

A MATTER IN ARBITRATION

In a Matter Between:

LOCAL UNION #1245 OF INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS)

(Union)

and

PACIFIC GAS AND ELECTRIC COMPANY)

(Employer)

Grievance:

Termination

Hearing

June 19, 2000

Award:

November 13, 2000

McKay Case No.

00-228

Arbitration Case No. 241

DECISION AND AWARD

**GERALD R. McKAY, NEUTRAL ARBITRATOR
BOB CHOATE, PANEL ARBITRATOR
PHIL CARTER, PANEL ARBITRATOR
MARGARET SHORT, PANEL ARBITRATOR
DEANNA RADFORD, PANEL ARBITRATOR**

Appearances By:

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LOCAL UNION #1245 OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS)	Hearing	June 19, 2000
(Union)	Award:	November 13, 2000
and	McKay Case No.	00-228
PACIFIC GAS AND ELECTRIC COMPANY)		
(Employer)		

STATEMENT OF PROCEDURE

This matter arises out of the application and interpretation of a Collective Bargaining Agreement which exists between the above identified Union and Employer.¹ Unable to resolve the dispute between themselves, the parties selected this Arbitrator in accordance with the terms of the contract to hear and resolve the matter as the fifth member of the panel. The hearing was held in San Francisco, California on June 19, 2000. During the course of the proceedings, the parties had an opportunity to present evidence and to cross-examine the witnesses. At the conclusion of the hearing, the parties submitted written briefs in argument of their respective positions. The Arbitrator received copies of those briefs on or before November 10, 2000. Having had an opportunity to review the record, the Arbitrator is prepared to issue his decision.

¹ Joint Exhibit #1

ISSUE

Did the Employer have just cause to terminate the grievant? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

TITLE 7. MANAGEMENT OF COMPANY

7.1 MANAGEMENT OF COMPANY

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; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provision of this Agreement, arbitration or Review Committee decision, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

BACKGROUND

The grievant worked for the Employer for approximately 9 years. At the time of his termination, he was working at the Employer's Marysville warehouse as a Materials Handler responsible for moving material into and out of the warehouse. In May 1999, the Employer announced to the employees working in the Marysville warehouse that it intended to layoff all of the hiring hall employees and did so on that particular date. According to the Employer's witnesses, the grievant was very upset by the announced layoff and confronted the Facility Superintendent,

Mr. Chuck Williams in an angry manner stating, "Who's going to do the work now?"² Shortly thereafter, a group of bullets for a .22 caliber pistol were found outside of Mr. Williams' office door. It was ultimately determined that the grievant was the individual who placed the bullets there. It is the position of the Employer that the grievant intended to threaten and frighten Mr. Williams because the grievant was angry over the layoffs. It is the position of the Union and the grievant that the grievant accidentally dropped the bullets by Mr. Williams' door because the grievant had a hole in his pocket. The Union asked that the grievant be reinstated with full back pay and benefits.

Mr. Bill Brockman, who has been with the Employer for 27 years and is presently Materials Supervisor at Marysville, testified that he was present at an announcement made sometime in early May of 1999 concerning the Employer's decision to layoff the hiring hall employees serving as Materials Handlers. The announcement was made to all of the employees working in the warehouse at the time including the regular employees as well as the warehouse employees. Mr. Williams made the announcement and after he did so, Mr. Brockman testified, the grievant "came forward, kind of got in his face and said, 'Who's going to do the work now?'"³ Later on the same day at approximately 12:30 p.m., Mr. Brockman was in the office area walking towards Mr. Williams' office and he looked down on the floor and saw some bullets. He stated:

"I think there was eight right in front of the door, and they were about 10 inches from the door, grouped - most of them were grouped pretty close together, probably within 10 to 14 inches in length, eight to 10 inches from the door."

...

² Transcript page 16

³ Transcript page 16

It looked to me like somebody probably had them in their hand and just dropped them right there as they walked by.”⁴

In his opinion, Mr. Brockman stated, the bullets were not randomly dropped but had been placed because they were grouped very close together. Mr. Brockman also found one other bullet near the office of another employee M . . . Mr. Brockman looked throughout the office area on all of the walkways and hallways but did not find any other bullets.⁵

The discovery of the bullets near Mr. Williams’ office became common knowledge fairly quickly among the employees working in the warehouse. Mr. Brockman testified that he was told that the grievant had left the facility at a time other than his lunchtime and returned some time later. Mr. Brockman approached the grievant about his absence and was told by the grievant that he had gone to the store. It was not until the following day that the grievant came forward and acknowledged that the bullets found on the floor by Mr. Williams’ office belonged to him. The grievant stated that when he heard that there were bullets found on the floor he became concerned because he had other bullets in his truck so he left the facility and drove to an area where he placed the box containing the remainder of the bullets near the road. At the end of work on that day, he retrieved the bullets. The grievant asserted that he had placed bullets in his pocket but that they must have fallen out of a hole in his pocket. According to the grievant, he had one earlier experience that day with bullets falling out of his pocket but he had picked them up. The grievant stated, “the bullets had fallen out earlier in the warehouse, but I had picked them up. I did not tell anyone that the bullets were mine, as I was afraid of what may happen to

⁴ Transcript page 17

⁵ Transcript page 21

me.⁶ “According to the grievant, he had the bullets in his pocket because the night before he had a .22 caliber gun which he was using to shoot at some neighborhood dogs. He stated, “I had been trying to scare some dogs away from my livestock by firing rounds into the ground near the dogs.” The grievant acknowledged, “I was not allowed to have the bullets on company property . . .” The grievant claimed that when he discovered the bullets in his pants he did not know what to do with them.

As a result of the incident, the Employer brought into the plant a Safety Program Coordinator to make an assessment of the concerns of the employees that worked with the grievant regarding the bullets having been placed on the floor. Ms. Julie St. Germaine testified that she has worked for the Employer since 1984 and serves as the Safety Program Coordinator. Ms. St. Germaine has had training conducting investigations, including the time she served as an Oakland Police Officer, as well as other organized programs relating to the investigative process conducted by various schools or universities. Ms. St. Germaine was directed to conduct an assessment of the concerns and in the process interviewed a number of employees about how they felt regarding the grievant’s behavior. She conducted 23 interviews in approximately 2 days. After interviewing the employees, she typed up the statements that they provided to her and all but two employees signed the statements. Copies of those statements were made available at the arbitration hearing but the names of the witnesses were redacted from the record copy. The Arbitrator was offered an opportunity to view incamera the names of the individuals, which opportunity was also made available to counsel for the Union. The Employer expressed concern

⁶ Joint Exhibit #5

that it did not want the grievant to obtain the names of the individuals who were interviewed so he could associate the statements they made with their name.

The statements from the employees express the clear indication that the grievant was a good worker but somebody who they were concerned about to one degree or another. Many of the employees expressed deep concern about the grievant placing the bullets on the floor near Mr. Williams' office. These employees did not believe the grievant's story that he had simply dropped them but, instead, believed that the grievant had placed the bullets there. One employee stated, for example, "None of us believed that he had dropped the bullets. We can't have bullets on the floor, dynamite in our pockets. What do bullets represent? It seems like a death threat to me. My concern is not to bury [the grievant], my concern is with my own safety."⁷ In contrast, another employee was asked about his concerns for his safety if the grievant returned to work and responded, "I don't really have concerns about my safety or that of other employees if [the grievant] comes back here to work. If corporate security proves that it was an accident, then I'd feel fine about him coming back." When asked if corporate security proved the bullets were left deliberately the same employee responded, "I don't have a fear for myself, I don't know about others."⁸

A number of employees expressed strong dislike for the grievant. One employee described the grievant in the following manner. "His behavior around here is beyond abnormal." This employee went on to state, "He watches everybody, has verbal confrontations, slips out of his truck repeatedly." The same employee noted, "The scariest thing about [the grievant] is that

⁷ Employer Exhibit #5

he hangs onto things forever. He confronted [redacted] over a month ago about an event from over a year ago. He confronted B [redacted] over something that had happened years earlier." One employee described the grievant losing his temper as a result of a confrontation that he had with another employee. "I saw [the grievant] lose his temper and slash wrapping. He slashed my work ([redacted] J [redacted] had wrapped were slashed open) and I confronted him and he said that he had slashed them because he thought they were B [redacted]'s work. This was 6 or 7 months ago. He has also made comments to that he hated Chuck (Williams)."⁹

An employee was asked to describe the grievant during one of the interviews conducted by Ms. St. Germaine and stated, "Persistent and vindictive. He can be scary sometimes. . . . Secretive. Sabotaged another employee's work by slashing wrapped pallets." This employee asserted that the grievant had a .22 caliber handgun. Another employee who indicated that they had never worked with the grievant or had any run-ins with him testified when asked if the employee would feel comfortable if the grievant returned to work stated, "No. I had a hard time sleeping that night and almost called Chuck. Any time he's here you're waiting for him to get into an argument. I never thought it would go this far. It's unnerving that he carries bullets with him." Another employee stated, "I would have a problem with him returning. One day after a talk with Chuck he entered the breakroom and mimed racking a gun. On Wednesday my initial suspect was [the grievant]. Several other people suspected him as well and related it to the gun mime." Ms. St. Germaine in concluding on the mixed nature of the statements made by

⁸ Employer Exhibit #5

⁹ Employer Exhibit #5

employees and in response to a question concerning the lack of discipline the grievant had received for similar incidents in the past stated:

“It amazed me that people were so intimidated by P that they were afraid to report it. In those reports, there’s a very good reason why these names aren’t on here.

The people whose work was slashed said – was encouraged to report that to management, and she said, ‘Hey, I live alone. I don’t want him going after me. I don’t want to take this to management.’

There’s other issues where people were afraid of him.”¹⁰

Subsequent to the incident, the Employer filed for and obtained an injunction pursuant to California Code of Civil Procedure Section 527.8(f) to prohibit the grievant from coming within 150 feet of his work location and to prohibit him from coming within 150 feet of various named individuals.¹¹ Approximately 53 employees are protected by the Injunctive Order which remains in effect until June 28, 2002.¹² The grievant’s failure to abide by the Injunctive Order may result in criminal prosecution punishable by \$1,000 fine, 6 months in jail, or both. The Order was signed by David Wasilenko, Superior Court Judge for the County of Yuba. Based on the Order and the language of Section 527.8(f), the Judge had to conclude that the grievant posed a real and present threat to the employees who are protected by his Order.

The Employer sent a grievant to a psychiatrist for an assessment of the grievant’s potential danger to his fellow workers. Dr. Stephen Raffle performed what he described as “a comprehensive psychiatric evaluation . . .” Dr. Raffle reviewed records and spoke with various individuals at the grievant’s workplace. The grievant was asked to take an MMPI. The grievant permitted the Arbitrator to review the findings of Dr. Raffle in a report dated May 26, 1999. In

¹⁰ Transcript page 69

¹¹ Employer Exhibit #2

¹² Employer Exhibit #3

part, Dr. Raffle concluded that the grievant "has a passive-aggressive style in confronting his hostility towards other." Dr. Raffle went on to state, "On the one hand, he is a person who wants to be in control of himself and the environment around him, and on the other hand, he has a poor ability to deal with his own aggression when he is confronted with it." Dr. Raffle suggested that the grievant's behavior of characterizing the bullets in front of Mr. Williams' door as an accident when in fact they were intended for intimidation is characteristic of his passive-aggressive style. Dr. Raffle described a number of incidents where the grievant acted in an aggressive manner and threatening manner as characteristic of his passive-aggressive behavior. In Dr. Raffle's opinion, it was not surprising that many employees feel threatened when they worked near him or with him.

Dr. Raffle recreated what he believed occurred after the announcement of the layoffs based on the conversations and research he had done with the grievant. In relevant part he stated:

"Following the tailgating meeting where the hiring hall workers were discharged, he became angry with Chuck and went to his truck, where he took out a handful of .22 bullets which he then placed in his pocket. Either his pocket had a hole in it or he cut a hole in it with a knife with which he later demonstrated the hole in his pocket. He then walked to Chuck's door and surreptitiously (passive-aggressively) dropped the bullets through the hole and down the pants leg to the front of the door and then walked away to the next door, that of Mr. P . . . This secretive depositing is typical of the passive-aggressive person, particularly a person who has a lot of obsessive compulsive personality traits . . . He then walked away, only to return later to witness the mess he had created, became worried that his actions had overstepped the boundaries of deniability, and hurriedly left the premises in order to hide the evidence, i.e., the box of bullets. After thinking about things over night, he returned to work and confessed, i.e., deposited the truth on his employer. He did so by telling partial truth, i.e., 'bullets fell through a hole in his pocket'. He did have the bullets for shooting at the dogs who were bothering his barn animals. He thus retained deniability and there is more than a kernel of truth in what he said."

Dr. Raffle concluded that the grievant's vengeful behavior probably reflects his efforts in a passive-aggressive manner to get even with individuals whom he imagines have offended him some how. Dr. Raffle stated, "The good news is that people with passive-aggressive personality disorders such as his are not the type which bring loaded weapons to work and shoot co-workers. They are more devious." Dr. Raffle indicated that the grievant showed no interest in seeking psychotherapy to assist him with his problems. Based on the grievant's unwillingness to seek help of this nature, Dr. Raffle expressed concern for the grievant's "violence potential" He stated the grievant's direct risk or threat of violence is low but his indirect risk or threat of violence is high." Among his recommendations, Dr. Raffle stated, "In the interest of safety, I recommend that a TRO be taken out in the event his employment is terminated."

POSITION OF THE PARTIES

EMPLOYER

The Employer argued that it had just cause to terminate the grievant.¹³ The grievant placed bullets outside the office of Mr. Williams in an effort to threaten and intimidate Mr. Williams because the grievant was angry with him as a result of the layoffs. Contrary to the grievant's assertions, the bullets were not dropped from a hole in his pocket by accident. The acts the grievant were intentional. When the Employer investigated the incident concerning the bullets, it discovered by talking to other employees in the warehouse that the grievant had engaged in other threatening acts. Employees were threaten by the grievant physically but did not report these incidents to management because they feared retaliation by the grievant.

¹³ The Employer summarized all of the elements of just cause in its analysis and concluded it had met each one.

Because of various statements the Employer made during the investigation of this matter, the Employer became concerned enough to seek an Injunction in Superior Court to prevent the grievant from coming near the workplace or the employees who worked in the workplace. The Court issued the Restraining Order which remains in effect until mid-2002.

The grievant's explanation for how the bullets got on the floor in front of Mr. Williams' office is simply not credible. Placing bullets by Mr. Williams' door was clearly intended as a threat. The Employer has an obligation to provide a safe workplace to its employees and cannot permit employees to engage in the type of conduct in which the grievant engaged because it frightens the other employees. The grievant's psychiatric examination would suggest that the grievant is a serious potential threat in the future should the grievant become angry when he does not get his way. The Employer cited City of Palo Alto v. Service Employees International Union Local 715, 77 Cal.App.4th 327 (1999) in support of its argument that as a matter of policy, the grievant may not be reinstated. For all these reasons, the Employer argued that it had just cause to terminate the grievant.

UNION

The Union argued that the grievant confessed to placing the bullets by Mr. Williams' door. The grievant's forthrightness, honesty, and candor at the time when he could have remained silent and undetected are not the behaviors of a guilty man. These actions, the Union argued, show that the grievant did not engage in intentional conduct but dropped the bullets by

accident. The Union conceded that the grievant's story of how the bullets ended up outside Mr. Williams' door is unlikely but it is probably true.

The Union argued that there are other cases involving employees with guns on company property where employees were not treated nearly as harshly as the grievant. The Union referred to a number of cases which were attached involving employees who either possessed guns or fired guns on company property. The grievant's offense of carrying ammunition onto Company property, the Union argued, was far less serious than the cases cited by the Union. The grievant did not have a loaded weapon on Company property and did not try to shoot someone on Company property.

The Union pointed out that the interviews done of employees who worked with the grievant show that most of the employees have no problem working with the grievant. Despite a finding by the physician who performed the threat assessment that the grievant was relatively a low risk as far as overt behavior goes, the Employer sought and obtained a Temporary Restraining Order against the grievant. Despite a complete lack of a corporate rule prohibiting ammunition on Company property, the Employer insisted that such a rule exists. The fact that the Employer obtained a Restraining Order is not an impediment to the grievant's reinstatement, it simply poses an obligation on the Employer to have the Restraining Order removed. For all the reasons stated above, the Union asked that the grievant be reinstated with full back pay and benefits.

DISCUSSION

The Union has compared the grievant's behavior to the conduct of several other employees who were determined by the Employer to have fired a weapon while on company property. If one reviews the facts of those other cases, there is a significant difference in the nature of the behavior of those employees in contrast to that of the grievant. It is true that the grievant did not show his pistol to anyone while he was at work. It is possible the grievant had the pistol on the Employer's property and no one saw it. It is not the pistol or the bullets in the pistol which make the grievant's conduct so serious. It is the message that the grievant delivered with his bullets that make the conduct serious. Shooting at a dog because a dog attacks you may not be appropriate but it is clearly far less serious than threatening to kill your supervisor, which is the message the bullets in front of Mr. Williams' door conveyed.

It is the Arbitrator's conclusion that the grievant's explanation for accidentally dropping the bullets out of his pocket in a small grouping in front of Mr. Williams' door is pure nonsense. The Arbitrator agrees with the conclusion reached by Dr. Raffle that the grievant may have put the bullets in his pocket and cut a hole in his pocket but that he stood intentionally and allowed the bullets to drop onto the floor in a small grouping by Mr. Williams' door. The grievant's conduct was intentional and it was his intent to convey a message to Mr. Williams that the grievant was angry with him. It is totally inappropriate for an employee to engage in behavior that threatens the health and safety of his supervisor. It is difficult to conclude if one accepts the premise that the grievant put the bullets in front of Mr. Williams' door intentionally that the

message he was conveying was anything other than a threat to Mr. Williams to do him bodily harm and perhaps to kill him.

The Union's reading of the report by Dr. Raffle, as reflected in its brief, misses significantly the points conveyed by Dr. Raffle. Dr. Raffle stated that it was unlikely the grievant would engage in direct overt violence, but he also concluded that it was highly likely that the grievant would engage in indirect violence. One of Dr. Raffle's recommendations was that the Employer obtain a Temporary Restraining Order if it intended to terminate the grievant because the grievant posed a serious risk to the health and safety of other employees working with him. The Superior Court Judge listened to the evidence presented by the Employer and concluded in a manner similar to Dr. Raffle that the grievant did pose a serious threat to the life and safety of the employees who are identified in the Order restraining the grievant from approaching them. While the incidents described by various employees at the hearing relating to alleged threats by the grievant toward them are not relevant for the purposes of the discipline, they do illustrate the grievant's tendency to become angry and to act on his anger in a violent manner. It is this concern reflected in Dr. Raffle's report and it is this concern reflected in the Order from the Court.

In the Arbitrator's opinion, the grievant has been a hard worker but he has also been an employee on the edge of violence. In the case of the bullets in front of Mr. Williams' door, the grievant simply went too far. He carried his message of anger beyond the pale of acceptable and into the realm of real and present danger. The grievant may regret what he did and may wish to describe his actions as accidental in order to excuse himself as Dr. Raffle suggests, but the

Arbitrator believes the grievant's act was intentional. If the grievant's act was intentional, no Employer should have to put up with a threat that at some point in the future an employee may actually act out on his threat and do real harm to employees. It is possible the grievant would never harm any one, but it is also quite likely the grievant would harm someone. The grievant made the threat and must live with the consequences of his actions.

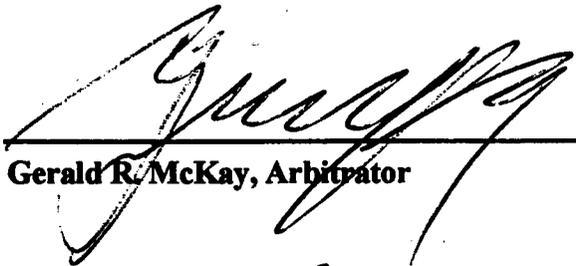
In summary, it is the Arbitrator's opinion that the grievant intentionally dropped bullets in front of Mr. Williams' door because the grievant was angry at Mr. Williams. The grievant's explanation that he dropped the bullets accidentally is not truthful. The grievant poses a real and present danger to the wellbeing of employees with whom he works, particularly if the grievant becomes angry at them. Dr. Raffle believed this to be the case, the Court believed this to be the case, and the Arbitrator believes this to be the case. Because the Employer has no obligation to tolerate the kind of threat the grievant made towards his supervisor when the Employer terminated the grievant, it had just cause to do so.

AWARD

The Employer had just cause to terminate the grievant. The grievance is denied.

IT IS SO ORDERED.

Dated: November 13, 2000



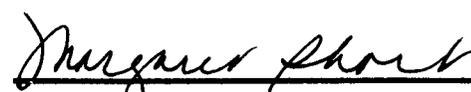
Gerald R. McKay, Arbitrator

 *dissent*

Bob Choate, Arbitrator *11/15/00*

 *dissent*

Phil Carter, Arbitrator *12/1/00*

 *concur*

Margaret Short, Arbitrator *11/15/00*

 *concur*

Deanna Radford, Arbitrator *11/17/00*