PURSUANT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy

between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245

Complainant

and

PACIFIC GAS AND ELECTRIC COMPANY

Union

Involving the grievances of . V , . R , . T , . O n and N

ARBITRATION CASE NO. 64

BOARD OF ARBITRATION:

Chairman: Joseph R. Grodin

Union Members: Lawrence Foss
Shirley Story

Company Members: I. Wayland Bonbright
David J. Bergma

INTERIM AWARD

Pursuant to an expedited procedure agreed upon by the parties, this matter was heard in arbitration Tuesday, March 22, 1977 at 9:30 A.M., and the Board of Arbitration was requested to issue its decision as soon as possible, with a formal opinion to follow receipt and analysis of the transcript. Both parties filed briefs at the time of hearing.

The grievances involve employees of the Corporate Accounting, Customer Accounting, and Plant Accounting Departments of the Company who were suspended for periods of time less than a day for refusing to remove campaign buttons

supporting particular candidates for Union office in an upcoming Union election. The suspension action was pursuant to an intra-Company directive dated February 24, 1977, stating Company policy to the effect that such buttons were not to be worn during working hours. It is undisputed that in the past employees have been permitted to wear buttons relating to a variety of sometimes controversial causes. Buttons relating to the intra-union campaign had been worn by some employees for several weeks prior to the disciplinary action involved here. There is no evidence that the wearing of such buttons had produced any interference with work activity. The only evidence of potential interference was in the form of an exhibit consisting of a handbill posted on some Company bulletin boards and containing suggestions of misconduct on the part of one of the candidates. The candidate in question is the one supported by the particular grievants in this case.

The parties are in agreement that National Labor Relations Act precedent is relevant in determining what constitutes "just cause" for disciplinary action under their agreement. The NLRB appears to accord electioneering for union office the same or similar protection under Section 7 of the Act as it does electioneering in organizational or NLRB election campaigns. E.g., Aerodex, Inc., 149 NLRB 192, 198; Jacobs Transfer, Inc., 201 NLRB 210; General Analine & Film Corp., 145 NLRB 1215; cf. United Parcel Service, 195 NLRB 441, 448. Under the generally applicable rule, the Company is required to demonstrate the existence of "special circumstances" which pose a threat to discipline or efficient production. E.g. Caterpillar Tractor Co. v. NLRB, 230 F.2d 357 (7th Cir. 1956); cf. United Parcel Service, supra. On this record the Company has not sustained that burden. United Aircraft Corp., 134 NLRB No. 153, which it cites in support of its position, is distinguishable as involving a background of an explosive and bitter strike atmosphere.

In view of these observations it is unnecessary to consider for purposes of this Interim Award the alternative grounds upon which the Union attacks the Company's actions. It is concluded that the Company exceeded the provisions of the Physical and Clerical Labor Agreements in not allowing the grievants to work and, for reasons to be explicated in the Final Opinion and Award, that the grievants are entitled to be made whole for lost pay.

Dated: March 22, 1977

Joseph R. Grodin, Chairman

Lawrence Foss, Union Member

I. Wayland Bonbright, Company Member - dissenting

Shirley Smith, Union Member

David J. Bergman, Company Member - dissenting