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IN ARBITRATION PROCEEDINGS PURSUANT TO
TITLE 102 OF THE CURRENT COLLECTIVE BARGAINING
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy
between
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245,
and
PACIFIC GAS AND ELECTRIC COMPANY,
Involving layoffs of [redacted] G[redacted] and [redacted] J[redacted].

OPINION AND AWARD OF THE BOARD OF ARBITRATION

This Arbitration arises pursuant to Agreement between INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, hereinafter referred to as the "Union," and PACIFIC GAS AND ELECTRIC COMPANY, hereinafter referred to as the "Company," under which ADOLPH M. KOVEN was selected to serve as Chairman of a Board of Arbitration which was also composed of V. G. OGLETREE, Union Member, DAVID H. REESE, Union Member, M. A. KIRSCH, Company Member, and V. J. THOMPSON, Company Member, and under which the Board of Arbitration Award would be final and binding upon the parties.

Hearing was held on January 5, 1968, in San Francisco, California. The parties were afforded full opportunity for the examination and cross-examination of witnesses, the introduction of relevant exhibits, and for argument. Both parties filed post-hearing briefs.

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APPEARANCES:

On behalf of the Union:

Messrs. NEYHART, GRODIN & BEESON, by
EDWARD C. PINKUS, Esq.,
Shell Building, 100 Bush Street,
San Francisco, California.

On behalf of the Company:

L. V. BROWN, Esq., and HENRY J. LaPLANTE, Esq.,
245 Market Street,
San Francisco, California 94106.

ISSUE

Will the layoffs of G[redacted] and J[redacted], General Construction Department employees, following a reduction in work forces, be sustained?

RELEVANT SECTIONS OF THE CONTRACT

Title 306.1: Only employees who have three years or more of continuous service with the company (as defined in Section 106.1) shall be given consideration, as follows, in cases of demotion and layoff in the Department of General Construction in which they are employed: ....

Title 306.3: When it becomes necessary for Company to lay off or move employees because of lack of work, Company shall give employees involved as much notice thereof as practicable, but in no event in case of layoff shall a regular employee be given less than five (5) calendar days' notice, and if he has five (5) years or more of continuous Company service he shall be given not less than ten (10) calendar days' notice.

Title 305.5: Employees who have three years or more of continuous service with Company (as defined in Section 106.1) shall be given preferential consideration as follows for promotion to vacancies occurring in the Department of General Construction in which they are employed:

(a) In the case of each such vacancy such preferential consideration shall be given to that employee who for the longest period of time has received the top rate of pay in the classification next lower in the normal line of progression to the one in which the vacancy exists, provided that he is fully qualified to perform the duties of the job which is vacant, and provided further that he is headquartered in the area in which the vacancy exists. As used herein the term "area" means the boundaries of the Division where the crew in which the vacancy exists is headquartered.

(b) An employee who is not on an expense allowance at the time of a transfer made under the provisions of this Section, shall not qualify for an

expense allowance unless he is transferred from his headquarters area to a job headquarters outside the boundary of his headquarters area.

(c) Notwithstanding anything herein contained to the contrary, Company may make appointments to jobs requiring the employee to exercise supervisory duties on the basis of ability and personal qualifications.

Title 310.2: A casual employee is one who is hired at a daily wage rate for an indeterminate period of time and who, regardless of length of service with Company, does not, as long as he retains such status, acquire any seniority rights, vacation, sick leave, leave of absence, or similar rights and privileges.

Title 310.3: A regular employee is one who has qualified for transfer from the status of casual employee and whose pay has been established at a weekly wage rate.

OPINION

Background:

The two grievants, regular employees with less than three years service, were laid off for lack of work though casual employees with less than six months' service were retained. The issue which this fact situation presents is whether regular employees with less than three years' service are entitled to preference over employees with less than six months' service in the event of layoff.

Position of Union:

(1) Contract Argument: Section 310.2 states that casual employees do not acquire any seniority rights. Section 310.3, in defining regular employees, does not mention seniority rights. Thus, a reasonable interpretation of Section 310.2 in combination with Section 310.3 leads to the conclusion that casual employees are subordinate on layoff to regular employees. "A contrary interpretation would allow the Company to lay off all regular employees with less than three years of service while retaining on the payroll hundreds of casuals doing the same type of work in the same department or division and in the same geographic area. Persons going to work as a casual or probationary employee expect to

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be the first to go in the event of layoff for lack of work. Employees who complete their period of casual or probationary employment reasonably expect that casuals will go first on layoff, particularly if they have read in their Contract that casuals have no seniority." By preferring the casual employees in this layoff, the Company essentially invested these casual employees with seniority rights to which the Contract does not entitle them. "The Contract as it now stands contains the shortest, clearest, and most precise statement of a seniority distinction between casual employees and regular employees."

(2) Bargaining History Argument: There has never been any bargaining history or any negotiations attempting to distinguish between the seniority rights of casual employees and regular employees with less than three years' service. Thus, the bargaining history is not conclusive in favor of either party. The bargaining history "does nevertheless permit the inference that the practice through the years regarding order of layoff for lack of work has been so satisfactory to both parties that neither has attempted to bargain any changes."

(3) Past Practice Argument: The Union is unaware of any prior examples except the [illegible] case in which the Company laid off regular employees with less than three years' service while retaining casuals.

Findings:

The crucial section in this dispute is Section 306.1. Section 306.1 provides that "Only (emphasis supplied) employees who had three years or more of continuous service with Company ... shall be given consideration, as follows, in cases of demotion and layoff in the Department of General Construction in which they are employed: ...." This language is clear and unambiguous on its face in giving no seniority to employees with less than three years' service. The language thus strongly favors the Company's

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action in this case, particularly in view of the fact that the word "only" was added in the most recent negotiations in 1966.

The Union claims that because casual employees are said not to have any seniority rights in Section 310.2 as compared to regular employees with less than three years service in Section 310.3, the conclusion follows that the Contract is silent on the seniority rights of regular employees with under three years' service and therefore that the Contract is ambiguous and that past practice must control. That Union argument is rejected because it ignores the language of Section 306.1, which is clear and plain on its face to the contrary.

The clarity of Section 306.1 has a further effect upon the Union's case. Obviously, if Section 306.1 were ambiguous, then the silence of the parties at the negotiations on the distinction between casual and regular employees with respect to layoff would become a more forceful and relevant argument in the Union's favor. But since Section 306.1 is unambiguous, a heavy burden is placed on the Union to show that the Contract language should be disregarded, and the silence of the parties in their negotiations does not contribute to that showing. Fundamentally, the Union says that the silence of the parties at the negotiations favors the Union because that silence is supported by the past practice of the parties in the Union's favor. That approach would be sound if the Contract were ambiguous, but since that is not so, the responsibility was the Union's to raise the question at the negotiations if the clear language of the Contract is now to be disregarded. We also know that a past practice contrary to clear contract language is less persuasive as a factor than when the contract is ambiguous. In other words, for past practice to prevail over clear contract language, the clear language must be amended by a later agreement, the existence of which is to be deduced from the course of conduct of the parties and where such conduct relied

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upon shows that the modification was unequivocal and the terms of the modification definite, certain and intentional (Pemberthy Injection Co., 15 LA 713; Gibson Refrigerator Co., 17 LA 313; Merrill - Stevens Dry Dock & Repair Co., 10 LA 562; Bethlehem Steel Co., 13 LA 556).

Moreover, with Union approval, a past practice was shown to the effect that the Company consistently laid off regular employees with less than three years' service based upon their length of service, and though this practice was in harmony with the Union's objectives, it still repeatedly and unsuccessfully sought to change the Contract language so as to require the Company to continue that practice as a matter of Contract obligation. Though the same kind of past practice was shown to exist in reference to casual employees vis a vis regular employees with less than three years' service, the Union made no attempt in its negotiations to make that past practice a matter of Contract obligation. Though the Union was in the same position in respect to the seniority rights of casual employees as against regular employees with less than three years' service, it never raised this question. Such absence tends to indicate that the Union had less confidence that the practice was binding on the Company and therefore significantly dilutes the silence of the parties as an argument in the Union's favor.

Aside from the relationship between the negotiating history and past practice, the Union argues that the employees are entitled to rely upon that past practice irrespective of language in the Contract to the contrary. If the Contract language were ambiguous, this Union past practice argument might prevail. But since the language is unambiguous and was, in addition, further clarified by the 1966 Contract change in which the word "only" was added, the conclusion follows that the past practice standing by itself is not enough to overcome the plain

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meaning of the Contract. Moreover, the [redacted] grievance also contributes to the conclusion that no express or implied agreement to modify the Contract language was present since a practically identical issue was raised in that [redacted] grievance but was withdrawn by the Union at the very same time that Section 306.1 was being strengthened in favor of the Company by the addition of the word "only".

A final Union argument relates to Company policy as expressed in Union Exhibit No. 1, "Guide for Handling Demotion of Employees". The Union says that in that document the Company itself established ground rules which require the retention of employees based on seniority. It relies upon the statement that "When a demotion is made in accordance with Union Agreement, Title 306, check all employees working in that Division with the same classification. Employee with the least classification service will be the one to demote...."

That Union argument again is not persuasive. When the Exhibit is considered in its entirety, the language upon which the Union relies does not necessarily lead to the conclusion that the Exhibit applies either to casual employees or to regular employees with less than three years' service. First, in that document the demotions are limited to those demotions made in accordance with Section 306.1. We know that 306.1 is limited to regular employees with over three years' service. Second, as a matter of Contract construction, it is noteworthy that the document specifically deals with employees with over three years' service and with employees with over five years' service and that nowhere are casual employees or regular employees with less than three years' service specifically mentioned. Moreover, in reading the document as a whole, a reasonable interpretation of its purpose is that the first paragraph is merely a statement of general character and that the paragraphs which follow specifically implement

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1 that first paragraph and that no additional classes of employees
2 other than those mentioned were intended to be covered. As a re-
3 sult, since the document is at best ambiguous, when placed within
4 the framework of the clear language of Section 306, the conclusion
5 which the Union advances cannot be favored.
6 Thus, for all the reasons set forth in the foregoing, the
7 Arbitrator rules that the layoffs of G[redacted] and J[redacted], Gen-
8 eral Construction Department employees, following a reduction in
9 work forces, is sustained.
10
11 **AWARD**
12 The layoffs of G[redacted] and J[redacted],
General Construction Department employees, fol-
13 lowing a reduction in work forces, is sustained.
14 Dated: 4-25-68

[signature]
15 ADOLPH M. KOVEN, Chairman of
the Board of Arbitration
16
17 **CONCUR**:
18 ______________________ Dated: ______________________
V. G. OGLETREE, Union Member
19
______________________ Dated: ______________________
20 DAVID H. REESE, Union Member
21 [signature] Dated: April 25, 1968
M.A. KIRSCH, Company Member
22 J W Borbright substituting for Dated: 4-25-68
23 V. J. THOMPSON, Company Member
24
25 **DISSENT**:
26 [signature] Dated: [illegible]
V. G. OGLETREE, Union Member
27 John J. McAdor — for Dated: 4-25-68
28 DAVID H. REESE, Union Member
29 ______________________ Dated: ______________________
M. A. KIRSCH, Company Member
30 ______________________ Dated: ______________________
31 V. J. THOMPSON, Company Member
32

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