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8 IN ARBITRATION PROCEEDINGS PURSUANT TO  
9 AGREEMENT BETWEEN THE PARTIES  
10

11 In the Matter of a Controversy )  
12 between )  
13 LOCAL UNION NO. 1245, INTERNATIONAL )  
14 BROTHERHOOD OF ELECTRICAL WORKERS, )  
15 AFL-CIO, )  
16 and )  
17 PACIFIC GAS AND ELECTRIC COMPANY. )  
18 Involving the disciplinary layoffs )  
19 of J. H. , P. Q. , )  
20 W. F. , D. )  
S. D. N. and R )  
O. , Grievants. (Arbitration )  
Case No. 94.) )

OPINION AND AWARD  
OF  
BOARD OF ARBITRATION

21 This Arbitration arises pursuant to Agreement between LOCAL  
22 UNION NO. 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
23 AFL-CIO, hereinafter referred to as the "Union", and PACIFIC GAS AND  
24 ELECTRIC COMPANY, hereinafter referred to as the "Company", under  
25 which Messrs. WAYNE GREER and ROGER STALCUP were appointed Union  
26 Members of the Board of Arbitration (Board), Messrs. FLOYD C. BUCHHOLZ  
27 and LEONARDO A. WEST were appointed Company Members of the Board and  
28 ARMON BARSAMIAN was appointed Chairman, and under which a decision  
29 by a majority of the Board shall be final and binding upon the  
30 parties.

31 Hearing was held September 14 and 15, and December 3 and 4,  
32 1981, in Sunnyvale, California. The parties were afforded full

1 opportunity for the examination and cross-examination of witnesses,  
2 the introduction of relevant exhibits, and for argument. Both  
3 parties filed post-hearing briefs on or about March 1, 1982.  
4  
5

6 APPEARANCES:

7 On behalf of the Union:

8 TOM DALZELL, Esquire, Attorney at  
9 Law, Post Office Box 4790, Walnut  
Creek, California, 94596.

10 On behalf of the Company:

11 L.V. BROWN, Jr., Esquire, Pacific  
12 Gas and Electric Company, 245 Market  
Street, Room 438, San Francisco,  
13 California, 94106.  
14  
15

16 ISSUE

17 Was (sic) the disciplinary layoffs  
18 of the named Grievants in violation  
of the Labor Agreement? If so,  
19 what is the remedy?  
(Joint Exhibit 2)  
20  
21

22 RELEVANT SECTIONS OF AGREEMENT

23 Title 7. Management of Company

24 Section 7.1 (In pertinent part):

25 The management of the Company and its business and  
26 the direction of its working forces are vested exclu-  
sively in Company, and this includes, but is not  
27 limited to, the following: to ... suspend, and  
discipline or discharge employees for just cause; ...

28 Title 102. Grievance Procedure

29 Section 102.2 (In pertinent part):

30 Disputes involving the following enumerated subjects  
31 shall be determined by the grievance procedures  
established herein:  
32 ...

1 (b) Discharge, demotion, suspension or  
2 discipline of an individual employee.

3 ...

4 Title 105. Safety

5 Section 105.1 Prevention of Accidents (In pertinent part):

6 (a) Company shall make reasonable provisions  
7 for the safety of employees in the  
performance of their work ...

8 Section 105.6 Election of Remedies (In pertinent part):

9 ...

10 (b) No employee shall be discharged for  
11 refusing to work on a job, a piece of  
12 equipment, or under conditions which  
present a real and apparent hazard to the  
employee's life or health.

13  
14  
15 FACTS

16 On June 20, 1980, a Company capacitor on a utility pole located  
17 near the intersection of Highway 101 and the Lawrence Expressway in  
18 Sunnyvale, California, failed and as a result of its subsequent  
19 rupture or explosion, polychlorinated biphenal insulating fluid  
20 (PCB's) in the capacitor was spilled on the capacitor rack, the pole  
21 itself and the ice plant and dirt below and around the pole. PCB's  
22 are a synthetic dielectric insulating fluid first developed for  
23 commercial use in the late 1920's by the Monsanto Company. They are  
24 uniquely suitable as insulating fluids because they are non-flammable;  
25 their use thus decreases the risk of fire and explosion in electrical  
26 equipment such as capacitors and transformers.

27 By the Toxic Substances Control Act of 1976, Congress banned  
28 the manufacture, processing, distribution in commerce or use of PCB's  
29 in any but totally enclosed systems. The act does not affect the use  
30 of equipment already containing PCB's. The Act further required the  
31 United States Environmental Protection Agency to prescribe marking  
32 and disposal regulations for PCB's, and on July 2, 1979, that Agency's

1 final rules governing the marking, use, and disposal of PCB's  
2 became effective. These regulations place specific restrictions on  
3 the disposal of PCB's and PCB-filled equipment and require the  
4 marking of poles supporting PCB-filled high voltage capacitors and  
5 the individual marking of transformers and other equipment containing  
6 PCB's.

7 Unfortunately, the precise manner in which cleanups of PCB  
8 spills are to be conducted (occupational exposure standards, the use  
9 of personal protective equipment and clothing, work practices, etc.)  
10 is as yet unregulated, other than the requirement that if a spill  
11 occurs all material containing 50 parts per million or greater PCB's  
12 must be removed and properly disposed of. California's Hazardous  
13 Waste Disposal Legislation regulates, to some extent, the manner in  
14 which PCB's and PCB-filled equipment must be disposed of and State  
15 regulations control employee exposure to and skin contact with PCB's,  
16 but no Federal or State rules or regulations exist which establish  
17 specific standards or procedures for PCB cleanups. The known and  
18 suspected biologic effects of PCB's is discussed in the Opinion  
19 portion hereof.

20 In an effort to meet its obligations under the law, and other-  
21 wise, the Company developed PCB cleanup procedures and distributed  
22 these procedures in what is referred to as Transmission and Distri-  
23 bution (T&D) Bulletins No. 2-50. As information became available  
24 and the Company's knowledge of PCB's increased, T&D Bulletin 2-50  
25 increased in scope and complexity. Thus, between June 1, 1971 and  
26 September 1, 1980, the Company has issued an original and four  
27 revisions of the Bulletin. At the time of the incident involved  
28 herein Revision #3, effective April 21, 1980, was in full force and  
29 effect.

30 On May 13, 1980, Mr. V.H. LIND issued a memorandum to certain  
31 persons on the subject of "Refusal to Perform PCB Related Work."  
32 Among other things, the memorandum directs how the Company is to

1 handle any refusals by employees to perform the assigned work.

2 On May 14, two sessions were held at the Cupertino yard during  
3 which certain portions of Revision #3 were read to the employees. The  
4 meetings were conducted by Mr. STAN ALAMEDA and Mr. WINFIELD MOUSSEAU,  
5 and all Grievants were in attendance. Questions were asked concerning  
6 the short and long term health effects of PCB's, but no answers were  
7 given, except perhaps to note that studies were inconclusive as far  
8 as humans are concerned. The employees also inquired about what  
9 discipline would be imposed for a refusal to work where PCB's are  
10 involved, to which the Company's response was that such matters will  
11 be handled on a case-by-case basis.

12 On the morning of June 20, at the Company's Cupertino yard,  
13 Line Field Foreman WINFIELD MOUSSEAU assigned Grievant Q to  
14 the PCB spill cleanup. Mr. Q told MOUSSEAU he didn't want any  
15 part of that day's cleanup as he had been on quite a few previous PCB  
16 cleanup operations. Mr. MOUSSEAU then suspended Q and sent  
17 him to see Field Line Foreman RICHARD WAGNER, who on June 20, held  
18 the position of Temporary General Foreman. During the meeting with  
19 WAGNER, Q said he was refusing to work because "he was very  
20 concerned with the health hazard of PCB's and his past exposure."  
21 The two men discussed the long term health effect of PCB's, and  
22 WAGNER told Q that the studies were as yet inconclusive.

23 Mr. Q then raised the issue of the adequacy of the white  
24 coveralls then in use by the Company for PCB cleanup operations,  
25 including the Company memorandum which, among other things, stated  
26 that the coveralls were inadequate protection against direct contact  
27 with PCB's. Mr. Q testified that WAGNER's response was, in  
28 words or substance, that "the adequacy of the coveralls had nothing  
29 to do with this." Moreover, while WAGNER testified that Q  
30 indicated that he would not work on the cleanup even if Revision 3  
31 were followed, Q testified that he did not believe that this  
32 specific issue was brought up during his meeting with WAGNER.

1 In any event, WAGNER then suspended Q1 and that concluded the  
2 meeting.

3 With respect to Grievant F , at the time of his dispatch  
4 on June 20 to participate in the PCB cleanup operation, he was working  
5 in a three-man crew with Sub-Foreman ROBERT McCORMICK, and Apprentice  
6 Lineman P. Before going to the spill site, the crew  
7 returned to the Cupertino yard. Mr. McCORMICK testified that while  
8 at the yard MOUSSEAU directed the crew to pick up all necessary  
9 safety equipment. McCORMICK picked up a copy of Revision 3 and had  
10 his crew pick up "coveralls, plastic overshoes, rubber gloves, cans  
11 of Penetone, power cleaner, absorbent rags, waterless hand cleaner,  
12 stiff brooms and mops". Grievant F , however, testified that  
13 he did not recall helping load the clothing, but that he was sure  
14 none was brought out to the cleanup site.

15 In any event, F and his crew arrived at the spill site at  
16 approximately 11:30 a.m. Already present at the site were MOUSSEAU,  
17 H. the Backhoe Operator, and R. For more than  
18 an hour, F and the others waited at the site without performing  
19 any work until Sub-Foreman RAYMOND JOHANSON arrived with his crew.

20 While waiting for JOHANSON to arrive with his crew, F  
21 and PAINTER went up in a boom truck to verify the capacitor was a  
22 PCB capacitor. F testified they brought the truck to within  
23 18 to 20 feet of the pole, and in so doing walked on ice plant  
24 within 18 to 20 feet of the pole. PCB contamination around the pole  
25 extended from as little as approximately 12 feet from the pole to  
26 as much as 30 feet away.

27 As they were waiting, McCORMICK read Revision 3 to them. Accord-  
28 ing to F , McCORMICK did not give a complete step-by-step  
29 tailboard of the job and did not say what protective clothing would  
30 be used in the cleanup. McCORMICK testified he did not give any  
31 specific assignments to F .

32 Mr. JOHANSON and his crew of Grievants H and S

1 eventually arrived at the site. Mr. McCORMICK testified that at  
2 this point, F , H and S all told him they were not  
3 going to work the cleanup and he passed this information on to  
4 MOUSSEAU. Mr. F testified, however, that while he had it in  
5 his mind to refuse to work the cleanup, he did not refuse to take  
6 part in the cleanup directly to McCORMICK.

7 In any event, the three Grievants then met with MOUSSEAU.  
8 MOUSSEAU testified he told the group there was protective clothing  
9 in McCORMICK's trailer and that all of the work would be done out  
10 of the bucket. The men complained about the health hazards of PCB's,  
11 and H asked for a Shop Steward. That request was denied  
12 by MOUSSEAU.

13 Mr. MOUSSEAU never gave job assignments. According to F ,  
14 he merely told the crew to get to work, and MOUSSEAU testified that  
15 when F , H and S refused, they were suspended  
16 and sent back to the Cupertino yard.

17 Grievants H and S likewise never received a  
18 tailboard briefing. Moreover, in addition to not giving a tailboard,  
19 JOHANSON did not read Bulletin 2-50 to his crew, give job assign-  
20 ments or tell the men they would be working in the bucket only.  
21 According to the testimony of the two Grievants, they looked for  
22 protective clothing in McCORMICK's trailer but found none.

23 Although MOUSSEAU did not ask why the employees were refusing  
24 to work, H volunteered the health issue by mentioning that  
25 his wife was pregnant and that there was no adequate clothing.  
26 Even when H raised the question of the unavailability of  
27 the protective clothing, MOUSSEAU said nothing about that clothing  
28 being available. Like F , H and S were suspended  
29 by MOUSSEAU and sent back to the yard.

30 Back at the yard, each Grievant met with WAGNER. F said  
31 he had refused because he had seen no clothing at the site, and

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1 none was brought out when the crew said they were concerned about  
2 the lack of adequate protective clothing, and further because of  
3 his lack of training. When asked if he would work a cleanup with  
4 proper training, F answered that it depended upon the availa-  
5 bility of protective clothing, but that he probably would with proper  
6 training and clothing.

7 Grievant S' , although unable to remember much of what  
8 transpired during his meeting with WAGNER, testified he did ask why  
9 respirators had not been available at the site, and mentioned the  
10 issue of training.

11 According to H , he mentioned the health hazards of  
12 working with PCB's, the lack of clothing and the lack of training  
13 in his meeting with WAGNER. Mr. WAGNER particularly remembers  
14 H ' concern for his pregnant wife and his lack of training.  
15 When asked, H told WAGNER he probably would work on cleanup  
16 given proper training and proper clothing.

17 With Grievants F H and S' suspended, four  
18 bargaining unit employees were left on the job. Although he  
19 testified that he only needed two qualified linemen to lower the  
20 capacitor, MOUSSEAU called a third crew to the site before proceeding  
21 with the job. Thus, at about 2:15 p.m. or 2:30 p.m., Sub-Foreman  
22 TRADER arrived at the site with his crew, Grievants N and O .

23 Mr. MOUSSEAU was not at the site when the crew arrived, and  
24 there was no other exempt supervisor in charge. Grievants N  
25 and O saw nobody wearing protective clothing, had none on  
26 their truck and saw none in either JOHANSEN's or McCORMICK's trucks.  
27 Further, while waiting for MOUSSEAU to return to the site, TRADER  
28 did not give N and O any sort of tailboard. Similarly,  
29 N and O got no tailboard from either McCORMICK or JOHANSEN.

30 When MOUSSEAU arrived, he gathered TRADER's crew at the back  
31 of the trailer and asked if they were going to work on the cleanup.  
32 Mr. N testified that MOUSSEAU said he "didn't care how it was



1 done, or who did it" as long as the job got done. Mr. MOUSSEAU  
2 admitted that he gave no tailboard or briefing on the job to N  
3 or O , again assuming that TRADER had given the tailboard while  
4 MOUSSEAU was away from the site.

5 Grievant N testified that after looking at the job he  
6 decided that it was not safe and that he was going to refuse to  
7 participate. He told MOUSSEAU that PCB's were a health hazard and  
8 that the crew had not received adequate training. N then told  
9 O to make up his own mind; O too refused to work. While  
10 N testified that he asked for a Shop Steward but that request  
11 was denied by MOUSSEAU, MOUSSEAU did not remember either Grievant  
12 asking for a Steward. After their conversation, MOUSSEAU told  
13 N and O that he had no choice but to suspend them, and  
14 he sent them back to the Cupertino yard.

15 During his discussion with WAGNER, N recalls raising several  
16 issues. Among them were lack of training and the general health  
17 hazard of PCB's. WAGNER testified that he remembered N complaining  
18 about being pulled in from out of his area and stating that in his  
19 opinion the Company was not telling the whole story on PCB's.  
20 When asked if he would take part in a cleanup with proper training,  
21 N told WAGNER that he might, that he would have to give it some  
22 consideration.

23 Grievant O told WAGNER that PCB's were a health hazard and  
24 explained his problem with the current coveralls ripping. When  
25 asked by WAGNER, O said he probably would have worked with  
26 better training and clothing.

27 On June 24, 1980, each Grievant received a letter of reprimand  
28 and a suspension of no more than 16 hours.

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POSITION OF COMPANY

Revision 3 for the first time went into great detail regarding personal protective measures. In addition to discussing the potential toxic or irritant effects of the PCB oil coming into contact with the skin or eyes, it also required that disposable protective clothing be carried to each spill site and worn over the employee's work clothes "when contact with PCB's is anticipated". Further, upon arrival at the work site, the crew was to put on "appropriate protective clothing." Again, the specific procedures for handling different kinds of spill situations were expanded.

The immediate relevance of the foregoing is apparent. Grievants' refusals at the job site encompass their background experience in working prior spills and the insight provided on May 14, when the pertinent parts of Revision 3 were read to them. All of the Grievants testified they were present when Revision 3 was reviewed with them on May 14, and two of the six testified they intended to refuse to work the June 20, spill no matter what was provided for in that Revision.

Grievants are unquestionably capable, qualified line persons who were adequately trained and experienced to perform, particularly under the experienced supervision of their foreman, the relatively simple mop-up at the June 20 spill. It is inconceivable that the circumstances confronting them at the moment of their decision to refuse to work could be perceived by them to present an immediate threat or hazard to their life. Indeed, persons in their occupation daily confront work situations of far greater potential for sudden death or injury.

Section 105.6(b) does not provide the employees a carte blanche to strike whenever they deem the work conditions to be hazardous. The provisions parallel California Labor Code Section 6311 and the Federal Occupational Safety and Health Regulations (29 CFR Section 1910.132(c) ).

1       It is an inescapable conclusion that the underlying motivation  
2 for Grievants' insubordination lies in their perception of the  
3 uncertain dangers of handling PCB's. Whether or not their fears were  
4 well-grounded is not an issue in this case. The plain fact is that  
5 there are thousands of PCB-filled capacitors still in use and lawfully  
6 so. More importantly, the Company is mandated by Federal and State  
7 law to remove the capacitors when they malfunction and to clean the  
8 area to specifications set by law. Whether or not PCB's are human  
9 carcinogens, the Company's spill and handling procedures treat them  
10 for what they are known to be; i.e., a toxic substance with which  
11 contact should be avoided. The procedures contained in Revision 3,  
12 then, provide a safe method for handling PCB spills. Moreover,  
13 notwithstanding several years of "study", California HESIS has  
14 failed to come up with specific handling procedures. The Company's  
15 T&D Bulletins, therefore, are the only published procedures governing  
16 cleanup operations.

17       Grievants did not have reasonable grounds to believe that the  
18 Foremen did not intend to follow the safety precautions outlined in  
19 Revision 3. Hindsight is a misplaced defense, and, in any event,  
20 is unwarranted under the facts presented at the hearing. The  
21 evidence adequately demonstrates that McCORMICK, MOUSSEAU, JOHANSEN  
22 and TRADER were operating within the parameters of the Revision while  
23 the crew was still present. The requirement for wearing protective  
24 gear varies depending upon the particular job situation, and  
25 Revision 3 requires the wearing of such protective clothing and  
26 equipment only when contact with the oil is anticipated. In the  
27 judgment of the supervisors involved, it was unnecessary for the  
28 crew to don protective clothing when they were merely standing idle,  
29 some distance from the blown capacitor which was no longer dripping  
30 and at a location where, even if there had been dust raised by the  
31 backhoe, it would not have exposed them to contact. The capacitor  
32 had blown several hours earlier and there was no concern for air

1 contamination.

2 Finally, the Union's defense of disparate treatment is without  
3 merit. In the first incident, discipline was uncalled for as the  
4 protective equipment mandated for working a PCB spill was not  
5 available at the spill site, and in the second, while the refusal  
6 may have proved frustrating to the Foreman, it was not an unqualified  
7 refusal to perform any work.

8 For all of the reasons stated, it is respectfully submitted  
9 that the Board must answer the issue in the negative; that is, the  
10 discipline of the six Grievants was not in violation of the Labor  
11 Agreement.

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#### POSITION OF UNION

15 If there is anything which this case does not represent it is  
16 a "simple refusal to work, common insubordination." The six Grievants  
17 have more than 100 years of service with the Company between them,  
18 and there is nothing in the record that suggests that any of them  
19 had any disciplinary record prior to June 20. That the six men are  
20 sincere and conscientious individuals is evident from their demeanor  
21 at the hearing.

22 As members of line crews, they are no strangers to danger, for  
23 on the job they are exposed to electrical hazards and the dangers  
24 involved in climbing on a daily basis. These are not the type of  
25 men who would refuse a job assignment lightly and risk loss of  
26 valuable seniority or the opportunity to enter or continue an  
27 apprenticeship.

28 Yet on June 20, each Grievant refused MOUSSEAU's order that he  
29 participate in a PCB cleanup, each for his own specific reasons, but  
30 all because of a sincere belief that the cleanup was not going to  
31 be conducted in a safe manner in accordance with established Company  
32 work procedures, a belief which in light of the record of this

1 arbitration was entirely reasonable and which was fully supported  
2 by objective facts.

3 It is not hyperbole to say that MOUSSEAU displayed an utter  
4 disregard for the health and safety of the employees involved in  
5 the cleanup and the work practices established by the Company for  
6 PCB cleanups. MOUSSEAU, it seems, was serious when he said that  
7 he "didn't care how it was done, or who did it" as long as the  
8 cleanup was completed.

9 Violations of T&D Bulletin 2-50, Revision 3, Company safety  
10 rules and "general common sense" include, but are not limited to,  
11 that MOUSSEAU had no experience cleaning up PCB spills under  
12 Bulletin 2-50 and was inadequately trained to direct the June 20  
13 cleanup; that McCORMICK and JOHANSEN had never worked on a PCB  
14 cleanup and had received inadequate training on PCB cleanup; that  
15 Grievants, with the exception of Q , had received inadequate  
16 training in proper and safe cleanup techniques; that no face  
17 shields, goggles, or respirators were available at either the  
18 operating headquarters or at the work site; that the only protective  
19 suits available at the operating headquarters were by the Company's  
20 own admission not impervious to PCB's and did not fit larger  
21 employees such as Grievant O ; that employees without protective  
22 suits, booties and gloves were permitted into the contaminated area;  
23 that MOUSSEAU improperly delegated the decision as to what protective  
24 clothing was appropriate to three Sub-Foremen who had never worked  
25 on a PCB spill; that MOUSSEAU did not give any of the five Grievants  
26 who reported to the cleanup site a tailboard briefing because he  
27 incorrectly assumed that the Sub-Foremen, with no cleanup experience,  
28 had done his job for him and given tailboards; that MOUSSEAU failed  
29 to barricade the contaminated area and limit entry to prevent the  
30 spread of contamination; that MOUSSEAU improperly left the cleanup  
31 site for substantial portions of the day; that MOUSSEAU and JOHANSEN  
32 walked through the contaminated ice plant to within five feet of the

1 pole; that MOUSSEAU permitted a line truck to be brought to within  
2 18 feet of the pole, well within the contaminated area; and that  
3 inadequate washing and flushing facilities were available at the  
4 cleanup in the event of skin or eye contact with PCB's.

5 The lack of training, lack of protective clothing, and failure  
6 to follow Bulletin 2-50 work procedures all combined to greatly  
7 increase the potential for exposure to PCB's, a highly toxic substance,  
8 whose dangers are not yet fully understood by even the scientific  
9 community.

10 In addition, on three occasions in the same division, similar  
11 if not identical work refusals had gone unpunished. Moreover,  
12 MOUSSEAU could not offer a consistent explanation for needing a  
13 fourth employee for the job, and could never explain why he needed  
14 a fifth and sixth employee.

15 The toxic nature of PCB's and MOUSSEAU's wholesale departure  
16 from the work procedures outlined in Bulletin 2-50 remove this  
17 case from the realm of common insubordination and place Grievants'  
18 refusals squarely within the realm of justified refusals to accept  
19 unsafe or unhealthy job assignments. For the reasons set forth  
20 above, then, the grievance should be sustained.

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#### OPINION

#### 24 Preliminary Matters

##### 25 A. Scope of Review by Board:

26 As in all discipline (and discharge) controversies, the scope  
27 of arbitral review is, or should be, limited to the facts and  
28 circumstances on which the Company relied in taking the action that  
29 it did against Grievants. In this particular case, the Board  
30 determines that the relevant scenario extends to and includes  
31 WAGNER's discussion with each Grievant at the Cupertino yard.

32 Therefore, for purposes of reviewing the record evidence, the

1 relevant and material facts extend to the point each Grievant was  
2 suspended finally by WAGNER. Thus, the Board considers as  
3 irrelevant and immaterial the record evidence which bears on  
4 post-suspension events at the spill site.<sup>1</sup>

5 B. Standard to be Applied:

6 It is eminently clear, particularly in consequence of the  
7 stipulated issue, that the Board's authority and jurisdiction extends  
8 to the application and interpretation of the collective bargaining  
9 agreement. The Board considers it to be wholly inappropriate, then,  
10 without proper authority from the parties, to  
11 resort to external law in developing the standard to be applied in  
12 testing the legitimacy of Grievants' claims of a health hazard.  
13 Further, where, unlike here, the collective agreement provides no  
14 guidance relative to the standard to be used in testing the employee's  
15 refusal to perform work based upon health and safety reasons, then  
16 it is up to the individual arbitrator to set the standard if called  
17 upon to do so. A review of How Arbitration Works by Elkouri and  
18 Elkouri quickly indicates that arbitrators have been anything but  
19 uniform in setting and applying a standard in such cases.

20 In this case, however, the Contract provides a great deal of  
21 assistance in arriving at a decision as to what standard should be  
22 established and applied, although not fully dispositive of that  
23 question. Thus, Section 105.6(b) protects employees from discharge  
24 for refusing to work "... under conditions which present a real  
25 and apparent hazard to ... life or health." At least for discharges,  
26 then, the parties have set the underlying standard to be applied  
27 in an employee's (and the Union's) claim to an exception to the

28 \_\_\_\_\_  
29 <sup>1</sup> Certain post-suspension facts, explained more fully below, are  
30 relevant and material to deciding this dispute. For example,  
31 the differences between T&D Bulletin 2-50, Revision 3 and  
32 Revision 4 will be touched upon, as will the significant changes  
in the Company's approach to training its employees in the  
proper procedures, including use and disposal of protective  
clothing and equipment, to be employed during PCB cleanups.

1 well-established arbitral principle of "work now, grieve later."<sup>2</sup>

2 As to discipline (as opposed to discharge) imposed where a question  
3 of health and safety has been raised, the Contract is silent. Not-  
4 withstanding that fact, and notwithstanding the absence of any  
5 record evidence which bears on the matter of the intent of the  
6 parties in negotiating and agreeing to Section 105.6(b), the Board  
7 considers it to be reasonable, and, for the sake of consistency,  
8 important, to fundamentally rely on what the parties themselves  
9 negotiated as the standard in discharge cases in setting the applicable  
10 standard to be applied in this case.

11 But should the "real and apparent" test be based on the strict  
12 objective standard or on the less stringent objective "reasonable  
13 man" standard? In this regard, the parties have had the benefit  
14 of a decision by Arbitrator ROBERT BURNS in Arbitration Case No. 81.  
15 In that case, Arbitrator BURNS states, in pertinent part, that:

16 "The work place is not a forum for  
17 debates. The employees have the  
18 option of refusing a work order  
19 if a real and apparent hazard  
reasonably and objectively is  
present ..."  
(At Page 24: Emphasis added)

20 No doubt exists that Arbitrator BURNS tempered the objective test  
21 with the reasonable man test, for he goes on to quote from the  
22 Supreme Court decision in Whirlpool v. Marshall.

23 The Board concludes that Arbitrator BURNS' application of an  
24 "objective/reasonable man" standard to the real and apparent hazard  
25 test in Section 105.6(b) is in line with the weight of arbitral  
26 authority and is, therefore, adopted by this Board.

27 C. Enforcement of Rules/Disparate Treatment:

28 A determination by employees that a real and apparent hazard  
29 to life or health exists so as to justify a refusal to obey an order

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31 <sup>2</sup> It is curious, indeed, that the parties did not include lesser  
32 forms of discipline in Section 105.6(b). However, no record  
evidence exists with respect to that question.



1 to perform certain work, and the Company's determination that under  
2 the circumstances discipline or discharge is warranted, are matters  
3 which must, of necessity, be decided on a case-by-case basis. Indeed,  
4 if the Company were to adopt a hard and fast rule that all such  
5 refusals will result in discipline or discharge, then it would be  
6 denying all bargaining unit employees not only a right guaranteed to  
7 them by the Contract but also fundamental rights which extend to  
8 all such employees by well-established arbitral precedent.

9 Additionally, determinations of disputes, such as the one  
10 involved herein, on a case-by-case basis is particularly true as  
11 regards the opinions and awards of arbitrators or boards of arbitration.  
12 Arbitration being what it is, such awards are limited to the facts  
13 and circumstances of the specific case being decided.

14 With respect to the Union's assertion that Grievants have been  
15 subjected to disparate or unequal treatment in consequence of the  
16 discipline imposed by the Company, the Board finds and concludes  
17 that insufficient record evidence exists in that regard in that  
18 only three prior incidents were testified to by Union witnesses.  
19 In any event, disparate treatment is a valid affirmative defense  
20 only where, unlike here, reasonable bases do not exist for variations  
21 in the assessment of punishment. In the three prior cases involving  
22 PCB cleanup operations, other work was available to which the  
23 employee could be (and was) shifted, and protective clothing and  
24 equipment was admittedly unavailable at the work site.

25 The Board concludes, therefore, that reasonable bases exist  
26 for the variations in the assessment of discipline.

27 D. Factors Considered in Establishing Hazard:

28 The question of the existence or non-existence of a real and  
29 apparent PCB hazard on June 20, is impacted upon by a variety of  
30 factors. For example, factors such as the experience and training  
31 of the employees and supervisors (exempt and non-exempt) involved  
32 relative to how to clean up PCB spills, how to avoid contamination

1 and what to do if contamination occurs; information provided  
2 employees and supervisors by the Company with respect to the hazards  
3 of PCB's; provision for the use of protective clothing and equipment;  
4 the bona fides of the employees in refusing to perform the cleanup  
5 work; the toxic nature of PCB's and its property of persisting  
6 almost indefinitely in the body; and whether the Company adhered  
7 to its published procedures (T&D Bulletin 2-50, Revision 3) at the  
8 spill site up to the point each Grievant refused to work,,are  
9 important factors to be considered by the Board.

10 Indeed, even the Company recognizes, albeit perhaps indirectly,  
11 certain flaws in Revision 3 of Bulletin 2-50, for Revision 4 greatly  
12 expands on PCB cleanup procedures, leaving nothing of consequence,  
13 as did Revision 3, to "common sense". But even Revision 4 will not  
14 protect employees against a real and apparent hazard if its provisions  
15 are not followed, and that is precisely one of the Union's principal  
16 assertions with respect to Revision 3. That is, the Union does not  
17 argue that Revision 3, which was in effect at the time of the June  
18 20 spill, is inadequate. Rather, it asserts that the Company failed  
19 to follow the procedures established by Revision 3, and that failure,  
20 coupled with other factors, created a real and apparent health  
21 hazard. As will be discussed more fully below, the Union's assertions  
22 are persuasive.

#### 23 E. Toxicity of PCB's:

24 No question exists that PCB's are toxic. They have been  
25 classified as such by the Toxic Substances Control Act of 1976.  
26 Interestingly, the testimony of the expert witnesses called by both  
27 parties to testify concerning PCB's is surprisingly consistent on  
28 certain important points.

29 For example, the experts agree that the effects of ongoing  
30 exposure (chronic effects) and the delayed effects of perhaps a  
31 single exposure observed distant in time to PCB's on experimental  
32 animals include liver damage, which may be reversible, facial

1 swelling, chloracne and cancer in rats and mice. Moreover, although  
2 the effects on humans to such exposure have not been thoroughly  
3 studied, data is available which shows that workers so exposed to  
4 PCB's developed chloracne and liver damage. Also, painful eye  
5 irritation is experienced should PCB's get into the eyes. (See,  
6 also, T&D Bulletin 2-50, Revision 4, page 3.) Of manifest concern,  
7 of course, is the spectre of cancer which is ever-present where  
8 PCB's are concerned.

9 On this last point, the experts agree that PCB's are known and  
10 accepted as an animal carcinogen, and that they are classified as  
11 suspected human carcinogens by every applicable governmental agency.  
12 Thus, while the Board considers all dangers associated with PCB  
13 exposure critical to its inquiry, of paramount importance is the  
14 unknown or suspected aspects of such exposure. It is the unknown  
15 or suspected dangers of PCB exposure, perhaps more than any other,  
16 coupled with its classification as a toxic substance, that require  
17 that PCB be accorded the utmost "respect" when dealing with it  
18 in circumstances the same as or substantially similar to those  
19 which existed on June 20, 1980.

20 With all of the above in mind, then, we now proceed to the  
21 merits of this case.

## 22 On the Merits

23 The Board is well aware that Federal and State law require the  
24 Company to remove capacitors when they malfunction. However,  
25 where, as here, the employees raise a question of a real and  
26 apparent hazard to their health based upon what the Board concludes  
27 to be reasonable and objective considerations, the legal requirements  
28 imposed upon the Company must then give way to the interests of the  
29 employees. That is to say, a balancing of the relative interests  
30 must occur; the Company's obligations under the law must be  
31 balanced against the employee's rights to work in situations that  
32 pose no real and apparent hazard to their life or health.

1 Further, while PCB's have been around since the late 1920's,  
2 a fact which may make the substance even more hazardous to certain  
3 employees some sixty-two years later, it cannot be reasonably  
4 argued that exposure to that substance is a normal part of a Line  
5 Crew's duties. Indeed, none of the Grievants or supervisors  
6 involved in the June 20 spill has experienced significant frequency  
7 in PCB cleanups. For example, in Q 's 39 years with the Company  
8 he estimated that he worked on eight or nine PCB cleanup operations,  
9 which is more than any other Grievant, while Sub-Foremen McCORMICK  
10 and JOHANSEN had not worked on a PCB cleanup prior to the June 20  
11 operation. In addition, MOUSSEAU, the exempt supervisor in charge  
12 of the entire operation on June 20, had supervised only two previous  
13 PCB cleanup operations, and had worked on a total of five such  
14 operations, including the one on June 20. These statistics also bear  
15 greatly on the matter of the lack of practical experience of those  
16 involved in the June 20 spill.

17 The Board concurs with State Industrial Hygienist JEFF HAHN's  
18 testimony that adequate training of employees and supervisors is of  
19 manifest importance in toxic substance cleanup operations. This  
20 factor is especially critical given the uncertainties and suspected  
21 health hazards attributed to PCB's and the then confusion among  
22 Grievants and the supervisors (as well as others) concerning the  
23 scope of the dangers present.

24 In this regard, no question exists that MOUSSEAU and the sub-  
25 foremen were not adequately trained and did not possess any real  
26 expertise as regards proper PCB spill cleanup operations. As a  
27 matter of fact, prior to the May 14, 1980 meeting conducted by  
28 STAN ALAMEDA, which was also attended by Grievants, MOUSSEAU had

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32 #####

1 no formal training whatsoever in PCB cleanup procedures.<sup>3</sup> His only  
2 training was "within the field foreman realm", but the Board is  
3 unclear as to what MOUSSEAU meant by that testimony. The same is  
4 true for McCORMICK and JOHANSON.

5 Thus, the lack of training and relevant practical experience of  
6 MOUSSEAU, McCORMICK and JOHANSON at the time they were in charge  
7 of the spill in question helped to create a real and apparent hazard  
8 to Grievants' health.

9 As to the lack of formal (or any) training and relevant practical  
10 experience, the same reasoning is generally applicable to each  
11 Grievant. Thus, the May 14 meeting was the only "training" Grievants  
12 received in PCB cleanup procedures, and the meeting was largely a  
13 reading of certain portions of Bulletin 2-50, Revision 3. There  
14 were no demonstrations on the proper techniques to be employed in  
15 cleaning up a PCB spill; there were no demonstrations on the proper  
16 use of protective clothing and equipment, including the proper  
17 method of disposal of contaminated clothing and equipment or the  
18 decontamination thereof; and there was no demonstration on the  
19 proper use of Penetone solution. There were no demonstrations of  
20 any kind.

21 Moreover, even assuming, arguendo, that the Board considered  
22 each Grievant to have had sufficient practical experience on PCB  
23 cleanups, the absence of any formalized training on the proper  
24 techniques and procedures to be employed with respect to all aspects  
25 of working with and around PCB's far outweighs any practical  
26 "expertise" held by any Grievant. As HAHN testified:

27 "... (A)s information changes about  
28 chemicals and more protection is  
required because of different properties

29 \_\_\_\_\_  
30 <sup>3</sup> It must be noted that on the two cleanup operations before the  
31 one on June 20, MOUSSEAU was functioning under a different  
32 revision of Bulletin 2-50. Revision 3 was not then in effect,  
and curiously, Revision 3 is the first T&D Bulletin 2-50 he  
had seen.

1                   that are suspected of chemicals,  
2                   then the situation of familiarity  
3                   with certain routines may be even  
                  worse, becoming somewhat of the  
                  worst people to work with chemicals ..."

4   So even if formal training is initially provided by the Company,  
5   retraining may become necessary from time to time in order to keep  
6   abreast of the changes which occur as we learn more about PCB's.<sup>4</sup>

7       The Company itself is generally in agreement that the use of  
8   trained personnel in PCB cleanups is very important. (See, for  
9   example, Mr. BUCHHOLZ' testimony at TR. 151: 22-26 and Revision 4  
10   of T&D Bulletin 2-50, which mandates that only trained personnel  
11   be used.) And it is quite interesting to note that after the  
12   June 20 spill, the Company initiated formal training programs,  
13   which included a slide presentation coupled with a demonstration  
14   on the proper use of protective clothing and proper cleanup techniques,  
15   and holds regular tailboard training, which was conspicuous by its  
16   absence on June 20. In addition, each Grievant was given one-on-one  
17   training.

18       With respect to the issue of the adequacy or inadequacy of the  
19   protective clothing that was covered by Revision 3 of T&D Bulletin  
20   2-50, the Board must note at the outset that it does not view  
21   its function herein as establishing what kind of protective clothing  
22   is generally appropriate in PCB cleanup situations. The Board's  
23   function is to determine if, under the facts and circumstances which  
24   existed on June 20, particularly at the spill site, Grievants had  
25   the contractual right to refuse to take part in the PCB cleanup  
26   operation.

27       In this regard, no question exists that face shields, goggles  
28   and respirators were unavailable at the spill site and at the

29

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30   <sup>4</sup> In any event, the testimony of HERNANDEZ, STOWELL, NEALE and  
31   FIMBRES indicates that their prior experiences did not conform  
32   to Revision 3 of Bulletin 2-50. In addition, ORTIZ could not  
     even fit into the extra-large coveralls, and QUILICI had reasonable  
     concerns about the protection afforded by the white protective suit.

1 Cupertino yard. Likewise, no question exists that the coveralls in  
2 use at the time of the June 20 spill did "not provide complete pro-  
3 tection against direct contact" with PCB's (Joint Exhibit 4).  
4 Questions do exist, however, as to whether direct contact was  
5 "anticipated" by MOUSSEAU, and what, if any, "appropriate clothing"  
6 the crew should have been immediately provided or, at the very  
7 least, told was available at the scene. (See Revision 3 of Bulletin  
8 2-50).

9 However, the Board really need not address these, or other  
10 related, questions, including the credibility issues which exist  
11 in the record, in consequence of the Company's failure to advise  
12 Grievants, or any of them, of the protective clothing that was  
13 (presumably) at the job site and to make such clothing immediately  
14 available to the men. If, then, Grievants had taken issue with  
15 the adequacy of the protective clothing, a different question would  
16 have existed. The Board recognizes that not all PCB cleanup  
17 operations will require the same degree of protection, and that such  
18 a decision is to be made by the exempt supervisor in charge of the  
19 operation, but on June 20, no supervisor, exempt or sub-foreman,  
20 made an effort to provide Grievants with any protective clothing,  
21 not even WAGNER. And that is the Company's obligation!

22 Additionally, it would be unreasonable for the Board to conclude  
23 that MOUSSEAU, who had no formal training, no relevant practical  
24 experience and who had read no T&D Bulletin pertaining to PCB cleanup  
25 procedures before Revision 3, could have made rational and safe  
26 decisions on June 20 concerning what, if any, protective clothing  
27 and equipment is necessary at particular points during the cleanup  
28 operation.<sup>5</sup>

29 Also missing during the June 20 spill were tailboard briefings.  
30

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31 <sup>5</sup> It goes without saying that additional or less protective gear  
32 may become necessary as the operation progresses.

1 Apparently, MOUSSEAU assumed the sub-foremen had fulfilled that  
2 obligation, but McCORMICK was the only one to have at least read  
3 Revision 3 to two employees, one of whom is a Grievant. That  
4 reading, however, does not rise to the level of a proper tailboard.  
5 Adequate opportunity existed for such briefing, and the failure  
6 to conduct such briefing, admitted by the Company to be a "funda-  
7 mental thing", helped to create a real and apparent hazard.

8 Nor did MOUSSEAU barricade the contaminated area as required  
9 by Revision 3. By failing to cordon off the area, he allowed for  
10 the spread of PCB contamination and added to the hazardous situation.

11 Finally, given the effect of PCB's on the eyes and the absence of  
12 face shields and goggles, the Board is not satisfied that an adequate  
13 supply of water was available at the spill site so as to properly  
14 flush the eyes in the event that became necessary. In this  
15 particular case, in the absence of adequate face and eye  
16 protection, drinking water cans may not have provided a  
17 sufficient supply of water.

18 In sum, the lack of training and experience of Grievants, the  
19 exempt supervisor and sub-foremen, the lack of protective clothing  
20 and equipment, and the Company's failure to follow T&D Bulletin  
21 2-50, Revision 3 together created a real and apparent hazard to the  
22 health of Grievants and they, and each of them, acted reasonably  
23 and in good faith in refusing to work the PCB spill on June 20, 1980.

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#### AWARD

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1. The disciplinary layoffs of the  
named Grievants were in violation  
of the Labor Agreement.

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2. The disciplinary layoffs of the  
named Grievants is hereby rescinded,  
they shall be paid for their lost  
pay and benefits, and all references  
to their discipline, including the

31

32

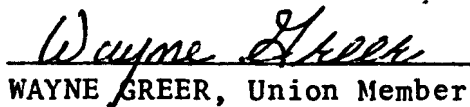


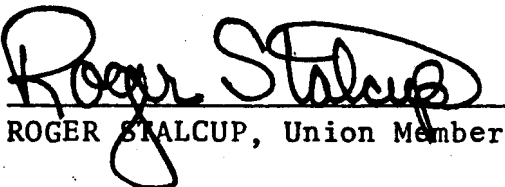
1 written communication dated June  
2 24, 1980, shall be removed from the  
3 employees' personnel files.

4 DATED: April 30, 1982.

5   
6  
7 ARMON BARSAMIAN - Chairman.

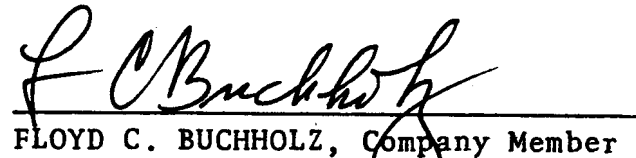
8  
9 Concur

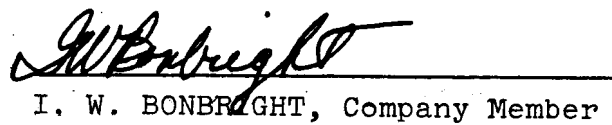
10   
11  
12 WAYNE GREER, Union Member

13   
14  
15 ROGER STALCUP, Union Member

16  
17 Dated: 5/6/82

18  
19 Dissent

20   
21  
22 FLOYD C. BUCHHOLZ, Company Member

23   
24  
25 I. W. BONBRIGHT, Company Member

26  
27 Dated: 7 June, 1982

TO: All Staff  
FROM: Ron Fitzsimmons  
DATE: July 20, 1982  
RE: New P.G. & E. Policy as a result of the PCB Arbitration Settlement

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Please find the new P.G.& E. Policy attached for your information.

RF/sam

Department

ELECTRIC OPERATIONS

FILE NO.

441.8

RE LETTER OF

SUBJECT

Transmission and Distribution  
Bulletin No. 2-50, Revision #4  
ALL

To Division or  
Department

Follow-up:				FHG RLS
DJB	JUL 1 1982			
PEP				MML
PNL	SEE ME	REPLY FOR MY SIGN	HANDLE	LDB
MAS	FYI	FOR YOUR RECOMM.	FILE	LSC

*Arbitration Case # 94*

July 1, 1982

DIVISION MANAGERS:

The subject Bulletin covers the procedures to be followed while handling polychlorinated biphenyl synthetic insulating fluids (PCBs) and equipment containing PCBs.

Pending the next revision of this Bulletin, each Operating Headquarters should include, under Part 7, a 5-gallon size drinking water container (the type carried on the Standard line truck) as a part of the equipment available for PCB cleanup operations. Each PCB cleanup procedure will require that this 5-gallon container be filled with fresh potable water and be available for potential use at the cleanup site.

Please make certain this change is implemented without delay.

F. C. BUCHHOLZ



FCB(1466):EP

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