

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

6 Attorneys for Plaintiff Utility Workers Union
of America, Local 132, AFL-CIO

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

12 UTILITY WORKERS UNION OF
13 AMERICA, LOCAL 132, AFL-CIO,

14 Plaintiff,

15 v.

16 SOUTHERN CALIFORNIA GAS
17 COMPANY, a California corporation;
and DOES 1-10,

18 Defendants.

CV 10-3645 RGK PJW

COMPLAINT FOR BREACH OF
CONTRACT

[29 U.S.C. § 185(a)]

21 Plaintiff Utility Workers Union of America, Local 132, AFL-CIO ("UWUA
22 Local 132" or "Union") alleges as follows:

24 JURISDICTION AND VENUE

25
26 1. This is an action for breach of a collective bargaining agreement.
27 Subject matter jurisdiction exists pursuant to § 301(a) of the Labor Management
28 Relations Act ("LMRA"), 29 U.S.C. § 185(a), and pursuant to 28 U.S.C. § 1331.

1 Venue is proper pursuant to LMRA § 301(c), 29 U.S.C. § 185(c), in that UWUA
2 Local 132 maintains its principal office in this judicial district and also in that its
3 duly authorized officers or agents are engaged in representing or acting for
4 employee members in this judicial district.

5
6 PARTIES
7

8 2. At all material times, plaintiff UWUA Local 132 was and is now a
9 labor organization existing for the purpose of representing employees in collective
10 bargaining concerning the terms and conditions of their employment in an industry
11 affecting commerce within the meaning of LMRA § 301. UWUA Local 132
12 maintains its principal office in Los Angeles County, California.

13
14 3. Plaintiff UWUA Local 132 is informed and believes and thereon
15 alleges that, at all material times, defendant Southern California Gas Company
16 ("the Gas Company") was and is now a corporation qualified to do business in
17 California. The Gas Company is a regulated subsidiary of Sempra Energy. The
18 Gas Company maintains its principal office in Los Angeles County, California. At
19 all material times, the Gas Company was and is now an employer in an industry
20 affecting commerce within the meaning of LMRA § 301.

21
22 4. The true names and capacities of defendants sued herein as Does 1
23 through 10 are unknown to UWUA Local 132, which therefore sues these
24 defendants by fictitious names. UWUA Local 132 will amend the complaint to
25 allege these Doe defendants' true names and capacities when they are ascertained.

26
27 5. UWUA Local 132 is informed and believes and thereon alleges that
28 each of the defendants was at all material times the agent of each other defendant;

1 that each of the defendants was at all material times acting within the course and
2 scope of his, her, or its authority; that the conduct alleged of each defendant was
3 authorized or ratified by each other defendant; and that each defendant is
4 responsible for the acts of the others.

5
6 COLLECTIVE BARGAINING AGREEMENT
7

8 6. At all material times, UWUA Local 132 and Gas Company have been
9 and are now parties to successive collective bargaining agreements (collectively,
10 "CBA") covering more than 5,000 Gas Company full-time and part-time
11 employees.

12
13 7. A Letter of Agreement attached to the CBA provides: "Part-time and
14 full-time temporary employees in bargaining unit positions shall become part of
15 the unit after 520 hours of continuous employment in a 12-month period. . . ."
16 Although the Letter of Agreement contains certain limitations on the application
17 of the CBA to part-time and full-time temporary employees, a Note to the Letter of
18 Agreement specifies that, ". . . part-time and full-time temporary employees are
19 accorded bidding rights under Section 5.10 (Position Opportunity and
20 Placement)."

21
22 8. Article V, Section 5.10 of the CBA, Position Opportunity and
23 Placement, governs bidding for open positions. Section 5.10 provides, *inter alia*,
24 that "[a]ny qualified employee may bid to any other job, provided that his or her
25 current job performance is not rated less than satisfactory" and that "[p]art-time
26 employees shall be eligible to bid for full-time positions based on their seniority
27 calculations as follows: Total hours worked since initial hire by the Company
28 divided by 2080 hours."

1 9. At all times material to the Complaint, Patrick Young (“Young”) has
2 been, and is, employed by the Gas Company as a part-time employee performing
3 in the position of Meter Reader-Part-time. Young is employed within the
4 bargaining unit represented by Local 132. At material times prior to November 5,
5 2009, Young attempted to submit bids for full-time positions for which he
6 believed he was qualified. Young’s attempts to bid were rejected and/or denied.
7 On or about November 5, 2009, Local 132 filed a grievance on Young’s behalf,
8 Grievance No. 09-G-132-4436. The grievance alleged that bids were being
9 denied.

10
11 10. At all times material to the Complaint, Hamed Sadoughi-Yazdi
12 (“Sadoughi-Yazdi”) has been, and is, employed by the Gas Company as a part-
13 time employee performing in the position of Meter Reader-Part-time. Sadoughi-
14 Yazdi is employed within the bargaining unit represented by Local 132. At
15 material times prior to November 12, 2009, Sadoughi-Yazdi attempted to submit
16 bids for full-time positions for which he believed he was qualified. Sadoughi-
17 Yazdi’s attempts to bid were rejected and/or denied. On or about November 12,
18 2009, Local 132 filed a grievance on Sadoughi-Yazdi’s behalf, Grievance No. 09-
19 G-132-4476. Sadoughi-Yazdi is employed by the Gas Company as a part-time
20 employee. The grievance alleged that Sadoughi-Yazdi was denied a bid to Energy
21 Tech Residential (“ETR”) even though he met the minimum requirements. On or
22 about November 24, 2009, the Gas Company sent a letter to Local 132 denying the
23 Union’s grievance and stating its position that, as a part-time employee, Sadoughi-
24 Yazdi does not have the right to file a grievance under the CBA.

25
26 11. At all times material to the Complaint, Mark Steven Cervantes
27 (“Cervantes”) has been, and is, employed by the Gas Company as a part-time
28 employee performing in the position of Meter Reader-Part-time. Cervantes is

1 employed within the bargaining unit represented by Local 132. At material times
2 prior to November 16, 2009, Cervantes attempted to submit bids for full-time
3 positions for which he believed he was qualified. Cervantes' attempts to bid were
4 rejected and/or denied, and Cervantes was also denied the opportunity to interview
5 for full-time positions. On or about November 16, 2009, Local 132 filed a
6 grievance on Cervantes' behalf, Grievance No. 09-G-132-4451. The grievance
7 alleged that bids and interviews for full-time positions were being denied. On or
8 about November 23, 2009, the Gas Company sent a letter to Local 132 denying the
9 Union's grievance and stating its position that, as a part-time employee, Cervantes
10 does not have the right to file a grievance under the CBA.

11
12 12. At all times material to the Complaint, Tin Myint ("Myint") has been,
13 and is, employed by the Gas Company as a part-time employee performing in the
14 position of Meter Reader-Part-time. Myint is employed within the bargaining unit
15 represented by Local 132. At material times prior to November 23, 2009, Myint
16 attempted to submit bids for full-time positions for which he believed he was
17 qualified. Myint's attempts to bid were rejected and/or denied. On or about
18 November 23, 2009, Local 132 filed a grievance on Myint's behalf, Grievance No.
19 09-G-132.4452. The grievance alleged that bids were being denied.

20
21 13. On January 26, 2010, Local 132 sent the Gas Company a letter
22 advising that the grievances filed on behalf of the four employees are a dispute
23 arising between the Union or its members and the Company within the meaning of
24 the CBA's grievance language and reminding the Gas Company that an arbitration
25 had already been held over part-timer bidding, in which the Gas Company had not
26 asserted that the grievance was illegitimate.

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1 14. On or about February 22, 2010, the Gas Company Employee
2 Relations Manager Leonard R. Prymus sent a letter to Local 132 stating “the
3 Company’s position that there has been no agreement to allow grievances to be
4 filed on behalf of part-time employees,” that “disputes arising over the disposition
5 of such claims shall not be subject to arbitration,” and that “your request to
6 consolidate and schedule grievances 4451, 4436, 4476, and 4452 is denied.”
7

8 15. On or about February 9, 2010, Local 132 sent the Gas Company a
9 letter amending and consolidating the grievances of Young, Sadoughi-Yazdi,
10 Cervantes, and Myint into a single complaint by Local 132 over the Gas
11 Company’s refusal of bids to Local 132’s part-time members, including Young,
12 Sadoughi-Yazdi, Cervantes and Myint. The letter states that the consolidated
13 grievance is a dispute between the Union or its members and the Gas Company.
14

15 16. The Gas Company has asserted the position, and continues to assert
16 and act on the position, as to Young, Sadoughi-Yazdi, Cervantes and Myint, that
17 part-time employees are not eligible to assert violations of Section 5.10 under the
18 grievance procedure of the CBA.
19

20 17. Local 132 is informed and believes, and based on such information
21 and belief alleges, that the Gas Company has programmed its computerized
22 bidding system to reject, cancel, and/or otherwise deny bids and attempts to
23 submit bids of part-time employees for full-time positions for which they are or
24 may be qualified, including bids and attempts to submit bids by Young, Sadoughi-
25 Yazdi, Cervantes and Myint.
26

27 18. Local 132 is informed and believes, and based on such information
28 and belief alleges, that the Gas Company has implemented policies of not allowing

1 part-time employees to bid on and be awarded full-time positions and of hiring
2 employees from outside the Gas Company in preference to promoting employees
3 from within the Gas Company who possess equivalent qualifications and/or
4 experience, from work, training, or experience gained inside and/or outside the
5 Gas Company.

6
7 CLAIM FOR RELIEF FOR BREACH OF CBA
8

9 19. UWUA Local 132 realleges paragraphs 1 through 18, inclusive,
10 above as if set forth here in their entirety.

11
12 20. Defendant Gas Company's refusal to process bids and attempts to
13 submit bids by part-time employees for full-time positions, including bids of
14 Young, Sadoughi-Yazdi, Cervantes and Myint, violates Section 5.10 of the CBA,
15 the Letter of Agreement and such other sections of the CBA which may be
16 dependent on or related to interpretation of Section 5.10.

17
18 21. UWUA Local 132 has exhausted all grievance procedures in the CBA
19 and/or alleges that further efforts to exhaust such procedures are, and will be,
20 futile. The Gas Company having taken the position that the grievance and
21 arbitration procedures in the CBA do not apply to part-time employees, Local 132
22 sues directly under LMRA Section 301 for the Gas Company's violation of the
23 CBA, including but not limited to Section 5.10 of the CBA and the Letter of
24 Agreement, in refusing to process bids and attempts to submit bids by part-time
25 employees for full-time positions, including the bids of Young, Sadoughi-Yazdi,
26 Cervantes and Myint.

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WHEREFORE, UWUA Local 132 prays for:

1. A declaration that the Gas Company violated the CBA in its application of Section 5.10 of the CBA, the Letter of Agreement and such other sections of the CBA which may be dependent on or related to interpretation of Section 5.10, to bids by part-time employees for full-time positions, including bids of Young, Sadoughi-Yazdi, Cervantes Myint, and any other part-time employees whose bids or attempts to bid were rejected, cancelled or otherwise denied in whole or in part based on their part-time status;

2. Damages, in an amount to be determined, for rejection, cancellation, and/or denial of bids submitted by or attempted to be submitted by Young, Sadoughi-Yazdi, Cervantes, Myint and any other part-time employees whose bids or attempts to bid were rejected, cancelled, or otherwise denied in whole or in part based on their part-time status;

3. Judgment in accordance with proof;

4. Costs of suit and an award of reasonable attorneys' fees; and

5. Such other and further relief as the Court deems just and proper.

DATED: May 14, 2010

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By: 
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