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6 IN ARBITRATION PROCEEDINGS PURSUANT TO TITLE 102.5 OF THE
7 CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES
8

9
10 In the Matter of a Controversy)
11 between)
12 INTERNATIONAL BROTHERHOOD OF)
13 ELECTRICAL WORKERS, LOCAL UNION)
14 NO. 1245,)
15 and)
16 PACIFIC GAS & ELECTRIC COMPANY,)
17 Involving the discharge of)
18 a Gas Serviceman.)

OPINION AND AWARD
OF THE
BOARD OF ARBITRATION

19 This Arbitration arises pursuant to Agreement between
20 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO.
21 1245, hereinafter referred to as the "Union," and PACIFIC GAS AND
22 ELECTRIC COMPANY, hereinafter referred to as the "Company," under
23 which ADOLPH M. KOVEN was selected to serve as Chairman of a Board
24 of Arbitration which was also composed of VERNON D. LOVEALL, Union
25 Board Member; LEO JAMESON, JR., Union Board Member; DAVID J.
26 BERGMAN, Company Board Member; and CHARLES A. MILLER, Company
27 Board Member; and under which the Award of the Board of Arbitra-
28 tion would be final and binding upon the parties.

29 Hearing was held on August 11, 1976, in San Francisco,
30 California. The parties were afforded full opportunity for the
31 examination and cross-examination of witnesses, the introduction
32 of relevant exhibits, and for argument. Both parties filed

1 post-hearing briefs.

2 APPEARANCES:

3 On behalf of the Union:

4 JEROME M. GARCHIK, Esq.
5 Neyhart & Anderson
6 100 Bush Street, Suite 2600
7 San Francisco, California 94104

8 On behalf of the Company:

9 L. V. BROWN, Esq.
10 Industrial Relations Department
11 Pacific Gas & Electric Company
12 245 Market Street
13 San Francisco, California 94105

14 ISSUE

15 Was the discharge of the grievant, a
16 Gas Serviceman, in violation of the parties' Physical
17 Labor Agreement dated September 1, 1952, as last
18 amended?

19 FACTS:

20 The grievant, a gas serviceman, had 14 years' employment
21 service at the time of his discharge. He was discharged in
22 April 1976 because of his conduct stemming from a service call on
23 March 21, 1976. He was charged with leaving a hazardous condition
24 at the customer's premises and failing to follow Company proce-
25 dures with respect to that service call.

26 On Sunday, March 21, the grievant was not working, but he
27 was on call for emergencies. He generally worked in Madera and
28 Chowchilla. About 5:00 p.m. on March 21, an employee named T
29 in Firebaugh, who was not a gas serviceman, was notified by the
30 police that a gas leak had occurred at an address on Tenth Street
31 in Firebaugh. The police stated that he turned the gas off and
32 that he tried without success to contact another employee who was
on call for emergencies. T went with the policeman to the
Tenth Street address, and the policeman showed him the place where
the leak in a meter in the back yard of the residence had occurred.
Two meters served a front and rear house on the same property.

1 Both houses were served by the same power service line. T
2 noticed that the gas cock on the meters had been shut off.

3 T told the occupant of the front house that the
4 service would be resumed that evening because the problem was the
5 Company's responsibility. The customer told T that gas had
6 been leaking from the vent; that he had placed his finger over
7 the top of the vent; and that fire had flashed back from the
8. water heater inside the house; and that since he was afraid the
9 house would catch fire, he called the police.

10 T called the Distribution Operator, who tried without
11 success to contact Company employees who lived close to Firebaugh
12 and who could handle the problem. Finally, around 8:00 p.m. he
13 telephoned the grievant, whose home was in Madera, some distance
14 from Firebaugh. The grievant arrived in Firebaugh about 9:00 p.m.,
15 and after an unsuccessful attempt to find the right house, he
16 found the correct address but was afraid to enter the yard because
17 a dog was barking and a "Beware of Dog" sign was posted on the
18 gate leading to the yard where the meters were located.

19 The grievant telephoned the Distribution Officer to report
20 that he could not get into the yard because of the dog, and the
21 Distribution Officer sent T to help the grievant. The grie-
22 vant told T when he arrived that the customer was not at home
23 and that he could not get into the house. T suggested that
24 the grievant leave a note in the customer's door stating that the
25 Company had sent someone out to correct the problem. The grievant
26 made out a card on a Company form indicating that he had tried to
27 get into the house to fix the problem. T started to drive
28 away from the house, and then he remembered that he had told the
29 customer that service would be restored that evening. T
30 therefore decided to drive around the block to a cafe to see if he
31 could locate the customer so that he could admit the grievant to
32 his house. T returned in a few seconds, and he testified

1 that when he got back the grievant had already left. The grievant
2 made no repairs or tests in T 's presence.

3 The grievant testified as follows: Tl did not see him
4 when he returned from the cafe where he was looking for the
5 customer because the grievant had moved his car. He tested the
6 meter after T left and determined that a leak in the regula-
7 tor had occurred. Initially, he took the pressure, getting a
8 reading of 7 or 8 digits, which indicated that the regulator was
9 functioning normally. He wrote those numbers on a Company form.
10 However, after making a test called the lock-up test, the pressure
11 started to slip, indicating a faulty regulator. He also conducted
12 a "soap test" on the regulator. In this test, soap is placed
13 around the vent to see if a bubble forms. The soap bubbled up,
14 indicating some malfunction in the diaphragm on the meter.

15 The grievant decided that the regulator would have to be
16 replaced "sometime" but that it did not make any sense to do so at
17 that particular time. He decided that he could not restore service
18 in any event since in order to do so he would be required to go
19 inside the house. No leak investigation was made because in order
20 to do so he would have to go inside. The grievant then shut off
21 the cocks, sealed both meters with steel discs, and left. The
22 customer service tag which he filled out and turned in to the
23 Company did not record that the regulator was leaking at the Tenth
24 Street address. Gas service could not be reconnected by the
25 customer after the grievant left the house unless two of the ser-
26 vice cocks were turned on by a hand wrench.

27 The next morning, a supervisor in the Company's Merced
28 headquarters investigated the grievant's conduct at the Firebaugh
29 address because a complaint was lodged that the grievant had
30 failed to restore service. The Company sent another employee to
31 the house to restore service, and he removed the meter with the
32 leaky regulator. Upon examination of the regulator it was

1 discovered that the vent had no cap, that there was a tear in the
2 diaphragm, and that a cigarette butt had been stuffed into the
3 regulator. The supervisor testified that a regulator with a hole
4 in it would not show a pressure of 7 or 8 digits which the grie-
5 vant had indicated on the tag, and the supervisor suspected that
6 the grievant had failed to take the pressure.

7 In addition, the supervisor performed a soap test, which
8 the grievant also testified he had made. No bubble formed when
9 the soap test was performed. The supervisor had placed the meter
10 in his Company car after it was removed from the Firebaugh address;
11 the grievant testified that the diaphragm of the meter could have
12 been further damaged by bouncing around in a car.

13 After discussions with various other supervisors, the
14 grievant was discharged in early April for failing to follow
15 Company rules in various respects. Basically the reasons fell into
16 two categories: leaving a hazardous condition at the residence,
17 and failing to keep records as specified in Company rules. In the
18 first category he was accused of failing to make a leak investiga-
19 tion, improperly sealing the meters because they did not contain
20 solid swivels and had only one washer, failing to replace the
21 leaking regulator, and failing to seek supervisory guidance. In
22 the second category, he failed to note that the leak source was at
23 the regulator, failed to tell the customer on the card that he left
24 why the gas was turned off, and failed to write a field service tag
25 for follow-up. The grievant testified that he would follow the
26 same procedure again if he were faced with the identical situation,
27 except that he would sign the tag that he left for the customer.

28 The grievant was disciplined on two prior occasions for his
29 conduct in making service calls. In 1973, he was reprimanded for
30 failing to find a gas leak, failing to follow correct leak test
31 procedure and failing to properly adjust a customer's regulator.
32 In 1975, he was given a one and one-half day disciplinary layoff

1 for allowing a leaking meter to operate at a laundromat for about
2 one hour in order to allow customers to complete drying their
3 clothes and because he did not complete the service tag on that
4 call. At the hearing, the grievant claimed that in the 1975 inci-
5 dent he was merely following his supervisor's orders. The grievant
6 was also reprimanded once in 1973 and once in 1975 for being at
7 unauthorized locations during the times that he was supposed to be
8 working.

9 POSITION OF COMPANY:

10 As this Arbitrator has held in a prior decision (I.B.E.W.,
11 Local 1245 v. P.G.& E., 48 LA 265), a serviceman must be trusted
12 to carry out his work in a responsible manner without supervision.
13 Negligent performance of a gas serviceman's functions creates a
14 serious hazard to the public, and therefore Company rules govern-
15 ing the procedures of a serviceman must be strictly observed.

16 The grievant failed to follow the Company's regulations in
17 all seven respects specified. He not only failed to change the
18 faulty regulator, but he also failed to place "solid swivels" in
19 the line coupling between the regulator and meter. The steel
20 discs which he claims he placed on the regulator would not provide
21 a positive check against the flow of gas. Moreover, the grievant
22 failed to leave a hazard notice at the second house serviced by
23 the defective regulator with the result that the customer was not
24 placed on notice of potential danger. The importance of such
25 notice is demonstrated by the fact that the tenant in the first
26 house actually placed his finger over the vent of the loudly hiss-
27 ing gas regulator, thus indicating the necessity to take precau-
28 tions against the careless conduct of customers. The tenant in
29 either house could have attempted to re-establish service with
30 disastrous results.

31 Moreover, the evidence shows that it is inherently improb-
32 able that the grievant made the tests that he claimed he made on

1 the meter at the Firebaugh house. Although the grievant recorded
2 an acceptable pressure during the test that he allegedly made,
3 later tests on the same meter showed that these readings were not
4 accurate. It is inherently improbable that the grievant would have
5 performed a pressure test to check the regulator for leakage
6 because he would have been required to turn the cock below the
7 regulator in order to perform the test, thus placing his head
8 within inches of the vent. At the hearing, when the valve on the
9 regulator was turned on, the hiss of escaping gas was audible
10 throughout the room. It strains credibility to believe that the
11 grievant performed this test in the face of such a hazard. The
12 demonstration at the hearing also shows that it was impossible
13 that the grievant made the "soap test," since it could not have
14 been done under the pressure rushing through the hole in the
15 defective diaphragm.

16 The grievant's testimony that he would conduct himself in
17 the same manner on a future call as he did in Firebaugh leads to
18 the conclusion that he has incorrigible disrespect for Company
19 rules. Finally, his record of past discipline for the same kind
20 of rule violations as occurred in the present case demonstrates
21 that the discharge was justified.

22 POSITION OF UNION:

23 The standard to be applied in determining whether the
24 grievant was guilty of leaving a hazard at the Firebaugh house is
25 whether the Company showed this fact by clear and convincing evi-
26 dence and beyond a reasonable doubt. This standard is applicable
27 whenever the discharge occurs "for alleged misconduct involving
28 the stigma of general social disapproval" (Pacific Gas & Electric
29 Co., 48 LA 265).

30 The Company failed to meet this stringent burden. The
31 Company's primary witness had never before worked as a gas service-
32 man and had never inspected the Firebaugh residence site prior to

1 the time that the meter at the house was disassembled. The
2 grievant's explanation that he did not leave the Firebaugh resi-
3 dence in a hazardous condition is entitled to belief because in
4 order to turn the gas on, the customer would have had to turn on
5 two gas cocks with a wrench. Moreover, as was obvious from the
6 demonstration at the hearing, anyone would have been aware of the
7 hazard from turning the gas on because of the quantity of gas
8 escaping from the regulator, and would have immediately shut off
9 the gas cocks.

10 The grievant was unable to make a leak investigation
11 because, as he testified, it was necessary to gain admittance to
12 the house in order to do so, and the customer was not at home.
13 Nor did the grievant's failure to replace the faulty regulator
14 cause a hazard or inconvenience to the customer. Service could
15 not have been restored even if the regulator had been replaced
16 because the customer was not at home, and it would have been an
17 idle act for him to replace the regulator at that time. At most,
18 the grievant faced a situation which required the exercise of
19 judgment by him, and he should not be second-guessed at this point.

20 Nor should the grievant's failure to seek direction from a
21 supervisor on March 21 be held against him. He reported to the
22 dispatcher what he had done, and he was in contact with Thorpe,
23 the only local representative of the Company who was available.
24 The record is silent as to what a supervisor would have instructed
25 the grievant to do, even if he had contacted the supervisor on
26 March 21.

27 As to the Company's allegation that the grievant did not
28 keep proper records, even if these allegations were proved, they
29 would not justify discharge. Even though the grievant failed to
30 note on the customer service tag that the leak source was at the
31 regulator, all the relevant people knew this situation to be the
32 fact, and therefore no prejudice resulted to the Company.

1 Moreover, the grievant did note on the tag, "gas coming out reg."
2 The fact that the grievant failed to issue a field service tag for
3 follow-up also did not prejudice the Company because all concerned
4 were fully aware of the problem with the meter. The same reason-
5 ing applies to the grievant's failure to note on the card that he
6 left the customer why he turned the gas off, since the customer
7 was present when the gas was turned off and must have known the
8 reason.

9 It would be unfair to require a gas serviceman to comply
10 literally with the voluminous and detailed record-keeping stan-
11 dards set forth in the Company's manual, and discharge is not
12 justified on the ground that some technical digression from those
13 standards occurred.

14 The grievant should be reinstated with full back pay. How-
15 ever, even if some of the Company's charges were proved, the
16 penalty of discharge is too severe since the grievant worked for
17 the Company for 14 years and no charge of fraud or willful miscon-
18 duct has been lodged against him. The prior technical infractions
19 of the grievant were so minor that as to one infraction only an
20 audit letter was imposed as a penalty, and the other letter did
21 not even state that it was a reprimand. Furthermore, the two
22 instances of abuse of Company time did not involve charges similar
23 to the charges in the present case.

24 The record suggests that the grievant was disciplined not
25 because of the seriousness of his conduct, but because he failed
26 to restore gas service at an earlier time. The grievant might
27 also have been the victim of some animosity by a supervisor since
28 previously he was arbitrarily discriminated against by the super-
29 visor in an incident involving the use of Company vehicles.

30 CONCLUSION:

31 As the Union recognizes, the most serious charge against
32 the grievant is that he left a hazardous condition at the premises

1 in Firebaugh after completing his call. In this regard, it is
2 undisputed that in order to resume the flow of gas, the customer
3 would have been required to turn two cocks on the meter with a
4 hand wrench, and it may be, as the grievant claims, that it was
5 unlikely that the customer would deliberately turn the gas on with
6 a handwrench, and if he did so, that he would immediately recog-
7 nize the danger.

8. Having said that, however, it cannot be doubted that the
9 grievant violated Company regulations in various respects with
10 regard to safety. The regulations required him to replace the
11 regulator, and he did not do so. Although he judged that there
12 was no point in following the regulations because service could
13 not be restored since he was precluded from entering the house, it
14 was not up to him to substitute his own judgment for the Company's
15 as to what was safe. Moreover, the grievant violated the Company's
16 "fail safe" regulations because he did not place solid swivels on
17 the meters to seal the meters. Even though the grievant insists
18 that no hazard was left at the Firebaugh house, he was not
19 entitled to second-guess the Company's requirements for safety.
20 His unilateral decision to violate the regulations cannot be con-
21 sidered anything other than a serious dereliction.

22 Perhaps an even more serious charge against the grievant is
23 that he failed to make the tests which he claims he made at the
24 Firebaugh house. He vigorously denies that charge. However, the
25 Company testified that a regulator which had a hole in it, as did
26 the regulator at the Firebaugh residence, would not show the read-
27 ing which the grievant claims that he produced when he performed
28 the pressure test. Moreover, the Company doubted that the grie-
29 vant performed the soap test, which again the grievant insists
30 that he made. At the hearing a demonstration with the meter
31 showed that no bubble formed when the soap test was performed.

32 However, because the charge that the grievant deliberately

1 lied about the tests is a most serious charge, the Company's
2 burden in this regard is commensurately very heavy. The grievant
3 stated that by driving the faulty meter around in the supervisor's
4 car, the meter could have been further damaged, and thus would
5 have affected the test results. Although the Company made a
6 fairly convincing showing that the grievant did not perform the
7 tests that he stated he performed, nevertheless in view of the
8 heavy burden which the Company bears in this respect, room for
9 doubt still persists so that the charge cannot be accepted as
10 proved given the seriousness of the accusation.

11 As to the grievant's admitted failure to follow regulations
12 regarding record-keeping, while some of these defects may not have
13 actually resulted in a hazard under the circumstances because the
14 customer in one of the houses on the property and several Company
15 employees were aware of the leak, this factor, standing alone,
16 does not excuse the grievant's failure to follow Company rules.
17 Those rules are designed to insure that both customers and Company
18 personnel are made aware of dangers and problems on service calls.
19 Furthermore, the grievant's failure to notify the customer who
20 lived in the second house at the Firebaugh property that the gas
21 had been turned off could have possibly created a hazard.

22 Against these violations we must weigh the grievant's prior
23 work history. He is an employee with 14 years of service, and
24 aside from two incidents involving safety violations, for which he
25 was reprimanded but not otherwise disciplined, his record is a
26 reasonably good one. Two other violations involved the misuse of
27 Company time, but they were fairly minor in nature. Moreover, the
28 grievant for most of his 14 years of employment worked in rural
29 areas without direct supervision, and his failure to carefully
30 follow the regulations could perhaps be explained to some degree
31 by the fact that he had not been as closely supervised as he should
32 have been during a substantial period of his employment. Indeed,

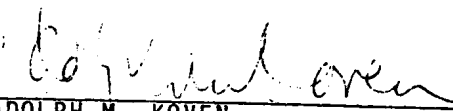
1 his insistence that he would have again followed the same system
2 with only minor variations would give support to the inference
3 that he operated over a rather substantial period without the kind
4 of close supervision which would have prevented his shortcomings
5 which gave rise to this dispute. In light of the fact that the
6 Company could suffer serious adverse consequences from violation
7 of its safety rules, certainly a severe penalty is called for. In
8 view of all the circumstances previously set forth, the grievant
9 is therefore to be re-employed, but without back pay under the
10 following conditions:

- 11 (1) Prior to reinstatement as Gas Serviceman, Madera, he will be
12 required to attend and satisfactorily complete the Gas
13 Serviceman school in Emeryville.
14
15 (2) He will be required to perform Gas Serviceman duties at an
16 acceptable level. Failure to do so or future misconduct on
17 the job of the nature that was the basis for the discharge
18 will be cause for immediate discharge, and if such discharge
19 occurs, it will be without recourse to the Grievance
20 Procedure except to determine such misconduct occurred.
21

22 AWARD

23 The discharge of the grievant is not sustained and
24 he is reinstated but without back pay.

25
26 Dated: 2-10-77


27 ADOLPH M. KOVEN
28 Chairman of the
29 Board of Arbitration
30
31
32

1 CONCUR:

2 *Vernon D. Loveall*
3 VERNON D. LOVEALL
4 Union Board Member

Dated: 2-14-77

5 *Leo Jameson, Jr.*
6 LEO JAMESON, JR.
7 Union Board Member

Dated: 2-15-77

8 DAVID J. BERGMAN
9 Company Board Member

Dated: _____

10 CHARLES A. MILLER
11 Company Board Member

Dated: _____

12
13
14 DISSENT:

15
16 VERNON D. LOVEALL
17 Union Board Member

Dated: _____

18
19 LEO JAMESON, JR.
20 Union Board Member

Dated: _____

21 *David J. Bergman*
22 DAVID J. BERGMAN
23 Company Board Member

Dated: 2-18-77

24 *Charles A. Miller*
25 CHARLES A. MILLER
26 Company Board Member

Dated: 2/17/77