IN ARBITRATION PROCEEDINGS BEFORE

A BOARD OF ARBITRATION

In the Matter of a Controversy Between LOCAL UNION 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Union, and PACIFIC GAS AND ELECTRIC COMPANY, Employer. Arbitration Case 201	OPINION AND AWARD

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This arbitration arises out of a dispute between Pacific Gas and Electric Company ("Employer") and International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1245 ("Union"). Employer and Union are parties to a collective bargaining agreement ("contract" or "agreement"), pursuant to the provisions of which I was named as Neutral Chairperson of a Board of Arbitration. The parties stipulated that all procedural requirements of the contract have been met, and the matter is properly before the Board with jurisdiction to render a final and binding award.

Hearing was held on May 23, 31, June 1, July 5, and 11, 1994 in San Francisco and Walnut Creek, California. The parties were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, and to file post-hearing briefs. The matter having been submitted on the briefs and reply briefs, the following opinion and award is issued:

RELEVANT CONTRACT PROVISIONS

TITLE 206. DEMOTION AND LAY OFF PROCEDURE

206.2 NOTICES

The following notices shall be given in connection with the demotion and layoff provisions of this Title:

(a) Company will give an employee who is to be demoted as much notice thereof as possible. At the time of notification the employee will be advised of the classification to which the employee is to be demoted and provided with a list of the jobs and locations thereof to

which any elections (vacancy or displacement of another employee) may be applied.

(b) Within twelve workdays after receipt of the list described in Subsection (a), the employee should notify Company of his/her election to transfer and indicate the job locations in the order of his/her preference. Preferential consideration shall be given to employees in the order of their Service, while Company shall endeavor to give effect to an employee's preference in the order he/she has indicated. Length of Service shall be the determining factor where two or more employees express a preference for a single location. Company shall notify an employee as to the specific location to which such employee will be transferred.

(c) An employee's failure to give the notice prescribed in Subsection (b) will operate to forfeit his/her right of election.

(d) Any transfer resulting from the application of this Section will be made effective at any time after the expiration of ten workdays from the giving of the notice provided for in Subsection (a).

(e) By agreement between Company and Union, the notice periods in this Section may be extended.

206.3 DEMOTION IN LINE OF PROGRESSION

When a demotion or displacement is to be made in a classification at a Company headquarters, the employee with the least Service in such classification shall be demoted to the next lower classification in the reverse order of the normal Line of Progression. An employee shall be demoted on a step by step basis; that is, the employee shall first be demoted in the reverse order of the normal Line of Progression for his/her classification to the next lower classification and, at such step, if the employee is subject to further demotion, the employee may exercise the election provided for in Section 206.4 or Section 206.5, as the case may be. If successive demotions must be made, the same procedure shall apply at each step until the employee is either placed in another job or is laid off. If more than one demotion is to be made, the within procedure shall first be applied to the highest classification to be affected, and then to successively lower classifications.

206.4 ELECTIONS TO CHANGE HEADQUARTERS OR DEPARTMENT

(a) An employee with three years or more of Service, who is to be demoted or displaced as provided in Section

206.3 has the following elections:

(1) may elect to displace that employee in the same classification and department within the Demotion Area who has the least Service, or if no such election is available;

(2) may elect to displace that employee in the same classification and department within the Demotion Unit who has the least Service, or if no such election is available;

(3) may elect to displace that employee in the same classification in the Demotion Area who has the least Service, or if no such election is available;

(4) may elect to displace that employee in the same classification in the Demotion Unit who has the least Service, or if no such election is available;

(5) may elect to displace that employee in the same classification and department in the System who has the least Service, or if no such election is available;

(6) may elect to displace that employee in the same classification in the System who has the least Service.

(b) An employee with less than three years of Service who is to be demoted or displaced as provided in Section 206.3 has the following elections:

(1) may elect to displace that employee in the same classification and department within the Demotion Area who has the least Service, or if no such election is available;

(2) may elect to displace that employee in the same classification and department within the Demotion Unit who has the least Service, or if no such election is available;

(3) may elect to displace that employee in the same classification within the Demotion Area who has the least Service, or if no such election is available;

(4) may elect to displace that employee in the same classification within the Demotion Unit who has the least Service.

(c) An employee who has been demoted or displaced, as provided in Section 206.3, before exercising the election provided by Subsection (a) hereof, may exercise such elections as if the demotion has not occurred.

206.5 ELECTION TO RETURN TO PREVIOUS LINE OF PROGRESSION

(a) If an employee cannot effect a demotion or displacement in accordance with Section 206.3 and, if in addition, such employee does not for any reason effect an election in accordance with Section 206.4, the employee may, if such employee has previously worked for at least six months in any other classification in another Line of Progression in Company, elect to displace that employee in such classification and Line of Progression in the employee's Demotion Area who has the least Service. An employee may exercise an election under the provisions of this Section only when it is for the purpose of returning to the Line of Progression in which the employee worked immediately prior to entering the Line of Progression from which the election was exercised.

(b) If an employee cannot effect a demotion or displacement in accordance with Section 206.5(a) above, the employee may, if he/she has previously worked for at least six months in any other classification in another Line of Progression in Company, elect to displace that employee in such classification and Line of Progression in such employee's Region who has the least Service. An employee may exercise an election under the provisions of this Section only when it is for the purpose of returning to the Line of Progression in which the employee worked immediately prior to entering the Line of Progression from which the election was exercised.

206.6 BUMPING EMPLOYEE IN BEGINNER'S JOB

(a) If the Company cannot effect a demotion or displacement of an employee in accordance with Section 206.3 and, if in addition, such employee does not for any reason effect an election in accordance with Section 206.4 or 206.5, he/she may elect to displace that employee in the Demotion Area, in a beginning classification who has the least Service provided he/she meets the qualifications of the transfer.

(b) If the Company cannot effect a demotion or displacement of an employee in Subsection (a) hereof, such employee may elect to displace that employee in the Demotion Unit in a beginning classification, who has the least Service, provided the employee meets the qualifications of a transfer.

(c) If the Company cannot effect a demotion or displacement of an employee in Subsections (a) and (b) hereof, if the Employee has been employed three years or more, such employee may elect to displace that employee in

the Company in a beginning classification, who has the least Service, provided the employee meets the qualifications for a transfer.

In February 1989 the parties executed a written clarification of Title 206 which included the following:

A. SECTION 206.1 - GENERAL RULES

7. For the purpose of this Title, a vacancy is any position the company intends to fill on a regular basis. . .

13. When more than one employee is subject to demotion or displacement all of the potential options will be identified and each of the affected employees are to prioritize their choices with the most senior employee's choice given first consideration.

F. SECTION 206.6 - BUMPING EMPLOYEE IN BEGINNER'S JOB

1. This election is only available to those employees who have no elections under 206.3.

* * *

TITLE 207. MISCELLANEOUS

207.2 It is recognized that Company has the right to have work done by outside contractors. In the exercise of such right Company will not make a contract with any other firm or individual for the purpose of dispensing with the services of employees who are engaged in maintenance or operating work.

(a) Company shall only contract after all efforts are made to use qualified Company resources, including optimum use of voluntary overtime and consideration of General Construction personnel.

(b) Company shall not contract any work normally performed by the bargaining unit if such contracting is intended to reduce or has the effect of reducing the regular work force by attrition, demotion, displacement or layoff. Layoffs, demotions and displacements shall not originate in a department where Company is contracting work. Further, the total size of the bargaining unit in that department shall not be reduced by attrition in the system while such work is being contracted.

(c) De minimis contracting does not invoke the terms of this Section. De minimis is defined as contracting less than 2080 hours annually in a department at a headquarters where there is a minimum of 10 bargaining unit employees in the department at the headquarters. . .

INTRODUCTION

On December 27, 1993,[1] the Employer gave employees the effective notice of their displacement under a reduction in force which eliminated approximately 395 bargaining unit jobs and numerous classifications. The reduction was unprecedented in the parties' bargaining relationship. The propriety of this reduction is not challenged. This grievance challenges the methods used by the Employer to implement the displacements as it impacted employees in the Electric Transmission and Distribution Department (Electric T&D) and also alleges concurrent impermissible subcontracting.

The Union attacks the Employer's action on three discrete theories which give rise to the three issues discussed separately below:

1. Did the Company violate the contract by reducing the number of bargaining unit employees in the Electric T&D even though contracting covered by Letter Agreement 88-104 was in force? If so, what is the remedy?

2. Did the Company award 206.6 options in a manner that did not conform with previous agreements relative to such subsection? If so, what is the remedy?

3. Did the Company violate the contract by failing to

[1]All dates hereinafter are in 1993 unless otherwise stated.

offer vacant beginning level positions in departments as required by Letter Agreement 88-104? If so, what is the remedy?

ISSUE NO. 1

A. Contentions of the Parties:

The Union relies on evidence that bargaining unit employees had performed work in connection with tree trimming and other vegetation removal which was subcontracted at the time of the displacements. The Union alleges the subcontract in these circumstances is proscribed by Title 207.2 of the contract.[2]

The Employer contends the subcontracting in question does not meet the Title 207.2 requirement of "normally performed" by the bargaining unit, was de minimis, and caused no harm to the Union. The Employer also relies on the absence of evidence that the subcontracting at issue occurred on the same date the unit employees were displaced. Finally, the Employer contends the Union should be estopped.[3]

B. Discussion:

The subcontracting issue involves work related to tree trimming and the clearance of vegetation from the area of the

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[2]The cited contract provisions are from the agreement which became effective on January 1, 1994, which is the pertinent agreement as no displacements occurred prior to 1994. The relevant provisions of Title 207.2 of the contract were previously embodied in a Letter of Agreement between the parties which they referred to as 88-104.

[3]This argument is not discussed in detail as the Employer prevailed on the merits of this issue. However, it is noted that the original grievance in this matter alleged the Employer did not comply with the 88-104 requirements, and the amended grievance alleged the Employer "reduced the number of bargaining unit employees . . . even though 88-104 contracting was in force."

Employer's utility poles. In both categories the issue calls for examination of the scope of bargaining unit work. The scope of bargaining unit work is indicated by the language used by the parties to define such work and by the practice which illustrates the application of this language.

To prevail on its subcontracting theory the Union has the burden of establishing: 1) the work in question was normally performed by the bargaining unit, 2) was work taken over and performed by a subcontractor, and 3) was of sufficient materiality to satisfy the requirements of Title 207.2(c) of the contract.

In 1988 a dispute arose in which the Union alleged that management employees were performing inspector duties relative to tree trimming. The parties negotiated an agreement which was intended to provide guidance in defining bargaining unit work in Pre-Review Case 1128 as follows:

> The routine inspection of tree trimming contractors as to compliance with PG&E standards; i.e., clearance of lines to the tree, shall normally be performed by bargaining unit personnel. Also, the first contact with the customers will generally be assigned to bargaining unit employees. However, when there is the likelihood of a serious complaint, a Management employee may respond.
>
> The administrative aspects; i.e., determining when work is to be performed as distinguished from actual routing of the crews, contract compliance, budgeting responsibilities, monetary decisions, etc. are properly performed by Management employees.
>
> Management reserves the right to audit/spot-check bargaining unit personnel and tree contract personnel for compliance with the terms and conditions of the existing contract.

The Union also points to the following excerpt from the

job description for inspectors which it contends illustrates the scope of bargaining unit work: ". . . checking tree and weed conditions, routing tree trimming and weed control crews."[4]

In 1993, prior to the events which gave rise to this dispute, the Employer reorganized its tree trimming function, eliminating approximately 27 management positions and altering the nature of its subcontracts from time and materials to "unit price."

The focus of the Union's evidence on this subcontracting issue concerns the extent to which this change resulted in subcontractors, particularly ECI, assuming bargaining unit work related to tree trimming. From the Employer's perspective the change resulted in the permissible elimination of bargaining unit work, but not a material assumption by subcontractors.

Secondly, the evidence addresses the extent to which bargaining unit employees lost work described as "subject pole clearance," a reference to the removal of weeds and other vegetation from the vicinity of utility poles.

The Employer points to three decisions of the parties applying PC 1128, which it contends are precedents clarifying the language. These decisions are not dispositive. The decision in PC 1335 does not appear on its face to be based upon facts comparable to those involved here. Specifically, the work in dispute there was not performed normally in the same department in which there were layoffs. The decision in PC 1372 does not have logical

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[4]The reduction in force eliminated approximately 52 inspector positions.

application in a situation such as this where a continuing long term subcontract exists at the same time as a reduction in force. Application of the doctrine of 1372 to the facts of this case would potentially make the 207.2 protection against subcontracting illusory by permitting the Employer to interrupt an ongoing subcontract for a brief period while it reduced the employee work force. The decision in PC 1348 involved factual questions which are moot here because this award concludes the subcontracting was permissible.

1. Subject Pole Clearance:

The Employer's witnesses described the routine removal of vegetation from the vicinity of utility poles, a fire prevention measure, as "subject pole clearance" which they distinguish from clearance of vegetation in connection with the installation of new poles or for the purpose of gaining access to poles. It is undisputed that the latter category of work has "normally" been performed by the bargaining unit employees. There is conflicting evidence as to whether Placerville bargaining unit employees performed some of the former or only the latter type of clearance work. This evidence concerns events approximately six years before this dispute arose.

There is no evidence establishing system-wide performance of subject pole clearance work by bargaining unit employees. Subject pole clearance at Placerville has been the subject of a longstanding subcontract of approximately 25 years' duration. In summary, the Union established at most that at a remote time a

minimal amount of subject pole clearance may have been performed by bargaining unit employees at one location. This evidence is inadequate to prove a practice in which the work was normally performed by the bargaining unit.

2. Tree Trimming:

The evidence concerning tree trimming presents a more complex issue. It should be noted that bargaining unit employees have performed "post-auditing" of subcontracted tree trimming in the category described as "grid work" or "2-15 work," for the purpose of determining clearance of trees from the area of utility poles. Grid work is not a part of this dispute which is limited to the ad hoc tree trimming, such as responding to emergencies or customer complaints.

The Union's case, consisting of the testimony of two employees in different headquarters, indicates they performed work which might be described as "post-auditing" of ad hoc tree trimming work. These employees described situations in which they have audited or examined the work of subcontractors to determine if the subcontractor performed appropriate tree trimming; however, in this respect they exceeded their job responsibilities. The Employer's witnesses indicated this activity was not representative of the system-wide practice.

The reorganization described above resulted in the subcontract to ECI of the function of auditing tree trimming subcontractors for the purpose of determining whether the work in question was performed and performed in keeping with arboricultural

standards. The Employer contends this auditing is for different purposes which distinguish it from that described in PC 1128 as "routine inspection" of contractors for "compliance with PG&E's standards." The Employer relies on evidence this function is no longer needed or performed.

The record establishes that the pre-reorganization monitoring of subcontractors by bargaining unit employees was aimed at determining whether the subcontractor had supplied the employee hours and equipment for which the Employer was billed. This form of auditing was obviously a product of the nature of the former subcontracting on a time and equipment basis. Current auditing by ECI is aimed at ascertaining if the work has been done and whether it was arboriculturally appropriate.

ECI's audits may have replaced some of the function reserved to management by PC 1128 and elements of bargaining unit work. This element of ECI's function is not shown to be a separable and material quantum of lost bargaining unit work. The time spent on non "grid work" line clearance checking which was performed by bargaining unit employees amounted to at most a few minutes and was incidental to other duties. Undoubtedly some work "normally" performed has been taken over or substituted for. However, the weight of the evidence does not demonstrate that the examples satisfy the explicit full-time equivalent requirements of Title 207.2(c).

PC 1128 described the work of first contact with customers concerning their complaints, (described as "tag work"), as work

"generally assigned" to the bargaining unit. In one location this work was shared with management. However, at Placerville this work has been referred directly to the tree trimming contractor for contact with the customers without participation by bargaining unit employees. This practice predates the reorganization and is unrelated to the current subcontracting practices. There is no evidence of a similar practice at other locations.

The Employer's witnesses testified that ECI does not perform any "tag work," and the bargaining unit does as much of this work as it did before the reorganization. Assuming that "tag work" was "normally performed" by the bargaining unit, there is no basis to conclude a material amount has been lost.

The Union also contends ECI assumed the bargaining unit task of routing tree trimming which is included in the inspectors' job description. The testimony of one employee at San Francisco is the only evidence supporting the contention this work was normally performed by bargaining unit employees.

The bargaining unit is geographically diverse and includes approximately 3,000 employees. The scope of bargaining unit work is defined on a system-wide basis, and the exchange of proposals which led to 88-104 reaffirmed the parties' intent to apply its terms and definitions on a system-wide basis.[5] As a corollary, the unusual practices at one or two locations cannot control what is bargaining unit work normally performed on a system-wide basis.

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[5]The system-wide nature of the bargaining unit is distinct from and unaffected by 207.2(c) which applies the de minimis test on a department or headquarters basis.

Neither will the unusual work practices, occupying a fraction of their time, of two or three employees provide a basis for a determination of bargaining unit work. A universally applicable definition of "normally performed" is not necessary to resolve of this grievance. The weight of the evidence does not establish a category in which a material amount (as defined by 207.2(c) of bargaining unit work was performed by subcontractors.

ISSUE NO. 2

A. Contentions of the Parties:

The Union contends the Employer violated the contract and subsidiary agreements in the following particulars: 1) by giving employees 206.6 options in addition to 206.3 options contrary to the language of 206.6(a) of the contract and of Section F.1 of the parties' written clarification of Title 206.6; 2) by giving employees who chose displacement under 206.4 or 206.5 additional displacement options under 206.6; 3) by the procedure of reducing the B list in large increments and by failing to reduce the number of names.

The Employer argues it conducted the displacement procedure pursuant to the contract as modified by the subsequent agreement of the parties. It points to the necessity of accommodating the contract to a reduction in force and displacements which were unprecedented in number and beyond the contemplation of the contract machinery. Finally, the Employer asserts its method of effecting the displacements caused no harm to the Union and therefore requires no remedy.

B. Discussion:

1. 206.6 and 206.3 Options:

The first of the Union's contentions finds support in the unambiguous language of the February 1989 written clarification of Title 206.6 which unequivocally disqualifies employees with 206.3 options from exercising 206.6 options (F.1). Notwithstanding this proscription the Employer created an A list consisting of all employees who were subject to displacement because their jobs were eliminated and generated for each of these employees all of the options available under 206.3, 206.4, 206.5 and 206.6.

The Employer seeks to overcome the implications of the language by pointing first to the joint recognition that the contract was ill suited to a displacement of this magnitude and therefore required adaptation. Secondly, the Employer finds support for its procedure in the language of the written clarification of Title 206.1 (A.13) which states when more than one employee is displaced, all potential options will be identified and the employee permitted to prioritize choices with first consideration given to the choice of the most senior employee.

The Employer seeks a construction giving controlling meaning to A.13, an interpretation which would make F.1 meaningless. This result is incompatible with recognized principles of contract interpretation and especially inappropriate where the contract is susceptible of an interpretation giving full

meaning and application to both provisions.[6] Recognizing that more than one employee was subject to displacement each employee could be given all those options which were "available" simultaneously, thus giving effect to A.13. However, under F.1 options under 206.3 preclude options under 206.6 and therefore these cannot both be "available." To avoid the application of the unambiguous language the Employer must demonstrate a clear and unambiguous agreement to waive or alter these contract provisions.

The Employer's position on this issue is evaluated with the recognition that the Employer was undertaking an enormously complex and perhaps impossible task in attempting to find an appropriate and equitable way to implement the displacements without running afoul of the contract. The Employer acted in a good faith effort to perform according to the contract and to remain consistent with its bargaining obligation.

Rick Doering, the Employer's Labor Relation Services Director, was given the onerous responsibility of implementing the displacements. He formed a management team to design a method to apply Title 206 of the contract to a system-wide displacement of this magnitude. He recognized the contract and clarification were not intended to apply to a displacement of this magnitude. He was required to perform what is described in the record as a process of attempting to shove a round peg in a square hole. Doering perceived this problem in the following terms:

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[6] Elkouri & Elkouri, How Arbitration Works, 4th ed., pp. 352-352. The February 19, 1989 written clarification of Title 206 of the Contract is treated as a substantive Contract term.

> The contract seems to be written generally for a single action or single area displacement where employees have a variety of options. When you take that large number of options that was given to a single employee and overlay large numbers of employees, it increases the number of options exponentially, and you end up with a huge number of potential options that employees may have, and they tend to be interrelated.

In November 1993 Doering involved the Union's Assistant Business Manager, Darrel Mitchell, in the process and in November and December numerous meetings were held primarily with Doering and Mitchell as the principal representatives of the parties. On December 8 Doering wrote Mitchell setting forth what he believed to be the basic understandings as to the implementation of the displacement process.

On December 13 the Employer sent out displacement notices implementing the program as described in the December 8 letter. On or about December 17 it became apparent the Union disagreed with parts of the December 8 letter. The Employer decided to rescind the December 13 notices. The parties met again to discuss the matter further, after which a letter of December 21 was sent to the Union confirming the Employer's understanding of the resolution of the disagreement concerning the December 8 letter. On December 27 the Employer sent revised displacement notices to the employees pursuant to the December 21 letter. The actual displacement of employees occurred in the Spring of 1994.

The Employer contends that the exchange of written communications and the conversations between the representatives of the parties amount to an acquiescence or agreement by the Union

waiving the interpretation which makes 206.3 and 206.6 options mutually exclusive. Doering recognized the necessity of obtaining the Union's agreement to depart from the express requirements of the contract, and he believed he had that agreement.

The record does not contain a clear and unambiguous attribution to Mitchell or any other Union official of express agreement and acceptance of the combined 206.6 and 206.3 options. Doering testified concerning notes he made of a conversation with Mitchell on January 27, 1994, in which he made the notation "206.3, .4, .5, .6, .7--all equal" followed by a box with the word "yes." He described these notes as reflecting the fact "that we were treating all of those available options to employees equally and that there prioritization regardless of what section it came under would be treated in the order the employees elected it." He elaborated on these notes, stating he was motivated by a desire to confirm a resolution of this problem because "there was a contractual question around 206.3, that is, if an employee has a 206.3 option . . . . a strict interpretation of the contract would say they don't have a 206.5 or a 206.6 option available to them at that time."[7]

Doering supplied Mitchell with an example of one of the December 13 initial displacement letters in which the employee

[7]The briefs appear to exaggerate the significance of Doering's testimony concerning his interpretation of the contract on this point. It is significant that Doering recognized the existence of a problem and was "looking for affirmation" from the Union for his interpretation and application. His belief as to whether the contract had been violated is less significant.

received both 206.6 and 206.3 options.

Mitchell acknowledged extensive discussions of the complexities and approaches necessary to effect the displacement. He also testified he did not know employees were given both 206.6 and 206.3 options until after the filing of this grievance and maintained that any departures from the express language of the contract would have to be in writing.

A careful reading of three letters does not disclose an express statement that 206.6 and 206.3 options would be offered together nor is there mention of or request for waiver of the clarification language. The December 8 letter states 206.6 options will be provided ". . . along with any other contractual options." The December 21 letter repeats essentially the same statement. Both letters address technical aspects of the displacements not directly related to this subject. Mitchell's December 22 response expresses general accord with the December 21 letter and includes a statement that the Union will challenge ". . . any instance where we believe the Company may not be following the provision of Title 206 or any other provisions of the Agreement." This letter also states the Union "understanding" the Employer will reissue the displacement notices ". . . in accordance with the contractual provisions of Title 206 and its associated clarifications."[8]

This correspondence is susceptible of an interpretation consistent with the Employer's position; a reasonable person might believe it demonstrates acceptance of the action. However, it is

[8]Emphasis added.

also compatible with a contrary interpretation, especially as the December 22 letter adheres to the clarification language. In a matter of this complexity it is both understandable and regrettable that misunderstandings could occur. In summary, the evidence is sufficient only to prove a misunderstanding or a failure of the meeting of the minds.

The evidence as described above and the record as a whole is insufficient to establish a clear and unmistakable waiver of a written contract requirement. The parol evidence simply does not establish with clarity and certainty any statement manifesting the Union's clear agreement to the Employer's treatment of the 206.6 and 206.3 problem. It is therefore concluded that, notwithstanding the Employer's good faith effort to structure a workable program, it violated the contract.

The record supports the conclusion that a substantial number of employees received impermissible choices. However, the stipulated evidence also discloses only one employee who cannot be identified was impacted by this violation.

2. 206.4 and 206.5 Options:

The Union's subsidiary argument which seeks to find a contract violation in the simultaneous granting of Title 206.4 and 206.5 options with 206.6 options is less persuasive. Re-examination and application of the contract language discussed above in this context leads to a different result. In contrast to the subject discussed above, neither the contract nor the written clarification expressly bar 206.6 options to employees who have

206.4 or 206.5 options. The contract provides that employees may select a 206.6 option if they do not choose options under 206.4 or 206.5, indicating the options are not available simultaneously. The clarifying language of A.13 modifies this limitation in a multiple employee displacement, requiring that all options be identified simultaneously and employees provided an opportunity to prioritize choices. This clarification supports the Employer's action in granting these options simultaneously. A contrary result would appear to be inconsistent with a meaningful interpretation of A.13.

The Employer's interpretation is compatible with an attempt to give the employees the broadest possible perspective on their options in a large displacement. The Employer informed the Union of its intent to treat all of the available options equally "regardless of what section it came under" and to permit the employees to exercise those options as they elected.

In view of the magnitude and complexity of this entire matter it may be that the Union did not fully understand how these options would be implemented. However, this good-faith effort to apply the contract in an equitable manner is not clearly inconsistent with its requirements. It is concluded that the Union has not sustained its burden of proof with respect to this allegation.

3. Compression of the B List:

A second subsidiary theory of violation is grounded in the fact that the Employer chose to reduce or "compress" the B list in

large increments. Simply described, the process involved the comparison of the A list employee's prioritized selection of options with the B list of employees impacted or potentially bumped by those choices. A computerized program was designed to effect this process and to prevent a more senior employee from being impacted by the displacement process when a junior employee was not. Repeated runs of the computer program were required to eliminate this circumstance.

It is undisputed that the goal of this program was in keeping with the agreement of the parties to protect seniority. The Union does not dispute the necessity of some form of "compression" of the B list; however, it contends that more numerous but smaller incremental reductions in the B list would have produced a more equitable result.

The Union's argument is difficult to accept because the contract did not specify how this process should have been performed. The argument is essentially a subjective assertion that there was a better way, which even if correct does not make out a violation. It does not lead to the conclusion that the process was inconsistent with the contract goals or language.

The discussions and the December 8 and 21 letters placed the Union on notice of the basic approach. Especially as the Union rejected the December 8 letter, there is no basis to conclude the procedure was inconsistent with any agreement reflected by communications. As the procedure was not inconsistent with the terms of the contract or any agreement of the parties there is no

violation.

The Union also asserts that an excessively long B list interacted with the large increment reductions to interfere with the intended function of 206.6. This argument, like the previous contention is largely subjective. Neither the contract nor the written clarification provide guidance as to how the process of matching displaced employees with those to be bumped will be conducted. The Union argues the excessive B list is incompatible with the December 8-22 exchange of letters. Just as that correspondence fails to demonstrate an agreement concerning 206.3 and 206.6 so does it fail to demonstrate an agreement on this point.

The parties agreed to conduct the procedure so as to protect senior employees when junior employees were not impacted. The Employer's method was consistent with the goal. The existence of alternatives does not demonstrate a breach of the contract.

ISSUE NO. 3

A. Contentions of the Parties:

The Union contends the Employer improperly failed to include janitor positions at Diablo Canyon which were filled by subcontractors' employees as B list options.

The Employer raised several defenses; however, it is unnecessary to look beyond the parties' written agreement concerning these positions.

B. Discussion:

When the events which created this dispute arose, the

parties had a pre-existing written agreement which provided that the janitors work in question belonged to the bargaining unit but permitted the Employer to continue the subcontract subject to the Union's right to require termination of the subcontract on 30 days' notice.

The Union, by virtue of this agreement, had the power at any time to terminate the subcontract of the janitors work in Steam Mechanical Maintenance at Diablo Canyon. As the Union had ample notice of the displacements, in excess of 30 days, it could have exercised the cancellation agreement well in advance of the displacements. It is unclear (and unnecessary to the outcome here) whether cancellation would have advanced the Union's interests in the displacement procedure or satisfied 207.2(b). For the reasons set forth above it would be grossly inequitable to permit this issue to disturb the displacement process.

AWARD

1. The Company did not violate the contract by reducing the number of bargaining unit employees in the Electric T&D even though contracting covered by Letter Agreement 88-104 was in force.

2. The Company awarded 206.6 options in a manner that did not conform with previous agreements relative to such subsection.

This award is limited to a finding that the Company violated the contract by awarding employees both 206.3 and 206.6 options.

3. The Company did not violate the contract by failing

to offer vacant beginning level positions in departments as required by Letter Agreement 88-104.

REMEDY

The Union seeks a remedy requiring the displacement procedure be rescinded and replaced by a procedure which conforms to the violation found. Several considerations require the denial of this proposed remedy. Most important is the absence of negative impact on an identified employee which can be attributed to the violation. On the other hand, a repeat of the displacement procedure would have a disruptive impact on numerous employees and the Employer's operations.

Based on these factors and the record as a whole, the Union's remedial request is denied and the displacement procedure discussed above may stand.

12/7/94
Date

WALTER L. KINTZ
Chairperson

Union Board Member — 11.29.94 Date — ~~Concur~~/Dissent

Union Board Member — 11/29/94 Date — ~~Concur~~/Dissent

Company Board Member — 12-1-94 Date — Concur/Dissent

Company Board Member — 12/1/94 Date — Concur/Dissent