

IN ARBITRATION PROCEEDINGS PURSUANT TO THE  
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of the Controversy

between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, AFL-CIO, LOCAL UNION 1245,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

Involving discharge of ~~XXXXXXXXXX~~ ~~XXXXXX~~

CASE NO. 20

OPINION OF THE CHAIRMAN

APPEARANCES:

ON BEHALF OF THE UNION:

JOSEPH R. GRODIN, ESQ., of the law firm of Messrs.  
Neyhart and Grodin, 1035 Russ Building, San  
Francisco 4, California.

ON BEHALF OF THE COMPANY:

HENRY J. LAPLANTE, ESQ., Pacific Gas and Electric  
Company, 245 Market Street, San Francisco 5,  
California.

The Parties and the Issue

Pacific Gas and Electric Company (herein called the  
"company") and Local Union No. 1245 of International Brotherhood  
of Electrical Workers, AFL-CIO, are parties to a collective bargain-  
ing agreement dated September 1, 1952, as amended July 1, 1962.

Pursuant to the collective bargaining agreement the parties have submitted to the Arbitration Board the following issue:

"Should the discharge of Mr. [REDACTED],  
M[REDACTED], Groundman, North Bay Division, be  
sustained?"

At a hearing held in San Rafael before the Arbitration Board on April 23, 1963, the parties stipulated that all grievance procedures under the collective bargaining agreement had been complied with or waived and the issue submitted was properly before the Arbitration Board pursuant to the collective bargaining agreement.

Evidence, both oral and documentary, was offered and received before the Arbitration Board and at the conclusion of the hearing the issue was submitted to the Arbitration Board for decision subject to the filing of concurrent briefs by the parties. The briefs having been filed on May 16, 1963, further memoranda having been filed on June 6, 1963, and the Arbitration Board having met and considered the matter, the issue now stands ready for decision.

#### The Facts

On December 13, 1962, grievant [REDACTED], M[REDACTED], a groundman in the employ of the company in the San Rafael area of the North Bay division, was given notice by the company that he was discharged effective December 31, 1962.

Grievant was discharged because of his unsatisfactory work performance. The elements of his unsatisfactory work perform-

ance were his preoccupation with other matters, his inattention to duties, and incompatibility affecting his job performance.

Grievant was first employed by the company on February 1, 1961, as a laborer in the gas department. On October 16, 1961, he transferred to the electric department as a laborer. On April 16, 1962, he was promoted to groundman in the electric department and held that position at the time of his discharge.

The groundman's duties and responsibilities are outlined in the opinion in Case No. 19, which has been decided by the Arbitration Board this day.

On April 15, 1962, after grievant had been employed for approximately six months as a laborer in the electrical department, his immediate supervisor filed an Employee Development Work sheet dated April 13, 1962, concerning grievant. The ratings and comments on grievant were generally good. It was noted that his volume of work was at a desirable level and that he was "a hard worker", had a "very clear head", and was willing to learn. He was reported to have a well-balanced nature and to be "very stable". The principal adverse comment was that grievant was "very loud at times and bossy". His supervisor in the report recommended him for promotion to groundman or truck driver. An earlier special report dated April 12, 1962, went into more detail. The report evaluated grievant's work and abilities in substantially the same manner and stated he was "very loud" and "noisy". He was warned by the Assistant General foreman about this defect.

After April 16, 1962, grievant was employed as a ground-

man and for periods of time as a temporary truck driver. Under date of August 1, 1962, his immediate supervisor, under whom he had worked for over six weeks, reported on his work in an Employee Development Work sheet as of the period ending June 30, 1962. The report was not favorable and this supervisor laid his unfavorable ratings to grievant's lack of familiarity and experience with the work. Grievant's work was satisfactory when he put his mind to it, but he appeared to be preoccupied with other matters. The report confirmed that his preoccupation at times was such that it interfered with his work and created hazards for his own safety and the safety of others. The report is in effect a summary of the testimony of this supervisor. This supervisor told grievant that the report was not good because of his inexperience. Nothing was said to him about preoccupation.

The next level supervisor, the Assistant General Foreman, reviewed the June 30, 1962 report. His comments were more critical. Grievant was noted as being "a little slower than usual for a new trainee", as lacking self-confidence, unstable, as a "little overzealous for his own good -- should learn to restrain his conversations", and as creating "a feeling of distrust by his approach -- appears insincere". The Assistant General Foreman also told grievant the report was not too good and he should develop a cooperative attitude.

In July grievant was assigned as a temporary truck driver. Grievant did not believe he was qualified for this work. He asked the Assistant General Foreman to be relieved but was told

he should not turn down this opportunity for advancement. His services in this classification were unsatisfactory. There was a personality clash with one of his immediate supervisors while he was serving as truck driver and this supervisor, for whom he worked in June, July, and August, asked that he be removed from his crew. He testified that M[REDACTED]'s work as groundman was above average, but his truck driving was poor. On one job M[REDACTED] was operating the power hoist on the truck lowering a pole. Something, not explained in the record, went wrong and the pole dropped near two other employees.

On August 30, 1962, the District Electric Superintendent addressed a letter to grievant and commented on the Employee Development Work sheet dated August 1, 1962. The letter pointed out that grievant had been in the electric department for 10 months and a groundman for four months and that the report showed he needed considerable instruction, the quality of his work needed improvement, and he needed constant supervision and direction. The letter posed the question whether grievant was in the right type of work and suggested that he make every effort to learn his job during the next three months so that he might "continue in your present line of progression". In discussing the letter with the District Electric Superintendent he was told that if "you shape up, then that's that".

In the view of his immediate supervisors grievant's work as groundman did not improve during the period after August 30, 1962, and until December, about the time he received the notice of

discharge. After that notice grievant's work was satisfactory. One of the supervisors for whom he had worked in July and August testified his work as groundman in December was very good.

Several of the linemen whom grievant assisted observed that grievant had average speed and response and understanding of the job of groundman. One of the linemen observed that he was above average in speed and performance; another that he was above average in speed and average in other respects; and a third that he was above average in speed in filling requests. Grievant's supervisors continued to observe his preoccupation and this also was observed by one of the linemen.

Some of grievant's problems may have arisen from a strong religious conviction and his attitude with respect to the banter and methods of expression by other members of the crews. Grievant followed a practice of reading religious and philosophical works during the lunch hour and saying grace before his noontime meal. This seemed to set him aside from the other members of the crews on which he worked. Nevertheless, to his coworkers and two supervisors he appeared to get along well with the other men.

In November 1962 two of his immediate supervisors filed special reports (Employee Development Work sheets) with respect to grievant. Grievant had worked for five days in the intervening period for the supervisor who had reported on August 1, 1962. He stated that he could see very little or no improvement in grievant's work, that grievant had the ability to learn and was a steady and willing worker as long as he kept his mind on the job, but that

his mental attitude kept him from adapting himself to the job, and that he seemed preoccupied at times. The other supervisor reported that grievant did not follow instructions and needed constant direction, that he did not seem to understand the work, that he had difficulty in getting along with the other men, and that grievant was not fitted for this type of work. These reports were discussed with grievant on December 7, 1962, the day he was given an opportunity to resign or be terminated by the company. After consideration, grievant refused to resign and was given notice of discharge December 13, 1962, effective December 31, 1962. Other facts are discussed in the opinion.

#### Opinion

There are two questions involved in the issue submitted:

(1) Whether under the collective bargaining agreement a discharge must be for just cause or whether the management has the inherent right of discharge.

(2) If a discharge must be for just cause, whether the discharge of grievant M[REDACTED] was for cause.

The collective bargaining agreement does not specifically set forth the principle or basis which shall govern the discharge of an employee within the bargaining unit.

The company contends that where a collective bargaining agreement contains no express limitation on management's right to discharge, management retains its inherent right to discharge

qualified only by federal and state laws and that since the discharge here was not in contravention of existing laws and was not capricious or arbitrary, it must be affirmed.<sup>1</sup>

The union contends that absent a clear provision to the contrary, a just cause basis for discharge or disciplinary action is implied in a collective bargaining agreement,<sup>2</sup> and that the parties in prior arbitrations have treated the agreement as requiring that the company have justifiable or just cause for discharge.

The agreement is a comprehensive document covering the rights and obligations of the company, union, and employees. It contains elaborate grievance procedures which culminate in arbitration (Title 102). Grievances covered by the grievance procedure (section 102.6):

- "(a) Interpretation or application of any of the terms of this Agreement;
- (b) Discharge, demotion, suspension or discipline of an individual employee;
- (c) Disputes as to whether a matter is a proper subject for the grievance procedure."

The agreement grants seniority rights to employees (Title 106) and company seniority is broken by discharge among other things (section 106.1). If the company may discharge as it contends with or without cause and if the only limitation on

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<sup>1</sup>The company cites National Cash Register Co. (N.Y.S.Ct. App. Div. 1952), 18 LA 595, and How Arbitration Works, 2nd ed. p. 410.

<sup>2</sup>Citing Cameron Iron Works, 25 LA 295, Higgins Industries, 25 LA 439; Atwater Mfg. Co., 13 LA 747.



management is that its decision be not arbitrary or capricious, then the seniority and other rights granted by the management would be seriously limited. The seniority and other provisions of the agreement are aimed at security not only for the union but for the individual employee as well. Arbitrator Hebert in Higgins Industries, 25 LA 441, has expressed it well (p. 440):

"It is, therefore, concluded that the contract as a whole, considering its purpose and intent, does not permit the discharge of an employee unless there is 'cause' by which is reasonably meant that there must be a substantial basis for the action taken. In other words, there must be a fair and legitimate reason for a discharge; it must not be arbitrary and, as a supreme economic penalty, it must not be so unduly severe as to be completely out of proportion to the gravity of the offense of which an employee may have been guilty. .... In holding that discharge cases are subject to the arbitration procedure and that management's decision in a discharge case is subject to review on the merits, this Board does not exceed the 'scope and terms of the agreement' nor does it change any of its terms and conditions."

The parties by their agreement have agreed to submit to the grievance and arbitration machinery the discharge of an employee and interpretation and application of the terms of the agreement. Unless a discharge is required to be based on just cause, the grievance and arbitration provisions have a restricted application and effect. Since the agreement does not specifically reserve to the company the right to discharge without just

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<sup>3</sup>Although the contract in Higgins Industries provided for loss of seniority rights on discharge for cause, it also contained a provision that the management retained "the sole right to hire, discipline, discharge, lay-off, assign, promote and transfer employees. ...."

cause, and since the agreement contains a no-strike clause and covers in a broad way the rights and obligations of the company, union, and employees, the discharge of an employee covered thereby should be for just cause.<sup>4</sup> The issue submitted is whether the discharge of grievant should be sustained. To decide the issue, the principle of decision provided by the collective bargaining agreement must first be ascertained. That principle is that a discharge must be for just cause.

If a discharge is to be for just cause the evidence should establish the grounds upon which the discharge is based and the grounds should be such that under all the circumstances they reasonably justify the termination of the employment. Unsatisfactory work performance usually occurs over a period of time. Often it is a cumulation of events and occurrences. It is often difficult to describe the details which in totality amount to unsatisfactory performance. For these reasons the good faith opinions of an employee's supervisors are entitled to full consideration.<sup>5</sup> Although the judgments of supervisors are entitled to full consideration, the grounds of discharge should be substantial and connected with the employment relationship, and objectively considered they should justify the termination.

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<sup>4</sup>The rationale of arbitration decisions such as Cameron Iron Works, supra, and Higgins Industries, Inc. is preferable to the reasoning and views in the authorities cited by the company. Moreover, the rationale of such decisions express the general view of the interpretation and application of collective bargaining agreements announced at a later date by the Supreme Court in United Steel Workers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-584, and other cases decided the same day.

<sup>5</sup>See Pacific Gas and Electric Company, 23 LA 556, 558.

Prior to his promotion to groundman grievant's supervisor was very complimentary of grievant's performance as a laborer. His only substantial criticism was that grievant was "loud and bossy". Grievant's early performance as a groundman was satisfactory when he put his mind to it. His failings were attributed to inexperience and preoccupation with other matters. The sum of the testimony appears to be that grievant was physically and mentally capable of performing a groundman's duties but that he manifested periods of inattention. His immediate supervisor in the first report stated that he got along well with others under normal circumstances. The Assistant General Foreman noted that he was slower than the average trainee, lacked self-confidence, was unstable, and appeared insincere.<sup>6</sup>

Grievant believed he was not properly trained to act as a truck driver. He had not bid this type of work, did not feel qualified, and had accepted it under protest. His unsatisfactory performance as a truck driver does not establish unsatisfactory work as a groundman. It is significant that, by reason of a clash of personalities, grievant was unable to get along with one of his supervisors for whom he worked as a temporary truck driver for about 14 days during June, July, and August 1962. Yet this supervisor testified his work as groundman (duties which a truck driver also performs) was above average.

Between April 1962 and the latter part of July, grievant

<sup>6</sup>The last comment appears to be at variance with other attributes of grievant's character.

worked as a groundman. Between July and December a large percentage of his work, estimated by grievant at 90%, was as a truck driver. The Assistant General Foreman estimated that grievant spent close to six months of the period from April to the end of the year as a truck driver. During December he worked as groundman. One of his supervisors for whom he worked as groundman in July testified his work then was below average. He was pre-occupied. He needed constant direction and instruction. He appeared disinterested. This same supervisor considered his work to be very good as a groundman in December.

The supervisor under whom he had first worked as groundman reported in November on grievant's work as groundman for five days in October. He saw no improvement in his work as groundman. Another supervisor for whom grievant had worked in August as a truck driver filed a report in November. This report was unfavorable for the most part and stated that grievant should not have been "placed in this field."

The substance of the evidence appears to be as follows: grievant's initial work as groundman left something to be desired but it was probably due to inexperience. His work as a truck driver which he accepted reluctantly because he did not feel qualified was unsatisfactory. Between July and the first of December the great majority of his time was spent working as a truck driver. His first immediate supervisor saw no improvement in his work as groundman in October. Another supervisor did see substantial improvement between July and December. Three other

supervisors were highly critical of his work but this was when he worked principally as a truck driver. These supervisors requested he be removed from their crews. Linemen, who are nonsupervisory employees and whom grievant assisted, were satisfied with his work, noticed no preoccupation, and thought he got along well with other employees. The Assistant General Foreman, the next level supervisor, was dissatisfied with grievant's work, attitude, and personal characteristics. After his notice of termination grievant's work as groundman was above average.

From the evidence it appears that grievant had the physical and mental ability to be a satisfactory groundman, the position which he had bid, and at times before his notice of discharge he performed satisfactorily as a groundman. His performance as a truck driver was unsatisfactory. After July he was given little chance to improve or to show that he was competent as a groundman. In December 1962 his work as groundman was above average.

Some of grievant's difficulties seem to have arisen because of his personal disapproval of the rough talk of the other crewmen, his strong religious convictions, his reading of religious and philosophical tracts during the lunch period, and possible inability to conform, at least outwardly, to the customs of some of the other crew members. At least three supervisors believed his relations with other employees were satisfactory. Other supervisors did not consider them to be satisfactory. Grievant's relationships with his fellow employees were

proper.<sup>7</sup> Grievant's religious and moral convictions and his desire to further his education would be considered admirable in most circles. Differences in attitudes and convictions are to be expected. Nonconformity need not be the equivalent of incompatibility and incompatibility should not be ground for discharge unless it so interferes with an employee's work as a member of a crew that his work is clearly unsatisfactory. The evidence does not establish incompatibility of grievant with his fellow employees which interfered with the performance of his duties as groundman or the work of the other employees.

Comment may be made on the letter of August 30, 1962. The letter was based on the report of June 30, 1962, when grievant was new to this work. The deficiencies listed in the report were attributed to inexperience by the supervisor. The letter pointed out that grievant still needed considerable instruction, the quality of his work needed improvement, and he still needed constant supervision and direction. The letter raised the question whether grievant was in the right type of work since he had not been able to learn his job. Grievant was told that he should make every effort to learn his job during the following three months so that he might "continue in your present line of progression". "Line of progression" in its ordinary meaning indicates a line of advancement.<sup>8</sup> Some four months before grievant had been promoted

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<sup>7</sup>Grievant was a shop steward, which is an indication of confidence placed in him by fellow employees. There is no evidence that his activities in this capacity contributed to his discharge.

<sup>8</sup>The phrase is treated as having this meaning in Pacific Gas & Electric Co., decision dated June 6, 1953.

from laborer to groundman. Promotion from groundman to apprentice lineman is the next step upward, and the company encourages employees to advance in the ranks. Although the letter suggested that grievant might not be in the right type of work, it did not unequivocally tell grievant that unless his work did improve within the next three months he would be discharged. Grievant's testimony concerning his construction of "line of progression" is not entirely clear, but it appears that he did not understand the letter to be a warning of discharge. His construction of the letter was not an unreasonable one under the circumstances. It is significant that grievant's work substantially improved after his notice of discharge and was above average. A categorical warning to grievant and an assignment to groundman's work probably would have resulted in performance by grievant which would have eliminated management's objection to his continued employment.<sup>9</sup>

The grounds on which the supervisors based their conclusions are not sufficient to justify grievant's discharge from the position of groundman for which he was employed. Both before and after the letter of August 30, 1962, grievant was required to work as a truck driver for a large part of the time and there was imposed on him the duty of learning and of perfecting himself in two jobs. The dissatisfaction with grievant's performance arose

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<sup>9</sup>The collective bargaining agreement does not provide for written notice to an employee that his job is in jeopardy and the decision is not based on any such requirement. Nevertheless, in cases of unsatisfactory work performance and incompetency the employer usually has the obligation to bring home in some appropriate way to the employee that his job is in jeopardy or discipline is contemplated and the reasons therefor.

PRINCIPALLY FROM HIS WORK AS A TRUCK DRIVER, NOT AS GOVERNMENT,  
and it is not just under the circumstances of this case to base  
a discharge on deficiencies in his performance as a truck driver.

Accordingly, there was no sufficient justification or  
just cause for grievant's discharge and the discharge should not  
be sustained under the collective bargaining agreement. Grievant  
should be reinstated with back pay for time lost from January 1,  
1963, to the date of his reinstatement at the groundman's rate of  
pay, less earnings received by him during such period.

Dated: June 12, 1963.

  
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Chairman, Arbitration Board