

In the Matter of an Arbitration

between

LOCAL UNION NO. 1245 of
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent.

Arbitration Case No. 125

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

ROGER STALCUP and
RON FITZSIMMONS, Union Members

I. WAYLAND BONBRIGHT and
RICK DOERING, Company Members

ISSUES:

1) Was the Grievant's () suspension on December 14, 1983, in violation of the Parties' Agreement?

2) Was the Grievant's () discharge effective January 24, 1984, in violation of the Parties' Agreement?

If the Board's response to Issue #1 is in the affirmative, what is the remedy? If the Board's response to Issue #2 is in the affirmative, what is the remedy?

STIPULATIONS:

"1. The propriety of the company disciplining employees for refusing to participate in the cleanup of a PCB spill was the subject of Arbitration Case No. 994, decided by Arbitrator Armon Barsamian on April 30, 1982. A copy of Arbitrator Barsamian's decision is attached to this Stipulation for the information of the Board of Arbitration.

"2. For the purposes of this arbitration case only, the parties adopt the comments of Arbitrator Barsamian at pages 18 through 19 of his decision with respect to the known and unknown toxic effects of PCBs.

"3. For the purposes of this arbitration case only, the parties agree that company employees are expected to participate in cleanups of PCB spills if all of the following conditions are met:

"(a) the employees and supervisors have been properly trained in the safe handling of PCBs; AND

"(b) the employees are provided with adequate protective clothing and equipment; AND

"(c) the provisions of T&D Bulletin 2-50, current revision, are followed.

"These issues are discussed in pages 18 through 24 of Arbitrator Barsamian's decision and in T&D Bulletin 2-50, Revision 5, a copy of which is attached to this Stipulation.

"4. The appropriate standard for review of company discipline of employees for refusing to participate in the cleanup of a PCB spill is: did the work assignment reasonably and objectively present a real and apparent hazard to the grievant's health, life or safety? [This standard is discussed at page 16 of Arbitrator Barsamian's decision.]" (Jt. Ex. 4)

BACKGROUND:

S was employed on January 22, 1969, and obtained a Lineman status in 1975.

Both incidents in this case involved transformers containing polychlorinated biphenyl insulating fluid (PCBs).

In 1976, Congress banned the manufacture, distribution and commercial use of PCB oils in other than totally enclosed systems; and, thereafter, the United States Environmental Protection Agency placed specific restrictions on the disposal of PCB contaminates measuring 50 parts or more per million. The Agency required the marking of poles supporting high voltage capacitors and individual marking of transformers and other equipment containing PCB. The removal of PCB contaminated capacitors and transformers that was presently in service was not required. The Environmental Protection Agency did not prescribe criteria for handling transformer spills. The

only requirement by the Agency was that all materials contaminated by a PCB spill measuring fifty parts per million or greater must be removed and properly disposed of.

Accordingly, the Company developed its own guidelines for the handling of transformer oil spills containing fifty parts or more per million of PCB. Over a course of years, the Company has revised T&D Bulletin 2-50 five times.

ISSUE 1 - THE SUSPENSION OF DECEMBER 14, 1983:

The letter addressed to S. [redacted] concerning his one-day, five-hour suspension reads as follows:

"This is to confirm discussions held with you on Thursday, December 15, 1983, Monday, December 19, 1983 and Wednesday, December 21, 1983, regarding your refusal to perform assigned work within your job classification on December 14, 1983.

"It is the Company's position that the training in PCB clean-up is adequate and that you have participated in training sessions on at least four occasions. In regards to the protective clothing, your Company provides the best available quality protective clothing. Therefore, your claim that the training and protective clothing are inadequate are insufficient reasons for not performing the work as ordered.

"As you know, at your request, we have pursued a potential change in your career with the objective of placing you in a position so as not to be exposed to PCB clean-up. A verbal contact with IBEW 1245 resulted in lack of agreement to place you in a career path change at this time.

"Your classification as a lineman includes the requirement of PCB clean-up. You will be expected to perform this job requirement in the future.

"On March 6, 1980, you took similar action and you were given one day off without pay.

"You are being given one day plus five hours without pay for this incident. (Five hours on December 15, 1983 plus all of December 16, 1983.)

"Any further incident of refusing to perform a PCB clean-up or any other requirements of your job classification will result in your termination." (Co. Ex. 8)

The Events of December 14, 1983:

On December 14, at approximately 2:00 p.m., Lineman P. told Mr. G, General Foreman in Sonoma, that a dripping transformer was resting on a pallet in the Company's Sonoma Yard. P. and G. placed the transformer into a bag and a sample of the leaked oil was sent out for a laboratory analysis.

At 4:30 p.m., G. was notified by the laboratory that the oil sample was 360 parts per million PCB, well over the 50 parts per million established by the Environmental Protection Agency. This condition required immediate removal and disposal of the PCB contaminated oil.

G., determining that the cleanup was beyond the regular work hours, then consulted the emergency overtime sign-up sheet to determine those persons who would be required to perform the clean-up. S. was the first name on that list that was entitled to overtime, and the Company had the obligation to call him for emergency overtime work.

Subforeman G testified that S. stated he would not take part in the clean-up, and G testified:

"A. I told him that we had a job to do in the yard, and he was on the call-out list and that it was something that had to be done and told him that we would have to clean it up.

"Q. Did you order him to clean up the -- to work on the crew?

"A. Yes, I did.

"Q. What was his response?

"A. He refused.

"Q. What happened after he refused? What did you do next?

"A. I told him that I had no recourse, that I had to suspend him until further investigation of the incident." (Tr. 40-41)

S testified as follows:

"A. Then I spoke to Mr. G' and said I wasn't going to work.

"And he said, 'Are you refusing?'

"And I said, 'If you are asking me to work, I am refusing.'

"And I stated that I was afraid to be around PCB's. I felt that it was injurious to my health as well as the health of the rest of the workers and felt the training was inadequate.

"And I said, 'Protective clothing doesn't protect us.'" (Tr. 167)

Thereafter, G : did not contact P who was the next person on the call-out list, because according to G , he knew that P : was scheduled to appear as Santa Claus in a Company Christmas party that evening.

The third person on the list was "hot" Apprentice Lineman . Mc , and he was not called because he lived too far away to respond quickly.

The fourth person on the list was a Lineman who accepted the offer and worked the emergency overtime.

On December 15, S had a meeting with G and Sonoma District Manager Fanucchi, and what transpired at that meeting is reflected in the letter of suspension noted hereinabove (Co. Ex. 8).

It is the Company's position that S was required to accept the assignment given to him; that as a Lineman, he had to accept the assignment since that was within the duties of a Lineman; that S had not withdrawn his name from the volunteer emergency overtime list, as provided in Section 212.2(c)(3). That particular provision reads, in part, as follows:

"(c) Employees who do not remove themselves from the call-out roster as provided for above nevertheless shall be allowed the opportunity to remove themselves during the week under the following conditions:

"(1) Regular scheduled attendance for educational purposes with advance notice.

"(2) Participation in civic or church activities with advance notice.

"(3) All other instances limited to twice a week with advance notice." (Jt. Ex. 1)

It is the Union's position that Section 212, when negotiated meant that volunteers from the 212 list are contacted and offered the emergency overtime; that during the first round of phone calls, an Employee who is on the volunteer list has the right to refuse the offer of emergency overtime and does not have to give any reason for such refusal; that if an Employee is contacted for a second time, then the refusal could only be for an urgent and pressing reason.

Section 212.3, entitled "Call Outs & Response," reads, in part, as follows:

"In the event employees are called for emergency overtime and refuse or cannot be reached, they will nevertheless be credited on the appropriate list with equivalent overtime in the same amount as received by those who did the work. Company is only required to make an attempt to contact by telephone an employee during an emergency period and such employee will be charged only one refusal." (Jt. Ex. 1)

Manuel A. Mederos, Union Assistant Business Manager, who was on the Negotiating Committee involved in the negotiations which led to the formulation of the actual call-out system in Section 212.3, stated on direct examination:

"Q. If an employee has signed for emergency overtime on a weekly basis and is on the list, does that employee in your experience have the right to decline or refuse a request to perform overtime?

"A. Off the top of my head under 212.3 I think it says specifically in there that he has the right to refuse. It doesn't say he has a right to decline. Then he will be charged with the amount of hours as if he worked for the equalization of overtime.

"Q. Does an employee who refuses under 212.3 to your knowledge have to give a good reason for so refusing?

"A. No.

"Q. Do you know of any situation which an employee other than Mr. S has been disciplined for refusing to work on the first call under 212?

"A. Off the 212 list, no." (Tr. 130-131)

On cross-examination, Mederos testified:

"Q. It's true, is it not, that if he is on the call-out list, he has been notified of the call-out, then he reports to the job. At that point it's true, is it not, that he does not have a right under the contract to look at the job and say, 'I don't like that kind of work. I refuse to take it.'

"A. I don't know that we have ever addressed that issue.

"Q. Once he has been ordered to do the job and he has arrived at that job site, the employee does not have a right to refuse that assignment?

"A. At that point.

"Q. Is that not true under your understanding of the relations between the Company and the Union under this contract?

"A. Well, you are making -- I would have to make some assumptions that it doesn't violate the other agreements that we made on where employees do have a right to refuse to do certain work. We do have that.

"Q. It's just a normal operational job that a line crew would do.

"A. If it was just normal overhead work, nothing involved.

"Q. Your answer is: He does not have a right to refuse under that circumstance?

"A. (Witness nods head.)" (Tr. 136-137)

G testified, on cross-examination:

"Q. Does the contract say something about you have to have a good reason to refuse? Are you aware of anywhere in the contract where it says you have to have a good reason to refuse?

"A. No, but I am assuming when a man signs up, if he is going to remove himself, he has a fairly good reason to remove himself.

"Q. Employees have in fact refused who were signed up for the 212 list, correct?

"A. They refuse the overtime.

"Q. Were they disciplined?

"A. No, but in this case --

"Q. My question was: Were the other employees who refused disciplined?

"A. They are credited with the overtime that was worked by somebody else." (Tr. 47)

Section 212 does provide a penalty for persons who refuse emergency overtime in that he is credited with the overtime work by the person who took the overtime but does not get paid for it, but the result of that is to change the position of the person who refused the overtime on the preferential list.

SUMMARY AS TO ISSUE 1:

S refused the emergency overtime because of his beliefs concerning working around PCB and his beliefs that the Company was not properly carrying out procedures that would be safe in working in and around PCB.

The suspension was given to S on the December 14th incident because of his refusal to perform assigned work within his job classification, that particular assignment having to do with cleaning up a PCB situation.

Aside from the merits of the position, either of S or the Company regarding the PCB itself, the fact is clear as argued by the Union that since S was being asked to work emergency overtime, he had a right to refuse that overtime the first time that he was asked to do so, regardless of what his reason might be.

The language in the Agreement Section 212.2(c) provides for a method for Employees to remove themselves from the call-out roster during the week under certain conditions. This Agreement provision does not apply to S in this particular circumstance since it was an emergency situation and there was no way of S knowing during the week that he wanted to withdraw from the list because of his concerns as to PCB, since he was asked to do this work at the end of a regular shift. This indicates that on its face Paragraph (c) was not applicable since there was no advance notice during the week that S would be asked to perform the PCB work in the Sonoma yard on December 14.

Having refused the work and accepting the testimony in the record that an Employee could refuse on the first round of requests to work emergency overtime without any reason, G

acted hastily when, at that point, he suspended S .
Having done so, S 's refusal to work was, as to the
December 14 instance, converted into a situation where the
Company suspended him for refusing to perform "assigned work
within your job classification." But, as to the December 14
incident, S had the protection of Section 212 and
could properly refuse the work in question. The Agreement
provided the punishment by assessing against his record the
hours worked by the Employee who did perform the work.

DECISION AS TO ISSUE 1:

S shall receive pay and other affected
benefits for the period of the December 14, 1983 suspension.

ISSUE NO. 2 - THE DISCHARGE OF S EFFECTIVE JANUARY
24, 1984:

Letter of Discharge:

"As the result of your continued refusals to
perform duties that are regularly assigned to a
journeyman lineman, you are discharged effective
January 24, 1984." (Co. Ex. 3)

The incident which led to S 's discharge started
on January 19, on which date a PG&E Employee had been sent to
a remote, isolated area at the end of Grove Road in the Sonoma
Valley to investigate a low voltage complaint, and he observed
a transformer which appeared to have ruptured and spilled oil
some time earlier. The information was relayed to G who

instructed the Employee to remain at the transformer site until he arrived. Then G and another exempt Foreman arrived at the site, and G instructed the "Troubleman," i.e., the other Employee to put on his PCB protective clothing and climb the pole to make a visual inspection to ascertain whether or not the transformer was identified as having PCB contaminated oil. The transformer was not marked.

Thereafter, G and the Troubleman scraped particles of wood from the stained area of the pole into a plastic bag, and in another bag picked up a small sampling of the stained earth for later testing by the laboratory. The laboratory reported its findings about 8:00 o'clock that evening, and stated that the test indicated that there were less than ten parts per million of PCB contaminates in the wood, and less than one part per million in the soil sample.

G did nothing further that evening; however, he decided to have a crew change out the transformer the following morning to avoid the possibility of the transformer falling over the weekend. G further testified that he did not have the Troubleman place barricade tape around the pole because of the remoteness of the area and the absence of human traffic.

On January 20, G told Subforeman C of the location of the transformer and the test result, and he

assigned C ' crew to do the clean-up. S was a member of that crew and was the Lineman.

That same morning, S was to meet at 8:00 a.m. with a Local Investigating Committee and that delayed the departure of the crew from the Yard. According to G , he had been told that the Local Investigating Committee involving S would last 30 to 45 minutes, about the same time it would take his crew to load the replacement transformer and PCB protective equipment.

The Committee meeting took longer, so G : held the crew in the Yard until the conclusion of the meeting. At the conclusion of the hearing before the Local Investigating Committee, G informed S of the work earlier assigned to his crew Foreman and that he should join them and proceed to change out the 10 KVA transformer; that the transformer had leaked oil; that it had been tested and it was non-PCB; that the pole tested out at less than 10 parts PCB per million, and the soil sample tested less than one part per million.

In this regard, S testified as follows:

"At the conclusion of the meeting Mr. G : told me that they had -- my crew would change the transformer out. And it had leaked oil on the pole and on the ground and the test results where the pole sample came up less than ten parts per million and the soil less than one.

"And, then, was I going to participate? And I replied, 'No.'

"And because we had just gone through the fact that -- my stating there was no safe level of exposure to PCB's and Mr. G kept telling me that under 50 parts per million is non-PCB and I kept telling him that under the 50 parts per million was only dealing with the Environmental Protection Agency disposal regulations and had nothing to do with health and safety.

"So then Mr. Caruso took me outside.

"Q. Were things getting emotionally charged?

"A. Yes. Mr. Caruso took me outside and we had a discussion about refusing.

"Then I walked back in. I told Mr. G that, if he can produce for me in black and white documentation from the manufacturer stating that clothing would protect me and the Penetone works, that he can guarantee I won't be contaminated, I would work it.

"Then I was suspended again.

"Q. And eventually discharged?

"A. Right." (Tr. 175-176)

The Parties stipulated that the toxicity of PCBs, as set forth by Arbitrator Barsamian in Arbitration Case 94, be adopted. Arbitrator Barsamian, in his Decision (Jt. Ex. 3) wrote that "no question exists that PCB's are toxic," and then stated:

"...The experts agree that PCB's are known and accepted as an animal carcinogen, and that they are classified as suspected human carcinogens by every applicable governmental agency. Thus, while the Board considers all dangers associated with PCB exposure critical to its inquiry, of paramount importance is the unknown or suspected aspects of such exposure. It is the unknown or suspected dangers of PCB exposure, perhaps more than any other, coupled with its classification as a toxic substance, that require that PCB be

accorded the utmost 'respect' when dealing with it... ." (Jt. Ex. 3, p. 19)

The record establishes that S _____ was, as the Union classifies him, a PCB activist. The record further indicates that S _____ was critical of PG&E's track record as to PCBs, and the record indicates that he has taken action with agencies designed to provide for safe working conditions.

The question remains whether those activities of S _____, in and of themselves, constitute a basis for his refusing a work assignment. The Union contends that S _____ could refuse such work assignments that involved PCB on the basis of health and safety; that Stipulation 4 between the Parties (Jt. Ex. 4) reads as follows:

"The appropriate standard for review of company discipline of employees for refusing to participate in the cleanup of a PCB spill is: did the work assignment reasonably and objectively present a real and apparent hazard to the grievant's health, life or safety?"

As to the incident of January 20, 1984, the PCB presence, both as to the pole and the ground was substantially below the standard of the Environmental Protection Agency.

Even though the transformer change-out and clean-up was not a spill of more than 50 parts per million PCB, Subforeman Carrithers insisted on the wearing of protective clothing for the Employees involved in the transformer change-out and clean-up.

The record indicates that as to training, since 1980 S attended at least four showings of a slide program "How to Do It Safely" presentation; that he was present on 21 other occasions with other Electric T&D Employees when their Supervisor discussed with them revisions of T&D Bulletin 2-50 and other PCB-related subjects.

If, as S complains, the Company did not give adequate training to Employees in clean-up techniques, he, because of his interest in PCB problems, could have filed a grievance in respect to his complaints. No such grievances were filed.

The Union argues that the Grievant's refusal to participate in the January 20 clean-up was reasonable; that he reasonably assumed that the Company's claim that the spill did not involve high concentrations of PCB was possibly inaccurate. But, there is no "reasonable" basis in this record to establish that it was "reasonable" for the Grievant to assume that the laboratory tests were inaccurate.

The Grievant's concern about the permeability of the protective clothing used by the Company, or the effectiveness of the solution used to clean up PCBs, and the toxic effects of PCB by-products, are all matters which were specifically in the knowledge of this Grievant, since he was more informed than apparently the average Employee in this respect; and, accordingly, should have raised these questions with the

Company through the grievance procedure before he became embroiled in the incident of January 20, 1984. Raising those questions at that time was not a "reasonable" man's approach to justify his refusal to accept the assignment of January 20, 1984.

One can respect the Grievant's beliefs concerning the dangers of PCBs and the fact that he does not want to work in and around situations where PCBs are involved. That being the case, he cannot fill the position of a Lineman since such work is included within the Lineman's duties (Co. Ex. 2).

The allegation which is asserted that the Grievant was "set up" on January 20, 1984, is simply not supported by any acceptable evidence.

At one time the Company offered S another position with the Company, which he stated he would accept, but this effort did not materialize. The Board believes that another attempt should be made to place S in a position other than that of Lineman with the Company, as provided in Paragraph 1 of the following Decisions.

DECISIONS AS TO ISSUE 2:

1) The Board directs the Parties to, within thirty (30) days of the date of these Decisions, seek to agree upon a position for S with the Company which, at the present or in the future, does not lead back to a classification

which would put him in the position of exposure to PCBs as part of the normal job duties of that classification. If such effort fails, then the Decision stated in paragraph 2 below shall thereupon immediately become effective.

2) The discharge of S as a Lineman was for just cause.

	ISSUE 1:	ISSUE 2:
<u>Sam Kagell</u> Chairman, Neutral/Member	Concur/ Dissent	Concur/ Dissent
<u>Roger Stalup</u> Union Member	Concur/ <u>Dissent</u>	Concur/ <u>Dissent</u>
<u>Bonferrinus</u> Union Member	Concur/ <u>Dissent</u>	Concur/ <u>Dissent</u>
<u>W. Donbright</u> Employer Member	Concur/ Dissent	Concur/ Dissent
<u>Rich R. Drury</u> Employer Member	Concur/ Dissent	Concur/ Dissent

Dated: May 2, 1985
San Francisco, California