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| International Brotherhood of Electrical Workers Local 1245<br><br>and<br><br>Pacific Gas & Electric Company | Arbitration Case #15<br><br>Issue: In the interpretation and application of Title 102 and Title 210 of the Agreement between the Company and Union entered into on September 1, 1952, and as thereafter amended, may a probationary employee exercise the right to process a grievance relating to his "lay off" (as the Company contends) or his "involuntary termination" (as the Union contends) other than for lack of work? |
| Review Case #197 | |
| San Francisco Grievance #95 | Date of Opinion: Jan. 23, 1961 |

## BACKGROUND

On February 4, 1959, W was employed as a laborer on a temporary basis, pending an expectant vacancy in the San Francisco Gas Street Department.

On February 20, 1959 he filled an authorized vacancy as a probationary Laborer succeeding another employee.

On August 3, 1959, We was laid off and the reason for terminating his employment was "not suited to this type of work".

Union upon request was given the reason verbally for the termination of Weible's employment, but their request in writing pursuant to Section 102.14 was denied.

Division disagreed with Union that this lay-off or discharge of probationary employees was a proper subject under the grievance procedure.

Union filed a formal grievance by letter dated August 5, 1959, and the Division replied by letter dated August 11, 1959.

The grievance was discussed in the Joint Grievance Committee Meetings on August 6 and September 3, 1959. At the September 3 meeting of the Joint Grievance Committee, Union requested that the grievance be referred for Review.

The dispute before the arbitrator relates solely to the question of whether or not a probationary employee may process a grievance relating to his termination other than for lack of work. It in no way involves the merits of the employee's termination.

## POSITION OF THE UNION

The Union contends that laying off an employee who is one day short of six months' service on the ground that he is unsuited to the type of work he is performing is not a lay off, but is in fact a discharge.

The Union argues that lay off means an involuntary termination for reasons other than cause, the best example of which is lay off in connection with reduction of force or lack of work. Discharge is an involuntary termination which involves fault on the part of the employee or lack of ability on his part. Since the terms lay off and discharge are used separately in the Agreement, the parties recognize the sharp distinction between the two. It follows, therefore, that termination for reasons other than lack of work, is a discharge and not a lay off.

Discharges as such are not enumerated in the Contract. Moreover, discharges are not within the concept of "similar rights and privileges". For these reasons the Union believes it may rightfully raise a grievance concerning the propriety of discharging a probationary employee under Section 102.6 although the Union admits that the same standards of just cause may not apply to a probationary employee as they apply to a regular employee. The Union noted that the Contract does not include any standards governing the discharge of a regular employee but that such discharges are clearly subject to the grievance procedure.

## POSITION OF THE COMPANY

The Company first calls attention to the Joint Statement of Facts set forth above and in particular, paragraph 3, which reads as follows:

> "On August 3, 1959, W____ was laid off and the reason for terminating his employment was 'not suited to this type of work'."

On this basis, the Company urges the Arbitration Board to find that the case involves a "lay off" and to enter judgment in favor of the Company by applying Section 210.2 wherein the lay off of a probationary employee is not subject to challenge.

Company contends that Section 210.2 specifically states that a probationary employee does not acquire any rights whatsoever concerning certain enumerated subjects, one of which is lay off, and the Company submits that Weible's termination was clearly a lay off.

Company indicated that they gave up the requirement by which a probationary employee had to qualify for a regular job upon completion of six months' service. Now, upon completion of the probationary period, an employee who is continued in employment automatically becomes a regular employee.

Company further testified that a probationary employee could not raise grievances in respect to certain subjects enumerated in Section 210.2. They said the Union gave up provisions permitting probationary employees to bid on regular jobs and to receive notice of lay off. Although the probationary employee had the right to raise a grievance concerning some matters, he was precluded from submitting a grievance on the enumerated subjects in Section 210.2 as well as in respect to "similar rights and privileges". These rights and privileges were characterized as arising from the probationary employee's employment with the Company and the benefits he accrued from seniority. Company

said that out of approximately 500 terminations a year which involved probationary employees, only one grievance was raised in the past and this grievance was subsequently dropped.

In its concluding statement, Company argued that the term "lay off" was broad enough to include "involuntary termination" for any reason. In that event the Company argued that involuntary termination "clearly fell within the 'similar rights and privileges' phrase of Section 210.2". The Company contended that in giving up the right to require a probationary employee with six months of service to qualify for a regular job, it gained the unrestricted right to terminate a probationary employee for any reason at any time during the probationary period. The Company urged that the meaning of "probationary" in itself carries with it the right of the employer to terminate a probationary employee without challenge through the grievance procedure.

## DISCUSSION

There is no dispute between the parties concerning the right of the Company to lay off a probationary employee for lack of work without challenge under the grievance procedure. The controversy concerns the construction of the term "lay off" and whether the Company's action was a lay off under the Agreement. Whether there is a distinction between lay off and discharge under the Agreement and whether there is any consequence connected with it, is essential to the resolution of the question before the Arbitration Board and is therefore properly subject to the grievance procedure under Section 102.6(c).

A review of Titles 102, 206 and 210 indicates that the parties referred to lay off and discharge separately and individually. The terms are not used interchangeably and there is no evidence to support the conclusion that discharge is included in the term lay off.

Further discussion brought out the fact that the parties agreed that probationers did have some rights under the grievance procedure. Through analysis of the Contract, the Arbitrator concluded that in cases of discharge of a probationary employee subject to the grievance procedure, the Company must, upon request of the Union, state in writing the reason for such discharge.

Applying Section 102.13, a probationary employee who was wrongfully discharged for violating a Company rule, practice or policy would be entitled to reinstatement. A probationary employee who was permanently laid off during a time of reduced working opportunity has no redress.

Yet, if the discharge of an employee is effected, it carries with it an inference of personal fault, misconduct or occupational dereliction of duty. In such instances, this could prejudice the employee's job opportunities elsewhere. If an employee is faced with discharge and its attendant consequences, the Chairman finds that a probationary employee has the right, to a limited extent under this Agreement, to set the record straight in respect to the charges made by the employer.

Probationary employees may be laid off permanently on grounds of lack of work without regard to seniority. In selecting probationary

employees to lay off, the Company may make such selections without regard to seniority and base its decision on job performance in general as contrasted with violation of rules, practices or policies. The probationer has no right under lay off to challenge such selection.

However, the Chairman concludes that the probationary employee has the right to challenge a discharge through the grievance procedure if such discharge is made due to a violation of a Company rule, practice or policy since the attendant consequences of such a discharge are considerably more serious and are a reflection upon the employee's character.

## FINDINGS

1. The Union is not estopped from pursuing an interpretation of the Agreement by reason of the Joint Statement of Facts signed by the Union and the Company.

2. Discharge or involuntary termination of a probationary employee is not included in the term lay off in Section 210.2 of the Agreement.

3. The Company is obliged upon request of the Union to state the reason for discharge of a probationary employee in accordance with Section 102.14 of the Agreement.

4. The Union has a limited right to process a grievance relating to the discharge or involuntary termination of a probationary employee, if such discharge is based upon violation of a Company rule, practice or policy.

## AWARD

In the interpretation and application of Title 210 of the Agreement between the parties, a probationary employee may exercise the right to process a grievance relating to his involuntary termination, as distinguished from lay off, for violation of a Company rule, practice or policy.

/s/ V. J. Thompson
/s/ R. B. Hinman
/s/ L. L. Mitchell - Dissent
/s/ Kenneth E. Stevenson - Dissent
/s/ Laurence P. Corbett, Chairman

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