

A MATTER IN ARBITRATION

In a Matter Between:)		
)		
PACIFIC GAS AND ELECTRIC	)	Grievance:	Routine Plant Clerks
COMPANY,)		
	)	Hearing:	December 3, 2007;
(Employer)	)		October 24, 2008; and
	)		May 18, 2009
and)		
	)	Award:	June 15, 2009
INTERNATIONAL BROTHERHOOD OF)		
ELECTRICAL WORKERS, LOCAL 1245,	)	McKay Case No.	08-273
)		
(Union))		

DECISION AND AWARD

GERALD R. McKAY, NEUTRAL ARBITRATOR
DOROTHY FORTIER, UNION PANEL MEMBER
BOB CHOATE, UNION PANEL MEMBER
CECILIA WYNN, EMPLOYER PANEL MEMBER
MARGARET A. SHORT, EMPLOYER PANEL MEMBER

Appearances By:

Employer: Stacy A. Campos, Esq.
Pacific Gas and Electric Company
Law Department
P.O. Box 7442
San Francisco, CA 94120

Union: Jenny Marston, Esq.
I.B.E.W. Local Union 1245
P. O. Box 2547
Vacaville, CA 95696

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STATEMENT OF PROCEDURE

This matter arises out of the application and interpretation of a Collective Bargaining Agreement, which exists between the above-identified Union and Employer.¹ Unable to resolve the dispute between themselves, the parties selected this Arbitrator in accordance with the terms of the contract to hear and resolve the matter. Hearings were held in San Francisco, California on December 3, 2007, October 24, 2008, and May 18, 2009. During the course of the proceedings, the parties had an opportunity to present evidence and to cross-examine the witnesses. On the final day of hearing, the Union rested its case based on the evidence that it had presented. The Employer made a motion for a summary judgment to the Arbitrator based on the argument that even if the Arbitrator accepted all of the Union's evidence as truthful, the Union failed to establish a contract violation. In response to this motion, the Arbitrator took it under advice and informed the parties that he would review the record and conduct a conference call to

¹ Joint Exhibit #1

see what the parties wanted to do based on the Arbitrator's review. Rather than hold a conference call, the Arbitrator decided to put his thoughts in writing, and send the parties a letter dated May 20, 2009. In the letter, he expressed the opinion that the Union had failed to make a case that the Employer violated the contract. However, he suggested several ways of resolving the dispute in a manner that would produce what the Arbitrator believed to be good results for both sides. Subsequent to sending the letter, the Union informed the Arbitrator that it did not wish to pursue any other alternatives to resolve the dispute and requested that the Arbitrator put his decision in writing. This writing is a reflection of the Arbitrator's decision based on his review of the present record.

ISSUE

Whether the Employer is in violation of the Collective Bargaining Agreement for its failure to advance the Routine Plant Clerks that are currently employed at the Employer's Diablo Canyon Power Plant to First Plant Clerks. If so, what is the appropriate remedy?²

RELEVANT CONTRACT LANGUAGE

0293 FIRST PLANT CLERK

An employee who, under general supervision, performs clerical work requiring a working knowledge of all procedures used in steam plant office work and the normal amount of judgment accompanying that knowledge. May also be required to maintain special and routine statistical records of operation and maintenance and to make computation for the preparation of reports. May be required to type accurately with reasonable speed.

0294 ROUTINE PLANT CLERK

An employee who performs clerical work requiring a basic knowledge of established Company steam plant office procedures and elementary accounting principles; may operate PBX Board or

² Transcript page 4. The Union suggested on the last day of hearing that the remedy it was seeking was not to upgrade all Routine Plant Clerks but just those that did First Clerk work and, in addition, the Union suggested, upgrading Routine Plant Clerks at times when they did First Plant Clerk work. The Union's suggestion on the final day of hearing is not consistent with the statement of the issue, which the parties framed on the first day of hearing in December 2007.

take readings during plant tests; in training for advancement to First Plant Clerk. Must be able to type with reasonable speed and accurately (35 words per minute); may be required to learn shorthand prior to promotion to First Plant Clerk.

0290 SENIOR PLANT CLERK

An employee who has the qualifications of a First Plant Clerk performs clerical work and is the lead clerk in a plant office directing the work of the other Plants Clerks.

0296 UTILITY PLANT CLERK

0297 SHIFT UTILITY PLANT CLERK

An employee who performs routine typing, filing, microfilming, photocopying and general clerical duties. May operate PBX Terminal, CRT terminal, and other standard office equipment. May be required to type with reasonable speed (35 words per minute net). Must have met all of Company's pre-employment clerical requirements. Utility Plant Clerks who are assigned to the Dosimetry Office are shift employees. . . .

BACKGROUND

The Employer operates a nuclear electrical power generating plant in Diablo Canyon, California. Among other personnel at the plant, the Employer employs various clerical employees who have various titles. Some of them are referred to as Utility Plant Clerks, some as Routine Plant Clerks, others as First Plant Clerks, and some as Senior Plant Clerks. All of these employees perform similar clerical work, but depending on the classification, certain employees have more responsibility and more difficult tasks to perform than others. It is the position of the Union that the contract intended that individuals classified as Routine Plant Clerks would, after a certain period of time, be promoted to First Plant Clerks. The reference in the contract to "in training for advancement to First Plant Clerk," the Union suggested, means that at some point in the Routine Plant Clerk's career, the clerk will be promoted to First Plant Clerk. Based on this theory, the Union asked that all of the Routine Plant Clerks working at the Diablo Canyon be reclassified as First Plant Clerks based on the work that Routine Plant Clerks are currently

performing. It is the position of the Employer that the Union is seeking to eliminate an entire classification which is a power that is beyond the scope of the Arbitrator's authority. If the Union wishes to eliminate Routine Plant Clerks, the Employer asserted, it should do so at the bargaining table. For the Union to prevail, the Employer asserted, it must establish that each and every Routine Plant Clerk is performing the work of a First Plant Clerk. When the Union rested, the Employer stated, it had only presented evidence with respect to a handful of Routine Plant Clerks, and that evidence does not justify reclassifying those individuals from Routine Plant Clerk to First Plant Clerk. For all these reasons, the Employer asked that the grievance be denied.

In its opening statement, the Union promised the Arbitrator that it would provide substantial evidence in the form of testimony and exhibits which support its position that Routine Plant Clerks primarily perform First Plant Clerk work as defined under the job description and prior grievances. The Union promised to highlight the tasks performed by Routine Plant Clerks and asserted that it would also provide circumstantial evidence that supports the claim that Routine Plant Clerks are doing First Plant Clerk work. The Union stated further in its opening statement that, "This grievance evaluates the basic question of how long must one be considered as in training to be advanced to another position?"³ According to the Union, the contract contemplates that Routine Plant Clerks will be in training for advancement to First Plant Clerks. The Union claimed that the evidence will establish that the Routine Plant Clerks have completed their training to be First Plant Clerks long ago and this should be recognized by the Employer by advancing all of the Routine Plant Clerks to First Plant Clerks.

³ Transcript page 9

In its opening statement, the Employer stated that the present case is an example of the parties failing to update job descriptions on a routine timely basis. The Employer conceded that the job descriptions for Routine Plant Clerks and First Plant Clerks do not reflect current responsibilities for either of the classifications entirely. For example, the Employer pointed out, none of the clerks perform shorthand, nor do they type on typewriters. With the introduction of computers, typing and shorthand is not a common skill or job requirement. As a result of the failure to update job descriptions, the Employer conceded, there has been a little bit more blurring of both job descriptions. Nevertheless, the Employer stated, there is no negotiated line of progression or automatic advancement under the terms of the Collective Bargaining Agreement that would permit Routine Plant Clerks to advance automatically to First Plant Clerks. The fact that the parties referenced Routine Plant Clerks as “in training” to become First Plant Clerks, the Employer suggested, is inartful because there is no contemplation of automatic upgrade. For example, in some positions, after performing work for 6 months, 12 months, or 18 months, the individual is upgraded to a new position. That type of upgrade does not apply to Routine Plant Clerks. If the parties wish to change the responsibilities of Routine Plant Clerks, the Employer stated, it must do so at the bargaining table, not through arbitration. The Employer stated it is time for both the Employer and the Union to sit down and review the job descriptions to come up with new ones that fit the current clerical practices at the Diablo Canyon facility. This is not an issue, the Employer asserted, that can be resolved by the Arbitrator.

Based on the parties’ opening statements in December 2007, the Arbitrator remanded the issues in dispute to the parties for further deliberation to determine whether they could resolve the conflict among themselves without the Arbitrator’s involvement. The parties were permitted

90 days in which to carry out this function.⁴ Unfortunately, the parties were not able to reach an agreement and on October 24, 2008, the hearing resumed. The Union's first witness was Renelle Hayes. Ms. Hayes works at the Diablo Canyon Plant and is also the Union's shop steward responsible for investigating claims raised by the various clerks. Ms. Hayes is classified as a Routine Plant Clerk working in the Engineering and Design Engineering Departments. She has held the Routine Plant Clerk position since 2004. Prior to that, Ms. Hayes stated, she worked as a Routine Plant Clerk in 1990. Her supervisor, Ms. Hayes testified, is Pat Nugent. She tries to meet with once a week, but because of his busy schedule, it is more often only once a month. She testified, "I go to Pat if we're approaching on deadline and overtime is needed."⁵ In her role as a Routine Plant Clerk, Ms. Hayes estimated, she supports "approximately seven supervisors, two managers, and 60 engineers and drafters."⁶ She described her routine major assigned duties in the following manner:

"RMSing -- record management storage system is one.

I oversee the whole office -- administrative support for both departments and all the engineers and drafters.

I oversee all the office equipment; supply ordering; getting visitors on-site through security.

There's the project engineering coordination section, where we do the processing of all the incoming and outgoing design input transmittals that the engineers are involved with.

The controlled drawings, keeping those current.

Boy, there's a whole vast array of duties, but those are some of the main ones."⁷

⁴ Transcript page 15

⁵ Transcript page 29

⁶ Transcript page 29

⁷ Transcript page 29 and 30

The Grievant claimed that when she started reporting to design engineering that it was her understanding that she was required to perform the work that previously had been performed by two clerks. Since she started her job in engineering, Ms. Hayes testified, there have been “additional duties added to my job.”⁸

Ms. Hayes described in some detail all of the work that she believed qualified her to be reclassified as a First Plant Clerks. For example, she testified:

“I’ve had to become qualified for processing security safeguard documents so I’ve completed the security safeguards information training. Unless you’ve completed that training, you cannot touch or look at or be in the same room with a security safeguards document because it is informational that is highly critical to the security of the plant.”

Ms. Hayes testified:

“I was reviewing the contracting and I was reading the job descriptions and it was just clear to me that we’ve got a big issue here. All the clerical, if not most of us, out there are doing above our classification in the job description.

So in discussing it without others, they also were, like, ‘Yeah, we weren’t aware it said that.’”⁹

Ms. Hayes asserted that her job has become more complex and difficult. She stated:

“Its increased, and it’s become more complex.

I have the added responsibility now of the project engineering coordination of all the design transmittals.

We have over 75 projects.

So, you take 75 projects times -- one project could have over 100 documents.

It’s huge, so I have a huge backlog, but it’s -- at this point, it’s waiting to be done on overtime.

⁸ Transcript page 34

⁹ Transcript page 86

So, the new SAP program that was currently -- recently implemented, that is changing how we do our work processes. It's a different system.

We have to do things a little differently, so we're still in a learning curve with that."¹⁰

Ms. Hayes acknowledged that she was familiar with the contract and believed that there were positions in the contract that provided for progressive from one level to another. She acknowledged that in the Routine Plant Clerk description there was no automatic progression to the First Plant Clerk position.¹¹ Ms. Hayes testified that she is aware that there have been numerous opportunities to negotiate the Collective Bargaining Agreement since 1985, but was not aware of whether any proposals have been submitted during negotiations to change the job descriptions for either Routine Plant Clerks or First Plant Clerks.¹² Ms. Hayes was not aware of whether the Union has submitted a job description change in the current 2009 negotiations for a new agreement. When asked what she expected to obtain as a result of filing the grievance, Ms. Hayes stated, "We were filing it on behalf of all routine plant clerks that we believed all showed were going first plant clerk work and should be reclassified as first plant clerks. Not just some, but all."¹³ To establish this, Ms. Hayes stated, a questionnaire was sent to all Routine Plant Clerks to find out what their current duties involved. The results of the questionnaire were made part of the grievance packet.

The Union presented testimony from four other Routine Plant Clerks working at Diablo Canyon Plant. Each of these individuals described what they do on regular routine basis. The four witnesses included Jana Orlando, Teri Bendele, Sandra Eatherly, and Robyn Goff.

¹⁰ Transcript page 86 and 87

¹¹ Transcript page 141

¹² Transcript page 140

Ms. Sandra Eatherly testified that at the present time she is a First Plant Clerk. She has occupied that position since April 2008. Prior to that, she worked as a Routine Plant Clerks from her date of hire -- June 26, 1986. Presently she works in Payroll Services processing payroll for the Diablo Canyon Plant. Before assuming a position as a First Plant Clerks, she worked in Engineering from 1987 to 1988; Quality Control from 1988 to 1994; Engineering from 1995 to 1997; Learning Services from 1998 to 1999; Engineering from 1999 to 2001; Regulatory Compliance from 2001 to 2003; and Security Services from 2003 to 2008. Ms. Eatherly described her current level of supervision and job tasks as a First Plant Clerk. She then described her level of supervision as a Routine Plant Clerk. She described the nature of her Routine Plant Clerk job, and the areas of responsibilities that she was assigned. In her opinion, Ms. Eatherly testified, since becoming a First Plant Clerk, she has compared the differences between her present responsibilities and those that she had as a Routine Plant Clerk. She stated that she does not spend more time working independently as a First Plant Clerk than she did as a Routine Plant Clerk. The daily assignments are at the same level of difficulty as a First Plant Clerk as they were as a Routine Plant Clerk. As a First Plant Clerk, she has one responsibility to enter payroll for the day, but as a Routine Plant Clerk she had multiple responsibilities everyday. As a First Plant Clerk, Ms. Eatherly stated, she handles fewer documents than she handled when she was a Routine Plant Clerk. She was also more familiar with the Collective Bargaining Agreement as a Routine Plant Clerk. As a First Plant Clerk and as a Routine Plant Clerk, she works at the same level of attention and accuracy. In her opinion, the two positions should be classified the same.¹⁴

¹³ Transcript page 134

¹⁴ Union Exhibit #12

Ms. Jana Orlando testified that she is classified as a Routine Plant Clerks. She described her level of supervision suggesting that her contact with supervision was minimal and consisted primarily of an annual review. She described the computer program usage and training that she has undertaken and the description of her current areas of responsibilities. She concluded her testimony by stating, "I believe, based upon the information that I have shared in my testimony herein, that the work that I currently perform is not entry level work but is First Plant Clerk-work."¹⁵

Robyn Goff is a Routine Plant Clerk, who has worked for the Employer since February 1985. She has also been a shop steward from 1987. With respect to her supervision, Ms. Goff stated:

"I pretty much work independently, and most of my tasks are self-driven because I what needs to be done.

I also receive tasks from managers, supervisors and department members. When these other individuals ask me to do something, they do not tell me the precise steps to follow. Instead, they just tell me what they need, and I do it.

I know how to perform tasks given to me with little, if any, instruction, from my years as an RPC. . . .

Typically, I have several pending assignments (either as a regularly scheduled responsibility or as a particular request from a co-worker). Because I have an understanding of the time sensitiveness of tasks that I perform, I am able to decide how to prioritize these tasks to get everything done in a timely manner. I do not have to run the order in which I perform my tasks by McQuade or any other supervisor or manager."¹⁶

In conclusion, Ms. Goff stated:

"I support this grievance because I feel that the work that I currently perform at my desk is already First Plant Clerk. As I have described, I am and have been performing predominantly above entry level tasks at my desk."

¹⁵ Union Exhibit #13

¹⁶ Union Exhibit #24

She went on to state, "It is my opinion that there is a wide spread abuse of our job position. Also, I know from experience that since the Power plant went on line the scope of our work and responsibilities have increased greatly."¹⁷

The final Union witness was Teri Bendele. Ms. Bendele has been a Routine Plant Clerk since 1989. Prior to that from 1987 to 1989, she was a Routine Clerical Assistant and Utility Plant Clerk. She described her supervision under Ken Pazdan:

"Pazdan supervises me very generally. We do not have regular meetings. I would say he provides direct supervision, meaning he gives me direct orders of specific tasks to perform, and the rest is indirectly, meaning that I just perform the same tasks that I regularly perform, as needed.

I decide when I need to work overtime, which I determine based upon my workload and my knowing what tasks I need to finish so that other will be able to do their work. If I determine that I need to work overtime, I request to do so through Pazdan. He always okays my request, I believe, because he trusts my judgment. . . .

Typically, I have about 15 pending assignments (either as a regularly scheduled responsibility or as a particular request from a co-worker). I decide how to prioritize these tasks to get everything done in a timely manner, and I do not have to run the order in which I perform my tasks to Pazdan."¹⁸

As with the other witnesses who testified, Ms. Bendele stated, "I want to be an FPC because I feel like I already am an FPC. That is, I believe that the work that I perform now at my desk is at the level of an FPC."¹⁹

¹⁷ Union Exhibit #14

¹⁸ Union Exhibit #15

¹⁹ Union Exhibit #15

POSITION OF THE PARTIES

UNION

The Union asserted that the individuals assigned as Routine Plant Clerks at the Diablo Canyon Plant are in a position that contemplates movement from that classification to the First Plant Clerk classification. Based on the language in the contract, it is anticipated, according to the Union, that employees will serve as Routine Plant Clerks for a reasonable period of time to learn how to become First Plant Clerks. Once they have learned the requirements to become a First Plant Clerk then they are to be promoted to that position. The evidence, the Union stated, shows that the Routine Plant Clerks who testified are all doing work that falls within the First Plant Clerk work job description. Since the Employer has chosen not to put on any evidence, the Arbitrator must accept the description of the work provided by the Routine Plant Clerks who testified. That work, in the Union's opinion, clearly constitutes First Plant Clerk work for which the individual Grievants should be compensated.

EMPLOYER

The Employer stated that the Union is proposing that the Arbitrator eliminate the position of Routine Plant Clerk and move everyone in that classification to a First Plant Clerk position. The contract does not provide for automatic progressive from Routine Plant Clerk to First Plant Clerk. The contract contemplates that Routine Plant Clerks will learn the responsibilities of a First Plant Clerk so that if a position becomes available, that will provide the Employer with a pool of individuals from which to select the First Plant Clerk. All of the work done by the clericals is similar work. Some have more responsibility than others, but the nature of clerical work is just that -- clerical. The Employer conceded that the job descriptions of First Plant

Clerks and Routine Plant Clerks is not consistent with current practice because it refers to old technology such as typing. So far as the Employer is aware, there are no typewriters at that Diablo Canyon Plant. The Employer conceded, as well, that the job description of the Routine Plant Clerk and First Plant Clerk need to be updated, but that the upgrading process does not mean that all the Routine Plant Clerks should be made First Plant Clerks. The jobs should be upgraded and if the parties wish to change the arrangement, or change the pay practices concerning Routine Plant Clerks and First Plant Clerks, they should do so at the bargaining table and not through arbitration.

DISCUSSION

In a contract dispute, the burden to establish the violation is on the Union. In the present dispute, the Union framed the issue that was to be presented to the Arbitrator. That issue states, "Whether the Employer is in violation of the Collective Bargaining Agreement for its failure to advance the Routine Plant Clerks that are currently employed at the Employer's Diablo Canyon Power Plant to First Plant Clerks." That issue presumes that the contract contains within it a requirement that the Employer has an obligation to move Routine Plant Clerks to the position of First Plant Clerk. The Union rests its claim that there is to be an automatic progression system based on the language found in the Routine Plant Clerk description in the agreement. There are two phrases that the Union points to. The first is "in training for advancement to First Plant Clerk." The second is "may be required to learn shorthand prior to promotion to First Plant Clerk." This is not language that normally is found in systems of progression.

A normal progression system generally provides certain standards that must be met or time limits that must be met for a person to move from one position to another. In other words, a person may be a Clerk I, a Clerk II, or a Clerk III and be required to serve in each of those levels for a period of time before moving to the next level. The language in the present contract assigns Routine Plant Clerks the obligation to learn the responsibilities of First Plant Clerk so that they will be available should the Employer need additional First Plant Clerks. In other words, the Employer is developing a pool of clerks upon whom it can call in order to fill its needs for more advanced and responsible clerical positions. One must presume that the Employer would also use the First Plant Clerk pool to select individuals to serve as Senior Plant Clerks. The fact that there is a Senior Plant Clerk does not mean that First Plant Clerks automatically progressed to Senior Plant Clerks. There, likewise, is no automatic progressive from Utility Plant Clerk or Shift Utility Plant Clerk to Routine Plant Clerk. In short, there is no system of progression from one position in the clerical category to another.

The parties have negotiated a contract that contains a number of clerical classifications. One of those classifications is Routine Plant Clerk. What the Union is asking the Arbitrator to do is, in essence, eliminate the Routine Plant Clerk position and move all of those individuals to the First Plant Clerk level. The contract does not give the Arbitrator the authority to alter the terms of the agreement. If the Arbitrator were to do what the Union is requesting, he would, in essence, have to eliminate the Routine Plant Clerk job classification, and replace it by assigning everyone to the First Plant Clerk classification. That type of major surgery in a Collective

Bargaining Agreement is beyond the authority of the Arbitrator, and is something the parties contemplate they will deal with at negotiations, not in an arbitration.

It is possible that on an individual basis some Routine Plant Clerks are performing work that is normally associated with First Plant Clerks. It is possible that on certain days some Routine Plant Clerks perform work that would normally be done by First Plant Clerks. There are ways in the Collective Bargaining Agreement to address those particular issues. However, that is not the grievance that the Union has placed before the Arbitrator in the present dispute. As Ms. Hayes testified, she wants all Routine Plant Clerks made First Plant Clerks. The only way one can make all Routine Plant Clerks into First Plant Clerks is to eliminate the Routine Plant Clerk classification. Otherwise, one needs to go through on an individual basis and review the daily job responsibilities of Routine Plant Clerks in a particular job and determine whether that specific job at that particular desk warrants reclassification. That is a process that may be available to the parties, but it is not the grievance that the Union filed in the present case. Even if the Arbitrator were to accept the testimony of the five individuals who testified as demonstrating that they should all be classified as First Plant Clerks, it does not permit the Arbitrator to address the issue that the Union presented. The Arbitrator would have to conclude that the other 25 or 30 Routine Plant Clerks are performing identically the same work as the five who testified and, in essence, reclassify them without any evidence. That is what the Arbitrator means when he says he would have to eliminate the classification.

In summary, based on the evidence presented, the Union has failed to establish that the Employer violated the contract by not reclassifying all Routine Plant Clerks as First Plant Clerks.

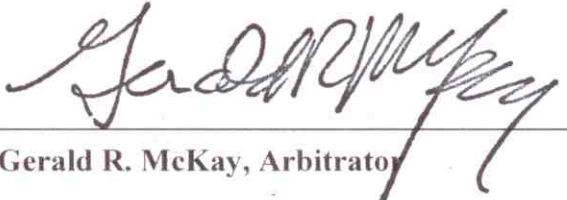
The contract does not provide the Arbitrator with authority to eliminate a classification. If the parties wish to eliminate the classification of Routine Plant Clerks, then they must do so at the bargaining table, and not in arbitration. The Arbitrator is not addressing, nor does the evidence permit the Arbitrator to address, whether any individual Routine Plant Clerk is performing work that should be reclassified as First Plant Clerk. Nor does the record permit the Arbitrator to address the question of whether in certain circumstances on certain days some Routine Plant Clerks perform for a period of time during the day First Plant Clerk work. If those are the concerns of the parties, then they need to address those separately and specifically. If at some point, an individual claim by a particular Routine Plant Clerk cannot be resolved, then a grievance filed on behalf of that specific individual regarding the specific facts of that individual's daily routine could constitute a new grievance for that individual. The Union's effort to do so on behalf of all Routine Plant Clerks cannot succeed based on the evidence in the record. The grievance, on that basis, has to be denied.

AWARD

The Employer is not in violation of the Collective Bargaining Agreement for its failure to advance the Routine Plant Clerks that are currently employed at the Employer's Diablo Canyon Power Plant to First Plant Clerks. The grievance is denied.

IT IS SO ORDERED.

Date: June 15, 2009



Gerald R. McKay, Arbitrator