



REVIEW COMMITTEE



IBEW

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RECEIVED MAY 29 1998

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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

**CASE CLOSED
FILED & LOGGED**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Diablo Division Grievance No. CON-95-67
Fresno Division Grievance No. FRO-95-81
Fact Finding No. 6403-96-114
Pre-Review Committee Case No. 2078

LAURA HENRY
Company Member
Local Investigating Committee

MIKE GRILL
Union Member
Local Investigating Committee

Subject of the Grievance

These cases involves the filling of two Technical Subforeman B positions in General Construction Gas Department and an alleged bypass of the two grievants, both of whom were Gas Technicians.

Facts of the Case

Grievant A was hired on February 2, 1984 and held various classifications in the General Construction Gas Department. On May 4, 1995, Grievant A was promoted to the position of Gas Technician. Grievant B was hired on March 13, 1984 and also held various classifications within the General Construction Gas Department. On April 20, 1995, Grievant B was promoted to the position of Gas Technician. One Technical Subforeman B position was filled on September 11, 1995 and one was filled on October 16, 1995. Both grievants were bypassed for these Technical Subforeman B positions as these positions were filled by employees in the Gas Technician classification who had less service than Grievant A or Grievant B.

In the LIC Report, the Supervisor testified that both grievants were bypassed in accordance with Subsection 305.5 (d) on the basis of ability and qualifications for the position in that both grievants had only been in the journey level Gas Technician position for 4-5 months and had not had sufficient time to attain the skills and qualifications necessary for the Technical Subforeman B position. The employees who were awarded the two Technical Subforeman B positions had spent approximately 3.5 and 5 years respectively in the classification of Gas Technician prior to being awarded the position of Technical Subforeman B. In addition, the Supervisor stated in the LIC Report that he

considered the language outlined in Subsection 205.14(b) which states that employees must be in a journeyman position for one year before becoming eligible for a foreman position

Attached in the LIC Report is a Temporary/Permanent Upgrade form completed by the Supervisor for both Grievant A and Grievant B stating the specific reasons why both grievants were not qualified for the position of the Technical Subforeman B(TSFB). Each forms states that the grievants "at this time needs experience leading start-up, testing and calibration prior to being considered for the TSFB position". The Supervisor also stated in the LIC report that since the date of the bypass he has made good faith efforts to provide training opportunities and experience to both grievants in order to enable them to be considered for future vacancies.

Grievant B, who was bypassed on 10/16/95, was upgraded to the non-bargaining unit classification of Inspector on 11/13/95, and to Construction Project Coordinator on 2/7/96. He was subsequently promoted to a Technical Subforeman B position on July 31, 1997 and continues to work in that classification. Grievant A, who was bypassed on 9/11/95, was offered the position of Technical Subforeman B on three separate occasions (approximately 10/1/97, 11/5/97 and 2/5/97) but turned down the job offer on each of the three occasions. Grievant A currently works in the classification of Operator Mechanic.

Discussion:

The Company argued that the grievants were properly bypassed in accordance with Subsection 305.5 (d) on the basis of ability and qualification as compared to those employees who were awarded the positions. Both grievants had less than one year (4-5 months) in the journey level classification of Gas Technician as compared to the 3.5 and 5 years of time spent in that classification by those employees awarded the Technical Subforeman position and as a result the grievants did not possess the skills and qualifications necessary for the Technical Subforeman B position. In addition, the Company argued that the Supervisor did in fact provide training opportunities and experience to both grievants in order to enable them to be considered for future vacancies which resulted in both grievants being offered Technical Subforeman B positions. These good faith efforts included placing both grievants on the calibration van as well as assigning the grievants as the lead Gas Technician on a crew responsible for leading the start up of a project.

The Union argued that both grievants were improperly bypassed for the Technical Subforeman B positions. While the less senior employees who were awarded the jobs did in fact have greater experience in that they had held the classification of Gas Tech for a longer period of time than the grievants, these employees failed to meet the

definition as outlined in Arbitration Case 6 and Arbitration Case 8 of "demonstrable superiority of ability and personal qualifications" as compared to the more senior grievants. In addition, the Union argued that the Company has incorrectly applied Subsection 205.14(b) in this case which states that employees must be in a journeyman position for one year before becoming eligible for a foreman position due to the fact that the Technical Subforeman B position is filled in accordance with Title 305. In addition, Union opined that Grievant B could not have received any additional training in those areas the supervisor claimed he lacked experience following the bypass because he was upgraded to non-bargaining unit classifications from 11/13/95 to 3/30/97, and then promoted to Technical Subforeman B.


The Committee reviewed the facts of this case in light of the language outlined in both Arbitration Case 6 and Arbitration Case 8 which states that the Company has the right to select junior bidders on the basis of "demonstrable superiority of ability and personal qualifications" over senior bidders.

Decision


The Pre-Review Committee could not agree whether the bypass of the grievants for the position of Technical Subforeman B was appropriate. However, the Committee does agree both grievants are now qualified for the position of Technical Subforeman B. After considerable research and debate about the facts and potential liability in this case, and recognizing the age of the grievance, the Pre-Review Committee agreed that this case is one in which an equity settlement is in order. Based on the fact that Grievant A turned down three separate job offers for the position of Technical Subforeman B, Grievant A is to be compensated at the Technical Subforeman B rate of pay for 1/2 of the time that transpired between the bypass on 9/11/95 and the date he first declined the offer of promotion to Technical Subforeman B on 10/1/97.

Grievant B was bypassed on 10/16/95. He was reclassified to the non-bargaining unit classification of Inspector B for the period of 11/13/95 to 2/6/96. He is to receive back pay for the difference between the Gas Tech or Inspector rate of pay which he received and the applicable wage rate for Technical Subforeman B for all paid time during this period (i.e. 10/16/95 to 2/6/96).

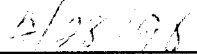
On the basis of the foregoing, this case is considered closed without prejudice to either party.



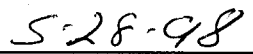
Margaret A. Short, Chairman
Review Committee



Roger W. Stalcup, Secretary
Review Committee



Date



Date