

MEMORANDUM OF DISPOSITION  
FACT FINDING CASE NO. 917-78-20  
SAN JOSE DIVISION GRIEVANCE NO. 8-214-78-40

18-5C

RECEIVED SEP 13 1978

SUBJECT OF GRIEVANCE:

On May 24, 1978, the Company notified the Union that they were bypassing the grievant in filling a vacant Part-Time Scheduled (PTS) Customer Services Clerk position at the San Jose office. The grievant contends that the Company's action is not only arbitrary and discriminatory, but is also a violation of his contractual rights under the provisions of the Clerical Labor Agreement.

CORRECTION ASKED FOR:

That the Company rescind their notification to the Union and award the PTS Customer Services Clerk position to the grievant. Further, Company shall restore and reimburse to the grievant all wages and benefits he has been denied as a result of Company's action in this case.

DISCUSSION:

The Fact Finding Committee met on August 1, 1978, to review the Local Investigating Committee's Statement of Facts, which is attached hereto and made a part hereof. After reviewing those facts, the Committee noted that during the 1977 negotiations the Company and Union agreed to modify the Transfer/New Hire Rules. After revising the language for Subsection 205.5(b) of the Physical Agreement, the negotiating committee agreed to substitute similar language for Subsection 18.5(b) of the Clerical Agreement. Unfortunately, Part-Time Scheduled jobs which were covered by Subsection 18.5(b) were not included in Subsection 205.5(b). Consequently, when the 1977 Agreement was printed, all reference to Part-Time Scheduled jobs inadvertently was deleted from Subsection 18.5(b). Therefore, it is reasonable to conclude that the negotiating parties had no intention of nullifying the right of a regular employee to submit a transfer application to a Part-Time Scheduled clerical position.

DECISION:

Based on the foregoing, the Committee agreed that the grievant was entitled to preferential consideration under 18.5(b) and should have been allowed the opportunity to submit a transfer application for Customer Services Clerk Part-Time Scheduled. Furthermore, the Committee agreed that since the grievant was senior to the employee awarded the Part-Time Scheduled position, and the job had last been filled by unrestricted appointment, the correction asked for should be granted.

This case is settled and considered closed.

Company and Union Agreed on  
8/14/78 to distribute the Fact  
Finding Settlement of San Jose  
Grievance #8-214-78-40.

FOR THE UNION:

M. A. Mederos 8-23-78  
M. A. MEDEROS (CONCUR/DISSENT) DATE

O. Owen 8-15-78  
O. OWEN (CONCUR/DISSENT) DATE

FOR THE COMPANY:

P. E. Pettigrew 8/18/78  
P. E. PETTIGREW (CONCUR/DISSENT) DATE

W. T. Peterson 8/14/78  
W. T. PETERSON (CONCUR/DISSENT) DATE