IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245,	]	
Union,	]	
and	]	
PACIFIC GAS & ELECTRIC COMPANY,	]	Case No. 327 Grievance-22389
Employer.	]	
Re: Title 104.11	]	

Opinion and Decision

of

Board of Arbitration

Micah Van Boegelen, Company Member

Kathy Price, Company Member

Dave Sankey, Union Member

Kit Stice, Union Member

John Kagel, Neutral Chair

APPEARANCES:

For the Union: Alex Pacheco, Esq., General Counsel, Vacaville, CA

For the Employer: Stacy A. Campos, Esq., Managing Counsel, San Francisco, CA

ISSUE:

The issue stated by the Union is: Whether the Company has violated the Collective Bargaining Agreement and Letter Agreement 09-06, by failing to count travel time from an employee's home as time worked for purposes of determining meal and overtime assignments?

The issue as stated by the Employer is: Did the Company violate Section 104.11 by not counting travel time towards meal entitlement, and whether that violated state law, as stated in the actual grievance?

The Parties have given the Board of Arbitration the authority to determine the issue after the submission of the matter by the Parties. (Tr. 8-9)

AGREEMENT PROVISIONS:

The Parties" Collective Bargaining Agreement applying to Operations, Maintenance and Construction, Section 104.11, "Time Intervals" reads:

> "In determining time intervals for the purpose of providing meals there shall not be included any time allowed for meals. (Amended 1-1-09)"

Before 2009, Section 104.11 read:

> "In determining time intervals for the purpose of providing meals, there shall not be included any travel time from an employee's home nor any time allowed for meals." (Er. Ex. 6)

Letter Agreement (LA) 09-06, signed on February 24, 2009, reads:

> "During general negotiations, the parties agreed to revise Section 104.11 Time Intervals (for meals) of the Physical Agreement to be in compliance with State Law to consider paid travel time as time worked. The following change was made:

104.11 TIME INTERVALS

In determining time intervals for the purpose of providing meals there shall not be included any travel time from an employee's home nor any time allowed for meals. ***(Amended 1-1-09)***

There is no comparable language in the Clerical Agreement. In order to ensure that compliance with State Law is Agreement consistently applied to the Clerical Agreement, Company proposes to add the same language to the Clerical Agreement.

16.6 *TIME INTERVALS*

In determining time intervals for the purpose of providing meals there shall not be included any time allowed for meals. ***(Added 1-1-09)***

Company also proposes that the next clarification update of the Guidelines For Use in the Administration of Meals, Item 10 under Application of Title 104 - Meals Guidelines. A. General Statement and Item 10 under Application of Title 16 - Meals Guidelines. A. General Statement be revised to reflect the above." (Jt. Ex. 2)

POSITION OF THE PARTIES:

Position of the Union:

That in bargaining for the 2009 Agreement, the Employer was advised that, under State law, the Employer would be required to count travel time toward the calculation of meals and when a meal would be provided; that the purpose of LA 09-06 was to update the Clerical Agreement and that both it and Section 104.11 provided that paid travel time would thereafter be considered as time worked, which affected both when meals would be taken and how overtime entitlements would be calculated; that it was unnecessary for the Employer to be concerned about State law given the Agreement's conflict-of-law provision which would conform the Agreement to State law once that became settled;

that the delay in filing the grievance until 2014 was that a violation of LA 09-06 could occur only in limited situations which could go unnoticed for a period of time; that LA-09-06 is admissible to show the Parties' mutual intent; that that LA was not mentioned in the original grievance, does not waive its consideration on the merits; that LA's are specifically part of the Parties' Labor Agreement; that the plain meaning of the Agreement supports the Union's position; that reference to State law is superfluous, illustrating what motivated the Parties to renegotiate the language, not how the Parties' intended the language to be read; that reference to State law is irrelevant since the Employer's negotiator did not mention whether the law referred to was statutory or case law; that thus the Agreement requires that travel time be considered as "time worked," a term of art in the Parties' relationship; that the provision does not say it would have no effect if State law was resolved in the Employer's favor; that objectively there is no rational explanation for the Employer jumping the gun and demanding the Parties modify their Agreement to comply with State law which was then in flux; that the Employer seeks to divorce the terms "to consider paid travel time as time worked" from its interpretation which is impermissible since the provision must be read as whole; that there is nothing in the language about continuing to defer to State law in the future nor reverting back to prior language in the event the law was resolved in the Employer's favor; that a subjective means of interpretation does not show the Union would have understood the wording to mean what it says, not as the Employer seeks to understand it; that any unilateral mistake on the part of the Employer cannot overturn the Agreement's

language; that it was the Employer's responsibility to write the language as the Employer now construes it to support its view and not leave any issue in doubt which it did not do.

Position of the Employer:

That the Parties never intended that travel time would count towards meal entitlement unless California wage and hour law mandated a change to their past practice of excluding such travel time; that with court clarification of State law, as the Parties agree occurred, that Parties to a collective bargaining agreement were exempt from travel time/meal entitlement regulations, the Parties never changed their practice from excluding such time from meal entitlement; that the Union's witness was unaware of the Parties' intent in modifying Section 104.11; that the undisputed evidence showed that. unless required by State law, that when agreed, they did not intend to count travel time towards meal entitlement; that the Union did not complain that relevant travel time was not paid for five years after agreement.

DISCUSSION:

In this case, the Union relies on what it considers the plain language of Section 104.11 to support its contentions as it was amended in 2009. Then the Parties excluded from the time intervals for providing meals the former provision of "any travel time from an employee's home." Further, it relies on LA 09-06 as showing that travel time would be time worked for overtime computation as well as for meal entitlement.

If the "plain language" of an agreement is subject to more than one reasonable interpretation it is considered ambiguous, and its meaning, and hence its interpretation, is

to be found by ascertaining the Parties' mutual intent in adopting the provision at the time of its adoption.

Perhaps somewhat ironically, the clearest authority as to how to determine the meaning of the words of an agreement, including whether a provision is "ambiguous," is a California Supreme Court decision, authored by Chief Justice Traynor, *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co*., 69 Cal.2d 33, and n.8 (1968)). Credible extrinsic evidence is proper to establish what the Parties' intended by the words they used, not necessarily how an outside observer, such as an arbitrator or judge, might view them, since what needs to be found is not their views, but that of the parties themselves.

In this case, both the credible evidence of bargaining history and how the Parties themselves interpreted the Agreement over a substantial period of time, support the view that the change to Section 104.11 was conditional on State law requiring travel time from home to work to be counted in determining when a meal would be required. The example in the record, as recounted by the Union's witness, was that if employees called out to work had to travel an hour to the work site, they would be entitled to a meal after four hours at the job site, whereas if that travel time was not counted, the entitlement would occur after working there for five hours. (Tr. 29-31)

The only evidence of what occurred in negotiations was that the Employer had been advised that California State law at that time required that such home to work travel time would be required to be counted for meal entitlement. Subsequently, it is undisputed that litigation and statutory amendments did not require that that be so. Further, the

record established that notwithstanding the change in Section 104.11's language, there was no claim between 2009 until the grievance in this case in 2014. (Jt. Ex. 2)

Accordingly, bargaining history, as well as how the Parties have interpreted the language for five years, including an intervening Agreement in 2012 (Jt. Ex. 1, Tr. 37), establishes what the Parties intended. The change in the Agreement and the LA both were initiated by the Employer to seek to conform to what both Parties then thought was State law. (Tr. 57, 59-60, Er. Ex. 1) When the law was finally settled in 2010 and 2012 (Er. Exs. 4-5), there was no legal requirement for them to count home-to-work time for determining a meal allowance entitlement. As far as this record shows, that had not been done, either before the 2009 change, or, thereafter, however rare, as the Union suggests, the right combination of facts might occur. (Tr. 61-62, 65)

The intent of the Parties was, as shown, conditional, therefore, depending on State law requiring such travel time as affecting meal timing. Nor was that mutual intention affected by LA 09-06 which reinforces what the evidence showed. That is clear not only from intent but also the wording that "paid travel time as time worked" dealt with compliance with "State Law." As the Parties both point out, there are several iterations of "travel time" in the Agreement covering different fact scenarios. (*E.g.,* Tr. 60) LA 09-06 applies to time intervals for providing meals. It refers to the change in Section 104.11 to conform the Clerical Agreement to it. There is no shown intent that the LA was to have some form of independent meaning other that for that purpose. Accordingly, Section 104.11 and LA-06-09 are to be applied in accordance with the mutual intent of the Parties as established in the record.

DECISION:

The grievance is denied.

Chairman, Neutral Member	Concur	10/9/18 date
Union Member	Concur Dissent	09/26/2018 date
Union Member	~~Concur~~ Dissent	9/26/18 date
Company Member	Concur/Dissent	date
Company Member	Concur/Dissent	date

DECISION:

The grievance is denied.

Chairman, Neutral Member	Concur	date
Union Member	Concur/Dissent	date
Union Member	Concur/Dissent	date
Company Member	Concur/~~Dissent~~	9/26/18 date
Company Member	Concur/~~Dissent~~	9-26-18 date