



REVIEW COMMITTEE

JUN - 5 1980

18.3(e) - Bypass of
multiple emp.
for temp. upgrade

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
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**CASE CLOSED
LOGGED AND FILED**

RECEIVED MAY - 7 1980

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
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R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

- ☐ DECISION
- ☐ LETTER DECISION
- ☐ PRE-REVIEW REFERRAL

REVIEW COMMITTEE DECISION

Peninsula Division Grievance No. GG-PD-40-02-88-80
Review Committee File No. 1695-89-20

Subject of the Grievance

This case involves Company's liability when a temporary upgrade is assigned to other than the senior qualified prebidder in a headquarters.

Facts of the Case

The need existed for two temporary Service Representatives in Customer Services, Belmont to provide vacation relief and longer term leave of absence backup. The two senior prebidders in the headquarters are Meter Readers. Due to operational requirements, both Meter Readers continued to perform their regular duties and were paid at the Service Representative rate on the dates when two junior prebidders were upgraded to Service Representative. The third and fourth qualified prebidders in the headquarters were upgraded on most days.

The fourth prebidder, the grievant in this case, is a Utility Clerk-Typist who was not upgraded on at least four dates due to Company's need to utilize her typing skill. The fifth prebidder was upgraded, and the fourth prebidder was not paid for the "bypass" as Company was already paying the second prebidder for this bypass.

Discussion

The Union cited the language of Subsection 18.3(a) of the Clerical Agreement which reads:

"18.3 Filling Temporary Vacancies

"(a) Whenever a vacancy occurs in any job classification, Company may temporarily fill it by assignment. In making temporary assignments to fill job vacancies, other than vacancies in beginner's classifications, Company shall first consider regular full-time employees at the headquarters in which the job vacancy exists in the order of their preferential consideration under Section 18.8. The foregoing shall apply whether or not the vacancy is one which must be filled on a regular basis."

Union then cited the language of Subsection 205.3(a) of the Physical Agreement which reads:

"205.3 Filling Temporary Vacancies

"(a) Whenever a vacancy occurs in any job classification, Company may temporarily fill it by assignment. In making temporary assignments to fill job vacancies, Company shall first consider employees in Relief classifications, and then, when practicable, consider the employees at the headquarters in which the job vacancy exists in the order of their preferential consideration under Section 205.7. The foregoing shall apply whether or not the vacancy is one which must be filled on a regular basis." (emphasis added)

Union noted the absence in the Clerical Agreement of the language referring to the practicability of making temporary assignments and, therefore, opined that Company is foreclosed from bypassing a clerical employee due to operational considerations; that the only permissible bypass would be pursuant to Sections 18.11 (lack of qualifications) and/or 18.13 (positions requiring supervisory or lead responsibilities).

Company acknowledged the difference in the language but indicated that practice has been to consider operational need when making temporary assignments. At the minimum, operational need is considered in the determination of whether to fill the temporary vacancy at all. In some instances, it is determined that operationally the position held by the senior qualified prebidder is more needed, and the temporary vacancy is not filled.

In other instances, the Company decides that both are necessary to be filled so the Company selects someone other than the senior qualified prebidder to fill the temporary vacancy. The Union did not dispute the fact that there have been many occasions when the senior qualified prebidder has not been released and has been paid "bypass" pay. What gives rise to this grievance is whether Company has to pay each employee so bypassed or is Company liable only for paying one employee bypassed for each temporary vacancy.

Union opines that each employee is entitled to consideration sequentially in seniority order and, therefore, Company must pay each employee bypassed even though only one person can fill a vacancy.

In Company's opinion, an application of the Union's "successive bypass theory" would require Company to pay the senior qualified prebidder on multiple concurrent vacancies if not upgraded. Clearly that has not occurred in the past. Union doesn't agree with the "theory," and opined that no grievance has ever been filed taking such a position. Company believes it is appropriate to pay no more than two people for each concurrent temporary vacancy filled (the one who performs the work and the senior qualified prebidder bypassed). Company conducted an informal system survey. The results indicated that Company has upgraded junior prebidders for operational reasons. Whether only the senior prebidder was paid or all qualified employees with a prebid on file that were bypassed, was inconsistent.

The parties recognize that by practice, temporary upgrades have in the past and should continue in the future to be made giving consideration to seniority, qualifications, and operational considerations. It should be noted that operational considerations encompass both long-term and short-term goals. There are long-term advantages for the Company and the employees in upgrading the senior qualified prebidder. The employee more likely to receive the job award on a regular basis receives training and experience in performing in the

temporary classification. During these temporary assignments, the supervisor has an opportunity to monitor and assess that performance. Therefore, the option to bypass senior employees should be used judiciously.

Decision

In an effort to resolve this matter and provide for as efficient operations as possible consistent with the provisions of the Labor Agreement, the parties agree that Company may effect an intentional bypass of prebidders for lack of qualifications (18.11 and/or 18.13) or for operational considerations. The decision to bypass should not be made lightly, and supervisors should be prepared to articulate the reasons for such bypass should the decision be challenged in the grievance procedure. It is not intended that this decision apply to inadvertent or unintentional temporary work assignments which result in bypass. Such cases would continue to be resolved on a case-by-case basis in the grievance procedure.

If Company decides to bypass the senior qualified prebidder to a temporary vacancy for operational reasons, the Review Committee agrees it is appropriate to compensate the employee for the missed upgrade opportunity.

Further, the parties agree that Company may effect subsequent bypasses for the same temporary vacancy but must consider the prebidders in the order of consideration under Section 18.8. However, if the subsequent bypasses are operationally justifiable, then Company need pay only the senior qualified prebidder bypassed.

If, however, the subsequent bypasses do not withstand review in the grievance procedure, then some or all of the additional bypassed prebidders will be paid for the denied opportunity.

Finally, where there are multiple concurrent temporary vacancies, the parties agree that no less than one bypassed prebidder--but not the same person on more than one vacancy--will be compensated for the missed upgrade.

As to the resolution of this case, the parties return the grievance to the Local Investigating Committee to attempt to settle the question of liability giving consideration to the foregoing and reviewing the operational reasons for not utilizing the grievant as a Service Representative for the dates in question.

The Review Committee retains jurisdiction to settle this case if the Local Investigating Committee is unable to do so.

This case is considered closed on the basis of the foregoing. Such closure should be so noted by the Local Investigating Committee.

FOR COMPANY:

Rodney J. Maslowski
Ronald A. Morris
Robert C. Taylor
David J. Bergman

By 

Date 4-25-90

FOR UNION:

Patrick S. Nickeson
Fred H. Pedersen
Arlis L. Watson
Roger W. Stalcup

By 

Date 4/23/90