

IN A BOARD OF ARBITRATION PROCEEDING PURSUANT TO THE  
CURRENT CLERICAL LABOR AGREEMENT BETWEEN THE PARTIES

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In the matter of a Controversy	)	
	)	
between	)	
	)	
PACIFIC GAS & ELECTRIC COMPANY	)	Arbitration Case
	)	No. 119
and	)	
	)	
LOCAL UNION NO. 1245 OF THE	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS	)	
	)	
	)	
	)	

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BOARD OF ARBITRATION:

ON BEHALF OF THE UNION:

ROGER STALCUP and DOROTHY FORTIER  
Local Union No. 1245 IBEW  
Post Office Box 4790  
Walnut Creek, California 94596

ON BEHALF OF THE EMPLOYER:

L. MIKE TYBURSKY and I. WAYLAND BONBRIGHT  
Pacific Gas and Electric Company  
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San Francisco, California 94106

THE CHAIRMAN:

ROBERT E. BURNS, ESQ., 155 Montgomery St., Suite 606  
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APPEARANCES:

ON BEHALF OF THE UNION:

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P. O. Box 4790, Walnut Creek, California 94596

ON BEHALF OF THE EMPLOYER:

L. V. BROWN, JR., ESQ., Pacific Gas and Electric Company  
245 Market Street, San Francisco, California 94106

### The Parties and the Issue

Pacific Gas & Electric Company (the "company") and Local Union 1245, International Brotherhood of Electrical Workers (the "union") are parties to a labor agreement applying to office and clerical employees (the "agreement").

Pursuant to the agreement and a written submission agreement a hearing was held in San Francisco on June 18, 1984 at which the parties, their attorneys and grievant M were present. At the hearing pursuant to the submission agreement the following issue was submitted to the Board of Arbitration:

Was the suspension of grievant M in February, 1983 or the discharge of grievant M in August, 1983 (or both of them) in violation of the parties' labor agreement? If so, as to the suspension and discharge (and each of them), what is the remedy?

At the conclusion of the hearing at which evidence, both oral and documentary, was received, the issue was submitted to the Board of Arbitration upon the filing of briefs by the parties. The briefs were filed on September 26, 1984.

### Provisions of the Agreement

Section 24.1 entitled "Management of the Company" provides in part as follows:

"The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to direct and supervise the work of its employees; to hire, promote,

demote, transfer, suspend, and discipline or discharge employees for just cause; . . . "

#### Statement of the Case

At the time of his termination on August 15, 1983 grievant Mr. [redacted], who was hired on October 9, 1979, was a meter reader in the company's San Francisco division. Grievant was discharged "for repeated insubordinate acts." Grievant had been suspended on July 29, 1983 pending investigation of a field incident involving field supervisor Frank Griffin on that date. Grievant was off work on a two week military leave of absence until August 15, 1983 when he received notice of his discharge.

A letter dated August 15, 1983 addressed to grievant stated:

"This letter is to confirm that effective August 16, 1983, you are discharged because of insubordination and making threatening remarks to Mr. Griffin, your supervisor."

Under date of August 22, 1983 the union filed a grievance received by the company on August 25, 1983. The issue stated in the grievance was as follows:

"On a continuing basis Company has allowed supervision to harass and intimidate grievant. On 7/29/83 grievant was physically assaulted by his supervisor (Frank Griffin) and then sent home for the remainder of his shift. When grievant returned to work on 8/15/83, after a two-week military leave of absence, he was terminated. Union contends that Company's actions against grievant were without just and/or sufficient cause."

Frank Griffin, a black person, is a field supervisor in the San Francisco meter reading department. He has been employed by the company for about 12 years, having previously

been a meter reader in the San Francisco division. Griffin had been grievant's supervisor for about 10 months prior to grievant's discharge.

Griffin testified that on July 27, 1983 after having been off a day sick, grievant reported for work and failed to produce a doctor's certificate as requested; that he told grievant that he would not be paid for the day off until he did so and grievant replied that if he didn't get paid he was going to rake Griffin over the coals; that on the same day he notified grievant that he would perform the semi-annual field audit on July 29.

A digest of Griffin's testimony follows. On the morning of July 29 he told grievant that he would be out sometime during the morning and join him on the route. Grievant replied that Griffin would have to find him first. Between 10 and 10:15 AM Griffin arrived on the route. Grievant was working in the 1300 block of 23rd Avenue. Griffin pulled up beside grievant, asked him in which direction he was working and grievant said nothing. Griffin drove around the corner, parked his car and returned and proceeded to begin the audit which is recorded on a sheet having various entries about meter reading functions. The performance review evaluation sheet contains a whole list of questions concerning the meter reader's appearance, supplies carried, safety, meter reading requirements included in field performance responsibilities, performance standards, and analysis of the meter readers's performance with recommended

corrective action. At about 11:30 AM a map of the route indicated that grievant had completed his route. Griffin asked grievant if he was through. Grievant stated that he was not. Grievant refused to show Griffin his meter book. Grievant said that he would like to take a break and Griffin agreed and they went to an ice cream store on Irving and 24th Avenue. Grievant refused to show Griffin his meter book on the ground that he had not finished with it. After they left the ice cream store grievant went to several meters on 24th Avenue and appeared to be writing in his meter book. At one time Griffin got close enough to see that he was not writing in the meter book, that he had already put "the read" into the meter book. Finally, grievant said that he was done and was going back. Griffin asked for the meter book and grievant refused. The last time grievant said he was not going to let Griffin see "shit." Griffin told grievant he was being insubordinate. Grievant said the burden of proof was on Griffin and he would have to prove the fact. Griffin told him that he wanted his keys and meter book and to report back to the office. At that time Griffin reached for the meter book. Grievant was carrying a screwdriver in his left hand, the meter book being under his right arm. Griffin reached across the front of grievant to get the meter book. Grievant struck at him with the screwdriver. Griffin reached again for the meter book. Grievant nicked him on the left hand with the screwdriver. At that time a truck pulled up and a man jumped out and asked Griffin to identify himself. The man was a shop steward for the union.

He asked grievant to give Griffin the meter book and the keys. Griffin got into his car to follow grievant and the shop steward and lost them in Golden Gate Park. Griffin remembered that he had left his clip board on 24th Avenue. He returned. On his way he saw grievant and the other man going into the police station. Grievant was making up a police report against him for assault and battery. Griffin also entered the police station and explained that grievant had pulled a screwdriver and struck at him. He returned to 24th Avenue and a resident who had found the clip board returned it to him. The man explained that he was looking out of the window and saw the incident between grievant and Griffin. The man later gave a written statement that the incident between grievant and Griffin was "no big deal."

Griffin testified in reply to an accusation by grievant that at no time did he make any remark to grievant concerning the inability of white men to satisfy white women as well as black men or that white men were not worth a damn; that he never asked grievant if it bothered him that for a hundred years his people were slaves to white men and now grievant was a slave to him; that during his ten months of supervision of grievant grievant had called him an "Uncle Tom," a "house nigger," a "token black;" that grievant put some watermelon bubble gum on his desk and told him that his people liked this type of gum; that grievant at one time referred to his hair and put his hand in Griffin's hair.

Griffin also testified that his working relationship

with grievant was basically good; that a meter reader reads from 14,000 to 15,000 meters a month and in the three years of grievant's employment the company has received four complaints concerning his meter reading; that it is not unusual to receive complaints about meter readers in alleys or jumping fences; that he prepared grievant's December 20, 1982 semi-annual performance evaluation and stated that grievant handled himself well, demonstrated good working habits and displayed a courteous attitude towards customers; that grievant had been counselled individually on four customer complaints but they were not serious enough to mention in terms of corrective action; that grievant had been given oral counselling on January 29, 1982, September 6, 1982, September 10, 1982 and October 20, 1982; that he audited grievant on September 20, 1982 and took impromptu audits on January 20, February 9, May 10, 1983; that in his semi-annual audit on August 17, 1982 he stated that grievant was displaying a courteous and polite attitude towards customers but needed to improve in the area of missed meters; that in later semi-annual audits he never observed grievant being discourteous with customers; that grievant had directed racial slurs at him but he did not allow it to interfere with a good relationship with grievant; that he might have mentioned the racial slurs to one of the supervisors on the same level but he never mentioned it to a superior supervisor; that he made a memo of a complaint by a supervisor that grievant had jumped a back fence in a customer's back yard but such a complaint is not unusual; that

he counselled grievant and made a memorandum and grievant agreed that he would not jump fences in the future; that he had never reported grievant's racial slurs to his superior because he felt that grievant had a problem and needed to make those types of statements.

J , a witness subpoenaed by the company, testified that he is a meter reader; that grievant tended to use racial slurs and racial jokes with a negative racial overtone; that he referred to Griffin on several occasions with racial, demeaning terms; that he called Griffin an Uncle Tom; that he would like to use Griffin as a target as a little black rabbit in the army maneuvers he was about to perform; that one morning grievant called him a nigger under his breath and he reported it to his supervisor; that he told his supervisor he did not wish to pursue it; that he had never heard grievant make threatening remarks to him or anyone else.

Annabel F. Morris is a supervisor for meter reading activities in San Francisco and is Griffin's supervisor. Grievant told her shortly after she took her position that he wished to be placed on the management consideration list; that she researched his file and found a notation "review within six months due to attendance;" that sometime later in March or April 1983 he had asked to be considered for a position in the marketing department; that she investigated the matter and decided that grievant could probably handle the assignment but no improvement was shown in his attendance; that she told grievant that because



of his attendance he could not be recommended at this time; that after grievant was removed from the management consideration list his attitude changed and instead of being a friendly person he seemed to go out of his way to stir up the office by throwing his keys across the room and by entering the office with a cigar and blow the smoke around everyone; that the office workers asked her to ask grievant not to throw his keys in the metal box and create a racket; that she asked grievant several times to refrain from throwing his keys; that grievant agreed but on occasion he would throw his keys thereafter; that when Griffin returned on July 29, 1983 after the audit Griffin reported to her and described what had taken place from the time he found grievant on the route; that when grievant returned to the office she told him that he was through for the day and there would be an investigation; that after contacting her supervisors grievant was placed on suspension; that grievant was off the next two weeks performing his army reserve duties and she wrote grievant a letter stating that he was on suspension; that when grievant reported after his reserve duties she met with him and the shop steward; that grievant stated he had not slashed Griffin with a screwdriver but did discuss at length Griffin's request to grievant to turn over his meter book and grievant gave no reasons for his refusal to do so; that at the conclusion of the interview she went with grievant to the district supervisor's office where grievant was terminated; that in arriving at the decision to terminate she took into consideration a three day disciplinary action grievant

had received in February.

Phillip C. Lithman, a witness subpoenaed by the company, has resided at 18 Sycamore Street for about four years. That address is a large converted warehouse with six separate apartments, one of which he occupies. The electric meter for the entire premises is located in his bedroom. The passage way leading to his bedroom consists in part of steps. He testified that on February 11, 1983 between 7 and 8:00 AM he was sleeping and was awakened by the door to his room slamming open and hitting the wall behind it; that there had been no knock at the door; that the loud noise awoke him and his girl friend who dived under the covers; that he sat up and saw the P. G. & E. meter reader; that he told the man that he had to knock and could not enter in the manner which he did; that the meter reader (grievant) smiled at him and he asked for his name and number; that grievant read the meter and was moving out of the room when he grabbed his crotch and said "here's my name and number" and as he left the room he shouted "fagots" and various other things; that he got out of the bed, put on his dressing gown and walked through the building and out the front door; that by that time grievant was across the street; that he told grievant that he wanted his name and number; that grievant grabbed his crotch and said "there's my fucking name and number;" that he reported this incident to the company; that he also testified at the Local Investigating Committee that he had never given grievant permission to enter his room without knocking; that he was not

sure whether grievant hit the top of a desk or a partition type wall; that grievant looked evil, was acting in a crazed, offensive manner and probably dangerous to any gay houses he might be visiting.

Griffin also testified concerning a telephone call to Lithman, the premises at 18 Sycamore, the type of people in residence there, and a succession of meter readers serving the premises.

Christine Alicino, a witness subpoenaed by the company, testified that at 8:00 AM on February 11, 1983 she was in bed with Lithman; that she was awakened by a large crashing; that she could not put it together but saw a man in a uniform coming in the door aggressively; that she immediately went under the covers; that she came out from under the covers as grievant finished reading the meter and was standing at the foot of the bed; that grievant called her and Lithman fagots; that Lithman asked grievant for his name and number; that grievant left the room banging down the hallway yelling things about fagots; that she felt the entire situation to be very threatening.

James Christopher, a witness called by the company, is a customer services supervisor whose desk is next to that of Griffin. He testified that one day grievant entered the room, used by meter readers and clerks and touched Griffin's head and said it was "kinky;" that Griffin said "don't do that;" that at times grievant would enter the room, throw his keys in the tray holding a pile of keys and drop his meter book loudly on the

table; that one of the women working on the telephones asked him what was wrong with grievant.

Gary Ciardella, a witness called by the company, was formerly a San Francisco meter reading supervisor. He did not recall racial comments reported to him by employee J . He testified that he received a complaint call from Lithman about 10:00 AM on February 11; that Lithman reported that he and a meter reader got into a shouting match and the meter reader called him a fagot; that the meter reader refused to give him his identification except to point to his groin area; that he told Lithman he would investigate the matter; that he went out and saw grievant on his route and asked him about the incident; that grievant said he knew what Ciardella was talking about but that he did not call Lithman any names; that the man had asked him for his ID but he did not show it to him; that he returned to the office and referred the case to Griffin when he returned to the office on the following day.

From the date of his hire on October 9, 1979 grievant worked as a meter reader in the San Francisco office. Prior to his suspension in February, 1983 he had not been disciplined by the company. Prior to his suspension he prepared a written response addressing and answering each of the four instances of customer complaints. He also had attended a safety meeting where the meter readers were advised to avoid and retreat from any confrontation and to report the incident. Grievant testified that he started reading the meter at 18 Sycamore Street in

November, 1981 with the exception of one month; that the first time he read the electric meter at 18 Sycamore he was shown where the meter was located by an occupant of the building; that at that time Lithman stated that he worked nights, not to wake him up, just come in, and read the meter; that after he began reading the meter in Lithman's bedroom he requested the company to install a remote reading devise at 18 Sycamore; that the company response was that remotes were expensive and used only in limited situations, but not in that neighborhood because of its likelihood of it being tampered with; that he made the request for a remote reading devise on the electrical meter at least three times; that during the ensuing months after February, 1982 there were no problems so long as he arrived at 8:30 AM and it was his experience that when the door was closed Lithman was gone; that he never knocked on the door; that on February 11, 1983 he arrived at 18 Sycamore at about 8:30 AM, rang the doorbell and was admitted by a young women; that he proceeded to read the gas meter; that as he started to mount the stairs to Lithman's bedroom there was some debris on the stairs and he tripped and fell; that he picked up his flashlight and screwdriver and proceeded up the stairs; that Lithman's door was firmly closed and he opened the door just enough to allow himself entry and walked straight across the room to the cabinet; that he did not slam the door; that he was about to open the cabinet with his screwdriver when he heard a voice "what the hell is going on;" that he said "excuse me, P. G. & E. meter reader here to

read the meter;" that Lithman said "what the hell are you doing here" and he replied "I'm here to read the meter;" that he sensed that Lithman was agitated; that he did not read the meter; that he closed the cabinet and Lithman was screaming and said "what's your name and number;" that Lithman started to get out of bed and he exited the room immediately; that Lithman was screaming for his name and number; that he apologized two or three times and made his way out of the building; that Lithman opened the front door and demanded that he give him his name and identification; that he had not slammed the door when he entered Lithman's room or threatened to turn off his service; that he did not knock on the desk or on the wall; that he did not grab his crotch at any time inside or outside the building or call Lithman and his girl friend fagots or use any profanity; that he did not give Lithman his name and number because he did not wish to become involved in an aggravated situation and believed at the time Lithman was reaching for some type of weapon; that in March, 1983 there was a complaint from a customer about jumping a fence; that there were two houses located at the area; that it was necessary to go up 84 stairs; that a mudslide had all but obstructed access to the meter; that three times he missed reading the meter and figured that if he could get down behind the property he could attain the readings on both gas and electric without disturbing anyone; that he explained the matter to Griffin and thought that he resolved the situation; that he agreed not to do it anymore; that in working with Griffin he had found that Griffin put a

higher priority on misses; that in the week prior to July 29 he had been off sick but could not provide a doctor's slip because his doctor was out of town; that he learned on July 29, that he would be audited that day although he knew about it on Wednesday; that normally Griffin inspected his vehicle as part of the semi-annual audit; that on July 29 when he was parked outside the 77 Beale Street office Griffin told him that he did not have time to make the inspection then; that normally a supervisor rides out on the route but on that day Griffin told him he would catch up with him later; that he started his route quickly and found because it was cold and wet there was condensation on the meter glass and he was not able to see some of the meters; that he skipped some of the meters for this reason and decided to come back later that day; that around 10:00 o'clock while he was on 23rd Avenue he heard a car honk and saw that it was Griffin; that he told Griffin at which account he was; that Griffin said he would be back; that he was going back up the hill on 23rd Avenue by the time Griffin returned and he told Griffin at which account he was; that Griffin told him to keep reading; that Griffin reminded him that he was not going to get into management and he better shape up and that he, Griffin, had the power to decide on him getting into management; that Griffin reminded him of his suspension in February and started chiding him about some racial comments; that he ignored Griffin because when a meter reader is distracted he makes errors; that when it was about 12:15 he was three quarters of the way through his route; that by

the time he and Griffin got to Irving and 22nd Avenue near the completion of his route Griffin started to get vocal again; that at this time he usually takes a break and a cup of coffee; that when he read the meter of a delicatessen, the owner invited him in to have a cup of coffee and he refused because he did not wish to take his break with Griffin; that when they got into the end of the route at Lincoln and 24th Avenue, he told Griffin that he had to check a few more meters; that Griffin said he wanted his book; that they finally went up 24th Avenue from Lincoln to the Baskin-Robbins store; that he laid his book on the table checking for subtraction errors; that Griffin asked him if he was done and he replied no; that Griffin said he wanted to see the book when he was done; that when he left the store he had to pick up six accounts and he wanted to check the readings that he had done early in the morning; that as they proceeded on 24th Avenue he told Griffin that he would give him the book when it was completed; that he normally carried on his wrist his own screwdriver with a six inch blade and thong; that up to this point Griffin had only asked for the meter book when it was completed; that as they proceeded on 24th Avenue approaching Lincoln he was carrying his meter book under his right arm and the screwdriver on his left arm; that Griffin lurched forward toward him and attempted to pull the meter book from under his arm; that Griffin was wrestling with him and he told him that someone might call the police; that Griffin would not back off and started pushing him and grabbing for the book; that as he grabbed for the book the



second time grievant's pencil pierced the side of Griffin's finger; that Griffin made three or four lurches at him and he was afraid that Griffin would hurt himself or they would fall to the pavement; that all of a sudden he heard the screech of tires and a vehicle pulled into a drive way in front of them and a guy jumped out and said "what's going on here;" that Griffin let go of him and the guy asked if he, M , needed help; that Griffin identified himself and the man asked for identification; that they went to Griffin's vehicle; that the man was shop steward A ; that Griffin told him that he wanted the book and keys and that he, M , was suspended; that A told him to give the book to Griffin and to give him the keys which he did; that he did not slash at Griffin with the screwdriver; that on August 15, when he reported for work and was discharged he was not given a chance to give his full side of what had happened; that the Local Investigating Committee was his first opportunity to respond; that he was careful about missing meters because he had been told in the past that his misses were too high; that he had in his possession four keys permitting access to company property although he had been requested to return them; that he retained the keys and uniforms to bring them to the arbitration; that he had not been heard July 29 or on August 15 and decided that he would bring the keys and uniforms to the arbitration when he could be heard and fairly judged; that he had never referred to Griffin as a house nigger or Uncle Tom.

A is an employee of the company and a

shop steward. On July 29, 1983 he was on the disability payroll. He testified that on that day while he was driving on 24th Avenue he observed an individual who had a meter reader in a bear hug; that he stopped his car, got out, and yelled "what's going on;" that Griffin released grievant and said "I'm his supervisor;" that he asked for identification and that he didn't "push it" when he saw Griffin walk to his company car; that he did not see grievant slash at Griffin with a screwdriver; that he and grievant went to the police station where Griffin joined them; that he drove grievant to the company office.

#### Discussion and Opinion

The February 1983 incident on Sycamore Street must basically be resolved from the contradictory testimony of grievant and Lithman and Alicino. The placement of the meter in Lithman's bedroom is unusual and the company might well have intalled a remote reading devise except the nature of the premises might have militated against such an installation since the remote reading devise is less secure. In any event, grievant knew the meter was in a bedroom and that alone could have indicated to him that a discreet entrance was indicated. Grievant accounts for the noise by his falling on the steps leading to the room. Alicino testified that the steps are some distance from the room and she was not awakened until, as she describes it, grievant burst into the room. Both Lithman and Alicino testified that they were awakened by grievant's loud entrance.

It is worthwhile to consider the positions of what may

be described as the "adversaries." Lithman telephoned the company the same day of the incident and complained of grievant's conduct. His testimony, given about 15 months after the incident, was reasonably clear concerning the events of that morning. According to Lithman, he was awakened by the door to his room slamming open and hitting the wall behind it. Alicino testified to the same effect and she was not present during Lithman's testimony. Both Lithman and Alicino testified to grievant's conduct while in the room and his statements accusing them of being fagots. Lithman followed grievant and from the door of the building again asked grievant for his name and number and grievant replied as has been indicated. Neither Lithman nor Alicino would have a discernible motive to fabricate a story concerning grievant's conduct. Nor is there a discernible reason to explain Lithman's telephone call to the company on the day of the incident and his appearance and testimony at the hearing in June, 1984.

It is true, as the union urges, that it would be strange indeed for grievant to call Lithman a fagot when he obviously was in bed with a woman. Alicino's face and appearance are such that she would not be mistaken for a man. As in the case of other employees of the company grievant was instructed "to back off" and retreat from a confrontation with a customer. But an employee can "back off" and still give his name and number, particularly when he is across the street from the questioning customer. If grievant had followed the permission of the former occupant of the room he would not have entered the room in such a manner as

to awaken Lithman and Alicino, both of whom testified that they were upset with grievant's abrupt entrance.

The circumstances of the February, 1983 incident at 18 Sycamore Street are such that the testimony of Lithman and Alicino is credible and the contradictory testimony of grievant is not accepted. Most persons would not have concocted stories such as those of Lithman and Alicino, although there may be exceptions. Grievant also testified that Lithman followed him to the outside door of the premises and asked for his name and number, acts of a person who has a complaint. Lithman's call the same day to the company and Lithman's and Alicino's testimony considered together establish the truth of the charge. The three day suspension was reasonable.

The fact that the company took action in February, 1983 against grievant without first interviewing Lithman does not invalidate the disciplinary action taken by the company because in this case the credible evidence of what happened on the day in question is such that there was just cause for grievant's suspension without pay for three days. If a company supervisor had investigated immediately by interviewing Lithman at the scene of the incident, the facts would presumably have not been different than those adduced at the hearing in this case. Grievant was not prejudiced by the supervisor's failure to interview Lithman and Alicino before disciplinary action was taken.

The credibility of the witnesses pervades this case. The report of the Local Investigating Committee (LIC) shows that

grievant stated at the LIC meeting that during the July 29 audit Griffin made remarks about the inability of white men to satisfy white women as well as black men and coupled this statement in asking grievant how his wife was doing and whether he had a happy home situation. Grievant also stated at the LIC meeting that Griffin said that 100 years ago his people were slaves to white men and that now grievant was a slave to him. At the arbitration hearing grievant did not recall having made such statements concerning Griffin at the LIC meeting until his memory was refreshed. Such alleged statements by Griffin on their face are hard to believe. Griffin denied making any such statements. Griffin appeared to be a decent man and in his newly won position of supervisor it would have been utterly stupid for him to make any such remarks to grievant or to anyone else employed by the company, especially those subject to his jurisdiction as a supervisor.

Grievant was not discharged because of his racial remarks to Griffin and to other employees. The next level of supervision had not been informed of them. The significance of those remarks is that they indicate grievant's state of mind and preoccupation with racial matters and his apparent resentment of Griffin's appointment as a supervisor. Another indication of grievant's state of mind concerning the status of other persons is shown by grievant's remarks to Lithman in February, 1983 when he referred to Lithman and Alicino as fagots\*. Grievant's

\*Although Lithman testified Alicino's head was under the covers, Alicino saw grievant and grievant saw a women in bed with him.

preoccupation with racial and status matters is also exemplified by his characterization of Griffin as an Uncle Tom.

In making his audit on July 29 Griffin had the right to look at grievant's meter book at the time he requested grievant to show the book to him. Grievant's intransigence was consistent with his apparent dislike, if not contempt, for Griffin. Griffin had a job to do and grievant was insubordinate in refusing to deliver or show to Griffin his meter book.

The evidence is also in conflict concerning the origin of the small cut which Griffin experienced. Grievant denies that he struck at Griffin with his screwdriver and asserts that when Griffin attempted to pull the meter book from under his arm the pen which he had in his hand accidentally scratched or cut Griffin. Griffin's account is that grievant slashed at him more than once with the screwdriver and finally connected and caused the wound.

A testified that when he first saw grievant and Griffin, Griffin had grievant in a "bear hug." Grievant referred to "wrestling," and in his statement to the LIC to a "bear hug." Griffin did not testify to a "bear hug" or "wrestling." At the LIC Griffin denied assaulting grievant, saying the only thing he touched was the meter book. Martin Engel who stated that he observed the incident stated it was "no big deal." Engel was not called as a witness and his hearsay statement is entitled to only slight weight. It may be observed that Engel was the only witness to the incident who was not involved as a participant or as a representative of one of the parties (A ). The tangled

contradictory evidence fails to specify clearly what happened at the critical moment when Griffin attempted to obtain the meter book. His hand was "nicked." Whether he put his arms around grievant and whether he was nicked by grievant's pen rather than the screwdriver is not clear.

Prior conduct of individuals sometimes assists in the evaluation of testimony of those individuals. Grievant was given to making offensive statements and threats. He put his hand on Griffin's head and commented on the texture of his hair. He expressed his defiance of Griffin in other ways. Griffin showed commendable restraint when grievant put his hand on Griffin's head. He also exercised restraint in response to racial remarks and did not report to a next level supervisor concerning grievant's remarks. Griffin's testimony is consistent with his prior conduct. Grievant on the other hand had engaged in the incident at the Lithman bedroom and had made statements to Griffin corroborated by at least one other employee. After considering all of the testimony, the demeanor of the witnesses, and the circumstances, it is concluded that Griffin's testimony concerning the July 29 incident is the correct and the most credible evidence.

The union urges that grievant was not insubordinate on July 29 in that during past audits he had refused to turn over his meter book to Griffin until he had finished his route, Griffin had accepted such refusal, and Griffin (and the company through him) had therefore condoned such conduct. The request

by a supervisor conducting an audit to examine the meter book is reasonable and proper. Griffin's acceptance of the refusal in the past is consistent with his failure to report grievant's racial remarks and grievant's placing his hand on Griffin's head and remarking on his hair. Griffin was attempting to get along with grievant as best he could, Griffin realizing that grievant was resentful of his color and his appointment as a management supervisor. There was no reason that Griffin on July 29 should continue his waivers of grievant's prior refusals to turn over the meter book. Griffin asked grievant for the book several times including the time they were taking a break in the ice cream store. If grievant believed, as the union urges, that Griffin was harassing him and making unreasonable demands upon him, he could have complained to Morris or a next level supervisor about Griffin's alleged conduct. Grievant could also have consulted his union steward or a union business representative. The rule has long been established that in the case of an improper order by a representative of management the employee should comply with the order unless the order threatens his health or safety, and then grieve or take action through appropriate union or management channels. Grievant's conduct on July 29 was consistent with his conduct in February at 18 Sycamore Street and his conduct in throwing his keys in the office and in disturbing the clerks there.

The union also complains that grievant was given "semi-annual audits in 11 months (August 17, December 16, 1982 and January 11, and July 29, 1983) and understandably grievant



was led to feel that he was being unduly singled out for Griffin's attention. Coupled with this the union urges that Griffin committed a total breach of supervisorial conduct in attempting to pull the meter book from under grievant's arm. Supervisors are also bound by appropriate rules of conduct. Supervisors are also human beings. To the extent there was harassment on July 29 the principal harassment was by grievant of Griffin. Griffin asked grievant for the meter book several times and grievant refused. Although not proper, it is understandable that Griffin reached for the meter book so that he could examine it. Under the circumstances Griffin's action did not excuse grievant's repeated refusals to surrender the meter book. Again, if grievant believed that Griffin's directions were improper or wrong, his action should have been to comply and thereafter complain or grieve.

Grievant's credibility concerning the events of July 29 is further undermined by the incident at 18 Sycamore Street and his testimony and the testimony of Lithman and Alicino. There is a standard instruction given to juries that a witness who is willfully false in one part of his testimony is to be distrusted in other parts of his testimony. That rule is applicable here. (The instruction was formerly contained in section 2061 of the California Code of Civil Procedure. Since the repeal of that section, it is given pursuant to the general power of the court. See annotation to section 2061, Code of Civil Procedure, West's Annotated California Codes.)

The pattern of grievant's misconduct at 18 Sycamore,

his statements to Griffin and another black employee, his conduct in the common room where meter readers and clerks work and his conduct on July 29 are all of a pattern. That pattern is such that the conclusion is that grievant was insubordinate on July 29, engaged in misconduct at 18 Sycamore Street and the company had just cause to discharge him.

Award

Pursuant to the labor agreement, the submission agreement, the stipulations of the parties and the evidence the following award is issued:

1. There was just cause for the suspension of grievant for three days in February, 1983 and such suspension was not in violation of the parties' labor agreement.

2. There was just cause for the discharge of grievant and such discharge was not in violation of the parties' labor agreement.

Dated: October 29, 1984.

BOARD OF ARBITRATION:

~~Concurs~~/Dissents

Roger Stalcup  
Roger Stalcup, Appointed by the union

~~Concurs~~/Dissents

Dorothy Fortier  
Dorothy Fortier, Appointed by the union

~~Dissents~~/Concurs

L. Mike Tyburski  
L. Mike Tyburski, Appointed by the company

~~Dissents~~/Concurs

I. Wayland Honbright  
I. Wayland Honbright, Appointed by the company

Concurs

Robert E. Burns  
Robert E. Burns, Chairman

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