

**ARBITRATION  
OPINION & AWARD**

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**IBEW LOCAL 1245,**

Union,

and

**PACIFIC GAS AND ELECTRIC COMPANY,**

Employer

Orinda, California  
November 17, 2005

Re: Customer Service Offices / Pay Stations  
Arbitration Case No. 271  
Grievance IR-IBEW-05-03

**ARBITRATION BOARD**

Neutral Panel Member: Kenneth N. Silbert

Employer Panel Members: Margaret Short and Frances Wilder Davis

Union Panel Members: Sam Tamimi and Dorothy Fortier

**APPEARANCES**

**On Behalf of the Union:**

Tom Dalzell  
IBEW Local 1245  
P.O. Box 2547  
Vacaville, CA 95696

**On Behalf of the Employer:**

Steven R. Feldstein  
Heller Ehrman LLP  
275 Middlefield Road  
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## **INTRODUCTION**

The Parties mutually selected the Arbitration Board pursuant to the terms of their collective bargaining agreement. The prior steps of the grievance procedure were complied with or waived and the matter is properly in arbitration. In lieu of a hearing, the Parties have provided the Board with the full LIC report and relevant exhibits. The matter was submitted for decision upon the receipt of briefs on October 25, 2005. Pursuant to the stipulation of the Parties, the Neutral Arbitrator is required to issue an award by not later than November 28, 2005.

## **ISSUE**

The Parties stipulated that the following issue is before the Board for a final and binding award:

Does the Company's use of pay stations violate the collective bargaining agreement, in light of its announced closing of all front counter operations at all of its customer service offices? If so, what is the remedy?

## **RELEVANT PROVISIONS OF THE AGREEMENT**

### **TITLE 24 MANAGEMENT OF THE COMPANY ...**

#### **24.1 Management of Company**

The Management of the Company and its business and the direction of its working forces are vested exclusively in the Company, and this includes but is not limited to, the following: to direct and supervise the work of its employees; to hire, promote, transfer, suspend, and discipline or discharge employees for just cause; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be

subject to the provisions of the Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

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#### 24.5 Contracting

It is recognized that the Company has the right to have work done by outside agencies. In the exercise of such right Company will not make a contract with any company or individual for the purpose of dispensing with the services of employees who are covered by the Clerical Bargaining Unit. The following guidelines will be observed:

(a) Where temporary services are required for a limited period of time, such as an emergency situation or for a specific function.

(b) Where the regular employees at the headquarters are either not available or normal workloads prevent them from doing the work during the time of the emergency or special function situation.

(c) The Union Business Representative in the area should, if possible, be informed of the Company's intentions before the agency employees commence work.

### SUMMARY OF THE FACTS

#### Background:

PG&E's Customer Service Offices (CSOs) are staffed by PG&E employees including bargaining unit personnel. CSOs provide various services to customers, including the ability to pay their bills. Historically, PG&E also has used pay stations to provide a bill payment alternative for its customers. Pay stations are independent businesses, non-profit organizations and government offices that agree to accept payments on behalf of PG&E.<sup>1</sup> They provide various conveniences for

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<sup>1</sup> PG&E contracts with American Payment Systems, Inc. ("ABS" aka "Checkfree"), that, in turn, enters into performance contracts with the pay stations. The current agreement between PG&E and ABS will expire on September 30, 2009.

customers. Pay stations generally are open extended hours, including nights and weekends. They also offer PG&E customers the option of paying other utility bills in addition to their PG&E bills.

The only function of agents at pay stations with respect to PG&E is to accept payments from customers; they do not handle any other transactions. They refer customer questions, complaints and requests for services to PG&E offices that are staffed with PG&E employees. Pay station agents provide receipts for customers, and scan the bills into the APS computer, along with the amount paid and the method of payment. At the end of the day, agents balance payments and bill stubs, and then upload the information. Information is automatically uploaded a second time, at 5:00 a.m. each day. Agents deposit the payments by noon the following day, and are responsible for all funds. The number and location of pay stations has changed over time for various reasons. New stations are opened to replace ones that are closed or to satisfy customer demand.

PG&E customers have various options for paying their bills: (1) home banking - Electronic Funds Transfer; (2) payment by mail; (3) direct withdrawal from their bank accounts; (4) payment by phone; (5) e-bills (online payments); (6) payment at CSOs; and (7) pay stations. In 2004, the average cost-per-transaction for bills paid at CSOs was \$3.31 (ranging between \$0.87 and \$7.91 at various local offices). The average cost-per-transaction for other methods of payment were significantly less: (1) home banking - \$0.10; (2) mail - \$0.13; (3) direct withdrawal - \$0.15; (4) phone - \$0.25; (5) e-bills - \$0.28; and (6) pay stations - \$0.57. Payments at CSOs constituted 9% of the total number of customer payments made in 2004. The remaining payments were distributed among the other methods, with the greatest percentage coming through the U.S. mail (63%).

**The Facts Giving Rise to the Present Grievance:**

PG&E currently maintains eighty four local CSOs. On August 1, 2004, PG&E submitted a request to the California Public Utilities Commission to close front counter operations at all eighty four CSO.<sup>2</sup> PG&E expects the Commission to issue a decision by December, 2006, and to close the eighty four CSO front counters by July 30, 2007. PG&E has already begun advising its customers of the anticipated closures.

Approximately 370 bargaining unit employees work in the local CSOs. All of those employees will be subject to Title 19 displacement or layoff, in the summer of 2007. PG&E represents that all affected employees will be given contractual opportunities to relocate to other positions within the Company. According to the Union, because of the centralization of customer service jobs, displacement options for most high seniority CSO front counter employees will be limited to jobs at large Company facilities in Sacramento, West Sacramento, Stockton, Fresno or San Jose (Joint Statement of Facts, ¶12), while lower seniority employees or those unwilling to move large distances would be subject to layoff with severance (Exhibit 7-2). PG&E fully intends to engage in effects bargaining with Local 1245 and to comply with its labor-management cooperation obligations under Title 21 of the collective bargaining agreement.

Over the last several years, the total number of pay stations has fallen to approximately 370 as compared to the historical norm of about 432. PG&E plans to restore or "reestablish" this historical norm over time, while recognizing that the number may fluctuate as individual pay stations are closes, opened or replaced.

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<sup>2</sup> In the alternative, PG&E proposed to the PUC that it be provided sufficient funding in its rate base to upgrade and continue staffing the front counters.

According to PG&E, the proposed closure of the CSOs is not the result of its use of pay stations. Rather the work performed at CSOs has decreased dramatically for various reasons, including consolidation of work, creation of new payment options, and use of technology to gain efficiencies. For instance, PG&E has relocated or centralized the following functions from one area to another within the Company:

- 1979 – Payment Processing to San Francisco
- 1987 – Closing Bill Collection/Credit Department to Stockton
- 1988 – Collection Agency Payment Processing to Stockton
- 1990 – Open Account Collection & Non-Energy Collection to Stockton
- 1994 – BPP Reports; CIA Application for Service; Summary Billing; Collection Operations to Stockton.
- 1994 – Call Center Operations Consolidation Completed
- 1995 – Fraud Verification to Stockton
- 1996 – Literature Fulfillment from San Francisco to West Sacramento
- 1997 – Payment Processing from San Francisco to West Sacramento
- 2000 – Records to Stockton
- 2002 – Agency Pledges; Bill Guarantees; Serviceman Line to Stockton
- 2005 – CIA Bill Processing to Stockton

According to PG&E, the need to maintain local CSOs has diminished to the point that continued operation of CSO front counters has become unnecessary. By eliminating CSOs, the Company will recognize significant cost-savings, improve financial controls, and eradicate inconsistent practices across offices.

#### **Prior Arbitrations Involving Pay Stations:**

The grievance at issue here represent the Union's fourth effort to challenge the use of pay stations through the contractual grievance procedure.

Arbitration Case #183 (Walter L. Kintz, 1991) involved five grievances which protested the continued use of pay stations in communities in which existing CSOs had been closed or consolidated with customer services offices in other communities, and in a community in which

employees at a CSO had been laid off and transferred to another CSO. At the time of those grievance, the practice of using pay stations had been in existence for 40 years, and PG&E had approximately 400 pay stations. Kintz noted that there was clear arbitral precedent for the strict application of Title 24.5 (Arbitration Case #128 (Barbara Chvany, 1986)). Nevertheless, Kintz found that the Union's acquiescence to PG&E's use of pay stations over an extended period of time, together with the absence of a demonstrated causal relationship between the use of pay stations and the displacement of bargaining unit employees, precluded the remedies sought by the Union: (1) a cease and desist order prohibiting PG&E from contracting with pay stations in the affected communities; and (2) return of the bargaining unit work performed by pay stations in those communities (*id.* at 14). Kintz explained:

Whatever may be said concerning the appropriate role of past practice in contract interpretation, a collective bargaining relationship is not enhanced by imposing extensive remedies for conduct which has long been indulged. For these reasons the question of Contract violation is largely academic as the usual remedies would not be appropriate in any event.

(*ibid.*)

In Arbitration Case #198 (Gerald R. McKay, 1994), the Union asserted that PG&E violated Title 24.5 by implementing a computerized bill payment system in existing pay stations. The Union argued that the Kintz award was distinguishable because it was based, in part, on Kintz' finding that there was no demonstrated loss of current or prospective work flowing from the conduct challenged in that case, while, in Case #198 it was able to establish such a loss. The Union requested a remedy requiring (a) PG&E to cease and desist from contracting with the agency then used for contracting with pay stations utilizing the computerized bill payment system, and (b) PG&E to return bargaining unit work to the bargaining unit (*id.* at 9-12).

McKay found that the use of pay stations is a violation of the subcontracting language in Title 24.5, but rejected the Union's grievance for other reasons:

At no point, apparently, until the issue was raised with arbitrator Kintz, has the Union ever questioned the Employer's right to use pay stations. For the Employer to continue to use pay stations as it has creates a convenience for the Employer and for the Employer's customers that would be significantly harmed by the Union's assertion of its rights at the present time. That is what arbitrator Kintz appears to say but which he did not say directly. It is for this reason this arbitrator agrees with arbitrator Kintz. One cannot sit on one's rights for forty years and then expect to enforce them. If the Union wants at the present time to change the system of using pay stations, then, given the decision of arbitrator Kintz and the inclination of this arbitrator, it must do so at the collective bargaining table.

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... It is this arbitrator's opinion that the Employer has the right to continue to use pay stations as arbitrator Kintz stated, not on the basis that the Employer has established a past practice since it cannot do so in the face of existing Contract language prohibiting subcontracting, but on the basis that the Union is estopped by laches from asserting its rights under the Contract having sat on its hands for over forty years. If the Union wants to change the use of pay stations and require that they be manned by bargaining unit personnel, then it must achieve that result at the collective bargaining table. For these reasons, the grievance is denied.

(*id.* at 20-21)

The Parties renewed their collective bargaining agreement in 1994 and 1997 without either side proposing changes to Title 24.5. On October 30, 1998, the Union sent the following letter to PG&E:

Due to the potential negative impact on our bargaining unit, IBEW Local 1245 is hereby formally notifying PG&E that Union no longer acquiesces to Company's past practice of contracting certain clerical bargaining unit work that was addressed in arbitration cases 183 and 198.

Accordingly, Title 24 of the Agreement is to be applied as written, in the future. The combination of reduced hours at customer service offices, the outright closure of customer service offices, and the expansion of pay stations all threaten to produce a negative impact on the clerical bargaining unit. We therefore place the Company on notice that we will not acquiesce to the use of pay stations regardless of any acquiescence on Local 1245's part in the past. We will regard any expansion of the pay station practice



or deletion of bargaining unit work from local customer service offices as  
a violation of Title 24. (JX 4)

In Arbitration Case #327 (Kenneth N. Silbert, 1999) the Union asserted that PG&E violated Title 24 when APS entered into contracts for new pay stations and to replace existing pay stations. The Arbitration Board denied the grievances on several grounds: (1) The binding effect of the prior awards by Kintz and McKay; (2) The fact that the Parties renewed Title 24, after those awards, indicated that they had adopted the holdings of those awards as part of their Agreement; and (3) There was no showing that PG&E's use of pay stations had changed materially after the Kintz and McKay awards. However, in a footnote, the Arbitration Board noted:

This decision is based upon the well established past practice regarding the use of pay stations. A different case might be presented if there were a material change in PG&E's use of pay stations, such as a dramatic increase in the use of pay stations resulting in the loss of bargaining unit work or the tangible threat of such a loss. (id. page 16, fn 4)

### **POSITIONS OF THE PARTIES**

#### **The Union:**

- » As Arbitrator McKay found, the use of pay stations violates Title 24.5 of the Agreement that prohibits subcontracting for the purpose of dispensing with the services of bargaining unit employees, with exceptions not applicable here.
- » The prior arbitration awards are not dispositive of the issue in this case. Unlike the prior cases, PG&E now seeks the complete elimination of the local CSO workforce. In the words of Arbitrator Kintz, this case "extend(s) beyond past practice." (Kintz Award, page 10). In the words of the Board in Arbitration Case #327, a different case is now presented. None of the three prior awards addressed a factual situation in which PG&E was dispensing with the

services of a single member of the clerical bargaining unit, let alone all 370 front counter customer service employees.

- » The current grievance is not barred by the Union's acquiescence over the years or by the doctrine of laches. When Local 1245 negotiated its first contract with PG&E, in 1953, the Company apparently was using pay stations, and it apparently was continuing to do so, in 1980 when the Parties first included the limits on subcontracting now found in Title 24.5.
- » There is no evidence that the Company has ever subcontracted to pay stations at a time when it was dispensing with the services of bargaining unit employees. Local 1245 may have acquiesced when pay stations did not cause Title 19 activity, but it has never acquiesced to the use of pay stations to replace bargaining unit employees when their jobs were being eliminated.
- » Prejudice is a required element of the defense of laches. PG&E cannot in good conscience argue that it is prejudiced by Local 1245's assertion of its contractual rights in this case. For 14 years, PG&E has been on notice that there might be limits to an arbitrator's acceptance of its acquiescence / past practice defense.
- » If the Board of Arbitration finds a violation of the Agreement in this case, PG&E has ample time to reconsider its position and to determine whether it will push for office closures without pay stations or its own alternate proposal to seek rate adjustments to finance upgrading the existing CSOs.
- » Under Arbitrator Chvany's expansive view of the restriction on subcontracting, the proposed closure of all of the CSOs and the displacement of 370 bargaining unit employees violates Title 24.5 of the Agreement.

**The Employer:**

- » PG&E has no plans to increase the use of pay stations above the levels expressly sanctioned by the prior arbitration decisions, and the closure of the CSOs is not the result of the Company's use of pay stations. The work performed at the CSOs has decreased dramatically over time because PG&E has been consolidating work, creating new customer payment options, and utilizing technology to gain efficiencies for many years. The initiative to close the front counters in CSOs is just another step in this evolutionary process, and a proper exercise of the Company's management rights under Title 24 of the Agreement.
- » The arbitration panel is bound by prior decisions upholding PG&E's right to continue to use pay stations in accordance with well-established historical norms.
- » The CSO closure plan is fully consistent with PG&E's management rights under Title 24 of the Agreement, including the right "to introduce new or improve methods or facilities."
- » PG&E has used Title 21 (Labor-Management Cooperation) to communicate with the Union on matters of policy and operation, and has followed the guidelines in Letter agreement R2-99-72 to discuss any planned workforce reductions. PG&E fully intends to comply with effects bargaining requirements and Title 21 with respect to the closure of CSOs.
- » The prior arbitration awards effectively have become part of the Agreement and control disposition of this case. The facts and issue in Arbitration Case 183 (Kintz, 1991) are virtually identical to those in the present arbitration. In that case, the Union unsuccessfully challenged the Company's decision to close and/or consolidate certain CSOs while continuing to use pay stations. Then, as now, the Union argued that Title 24.5 precluded the Company from removing bargaining unit work while continuing to use pay stations.

Arbitrator Kintz noted that the Company had closed or consolidated more than thirty CSOs in the prior twenty years while continuing to use pay stations. Kintz properly denied the grievance on the grounds that the Union had acquiesced in the practice.

- » The subsequent pay station arbitration awards reinforced the reasoning adopted by Kintz and reaffirmed the Company's right to use pay stations.
- » PG&E's use of pay stations has not changed materially since the prior awards were issued. At the time of the 1999 arbitration (Case #237), the Company had 434 pay stations. It presently has only 370 pay stations, and intends to restore the historical norm of approximately 432. For that reason, the prior awards preclude a finding of a contract violation in this case.
- » The Union's reliance on footnote four in the award in Arbitration Case #327 is misplaced. As indicated in the facts, there has not been a material change in the use of pay stations, and the CSO closure project is not the result of an increased use of pay stations. There is no causal relationship between the use of pay stations and the proposed closure of CSOs.
- » The grievance should be denied.

### **OPINION**

The Union bears the burden of proof in this contract interpretation case. As noted in Case #327, that burden is particularly high given the prior arbitration awards involving pay stations. A careful review of the record and the arguments of the Parties requires a finding that the Union has not met that burden.

of pay stations violates Title 24.5 of the Agreement. It is the closure of the CSOs, not the continued use of pay stations, that will cause the loss of bargaining unit jobs.

For the above reasons, and based upon the record as a whole, the Arbitration Board makes the following award.

**AWARD**

The Company's use of pay stations does not violate the collective bargaining agreement, in light of its announced closing of all front counter operations at all of its customer service offices. The grievance is denied.

K. Silbert  
Kenneth N. Silbert

November 17, 2005

Concur / Dissent

Margaret Short  
Margaret Short

11/21/05

Concur / Dissent

Frances Wilder-Davis  
Frances Wilder Davis

11-21-05

Concur / Dissent

Sam Tamimi  
Sam Tamimi

11-21-05

Concur / Dissent

Dorothy Fortier  
Dorothy Fortier

11-21-05

Concur / Dissent

The prior awards establish that PG&E's historical use of pay stations does not violate the Agreement, even when there have been closures and/or consolidations of CSOs (Case #183), changes in the technology at pay stations (Case #198); and closure and replacement of existing pay stations (Case #327).

The Union correctly notes that the present case differs from the prior cases because it involves the closure of all remaining CSO front offices and the displacement of approximately 370 bargaining unit employees, subject to their Title 19 rights. However, this is not the "different case" alluded to in footnote 4 of the award in Case #327. That footnote cautioned that the prior arbitration awards might not be controlling "if there were a material change in PG&E's use of pay stations, such as a dramatic increase in the use of pay stations resulting in the loss of bargaining unit work or the tangible threat of such a loss." In the present case, it is undisputed that the current jobs of 370 bargaining jobs employees will be eliminated and the employees holding those jobs will be displaced, but the record does not establish that the proposed closure of the CSOs is the result of a material change or dramatic increase in the use of pay stations.

Clearly, pay stations offer customers an option for paying their bills and to that extent they are one of the factors that make front office CSOs less necessary. But, that was true at the time of all of the prior arbitration awards, including Case #183 that involved the closure and/or consolidation of CSOs. The record establishes that there are numerous reasons that CSOs are no longer necessary, as discussed above. In addition, the Joint Statement of Facts establishes that the number of pay stations currently is below the historic norm, and that PG&E intends only to restore that norm.

In the absence of a material change or dramatic increase in the use of pay stations and a causal connection to the closure of the CSOs, the Union has not established that the continued use