



REVIEW COMMITTEE



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**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Mission Division Grievance No. HAY-94-52
Fact Finding Committee No. 6280-95-297
Pre-Review Committee No. 2065

FRANCES WILDER
Company Member
Local Investigating Committee

JOEL ELLIOFF
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the demotion of an Inspector in Hayward to an Apprentice Lineman position in the same headquarters pursuant to Section 206.3 of the Physical Agreement.

Facts of the Case

In 1993, Company vacated a number of Title 200 physical classifications system-wide. Inspector was one of them. On December 29, 1993 the grievant was given a letter and list of Title 206 options. He was assigned his first choice, Apprentice Lineman, Hayward. The demotion became effective March 11, 1994. Based on time previously worked as an Apprentice Lineman, he was placed at the 18-month wage step. The grievant was not allowed to progress beyond the 18 month step and received no PWI's.

The grievant first became an Apprentice Lineman June 6, 1983. In 1984 he suffered an industrial injury, was on and off the Workers' Compensation Payroll, worked light duty assignments, and finally was removed from the Apprentice Lineman classification and rehabilitated into an Inspector position in 1989. Prior to receiving his Title 206 options, he was sent an ALERT letter advising that:

"ALL requirements for the classifications elected MUST be met; this includes both technical (e.g., ACT test) and physical requirements (e.g., work on energized lines at top of pole with 50 lbs. of equipment). Should you make an election to a classification which is inconsistent with available information on your qualifications (either technical or physical), you should be prepared to discuss this situation with your Human Resources Department. You may be requested to provide documentation/evidence of current qualifications/ability to perform the options selected."

PRC 2065(cont.)

Of the essential job functions for Apprentice Lineman, the grievant indicated he could not:

“work at top of pole and tower from 35’ up to and exceeding 300’ while working on energized lines with tool and equipment weighing up to 50 lbs. for extended duration.” or
“Use 8’ - 12’ hotstick, with up to 30 lbs. on end of stick, to work on electrical lines.”

Discussion

Section 206.1(f) of the Agreement states:

“In the application of this Title, an employee shall not be placed in a job unless qualified to perform the duties.”

Review Committee Decision 1527 upheld the lay-off of an employee who could not meet the test requirements for the beginning level vacancy that was his only Title 206 option, pursuant to Section 206.6. This decision supports the intent of the above Section insofar as it underscores that an employee must be qualified for the Title 206 position to which he is assigned. The relevance in this case is that when employees prioritize their options, it is important for them to select those positions for which they believe they meet all qualifications. However, there may be certain positions the employee is interested in and can become qualified before the assignment phase, it would also be appropriate for the employee to include those positions in their prioritization.

Subsection 112.10(b) of the Agreement states:

“It is Company’s policy in the administration of Subsection 112.10(a) above to assign employees who are permanently partially disabled to such light work as may be available within the employee’s current classification. For example, in the Electric Transmission and Distribution Department of the Division, Company will attempt to assign employees who can no longer meet the climbing requirement but who are otherwise qualified as journeymen to duties which require journeyman skills but do not require employees to climb on a regular basis. The foregoing shall not be interpreted to apply to more than one journeyman, including classifications higher thereto in the normal line of Progression, in ten in any headquarters and shall be administered on the basis of service and qualifications.”

PRC 2065(cont.)

The Pre-Review Committee is in agreement that an employee must be fully qualified to fill a position under Title 206. An exception can be found in Subsection 112.10(b) which allows for accommodation of an employee's disability in journeyman or higher classifications. PRC's 599 and 1100 confirm that the accommodation provided for in Subsection 112.10(b) does not apply to classifications lower than journeyman. However the parties support efforts for internal rehabilitation by placement in positions commensurate with an employee's disability. Numerous letter agreements have been executed to effect such placements.

In July 1992, the accommodations provision of Americans With Disabilities Act became effective, which is more recent than the referenced contract sections or grievance decisions cited above. After being appointed to the Apprentice Lineman position, the Company sent the employee to a doctor to evaluate his ability to perform as an Apprentice. The doctor stated:

"In relation to the patient's ability to participate in the position, Apprentice Lineman, he should be restricted from pole climbing on a full-time basis because of pain precipitated by extreme twisting and extension."

This doctor also precluded the grievant from Utility Worker, Gas Service Representative, Meter Reader, Garageman, Building Helper, and Operator-in-Training. However, physically he could perform the duties of a Customer Services Representative.

The file contains a report to a Safety, Healthy and Claims Representative from a second doctor indicating:

"I feel that he can function as an Apprentice Lineman with certain restrictions. His climbing should be restricted to occasional climbing. In addition he should be accommodated with an aerial lift or as it is known in the trade, a 'bucket truck'. With this assistance he could perform all the material duties of his job as he described it to me."

It is clear from the medical information and the contract language that the grievant should not have been placed in the Apprentice Lineman position. However, the grievant's request to be accommodated as an Apprentice under ADA is unresolved by this decision.

For the first six months the grievant performed Apprentice duties, thereafter he was assigned some of the same duties he had performed as an Inspector prior to his demotion.

In 1995, Company again began to fill the Inspector classification in some locations. In June 1996, the grievant was awarded an Inspector in Hayward pursuant to Subsection 205.7(a).

PRC 2065(cont.)

Decision

The Pre-Review Committee agrees the grievant is to be compensated at the Inspector rate from September 2, 1994 until he was awarded the position on a regular basis.

In addition, the Pre-Review Committee recommends the parties discuss the impact of the Americans with Disabilities Act on the labor agreements and make modification to contract language as appropriate.

On this basis this case is considered closed.



Margaret A. Short, Chairman
Review Committee



Roger W. Stalcup, Secretary
Review Committee

7/16/96

Date

7/16/96

Date