In the Matter of an Arbitration]
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between]
]
INTERNATIONAL BROTHERHOOD OF]
ELECTRICAL WORKERS, LOCAL 1245,]
]
Complainant,]
]
and]
]
PACIFIC GAS AND ELECTRIC COMPANY,]
]
Respondent.]
]
Re: Case No. 70]
]

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Company Arbitrators, I. WAYLAND BONBRIGHT and DAVID J. BERGMAN

Union Arbitrators, MANUEL A. MEDEROS and LARRY FOSS

Neutral Arbitrator, JOHN KAGEL

San Francisco, California
March 1, 1979

In the Matter of an Arbitration between INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245, Complainant, and PACIFIC GAS AND ELECTRIC COMPANY, Respondent. Re: Case No. 70	OPINION AND DECISION OF BOARD OF ARBITRATION San Francisco, California March 1, 1979

ISSUE:

1. Was the bypass of E. A. Tompkins to a Leadman a violation of the Physical Labor Agreement?

2. Was the bypass of George B. Allan to Head Meter Reader, temporary, in violation of the Clerical Labor Agreement?

BACKGROUND:

Both Tompkins and Allan would have been placed into the positions they seek but for their relationship with others (Tr. 14).

The Company maintains, however, that neither are entitled to the position because if Tompkins was transferred, he would be in a position immediately under

one occupied by his brother. And if Allan received the temporary position he seeks, he would be in a position of supervising his daughter.

Tompkins' brother is Garage Subforeman at Burney. If Tompkins becomes Lead Mechanic, his shift would overlap by an hour and a half with his brother's. The Leadman has authority to purchase parts at an auto supply store in Burney by using a credit account and receiving a receipt. Those receipts are examined by the Garage Subforeman. They are also examined by the Garage Foreman, the District Manager, and Accounts Payable. They are routinely audited on a sample basis according to accepted accounting practices (Tr. 99).

If Allen served as a Head Meter Reader, he would examine the records of the Meter Readers which would include his daughter's. An abuse for which a Head Meter Reader examines Meter Readers' books is to detect "curbing", which is a situation where the Meter Reader concocts meter entries to avoid actually reading them (Tr. 58).

Company Policy:

According to the Company, while there is no bar to hiring relatives within the Company generally (Tr. 24), there is a consistent unwritten policy which bars immediate supervision by one relative of another (Tr. 10, 17, 29).

Company witnesses could not positively state there had been no situations where one relative directly supervised another. Union witnesses established that there have been four, if not five, such situations (Un. Ex. 1a, Tr. 65, 82, 83, 86, 89). Additional similar relationships could occur during temporary upgrades (e.g. Tr. 84).

Bonnie Day Decision:

In Arbitration Case No. 18, the Bonnie Day case, a woman who married a co-employee was transferred from the office where the co-employee worked. The wife was a clerk whose duties included counting cash and checks as well as checking cash received by other employees. The grievant's husband was a counter clerk whose receipts were so checked by the grievant. The transfer was made because of a company rule that related persons should not be employed in the same office or department of the company where cash is counted, which rule was at least listed in writing to be checked by cash auditors. The arbitrator determined that the company's rule was reasonable; that it was of long standing as evidenced by its listing in the audit list and that the rule was not contrary to the provisions of the Collective Bargaining Agreement (Co. Ex. 1).

POSITIONS OF THE PARTIES:

Position of the Union:

That there is substantial doubt that a Company policy exists which would sanction the denial of the transfers involved; that Union representatives had no knowledge of such a rule (Tr. 37); that such rule has never been posted and is in fact unwritten; that if it exists, it has been passed by word of mouth among Management personnel without notice to the Union; that the Company presented no evidence of any specific instance where the rule was applied while the Union has established numerous instances where it has not been applied; that the cash handling arbitration decision is inapplicable here; that the rule is unreasonable as applied here where there are no situations such as involved in the cash handling case; that the Company has not articulated a consistent policy and there is no clear standard by which the Employees or the Union can determine whether a particular bid would be prohibited by the Company rule or not; that thus even if the Company rule is considered to be reasonable, it nonetheless must be applied uniformly; that even if the rule exists and is reasonable, it cannot vary the specific terms of the Collective Bargaining Agreement and there is no qualification in the Agreement to allow the application of the claimed Company rule.

Position of the Company:

That the Grievants were bypassed because of a Company policy proscribing the employment of a close relation to a position where one brother would be required to approve the Company purchases of the other or for the father to audit the work of a daughter; that to a lesser degree it is also the Company's established policy to discourage like arrangements and other kinds of work situations unless there are intervening subordinate supervisors between the relatives; that the policy is applied to either Grievants' situations is not contrary to any provision of the Agreement nor is it arbitrary or unreasonable; that in the instances where there has been direct supervision by a relative, there was no showing that the supervisor would be required to approve purchases, cash transactions or curbing for none of the examples concerned auditing of purchases made by the Employee relative (Tr. 94); that the case must be decided within the narrow confines of the issues presented in both cases; that the Company policy has been in existence since at least 1927 and has been in effect and uniformly applied in each of the various divisions where one of the witnesses had worked during the last 15 years; that the Union has not endeavored to change or repudiate the policy either before or after the execution of the 1952 Agreement

through negotiations, nor for that matter following the issuance of the Bonnie Day arbitration decision; that while the policy may not be spelled out in the Labor Agreement, the Management Rights Clauses of both Agreements provide the enabling vehicle for implementing or continuing practices necessary for safeguarding the Company's funds and the interest of the supervisory Employees; that the Company's determination has not affected the ability of the Grievants to secure other positions within the Company.

DISCUSSION:

Agreement Provisions:

The Grievants, the Company concedes, meet the Agreement's standards for the positions they seek. The sole basis for denying the positions was an unwritten Company policy which this record did not show existed. The numerous examples contrary to the claimed policy showed that there was no basis to deny the operation of the Agreement in this case.

Claimed Policy:

The Company, in the face of the evidence, has asserted either a new policy or a refinement to its earlier policy. It now contends that the specifics of the positions the Grievants seek bar their receiving them.

Not only was this not the basis of denying the Grievants their jobs but, on analysis, does not otherwise prevent them from getting them.

Grievance No. 18:

The Company maintains that such policy that it now articulates is one which is akin to that which was enforced in the Bonnie Day case. However, an examination of the facts of that case compared to the situations involving the Grievants does not show such applicability. That case barred one employee from counting the cash of another. It has nothing to do with supervisory relationships between the two employees, but was based upon not only evidence that the rule had been of long standing, but also as the Arbitrator explained there:

> "In most, if not all, business organizations the handling of and accounting for cash is subject to auditing procedures and controls and every effort is made to assure that the company not only receives all funds paid by its customers but also that no employee is embarrassed or placed in a position where an explanation or accounting for missing funds may be difficult. An employer is entitled to adopt reasonable rules to secure the funds received from customers as well as to protect its employees from situations which could lead to embarrassment. Independent checking of cash is a protection to the company as well as the employees." (Co. Ex. 1)

The positions in question do not have the type of relationship that the Arbitrator in Bonnie Day found not only to be only a rule of long standing, but also to

be neither arbitrary nor unreasonable.

The Company overemphasizes the fiduciary relationship involved in the Burney auto parts situation. Not only are such purchases limited solely to the parts which are needed only just before the auto parts store in Burney closes, but also involves parts whose installation cannot wait until the following day. In short, the position to be occupied by Grievant Tompkins is not the primary position where such parts are purchased. In fact, Tompkins is seeking a downgrade so that he can be in Burney. In his current position in Redding, he has been promoted on upgrade situations to a position which in effect audits the parts purchases of his brother whom the Company now maintains cannot audit Tompkins and there was no issue raised when such promotions were made. In any case, as was testified, both the Garage Foreman and District Manager also audit the purchases of Burney Subforemen. In short, if the position is one of such delicate concern to the Company, unlike cash which disappears as soon as it is counted and is intermingled, there is a direct paper record of all auto purchases, it is a matter which can be easily audited, and even if there should be a rule with respect to such auditing, it would not appear reasonable under the facts and circumstances to apply it here in the face of the Grievant's clear Collective Bargaining Agreement rights to occupy the Burney position.

Similarly, the same applies to the Head Meter Reader temporary position sought by Grievant Allan. While he would be required to audit the meter reading records to check that the book had not been "curbed", the Company has not established that the daughter's book would not routinely be considered by others as well or that there would be any particular difficulty in having that book independently audited. Again, such also is a determination to be made from the paper record. If in fact the Company is concerned with respect to such a matter, it also can check such work of both the daughter and the father. And, the Company's position with respect to the possible embarrassment of the father which can occur if he does not do a proper job auditing his daughter's activities is a matter the father clearly must take into account in seeking and accepting the job to which he is contractually entitled.

Rule Making Authority:

The Company maintains that it is entitled to establish reasonable rules which are not contrary to the Collective Bargaining Agreement. That such is shown is found in Bonnie Day, Arbitration Case No. 18. But, the facts of this case show that no such rule has been adopted. What the Company is urging is that such a rule should be adopted. But, if there is such a rule in accordance

with the Agreement, it can be articulated in such a way as to control the necessary fiduciary relationships that the Company does not wish to see relatives involved in. Then, as the Union urges, an Employee will be in a position to know whether or not he is entitled to bid to certain positions. But the rule sought to be posed by the Company here was not so articulated. It cannot receive a shifting type of articulation so to cover particular jobs when it has not covered others, and, even if it has existed, the Company has not shown that it would be reasonable to apply it to the particular cases in question here.

DECISION:

The bypass of E. A. Tompkins to a Leadman is in violation of the Physical Labor Agreement. The bypass of George Allan to Head Meter Reader, temporary, is in violation of the Clerical Labor Relations Agreement.

3-1-79 Date	~~Concur~~/Dissent	Employer Arbitrator
3/1/79 Date	Concur/Dissent	Employer Arbitrator
3/1/79 Date	Concur/~~Dissent~~	Union Arbitrator
3-1-79 Date	Concur/~~Dissent~~	Union Arbitrator
3/1/79 Date	Concur/~~Dissent~~	Neutral Arbitrator