
In the Matter of an Arbitration

between

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION NO. 1245,**

Complainant,

and

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Respondent,

Involving grievance of H. D. Seavers

OPINION AND DECISION OF THE BOARD OF ARBITRATION

SAM KAGEL, Chairman

JOHN K. McNALLY, Union Board Member

PETER R. DUTTON, Union Board Member

LEE R. THOMAS, Company Board Member

DARYL G. COLLINS, Company Board Member

San Francisco, California

February 26, 1970

ISSUE:

"Does the Grievant's, H. D. Seavers, job performance demonstrate that he may be expected to satisfactorily and safely perform more responsible assignments in his line of progression if promoted to a Line Subforeman?

1. "If the answer is no, the Award shall be:
 - "(a) The Company need not consider his bids under the provisions of Title 205 of the Physical Agreement, to Line Subforeman; or
 - "(b) Under the facts of this case, the Grievant has not received an impartial opportunity to demonstrate his knowledge of Line work in a supervisory capacity, or that he can efficiently and safely direct the work of a Line crew. Therefore, the Grievant shall be assigned as a conditional Line Subforeman subject to the conditions of the Agreement between Company and Union which is attached hereto as Exhibit B and incorporated herein. [Parties' letter of August 11, 1962.]
2. "If the answer is yes, the Award shall be that the Grievant shall be promoted to Line Subforeman."
(Jt. Ex. 2, Ex. A)

DEFINITION OF A LINE SUBFOREMAN:

"An employee who is a Working Foreman in charge of a crew of not more than four men (exclusive of himself) engaged in all classes of overhead line work, in all classes of underground distribution system work utilizing non-lead cables, and in providing electric service to customers; may be required to drive the truck and operate the associated equipment as assigned. He shall have the personal qualifications of leadership and supervisory ability, the craft qualifications of a Lineman and be familiar with Company's construction and safety standards, General Order 95, accounting procedures, and other applicable rules and procedures." (Tr. p.6, Co.Ex. 1).

BACKGROUND:

Seavers was employed by the Company as a Journeyman Lineman about 10 years ago. After 6 years he was promoted to Troublemaker and held that position until December 1966, when he was demoted back to Lineman. The demotion was grieved and was later sustained by the Review Committee.

Seavers continued to work as a Lineman until July 29, 1968 when he was assigned a crew and temporarily upgraded to Subforeman for an indeterminate period of time on a trial basis. The trial period was terminated by the Company in September of 1968 and Seavers was returned to the Line Crews as a Lineman.

POSITION OF THE PARTIES:

Company's Position:

Based upon certain specific incidents (which will be examined hereinafter), the Company concluded that a number of these incidents involved serious rule violations, infraction of Company's practices or line construction standards and damage to customers' or Company property and that these all stand uncontradicted, unexplained or inadequately justified; that the Company does not take the position that all of the incidents testified to at the hearing individually were of such serious consequence that standing alone they would support the conclusion reached by three Supervisors that Seavers should not be promoted; that collectively however they constitute instances of serious errors, refusal

to follow instructions, rule violations and damage and together create a composite picture of an inadequate work performance that Seavers' Supervisors might look forward to in the future if he were placed in a Line Subforeman position on a regular basis; that taken collectively the various instances (to be examined hereinafter) constitute a reasonable basis to support the Supervisor's judgment as to Seavers' qualifications to be a Line Subforeman; that the purpose of the trial period was to provide him with the opportunity to show that he could do the job; that the Review Board in sustaining the prior demotion of Seavers stated "In the future if a job performer demonstrates that he can perform more responsible assignments in his line of progression, he may again be considered for such assignments"; that the judgment of Seavers' Supervisors as to Seavers' qualifications must be upheld unless the whole of the evidence presented in support of their judgment shows the decision to be unfair, arbitrary or obviously inequitable; that Seavers has shown a stubborn refusal to follow rules and instructions designed for the safety of himself, members of his crew and the general public; that therefore there is no reason in fact or logic to place Seavers in a responsible position as a Line Subforeman; that there is absolutely no evidence that Seavers was not given an impartial opportunity to demonstrate his ability.

Position of the Union:

That under the applicable provisions of Title 205 of the Physical Agreement Seavers is entitled to automatic

advancement from Journeyman to Line Subforeman; that the Company rejected Seavers' bid for the Line Subforeman's position invoking the bypass provisions of the Agreement; that under these provisions the Company is permitted to refuse advancement to an employee if it feels he would not be able to satisfactorily perform the work in the higher classification; that the Company bypassed him on the ground that he would not be able to properly carry out a Line Subforeman's duty; that in attempting to prove that Seavers is not qualified for the job the Company relies almost exclusively on a critique of Seavers on the job performance as "conditional" Line Subforeman during a six-week period from the end of July to the middle of September 1968; that the Company has presented evidence concerning nine separate events or "incidents" which occurred during the six-week period which the Company contends demonstrates his various inadequacies as Line Subforeman and his inability satisfactorily to perform the duties of that position; that substantially on the basis of these nine incidents the Company concludes that Seavers is not qualified for the job; that it is the Union's contention that the nine incidents in question when fairly and objectively regarded failed to reveal any meaningful inadequacy in Seavers' job performance; that in each instance Seavers completed his assigned task properly, safely and efficiently; that therefore the Grievant is entitled to promotion to Line Subforeman.

DISCUSSION:

Incident of August 19, 1968 - Patterson School:

Prior to this job, the Company states Seavers had been told not to connect customer service until a particular defect had been corrected. Seavers interpreted his instructions as not to energize the connection until the defect had been corrected. The energizing did not take place until August 21. Additionally, Seavers completed the job while in a truck aerial bucket with his crew standing by. The Company maintained that the completion could have been done by a Troublemaker the next day; Seavers states he was told to finish the job and the Union contends that any crew time lost was negligible.

**Incident of August 22, 1968 - Open Delta Transformer
Bank:**

The Company states that in accordance with its rules it instructed Seavers to install a transformer on the side of the pole away from the cross-arm. The Union recognized that the purpose of the rule is safety for workmen on the pole. (Brief p.10). The Company further contends that a duplication of work would be required if larger transformers were later requested which have to be hung away from the cross-arm.

Seavers states he hung the transformer where he did because of a tree overhanging the pole. He acknowledged knowledge of the Company rule and in fact rehung the transformer on the other side after being requested to do so.

Incident of July 29, 1968 - Dumberton Quarry:

This incident involved stringing wires over a roadway used by trucks going to and from the quarry. The Company maintains the method used by Seavers was time-consuming and contrary to the Company's suggestion to him. And, even employing the method he desired to use, Seavers did so incorrectly.

Seavers' main concern was to not delay the truckers, who were paid on a load basis. He also sought to prevent damage to the wire and to vehicles. Outside of one instance concerning maintaining slack, he stated the job went as planned.

Incident of July 30, 1968 - Clements Company:

On setting a new pole and transferring lines, the Company maintained that Seavers did not take the proper tools to the job. On seeking an explanation, the Company contends that Seavers' plan of operation was time-consuming, inefficient and unsafe.

Incident of August 6, 1968 - Braddock and Logan Tract:

The Company contends that Seavers failed to hang fixtures before raising a pole. Seavers states that he chose placing them on the pole after it was set to protect the fixtures, a private automobile, and that the pole might be top heavy. As to the latter, the Company contends with with the equipment assigned to him, the latter was not a proper consideration by Seavers.

Incident of August 12, 1968 - Patterson School:

The Company contends that a transformer had not been removed from an old pole while the wires were to be removed. Seavers' response was he would have been obliged to haul the old transformer with him and then return it the following day.

A line failure occurred a month after completing the job that the Company contends was the result of faulty installation by Seavers' crew which, if uncorrected, could have caused a fire. (Tr. 147).

Incident of August 13, 1968 - Robertson Avenue Pole Fires:

The Company ordered new pole holes dug but instead Seavers was having a transformer removed which he maintained was unsafe because of the fire. The testimony is in conflict on this point.

After the transformer was removed, Seavers again was ordered to dig the holes. Instead the Company found Seavers removing the old pole, he planning to use the old ^{hole} ~~hole~~ for the new pole. Seavers states that he had hit gas and water service and did not want to change the location of a telephone company terminal box. He maintained that the telephone equipment was not to be moved unless absolutely necessary according to Company policy.

Incident of Late August, 1968 - Line Bobs:

The Company criticized Seavers' placement of line bobs so far away from a pole that a workman could not reach

then. Seavers response was that the bobs were placed by an apprentice; that a private car prevented the bucket rig to get closer to the pole; that Seavers could not tell the bobs were ^{as} far out as they were from the ground.

Incident of Improper Voltage Hookup,
September 13, 1968:

Seavers admitted connecting the hot leg of the service to a neutral, resulting in creating boiling water in the customer's cold water pipes, electric shocks and damage to the customer's appliances and lights. Seavers stated he did not test the voltage and maintains he would change his procedures in the future.

SUMMARY:

The Company contends that while each incident itself would not, standing alone, justify Seavers' demotion, the composite picture shows such future potential for inadequate work performance that it was justified in not promoting him. The Union's position is that, with the exception of the final incident, all of the Grievant's actions were justified and thus the Company could not demonstrate any serious short-coming in Seavers' job. The above incidents disclose that Seavers on some occasions, and especially as to that of September 13, 1968 was negligent in the performance of his duties. As to the

other incidents it is also clear that the Company complains of choices of methods that Seavers used that were reasonable alternatives under the circumstances.

The record shows that Seavers possesses qualities that could allow him to properly take the promotion provided that he learn to follow orders and Company procedures to a greater degree. The parties have provided for a learning period for Seavers as a possible award. Considering the entire record in this case, it is appropriate that Seavers be given the opportunity to receive such training. His future performance will determine whether such training will have corrected his present deficiencies. Certainly his length of service and the inconclusive nature of some of the incidents related above is a proper basis to grant Seavers a further impartial opportunity to establish his competency as a Subforeman.

DECISION:

The answer to the issue is No and the award is that:

H. D. Seavers shall be assigned as a conditional Line Subforeman subject to the conditions of the Agreement of August 11, 1969 between Company and Union which is attached as exhibit B thereto and incorporated therein forthwith.

OPINION AND DECISION OF THE BOARD OF ARBITRATION

Sam Kagel
SAM KAGEL, Chairman

John Wildes
Union Member

Concur/Dissent

2-26-70
Date

J. K. McHaley
Union Member

Concur/Dissent

2-26-70
Date

A. G. Collins
Company Member

Concur/Dissent

2-26-70
Date

Paul P. Thomas
Company Member

Concur/Dissent

2-26-70
Date

ARBITRATION CASE NO. 31

EXHIBIT B

Assignment of H. D. Seavers as a Conditional Line Subforeman
Fremont Electric Department

The Pacific Gas and Electric Company and Local Union 1245, I.B.E.W., agree that the assignment of the grievant, Mr. H. D. Seavers, as a Conditional Line Subforeman, at Fremont, pursuant to an Award under the provisions of 1(b) of the Issue and Award in Arbitration Case No. 31, shall be made in accordance with the following terms and conditions:

1. The grievant shall first be offered the opportunity to prepare for and take the Arithmetic Computation Test. Until such time as he has successfully passed the Test, he shall continue to be classified as and assigned the work of a Lineman.

To prepare himself for the Test he will be given a copy of the study form and answers. He will be allowed at least one month from the date of the Arbitrator's Award in which to take the Test; however, at his election the Test may be taken earlier. The Test will be administered in the usual manner during regular hours of work.

The grievant will be allowed only one opportunity to take and pass the Test. A passing score will be that percentage established by agreement between Company and Union as an entrance requirement to certain apprenticeships.

If the grievant attains a passing score, he shall be immediately classified as a Conditional Line Subforeman subject to the remaining conditions of this Agreement. If the grievant does not attain a passing score on the Test within one month (30 calendar days) from the date of such Award, this Agreement shall terminate.

2. At the time the grievant is classified as a Conditional Line Subforeman, he shall be paid for all straight-time hours worked at the proper wage step of the Line Subforeman classification.

3. Following such appointment, the grievant shall be assigned to the next scheduled class of courses at the Basic Electricity School to be held at Emeryville and following that to the next scheduled class of courses at the Basic Lineman School also held at Emeryville. The order of attendance may be changed if necessary to insure that he is placed in one or the other course as soon as possible following appointment as a Conditional Line Subforeman.

If the grievant cannot be immediately placed in one or the other school, he may, in the interim, be assigned work in his headquarters as a Conditional Line Subforeman in accordance with later provisions of this Agreement dealing with work assignments.

4. As a condition of his retaining the status of Conditional Line Subforeman, or later attaining an unrestricted status as a Line Subforeman, the grievant shall be required to attend and satisfactorily complete each course. This shall mean that he shall, except for authorized absences, regularly attend each session, demonstrate that he is receptive to the instructions given and follow the directions of his instructors, and receive a passing grade in each course. As to the latter, a passing grade shall be that standard adopted for apprenticeships.

Failure to meet any of the criteria set forth in the foregoing paragraph shall be cause to reinstate the grievant as a Lineman at his present headquarters and terminate this Agreement.

5. As soon as the grievant has successfully completed both courses, he shall be reassigned to his present headquarters as a Conditional Line Subforeman for an additional period of time that shall not exceed three hundred and sixty-five (365) days from the date he was appointed as a Conditional Line Subforeman.

While assigned as a Conditional Line Subforeman he will be given work assignments of increasing complexity and responsibility for the purpose of demonstrating his qualifications to be assigned to a Line Subforeman classification on an unrestricted basis. His work performance will be appraised periodically, as deemed necessary by his supervisor, and such appraisals will be reviewed with him. Such assignments, as a Conditional Line Subforeman, shall continue so long as the employee demonstrates that he is performing the work assigned in a satisfactory manner and is providing his assigned crew with the instruction and leadership necessary to carry out the work in a safe and efficient manner.

While assigned as a Conditional Line Subforeman, the grievant will not be assigned as such to work to be performed outside of his regular work hours, except where the work he has been assigned during his regular work hours continues beyond the regular quitting time.

For the period of time that he remains assigned as a Conditional Line Subforeman, at his headquarters, he shall remain on the overtime distribution list established for Linemen at his headquarters, provided he has previously volunteered for such work, and, if assigned to overtime work from such list, paid at the Lineman rate of pay.

Subject to the provisions of the next following paragraph No. 6, failure on the part of the grievant to carry out his work assignments in a satisfactory manner or in a way that demonstrates to his supervisor (after a reasonable period in which to bring his performance up to the required standard) that he will not qualify for assignment as a Line Subforeman on an unrestricted basis shall be cause to reinstate him as a Lineman at his headquarters and terminate this Agreement, notwithstanding that such reinstatement may occur before the expiration of three hundred and sixty-five (365) days following his appointment as a Conditional Line Subforeman.

6. Any dispute that arises out of the application or interpretation of any provision of this Agreement shall be referred to the Review Committee for resolution. Such Committee shall render a decision on such dispute that shall be final and binding and neither the subject matter of the dispute or the Review Committee's decision shall be subject to the arbitration procedures set forth in the Agreement applying to operation, maintenance, and construction employees, dated September 1, 1952, as last amended (hereafter called the Physical Agreement).

7. While assigned as a Conditional Line Subforeman, the grievant's bid to a Line Subforeman vacancy, at any headquarters, may be rejected by Company pursuant to the provisions of Section 205.11 of the Physical Agreement and such rejection shall not be subject to the grievance procedures (Title 102) of that Agreement.

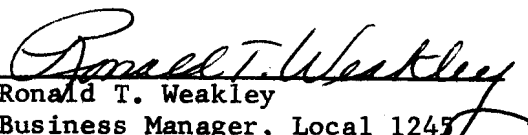
The grievant's acceptance of a Lineman position at any other headquarters, or request to be reinstated as a Lineman at his present headquarters, or appointment to any other classification, will terminate this Agreement.

8. The appointment of grievant to an unrestricted Line Subforeman classification may, three hundred and sixty-five (365) days following his appointment as a Conditional Line Subforeman, or before, as the case may be, result in a surplus of Line Subforemen at the grievant's present headquarters. To alleviate this, it is understood that if a Line Subforeman vacancy occurs at that headquarters within ninety (90) days following his unrestricted appointment as Line Subforeman, Company need not fill the vacancy under the provisions of Title 205. Further, in the event that a vacancy does not occur within this ninety (90) day period, it may be necessary for the Division to exercise the provisions of Title 206.

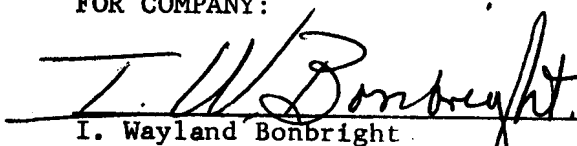
It is further understood and agreed that termination of this Agreement for any reason set forth above, subject to the provisions of paragraph No. 6, shall discharge Company from any further obligation under the Award made in Arbitration Case No. 31.

Dated August 12, 1969

FOR UNION:


Ronald T. Weakley
Business Manager, Local 1245

FOR COMPANY:


I. Wayland Bonbright
Manager of Industrial Relations