IN ARBITRATION PROCEEDINGS

PURSUANT TO TITLE 102.5 OF THE AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between LOCAL UNION NO. 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Complainant and PACIFIC GAS AND ELECTRIC COMPANY Respondent	Arbitration Case No. 61 OPINION AND AWARD

BOARD OF ARBITRATION:

Chairman:	Joseph R. Grodin
Union Members:	Robert Gibbs John Wheat
Company Members:	I. Wayland Bonbright David J. Bergman

I. BACKGROUND OF THE DISPUTE AND STATEMENT OF THE ISSUE

This is an arbitration between the Pacific Gas and Electric Company ("Company") and International Brotherhood of Electrical Workers, Local Union No. 1245 ("Union") involving the reorganization of three District Electric Operating Centers in Company's San Joaquin Division. The facts are not in dispute. Prior to the reorganization, which occurred in November, 1975, each Center was manned by a number of Distribution Operators (DO's) and a Chief Distribution Operator (CDO). The CDO's performed the work of DO's and in addition were responsible for the administration and coordination of the office, including supervision of the issuance of clearances; the maintenance of logs, switching tags, maps, code orders and other records; conducting the training activities of the office; coordination of workoad and schedules of employees in the office; and acting as liaison with other departments. The CDO's spent between 25 percent and 50 percent of their time in performing such additional activities.[1] Both classifications were included in the bargaining unit represented by Union, and the job descriptions for each were the product of agreement. The CDO received a higher salary, and his position was promotive from that of DO.

In November, 1975, the Company determined that additional supervisory functions were required at the Centers for

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1. The exact allocation of time is unclear. Counsel for the Company referred in his opening statement to a 50-50 allocation. The evidence indicates that the percentage of time which CDO's spent in performing "administrative" duties was variable, but probably less than 50 percent.

several reasons: (1) The Company and Union had recently agreed upon the establishing of a new classification (Operator-in-Training) for each of the Centers, and a formal training program was instituted. The Company believed that additional supervisory time was necessary in connection with that program; (2) the Company decided that additional supervision of DO's was desirable, in order to audit for deviations from general orders and standard practices, and (3) the Company decided that it would be desirable to have someone assigned to each of the Centers with authority to take direct disciplinary action. While the CDO's had authority to prepare Employee Performance Appraisal Reports, he had no direct disciplinary authority. Instead, he reported to the District Electric Superintendent, who had that authority.

For these reasons the Company established a new classification at each of the Centers of Supervising Distribution Operator. The administrative (or non-DO) functions of the CDO were transferred to the new classifications, and the DO work previously performed by the CDO was distributed among the remaining DO's. In each case the CDO was appointed to the new classification. The CDO classification was not formally eliminated, but neither was it filled. It is used on occasion for temporary upgrade when the SDO is absent for periods of 20 working days or more. All these actions were taken unilaterally, without bargaining with the Union and without obtaining the Union's consent. When the Union was advised of

the Company's intended actions, it filed the grievances which led to this proceeding.

The parties were unable to agree upon the statement of the issue, and accordingly stipulated that the Chairman of the Board of Arbitration could frame the issue based upon the testimony and evidence submitted. The Chairman has determined that an adequate statement of the issue is whether the Company violated the collective bargaining agreement by its actions described in the preceding paragraph, and if so what remedy is appropriate.

II. CONTENTIONS OF THE PARTIES

A. Union Contentions. The Union contends that the Company has not merely created a new nonbargaining unit classification into which it has promoted bargaining unit personnel. Rather, it has in effect reclassified the CDO position and unilaterally removed it from the contract, thus changing the contractual line of progression and removing a highly paid permanent position from the contractual bidding procedure; and in the process it has usurped supervisory and administrative work formerly subject to the agreement and performed by bargaining unit personnel, and unilaterally adjusted the duties of the DO classification. These actions, the Union contends, violate several provisions of the agreement, specifically Section 2.1

(Recognition),[2] Section 204.4 (Classification Adjustment),[3] and Title 600, Part VI (Job Definitions and Lines of Progression).[4]

The Union argues that the parties have always added, deleted, or adjusted classifications subject to the collective bargaining agreement through the bargaining process, either at the time of general bargaining or through intermim (letter) agreement. A number of examples of such bilateral modifications were evidenced in the record. For example, the classifications of System Dispatcher and Assistant System Dispatcher were removed from the bargaining unit through general negotiations in 1956; and the classification of Load Dispatcher was reclassified to the nonbargaining unit classification of Assistant System Dispatcher through general negotiations in 1966. The

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2. Section 2.1 provided in relevant part: "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 those employees for whom the National Labor Relations Board certified Union as such representative in Case No. 20-RC-1454. ...."

3. Section 204.4 provides in relevant part: "Upon agreement thereon by Company and Union, additional regular classifications, wages therefor, and normal lines of progression of any classification may be adjusted. Pending such agreement Company may establish temporary classifications and wages therefor, and temporarily adjust the wages and duties of any classification...."

4. Title 600 incorporates by reference a listing of Section numbers and Exhibits, under which Company and Union have entered into separate Supplementary Agreements setting forth the Job Definitions and Lines of Progression for certain classifications covered by the agreement. Included within the material incorporated are Section numbers and Exhibits relating to job definitions and lines of progression of DO and CDO in the San Joaquin Division.

classifications of DO and CDO were themselves established in the San Joaquin Division by letter agreement, the latter upon proposal by the Company as a means of providing immediate supervision over the DO's.

As more fully described under the heading "Company Contentions" the Company asserts two instances of departure from the general principle of bilateral modification, the first based upon the removal of "Watch Engineers" from the bargaining unit in the early 1950's, and the second based upon a unilateral reclassification effected by the Company in 1972. The Union contends the Watch Engineer incident is unrelated to the question at issue, since it occurred in the course of general negotiations rather than during the term of an existing agreement; and that the facts surrounding the 1972 incident do not establish Union acquiescence in the proposition for which the Company now contends. Basically, the Union asserts, the Company is confusing its statutory right to refuse to bargain over supervisors with its contractual obligation to abide by the negotiated agreement.

B. Company Contentions. The Company contends that insofar as the reorganization involved the allocation of bargaining unit work previously performed by the CDO to other DO's and the OIT, such action amounted to no more than a proper shifting of the workload to other unit employees which did not require prior acquiescence by the Union. It contends further that the SDO classification is an exempt position within the meaning of the National Labor Relations Act, the creation of which was within

the prerogative of management, and the incumbent did not assume the bargaining unit functions of the CDO. The functions of the new position bear little, if any, resemblance to the CDO position aside from certain authority to call DO's for overtime; thus the case is not one of replacing a bargaining unit employee with an exempt supervisor to carry out the work previously bargained for the CDO. Management has an inherent right to assign new duties or reallocate old duties as reasonably required by operational needs, and its decisions should be accorded great leeway if not in conflict with any provisions of the Labor Agreement. Section 204.4, relating to creation of classifications, is confined to classifications within the bargaining unit, as made clear by Section 2.2, which provides in part that "The provisions of this Agreement shall be limited in their application to employees of Company in the bargaining unit described in Section 2.1." Moreover, the agreement contains a broad management rights clause which enables the Company unilaterally to determine the manning and staffing requirements of its operational forces.[5]

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5. Section 7.1 provides in relevant part: "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 plan, direct, and control operations ... 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 letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement."

The Company contends further that it is not required by any provision of the agreement to fill a position where the services of employees in that classification are no longer required. On the contrary, Section 205.7, relating to job bidding, provides in part:

> "Whenever a vacancy occurs in any job classification ... which the Company intends to fill on a regular basis, Company shall fill it by award as soon as practicable." (Emphasis added)

Read together with the management rights clause, this section gives the Company the right to determine the continued need for a particular kind of service. Therefore, the Company is not in violation of the agreement by failing to post the CDO vacancies for bid. The agreement does not guarantee that any person will be employed in a designated classification.

The Company position in this matter, it contends, is supported by past practice of unchallenged reorganizations of a similar nature. Two examples of such past practice, referred to previously in this Opinion, are asserted and will be discussed later. The Company distinguishes the incidents involving negotiated removal of Load Dispatchers and Assistant System Dispatchers from the unit on the ground that these were clearly unit positions, and it was not contemplated that job duties would change as a result of removal.

III. DISCUSSION

As the Company contends, it is the prevailing view among arbitrators that an employer has the right to establish, eliminate, and combine jobs and classifications except as limited by the agreement. E.g., Modern Bakeries, 39 LA 939 (Koven, 1962); Reynolds Metal Co., 25 LA 44 (Prasow, 1955); Avon Products, 26 LA 422 (Ridge, 1956); Potter & Blumfield, Inc., 29 LA 344 (Warns, 1957); Colson Co., 54 LA 896 (Roberts, 1970). While that proposition may provide a useful starting point for analysis, however, it is ultimately necessary to determine whether this agreement, between these parties contains express or implied limitations upon management's right to do what it did in this case. As Arbitrator Seidenberg put it in Great Atlantic & Pacific Tea Co., 51 LA 303 (1968):

> "The more recent and apparently majority view is that Management, unless specifically restricted by the Agreement, has the contractual right to modify or eliminate a negotiated job classification, including its wage rate, provided that it is acting in good faith and is not seeking to undermine the Union's representation rights. The minority, and older, view is that the collective agreement would be only a hollow shell if the job classifications provided therein depended for their survival upon a subsequent demonstration of alleged efficiency or inefficiency. The minority view holds vesting Management with these claimed rights imperils stability in labor relations.
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> However, the overriding view that emerges from all the reported cases is that each case must be decided on its particular facts. The lack of unanimity on this subject must be accounted for, in part, by the fact that seldom are the facts and circumstances identical in the multitudinous cases on this subject matter."

The issue posed is not an easy one. On one hand the Company asserts an interest in seeking to bring a higher level

of direct supervision to bear upon employees in the Operating Centers. That interest is clearly legitimate, and the Company's good faith in asserting it is not questioned. On the other hand, the Union contends that the manner in which the Company has asserted that interest here threatens the integrity of its bargained-for structure of classifications, wage rates, lines of progression, and job content. The question is not whether the Company may assert its concededly legitimate interest in this matter, but whether it may do so unilaterally rather than bilaterally, through negotiation with the Union. In the case just referred to, Arbitrator Seidenberg came to the conclusion that the Employer's action in abandoning contract-established classifications of "working foreman" and transferring employees so classified to exempt supervisory positions was in violation of its agreement with the Union for the reason that the Employer's right to make such unilateral job classification changes had been diluted and qualified by bargaining history over the classification concerning establishment of the job, wages, number of employees, and methods of filling temporary and permanent vacancies. While the facts of that case were different in some respects, for the reasons which follow we reach the same conclusion here.

It is apparent from the agreement and the evidence submitted that the collective bargaining relationship between these parties is highly developed and sophisticated. Unlike the situations in the cases cited by the Company, job classifications and job descriptions, as well as the relationship of

classifications to one another in lines of progression, are the subject of intensive and detailed negotiations. Bargaining with respect to these matters has not been confined to general negotiations upon contract expiration, but rather has continued throughout each contract term to accommodate changing situations; and changes in the structure, when negotiated, are reflected in interim letters of agreement or memoranda. This bilateralism has extended to the negotiation for removal of classifications from the bargaining unit to exempt, supervisory positions.[6]

The history of the classifications involved in this case is illustrative of that practice. The DO classification in San Joaquin Division was initially established by Letter Agreement in 1962, and the CDO classification by Letter Agreement in 1963. These classifications, as well as the job descriptions, wage rates, and relationship to lines of progression were subsequently incorporated into the schedule adopted in general negotiations. Similarly, the Operator-in-Training classification, one of the factors in the Company's

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6. System Dispatchers and Assistant System Dispatchers, held by the NLRB to be nonsupervisory, were bargained out of the unit by general negotiations in 1956. In 1966 the Load Dispatcher classification was discontinued through negotiations, and its incumbents transferred to the then exempt Assistant System Dispatcher classification. An oppositive movement was negotiated in 1964, when persons classified as Substation Foreman were transferred to a newly created unit classification of Operating Subforeman in the San Joaquin Division.

determination to restructure supervision at the Operating Centers involved, was established by mutual agreement shortly before the restructuring took place.

The Company's action in restructuring supervision at the Operating Center impacts upon the negotiated scheme in three identifiable ways. First, it removes from the bargaining unit certain work which had been identified in the agreement (through incorporation of classification and job descriptions) as bargaining unit work. While the nature of that work is changed somewhat by the addition of more substantial supervisory responsibility, the essence of the work involved--administration of the Center--remains the same, and the similarities in duties performed by the CDO's and SDO's is more than de minimis. Second, it results in increased workload for members of the bargaining unit.[7] And third, it effectively eliminates a higher paid job from the negotiated line of progression.

If such action had been taken, with similar consequences, with respect to a classification not involving supervisory responsibility--if, for example, the Company had abandoned a higher paid classification within the Union's bargaining unit and transferred part of its duties to a classification in some other union's bargaining unit--there seems little doubt

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7. The record on this subject is incomplete. One former CDO, now SDO, testified that he formerly did about 50 percent of the tags in his office, and that that work had been shifted to existing DO's, since the OIT, during training, was not able to perform much productive work.

that the action would have violated the agreement. Section 204.4 clearly contemplates mutual agreement as a condition to changes in the classification structure, and even in the absence of such a provision arbitrators have held that the incorporation of job classifications and detailed job descriptions into an agreement (as in Title 600 of this agreement) implies that those classifications will continue so long as the work and duties associated with those classifications remains. E.g., Marble Cliff Quarries Co., 47 LA 396 (Dworkin, 1966). Abandonment of a classification combined with a transfer of work outside the bargaining unit may also constitute a violation of implied limitations imposed by a recognition clause, viewed in the totality of the contractual scheme. Section 7.1 would not affect this result, since its provisions are expressly subordinate to "the provisions of the Agreement, arbitration, or Review Committee decisions, or letters of agreement, or memorandum of understanding clarifying or interpreting this Agreement."

The issue narrows, therefore, to whether the result should be different because some of the duties of the abandoned classification may be supervisory in nature, or because the duties of the newly created classification are clearly supervisory. The Company does not contend that the CDO's are "supervisors" within the meaning of the NLRA[8] and it is unnecessary to determine

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8. It is the Company's position that CDO's are in the same category as Subforemen, who were included in the unit by the NLRB over the Company's objection that they are supervisors.

whether they are, since the Company has in fact bargained for their inclusion within the wage, classification, and promotional structure of the unit covered by the agreement. Moreover, while the Company is under no statutory obligation to bargain over the creation of the SDO classification, since that classification is clearly supervisory in nature, it is nevertheless under a contractual obligation not to transfer out of the unit duties associated with administration and coordination of the Distribution Operator's office which have been bargained for as part of the CDO classification. See Local 1055 IBEW v. Gulf Power Co., 44 LRRM 2992 (N.D. Fla. 1959).

This distinction--between statutory rights and contract obligations--places in proper perspective the events in the early 1950's relating to the classification of Watch Engineer. While the present record is far from complete as to those events, it appears that the charge was filed in response to action of the Company in discontinuing the classification of Watch Engineer and transferring its supervisory functions to a newly created classification of Shift Foreman. This action occurred while negotiations for an agreement were in progress, and the Company took the position that since the job duties of the Shift Foreman were supervisory in nature it had no obligation to bargain with respect to that classification. The Union filed an unfair

labor practice charge protesting this refusal to bargain, and later the charge was withdrawn with prejudice.

While it does not appear why the charge was withdrawn, it seems likely that the Union was convinced that the Company's position was correct, that it had no statutory duty to bargain with respect to the classification at issue. In any event, the Company concedes that no significance can be attached to the withdrawal of the charge. Rather, it points to the fact that no grievance was filed under the agreement. But since the term of the agreement had expired, and the Company exercised its lawful right to refuse to bargain for inclusion of a supervisory position in the bargaining unit for a new agreement, the filing of a grievance would clearly have been a futile gesture. Therefore, no inference can be drawn from the Union's failure to file a grievance.

The 1972 reclassification of "Operating Subforeman" in the Los Banos and Midway substations to "Substation Foreman" is more in point. There, the Company's action was quite similar to the present case. The Company's proposed actions were discussed with the Union representative assigned to that part of the SanJoaquin Division at the time, on two or three occasions, and one of the appointees to the newly created exempt position was a shop steward. No grievance was filed.

The question is whether that incident, standing alone, is sufficient evidence of Union acquiescence in an interpretation of the agreement inconsistent with the interpretation which the Union asserts now. Larry Foss, Assistant Business

Manager for the Union, testified that he and others at the Union's headquarters in Walnut Creek had not been aware of that incident before the grievance proceedings leading to this arbitration, and that the Union had no record of any written communications on the subject, though at a later date the parties deleted the "Operating Subforeman" classification from the agreement. Why the Business Representative took no further action--whether because of agreement with the substance of the Company's proposal or with the proposition that the Union's consent was not required--is unclear. The incident is ambiguous at best, and in the face of the considerations discussed above is not sufficient to establish Union acquiescence in the principle for which the Company contends.

It is concluded, therefore, that the Company violated the agreement by its actions in abandoning the classification of CDO and transferring its administrative functions to a classification outside the bargaining unit.

AWARD:

1. The Company violated its 1974-1976 agreement with the Union by its actions in unilaterally abandoning the classification of Chief Distribution Operator and transferring its administrative functions to a classification outside the bargaining unit.

2. Except as the Union may otherwise agree, the status quo prior to the Company's unilateral action is to be restored.

Dated: March 14, 1977

Joseph R. Grodin, Chairman

Robert Gibbs, Union Member

I. Wayland Bonbright, Company Member - dissenting

John Wheat, Union Member

David J. Bergman, Company Member