

REVIEW COMMITTEE**PG and E**

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D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

IBEW 

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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**CASE CLOSED
LOGGED AND FILED**

RECEIVED JUL 17 1986

General Construction Grievance No. 3-1493-86-1
P-RC 1109

July 11, 1986

RICHARD S. BAIN, Chairman
General Construction
Joint Grievance Committee

BARRY J. HUMPHREY, Chairman
General Construction
Joint Grievance Committee

Subject of the Grievance

This case concerns the discharge of a General Construction Clerical Assistant at the Diablo Canyon Power Plant for alleged illegal off-the-job drug activity.

Facts of the Case

The grievant was employed on October 4, 1984. In the latter part of 1985, an investigation by the Corporate Security Department in conjunction with the San Luis Obispo County Narcotics Task Force was conducted within the Operational Security Force. One of the Operational Security Officers found to be involved in illegal drug sales was the grievant's husband. On December 5, 1985, the grievant was interviewed by the Security Department regarding her possible involvement in the sale of cocaine. The grievant was suspended on December 6, 1985 and subsequently discharged.

During the course of the investigative interview, the grievant admitted that she had been an off-the-job user of cocaine. In addition, the grievant made the following statements that could be interpreted to be admissions of off-the-job drug sales:

Q. You supply cocaine to some of your friends, too?

A. Some of my friends? Yeah, but they don't work up here.

And later in the questioning:

Q. How much do you think he [the grievant's husband] made per month? If he sold \$1000 worth, how much of that was profit?

A. He did it, well we did it, because I did it too, you know, so...and you never make any, you just do it for your own personal usage.

Q. It paid for your own?

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A. Yeah, that's all we were there for. It was never large quantities; it was small quantities.

Q. Do you still use now?

A. No.

In addition, the Security Department interviewed another employee who recalled purchasing cocaine on two occasions from the grievant's husband and giving the money in the transaction to the grievant.

During the Local Investigating Committee meeting, the grievant addressed her statements made to the Security Department. Regarding the first excerpt, the grievant explained that this particular question followed a long line of questioning about her husband. The grievant assumed that this question was also referring to her husband, and she acknowledged that her husband had sold cocaine to some of her friends.

As to the second excerpt, the grievant stated that she was referring to using cocaine together with her husband as that was where the line of questioning was headed, noted by the follow-up question, "Do you still use now"?

The grievant denied ever selling drugs or receiving money in any drug transaction.

Discussion

In discussion of this case, the Union argued that the Company's case against the grievant was largely one of guilt by association. Namely, the grievant's knowledge that her husband was a cocaine dealer and her admitted presence when some of the drug transactions occurred. The Union pointed out that the grievant's explanations for the two excerpts noted above, which were pulled out of a lengthy investigatory interview, were believable when examining the surrounding line of questioning. It was further noted that none of the statements by the grievant were followed up with definitive questions to verify what may have appeared to have been statements of admission.

Company argued that the grievant was fully aware of the intent and purpose of the Security Department investigation and that the grievant knowingly and truthfully answered the questions.

Decision

The Committee recognized that in the instant case, it was faced with an allegation involving all off-the-job activities as there was no evidence that drugs were taken or sold on Company property by the grievant. Clearly, the grievant admitted to using cocaine off-the-job. Not so clear is the evidence regarding the off-the-job drug sales. The Committee is in agreement that the level of ambiguity surrounding the allegation of drug sales raises a question of whether the standard of proof has been met. As a result, the Committee agreed to the following equity settlement:

The grievant will be required to submit to the Company's drug screening procedures. If the grievant fails the drug screen, the

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discharge will be sustained. If the grievant passes the drug screen, she will be reinstated with the condition that she meet with an agreed-to professional for the purpose of determining whether the grievant should be referred to a drug rehabilitation/diversion program. If the grievant is so referred, completion of the program and any subsequent after-care will be a condition of further employment.

If the grievant is reinstated, the Committee agreed that the grievant will receive backpay for one-half of the period between her suspension and reinstatement. This amount will be offset by any outside earnings by the grievant during the period in question.

The grievant's discharge letter will be rescinded and rewritten to reflect this decision. Based on the foregoing, this case is closed without prejudice to the position of either party and such closure should be so noted by the Local Investigating Committee.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER N. STALCUP, Secretary
Review Committee

RRD:mc