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8 IN ARBITRATION PROCEEDINGS PURSUANT
9 TO SECTION 102.12 OF COLLECTIVE BARGAINING
10 AGREEMENT EFFECTIVE JULY 1, 1963
11

12 In the Matter of a Controversy)

13 between

14 LOCAL UNION NO. 1245 OF
INTERNATIONAL BROTHERHOOD OF
15 ELECTRICAL WORKERS, AFL-CIO,

16 and

17 PACIFIC GAS AND ELECTRIC
COMPANY,
18

19 Involving allegedly unjust
demotion of ██████████ B█████████.
20

OPINION AND AWARD

OF

BOARD OF ARBITRATION

21 This Arbitration arises pursuant to Agreement between
22 LOCAL UNION NO. 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
23 WORKERS, AFL-CIO, hereinafter referred to as the "Union," and
24 PACIFIC GAS AND ELECTRIC COMPANY, hereinafter referred to as
25 the "Company," under which Adolph M. Koven was selected to
26 serve as Chairman of a Board of Arbitration composed of Arthur
27 M. Kezer and E. C. Drew for the Company and Shirley M. McPherson
28 and Daniel J. McPeak for the Union, and under which the Award
29 of the Board of Arbitration would be final and binding upon
30 the parties.
31

1 APPEARANCES:

2 On behalf of the Union:

3 MESSRS. NEYHART & GRODIN by JOSEPH R. GRODIN, Esq.,
4 Attorneys at Law
5 Russ Building
6 San Francisco, California;

7 On behalf of the Company:

8 L. V. BROWN, Esq.
9 Attorney at Law
10 Pacific Gas and Electric Company
11 245 Market Street
12 San Francisco, California

13 HENRY J. LAPLANTE, Esq.
14 Attorney at Law
15 Pacific Gas and Electric Company
16 245 Market Street
17 San Francisco, California.

18 ISSUE

19 Will the demotion of the grievant be sustained?

20 FACTS

21 The grievant was first employed in 1957 and has been a
22 Gas Service Man since 1960. He was demoted to the job of
23 Helper on February 12, 1966, as a result of charges of immoral
24 conduct which were made by Mrs. P [REDACTED], a customer, on
25 February 5, 1966, and after the Company investigated those
26 charges (Tr. 5-6, 18, 52, 69-70, 80-81).

27 The P [REDACTED] Incident:

28 The grievant arrived at customer P [REDACTED]'s residence
29 about 9:00 AM in response to a phone request to repair the gas
30 heater (Tr. 18, 81). Mrs. P [REDACTED], a 15-year-old pregnant
31 housewife wearing a bathrobe, who was alone in the house,
32 answered the door, let the grievant in and showed him the heater
in the living room (Tr. 20-21, 24, 33, 38, 73, 81). While the
grievant was working on the heater, Mrs. P [REDACTED] was sitting
on a couch across the room (Tr. 27, 82). Mrs. P [REDACTED] tes-
tified that the grievant was working on the heater for 20 to

1 25 minutes or longer during which time he played with the dog,
2 and talked about his dog and two daughters, one of whom he said
3 was one or two years younger than Mrs. P [REDACTED] (Tr. 19, 27,
4 36). The grievant testified that he spent five to six minutes
5 working on the heater, that he knocked the dog away when it
6 came to him, and that he advised Mrs. P [REDACTED] about keeping
7 the heater clean (Tr. 81-83).

8 Mrs. P [REDACTED] testified that the grievant asked if
9 anything was wrong with the stove; that, even though she
10 answered, "No," he walked into the kitchen and took off the
11 top burners, and that the following conversation and action
12 then took place: The grievant asked Mrs. P [REDACTED] if she was
13 just married, and when Mrs. P [REDACTED] answered, "Yes," the
14 grievant asked, "Do you like it better now than you did before?"
15 and when Mrs. P [REDACTED] again answered "Yes," the grievant
16 asked, "What's the matter, didn't you get enough?" Mrs. P [REDACTED]
17 [REDACTED] said that was not what she meant, and when she started to
18 walk from the kitchen, the grievant stepped in front of her and
19 "placed his hands on her below the waist" after which he stepped
20 back, apologized and asked Mrs. P [REDACTED] not to tell her hus-
21 band, that he had lost his head, and that he did not know what
22 he was doing. He said, "If you don't tell him, I'll come and
23 clean your heater in my spare time." (Tr. 19-20, 28-9) The
24 grievant admitted checking the stove after Mrs. P [REDACTED] had
25 told him of a yellow flame on the stove, but he denied any
26 conversation of the kind testified to by Mrs. P [REDACTED], and
27 denied standing any closer than three feet from Mrs. P [REDACTED]
28 (Tr. 83-5). The grievant testified that he was at the P [REDACTED]
29 residence about ten minutes and that Mrs. P [REDACTED] was not
30 upset when he left (Tr. 85).

31 Mrs. P [REDACTED] testified that after the grievant left,
32 she got dressed, went to a neighbor's home, related some of

1 what had happened, was given sedatives, and was picked up by
2 her mother (Tr. 19, 21, 30). A Company representative who
3 interviewed the neighbor said that the neighbor found Mrs.
4 P [REDACTED] hysterical, and had difficulty finding out what had
5 happened (Tr. 53-4).

6 The grievant testified that the following series of
7 events occurred after he left the P [REDACTED] residence: (1)
8 he went to a residence close by to read the meter but was un-
9 able to do so since the gate was locked as it had been the
10 previous day, and he did not bother to change the card which
11 he had left the previous day (contrary to Company practice,
12 which requires another card or changing the date on the old
13 card when a following call is made), and he left at 9:15 AM
14 (Tr. 86, 94); (2) he drove two and one-half miles and read a
15 meter at 6240 Washatch; (3) he then drove to 5000 Springfield,
16 arriving about 9:30 AM (Tr. 87). He spent 45 minutes adjusting
17 the range with the customer present, and during which time a
18 garbage truck was across the street (Tr. 87-8); (4) the
19 grievant then drove to a cafe to meet another serviceman,
20 arriving at 10:25 AM (Tr. 89). The driver of the garbage
21 truck remembered seeing the grievant on February 5, 1966, at
22 5000 Springfield between 9:30 and 10:00 AM (Un. Ex. 1).

23 Mrs. P [REDACTED] testified that the serviceman wore
24 glasses (Tr. 25-26). The grievant and his wife both testified
25 that the grievant does not wear glasses (Tr. 81, 93, 108).

26 Company Investigation:

27 On February 5, 1966, Mrs. P [REDACTED]'s mother telephoned
28 the Company and stated that a serviceman molested her daughter
29 (Tr. 38, 57). Two Company representatives went immediately to
30 the mother's home where they found Mrs. P [REDACTED] hysterical
31 and incoherent and could not interview her for 15 minutes (Tr.
32 39, 57). When she could speak, three sets of notes were made

1 by Company representatives of Mrs. P██████'s statements (Tr.
2 39, 42, 57).

3 When they left at 12:10 PM, the Company representatives
4 did not know the identity of the serviceman who was accused of
5 molesting Mrs. P██████, but one said to the other that it
6 was the grievant because of the grievant's involvement in a
7 1962 complaint which bore similarities to Mrs. P██████'s
8 statement (in the 1962 incident, the grievant was off work for
9 one day and was reinstated with back pay) (Tr. 39-40, 49-50,
10 60, 90). In the 1962 incident as well as in the P██████
11 incident, the Company testified that the grievant made essen-
12 tially the same statement: "Well, if you don't tell your hus-
13 band or you don't tell anybody, I will come back on my day off
14 and work on your heater."

15 When the Company representatives returned to the Company
16 office, they checked the records which showed that the service-
17 man who called on Mrs. P██████ was the grievant (Tr. 44, 50).
18 A meeting was held that afternoon at which the grievant, in
19 the presence of the shop steward, was confronted with the state-
20 ments of Mrs. P██████ (Tr. 50-52).

21 On the following day, three Company representatives
22 again interviewed Mrs. P██████ and they confirmed her state-
23 ments of the previous day (Tr. 52-53, 70).

24 The Company testified that the duties of its servicemen
25 include performing domestic and commercial service work, adjust-
26 ing gas appliances, etc., and that they work alone and unsuper-
27 vised. Helpers do not go into people's homes and only work
28 under direct supervision (Tr. 55-56).

29 Mrs. P██████ filed a claim against the Company alleg-
30 ing that the grievant placed a hand under her bathrobe and
31 touched her in the area of her genitals (Tr. 24, 72-3).

32 The Union requested that the joint investigating

1 committee conduct a joint interview of Mrs. P [REDACTED] and her
2 neighbor, but the Company refused although it did not attempt
3 to stop any interview by the Union (Tr. 103-104). The record
4 does not reflect that the Union interviewed Mrs. P [REDACTED].

5 DISCUSSION

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7 In this case a service man of the Gas Company was
8 charged by a female customer with having made immoral advances
9 to her. As a result, the employee was demoted to a non-customer-
10 contact job, which carried a lower rate of pay. Since essen-
11 tially all we have by way of evidence in this case is the
12 customer's charge of immoral conduct against the grievant counter-
13 posed only by the grievant's denial, a central question becomes
14 what quantum of proof is required of the Company in order for
15 it to justify the man's demotion.

16 The Arbitrator agrees with the Union that where dis-
17 charge occurs for alleged misconduct involving the stigma of
18 general social disapproval, the evidence must be clearly and
19 convincingly established, that is, beyond a reasonable doubt.
20 But the Union goes further and says that if the alleged conduct
21 involves general social disapproval, and demotion, not discharge,
22 results, the same standard of proof beyond a reasonable doubt
23 should nonetheless be required.

24 The Arbitrator does not agree with the Union that the
25 required quantum of proof in discharge cases involving general
26 social disapproval automatically applies to demotion cases. To
27 always require this standard in demotions disregards the object-
28 ive reality that demotion, unlike discharge, generally carries
29 less social stigmata, and that demotion, unlike discharge, does
30 not sever the employment relationship but instead looks to a
31 continuance of it. Obviously when an individual is retained in
32 employment, his social image ordinarily has not been altered as

1 much as when he is expelled from employment. For example, in
2 demotions generally no loss of plant seniority and no loss of
3 other contractual rights occur and the dilution of one's social
4 standing is not held out for all the world to see and judge
5 in the same way as in the case of discharge. That is not to
6 say that every demotion should automatically require a lesser
7 standard of proof. For example, if the demotion were a subter-
8 fuge and was imposed as a substitute for discharge because the
9 Company knew it would be unable to satisfy a higher quantum of
10 proof, or if the demotion held the grievant up to serious oblo-
11 quy among his co-workers or others comparable to that which
12 would be created by discharge (e.g. where the demotion had
13 harsh punitive connotations as in the case of a long-term tool
14 and die maker who is demoted to the job of a janitor), the
15 greater quantum of proof under those circumstances would seem
16 more appropriate. But in a so-called "bona fide" demotion
17 case involving moral turpitude, other relevant factors in addi-
18 tion to the extent of social disapproval may be considered in
19 establishing what quantum of proof is to be required. The
20 inquiry is not so much for the arbitrator to decide whether the
21 grievant actually performed the act with which he is charged,
22 but rather whether the Company had reasonable or sufficient
23 cause to insulate the grievant from public contact. To deter-
24 mine that question is a relatively objective matter since the
25 focus becomes what the Company did by way of investigation,
26 issues of credibility, the weight of the testimony for and
27 against the grievant, and the particular requirements, if any,
28 of the Company's business operations.

29 (1) An underlying important and seriously relevant
30 factor in this case is that this Company is a public utility
31 widely engaged in a public-contact type of business. There is
32 not one home in the community which it does not service. A

1 primary requirement of its operation is to exercise great
2 caution in sending employees into the homes of its customers.
3 Furthermore, because of its widespread contact with the public,
4 the Company is particularly sensitive to litigation. Assume
5 for the moment that the Company retained in a public-contact
6 position a person whom it had reasonable cause to believe
7 might engage in immoral conduct but whose guilt beyond a reason-
8 able doubt had not been established. If in the future that
9 person actually engaged in such conduct, the Company would
10 obviously be vulnerable to public criticism and to private
11 litigation that might involve serious charges of gross negligence
12 and punitive damages.

13 (2) Two Company representatives on the day the com-
14 plaint was made, and three Company representatives shortly
15 thereafter on a second occasion, interviewed Mrs. P██████████.
16 The results of those two interviews were consistent with each
17 other and substantially consistent with Mrs. P██████████'s testi-
18 mony at the hearing. Furthermore, the grievant was promptly
19 confronted by the Company with the charges against him. The
20 fact that it did so and the manner in which the Company con-
21 ducted its investigation points to the conclusion that the prob-
22 lem was a serious problem to the Company and that it sincerely
23 desired to reach a fair appraisal of the facts. Aside from
24 Mrs. P██████████'s bare charge and the grievant's bare denial,
25 the only major conflict in the testimony occurred on how long
26 the grievant was present in the P██████████ residence. The griev-
27 ant says that he was there for ten minutes; Mrs. P██████████ says
28 he was there for forty minutes. Evidence was produced that the
29 grievant completed a number of assignments after leaving the
30 P██████████ residence, which was intended to show that he could
31 not have been at the P██████████ residence for 40 minutes. How-
32 ever, the evidence did not establish with certainty the exact

1 time he actually spent in her home. Irrespective of which
2 version is accepted, the actions which Mrs. P [REDACTED] complained
3 of obviously could have taken place in either time period with
4 the result that this particular testimonial conflict on how long
5 the grievant actually spent in the P [REDACTED] house need not be
6 resolved nor does this point become a major strategic fact.

7 (3) The fact that the grievant had been charged with
8 similar misconduct in a prior incident some years before does
9 not in itself prove that the grievant actually engaged in the
10 misconduct which Mrs. P [REDACTED] charges or even that he actually
11 engaged in that prior misconduct. What is particularly signi-
12 ficant about that prior incident is that a Company employee
13 recalled that the grievant was charged with using language
14 which was so similar to that used in the P [REDACTED] cases that
15 one of the Company investigators was able, because of that re-
16 membrance, to independently connect the grievant to the P [REDACTED]
17 situation even before he actually knew that the grievant was
18 the specific person charged by Mrs. P [REDACTED]. Admittedly,
19 this evidence is hearsay to prove that the grievant actually
20 made that statement on that prior occasion since the person who
21 charged the grievant with that original statement was not pres-
22 ent at the hearing. However, when added to the Company's own
23 full investigation, this evidence has great vitality in estab-
24 lishing the Company's state of mind and that it had reasonable
25 cause to believe that the incident as described by Mrs. P [REDACTED]
26 actually occurred.

27 (4) The only way in which the credibility of Mrs. P [REDACTED]
28 [REDACTED] might have been put in issue is whether she had psychologi-
29 cal problems which would cause her to give false testimony.
30 Based upon the record, nothing was shown to lead to the conclu-
31 sion that her testimony should not be credited for this reason.
32 It is true that she sought psychiatric treatment after the

1 incident, but no showing was made that any psychiatric disturb-
2 ance was present before the incident occurred. That she is a
3 young girl of fifteen and was pregnant at the time of the
4 incident understandably raises some suspicion of her emotional
5 stability, but obviously that fact standing alone cannot become
6 the determinative fact to conclude that her testimony cannot be
7 believed.

8 A troublesome basic aspect to this case is that if we
9 assume that the incident never occurred at all and if the
10 grievant is really blameless, it is impossible to understand
11 why Mrs. P [REDACTED] would charge him with immoral conduct. We
12 might speculate about her motivation and state of mind but there
13 is no proof that she concocted the story against him. No show-
14 ing was made that she was hallucinating and no proof of personal
15 animosity against the grievant was produced. The only remaining
16 factor which is potentially susceptible of some inference to
17 her disadvantage is that following the incident Mrs. P [REDACTED]
18 filed suit against the Company for damages. But again that
19 fact standing alone in the absence of other proof to show that
20 the incident did not in fact occur does not lead to the conclu-
21 sion that she actually fabricated her charges against the griev-
22 ant for personal gain. Testimony by Mrs. P [REDACTED] as well as
23 by the Company that she was genuinely hysterical when she went
24 to her neighbor's house immediately following the incident is
25 clearly entitled to be credited, and no evidence was produced
26 that she communicated with anyone between the time of the incid-
27 ent and the time she went to the neighbor's house. One cannot
28 therefore come to the conclusion that she had anyone's help
29 during that short interval immediately following the incident
30 in fabricating a story for personal gain.

31 A last, but minor, discrepancy in the testimony of the
32 grievant and Mrs. P [REDACTED] involves a statement by the grievant

1 that he had no personal conversation with her during the time
2 he was in her home. But Mrs. P [REDACTED] says the grievant told
3 her that he had a daughter within a couple of years of her own
4 age. At the hearing the grievant specifically denied this con-
5 versation although the fact is that he does have a daughter of
6 that age. Somewhat of a doubt as to the grievant's credibility
7 therefore arises since Mrs. P [REDACTED] most probably would have
8 had no way of knowing this fact other than through the conver-
9 sation with the grievant on the day of the incident.


10 One of the major implied thrusts of the Union's position
11 is that Mrs. P [REDACTED]'s testimony and charges should be rejected
12 because it is extremely difficult to show she was not to be
13 believed. The Arbitrator grants that it would indeed be ex-
14 tremely difficult, if not impossible, to show that Mrs. P [REDACTED]
15 [REDACTED] perjured herself. But the actual fact of the matter is
16 that she was not shown to have perjured herself and though her
17 testimony, because of her pending suit against the Company,
18 became self-serving, so to speak, a posteriori, so is the
19 grievant's testimony self-serving. To disbelieve her solely
20 for the reason that it is difficult or impossible to disprove
21 her testimony would be an improper basis for deciding the case,
22 and the more appropriate approach to this factual situation is
23 whether the Company had reasonable and sufficient cause to in-
24 sulate the grievant from public contact. In this connection,
25 the following factors cannot be disregarded: that the results
26 of the Company's bona fide investigation led it to sincerely
27 believe that the grievant had engaged in the conduct with which
28 he was charged; that no persuasive evidence was developed which
29 would require that Mrs. P [REDACTED]'s testimony should be dis-
30 believed; and that the grievant's probable use of the same
31 words both on the P [REDACTED] occasion and on a prior occasion,
32 namely, "if you don't tell your husband or you don't tell any-

1 body, I will come back on my day off and clean your heater"
2 could legitimately be used by the Company to confirm the judgment
3 of his guilt which emerged as a result of its bona fide investi-
4 gation. When the character of the Company's business and its
5 relationship to the public, its sensitive vulnerability to pri-
6 vate litigation and to public criticism, is added to the combin-
7 ation of factors in the grievant's disfavor, the Arbitrator can
8 only conclude that the Company had the right to remove him from
9 his public-contact job. In the Arbitrator's opinion, the
10 Company's action is to be sustained despite the fact that if
11 the proof against the grievant required a quantum of proof
12 beyond a reasonable doubt, the case against him could not sur-
13 vive.

14 Whether there were non-public-contact jobs elsewhere
15 with the Company, which would not be considered demotions and
16 for which the grievant was qualified, was not indicated in the
17 record. It can only be assumed that there were none, which
18 would then justify the placing of the grievant in a lower
19 paying position in order to preclude him from working in a
20 public-contact position.

21 A W A R D

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23 The demotion of the grievant is sustained.

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25 DATED: 2/27/67
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28 Adolph M. Koven, Chairman of
Board of Arbitration

29 (Other signatures on following page.)
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Arthur M. Kezer
Arthur M. Kezer, Company Board Member

Dated: Feb 27 1967

E. C. Drew
E. C. Drew, Company Board Member

Dated: Feb 27 1967

Shirley M. McPherson, Union Board Member

Dated: _____

Daniel J. McPeak, Union Board Member

Dated: _____

DISSENT:

Arthur M. Kezer, Company Board Member

Dated: _____

E. C. Drew, Company Board Member

Dated: _____

Shirley M. McPherson
Shirley M. McPherson, Union Board Member

Dated: February 27, 1967

Daniel J. McPeak
Daniel J. McPeak, Union Board Member

Dated: February 27, 1967