

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.

Arbitration Case
No. 146

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Chairperson: Kathy Kelly, Attorney

Union Members: Roger Stalcup
Gwendolyn Wynn

Employer Members: I. Wayland Bonbright
David Bergman

BACKGROUND AND ISSUES:

The Grievant, F was terminated from her employment as a Meter Reader with the Company on July 12, 1985. Approximately two and one-half months before this date, she requested a lateral transfer to the position of Gas Helper. In this proceeding, the Union is not challenging the propriety of F's termination if she was properly in the position of Meter Reader at that time. Indeed, the Union has conceded that F's performance as a Meter Reader was "unacceptable" (Tr. 8). The central position of the Union in this case is that the Company improperly disqualified F for transfer to the Gas Helper position, that she should have been given that position, and that this transfer would have changed subsequent events.

The issue in this proceeding, as stated by the Parties, is:

"Notwithstanding the grievant's discharge which was upheld by Union and Company, was the Company's denial of a transfer request which the Grievant submitted before her discharge in violation of the Agreement? If so, what is the remedy?" (Jt. Ex. 2)

At the hearing in this matter, the Parties clarified that they solely desire a declaration from the Arbitration Board as to whether denial of F's request to transfer to the Gas Helper position was proper. In the event a violation of the Agreement is found, the Board has been

instructed to state that fact and remand the matter to the Parties for formulation of the precise remedy (Tr. 8-9).

RELEVANT AGREEMENT PROVISIONS:

"TITLE 205.

"JOB BIDDING, PROMOTION AND TRANSFER

"205.1 INTENT

"(a) The provisions of this Title shall be interpreted and applied in a manner consistent with the parties' purpose and intent in negotiating the job bidding and promotion procedures contained herein, namely that when employees are qualified by knowledge, skill and efficiency and are physically able to perform the duties of a job, the employee with the greatest Service shall receive preference in accordance with the sequence of consideration outlined in Subsection 205.5(b) and Sections 205.7 and 205.8 for an appointment to fill a vacancy, and that Company shall endeavor to expedite the filling of job vacancies.

"205.11 BYPASS FOR LACK OF QUALIFICATIONS

"(a) Notwithstanding anything contained in this Title, Company may reject the bid of any employee who does not possess the knowledge, skill, efficiency, adaptability and physical ability required for the job on which the bid is made. Additionally, the bid of an employee to a classification having a higher maximum wage rate will be rejected if the employee has been under active counselling for poor work performance during the previous 12 months. Active counselling for the purpose of this Section is considered to be: (1) Two or more separate instances in which the employee received disciplinary lay-off without pay for poor work performance or (2) demotion for cause."

FACTS LEADING UP TO THE GRIEVANCE:

The Grievant was employed by the Company on August 23, 1983, as a Meter Reader in Modesto. She received a number of disciplinary actions in 1984 and the early portion of 1985. The principal grounds for discipline were poor attendance and meter reading errors, including errors in subtraction. As already indicated, the Union has conceded that F's performance as a Meter Reader was "unacceptable" (Tr. 8).

In late March of 1985, F requested to transfer to a meter reading position in Stockton (Co. Ex. 8). Robert Edwards, the Company's Personnel Manager for the Stockton Division, testified that he felt F had a poor relationship with supervision in Modesto and that this might possibly be contributing to her poor performance (Tr. 27-28). Considering this possibility, the transfer request was granted.

F continued to experience difficulty with meter reading. In mid-April, she requested a lateral transfer to the position of Gas Helper (Co. Ex. 10). The Company bypassed F and one of three Gas Helper vacancies was filled with an individual possessing less seniority (Co. Ex. 10, pp. 2-3). The Company's stated reasons for this decision will be discussed below.

F continued to produce errors in meter reading and subtraction above established Company standards. As already

indicated, this led to her termination on July 12, 1985. The Grievant's relevant employment history may be summarized as follows:

"GRIEVANT'S EMPLOYMENT RECORD

"Co. Ex. 8	1)	<u>Date of Hire</u>	8/23/83
Co. Ex. 1	2)	<u>Warning Letter for</u> Poor Attendance, Subtraction Errors & Poor Judgment	2/ 9/84
Co. Ex. 3	3)	<u>Warning Letter for</u> Avoidable Accident	4/10/84
Co. Ex. 4	4)	<u>Warning Letter for</u> Subtraction & Other Reading Errors	12/21/84
Co. Ex. 5	5)	<u>Warning Letter for</u> Poor Attendance	3/ 7/85
Co. Ex. 6	6)	(1) <u>Day Suspension for</u> Subtraction and Other Reading Errors	3/13/85
Co. Ex. 8	7)	<u>Transfer to Stockton</u> <u>Granted</u>	4/ 4/85
Co. Ex. 9	8)	(3) <u>Day Suspension for</u> Subtraction & Other Reading Errors	4/15/85
Co. Ex. 10	9)	<u>Transfer to Gas Helper</u> <u>Denied</u>	4/26/85
Co. Ex. 11	10)	<u>Terminated for</u> Subtraction & Other Reading Errors	7/12/85"

Edwards, who participated in the decision to deny F 's request for transfer to a Gas Helper position, described the reasons for that decision as follows during his direct examination:

"A. They relate back to our reasons for allowing her to transfer to Stockton in the first place as a meter reader.

"I think it is important to remember that she had just arrived on the job. She arrived on April 22nd. Our notice of bypass to the Union is dated April 26th.

"She had on the date of notice of bypass just completed her training. She had voluntarily requested the transfer to Stockton from Modesto as a meter reader and had indicated that she was having problems with Ms. O'Neill as being one of the reasons why she wanted to leave.

"I was aware of the two prior disciplinary actions involving time off that she had received. That was of some concern to me. But primarily I wanted to give her an opportunity to be successful as a meter reader in Stockton. After all that was her desire as indicated by her request for transfer to Stockton. She was in a new work environment with new supervisors. She had not had the opportunity to see whether she would be successful or not.

"I also knew that we had previously counseled her, Tom Calkins, my personnel representative had, Jude Sharp (ph.), our [EAP] counselor had and Marilyn O'Neill, her prior supervisor, had counseled her that it would be necessary for her to meet minimum performance requirements of a meter reader in order to be eligible for transfer in the future." (Tr. 50-51)

It should be noted that when the Company granted F. 's request to transfer to Stockton as a Meter Reader, that decision was not expressly made conditional upon any commitment to remain in the Stockton meter reading position for any length of time (Tr. 57-58).

After the grievance giving rise to this case was filed, the Company stated its reasons for denying the disputed transfer request as follows in its formal answer to the grievance:

"Grievant was bypassed under Section 205.11 of the Physical Agreement for lack-of-qualifications. During the grievant's employment history of 19-months, multiple disciplinary actions have taken place with regard to her work performance.

"In accordance with Section 205.11(a), the grievant has had two separate instances within the past 12-months in which the employee received disciplinary layoff without pay for poor work performance. As such, Company bypassed this grievant for just cause." (Jt. Ex. 5)

DISCUSSION:

The Company answer quoted above places reliance upon Section 205.11(a) of the Agreement. The Union argues that examination of this Section supports its contention that denial of F. 's request to become a Gas Helper was improper.

Section 205.11(a) carefully describes certain circumstances under which the Company may reject Employee "bid" requests. Both Parties agree that it has been their practice to use the words "transfer" and "bid" as terms of art referring to different events. The term "transfer" has been used to describe a lateral change from one entry level position to another entry level position. The term "bid" has been used to describe other changes of position, including promotions.

There is no dispute concerning the fact that F. 's request to move from her meter reading position to the position of Gas Helper was a "transfer" request. The Union contends that Section 205.11(a) is the full agreement between the Parties regarding the nature of the Company's right to reject Employee requests to change from one job to another; that Section 205.11(a) only establishes such rights in connection with bid requests; that it is silent concerning the nature of the

Company's rights in connection with transfer requests; that this impliedly makes clear the Company has no right to reject transfer requests; and, that the grievance should therefore be sustained.

The Company places reliance upon a prior decision of the Review Committee in PRC 341. That dispute arose in 1978 and it gave rise to a discussion regarding whether the Company may disqualify Employees for transfer or promotion on the grounds of poor attendance, standing alone. The decision arrived at was as follows:

"Job attendance is one of the critical areas of an employee's responsibility; when unsatisfactory and within the employee's capability to correct, the usual concepts of 'corrective discipline' are appropriate, e.g., progressive discipline from oral counselling, letter(s) of reprimand, time-off without pay, and, ultimately, discharge. Generally, however, unless in combination with other work performance problems or where the new job demands a higher attendance standard, it is not a proper basis for bypass to promotion or transfer. At the same time, however, it should be noted that the progressive discipline follows the employee to the new job."
(Co. Ex. 15)

The Company urges that PRC 341 authorizes it to disqualify an Employee for transfer or promotion if the Employee's past work record reflects poor attendance, combined with other work performance problems, and that F ; employment record at the time she requested transfer to the Gas Helper position unquestionably reflected poor attendance, combined with other work performance problems.

The Union responds by urging that PRC 341 was superseded during the most recent collective bargaining negotiations between the Parties, which produced the current language of Section 205.11(a), and that it no longer has any force or effect.

In the most recent negotiations, the Company proposed language for Section 205.11 which would give it rights substantially beyond those recognized in PRC 341. Specifically, the Company sought the right to reject bid or transfer applications of any Employee "under active counseling for any reason" (Co. Ex. 16). The Union adamantly opposed this proposal. Thereafter, the Company withdrew its proposal and put forth a new proposal, similar in structure to the current language of Section 205.11(a), addressing solely the nature of the Company's right to reject bid requests.

This bargaining history does not support the Union's contention that the 1983 negotiations obliterated prior understandings between the Parties, to the extent that they controlled transfer requests. The Company sought in those negotiations to strike a new deal concerning transfer requests which would be more favorable to it. When that effort failed, it was abandoned and the new strategy adopted addressed solely the topic of bid requests. As to transfer requests, this left both Parties in the position they occupied prior to the negotiations. There was no express nor implied deal to terminate

existing understandings as they pertained to transfer requests. This means that PRC 341 has relevance to the present case.

It does not follow, however, that the Company's reliance upon it was well placed when it denied F 's request to transfer to the position of Gas Helper. The Agreement effective between the Parties at the time PRC 341 was rendered read the same in all relevant respects as does the current Agreement. PRC 341 was rendered in order to clarify Title 205 of that Agreement; it does not suggest in any way that it was intended to contradict the terms of Title 205.

Only one portion of Title 205 speaks to the nature of the Company's right to disqualify Employees seeking lateral transfer from one entry level position to another. That provision is the opening paragraph of the Title, which specifies the purpose and intent which should control its entire application. It reads as follows:

"The provisions of this Title shall be interpreted and applied in a manner consistent with the parties' purpose and intent in negotiating the job bidding and promotion procedures contained herein, namely that when employees are qualified by knowledge, skill and efficiency and are physically able to perform the duties of a job, the employee with the greatest Service shall receive preference in accordance with the sequence of consideration outlined in Subsection 205.5(b) and Sections 205.7 and 205.8 for an appointment to fill a vacancy, and that Company shall endeavor to expedite the filling of job vacancies." (Emphasis added)

This provision makes clear that the Company may disqualify Employees for transfer if their prior employment makes

clear that they do not possess the "skill and efficiency" to perform the position they seek. It makes equally clear that the Company may not disqualify Employees for transfer if they possess the requisite knowledge, skill, efficiency and physical ability to perform the new job. Section 205.1(a) is unambiguous in its command that preference must be given in accordance with Subsection 205.5(b) (the precursor to the current provision under which F sought transfer) to Employees "qualified by knowledge, skill and efficiency and ... physically able to perform the duties of a job." In other words, if the Company rejects a transfer request on the basis of an Employee's track record, that track record must reflect that the Employee does not possess the skill and efficiency necessary for the job sought.

PRC 341 itself reflects this fact. In part, it states:

"Generally, however, unless in combination with other work performance problems or where the new job demands a higher attendance standard, it is not a proper basis for bypass to promotion or transfer." (Co. Ex. 15)

The reference of the Review Committee members to the "new job demands" emphasizes the proper focus of attention.

The record makes very clear that the Company did not consider F. 's employment record as creating any cause to believe she was without the "skill and efficiency" to perform successfully as a Gas Helper. This topic was expressly addressed during Edwards' cross-examination as follows:

"Q. [By Mr. Dalzell] When you decided to bypass F for the gas helper job vacancy, did you believe she was unqualified for the gas helper position?

"A. There was no question in my mind F me[e]t the literal requirements under Title 205[5] for transfer to gas helper.

"Q. Did you have any doubts about her possession of the knowledge, skills, efficiency, adaptability and physical ability for the helper position?

"A. Based on the information I had, I had no reason to doubt that she met those requirements."
(Tr. 58-59)

This concession that F possessed the requisite knowledge, skills, efficiency and physical ability to perform the Gas Helper position makes clear that she was entitled to that position under Section 205.1(a) of the Agreement.

The Company has argued that such a construction of the Agreement must be avoided in order to prevent Employees from "running from the Sheriff." The Company does not want Employees who have a history of performance problems to make a lateral switch into another job with different performance expectations where progressive discipline must be initiated from the beginning. For example, in the present case, the Company has speculated that F's discipline for subtraction and other reading errors while employed as a Meter Reader would not have provided a proper foundation for additional discipline if she encountered performance problems while working as a Gas Helper.

The Union responds by arguing that nothing should prevent an Employee from moving laterally into another entry level job for which the Employee is better suited. It notes in the present case that although F 's meter reading and subtraction skills were lacking, she may well have succeeded as a Gas Helper, because that job does not require those skills.

The Company's concerns might properly motivate contract proposals for limits on the timing or frequency of transfer requests. At present, however, the Company has not secured any contract language restricting the timing or frequency of transfer requests which has bearing on this case (Tr. 85). It has sought to secure a contract right in this case which is not based upon any language within the Agreement. The present case, however, must be resolved in accordance with the current language of the Agreement, and it makes clear that the Company improperly bypassed F when she requested transfer to a Gas Helper position.

The Appropriate Remedy:

In accordance with the request of both Parties, the Decision below remands this matter to the Parties for formulation of the precise remedy. Certain facts contained within this record should be noted at that time. The Grievant received a warning letter for poor attendance on March 7, 1985. When the local Investigating Committee considered this warning letter, its decision was as follows:

"It is the decision of the Committee that the 3/7/85 (Exhibit 2) memo will stand without adjustment. The grievant's attendance will be reviewed with her again in six months (e.g. about 9/7/85). At the end of twelve months (e.g. 3/7/86), another review of the grievant's attendance will be made and if the record warrants, the 3/7/85 memo will be removed from the file and destroyed." (Co. Ex. 7)

PRC 341 makes clear that so far as poor attendance is concerned, "progressive discipline follows the employee to the new job." (Co. Ex. 15) The Company's expectations for good attendance have application to all positions. These factors should be considered by the Parties upon remand.

DECISION:

1) The Company violated the Agreement when it bypassed the Grievant for transfer to the position of Gas Helper on April 26, 1985.


2) This matter is remanded to the Parties for formulation of a precise remedy.

3) Jurisdiction is retained for the purpose of resolving any impasse or dispute concerning interpretation of this Decision.



Chairperson

Concur/Dissent 3/18/87
Date



Employer Member

~~Concur/Dissent~~ 3-18-87
Date

M. Albright
Employer Member

~~Concur~~/Dissent 3/18/87
Date

Roger Statcup
Union Member

Concur/~~Dissent~~ 3/18/87
Date

Dwendolyn Wynn
Union Member

Concur/~~Dissent~~ 3/18/87
Date

Signed and dated in
San Francisco, California



IBEW LOCAL UNION 1245

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

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May 6, 1987

I. W. Bonbright, Manager
Industrial Relations Department
Pacific Gas & Electric Company
245 Market Street, Room 444
San Francisco, Ca. 94106

Re: Arbitration Case No. 146 -

Dear Mr. Bonbright

We are in receipt of your proposed Letter Agreement 87-73-PGE, dated April 24, 1987, in reference to the above-captioned arbitration case. Please be advised that we are not in agreement with your proposal.

In the Opinion and Decision in this case, Arbitrator Kathy Kelly ruled that the Company violated the Agreement when it bypassed the Grievant for transfer to the position of Gas Helper on April 26, 1985. We do not believe it is appropriate to require the Grievant to demonstrate "fully satisfactory" performance for one year following reinstatement as a Gas Helper in order to be entitled to backpay for the period she was terminated (7/12/85 to 3/25/87).

The question of remedy in terms of backpay was not before Arbitrator Kelly. In the Opinion and Decision, Arbitrator Kelly stated:

"In accordance with the request of both Parties, the Decision below remands this matter to the Parties for formulation of the precise remedy. Certain facts contained within this record should be noted at that time. The Grievant received a warning letter for poor attendance on March 7, 1985... PRC 341 makes clear that so far as poor attendance is concerned, "progressive discipline follows the employee to the new job". The Company's expectations for good attendance have application to all positions. These factors should be considered by the Parties upon remand."

Following her employment date (8/23/83) Grievant F was counseled concerning her attendance record on 2/8/84. A Memo to File was prepared confirming this counseling. Grievant was again counseled concerning attendance on 7/10/84. A confirming Memo to File was prepared. She was next counseled concerning attendance on 3/7/85, by Supervisor Marilyn O'Neill. In this instance, a memo was issued to F

In a report related to Stockton Grievance 16-391-85-9, the Local Investigating Committee addressed the issue of the 3/7/85 memo. In testimony related to the basis for issuing the memo, Supervisor O'Neill stated

"O'Neill explained that the grievant was not singled out for special criticism for her absences. O'Neill explained that the entire employee group in the Modesto office, plus the 12 Meter Readers located in Modesto were undergoing an attendance review. Those with good attendance records had received letters of commendation. Employees whose absences appeared excessive were being orally counselled with a confirming memo to the Supervisor's file. The grievant had received such a warning due to her excessive absences and her pattern of useage which suggests abuse (emphasis added)(page 4 of the LIC Report).

In further reference to the LIC Report for this case, the Committee recaped the Grievant's employment and disciplinary record. As related to the 3/7/85 memo, the LIC described it as:

Memo to Supervisor's file by Customer Services Supervisor Marilyn O'Neill. Oral reprimand for excessive sick leave usage and pattern of usage; "satisfactory evidence" required. (Page 1-2 of LIC Report)

While on its face the 3/7/85 memo appears to be a formal disciplinary letter, clearly the supervisor who signed the memo and the Local Investigating Committee were in agreement that the 3/7/85 memo was a Memo to File confirming oral counseling.

Based upon the above, it is apparent that Grievant F has been subject to oral counseling related to attendance on three occasions during her period of employment. There is no record of formal disciplinary action related to attendance problems. We also note that attendance was not cited in the 7/12/85 termination letter as a consideration.

We do not disagree with Arbitrator Kelly's statement that "so far as poor attendance is concerned, progressive discipline follows the employee to the new job". In 1983, the Pre-Review Committee (P-RC File No.846) established that giving an employee time off as disciplinary action solely for attendance problems was inappropriate and agreed that the progressive discipline steps to be followed include counseling, formal disciplinary letters, and a "last and final" letter. The Decision concluded that failure to improve attendance following issuance of a "last and final" letter may result in termination without being preceeded with disciplinary time off.

In our view, Grievant F should be treated as described above. The record makes clear that F was at the level of informal counseling. We concur that in conjunction with her reinstatement, she remains at this step of progressive discipline. We also believe that the settlement achieved by the Local Investigating Committee in Stockton Grievance 16-391-85-9 as it relates to the 3/7/85 memo is still appropriate and should be carried out, although the date for review and possible removal of the memo must be extended by a period equal to F's absence. Based upon the established procedures for attendance management, Union is of the opinion that Grievant F should receive full back pay at the one-year Gas Helper rate from the date of discharge to the date of reinstatement at the rates in effect for that time period less any outside earnings.

If you wish to discuss this matter further, please contact me.

Sincerely,



Roger Stalcup
Assistant Business Manager
IBEW Local 1245

cc: RGibbs
Arb. 146