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Arbitrator and Mediator
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IN ARBITRATION PROCEEDINGS PURSUANT TO

AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245	Arbitrator's File No. 97-201-LA
and,	ARBITRATOR'S OPINION AND AWARD (December 22, 1998)
PACIFIC GAS AND ELECTRIC COMPANY	
[Re: El Dorado Project Grievances, ARB No. 222]	

Arbitration Board: Barry Winograd, neutral chairperson; Roger Stalcup and Darrel Mitchell, Union members; Margaret Short and John Moffat, Company members.

Appearances: Tom Dalzell, attorney for the Union; Stacy A. Campos, attorney for the Company.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the International Brotherhood of Electrical Workers, Local 1245, and the Pacific Gas and Electric Company.

The Union contends that the Company improperly denied overtime to bargaining unit employees while also contracting out unit work. The Union alleges as well that the Company violated the labor agreement by displacing unit employees. Both of the Union's claims arose in connection with the intended sale of the El Dorado Project, a Company facility, to the El Dorado Irrigation District. The Company maintains that overtime was appropriately provided by the Company in accord with an understanding reached with the Union. The Company also urges that the eventual displacement of Company employees was justified because of the pending sale of the Project.

The undersigned was selected by the parties to conduct a hearing and render an arbitration award. The hearing was held on March 16, 1998 in San Francisco, California. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses, and for introduction of relevant exhibits. Posthearing briefing was completed on October 1, 1998. Thereafter, an executive session of the arbitration board was held on November 10, 1998. This decision followed.

ISSUES

The parties agreed upon the following statement of the issues to be resolved in this proceeding. (Tr. 5-8.) The issues are:

1. Was the Company obligated to offer the water systems repairmen headquartered at Camp 5 optimum overtime and the hydro electrician optimum overtime while the El Dorado Irrigation District repaired the El Dorado Project? If so, what should be the remedy? (Grievance AUB 95-33)

2. Did the Company violate the collective bargaining agreement by refusing to offer optimum overtime to the hydro maintenance employees and electrical technicians headquartered in Auburn while the El Dorado Irrigation District repaired the El Dorado Project? If so, what should be the remedy? (Grievance AUB 96-02)

3. Did the Company violate the collective bargaining agreement by displacing the bargaining unit employees headquartered at Camp 5 prior to the close of a sale of the facility to the El Dorado Irrigation District? If so, what should be the remedy? (Grievance AUB 96-10)

RELEVANT CONTRACT PROVISIONS

207.2 It is recognized that Company has the right to have work done by outside contractors. In the exercise of such right Company will not make a contract with any other firm or individual for the purpose of

dispensing with the services of employees who are engaged in maintenance or operating work.

(a) Company shall only contract after all efforts are made to use qualified Company resources, including optimum use of voluntary overtime and consideration of General Construction personnel.

(b) Company shall not contract any work normally performed by the bargaining unit if such contracting is intended to reduce or has the effect of reducing the regular work force by attrition, demotion, displacement or layoff. Layoffs, demotions and displacements shall not originate in a department where Company is contracting work. Further, the total size of the bargaining unit in that department shall not be reduced by attrition in the system while such work is being contracted.

'In addition, the parties have negotiated Letter Agreement No. 88-104, which states in pertinent part:

2. Section 207.2 of the Physical Agreement shall be interpreted as follows:

a. Company shall only contract after all efforts are made to use qualified Company resources, including optimal use of voluntary overtime in consideration of General Construction personnel ....

FACTUAL ANALYSIS

1. <u>The PG&E-El Dorado Irrigation District Relationship</u>

This case concerns ramifications of contractual relationships entered into by the Company and the El Dorado Irrigation District in 1995 and 1996. The subject of the agreements was the El Dorado Project, also known as Project 184

or Camp 5, a water conveyance system and hydroelectric facility near Placerville, California. (Jt. Exhs. 3-5.) In general, the Company assumed an obligation earlier in the century to provide water service to the District in conjunction with the Company's takeover of hydroelectric facilities. After a major fire in 1992, the Company's ability to operate the Project at a reasonable cost was jeopardized. As the parties stipulated,

> A large wildland fire in September, 1992 (the "Cleveland fire") destroyed several miles of original wooden flumes on the El Dorado Canal, which caused increased erosion problems for the canal and necessitated extensive repairs at a cost of over $16 million. A ruptured nozzle body housing caused flooding which put the powerhouse out of operation during the period between March 5, 1993 and June 20, 1996, requiring repairs costing about $5 million. These large and unexpected maintenance and capital improvement costs for the Project have required ongoing capital additions that have far more than offset the ordinary depreciation schedule associated with utility plant of this age, with the result that the book value associated with the Project (net of depreciation) was approximately $49 million as of December 31, 1996. (Jt. Exh. 19, pp. 4-5.)

In the face of major operational and capital improvement costs that would have been required for continued Project activity, the Company sought a way out of an uneconomic situation. (Tr. 151.) To this end, the Company negotiated an asset sale agreement with the District, executed in September 1995. (Jt. Exh. 12.) A few weeks later in September, a related construction access agreement was completed. (Jt. Exh. 13.) The asset sale agreement provided, in relevant part, that the District would purchase the project for $2 million, with $500,000

payable at closing and $1.5 million in 2003, and that the Company would maintain legal control of the Project until the sale was closed. (Jt. Exh. 12, Secs. 2.5, 5.2.) Subject to certain conditions precedent, either the Company or the District had the right to terminate the sale prior to closing. (Jt. Exh. 12, Sec. 9.13.)

At the time these agreements were negotiated, it was expected to take a year or so to obtain regulatory approval of the sale and licensing transfer. (Tr. 152.) In anticipation of the eventual transfer, the District was given the right to complete repairs to the facility prior to closing. (Id., Sec. 5.3.d.) To reduce the risk to the District if the sale did not close, the Company agreed to repay the District for construction repairs and improvements undertaken prior to September 30, 1996. (Id., Sec. 9.1.)

The work undertaken by the District in preparing for the eventual transfer of ownership included, (1) replacing the old wooden penstock delivering water to the powerhouse; (2) relining the interior coating of the penstock; and, (3) replacing the nozzle bodies and governor system in the powerhouse, related performance testing, and release of the units for commercial operation. (Tr. 45-46.) The Union has stated that its claims in this case concern only the third category of work; that is, work inside the powerhouse portion of the Project. (Tr. 56.)

Under the construction access agreement, the District was deemed to be a contractor working at the site. (Jt. Exh. 13, Sec. 2.3.) Further, the access agreement provided that if the sale was terminated before the actual closing date, the District would complete restoration of the Project in the capacity of a "turnkey contractor," subject to a cap on the Company's repayment of the District's construction costs. (Id., Secs. 1, 3; Tr. 50.)

By spring 1996, the District's restoration work had been completed. (Tr. 43-44, 153-154.) In doing so, the District utilized its own maintenance and operational staff, as well as specialized skills provided by subcontractors. (Tr. 46.) Employees commonly worked six 10-hour days, sometimes more, in completing the powerhouse restoration. (Tr. 52-53.) Throughout the Project activity, the Company's supervisory staff had oversight responsibility as the regulatory licensee to ensure that work was done properly. (Tr. 47-48, 57.) In this respect, upon occasion Company representatives inspected the facility, or raised questions about contract prices and specifications for work being carried out by the District or by its contractors. (Tr. 45-48, 70-74.) Some larger pieces of Company equipment also were used by the District. The time spent by Company personnel on such matters was charged back to the District. (Tr. 67.)

In late spring 1996, an additional agreement was executed by the Company and the District. This contract, known as the

operations and maintenance agreement, established the District's role as the operator of the Project until final closure of the asset sale. (Jt. Exh. 14.) Pursuant to this agreement, the District sold power to the Company at a set price, apparently without strict regard to market rates, and with the proceeds destined to provide funds for payment of the purchase price to the Company. (Id., Sec. 5.1; Tr. 77-79, 156.) At this point, in June 1996, Company employees working at the Project were given temporary assignments to other headquarters until new permanent assignments were arranged under Title 206 of the labor agreement. (Jt. Exh. 12, pp. 12-13.) As acknowledged at the hearing, the work carried out by the District's staff after the June 1996 operational takeover was essentially the same as the work that had been performed by Company employees prior to that time. (Tr. 83.)

2. The January 1997 Flood and its Aftermath

On January 1, 1997, a catastrophic flood struck the mountainous area in which the Project was located, knocking out the powerhouse and the water conveyance system. (Tr. 84; Jt. Exh. 6, 7.) Following the flood, the District and its contractors carried out substantial cleanup and maintenance work to repair basic damage and to halt further deterioration to the Project, but no work was undertaken to restore operations apart from minimal water conveyance to the District's reservoir. (Tr.

84-86.) In the post-flood period, including the significant maintenance work carried out in the first part of 1997, Company crews were not utilized at the Project, although previously in crisis and emergency situations, as after the 1992 fire, Company crews had been used for such work. (Tr. 86-87.)

In June 1997, the Company exercised its contract right to unilaterally terminate the asset sale agreement because the sale had not closed by September 30, 1996, with the Company noting its readiness to resume operation of the Project no sooner than 90 days after termination. (Jt. Exh. 16.) Prior to this action, the Company had not submitted any application to regulatory agencies to transfer the operational license or to secure authorization to sell the Project. (Jt. Exh. 19, p. 6.) The Company's termination action meant that the sale of the Project never closed. (Id.)

The Company resumed full control of the Project in September 1997. (Id.) However, the powerhouse has not been restored to operation, and the focus of work has been on maintaining equipment integrity. (Tr. 145-147.) Consistent with the Company's previous concerns regarding Project costs, the Company has shown no intent by capital outlays to restore operations in the future. Company employees who were displaced and transferred in June 1996, were never returned to permanent work at the Project. Instead, to the extent Project work has been needed

since September 1997, as in patrolling canals and lakes, employee assignments have been made from other headquarters, and a full-time crew has not been assigned to the Project. (Tr. 147, 149.)

3. Payments to the District

The Company paid approximately $4.5 million to the District for its work restoring the Project to operational capacity between September 1995 and June 1996. (Tr. 91.) Several hundred thousand dollars of District expense over the negotiated cap was not paid by the Company. (Tr. 92, 148.) In addition, a portion of the District's non-routine costs after the June 1996 takeover and for damage control after the January 1997 flood was reimbursed by the Company. (Tr. 96-97, 154.)

Under the operational agreement executed in June 1996, the Company paid the District approximately $1.7 million for electricity generated between June 1996 and the January 1997 flood. (Jt. Exh. 19, p. 5.)

4. Labor-Management Meetings in 1995

In late August 1995, Company and Union representatives began discussions about the Company's intention to sell the Project to the District. At that time, a notice sent by the Company to the Union summarized the subjects considered by the parties:

> The Company agreed to the sale last month and EID's Board of Directors will consider the sale at their meeting this week. Once the sale is agreed to, but before transfer of ownership occurs, EID will need to do major work to make the plant operational. When PG&E has done this work in the past we have accomplished it with various resources including Title 200 Hydro Maintenance employees, Title 300 Hydro Construction employees, and contracting. The work to be performed will be under the control of EID and they plan to contract the work out.
>
> At our upcoming meeting on September 18, we would like to discuss issues relating to the transfer of ownership. There are still many steps in the process, and the target for the transfer is the spring of 1996. In the interim we plan to maintain the existing staffing at the facility. Currently there are 8 Water Department employees and 2 Hydro Department employees at the headquarters. (Un. Exh. 1.)

At the labor-management meeting held on September 18, 1995, the Company provided information regarding the District's plan to repair the Project as well as the potential displacement of employees in the future. (Tr. 122-123, 131-132.) When the parties met in September, the District had not begun its restoration work, and neither the Company nor the Union representatives had seen the actual contracts executed by the Company and the District. (Tr. 135-136.) Regardless, with the general plan in mind, the Union expressed its concerns regarding contracting out of bargaining unit work, focusing on overtime issues arising under Letter Agreement No. 88-104. (Tr. 122.) Company representatives on September 18 disputed the contracting characterization advanced by the Union because the Company did not intend to do any work at the facility, because the repairs were not being carried out on the Company's behalf, and because

not all of the work involved the Title 200 workforce. (Tr. 123.)

By the end of the September meeting, as confirmed the next day, the parties agreed that optimum overtime was going to be made available to one Company employee who was assigned at the Project. (Tr. 125, 131; Jt. Exh. 9, p. 8.) Subsequently, that employee, an electrician, spoke with a local manager and arranged for 10 hours of overtime per week, some of which involved work in the powerhouse. (Tr. 53-54, 104-105.) This overtime was not linked to the amount of work being carried out by District employees or by subcontractors at the site. (Tr. 62.) At the September meeting, no request was made by the Union for overtime for maintenance employees headquartered in Auburn. (Tr. 128.)

The parties next conferred in November 1995. At that meeting they discussed potential displacement issues. (Co. Exh. 1; Tr. 125-127.) Although the date of an operational transfer to the District was still uncertain, the parties briefly considered options for employee placements in other locations, voluntary retirement, and similar issues. In November, the parties did not arrive at any agreement regarding contingency arrangements in the event the sale to the District fell through, but issues related to that possibility were mentioned, including the rights of employees who might be laid off. (Tr. 133-134.) However, these topics were deferred to a later unspecified point in time.

5. Grievance No. AUB 95-33

In December 1995, the Union filed a grievance alleging a denial of optimum overtime for electrical and water system repair work at the Project. The Company rejected the Union's claim, asserting that the overtime made available to one electrician was consistent with the understanding reached in September 1995. Thereafter, in a local investigating committee report in February 1996, the parties reviewed the history of the previous discussions in September, and of the District's work prior to a sale being completed. (Jt. Exh. 9, p. 3.) The investigating committee noted:

> Company and Union agreed the penstock replacement and relining work was not normally performed by the Title 200 workforce; and that this work had often been contracted in the past. Accordingly, Company and Union agreed there was no union issue associated with allowing EID to perform this work.
>
> Regarding the governor/needle valve replacement work, Company and Union agreed under normal circumstances (facilities not pending sale), this work would be performed by the Title 200 Maintenance Crew work force. In the interest of resolving this issue, Company agreed to reset the "floor numbers" for the affected maintenance crew classifications to whatever the numbers are when the work by EID or its contractors begins on the governor/penstock nozzle; and also Company would offer optimum overtime to the one Hydro Maintenance employee Headquartered at Camp 5. (Id., pp. 3-4.)[1]

[1]The Company provided testimony, departing from the committee's finding, that the powerhouse restoration work was not within the domain of Title 200 employees because of the scope of the work. (Tr. 66.) However, for the purpose of this decision, the committee's unqualified joint acknowledgement will be accepted.

Considering the events giving rise to this grievance, the report also observed that,

> Grievant Mr. Urso, confirmed he has been offered OT as agreed for work at the powerhouse. Later, he found out that EID contractors had installed temporary electrical power to perform the penstock relining. Grievant says this temporary wiring is also work that he has performed in the past and so he should be offered additional OT to meet the optimum OT provisions of the union agreement. (Id., p.4.)

As to the water system repair work, the Union raised this issue in conjunction with work undertaken on the tramway, rail car, and cable used by the District to access the penstock for relining work.

In responding to the grievance, Company representatives rejected the Union's claims on several grounds, including that Title 200 work was not involved, that the Company had reached an arrangement with the Union to provide overtime to one employee before the District began its work, and that substantial amounts of overtime had been carried out by the electrician and by others. Ultimately, the Company advanced the view that the District's work did not involve a true 88-104 contracting situation because there were no Company plans for future operation of the Project, which had been conditionally sold.

6. Grievance No. AUB 96-02

In January 1996, the Union filed another grievance regarding

the absence of any Company offer of overtime at the Project to maintenance staff headquartered in Auburn, particularly work undertaken by the District in repairing the penstock tram house.

The Company rejected this claim as well, citing the unusual contracting situation of work being done for the District's benefit, that the job, in the Company's view, was too big for maintenance support from Auburn on overtime, and that the previous September 1995 understanding did not cover this work. (Jt. Exh. 10, pp. 2-4.) The Company also has urged that it has no obligation to consider overtime outside of an affected headquarters. (Id., p. 8.)

7. Grievance No. AUB 96-10

In June 1996, the Union filed a third grievance regarding the Project. This grievance protested the transfer and displacement of Union employees from the Project prior to completion of the sale to the District. The Company also rejected this grievance. The Company asserted that it's agreement with the District authorized the District's operation of the Project once the powerhouse was ready for commercial use, that District employees were not working as contractors for the Company, and that Company employees at the Project had been given temporary assignments pursuant to the bargaining agreement pending their permanent relocations. (Jt. Exh. 11, p. 9.)

The local investigating committee report in August 1996 noted that the Company retained liability for operation of the project until the sale was finalized and ownership was transferred, and that regulatory approval of the sale had not yet been provided. (Jt. Exh. 11, p. 7.) The positions of the parties were summarized in the investigation report:

> The Union's position is that until such time that the sale is finalized, work that is being performed by EID employees is IBEW bargaining unit work, and this work should be performed by PG&E employees. Any sale agreement entered into by Company and EID does not override the labor agreement that Company has with IBEW. Company has violated it's contract with IBEW.
>
> Union recognizes that Company will not return these employees to Camp 5. However, to be in compliance with the agreement, affected employees formerly headquartered at Camp 5 should receive temporary headquarter expenses while assigned to their new positions as a result of the Title 206 activity until such time that the sale is final.
>
> Company's position is that management has the right to sell any Company owned facility, and enter into negotiated agreements with prospective buyers to orchestrate the sale. The IBEW contract has not been violated, as EID is not acting as a contractor for PG&E to perform work at the facility. EID is responsible for the costs associated with their employees performing maintenance and repair work. The appropriate provisions of the IBEW agreement were utilized when employees were temporarily headquartered elsewhere, i.e., paying appropriate temporary headquarter expenses. These expenses ceased when, based on their 206 options, employees reported to their new assignments. (Jt. Exh. 11, p. 7.)

DISCUSSION

1. Introduction

On the overtime disputes, the Union contends that the work carried out by the District and its subcontractors between fall 1995 and June 1996 was traditional bargaining unit work, and that, by definition, the District was a contractor during that period. In agreeing to the District doing this work, the Union believes that the Company did not properly consider the use of optimum overtime. In this regard, the Union claims that it should not be barred based on the September 1995 talks from seeking additional overtime for the one employee who did receive overtime, for the water system repairman, and for employees at the Auburn headquarters. In the Union's view, the September 1995 discussions were based on uncertainty and misinformation about future events related to the sale.

Regarding the later District takeover and displacement of Company employees, the Union emphasizes that the Company violated Section 207.2 because the terms of the sale recognized that the District would be considered a turnkey contractor if the sale did not go through. For this reason, the Union believes that the Company assumed the risk of liability to bargaining unit members if the sale agreement was terminated. Further, the Union urges

that the undeniable effect of contracting with the District, before and after its takeover, was to displace Company employees, thereby placing the Company's action squarely within the prohibitory terms of Section 207.2. Underscoring this point, the Union emphasizes that District employees performed the same functions that Company employees had performed at the Project.

The Company denies that the labor agreement was violated in any respect. According to the Company, the District's work at the Project before and after June 1996 occurred only because the District was an intended purchaser of the Company's operation, and that the Company itself had no expectation or intent to resume operations at the Project. In this respect, the District needed to make repairs as well as to obtain operating revenues for the purchase to succeed. The Company urges that its minimal oversight of District activity was consistent with a real transfer of authority.

As to the specific issue of optimum overtime, the Company observes that much of the work at the Project was not Title 200 work since, for the most part, it involved jobs outside the powerhouse. Additionally, the Company contends that overtime availability for Company employees was not demonstrated because the amount of work was beyond the capacity of Title 200 employees in the area. Moreover, the Company argues that the September 1995 agreement between the parties precludes the later contention

that insufficient overtime was made available. As for employees headquartered at Auburn, the Company points to precedent involving these parties which obliges the Company to consider optimum overtime only for employees at an affected headquarters.[2]

Considering the separate issue of the June 1996 displacements, the Company maintains that the Union's grievance should be denied. The Company urges that there was insufficient evidence that the District was a contractor under Section 207.2 of the labor agreement once the District had assumed operational control of the powerhouse in June 1996, and began generating and selling electricity. Although the Company acknowledges that funds had been paid to the District for its construction work prior to the takeover, and for purchasing power after June 1996, this does not, in the Company's view, amount to payment to the District to operate the project on behalf of the Company.

Last, the Company disputes the remedy proposed by the Union of restoring the Project and awarding make whole payments for the monetary losses of employees. The Company argues that such relief is too sweeping given the nature of the District's role at the Project, and that it goes beyond what the Company would have been obliged to do after the January 1997 flood. As the Company

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[2]Pre-Review Decision, Nos. 2034 and 2046. (Co. Brief, att. C.)

notes, operations would not and have not been restored at the Project, and, at most, the work would have been pursued by employees from other headquarters.

2. The Overtime Grievances

Assuming for discussion that the Union is correct with respect to the District functioning as a contractor prior to June 1996, including carrying out work at the powerhouse normally within the province of Title 200, nevertheless the Union's overtime grievances shall be rejected. The first reason to reject the Union's claim is that the Company complied with its obligation to consider the use of optimum overtime prior to the District and its subcontractors commencing work on the Project. This was evident in the discussion held in September 1995. The discussion met the Company's duty under Letter Agreement No. 88-144 as amplified by precedent between the parties.[3]

Second, these considerations aside, the overtime grievances were prompted by penstock work activity that took place outside the powerhouse. As stipulated at the hearing, and in accord with local investigation committee findings, the penstock work largely involved matters beyond the scope of this case, which focuses on

[3]See, e.g., Pre-Review Decision, Nos. 1633 and 1695. (Co. Brief, att. A, p. 8.) Under these circumstances the Company was not obliged to continue to modify overtime assigned. This is supported by Pre-Review Decision, No. 1116. (Co. Brief, att. D.)

Title 200 work at the powerhouse.[4] In this respect, the talks in September 1995 between the Company and the Union led to an agreement to provide overtime for one employee, and the Company did so thereafter, prior to the District undertaking its work at the Project. The Company's commitment to this understanding with the Union was confirmed and followed in the succeeding months.

3. The Displacement Grievance

The Union should prevail on this grievance because, by contractual definition, the District acted in the place of the Company by serving as a contractor during the pre-sale period. This included the period covered by the operation and maintenance agreement since a final closure of the sale never was reached. Under these circumstances, Section 207.2 expressly applies because the Company was contracting work normally performed by bargaining unit employees and because the Company's action had, "the effect of reducing the regular work force by ... displacement."

As the Union contends, the Company took a risk that the sale to the District would not go through. Indeed, it appears that Company representatives in fall 1996 assumed in error that the sale had been finalized, stating "control of the facility no longer rests with the Company." (Jt. Exh. 11, p. 14 (Pre-Review

[4]See Pre-Review Decision, No. 1515. (Co. Brief, att. B.)

Referral).) The burden of the contractual risk that the sale would not be completed should not be shifted to bargaining unit members absent an agreement by the Union to forego a remedy for an improper and premature displacement. In contrast to the overtime grievances, an agreement by the Union to go along with the Company's displacement action cannot be found. Rather, the most telling evidence shows that the details of a displacement impact were deferred.

Further, the Company's contentions regarding the District's status as a successor entity are not persuasive since the Company never relinquished ultimate legal authority, and the District was generating power, just as the Company had done. In fact, the District was selling power back to the Company at a fixed price, presumably for subsequent resale to other buyers. In this fashion, the Company's intermingling of its role as an owner and prospective seller demonstrates that it never relinquished full control over the destiny of the Project. This was confirmed when the sale was terminated by the Company in 1997.[5]

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[5]No conclusion is being offered in this decision about application of Section 207.2 and Letter Agreement 88-104 if the sale to the District had closed in accord with the conditions previously established by the Company and the District. The Company's liability, if any, in such a situation will have to be resolved in a different case.

4. The Appropriate Remedy

The Union contends that appropriate relief for the improper displacement of Company employees is restoration of employee rights at the Project, at least until the Company formally ceases designation of the Project as a headquarters operation. Hence, the Union seeks temporary headquarters pay for employees who were relocated when they should not have been, extending from June 1996 forward in time until the Company formally ends the Project's status as a headquarters. The Company opposes such a broad remedy, urging in particular that it never intended to restore operations, and that the flood in January 1997 dashed any possibility that future operations could be carried out economically.

The Company is on firm ground in objecting to unlimited make whole monetary relief, although some compensation to a date beyond January 1997 would be appropriate given the extensive cleanup and maintenance work carried out by District staff and contractors in the post-flood period. From the evidence introduced, this work thereafter would have been carried out to some extent by the Company's headquarters personnel until April 30, 1997. The Award shall reflect this conclusion as District staff to a substantial degree was standing in the shoes of the Company, thereby forcing premature displacement of Company employees.

completed, the Project was effectively closed as a headquarters for the Company. The continued work of a modest nature carried out by Project staff was solely to maintain minimal standards and equipment integrity for the Project. Beyond that, there was insufficient evidence to demonstrate that the entitlements of Company employees at other headquarters were wrongfully denied in terms of cleanup and maintenance work after January 1997.

Based on the facts presented, and to provide an equitable outcome bringing this dispute to a final conclusion, limited monetary relief will be awarded to the affected Project employees. To this end, pursuant to Sections 201.6 and 202.23 of the labor agreement, the Company shall pay travel time and mileage to affected employees through April 30, 1997. In light of the need for a balanced resolution, the Company shall not be required to make payments for missed meals otherwise provided by Title 104 of the labor agreement.

AWARD

Based on the testimony and documentary evidence, and the findings and conclusions set forth above, the undersigned renders the following Award:

1. The overtime grievances will be denied.

2. The displacement grievance will be sustained.

3. Bargaining unit employees displaced by the Company's actions in June 1996 shall receive limited monetary payments for the period at issue through April 30, 1997. Pursuant to Sections 201.6 and 202.23 of the labor agreement, the Company shall pay travel time and mileage to affected employees through April 30, 1997. Other payments shall not be required.

4. Pursuant to the stipulation of the parties, the undersigned will retain jurisdiction for 90 days to resolve any disputes regarding implementation of the Award.

Dated: December 22, 1998

BARRY WINOGRAD
Arbitrator

As to the Award:

MARGARET SHORT, Company Member
(concur) (~~dissent~~)

ROGER STALCUP, Union Member
(concur) (dissent)

JOHN MOFFAT, Company Member
(concur) (~~dissent~~)

DARREL MITCHELL, Union Member
(concur) (~~dissent~~)