

REVIEW COMMITTEE

PG and E

IBEW 

PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET, ROOM 444
SAN FRANCISCO, CALIFORNIA 94106
(415) 781-4211, EXTENSION 1125

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(415) 933-6060
R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

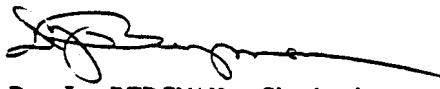
San Jose Division Grievance No. 8-759-82-126
Fact Finding Committee No. 2553-82-389

May 9, 1983

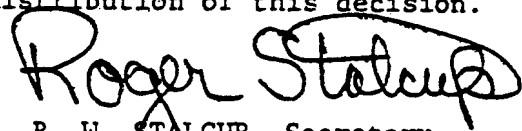
MR. D. J. COYNE, Company Member
San Jose Division
Local Investigating Committee

MR. B. THOMSON, Union Member
San Jose Division
Local Investigating Committee

Attached is a Memorandum of Disposition for Fact Finding
Case No. 2553-82-389, Division Grievance No. 8-759-82-126. The parties
have mutually agreed to a system-wide distribution of this decision.



D. J. BERGMAN, Chairman
Review Committee



R. W. STALCUP, Secretary
Review Committee

MAShort(1123):ml

Local Union 1245
International Brotherhood
Electrical Workers



(3063 CITRUS CIRCLE) • P.O. BOX 4790, WALNUT CREEK, CALIFORNIA 94596 • (415) 933-6060

April 5, 1983

Mr. D. J. Bergman, Chairman
Review Committee
Pacific Gas and Electric Company
245 Market Street, Room 436
San Francisco, CA 94106

RE: FACT FINDING COMMITTEE FILE NO. 2553-82-389

Dear Mr. Bergman:

In settling Fact Finding Committee File No. 2553, Local 1245 agreed that it is inappropriate to threaten bargaining unit employees with disciplinary action when such employee elects to honor a stranger picket line. However, in light of your letter dated February 3, 1983, on the same subject, please be advised of Local 1245's position, as follows.

There are two types of sympathy strikes. First is the honoring of a picket line established by a union other than Local 1245, IBEW, at PG&E's premises. If ESC were to strike PG&E and picket its installations, and members of Local 1245, IBEW were to honor those picket lines, they would be engaged in the first type of sympathy strike. Should this result in a total work stoppage, it is treated differently by the National Labor Relations Board than the second type of sympathy strike.

In this first type of sympathy strike--a total work stoppage--PG&E would have the right to replace striking employees or to lay off for lack of work caused by the strike at its premises. Assuming it was not going to replace, but merely lay off for lack of work, PG&E would be required to follow the procedures established in Title 206 of the Physical Agreement (Title 19 of the Clerical Agreement). In this first type of sympathy strike, PG&E may replace workers without establishing a substantial business justification for doing so.

The second type of sympathy strike is the election not to cross a picket line established at a premise other than PG&E's. If a picket line is established at a construction site or at another employer's place of business where a PG&E employee is sent to perform work, and such employee elects not

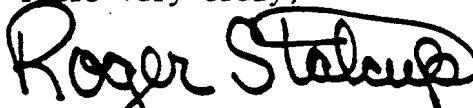
to cross the picket line, a partial work stoppage occurs. A partial work stoppage is treated differently by the NLRB than the first form of sympathy strike described above.

In the second type of sympathy strike—a partial work stoppage—PG&E may not replace a worker unless it has substantial business justification for doing so. PG&E may not replace the worker unless a bona fide emergency exists or replacement is necessary "to preserve the efficient operation of its business". What this means is that PG&E may not deal with a type two refusal to work in any different fashion than it would any other conditions under which an employee was disabled from entering a third party premises to perform his work. For example, if the premises were locked or a safety condition existed which prevented the employee from performing his assigned task, PG&E would not replace that employee or lay him off. Instead, it would reassign the employee to other tasks. If PG&E were to replace or lay off because the condition which prevented entry on the premises was a lawful picket line, when it would not do so under the circumstances described earlier, PG&E would be discriminating on the basis of the exercise of an employee right under the NLRA. PG&E cannot do that without violating the Act.

If PG&E does not replace, but "lays off for lack of work", it must follow the lay off procedures outlined in the agreement. Failure to do so is breach of contract, and in addition, a unilateral change violative of Section 8(a)(5) of the Act.

This opinion is based upon the Board's decisions in Redwing Carriers, Inc., 137 NLRB 1545 (1962) and Southern California Edison, 243 NLRB 372 (1979), as well as conversation on this subject between John L. Anderson of Neyhart, Anderson, Nussbaum, Reilly & Freitas, and senior officials of the NLRB in San Francisco. Further, it is my understanding that Mr. Anderson has reviewed the above with L.V. "Bud" Brown of the Industrial Relations Department Staff and that Mr. Brown concurs with the above.

Yours very truly,



Roger Stalcup, Secretary
Review Committee

RWS/rlm

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PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 245 MARKET STREET • SAN FRANCISCO, CALIFORNIA 94106 • (415) 781-4211 • TWX 910-372-6587

February 3, 1983

Mr. R. W. Stalcup, Secretary
Review Committee, Local 1245
I.B.E.W., AFL-CIO
P. O. Box 4790
Walnut Creek, California 94596

Dear Mr. Stalcup:

In settling Fact Finding Committee Case No. 2553, the Company agreed that it is inappropriate to threaten bargaining unit employees with disciplinary action for failure to cross a lawful picket line. However, so there is no misunderstanding in the future, it is the Company's position that the National Labor Relations Board Case No. 79-7435 provides that the employee may be laid off for lack of work for the duration of the assignment, those employees who refuse to cross a picket line.

Yours very truly,



D. J. BERGMAN, Chairman
Review Committee

MAS:ml

PACIFIC GAS AND ELECTRIC COMPANY
MEMORANDUM OF DISPOSITION
LOCAL INVESTIGATING COMMITTEE REPORT NO. 8-759-82-126
FACT FINDING COMMITTEE NO. 2553-82-389

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SUBJECT OF GRIEVANCE:

As stated by the Union, the grievance issue is:

"On 9/29/82, the grievants refused to cross a lawful picket line. The grievants were ordered to cross under the threat of discipline. The grievants then did so under protest. The Union contends that employees have the right to honor lawful picket lines established by other Unions and that the employer doesn't have the right to force employees to cross by threatening to use discipline if they don't."

CORRECTION ASKED FOR:

The correction asked for by the Union is as follows:

"That the Company desist and cease (sic) the use of threats of discipline against those employees who desire to honor lawful picket lines."

INVESTIGATION PROCEDURE:

The Fact Finding Committee met on 12/10/82 in the San Jose Division Personnel Department Office. The Committee was comprised of P. Pettigrew, Industrial Relations Representative; D. J. Coyne, Labor Relations Supervisor; R. Stalcup, Assistant Business Manager; and B. Thomson, Union Business Representative. Prior to discussing the case the Committee thoroughly reviewed the report of the Local Investigating Committee.

DISCUSSION:

At the Fact Finding Meeting the Company outlined its policy in relation to requiring employees to cross picket lines. Specifically, the Company stated that it is committed to making every attempt to gain voluntary agreements with striking personnel, to allow Company employees to perform required work. Should these attempts fail, the Company may utilize other means to perform the work. Some examples of these options would be, the use of management employees to perform the required work, entering the work site via a "secondary" gate, or performing the work on weekends or after normal working hours.

The Company stressed that both the Company and the Union are contractually committed to the "continuous rendition and availability" of utility services. The Company further stressed that under their interpretation of the California Public Utilities Commission Rules, the Company cannot deny service to a customer solely on the basis of a labor strike which results in lawful picketing.

The Company agreed that, based on National Labor Relations Board case No. 79-7435 (N.L.R.B. vs. Southern California Edison) the threat of disciplinary action in this case was inappropriate. Although the Company may perform the required work as outlined above, the threatening of disciplinary action against those employees who decide to honor a lawful picket line is incorrect.

DISPOSITION:

Upon clarifying its position in this and similar strike related cases, the Company agreed that threatening disciplinary action, when an employee refuses to cross a lawful picket line is incorrect. This case is therefore closed on the basis of the above.

FOR THE UNION:

Roger Stalcup 4/5/83
R. W. STALCUP (CONCUR/DISSENT) DATE

Larry Pierce 4-6-83
L. PIERCE (CONCUR/DISSENT) DATE

FOR THE COMPANY:

P. E. Pettigrew 1-31-83
P. PETTIGREW (CONCUR/DISSENT) DATE

D. J. Coyne 1/27/83
D. J. COYNE (CONCUR/DISSENT) DATE

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FF 2553-80-389

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NEYHART, ANDERSON, NUSSBAUM, REILLY & FREITAS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

100 BUSH STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94104
(415) 986-1980



STANLEY H. NEYHART
JOHN L. ANDERSON
PETER D. NUSSBAUM
FRANK J. REILLY
JOSEPH FREITAS, JR.
RONALD YANK
FRANK M. BRASS
SANFORD N. NATHAN
MATTHEW D. ROSS
LYNN C. ROSSMAN
WILLIAM J. FLYNN
W. KENT KHTIKIAN

March 31, 1983

Roger Stalcup
Assistant Business Manager
IBEW 1245
3063 Citrus Circle
Walnut Creek, CA

Re: Fact Finding Committee Case No. 2553

Dear Roger:

You have requested that I comment on Dave Bergman's letter to you dated February 3, 1983, in connection with future PG&E policy with respect to employees honoring stranger picket lines. Bergman appears to be saying that PG&E will lay-off employees who do not cross a picket line for the duration of the assignment to be performed at the picketed premises.

In my view, Bergman's letter in and of itself constitutes a violation of §8(a)(1) of the National Labor Relations Act, because it announces an intent, regardless of the circumstance, to discipline an employee for engaging in protected concerted activities under §7 of the NLRA.

My reasons for so stating are as follows:

1. There are two types of sympathy strikes. First is the honoring of a picket line established by a union other than IBEW 1245 at PG&E's premises. If the Scientists and Engineers were to strike PG&E and picket its installations, and IBEW 1245 members were to honor those picket lines, they would be engaged in what I will call a type one sympathy strike. This constitutes a total work stoppage and is treated differently by the Board than the second type of sympathy strike.

2. The second type of sympathy strike is the refusal to cross a picket line established at a premise other than PG&E's. If the plumbers established a picket at a

Roger Stalcup
March 31, 1983
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construction site where a PG&E employee is sent to connect a service, his refusal to cross the picket line is what I will call a type two sympathy strike. It constitutes a partial work stoppage which is treated differently by the Board than the first form of sympathy strike described above.

3. In the type one sympathy strike - a total work stoppage - PG&E would have the right to replace striking employees or to lay-off for lack of work caused by the strike at its premises. Assuming it was not going to replace, but merely lay-off for lack of work, PG&E would be required to follow the lay-off procedures contained in the agreement. In the first type of sympathy strike, PG&E may replace workers without establishing a substantial business justification for doing so.

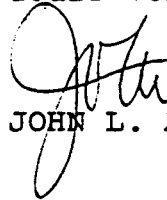
4. In the second type of sympathy strike - a partial work stoppage - PG&E may not replace a worker unless it has substantial business justification for doing so. PG&E may not replace the worker unless a bona fide emergency exists or replacement is necessary "to preserve the efficient operation of its business." What this means is that PG&E may not deal with a type two refusal to work in any different fashion than it would any other conditions under which an employee was disabled from entering a third party premises to perform his work. For example, if the premises were locked or a safety condition existed which prevented the employee from performing his assigned task, PG&E would not replace that employee or lay him off. Instead, it would reassign the employee to other tasks. IF PG&E were to replace or lay-off because the condition which prevented entry on the premises was a lawful picket line, when it would not do so under the circumstances described earlier, PG&E would be discriminating on the basis of the exercise of an employee right under the NLRA. PG&E cannot do that without violating the Act.

5. If PG&E does not replace, but "lays off for lack of work," it must follow the lay-off procedures outlined in the agreement. Failure to do so is a breach of contract, and, in addition, a unilateral change violative of §8(a)(5) of the Act.

Roger Stalcup
March 31, 1983
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My opinion is based upon the Board's decisions in Redwing Carriers, Inc., 137 NLRB 1545 (1962) and Southern California Edison, 243 NLRB 372 (1979), as well as conversation on this subject with senior officials of the NLRB in San Francisco.

Yours very truly,



JOHN L. ANDERSON

JLA:lw1

