PACIFIC GAS AND ELECTRIC COMPANY

and

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

Case No. 187 - R

ARBITRATION AWARD ON ARBITRABILITY

A hearing was held on June 9, 1992 in San Francisco, California and the following issue submitted to the arbitrator:

> **Whether the merits of the Grievant's decision-making leave are arbitrable?**

The Grievant has worked for the Company for 17 years. He was involved in a confrontation with coworkers on April 18, 1990 and suffered a severe stress reaction to the incident. He was taken off work and referred to a Company psychiatrist for evaluation and treatment. The Grievant continued receiving treatment after he returned to work on May 7. A few days later, on May 10, he was given a decision-making leave for his actions in the confrontation.

On May 23 the Grievant discussed the decision-making leave and its consequences in the positive discipline system with the psychiatrist. He informed the doctor that he intended to file a grievance. The Grievant testified about the psychiatrist's advice:

> **At that time Dr. Wolff told me that in his opinion it would be absolutely nothing but exasperating to the condition that I was in to pursue that grievance at that time and that it was his recommendation to me that I not pursue it and that I keep undergoing the sessions with him and keep avoiding the conflicts that had precipitated this whole situation.**

Title 102.3(a)(2) of the contract requires grievances of this type to be filed within 30 days of the incident or awareness of it, whichever is later. However, based on the psychiatrist's advice, the Grievant decided not to grieve the decision-making leave. The Grievant notified his supervisor and division manager of his decision and the reasons for it. The question of the arbitrability of the decision-making leave was not raised until after he was terminated on August 6, 1990.

The merits of the decision-making leave are arbitrable. The Grievant intended to file a grievance within the contractual time limit and was persuaded not to by the psychiatrist. The Company's doctor advised him to forfeit his grievance if he wanted to get well. Because this recommendation was decisive in the Grievant's failure to file, it would be fundamentally unfair to bar him from arbitrating his claim on the merits now that the Company has relied on the unchallenged decision-making leave as a basis for discharge.

The Company is inconvenienced, but not prejudiced or hindered, by the failure to have a timely grievance on the decision-making leave. The Company's preparation of its arbitration case will not be substantially affected by having to arbitrate the merits of the decision-making leave. It will not have to develop new facts as the Union asserts the termination incident stems from the decision-making leave confrontation and intends to address those events in its challenge to the discharge. Moreover, the confrontation which led to the decision-making leave occurred only 3

months before the termination and therefore the evidence relating to it is not so "stale" as to disadvantage the Company's development of its case.

Although the investigation and negotiation steps of the grievance procedure have not been implemented in this instance, there is nothing to stop the parties from informally negotiating the decision-making leave prior to the next scheduled hearing or agreeing to delay the hearing until the formal contractual procedures can be exhausted.

Finally, as the fact pattern presented here is unique, it is unlikely to occur a second time. Therefore, this ruling can, and is, limited to this specific situation and should not be considered a basis for future exceptions to the contractual time limit for filing grievances.

Date: July 9, 1992

Anita Christine Knowlton

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