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. Re: Computation of Pro-rated Vacation upon Resignation	Arbitration Case No. 138

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Company Members: I. W. Bonbright
Rick R. Doering

Union Members: Arthur D. Murray
Roger Stalcup

Neutral Member: Kathleen Kelly

ISSUE:

Did the Company miscalculate the Grievant's terminal vacation entitlement? If so, what is the remedy? (Jt. Ex. 2).

RELEVANT AGREEMENT PROVISIONS:

"TITLE 8. VACATIONS

"8.1 DEFINITIONS

" ...

"(c) Earned Annual Vacation Allowance is the number of paid vacation days which an employee has earned in the previous calendar year. The number of paid vacation days will be determined by the straight-time days worked in the preceding calendar year and years of employment.

"8.2 VACATION ALLOWANCE

"(a) A regular employee, who completes his first year of Service, shall be entitled to vacation with pay in accordance with the following table:

"Employment date:

"From	to inclusive	Days Vacation
"January 1	February 3	10
"February 4	March 9	9
"March 10	April 11	8
"April 12	May 14	7
"May 15	June 16	6
"June 17	July 19	5
"July 20	August 21	4
"August 22	September 23	3
"September 24	October 26	2
"October 27	November 28	1
"November 29	December 31	0

"(b) (Effective until 12-31-85) In the subsequent calendar year and in each year thereafter, up to and including the seventh calendar year following his employment date, a regular employee shall be entitled to a vacation of ten workdays with pay. (Amended 1-1-84) ...

"(c) (Effective until 12-31-85) In the eighth calendar year and in each year thereafter up to and including the 15th calendar year following his employment date, a regular employee shall be entitled to a vacation of 15 workdays with pay. (Amended 1-1-84) ...

"8.3 SERVICE ANNIVERSARY VACATION - BONUS VACATION

"(a) In the fifth calendar year following his employment date and in each fifth calendar year thereafter, Company shall grant each employee a service anniversary vacation of five workdays. A service anniversary vacation shall be in addition to the annual vacation allowance set forth in Section 8.2 above to which the employee may be otherwise entitled in that calendar year and he acquires no right as to all or any part of the service anniversary vacation unless he works in the calendar year in which it is granted. The service anniversary vacation, as herein provided, vests on the first day of each calendar year in which an employee qualifies for a service anniversary vacation, and must be taken in that calendar year. (The provisions of this Section shall not apply to part-time or intermittent employees.) (Amended 1-1-80). ...

"8.7 TERMINATION OF EMPLOYMENT

"(a) Any employee who terminates his Service with the Company for any reason shall be paid a vacation allowance of 1/12th of his annual vacation for each 22 workdays he has worked beyond January 1

of the year in which he leaves the Company's service, plus any unused vacation earned in the calendar year(s) preceding his severance, provided:

"(1) he was first employed before December 31, 1969, and he retired from the Company's service under the provisions of the Company's Retirement Plan, or

"(2) he was first employed after December 31, 1969, or

"(3) his vacation entitlement as of December 31, 1970, was calculated on the basis of the then existing provision of Section 8.17 of this Agreement." (Jt. Ex. 1).

DISCUSSION:

Facts Giving Rise to the Grievance:

The facts leading up to the grievance are not in dispute. The Grievant, S , was employed by the Company on August 24, 1977 and resigned effective October 5, 1984 (Co. Ex. 4). Under Section 8.7(a) of the Agreement, S qualified for receipt of " ... 1/12th of his annual vacation for each 22 workdays he ... worked beyond January 1 of the year in which he [left] the Company's service, plus any unused vacation earned in the calendar year(s) preceding his severance" (Jt. Ex. 1).

There is no dispute regarding S 's "unused vacation earned in the calendar years preceding his severance" and on the books as of January 1, 1984. The Parties agree

that this amount was properly computed and paid (Tr. 7). The dispute in this case concerns computation of prorated vacation earned by the Grievant in 1984, that is, from January 1, 1984 until the time of his resignation, October 5, 1984.

Both Parties agree that the Grievant worked nine 22 day periods in 1984, thereby calling for 9/12 of his "annual vacation" (Tr. 7). The Parties also agree that the Grievant's hourly rate at the time of termination is the appropriate rate for use upon translating this formula into money (Tr. 9).

The Parties disagree, however, regarding the amount of "annual vacation" to be used in this formula. The controlling provisions are paragraphs b and c of Section 8.2, which state as follows:

> "(b) (Effective until 12-31-85) In the subsequent calendar year and in each year thereafter, up to and including the seventh calendar year following his employment date, a regular employee shall be entitled to a vacation of ten workdays with pay. (Amended 1-1-84).
>
> "(c) (Effective until 12-31-85) In the eighth calendar year and in each year thereafter up to and including the 15th calendar year following his employment date, a regular employee shall be entitled to a vacation of 15 workdays with pay. (Amended 1-1-84)." (Jt. Ex. 1).

It is agreed that 1985 would have been the eighth calendar year following the Grievant's employment. The Company contends that the Grievant did not qualify for "annual vacation" at the rate of fifteen workdays under Section 8.2(c) because he did not work any days in 1985, which would have been the eighth calendar year following his employment. The Union contends that since 1970, the governing Agreement has required Employees to take their vacations in the year after they are earned. Therefore, the Union argues that while the Grievant was working in 1984 he was earning vacation to be taken in 1985. Under the Union's view, the vacation being earned while working during 1984 should, therefore, be computed according to the "annual vacation" that would have been allowed to the Grievant in 1985.

Application of the Agreement:

Before 1970, there was not a common date for vesting of all Employee vacation benefits. Each employee had a "qualifying date," controlled by the date upon which that Employee became a regular Employee (Un. Ex. 1, Section 8.1(c)). Employees were allowed to take their vacations in each calendar year before reaching their qualifying anniversary dates. Hence, they were taking vacation that was not yet fully earned. Under this system, some resigning Employees were required to reimburse the Company for vacation taken but not yet fully earned.

In 1970, the vacation system was changed. Under the system beginning in 1970 and continuing until the present, vacation days are allotted to all Employees who have completed one or more years of service on January 1, of each year. The days allotted have been earned in the prior calendar year. As stated in Section 8.1(c), "the number of paid vacation days will be determined by the straight time days worked in the preceding calendar year and years of employment." Under this system, no vacations may be taken until after they are fully earned.

Under the current system, all new Employees receive a special vacation allotment upon reaching their first anniversary date. This vacation allotment is intended to cover vacation earned in the partial year worked before each Employee begins their initial full calendar year of service with the Company. Vacation earned during the initial full calendar year of service with the Company is allotted on the following January 1st, as is true for all other Employees.

All of the Grievant's employment occurred under the post-1970 system. The following chart summarizes relevant information regarding vacation earned by the Grievant before the work performed in calendar year 1984:

Calendar Years Following Hire	Date vacation Earned	Amt. Earned	Period for Which Earned
1st	8/24/78	3 days	8/24/77-12/31/77
2nd	1/1/79	10 days	Calendar Yr. '78
3rd	1/1/80	10 days	Calendar Yr. '79
4th	1/1/81	10 days	Calendar Yr. '80
5th	1/1/82	10 days	Calendar Yr. '81
6th	1/1/83	10 days	Calendar Yr. '82
7th	1/1/84	10 days	Calendar Yr. '83

Section 8.2(b), relied upon by the Company, provides that each Employee completing one year of service shall receive a vacation of 10 workdays on each January 1 "... up to and including the seventh calendar year following his employment date ... ." The chart above makes clear that the Grievant had accrued all vacation called for under Section 8.2(b) by January 1, 1984. January 1, 1984 was the first day of "the seventh calendar year following his employment date."

When the Grievant continued to work past January 1, 1984, therefore, he must have been earning some vacation benefits other than those described in Section 8.2(b). He had already received all of the vacation benefits called for in Section 8.2(b). The only thing he could have been earning, was benefits as described in Section 8.2(c), which calls for accumulation of vacation credit at the rate of fifteen workdays per year. This is the amount of vacation which both Parties agree would have been payable had the Grievant worked into 1985. As

stated in the Company's brief, "... prior to his resignation, the Grievant was 'earning' vacation credits towards his 1985 vacation entitlement" (Co. Br., p. 2, lines 20-21). This conclusion supports the claim of the Union. As pointed out by the Union, the current system requires Employees to fully earn their vacation before it is taken. Under this system Employees earning vacation are earning the amount of vacation scheduled to be taken in the following year.

The Union appropriately cites an additional provision of the Agreement in support of its claim. Section 8.3 provides for "bonus vacations." That section states, in part:

> "A service anniversary vacation shall be in addition to the annual vacation allowance set forth in Section 8.2 above to which the Employee may be otherwise entitled in that calendar year. And he acquires no right as to all or any part of the service anniversary vacation unless he works in the calendar year in which it is granted. (Jt. Ex. 1).

On this occasion, the Parties' Agreement clearly dictates that an added benefit will not be payable unless the Employee works into the year during which the paid time off is to be taken. The fact that the Parties clearly inserted such a requirement in Section 8.3 further evidences that such a requirement should not be written into Section 8.2, the provision controlling this grievance, by the Arbitration Board.

The Company argues that these conclusions are inconsistent with the recognition of both Parties that S 's vacation allotment was properly computed using his 1984 rate of pay, despite the fact that an increase would have been called for in 1985 (TR. 14). No such inconsistency is found. As stated above, when S continued to work into calendar year 1984, he was earning the benefits called for by Section 8.2(c), namely, vacation at fifteen workdays per year, because he had already received all benefits called for under Section 8.2(b). Nothing about this conclusion suggests that S should have been paid at the 1985 rate of pay, rather than the rate governing when he resigned. Indeed, Section 8.9(a) of the Agreement specifically requires that "vacation pay shall be computed at the straight rate of pay applicable to the employee's regular classification as of the time his vacation is taken." This provision required use of the 1984 pay rate upon computing S 's prorated vacation benefit, without regard to the number of days utilized.

The Company also places reliance upon past practice. All of the evidence regarding past practice, however, relates to general Company policies. No evidence was offered of any specific case arising which called these policies to the attention of the Union. There is, therefore, no evidence of Union acquiescence in a procedure or method of computation different from that found appropriate here under the Agreement.

In sum, while the Grievant was working in 1984, he had already earned and received all of the vacation benefits described by Section 8.2(b). He continued to earn vacation while working in 1984, however. He was earning vacation at the rate called for in Section 8.2(c), namely, fifteen work days per year. This means that his pro-rated entitlement at the time of resignation should have been computed by multiplying 9/12 by 120 hours times the applicable hourly rate of $12.65.

DECISION:

1. The Company did not calculate the Grievant's terminal vacation entitlement as required by Sections 8.2 and 8.7 of the Agreement.

2. The Company shall immediately pay to the Grievant the difference between the terminal vacation entitlement required by the Agreement, namely, 9/12th times 120 times $12.65, and the sum actually paid at the time of the Grievant's resignation.

Kathy Kelly
KATHY KELLY, Chairman — Concur/~~Dissent~~ 7/28/86 Dated

I. Wayland Bonbright
I. WAYLAND BONBRIGHT, Employer Member — ~~Concur~~/Dissent 7/28/86 Dated

Rick R. Doering
RICK R. DOERING, Employer Member — ~~Concur~~/Dissent 7/28/86 Dated

Arthur D Murray
ARTHUR D. MURRAY, Union Member

Concur/~~Dissent~~ 7/28/86
Dated

Roger Stalcup
ROGER STALCUP, Union Member

Concur/~~Dissent~~ 7/28/86
Dated