IN THE MATTER OF ARBITRATION

Between

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

Union

and

PACIFIC GAS AND ELECTRIC CO.,

Employer

OPINION AND AWARD

Involving Grievance of

Arbitration Case No. 32

R. A. STORRS, Union Appointed Arbitrator
M. A. MEDEROS, Union Appointed Arbitrator
E. C. DREW, Company Appointed Arbitrator
I. WAYLAND BONBRIGHT, Company Appointed Arbitrator
MORRIS L. MYERS, Chairman of the Arbitration Board

SPOKESMEN FOR THE PARTIES:

FOR THE UNION — Michael C. Tobriner, Esq.
Brundage, Neyhart, Grodin & Beeson
100 Bush Street
San Francisco, California 94104

and

John J. Wilder

FOR THE EMPLOYER — L. V. Brown, Esq.
and
H. J. LaPlante
Pacific Gas and Electric Co.
245 Market Street
San Francisco, California

Parties to the Dispute

Pacific Gas and Electric Company (herein "Company" or "Employer") and International Brotherhood of Electrical Workers, Local Union No. 1245 (herein "Union") are parties to a collective bargaining agreement (herein "Agreement")(Jt. Ex. 1). Pursuant to that Agreement, an arbitration hearing was held in San Francisco, California on February 18 and 19, 1970, at which hearing evidence was presented related to the issue as stated below. It was stipulated at the hearing that the below-stated issue is appropriately before the Arbitration Board for determination. Post-hearing briefs were filed by the Company and the Union on May 1, 1970. Based upon the evidence and argument, the Arbitration Board finds as follows:

ISSUE

The issue which the parties stipulated be submitted to the Arbitration Board is as follows:

> "Was the demotion of _____ from Gas Serviceman to Helper in violation of the Agreement of 1952, as amended, applying to physical employees of Company?" (Jt. Ex.2)

APPLICABLE CONTRACT PROVISIONS

> "102.13 If an employee has been demoted, disciplined or dismissed from Company's service for alleged violation of a Company rule, practice, or policy and Company finds upon investigation that such employee did not violate a Company rule, practice, or policy as alleged, it shall reinstate him and pay him for all time lost thereby."
>
> (Jt.Ex.1-p.19)

* * *

"DEMOTION OTHER THAN LACK OF WORK

"The foregoing Sections 206.1 through 206.8 and 206.10 through 206.12 apply only to an employee demoted for lack of work. Demotion for any reason other than for lack of work is provided for as follows:

"206.15 An employee who is demoted for any reason other than for lack of work may be placed in a vacancy created in his headquarters by the promotion of one or more employees to fill the job which the demoted employee vacated. If no such vacancy occurs he may be demoted to a vacancy in a lower classification in the Division in which he is employed. In the application of this Section an employee shall be demoted to a vacancy in the first successively lower classification which he is qualified to fill."

(Jt.Ex.1-p.62)

FACTS

The grievant in this case, Mr. , has been an employee of the Company for over nine years. He became a Gas Serviceman more than six years ago and remained in that classification until July 21, 1969, on which date Mr. was demoted to the classification of Gas Helper. (Co. Ex. 2). As stated above, the issue in this case is whether that demotion was violative of the Agreement between the Company and the Union.

COMPANY POSITION

The basic position of the Company in this case is that Mr. had, by his entire past record as a Gas Serviceman, demonstrated that he lacked the degree of reliability, responsibility, and trustworthiness which is

essential for employees in that classification. Gas servicemen, by the very nature of their work, are "unsupervised", in the sense that they work alone, and are provided a great deal of "independence". The Company asserts that the other side of the coin is an obligation on the part of the employee in that classification not to take advantage of that "independence" and to conduct himself in a responsible and reliable manner.

_, contends the Company, failed to meet that standard.

The Company points to a number of incidents and events within the recent past that show, according to the Company, that _____, is not worthy of the trust that must be placed in an employee in the classification of Gas Serviceman. Chronologically, those incidents were as follows:

1. In March, 1968, r left a "NOTICE TO CUSTOMERS -- A P.G. and E. REPRESENTATIVE CALLED TODAY" near some motorcycles at a customer's residence, on which notice had written, "You people have been told to move these bikes. If you don't by 3-26-68 the chain will be cut and bikes throw (sic) out into garage." (Co.Ex.9). The motorcycles, which were lock-chained to the residence, apparently obstructed Mr. availability to the electric meters at this residence. The customer, upon reading the note, complained to the Company. It is the Company's contention that Mr. should not have left a note, but instead should have brought the situation to the attention of his supervisor who, in turn, would have gone to talk with the customer. (Tr. p.99-103).

2. On January 29, 1969, Mr. 's supervisor noticed that Mr. had an "unusually successive and high number of CGI's." (NOTE: "CGI" stands for "Can't Get In", meaning that the customer was not at home when the Serviceman was there.) On the following day, the supervisor went to the four residences where Mr. had indicated, successively, that there had been no one at home. In all four cases, the customers at those residences stated to the supervisor that, to the contrary, someone <u>was</u> at home at the time indicated on Mr. 's tag. Furthermore, each of the four custom ers stated to the supervisor that no "CGI" notice had been left at his residence. (Co.Ex.7; Tr. p.91-92, 165-166). The clear implication of this evidence is that Mr. did not in fact go to those residences on January 29, 1969 and falsified his tags by stating that he had gone but that no one was at home.

3. The Company has a policy that when Servicemen go for coffee, they are not to travel unnecessarily out of their assigned working area, nor are more than two Servicemen to be in a coffee shop at the same time. On March 21, 1969, Mr. , in violation of this policy, went into a coffee shop where two other Servicemen were already present. Furthermore, according to the Company, Mr. Malonoy engaged in unreasonable routing in going for coffee, resulting in excessive mileage. For this violation, the Company on March 26, 1969 gave Mr. a written warning. (Co. Ex.8; Tr. p. 96-97, 163-164).

4. The Company has a practice of auditing the work of each Serviceman once every three months. This audit consists of taking a random sample of a Serviceman's work on a particular day and a supervisor's calling back on the following day at the residences involved in the sample to check out the work that was done by the Serviceman. If a Serviceman does not average a ninety "index" based on the four audits in a calendar year, he is required to attend remedial training class the following year, and he is audited monthly thereafter until his performance is again considered to be satisfactory.

In calendar year 1968, no more than 8 servicemen out of the 96 in the central district of the San Jose Division, the district in which Mr. worked, had a rating of less than ninety. Mr. was one of those who had a rating below ninety. Consequently, on March 26, 1969, he attended remedial class, at which time, among other things, it was emphasized to Mr. , and to the others in the class, the importance of filling out tags correctly -- i.e., signing them, dating them and putting the exact time on them that they were on the job. (Tr. p.17, 103-110, 185-190).

An audit was conducted on April 3, 1969 of Mr. 's April 2, 1969 work. This audit revealed that Mr. had been at a customer's residence as a result of the customer's complaint of a gas leak, that Mr. had found no gas leak, had "painted the meter" and left; however, the supervisor conducting the audit later found a leak in the meter. Furthermore, the supervisor found that the gas pressure was lower than

standard. According to the Company, had Mr. y followed the prescribed procedure for checking leaks, he would have determined that the gas pressure was low, thus indicating that Mr. had not performed his job in accordance with the prescribed procedure. Lastly, the supervisor found that there was an uncapped gas line in the customer's garage. Again, asserts the Company, had Mr. performed his job properly, he would have discovered this uncapped gas line. (Tr. p.110-114).

5. On April 9, 1969, Mr. 's supervisor saw Mr. at 4:12 P.M. driving his truck. That evening, the supervisor checked Mr. 's tags and found that Mr. had stated on one tag that he had arrived at a particular address at 4:05 P.M. to perform a job and had completed his work at that address at 4:30 P.M. (Co.Ex.10). When confronted by the supervisor the following day with the fact that he had been seen driving at the same time that he had indicated on his tag that he was working, Mr. y admitted that the "arrival time" that he had written on the tag was in error and that he had adjusted the time to fit a gap in his schedule. He stated that when he was seen by the supervisor at 4:12 P.M. he was on his way to make a personal telephone call.

Mr. was told that he was not to make any falsifications of any type on any company record and that he was not to defer company business and engage in unnecessary travel to make personal telephone calls. He also was told that if a similar incident occurred in the future, disciplinary action would be taken against him. (Joint Ex.3, Tr. p.115-122,304).

6. On July 15, 1969, Mr. 's supervisor checked Mr. 's tags and found that he had completed 28 lock tags out of the 41 tags that had been issued to him. On the following day, July 16, 1969, the supervisor again checked Mr. 's tags and discovered that he had completed 24 tags of the 40 that had been assigned to him. Since 40 or 41 tags are the average number assigned daily to a Serviceman with the expectation that work will be completed on all of them, supervisor decided to follow Mr. on July 17, 1969 to determine why Mr. was not completing the amount of work that was expected of him. (Tr. p.123, 128-129).

Accordingly, on July 17, 1969, Mr. R , a service foreman, and Mr. D , an assistant service foreman and Mr. 's supervisor, were assigned to keep Mr. under surveillance. Mr. C drove the car while Mr. F kept notes on when and where he observed Mr. during the day. Mr. C and Mr. F would check their watches with each other periodically to make sure their watches were synchronized. Although they did not manage to keep Mr. under constant observation, they did see him at more than half of the addresses where Mr. had tags assigned to him to perform work. (Co.Ex. 4, 5, 6).

According to Mr. F 's and Mr. C 's testimony, shortly after 3:12 P.M. on July 17, Mr. started driving his truck and ended at an address which was outside his service area. When he arrived at the address, which was 3.6 miles from the immediately prior address at which he had been, he was

observed by Mr. C e and Mr. F . to get out of his truck, enter a residence and stay there until about 4:10 P.M., at which time he got back into his truck and drove to the San Jose yard, arriving at the yard at 4:28 P.M.

When Mr. r turned in his tags on July 17, the times indicated on them as to when he arrived and left each address were checked against the times that had been noted by Mr. F as to when and where Mr. had been observed that day. It was determined by comparing the tags against Mr. F l's notes that there were discrepancies in the times, ranging from a difference of 5 minutes up to 79 minutes. Furthermore, there was no indication on any records turned in by Mr. that he had been at the address which was outside his service area. (Co.Ex. 4, 5, 6; Tr. p. 30-35, 134-137).

* * *

It is the Company's contention that Mr. falsified the times written on his July 17 tags, and that, particularly in light of the written warning that had been given him in April, 1969 regarding falsification of company records, Mr. r's demotion from Serviceman to Helper was not violative of the Agreement. Moreover, the Company asserts that the July 17 incident cannot be viewed in isolation from Mr. 's entire record of performance as a Serviceman, and that the conclusion is "inescapable" that Mr. r's record of performance and attitude demonstrates beyond question that he was unsuited to be continued in employment as a Serviceman.

UNION'S POSITION

It is the Union's position that only two reasons were given by the Company prior to the arbitration hearing for Mr. 's demotion -- namely, (1) that on July 17, 1969, he went outside his service area on personal business during which time his completion tags indicated he was performing Company work, and (2) that on July 17, 1969, he had entered incorrect times on his tags "to cover other lapses from company work". (Co.Ex.2). Therefore, says the Union, it is not appropriate for the Arbitration Board in this case to consider, as the Company seeks the Board to consider, any other incident in Mr. 's past record as a Serviceman to determine whether Mr. r's demotion was violative of the Agreement.

As for Mr. 's leaving his work area on July 17, the Union points to Mr. y's testimony that the purpose of this trip was to check a swimming pool heater at his brother-in-law's residence. According to the grievant, he had completed all of the work that had been assigned to him when he went to his brother-in-law's house. Furthermore, the grievant insisted that it was after 4 P.M. when he left his work area, too late for him to call the Company for additional assignments that day. (Tr. p.271, 305-308). The Union notes in this regard that the Company's evidence is in conflict as to when Mr. arrived at his brother-in-law's house, some of it indicating that he arrived at 3:24 P.M., yet an indication in other parts of the evidence that he was still enroute to the house at 3:30 P.M. (Co.Ex. 4,6; Tr. p.64). Thus, contends the

Union, since the Company's evidence is inconsistent, the Board should believe the grievant.

In any event, says the Union, the seriousness of the grievant's trip to his brother-in-law's residence must be viewed in the light of Company policy on personal errands. There is indisputably no prohibition against a Serviceman taking time out during working hours for personal reasons so long as doing so does not unduly interfere with Company business. In the instant case, the trip was to inspect a swimming pool heater, the operation of which would bring additional income to the Company, asserts the Union. Thus, contends the Union, the harm done to the Company by Mr. 's "excursion" is far outweighed by the harm done to Mr. by demoting him, recognizing that even by the Company's testimony, it will probably be at least a year and a half from the date of Mr. 's demotion that he will again be considered if he bids for a Serviceman's job. (Tr. p.231).

As for the times logged by Mr. F on July 17 as to when and where he saw Mr. on that date, the Union asserts that those times must be inaccurate because of the testimony by both Mr. F and Mr. C . They testified that the minimum time necessary to complete a lock tag job on both gas and electric meters is between five and ten minutes. (Tr. p.50, 157). Yet, according to the times recorded by Mr. F on July 17 in several instances only five minutes lapsed between Mr. 's arrival at one address to perform a lock tag job and his arrival at the next address. Therefore, asserts the Union, the times recorded by Mr. F are

inherently unbelievable, and even Mr. F was unable to explain how Mr. could have performed the work at several addresses in the short period of time as would be consistent with the times recorded by Mr. F . (Tr. 53, 54, 55, 58, 59). Consequently, contends the Union, since the evidence submitted by the Company cannot be considered to be accurate, the Company has not met its burden of proof in establishing that the times recorded on the tags by Mr. were inaccurate.

Notwithstanding that the Union believes that incidents prior to July 17, 1969 should not be considered by the Arbitration Board in the determination of this case, the Union asks the Board to note the following evidence related to those prior incidents:

1. As for the March, 1968 incident concerning the note left by the grievant on the motorcycles, Mr. testified that he had spoken to the manager of the apartment on an earlier occasion, pointing out that the location of the motorcycles made it impossible for him to check the meters. When he returned to find the motorcycles still unmoved, he again spoke to the manager, who told Mr. that the owners of the motorcycles had been told to move them, and the manager suggested to Mr. that he leave a note. In any event, asserts the Union, the Company has at no time taken the position that Mr. 's demotion in July, 1969 was because of his poor customer relations. (Tr. p. 235-236).

2. Regarding the January 29, 1969 incident of the four "CGI's" wherein the Company asserted that the four customers

said that they were at home at the time Mr. said they were not, Mr. testified that on that particular day he had no gas in his "hot change" tank, but that if gas had been in his "hot change" tank, he could have made a "hot change" on the meters at two of the four addresses in question. Therefore, since it would be possible to make a "hot change" at a later time at those addresses, he left no "CGI" notes. However, Mr. Maloney testified that at the other two addresses where a "hand change" was necessary to make the meter change, he left "CGI" notes after knocking on their doors and getting no response. (Tr. p. 237-240).

3. With respect to the March 21, 1969 "coffee shop" incident, it was Mr. 's testimony that two Company servicemen were leaving the coffee shop just as he was entering, and that there was only one other serviceman in the shop bedides himself while he was there. (Tr. p.234). Furthermore, the Union asserts that, insofar as the Company allegation of "excessive travel" is concerned related to this incident, the Company made no showing that Mr. could have obtained coffee at any location closer to his work area than where he in fact went for coffee.

4. With regard to the April 3, 1969 audit of Mr. s April 2 work, wherein the supervisor found a gas leak, an uncapped gas line and low gas pressure whereas Mr. had not discovered any of these faulty conditions, Mr. testified that he followed standard practice in the performance of the work on this job. He stated that in order to find the gas leak in the meter

it was necessary for the supervisor to pull off the entire dial face from the meter, and that he ( ) had never been instructed to perform that operation to find a leak. He also stated that the customer told him that she smelled gas outside the garage and that he did not believe that a check inside was indicated in view of that information. (Tr. p. 240-244, 300). More importantly, contends the Union, it is not the Company's position that the grievant does not possess the ability to be a Serviceman and that since the grievant's demotion was not for "poor quality work, this incident is irrelevant." (Union brief, p. 19).

5. With respect to the amount of work completed by Mr. on July 15 and July 16, 1969, the Union invites the Arbitration Board's attention to Mr. 's testimony that he had just returned from a month's vacation and that he hadn't gotten "back in the groove", particularly since some of the areas assigned to him on July 15 and 16 were unfamiliar to him. (Tr. p. 246-250). The Union also contends that the Company has not alleged either that the grievant was on personal business or that the grievant in any way falsified his tags on July 15 or July 16; therefore, evidence related to Mr. 's work performance on those two days is irrelevant to the issue in this case.

OPINION

The Arbitration Board believes that the crucial issue in this case is whether Mr. has demonstrated by his

actions the degree of reliability and trustworthiness that can properly be expected of a Serviceman by the Company. Based upon all the evidence, it is the Board's opinion that he has not.

In arriving at this opinion, the Board wishes it to be understood that much of the evidence submitted by the Company has been given little or no weight. The Board believes, for example, that the March, 1968 incident regarding the note left on the motorcycles has nothing to do with Mr. --'s trustworthiness, and the Board concurs with the Union that Mr. 's "customer relations" is not properly within the scope of this case. Neither does the Board rely upon the March, 1969 "coffee shop" incident, in reaching its judgment as to the grievant's lack of reliability, for the evidence as to that incident is indeed inconclusive that Mr. violated the rule against "congregating". The Board also places little weight on the "four CGI" incident of January 29, 1969 in making its determination.

Putting it another way, the Board relies largely if not solely on the evidence regarding events occurring since March 26, 1969, the day that the grievant attended remedial class. Mr. should have realized at that time that he was "skating on thin ice", since the whole idea of the class was to refresh the few Servicemen who had not met the "standard" for performance as indicated by their 1968 audits. It must be remembered that Mr. was told in this class that he was to fill out his tags accurately. Notwithstanding this reminder, no more than two weeks passed before Mr. admittedly

falsified time on his tag, for on April 9, 1969 he was seen by his supervisor driving his truck at a time when when he stated on a tag that he was working. Mr. acknowledged this falsification and was specifically warned in writing that "future lapses of this nature or disregard of the instructions contained herein will result in appropriate disciplinary measures being taken." Remember also that Mr. in this incident had stated that he was on his way to make a personal phone call when he was seen by his supervisor. It was pointed out to him that he had gone 1½ miles out of his way to make his phone call and this was considered by the Company to be unreasonable. (Joint Ex. 3)

This warning apparently had little effect on Mr. for on July 17 he traveled 3.6 miles out of his way on personal business -- to check his brother-in-law's swimming pool heater. The grievant does not deny that he took this detour. His defense seems to be that checking the heater indirectly benefited the Company -- an argument that does not impress the Board -- and that the detour occurred so late in the day that no more assignments would likely have been given to him by the Company had he called in to the Company.

In this latter regard, the Board does not accept Mr. testimony that he finished his last job prior to his going to his brother-in-law's house at 4:08 P.M., as opposed to the testimony of Mr. I and Mr. C that he left for his brother-in-law's prior to 3:30 P.M. If the Board were to

believe Mr. , he traveled 3.6 miles to his brother-in-law's house, spent as much as seven minutes at that house, and then drove at least eight miles back to the yard, all in the space of twenty-two minutes. This the Board finds hard to accept, as distinguished from the testimony of the Company witnesses that Mr. stayed at his brother-in-law's residence at least one-half hour and did not start back to the yard until 4:10 P.M., arriving at the yard at 4:28 P.M.

There is another part of Mr. 's testimony that is difficult for the Board to accept. Mr. stated that he saw Mr. F . and Mr. C in a car on several occasions on July 17 and realized that he was under surveillance. If that were true, then it indeed was remarkable that Mr. would have taken a trip out of his service area to his brother-in-law's house, remembering again that he had been given a written warning only three months earlier about making unnecessary trips on personal business during working hours. The Board believes that if Mr. knew he was being followed and nevertheless took this excursion, such conduct would constitute near insubordination.

The Board is also of the opinion that Mr. falsified the times on his tags on July 17. At the same time, the Board does not accept the full accuracy of the times as noted by Mr. F as being "arrival times" by Mr. at the respective addresses. Indeed, if the difference between the times noted on Mr. 's tags and the times noted by

Mr. F were within a few minutes of each other, the Board would not find that Mr. falsified his times. The Board in making these observations, is not casting doubt on Mr. F 's honesty; rather, the Board takes cognisance of the fact that this is the first time that Mr. F ever engaged in surveillance work and itis more likely that the times he wrote down were the times when he saw Mr. at the various addresses instead of their being "arrival times".

However, the time differentials between Mr. 's and Mr. F 's notations were not minor -- they were at considerable variance, two of them being over an hour apart. For example, Mr. r noted on his tag that he completed his work at 56 N. 3rd at 1:00 P.M., whereas Mr. F 1 noted that Mr. arrived at that job at 11:52 A.M. Considering that the work at that address was a "read only", a task taking no more than 2-3 minutes, it is apparent that either Mr. F , in collusion with Mr. C , wilfully and deliberately falsified the time that he put down as having seen Mr. at that address on one hand, or that Mr. falsified the time that he was there on the other hand. As between these alternatives, the Board believes that it was Mr. , not Mr. F , who falsified the time notation.

The considerable time difference as between Mr. F 's and Mr. 's notations at the 56 N. 3rd address was not unique to that address. A study of Company Exhibit 6 shows that of the 16 addresses where there were time notations by both

Mr. F and Mr. , at 7 addresses the difference was more than 30 minutes, and at 13 addresses the difference was 20 minutes or more. To reiterate, a difference of such magnitude cannot be attributable to mere mistake by either or both of the persons making the notations -- either Mr. deliberately falsified his time notations or Mr. F did -- and the Board finds that it was Mr. who did.

Thus, the Board concludes that disciplinary action against Mr. was justified. The remaining consideration for the Board to determine is whether demotion was an appropriate disciplinary action. Were the Agreement silent in this regard or were there no past practice of demoting employees as a disciplinary measure, the Board might be hard put to find demotion as being appropriate. However, the facts are to the contrary.

Sections 102.13 and 206.15 of the Agreement clearly provide for demotions for reasons other than for lack of work, the former section being particularly clear that demotion is appropriate as a disciplinary action, Moreover, it was established that in at least two prior instances, employees have been demoted as disciplinary measures, and in one of those prior instances the employee was demoted from the Serviceman job. (Co. Ex. 11 & 12). In light of the above-cited contractual provisions and the past practice of the parties, the Board is of the opinion that Mr. 's demotion was appropriate as a disciplinary action.

AWARD

The demotion of from Gas Serviceman to Helper was not in violation of the Agreement of 1952, as amended, applying to physical employees of Company.

Dated: July 13, 1970.

Morris L. Myers

MORRIS L. MYERS, Chairman
of Arbitration Board

R. A. Storms Dissent

R. A. STORMS,
Union Appointed Arbitrator

M. A. Medeiros (non Concur)

M. A. MEDEIROS,
Union Appointed Arbitrator

E. C. Drew.

E. C. DREW,
Company Appointed Arbitrator

J. Wayland Bonbright - Concur

J. WAYLAND BONBRIGHT,
Company Appointed Arbitrator