

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1245,**

Complainant,

and

**PACIFIC GAS & ELECTRIC COMPANY,**

Respondent.

Re: Case No. 263. Termination

**Opinion & Decision**

of

**Board of Arbitration**

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**BOARD OF ARBITRATION**

UNION MEMBERS: Landis Marttila and Frank Saxsenmeier  
EMPLOYER MEMBERS: Carol Pound and Margaret Short  
NEUTRAL MEMBER: Barbara Chvany

**APPEARANCES**

**On Behalf of the Union:**

Tom Dalzell  
IBEW Local 1245  
P.O. Box 2547  
Vacaville, CA 95696

**On Behalf of the Employer:**

Stacy A. Campos  
PG&E  
Law Department  
P.O. Box 7442  
San Francisco, CA 94120

**INTRODUCTION**

This dispute arises under the Labor Agreement between the above-captioned Parties (JX 1). Pursuant to the Agreement, the Parties appointed the Board of Arbitration, chaired by the undersigned neutral Arbitrator. A hearing was conducted on February 17, 2004, in San Francisco, California. At the hearing, the Parties had a full opportunity to examine and cross-examine witnesses, and to present relevant evidence and argument. The Parties stipulated that the issues

before the Board were pursued through the grievance procedure (JX 2; TR 4-5). No procedural issues having been raised, the matter is properly before the Board for final and binding decision. A verbatim transcript of the proceedings was taken.<sup>1</sup> The Parties filed post-hearing briefs, and the matter was submitted for decision on September 3, 2004.

Grievant S was hired on February 5, 1985. He was terminated effective July 23, 2003 based on charges of inappropriate conduct. At the time of the events at issue, he was a Troublemaker and had held that classification for 11 years. (TR 6, 99)

### **ISSUE**

Was the Grievant terminated for just cause? If not, what shall be the remedy? (JX 2; TR 5)

### **REMEDY REQUESTED**

On behalf of the Grievant, the Union seeks the removal of the termination and a make-whole remedy for all losses he suffered due to the Company's action (TR 5; JX 3, p. 19, Exh. I; Un. Brf. 8). The Company seeks denial of the grievance in its entirety (TR 5; Co. Brf. 20).

### **RELEVANT AGREEMENT PROVISIONS**

The Company is a public utility. As such, it has special obligations with respect to service to the public. Continuity of service is a priority, given the importance of uninterrupted power to

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<sup>1</sup> References to the transcript are cited herein as (TR #); references to Joint Exhibits and Employer Exhibits are cited as (JX #) and (EX #), respectively.

customers (TR 89, 91-92). These commitments are so central and significant that the Parties have acknowledged them in the Labor Agreement. (TR 91-92)

### TITLE 3. Continuity of Service

3.1 Company is engaged in rendering public utility services to the public, and Union and Company recognize that there is an obligation on each party for the continuous rendition and availability of such services.

3.2 The duties performed by employees of Company as part of their employment pertain to and are essential the operation of a public entity and the welfare of the public dependent hereon. During the term of this Agreement employees shall not partially or totally abstain from the performance of their duties for Company. Union shall not call upon or authorize employees individually or collectively to engage in such activities and shall make a reasonable effort under the circumstances to dissuade employees from engaging in such activities, and Company shall not cause any lockout.

3.3 Employees who are members of Union shall perform loyal and efficient work and service, and shall use their influence and best efforts to protect the properties of Company and its service to the public, and shall cooperate in promoting and advancing the welfare of Company and in preserving the continuity of its service to the public at all times.

\* \* \*

### TITLE 7.1 Management of Company

7.1 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; ... (Jt. Exh. 1.)

## **BACKGROUND**

### **Context of Discharge Incident:**

The Parties were engaged in protracted contract negotiations in Summer 2003, at the time of the incident leading to the Grievant's termination (TR 32-33, 75, 91, 100). Prior to the incident, a letter had been circulating stating dissatisfaction with progress in bargaining, raising the issue that

overtime might not be included in any retroactive pay settlement, and urging crews not to work emergency overtime to restore interrupted service (TR 81, 87, 88). There was an effort by Title 200 crews in the San Francisco Bay Area to boycott overtime (TR 99). During the relevant time frame, there were insufficient Title 200 crew members signed up to work overtime, whether or not directly caused by the boycott (TR 81).

The Union did not encourage employees to withhold service (TR 93), and it had not sanctioned the boycott (TR 140). The Company has traditionally not accepted self-help as a response to dissatisfaction with negotiations (TR 93).

Troublemakers are first responders who have a responsibility to be available to perform needed work, which normally involves making conditions safe and restoring power to customers, where possible (TR 87, 92). If Troublemakers are unable to restore service, they request additional resources. (TR 92). The speed with which interrupted service is restored is very important to the Company and to its customers (TR 92).

The Grievant testified that he, personally, did not participate in the overtime boycott because “the duty of a troublemaker is to restore power, and to be the first responder to any emergency and to make it safe” (TR 100). However, he also testified that he supported the boycott of voluntary overtime (TR 100).

**June 28, 2003 Incident:**

The incident leading to the Grievant’s discharge occurred on June 28, 2003 at a jobsite in Pacifica, California, where an outage had occurred (TR 51). The Grievant was on the clock working overtime, though not assigned to that jobsite or area (TR 56, 74, 86, 120). Three individuals

involved in the events testified at the arbitration hearing: Construction Supervisor Will Gray, Distribution Supervisor Greg Smethurst and the Grievant.

Construction Supervisor William T. Gray, Jr. was assigned to report to the Pacifica location with a general construction crew, after the first responder Troublemaker (not the Grievant) was unable to restore power at the site (TR 13, 33, 34-35, 52-54). In this time period, Title 300 general construction crews were responding more frequently to routine outages such as this, in part because of the temporary unavailability of Title 200 crews due to the overtime boycott (TR 36, 45). The following account of the events at the Pacifica jobsite is based on the testimony of Company witnesses Gray and Smethurst.

When Gray arrived at the jobsite, he observed two trouble vehicles and was surprised because he had been told Troublemakers would not be responding to perform the work (TR 14, 38-39, 45; see also TR 55). One trouble truck was parked on the wrong side of the street, and lurched forward as Gray exited his vehicle (TR 15; see also 56). The driver of that truck, Grievant S approached Gray and asked what he thought he was doing (TR 15, 39). Gray responded he was going to restore the customers' power (TR 15). The Grievant asked to speak with him off to the side, and they moved to the sidewalk (TR 15, 25). The Grievant asked again what Gray thought he was doing. Gray told him he was going to do the work that the Title 200 Troublemaker crews had refused to do (TR 16, 38-39). The Grievant responded, "I thought that you were a good union brother."<sup>2</sup> (TR 16, 40). The Grievant stated further that he was trying to "get what we deserve," an apparent

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<sup>2</sup> As a supervisor, Gray was not a member of the bargaining unit (TR 16). However, nothing about his appearance or clothing on the date in question made that apparent (TR 35-36). At the time of the hearing, Gray was a 17 year employee of the Company, who had been out of the bargaining unit for approximately two years on a permanent basis (TR 34).

reference to the contract negotiations that were underway at the time and the overtime boycott (TR 16); and that he was trying to help the Title 300 Linemen, too (TR 40-41). Gray told the Grievant he didn't believe he cared about general construction (TR 41); that his crew was doing fine, working at double their normal rate of pay; and, if they did not want to perform the work, they "shouldn't take the man's money for doing nothing" (TR 16). On cross-examination, Gray recalled stating, "I'm not even a member of the union, but if being a good union brother meant leaving folks out of power, then I want no part of it" (TR 40).<sup>3</sup>

The discussion between the two continued, and their voices became elevated. In his notes for the day, Gray recorded telling the Grievant, "If you're here, you are getting paid to do a job, you should do that job; if not, you're stealing. And you're just angry right now because you're not getting the candy you wanted," referring to the fringe benefits at issue in the negotiations. (TR 31, 41-42; EX 1) Gray testified that he believed the Grievant's intention was plain in wanting to dissuade and intimidate him [Gray] from performing the work (TR 47-50).

Greg Smethurst, who was in charge of the division and who had assigned the work to Gray's construction crew, was also on-site (TR 50-55). Smethurst approached while Gray and the Grievant were talking, to ascertain why the Grievant was there (TR 56). The Grievant said, "Do you mind, this is a private conversation" and Smethurst walked away (TR 18, 44, 58).<sup>4</sup> During this period,

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<sup>3</sup> The latter comment is not contained in Gray's notes about the incident (TR 40; EX 1). The notes, while fairly detailed, are not a verbatim account (TR 46-47).

<sup>4</sup> Gray testified that Smethurst asked the Grievant to leave before the Grievant stated it was a private conversation (TR 18). Smethurst puts the order of things differently. He did not tell the Grievant to leave until later when the conversation with Gray became more heated (TR 57). Smethurst's testimony on this point is found to be the more reliable because he was not directly engaged in the confrontation, and his perceptions were less likely to be clouded by emotion.

there were a couple of customers outside, down the street. (TR 17) When the conversation continued on a heated level, Smethurst again approached the two, told the Grievant to leave, and told Gray to get to work (TR 58). Gray testified he walked away, grabbed his tools, and began giving instructions to the crew (TR 17-19). They proceeded into a backyard to get started on the job (TR 19, 20). He spoke to his crew, who were distracted and unsettled by the confrontation (TR 19-20).

The Grievant did not leave as directed by Smethurst (TR 19). When Gray returned to his vehicle from the backyard, he passed the Grievant and another Troublemaker, W , at the gate (TR 20-21, 26-27, 38, 48, 58-59). They flanked or followed Gray as he walked toward his truck (TR 21, 59). The confrontation continued and became more heated (TR 60). As Gray described the events at this point, the Grievant asked him if he [Gray] understood the consequences of the decision he was making to do this work. Gray replied he wasn't aware of consequences other than restoring power to the customers. The Grievant then stated, "Oh, yeah, there'll be consequences." Gray told the Grievant he was not frightened, to which he [Grievant] responded, "Oh, yeah, you are." When Gray repeated that he was not, the Grievant said, "Well, if you're not, you should be and you will be." (TR 21-22, 27). Based on these events, Gray thought it was "clear they wanted a confrontation ... and that their intention was to try to intimidate ..." (TR 21)

Smethurst heard at least part of the exchange but did not recall all the details (TR 60). However, he did remember the Grievant making a statement to the effect, "I may not get you, but the brotherhood would" (TR 60).

During this exchange, the Grievant and W (the other Troublemaker) were standing on each side of Gray, in close proximity (TR 22). Gray told the Grievant to leave. The Grievant refused and insisted he had the right to be there. Gray told him he did not have that right and accused him

of being there “purely and simply to intimidate and have a confrontation.” (TR 22) Gray stated, “you have to leave now.” The Grievant, who was very close to Gray, said, “Make me,” thrusting his finger at Gray (TR 22-23). Gray responded, “I don’t have to make you. I’ll call the police (TR 22). Gray believed the Grievant was trying to provoke him into a physical altercation. The confrontation was heated, voices were elevated, and Gray was struggling to keep his composure (TR 23, 43, 57). Smethurst again approached them to break it up, telling the Grievant he had to leave the job site and instructing Gray to get his tools from his truck (TR 24, 43, 61-62). Gray proceeded toward his truck (TR 61), but the Grievant did not promptly follow Smethurst’s order (TR 61). Rather, he persisted in confronting Gray (TR 25, 27, 43). Additional shouting took place (TR 61). Gray does not dispute that the discussion was heated and both of their voices were elevated (TR 29, 32). Smethurst told Gray to continue on to his truck, and he complied (TR 61). Smethurst again told the Grievant “You’ve got to leave,” but the Grievant did not (TR 61-62).

Gray went to his truck, and a short time later Smethurst again heard elevated conversation (TR 27, 43, 62). Smethurst approached the two, telling Gray to finish getting his tools off his truck and giving the Grievant an emphatic and express direct order to leave the jobsite immediately (TR 25, 27, 43-44, 62). The Grievant did not desist in his verbal confrontation, and Smethurst repeated the direct order, stating, “Do you understand that I’m giving you a direct order to leave the job site now. Go back to your area.” (TR 63) The Grievant and W ultimately drove away from the jobsite, however, they stopped to converse with others nearby before finally leaving (TR 28, 63, 70).

Affected customers were without service for several hours, in total (TR 33). It took the construction crew two-and-a-half to three hours at the site to complete the work, and they were not



the first responders (TR 33). The customers were anxious to have their power restored (TR 64). Had the Title 300 crew not responded, they would have been without service until the following day (TR 65).

**The Grievant's Testimony:**

The Grievant testified he went to the jobsite simply to inform the crew of the overtime boycott so they would support it in the future; he did not ask anyone to walk off the job or refuse to perform the work (TR 104). He was unhappy with the way negotiations were progressing and he had expressed that to the Union (TR 139-140). No one from the Union told him to go to this jobsite and discuss the boycott with the crew assigned there (TR 140). According to the Grievant, he thought Gray was a bargaining unit employee (TR 104, 105). He stated that he would not have talked to Gray at all about supporting the boycott, or used the same tone with him, if he had known Gray was in supervision (TR 113, 114-115).

The Grievant also testified that he went to the jobsite and into the back yard to observe if there were three people on the crew (TR 127, 136).<sup>5</sup> He testified that he had observed Gray performing work in a December 2002 storm without the necessary crew size, which he regarded as a safety violation (TR 106, 124, 126).

The Grievant's account is similar in a number of respects to the description given by Company witnesses, including that when Smethurst approached Gray and the Grievant initially, the Grievant told him it was a private conversation (TR 106); that the confrontation moved from place

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<sup>5</sup> The Grievant acknowledges there were three individuals there, four including Smethurst.

to place with breaks in between (TR 107-108); that Weaver was with him when the confrontation resumed near the gate<sup>6</sup> (TR 108); and that both he and Gray raised their voices (TR 107).

The Grievant's account of the events at the jobsite differs in several respects from that of the Company witnesses. He denies stopping suddenly or lurching his truck, though he explained it could be interpreted that way because the location was on a steep hill (TR 105). According to the Grievant, he raised the crew-size safety issue with Gray on June 28, 2003, and Gray was the first to raise his voice in response (TR 107). The Grievant testified that Gray asked him to leave (TR 109, 141), and that he did so promptly, although his testimony then equivocates on this point (TR 127, 128). The Grievant recalled Smethurst asking him to leave only once (TR 111, 114, 124, 135). However, the Grievant acknowledged that Smethurst could have asked him additional times to leave, but that he [Grievant] did not hear him in the heat of the moment (*Id.*)<sup>7</sup> The Grievant denied threatening Gray or attempting to intimidate him by "getting in his face" and pointing his finger at him (TR 112, 116, 129, 139).<sup>8</sup>

**Report, Investigation and Decision to Terminate:**

Smethurst reported the incident to Superintendent Mel Abrew (TR 65, 73), resulting in an investigation and, ultimately, in the decision to discharge the Grievant (TR 75-80). In the course of the investigation, Abrew learned that the Company had not dispatched the Grievant to the jobsite (TR 77). The investigation revealed that it was the Grievant who made a call to the distribution

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<sup>6</sup> Weaver was not called as a witness.

<sup>7</sup> In the course of the security investigation, however, the Grievant "denied that he was asked to leave by either Smethurst or Gray or that he had refused to do so" (JX 3, p. 37).

<sup>8</sup> In the security investigation, however, the Grievant admitted he might have pointed his finger at Gray for emphasis (JX 3, p. 37).

operator to inquire about the job (JX 3, pp. 39-40, Exh VIII; TR 77-78, 101). He acknowledges that the site was outside of his geographical area (TR 102).

In the investigation, the Grievant stated that he went to the Pacifica jobsite because he had safety issues with Gray in the past and wanted to be sure that the job was being done safely; and he denied yelling or trying to intimidate anyone (TR 82; JX 3, p. 37). As noted above, his hearing testimony referred to that reason but also the overtime boycott (TR 103-104).

After interviewing several witnesses and collecting other relevant data, the corporate security investigation concluded that the Grievant had deliberately driven from his assigned work area, without authorization, for the specific purpose of intimidating and harassing a supervisor in order to cause the supervisor and crew to cease work on an emergency restoration; and, further, that the Grievant was insubordinate to another supervisor, Smethurst, by willfully disregarding his directive to leave the area (JX 3, p. 37).

After reviewing the corporate security report and considering all of the circumstances, management concluded that termination was the appropriate penalty (TR 84). The Company took the situation very seriously and believed "a strong statement" was needed in response to the Grievant's intentional effort to dissuade a crew from performing work necessary to restore customers to service (TR 82-83, 84, 88, 93-94). The Company concluded that the incident was sufficiently egregious to warrant summary termination under the Positive Discipline Agreement (TR 95).

## **POSITIONS OF THE PARTIES**

### **The Company:**

- » Pursuant to the Agreement, the Company can terminate an employee for just cause. In this case, it had ample just cause to discharge the Grievant.
- » The rule the Grievant violated goes to the core of the Company's business and obligation to provide continuous service to the public. The rule is of such importance that the Parties incorporated it in the Agreement.
- » The prompt restoration of interrupted service is of paramount importance to the public and the Company's business, and employees have a duty to use their best efforts to provide efficient and continuous service.
- » The Grievant knew, or ought to have known under a common sense standard, that threatening and intimidating a coworker and attempting to interfere with the Company's service to customers could result in discharge. He also knew that his behavior was not sanctioned by the Union.
- » The Company conducted a fair, reasonable and thorough investigation of the incident prior to reaching the decision to terminate the Grievant.
- » The conclusion that the Grievant engaged in egregious misconduct warranting discharge is amply demonstrated by the evidence. The Grievant deliberately went to the jobsite to discourage the crew from performing the overtime work. He escalated his actions, threatened and attempted to physically intimidate Gray when he found Gray intent on performing the assigned job.
- » The serious nature of the Grievant's misconduct justified the imposition of termination, and the bypassing of less severe discipline. The Positive Discipline policy allows steps to be skipped for offenses of major consequence such as this.

- » The decision to terminate the Grievant for the proven misconduct was reasonable and consistent with the Parties' Positive Discipline Agreement. This offense is worthy of termination without mitigation, as are such terminable offenses as curbing a meter or diverting energy.
- » No mitigation is appropriate, because the Grievant's behavior was in direct contravention to the heart of the Company's business. The fact that he was being paid time and one-half by the Company while engaging in this behavior makes his conduct even more unacceptable.
- » The Grievant's excuses and attempted explanations are unworthy of credence. They are contradicted by the evidence, including his own admissions at the hearing. He acted with callous disregard of customers.
- » The Grievant lied regarding his intent and his actions in both the investigation of the incident by the Company, and in the course of the grievance procedure. This, also, makes him unworthy of reinstatement.
- » Whether the Grievant thought Gray was a bargaining unit member or not is irrelevant. His threatening and intimidating behavior, and attempt to stop or delay emergency restoration work, was egregious and inexcusable even if he thought he was speaking with a Union brother.
- » Any contention by the Union that the Company violated the Agreement by allowing Gray to work on the crew is also irrelevant. Even if a violation occurred, the appropriate course of action is to file a grievance, not resort to self-help by disrupting the emergency work.
- » The termination is in accordance with the Positive Discipline Agreement and supported by just cause. The Board should not disturb the Company's decision. Rather the Grievant should bear the consequences of his actions.

**The Union:**

- » The Union concedes that the Grievant exercised poor judgment in going to the jobsite to seek support for the wildcat overtime boycott. The Union neither advocated nor condoned the overtime boycott, however, the members' frustration was understandable under the circumstances.
- » The Grievant's conduct at the Pacifica jobsite did not rise to the level of insubordination justifying termination. The Union urges the Board to take several factors into account in reaching this conclusion.
- » On the day of the incident, Gary and Smethurst had the false impression that the Grievant's fellow Troubleman, W, had refused to perform work at the jobsite (TR 38). It was not until the following next day that Smethurst learned W told the truth when he claimed that he could not get access to perform the assigned task (TR 68-69). The two Supervisors, thus, treated the Grievant and W as liars who could not be trusted.
- » Smethurst's low-key management style was partially to blame for the escalation of the argument between Gray and the Grievant. Had Smethurst told the Grievant to leave the jobsite when he first arrived, the ensuing argument would not have taken place. A more forceful response by management would have nipped the situation in the bud.
- » Gray shares blame for the escalation of words. The record and his demeanor show he is quirky, impatient and stubborn. On the date of the incident he was dressed and was working like a member of the bargaining unit (TR 36, 72). The Grievant had no interest in talking to management or supervision at the time; he was spreading the word about the overtime boycott to union crews. Had Gray told him he was in supervision, the Grievant would have ignored him and spoken to union members instead.

» Gray participated in the incident in an equally loud and heated manner. Both were so absorbed in arguing with each other, they failed to hear Smethurst's admonitions, until he used the words "direct order." At that point, Gray went to his truck and the Grievant left the jobsite.

» The Grievant's motives were altruistic. He was motivated by a sense of solidarity with fellow union members, who were discouraged by management's contract offer. He balanced his own intense sense of service with his sense of solidarity, working overtime as a first responder, while supporting the effort to put economic pressure on the Company, within the confines of the Agreement.

» The Grievant expressed regret, conceding that he had made mistakes that he would not repeat (TR 134). His 17 minutes of poor judgment must be balanced against 17 years of dedicated and loyal service.

» The Company's judgment to terminate was designed to send a strong message in the context of the overtime boycott. However, in retrospect, divorced from the passions of the moment on both sides of the table, the decision to move immediately to termination exceeded the bounds of just cause and should not be sustained.

» For all these reasons, the termination lacked just cause and should be removed from the Grievant's record. He should be reinstated to his former position, and awarded the remedies requested.

## DISCUSSION

The record supports a finding that the Grievant went to the Pacifica jobsite, outside his geographical area, while on overtime and on the clock, with the intention of attempting to dissuade the Title 300 crew from performing the assigned work. The Grievant's denial of that motivation, and his assertion of safety concerns, is not accepted. The asserted safety concern was based on one incident allegedly involving Gray dating back to December 2002 (TR 122-124). The Grievant admittedly had never spoken to Gray about the prior event (TR 124). Both Gray and Smethurst testified the Grievant did not raise any safety or other specific work-related concerns in the incident on June 28 (TR 29, 45-46, 58). The Grievant admits he never approached Smethurst with a concern about safety or crew-size (TR 122, 124-125, 136). The Grievant did not report any safety issue to a shop steward or his supervisor (TR 94-96, 123). His assertions concerning that purpose are simply not credible, and appear to be a convenient alternative offered to provide cover for his true intentions (TR 130).

This case does not involve a momentary or impulsive loss of control by an employee in immediate response to particularly aggravating work conditions, or resulting from unreasonable provocation, or resulting from difficult personal circumstances. Rather, the Grievant sought out this confrontation by calling the distribution operators' office to obtain information about the dispatch of a crew to this site. He then called W and asked him to meet him at the jobsite (TR 121). He then went to the location, with no legitimate business purpose. He literally "went out of his way" to get into this confrontation. This further supports the finding, above, that he went to the location intentionally to interfere with the crew performing work on overtime.



The Grievant's conduct was an intentional effort to dissuade, and ultimately intimidate, Gray from restoring service to customers on that overtime assignment. This conduct directly contravenes the central mission of the Company, acknowledged by the Union in Section 3.1 of the Agreement. The Grievant's actions clearly violated Section 3.2 of the Agreement, which prohibits an employee from calling upon others to abstain from the performance of their duties for the Company; and his actions violated Section 3.3, which obligates employees to use their influence and best efforts to protect service and preserve continuity of service to the public (JX 1).

When the Grievant arrived at the jobsite, his tone was immediately confrontational as opposed to a friendly effort to persuade Gray to respect the boycott in the future. While at the site, he persisted in a course of unreasonably belligerent, threatening and intimidating conduct toward Gray. The Grievant's denials are not credible. The facts are summarized in detail above and need not be repeated. Significantly, Smethurst's testimony corroborates Gray's that the Grievant made threatening remarks. It is undisputed that customers were in the area at the time (TR 141). Any reasonable employee knows, or ought to know, that behavior of the type engaged in by the Grievant on June 28 is unacceptable and could lead to discharge.

Moreover, the evidence shows that the Grievant persisted in this course of misconduct despite several attempts by Gray to terminate the conversation, and in direct contravention to repeated, clear directives from Smethurst to leave the jobsite. The Grievant had several opportunities to desist, but he chose instead to ignore Smethurst's orders and escalate his threatening and physically provocative conduct toward Gray.

The Union argues several points in urging the Board to sustain the grievance. Regarding Gray's and Smethurst's false impression at the time that Troubleman W had refused to perform

work at the jobsite, that point does not undermine the Company's case. The correct information became known the following day, well before the decision to terminate the Grievant was made.

Blaming Smethurst's low key management style for allowing the situation to escalate also does not get the Grievant off the hook. Smethurst backed off initially, before the situation became heated, when the Grievant told him he was engaged in a private conversation. When the confrontation heated up, Smethurst interceded promptly and plainly told the Grievant to leave and Gray to go to work. When the Grievant renewed the confrontation, Smethurst interceded again and instructed the Grievant to leave, and ultimately issued two express direct orders for him to leave. Responsibility for the Grievant's failure to desist in these circumstances rests on him, not upon Smethurst.

Similarly, the Union's attempts to portray Gray's actions as equivalent to the Grievant's are not persuasive. Gray did not seek out this confrontation, the Grievant did. Gray had legitimate assigned work at the site, the Grievant did not. Gray attempted to go about that assigned work, cutting off the conversation more than once. While Gray did not back down when verbally accosted by the Grievant, and responded with his unsympathetic views, Gray was neither the instigator nor the person persisting in the confrontation. Even the Grievant admits that Gray told him to leave the jobsite. It was the Grievant who refused to disengage, for example by going to the backyard, and then by flanking and following Gray to his vehicle when he came through the gate to get items from his vehicle. The record is devoid of evidence that Gray sought out the Grievant to pursue further confrontation.

Additionally, the record as a whole shows that Gray was more responsive to Smethurst's instructions than the Grievant was. While Smethurst had to give instructions to Gray as many times

as he gave them to the Grievant, the difference is that Gray was attempting to follow Smethurst's directives, while the Grievant was ignoring them and refusing to desist.

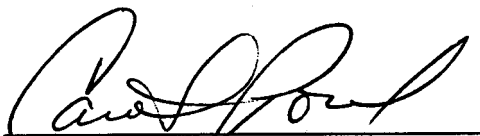
The Grievant testified he only heard Smethurst tell him once to leave the job site (TR 124). The record shows that Smethurst directed the Grievant to leave at three different points in the incident. On the first two occasions, Smethurst told the Grievant in no uncertain terms to leave. At the third stage, he directly ordered the Grievant to leave the jobsite (TR 63, 67). Even then, Smethurst had to repeat the direct order before the Grievant departed (TR 63).

The Union argues that the Grievant was not aware that Gray was not a bargaining unit member. Even if this were accepted as true, it does not change the result. The record supports a finding that the Company would have taken the Grievant's conduct equally seriously had Gray been a bargaining unit member (TR 94). Intimidating, threatening and belligerent conduct of the type proven on this record, whether directed toward a bargaining unit coworker or a supervisor, is unacceptable and constitutes just cause for summary termination.

For all the foregoing reasons, the following decision is rendered:

**DECISION**

Grievant S was terminated for just cause. The grievance is denied.

  
Company Board Member

CONCUR / DISSENT

2-28-05  
Date

  
Company Board Member

CONCUR / DISSENT

2/25/05  
Date

  
Union Board Member

CONCUR / DISSENT

3/2/05  
Date

  
Union Board Member

CONCUR / DISSENT

2-25-05  
Date

  
Neutral Board Member

CONCUR / DISSENT

February 22, 2005  
Date