REVIEW COMMITTEE

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IBEW

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INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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(415) 933-6060
R.W. STALCUP, SECRETARY

☐ DECISION
☐ LETTER DECISION
☐ PRE-REVIEW REFERRAL

East Bay Division Grievance No. 1-1877-83-65
P-RC 859

January 27, 1984 RECEIVED JAN 30 1984

MR. L. R. JOHNSON, Company Member
East Bay Division
Local Investigating Committee

MR. S. A. TAMIMI, Union Member
East Bay Division
Local Investigating Committee

The above-subject grievance has been discussed by the Pre-Review Committee prior to its docketing on the agenda of the Review Committee and is being returned, pursuant to Step Five A(ii) of the grievance procedure, to the Local Investigating Committee for settlement in accordance with the following:

Grievance Issue

This grievance concerns whether an employee with less than one year of service is eligible for a prorated vacation allowance when employment is terminated. The grievant was hired on July 28, 1982 as a Machinist and resigned on March 17, 1983.

Discussion

The Union argued that Section 111.7, Termination of Employment, of the Physical Agreement applies to "any employee" and, therefore, does not exclude employees with less than one year of service. Consequently, the Union contended that the grievant is entitled to four days of vacation pay. The Company opined that vacation allowance, as specified in Section 111.2, pertains only to regular employees who have completed one year of service. Therefore, Section 111.7 would not entitle the grievant to a prorated vacation allowance until after July 27, 1983, the date he would complete one full year of service. The Company further argued that past practice has been to deny vacation allowance to employees who terminate their employment prior to attaining one year of service.

The Committee also discussed the recently decided California Supreme Court case of Suastez vs. Plastic Dress-Up Company. This decision determined that an employee "vests" for vacation as labor is rendered and, therefore, an employee should be paid in wages for a pro rata share of his vacation pay upon termination. The Committee then reviewed the recent Federal District Court decision of California Hospital Association vs. Henning in which the Federal Court effectively overruled the Suastez decision. This decision provided that any vacation plan provided by an employer, whether funded or unfunded, written or unwritten, to which an employer had committed itself, by contract or otherwise was an "employee benefit plan" within the meaning of the federal

ERISA statute. Once the Federal Court had determined that the employer's vacation plan fell under ERISA's umbrella, the Court concluded that any State law (whether a State Supreme Court decision or an agency regulation) that attempted to "regulate" such vacation plans was preempted and without effect.

In essence, the Court held that California law did not and could not restrict an employer's right to deny vacation benefits to persons who had not, under the terms of the plan, earned those benefits.

Decision

The Committee agreed to close this case without adjustment on the basis of the most recent Federal Court decision. The employee had not yet been vested to receive vacation benefits in that he had not yet been employed for one year as required pursuant to Subsection 111.2(a). The Committee also agreed to reopen and discuss this case in the event that the law applicable to the period of time covered by this grievance changes. This case is considered closed on the basis of the above and should be so noted by the Local Investigating Committee.

D. J. BERGMAN, Chairman
Review Committee

R. W. STALCUP, Secretary
Review Committee

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