

# REVIEW COMMITTEE

## PG and E

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## IBEW

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**CASE CLOSED** FEB 0 2 1984  
**LOGGED AND FILED**

D.J. BERGMAN, CHAIRMAN

**RECEIVED FEB 0 2 1984**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

General Construction Grievance No. 3-1191-83-34  
P-RC 895

January 30, 1984

MR. R. S. BAIN, Chairman  
General Construction  
Joint Grievance Committee

MR. BOB CALLENDER, Chairman  
General Construction  
Joint Grievance Committee

### Grievance Issue

Alleged retaliation against a Working Foreman C for his Union-related activities.

### Background

On March 4, 1983, the Union filed two grievances on behalf of the grievant in this case and several other employees. The grievance issue presented by one of these grievances concerned an inclement weather job close-down decision; the grievance issue presented by the other grievance concerned the grievants' classifications.

On March 30, 1983, the Local Investigating Committee interviewed the grievant regarding the March 4 grievances.

On April 1, 1983, the grievant was transferred from Moss Landing to Cupertino.

On April 8, 1983, the Local Investigating Committee interviewed the grievant's General Foreman.

On April 13, 1983, the grievant was transferred from Cupertino to San Jose.

The Local Investigating Committee eventually resolved the two March 4 grievances. In both cases, the correction asked for by the Union essentially was granted.

### Facts of the Case

On April 19, 1983, the grievant was issued a letter, dated April 18, regarding his poor work performance and a violation of a safety rule (not shoring an excavation). Also on April 19, the grievant was transferred from San Jose to Fresno.

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On May 2, 1983, the Union filed the grievance which is the subject of this case. This grievance alleges that the grievant was issued the April 18 letter and transferred because of his Union activities and participation in the grievance procedure.

During May 1983, a Heavy Truck Driver with less Service than the grievant was upgraded to Working Foreman C for 16 workdays to supervise a paving crew in San Jose.

On June 8, 1983, the Local Investigating Committee met to interview the grievant's General Foreman regarding the May 2 grievance. However, the General Foreman told the Local Investigating Committee that he would not participate in the investigation or otherwise discuss the grievance until the wording of the grievance issue and correction asked for were changed.

Later on June 8, the Local Investigating Committee interviewed the grievant. The grievant told the Local Investigating Committee that he either disagreed with or did not understand many of the statements in the April 18 letter; that he has never been informed of the standards of performance that are expected of him; that the portion of the letter which references his failure to shore an excavation are true, but that the excavation in question was 10 feet square, 6 feet deep on one side but only 4 feet deep on the other; that the General Foreman told him he (grievant) was being transferred to Fresno as punishment for his poor work performance.

The Local Investigating Committee subsequently met with the General Foreman's Superintendent. The Superintendent told the Local Investigating Committee that prior to the issuance of the April 18 letter the grievant had, at best, functioned as a Laborer or Helper rather than as a supervisor; that at other times the grievant stood around watching the crew when there was work he could have performed; that, by law, any excavation over 5 feet deep regardless of its size or shape, must be shored, that the grievant was well aware of this fact; that the grievant was not returned to San Jose to supervise the paving crew because paving work requires a great deal of planning and coordination as well as a supervisor who can "push" the crew, and that the grievant is not strong in these responsibility areas; that additional Working Foreman C's were needed in Fresno at the time of the grievant's transfer to that area; and that the grievant's transfer was unrelated to his grievance activity; that the grievant's performance has improved since April 19 and that, partly in recognition of this improved performance, he was promoted to Working Foreman B on July 27.

Except for the April 18, 1983 letter, there is no evidence in the record which indicates that the grievant has been involved in other safety violations, or that he otherwise had been counseled or reprimanded about his job performance or for any other reason. The Committee noted that the grievant has an employment date of August 23, 1960.

### Discussion

The Union stated that the timing of the grievant's transfer to Fresno coupled with the total lack of any record of prior performance problems or counseling clearly indicates that the subject letter and the grievant's transfer to Fresno were effected in retaliation for the grievant's

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participation in the two grievances filed on March 4; that if the grievant is weak in certain areas, he should first be made aware of the areas of weakness and then should be trained, not punitively transferred. The Union also stated that the General Foreman's refusal to cooperate with the Local Investigating Committee evidences his contempt for the grievance procedure.

Company maintained that the grievant was properly issued the April 18 letter for poor work performance and the safety rule violation, and that his transfer to Fresno was due to a need for additional Working Foremen in the Fresno area; that neither of these actions was taken in retaliation for grievant's Union-related activities. However, the Company expressed regret that the General Foreman refused to participate in the grievance procedure, and stated that he has been instructed to participate, in a cooperative manner, in the future.

### Decision

Notwithstanding the fact that the relationship and sequence of the events cited above may appear to be somewhat more than coincidental, the Pre-Review Committee has no substantive evidence that the grievant was harassed for his Union-related activities.

The Committee discussed the April 18 letter at length. However, due to its unusual construction and wording, it remained unclear to the Committee whether the letter was written as an actual reprimand or simply as documentation of a conversation between the General Foreman and the grievant. Therefore, and since the grievant apparently had no prior counseling or reprimand sessions regarding performance or safety problems, the Committee agreed that the April 18 letter will be removed from all records and destroyed. A record of the cited safety violation should, however, be retained in the appropriate field file.

The case is closed on this basis without further adjustment.

  
D. J. BERGMAN, Chairman  
Review Committee

  
R. W. STALCUP, Secretary  
Review Committee

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