

In the Matter of Arbitration]

between]

INTERNATIONAL BROTHERHOOD OF]
ELECTRICAL WORKERS LOCAL 1245]

and]

PACIFIC GAS & ELECTRIC CO.]

Arbitration Case
No. 170

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Chairman:

Sam Kagel, Esq.

Union Members:

Roger Stalcup
Dorothy Fortier

Company Members:

Rick R. Doering
Ronald A. Morris

ISSUE:

Did the Company violate the Agreement in assigning Change Party/no entry duties to other than Gas Servicemen; and, if so, what is the remedy?

AGREEMENT PROVISIONS:

"Section 2.1 (Recognition) of the current collective bargaining applicable to the physical bargaining unit (Joint Exhibit 1) provides as follows:

"2.1 RECOGNITION

"For the purpose of collective bargaining with respect to rate of pay, wages, hours of employment and other conditions of employment Company recognizes Union as the exclusive representative of those employees for whom the National Labor Relations Board certified Union as such representative in Case No. 20-RC-1454, but further including clerks in the offices of electric department foremen and technical clerks in steam generation, and excluding system dispatchers, assistant system dispatchers and rodman-chainman.

"Section 2.1 (Recognition) of the current collective bargaining agreement applicable to the clerical bargaining unit (Joint Exhibit 2) provides as follows:

"2.1 RECOGNITION:

"For the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment, Company recognizes Union as the exclusive representative of all office and clerical employees, including Meter Readers and Credit Representatives, in Company's geographical Divisions and Regions and Departments, as follows:

"Materials Distribution (except General Office)
Computer Operations
Design-Drafting
Construction Accounting (VP Comptrollers)

Corporate Accounting
(except the Accounting Research and
Analysis Section) (VP Comptrollers)
Customer Accounting (VP General Services)
Payment Accounting (VP Comptrollers)
Accounting Data Control Section (VP
Comptrollers)
Pipe Line Operations
Mail Processing Center
Reprographics Section (20-RC-14824)
Maintenance and Operations and Garage of
the Building and Land Services Department
Gas Chart Office (32-RC-650) - Gas Measure-
ment and Production

"The foregoing applies to areas and Departments for whom the National Labor Relations Board has certified Union as such representative; excluding supervisors, confidential employees, and all other employees in Company's General Office. Whenever the word 'Division' or 'Region' is used hereinafter, it may be construed to apply to Departments hereinabove enumerated, provided the context makes such application reasonable. (Amended 1-1-88)

"Section 7.1 (Management of the Company) of the physical agreement provides as follows:

"7.1 MANAGEMENT OF COMPANY

"The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration or Review Committee decisions, or letter of agreement, or memorandums of understanding clarifying or interpreting this Agreement."

The above identical provision is in Section 24.1 of the Clerical Agreement.

BACKGROUND:

Before April 15, 1987, Gas Servicemen made every effort possible to gain entry on every change of party tag. Gas Servicemen are in the Physical bargaining unit. Effective April 15, 1987, this policy was changed by the Company and the Customer Service Representative, who spoke with the party requesting the new service, would ask the new customer if he or she wanted an appliance check and, if the customer said "no," a "no entry" tag was made up and the Gas Serviceman would go to the customer's home or business and read the meter.

In the late summer or early fall of 1987, Gas Distribution Manager, Ronald Morris, told the Region Gas Service Superintendents that "they should be using their Meter Readers to do this work (the change of party/no entry tags)." Meter Readers are in the Clerical bargaining unit. One of the headquarters, namely Sacramento, uses Meter Readers on a regular basis to perform Change of Party/no entry tags. Two Meter Readers perform Change of Party/no entry tags on a full-time basis, and others may pick up a few tags if their regularly assigned route of meters does not take all day.

The Sacramento Meter Readers performing Change of Party/no entry tags, unlike Meter Readers who are assigned a regular route of meters, do not enter their meter readings into an electronic meter reading device, but fill out the multi-purpose tags used by Gas Servicemen.

The Sacramento Meter Readers assigned to the Change of Party/no entry tags "spot" the meter, i.e., check the flow of gas as measured by the meter hands. That duty is not in the negotiated Meter Reader job description and is one for which Sacramento Meter Readers have been given special training.

Local 1245 and the Company have negotiated two separate Collective Bargaining Agreements--one Physical and the other Clerical.

The assignment to Meter Readers of the work in question was made unilaterally by the Company and not as a result of any discussion or negotiation with the Union.

UNION'S POSITION:

The Union's position, in part, is stated in its brief as follows:

"First, the Gas Serviceman classification has historically been responsible for change of entry tags, including change of party/no entry tags.

"Second, in 1987, the Company began to assign change of party/no entry tags to Meter Readers without the consent of Local 1245. This work does not fall within the scope of the negotiated Meter Reader job description for several reasons, as follows: (1) the Meter Reader is not present at the meter as part of a regularly scheduled reading of an assigned route of meter; (2) the Meter Reader enters the read onto a Gas Serviceman's [tag], not the electronic meter reading device normally used for reading a route of meters; and (3) the Meter Reader is expected to spot (clock) the gas flow, a duty which is normally performed only by the Gas Serviceman classification.

"Third, the parties have historically agreed that the recognition clauses of the respect[ive] collective bargaining agreements govern the assignment of work. In general negotiations, Meter Reader negotiations, Letter Agreements, and grievance settlements, the parties have recognized the historical delineations between the units, which sometimes can only be defined by past practice, not by job descriptions. The protection of the bargaining units has been consistent, with Local 1245 arguing that work belongs in the lower paying clerical bargaining unit as often as it argues that the work belongs in the physical bargaining unit.

"In stark contrast with past practice, the Company here has attempted to transverse bargaining unit lines and assign work historically performed by the physical bargaining unit to the clerical bargaining unit without first negotiating the change with Local 1245. Whatever reasons the Company had to make the administrative change in 1987 and whatever reasons the Company had to want to assign the Gas Serviceman work to Meter Readers, the evidence establishes that the work belongs to the Gas Serviceman classification unless and until Local 1245 agrees to place that work in the clerical bargaining unit." (Un. Br., pp 12-13)

COMPANY'S POSITION:

The Company's position is stated in its "Conclusion" to its brief as follows:

"Nothing in the agreements between the parties indicates that Change Party/no entry duties must be performed only by Gas Servicemen. To the contrary, neither meter reading duties nor Change Party duties have ever been a part of the negotiated job description for Gas Servicemen. The agreements clearly state, however, that Meter Readers may perform special meter reads on a daily basis. Change Party/no entry is nothing more than a special meter read. Even assuming arguendo that these duties should be performed by the Gas Serviceman classification, the Union admits that Meter Readers are in the direct line of progression and the agreements, therefore, clearly permit Meter Readers to perform these duties.

"Past practice also establishes that these duties may be performed by Meter Readers. Even in the past, Meter Readers were regularly dispatched to perform Change Party duties. As an integral part of the assigned routes, Meter Readers perform the Change Party read when it is in the five day window of the monthly read and the Union has never challenged the practice. Gas Servicemen have never been dispatched to perform duties involving only meter reading and Meter Readers are regularly dispatched to do meter reading. The new duties of Change Party/no entry require nothing more than meter reading. Such work has never been the 'exclusive' work of Gas Servicemen. The Company was not obligated to bargain over assignment of these duties because assignment to Meter Readers was authorized by the collective bargaining agreement and consistent with past practice. The grievances must, therefore, be denied." (Er. Br., pp. 15-16)

DISCUSSION:

The record establishes that Gas Servicemen have historically been responsible for change of entry tags, including Change of Party/no entry tags, even though the Gas Servicemen job description contains no specific mention of this duty.

On a sporadic basis during emergencies or severe backlogs, the work in question could have been performed by Troublemens, Metermen, and Meter Readers. However, the change instituted in Sacramento does not fall within those circumstances noted above when persons other than Gas Servicemen performed the work in question.

The duty involved in this case is a new duty that did not exist prior to April 1987, namely, the assignment of work when an order is expressly dispatched as Change Party/no entry. The

record is clear that that dispatch requires reading meters. The record is also clear that that is not a dispatch ordinarily on a Meter Reader's dispatch. In fact, in Sacramento two Employees were specifically set up to handle such dispatches. In addition, those Employees were given special training and the Gas Servicemen tag was used, not the electronic device used ordinarily by a Meter Reader to record the reading.

In short, a policy which resulted in the Sacramento headquarters doing what it did resulted in moving work from that performed by Gas Servicemen to Meter Readers who were not operating in the normal manner that Meter Readers do work and are dispatched.

The Company argues that there was no obligation to negotiate its decision with the Union of having the Meter Readers perform the duties in question; that this was a new task not performed by Gas Servicemen in the past. The fact is that the task in question is now being performed by Gas Servicemen throughout the Company except Sacramento. But aside from that is the fact that in this case, work previously performed by Gas Servicemen has been assigned, on a regular basis, to another classification of Employees.

Ronald A. Morris, Manager, Gas Distribution, testified on cross-examination as follows:

"Q. [Mr. Dalzell, Union Counsel] In 1987 when you changed the standard practice, you informed the regional gas superintendents that they were permitted

to use employees other than gas servicemen for change of parties/no entry, correct?

"A. The decision was made as a joint effort. In other words, I'm gaining input from the region gas service superintendents. The decision was simply to encourage the use.

"Q. Since the change of policy, would it not be accurate to say that still the overwhelming majority of change of party/no entries system-wide are being performed by gas servicemen?

"A. The majority are to this day, yes.

"Q. Could you estimate what percentage are still being done by gas servicemen?

"A. I don't know the answer to that.

"Q. Could you tell me what headquarters are routinely using employees other than gas servicemen to perform change of party/no entry?

"A. The one that I'm aware of is Sacramento.

"Q. Is that the only one you are aware of?

"A. On a regular basis, that's the only one I'm aware of.

"Q. Other than the spot or sproadic catch-up you talked about?

"A. Exactly." (Tr. 30-31)

Morris further testified:

"Q. You testified that this decision would not adversely affect gas servicemen?

"Q. Yes.

"Q. Could it not result in lost overtime for gas servicemen?

"A. It could under some conditions.

"Q. If this decision, if this policy were implemented system-wide, could it not result in the

elimination or the conversion of at least 89 gas service jobs?

"A. It could.

"Q. Does the use of meter readers in the Sacramento headquarters on a routine basis not mean that additional gas service jobs have not been created? Is that not the effect of the use of meter readers?

"A. I'm not sure I understand the question.

"Q. If the company were not using the meter readers in Sacramento, would it not either have to give overtime to the existing gas servicemen or create new gas servicemen positions that incumbent employees could promote into?

"A. Yes, the work is mandated, it would have to be done." (Tr. 33)

The record is clear that when the Parties in the past had occasion for movement of classifications of Employees from the Physical Agreement to the Clerical Agreement, or vice versa, such had been the subject of negotiation. The Union presented cases including past negotiations, Letter Agreements, and grievance settlements in which the issue of conflicting work assignments in the two bargaining units was addressed and settled between the Parties.

At the Diablo Canyon Nuclear Power Plant, the Clerical workers are included in the Physical bargaining unit. In 1979 the Company asked for and received permission from Local 1245 to use one Clerical bargaining unit Employee at Diablo Canyon. Thereafter, it asked and received permission to add two additional Clerical bargaining unit Employees at Diablo Canyon.

Thereafter, the Company, without permission, hired approximately 40 Clerical bargaining unit Employees to be used at Diablo Canyon. The Union filed a grievance and at the pre-review level of the grievance procedure, the Parties agreed that while the duty of the beginning Clerical bargaining unit position of Utility Clerks and the beginning Physical bargaining unit position of routine Plant Clerks are nearly identical, the work at Diablo Canyon should be assigned to the Physical bargaining unit position. The 40 Employees hired as Utility Clerks were converted to routine Plant Clerks and paid retroactively at the higher rate of pay associated with the routine Plant Clerks position (Un. Ex. 6).

The problem concerning the Utility Clerks at Diablo Canyon was eventually resolved in 1988 general negotiations when the Parties agreed to create a new Clerical position within the Physical bargaining unit for use only at Diablo Canyon.

In the 1983 negotiations, on the Meter Reader job description, the Company asked for and received permission from Local 1245 to have Meter Readers perform one specific job which would normally be part of the Gas Serviceman job description.

In 1983 the Company proposed that Gas Servicemen in the East Bay Division be allowed to deliver 48-hour notices to residential customers and accept payment from the customers, work which would normally be performed by the Clerical bargain-

ing unit position of Credit Representative. Local 1245 agreed to a pilot program embracing this concept.

In 1988 the Parties agreed to a localized pilot program in which Credit Representatives, who were members of the Clerical bargaining unit, would perform under certain specific conditions work historically performed by the Troublemaker classification in the Physical bargaining unit.

In 1968, in a Review Committee decision, the Parties agreed that Collectors, who were members of the Clerical bargaining unit, could in certain situations, when they were already at the customer's premises, disconnect service of a delinquent customer, work normally assigned to a Gas Serviceman. The Committee further agreed that a Gas Serviceman, a member of the Physical bargaining unit, could in certain situations collect a delinquent bill when sent to a customer's premise to disconnect service, work normally assigned to the Clerical bargaining unit (Un. Ex. 9). This decision was reaffirmed by the Pre-Review Committee in 1987 (Un. Ex. 10).

In certain cases the Parties agreed that the Company had violated the Agreement when it assigned Clerical work historically performed by the Clerical bargaining unit to a Physical bargaining unit Employee (Un. Exs. 11, 15 and 16). And in another case, the Parties agreed that there was a violation when the Company attempted to transfer Physical bargaining unit Clerical work to the Clerical bargaining unit (Un. Ex. 12).

With reference to the preparation of time transmittals, the Parties agreed that the Company violated the Agreement when it had Physical bargaining unit Employees prepare time transmittals, work historically performed by Clerical classifications (Un. Exs. 13 and 14).

The Company contends that the evidence of those previous grievances has no probative value because in this present case there was no transfer of duties between bargaining units. That is not correct. The duties of Gas Servicemen were moved to the classification of Meter Readers and required special training for the Meter Readers and directed them to enter the reading on a Gas Serviceman tag. This is a case where work of one classification has been moved to another classification within a different bargaining agreement. The evidence establishes that the Parties over a good many years where there has been the problem of work of classifications crossing over from one bargaining unit to another bargaining unit has been accepted as a proper subject for negotiation between the Parties.

DECISION:

1) The Company shall cease and desist from assigning Meter Readers, as it is now doing in Sacramento, to perform the meter reading in instances where Change Party/no entry situations prevail.

2) The matter of any other relief is remanded to the Parties. The Board retains jurisdiction over any dispute that may result from this remand.

Sam Kogel
Chairman

Concur/~~Dissent~~ 3/15/90
Date

Roger Statcup
Union Member

Concur/~~Dissent~~ 3/15/90
Date

Donothy Fortier
Union Member

Concur/~~Dissent~~ 3-21-90
Date

Sheldon A. Shaw
Company Member

~~Concur~~/~~Dissent~~ 3/15/90
Date

Rick R. Denny
Company Member

~~Concur~~/~~Dissent~~ 3/15/90
Date

Signed and dated in
San Francisco, California