

7.1 -Just cause for disciplin
DML issued-grievant
openly tape recorded
rtn conversations in
business office.



REVIEW COMMITTEE

IBEW



JUN 14 1993

**CASE CLOSED
LOGGED AND FILED**

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PACIFIC GAS AND ELECTRIC COMPANY
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INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
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R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Russian River Division Grievance No. RUS-92-14
P-RC 1640

JUDY McMORROW, Company Member
Russian River Division
Local Investigating Committee

BOB CHOATE, Union Member
Russian River Division
Local Investigating Committee

Subject of the Grievance:

On April 7, 1992 the Company issued a Decision Making Leave to a Utility Clerk in Ukiah for illegally taping office conversations without permission.

Facts of the Case:

Prior to the incident in question, the grievant received a Written Reminder in the conduct category for operating a Company vehicle without a valid driver's license. The Written Reminder was active at the time of this incident.

On March 18, 1992 the grievant advised her co-workers and Acting Customer Services Supervisor that she was going to be tape recording conversations taking place in the office for the next two weeks. The Acting Supervisor contacted the District Manager to determine if the employee's actions were legally permitted.

Upon being advised of the grievant's actions, the District Manager elected to assist the Acting Supervisor in handling the issue. The Manager went to the office and met with the work group. She advised the grievant that she was to cease and desist and that tape recording would not be permitted. It is unclear from the LIC Report and exhibits if the District Manager's meeting was interrupted by a customer's visit to the office. However, after advising the grievant to stop recording, the Manager realized that the grievant was continuing to tape record the meeting. When the Manager determined that the tape recorder was still on, she again advised the grievant to turn the recorder off and this time the grievant complied.

Discussion:

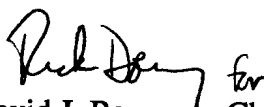
The Company argued that tape recording the conversations of others without their permission is illegal and a violation of Penal Code 632. In addition to the legal issue, the Company notes the grievant's actions of continuing to record the conversation until ordered to turn the recorder off a second time amount to insubordination.

The Union opined that Section 632 is not applicable since the grievant was taping office conversations in an open office environment. The Union maintained that private conversations must be conducted in areas where they are unlikely to be overheard to be entitled to the protection of this statute. The Union also argued that the grievant turned the recorder off when directed by the District Manager and was not insubordinate. Finally, the Union noted that the DML states that the grievant received disciplinary action for illegal actions and a serious breach of conduct. There is no mention of insubordination.

Decision:

The Pre-Review Committee agreed that management clearly was within its rights to instruct the grievant to cease tape recording and that failure on her part to comply with such an instruction would be insubordination. However, the Committee was unable to determine the appropriateness of the DML. The Company conceded that the DML should have reflected that the grievant received it for insubordination, however argued that this administrative error did not mitigate the grievant's actions. The Union did not agree that the record supported a conclusion that the grievant failed to comply with an instruction in a timely manner. After a lengthy discussion, the parties determined that the DML had been deactivated and agreed to close the case accordingly.

This case is closed and should be so noted by the Local Investigating Committee.


David J. Bergman, Chairman
Review Committee


Roger W. Stalcup, Secretary
Review Committee

Date 6/8/93

Date 6/11/93