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

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, Complainant, and PACIFIC GAS AND ELECTRIC COMPANY, Respondent. Arbitration Case No. (73) Meal Dispute Grievance.	OPINION OF THE CHAIRMAN and DECISION OF THE ARBITRATION BOARD WILLIAM EATON, CHAIRMAN PAUL PETTIGREW and WAYLAND BONBRIGHT, Company Members LAWRENCE FOSS and EDWARD VALLEJO Union Members

APPEARANCES:

FOR THE UNION:

JOHN L. ANDERSON, Esq.
Neyhart, Anderson & Nussbaum
100 Bush St., Suite 2600
San Francisco, Calif. 94104

FOR THE COMPANY:

L.V. BROWN, Esq.
Pacific Gas & Electric Company
245 Market Street
San Francisco, Calif. 94106

I. STATEMENT OF THE CASE

This is an arbitration to determine the following issue as stipulated by the parties:

> Pursuant to the provisions of the Physical Labor Agreement, as amended January 1, 1977, are the grievants entitled to a Company-provided meal?

Hearing was held at the company offices in San Francisco on August 14 1978 for the presentation of evidence and argument. The issue was submitted to the Board of Arbitration upon oral argument at the close of the hearing, subject to the right of each party to file a brief memorandum of legal points and authorities after receiving the reporter's transcript of the proceedings.

Arbitration case number 73 represents a consolidation of three Review Committee cases, bearing file numbers 1432-77-19, 1433-77-20, and 1435-78-2. It is agreed that, while the dispute arises out of various fact situations, the essential issue is whether, under the provisions of Section 104.4 of the Agreement, the company is required to provide a meal for an employee working more than one hour beyond regular work hours, no matter how short a time thereafter. Section 104.1 and Section 104.4 read as follows:

> 104.1 The provisions of this Title shall be interpreted and applied in a practical manner which shall conform to the intention of the parties in negotiating with respect to meals; namely, that a comparable substitute shall be provided when employees are prevented from observing the usual and average meal practices or are prevented from eating a meal at approximately the usual time therefor.
>
> 104.4 If Company requires an employee to perform work for more than one hour beyond regular work hours, it shall provide him with a meal approximately one hour after regular quitting time and with meals at intervals thereafter of approximately 4 hours but not more than 5 hours for as long as he continues such work.

Evidence was presented at the arbitration hearing relating both to the negotiations leading to the present provisions of Section 104.4, and to accepted practice under the prior provisions, which provided for a meal after one and one-half hours beyond the regular work shift.

Negotiating History

Assistant business manager Merton Walters, who was chief spokesman for the union during the negotiations which led to the present Agreement, testified that the present provisions of Section 104.4 resulted from union acceptance of a company proposal presented to the union during negotiating sessions on November 17 1976. The company also presented other proposals involving Title 104 at the same time. Walters testified that underlining on the copy introduced into evidence at the arbitration hearing was done by himself, and indicated where the union had a question or a disagreement with company proposals.

According to Walters, company chief spokesman Wayland Bonbright stated that one hour beyond regular work hours meant that "one minute beyond the hour" would qualify an employee for the meal as provided. Walters testified that that answered the only question the union had in regard to the company's proposal concerning Section 104.4, and that it was thereafter accepted as presented.

In a union publication entitled "Utility Reporter", in which the provisions of the new Agreement were explained to union membership prior to ratification, the explanation concerning Section 104.4 was simply: "Provides for a meal one hour beyond regular work hours rather than one and one half hours."

Local union president Ronald Fitzsimmons testified that

he had been a member of the negotiating committee, and that the company's proposal concerning Section 104.4 had been discussed approximately as testified to by Walters. In addition Fitzsimmons, as well as Walters, testified as to certain procedures followed by the union in seeking ratification of the Agreement, including Section 104.4.

Walters testified that he told the staff of business representatives of the union what the changes were, and that he informed them, according to his belief derived during the negotiations, that work one minute beyond the hour would qualify an employee for the meal provided by Section 104.4. Fitzsimmons presented similar testimony, stating that he had so presented the provision in dispute during unit meetings at various locations throughout the territory served by the company.

Fitzsimmons stated that copy presented to union members in the "Utility Reporter" had been discussed by the union with the company prior to its publication. He stated that the union committee had considered adding the "one minute" language, but decided not to do so on the belief that the matter was fully understood according to the position now advanced by the union.

Chief company spokesman Bonbright testified that the company's proposal was based upon an excerpt referred to as Order 4-76 of the Industrial Welfare Commission of the State of California, which provided in relevant part that no employer shall employ any person for a period of more than five hours without a meal period. Although Bonbright testified that the IWC order was referred to during negotiations, he indicated that no specific agreement was reached in regard to its provisions for the reason that it was unclear at the time exactly how the order would be interpreted.

Bonbright stated that during negotiations and shortly thereafter his office was in continuous contact with an employer organization known as Federated Employers, and that through this organization the company understood that the IWC would interpret its order 4-76 to mean that a meal would be required at a break point eight minutes after the hour. It is agreed that this specific interpretation was not known or discussed during negotiations.

Bonbright agreed that during negotiations he was asked by the union what one minute more than an hour would mean, and that he replied that it would be "obviously more than an hour." On cross-examination he agreed that this answer was "probably" given to the union in response to its question of what one minute more than an hour meant in relation to the proposed company change in Section 104.4.

Walters agreed that IWC Order 4-76 was "mentioned" during negotiations, and that the union was aware that uncertainty existed as to its meaning. Walters testified that awareness of that uncertainty was what prompted the union to inquire what the company meant by "one hour", and to inquire whether one minute more than one hour would qualify under the company's proposal.

Practice

In the previous contract, and in predecessors to that agreement for some years past, Section 104.4 had required that employees must continue work until at least one and one-half hours following the conclusion of the work day in order to qualify for the meal provided. The question of how to interpret the then one and one-half hour provision arose in Review Committee and was

resolved in a decision dated April 28 1967. The dispute there presented had arisen out of a situation in which employees were paid for work beyond the regular shift in increments of 15 minutes, and in which the grievants therein had worked until approximately 5:55 or 5:56 p.m. They were therefore paid until 6:00 p.m., but had been denied a meal on the ground that they had not actually worked for the one and one-half hours required, which would have been to 6:00 p.m.

The Review Committee decided that, while Section 104.4 could have been read as interpreted, "a continued technical application of the section is inconsistent with the practical approach suggested by the introductory section" to Title 104. Therefore, it was determined that employees paid for one and one-half hours work would thereafter be entitled to a meal under the provisions of Section 104.4.

It is agreed that this 1967 Review Committee decision was not discussed during negotiations for the present Agreement. It was also agreed by union witnesses that the Review Committee decision had not been specifically revoked by the parties. However, assistant business manager Lawrence Foss also testified that there existed no formal or systematized method of reviewing and revoking Review Committee decisions as a result of subsequent changes in the collective bargaining Agreement. Foss stated that, as a consequence, there is a "considerable number" of now outmoded Review Committee decisions which have never been formally revoked.

II. DISCUSSION

Union Argument

The present provisions of Section 104.4 resulted from a negotiating proposal advanced by the company, which was incorporated into the Agreement without alteration. The accepted legal principle is that he who submits and drafts language of a contractual agreement should have that agreement read against his interest in the event of ambiguity.

The union agrees that, but for the negotiating statements made across the table concerning the company's proposal, the prior decision of the Review Committee would probably prevail. That decision, however, is overruled by discussions which occurred during negotiations, specifically the "one minute" statement of company negotiator Bonbright. Moreover, the Review Committee decision itself was never discussed during negotiations.

The union has relied to its detriment on what it was told during negotiations. Union representatives have gone out to the membership and told the members what the new provisions of Section 104.4 mean, according to the understanding during negotiations, and now have been repudiated by the company's interpretation.

The question at issue is not one of practicability, but is a legal question of what the parties said across the bargaining table in discussing the proposed change, what meeting of the minds occurred, and what the union reasonably believed to have been agreed to as a result.

Company Argument

The union is not convincing in asserting that it has relied to its detriment on statements made by the company during negotiations. On the contrary, it has picked up a major concession. Whereas it was required that employees work one and one-half hours before being provided with a meal under the prior agreement, the new requirement is only one hour.

In approaching a similar problem under the prior language, the Review Committee laid great stress on the practical and common sense view which it adopted in its 1967 decision. That decision was that it is not reasonable to pay one and one-half hours for time worked, then not to grant a meal when such payment is made. The union position in the present Agreement would place the parties back in the illogical position which they occupied prior to the 1967 decision.

The copy of the union's publication "Utility Reporter" introduced into evidence at the arbitration hearing indicates that the union can explain clearly what new contract provisions mean when it cares to. There is detailed, and non-legalistic, explanation, for example, of the vacation language. Yet, in explaining Section 104.4, the union merely reiterates the language of the new provision.

As a realistic matter, there is often a lack of full understanding between the parties to a collective bargaining agreement during negotiations. That is one of the hazards of the collective bargaining relationship, and does not necessarily present a question of the credibility or recollection of witnesses to the negotiations. It must be asked in this dispute why, if the "one minute" statement of company negotiator Bonbright was so important to the union, it did not call that matter to the attention of the company when preparing its summary for union membership

ratification, which then could have been hammered out had a discrepancy in interpretation existed.

It is an accepted principle of contract law that a written document cannot be changed except by a subsequent written document. It is undisputed that the 1967 Review Committee decision has never been revoked, so that its provisions and reasoning should be followed in the present dispute.

Conclusions

In assessing this dispute we are presented with conflicting principles of contract interpretation, as well as conflicting interpretations of the intent expressed by the parties during negotiations.

As the union suggests, ambiguities in contract language should normally be construed against the party responsible for the language. Offsetting that consideration in the present dispute is the fact that the language at issue affords an additional benefit to union members in circumstances which do not indicate that the benefit was traded off for any other consideration.

Rather, the evidence indicates that it was the intent of the company to comply with what it believed would be the requirements of IWC Order 4-76. At the date of this Award there has been no definitive interpretation of that Order.

In these circumstances it would seem reasonable to accept the company's interpretation of the language which it advanced in providing a new and gratutious benefit.

Turning to the applicability of the 1967 Review Committee decision, it is undisputed that such Review Committee decisions

applicability. In the case of the Review Committee decision at issue, however, the applicability is clear enough. The provisions of that decision can be applied to interpret the language of the Agreement here at issue. Since the decision was not repudiated or revised during negotiations, there is no indication that the parties intended that it should no longer apply.

The Award is rendered accordingly.

DECISION

For the reasons set forth in the foregoing Opinion, the decision of the Arbitration Board is as follows:

1. The 1967 Review Committee decision shall be applied to the facts of the present dispute.
2. The 1967 Review Committee decision shall continue to apply except that should definitive IWC rules be issued which are more beneficial to the employee, the company shall comply with such rules.
3. Accordingly, pursuant to the provisions of the Physical Labor Agreement, as amended January 1 1977, the Grievants are not entitled to a company provided meal.

November 7 1978

WILLIAM EATON, Arbitrator

PAUL PETTIGREW, Company Member — Concur

LAWRENCE FOSS, Union Member — dissent

WAYLAND BONBRIGHT, Company Member — Concur

EDWARD VALLEJO, Union Member — dissent