



REVIEW COMMITTEE



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**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

**DeAnza Grievance No. DEA-96-16
Fact Finding File No.6516-97-047
Pre-Review Committee Case No. 2115**

YVONNE WONG
Company Member
Local Investigating Committee

KATHY MAAS
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns whether or not it is appropriate to include temporary time the grievant spent as an Assistant Foreman's Clerk in determining her status as a bidder to a Foreman's Clerk position.

Facts of the Case

This grievance was filed December 30, 1996 when the grievant was being considered for a temporary upgrade to Foreman's Clerk. She was upgraded but the grievance challenges her priority of consideration: whether she should be a "b or c" bidder or a "d" bidder.

The grievant's employment history is as follows:

9/8/81	Utility Clerk-Operating	Hired
6/12/95	Operating Clerk	Successful Bidder
7/10/95	Asst. Foreman's Clerk	Successful Bidder

She was temporarily upgraded to Assistant Foreman's Clerk from June 15, 1987 to April 10, 1988; and December 16, 1991 to June 11, 1995, for a total of four years and four months. The Company did not credit the grievant for the temporary time spent in the Assistant Foreman's Clerk position for bidding purposes; however, the grievant was credited that time for pay purposes. The grievant showed up as a "B" bidder on the bid list to Foreman's Clerk; however, the Company reprioritized her to a "D" bidder because she had not been in the Asst. Foreman's Clerk classification on a regular basis for 24 months or more, the time necessary to progress from start to top rate of pay. Company based its decision to reprioritize on its interpretation of Section 205.21, of the Physical Agreement; a joint Labor Agreement Interpretation dated January 24, 1968; and a December 4, 1968 letter of interpretation of that same section.

The January 24, 1968 letter states in part:

“To be entitled to preferential consideration under Subsection 205.7(b) or (c), except as otherwise provided in Subsection 205.2(b) or any applicable apprenticeship agreement, an employee receiving the ‘top rate of pay of the next lower classification’ as defined above must have worked in such listed ‘next lower classification’, or the ‘same or higher classifications’ for a period of time equal to or greater than the time required to progress from the starting wage rate to the top wage rate for that ‘next lower classification’ having the lowest maximum wage rate.”

The December 4, 1968 letter states in part:

“As a matter of interpretation, it is our opinion that in the case of an employee who is temporarily assigned in a higher classification listed as ‘next lower classification’ or ‘same or higher classification, the time worked in such classification may only accumulate as seniority for wage rate purposes in his regular basic classification and in the specific classification in which he performs such work.”

“Under no circumstances will he accrue time worked in a temporary classification as classification seniority for bidding purposes, but he does accrue classification seniority in his regular basic classification for the time worked in any temporary classification.”

Section 205.21 of the Physical Agreement also states:

“Where a clerical classification is among a group of classifications listed in Exhibit VI as ‘next lower’ in a physical Line of Progression, the physical classification with the lowest maximum wage rate shall prevail in determining the amount of time required to be worked in such listed next lower classification.”

Discussion

The Company stated that it was not its practice to credit employees with temporary time spent in classifications for bidding purposes and cited the December 4, 1968 letter and Review Committee Decision 1130, a 1972 decision. The letter of interpretation is dated December 4, 1968, so it has been at least since that time that the Company’s interpretation has been in effect. The letter clearly states that under no circumstances will an employee accrue time worked in a temporary classification as classification seniority for bidding purposes, but an employee does accrue classification seniority in his/her regular basic classification for the time worked in any temporary classification.

The Union opined that in the case at hand, the length of the upgrade violated the spirit and intent of the December 4, 1968 letter. It does not believe that it was either party's intent that upgrades would be beyond a reasonable period of time. The Union also opined that upgrades for this length of time should be limited in scope such as to fill in behind an absent employee and should not be for additional workload.

Upon reviewing the line of progression for Foreman's Clerk, the PRC noted that T&D Driver is listed as a next lower classification. It has a top pay rate equal to Asst. Foreman's Clerk and takes six months to progress from the starting rate to the top rate. Based on the provisions of Section 205.21, the grievant would need to spend six months in one of the next lower classifications to be a "b or c" bidder. The grievant, in fact, had been in the Asst. Foreman's Clerk classification on a regular basis for more than six months at the time the grievance was filed and should have properly been considered as a "b or c" bidder to Foreman's Clerk.

Decision

The Pre-Review Committee agreed that the grievant should have been considered a "b or c" bidder to Foreman's Clerk at the time the grievance was filed. There is no adjustment in this case, however, as there was no demonstration of bypass on a temporary or regular appointment basis.

This case is closed.

Margaret A. Short
Margaret A. Short, Chairman
Review Committee

5/28/98
Date

Roger W. Stalcup
Roger W. Stalcup, Secretary
Review Committee

5-28-98
Date