of "equity".

Additionally, even if this was not so, as the Union points out, the Company has offered no justification as to why it violated the Agreement. The Company made no claim that it was in some way misled or confused by the Employees or the Union putting forth any other grounds on which traditional equity considerations might even be considered as possibly applicable to relieve the Company of the Agreement's specific requirement.

Groups of Employees:

While the Parties have addressed how the additional compensation set forth in the Agreement is to be applicable to the various groups of Employees who reported to Shotwell in the various periods of time, the decision of the Board is limited to those Employees assigned from Martin to Shotwell. Those Employees necessarily include the original group assigned, whether or not voluntarily, as well as Employees assigned by the Company on a temporary basis during that period of time. It does not include Employees who were hired into Shotwell and who had never worked at Martin, nor does it include those who voluntarily bid into Shotwell except those who had bid directly from Martin.

DECISION:

The Company shall forthwith pay the compensation as set forth in Section 202.23, namely, considering travel to and from the Employee's home and Shotwell as time worked and mileage as provided in Section 201.6 for the use of the Employees personal vehicle for Employees assigned from Martin to Shotwell between March 8, 1983 and November 15, 1985.

The specific amounts due specific Employees are remanded to the Parties, the Board retaining jurisdiction solely for the purpose of resolving disputes between the Parties as to specific compensation due Employees under the terms of this award.

JOHN KAGEL, Chairman — Concur/Dissent — Dated 2/2/85

I. W. BONBRIGHT, Company Member — ~~Concur~~/Dissent — Dated 2/2/87

KENT ANDERSON, Company Member — ~~Concur~~/Dissent — Dated 2/2/87

~~JOE VALENTINO,~~ ED CARUSO, Union Member — Concur/~~Dissent~~ — Dated 2-2-87

ROGER STALCUP, Union Member — Concur/~~Dissent~~ — Dated 2/2/87