In the Matter of Arbitration

between

PACIFIC GAS AND ELECTRIC COMPANY,

Employer,

and

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

Union.

OPINION AND AWARD

(Individual Grievant N G)

Parties' Arbitration Case No. 99

Arbitration Board:

Employer Arbitrators: Rick R. Doering, Karen Savelich

Union Arbitrators: Kenneth L. Ball, Jr., Corbett L. Wheeler

Chairman: Harvey Letter

Appearances:

For the Employer:
Laurence V. Brown, Jr., Esq.

For the Union:
Thomas L. Dalzell, Esq.
Staff Attorney

STATEMENT OF THE CASE

As parties to a collective bargaining agreement, which initially took effect September 1, 1952, and, as amended, is effective from January 1, 1980, to December 31, 1982, the Union and the Employer submitted this matter to arbitration. The dispute concerns the discharge of the Grievant. The Parties agreed that the procedures required by the Agreement have been satisfied and that the matter is properly before the Arbitration Board.

Hearing was held on April 27, 1982. The Parties had full opportunity to present evidence, including the examination and cross-examination of witnesses. After the close of the hearing, the Parties submitted briefs which the Chairman of the Arbitration Board received by November 12, 1982.

ISSUE

The Parties stipulated:

> Was the discharge of the Grievant in violation of the Physical Labor Agreement, as last amended?
>
> If so, what is the remedy?

RELEVANT CONTRACT PROVISION

TITLE 7. MANAGEMENT OF THE COMPANY

7.1 Management of the Company

The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to . . . suspend, and discipline or discharge employees for just cause; . . . provided, however, that all of the foregoing shall be subject to the provisions of this agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

THE EMPLOYER'S WAGE ATTACHMENT/GARNISHMENT PROCEDURES

On August 20, 1976, Company Personnel Relations issued a document on "Employee Wage Attachments." It stated, in part,

> . . .However, since employee garnishments represent an economic hardship to the Company, we have the right to admonish employees against further garnishments. Upon receipt of information from your department concerning the garnishment of an employee's wages, the appropriate Division Personnel Manager will insure that appropriate management action is taken to prevent future involve-

> ments. This process should include an offer to put the employee in contact with Employee Assistance Counselors for possible assistance in dealing with the problems leading to the garnishment in the first place. If after initial counseling, an employee's wages are subjected to multiple garnishments, he/she should be dealt with through escalating steps of the constructive disciplinary process.

On May 3, 1977, the Company's East Bay - Personnel issued a document referencing "Wage Attachments/Garnishments." It identified as a problem an increase in wage attachments/garnishments being processed by the Company. It also set forth procedures to be followed for implementing disciplinary action against employees who had their wages attached or garnisheed.

On October 16, 1979, East Bay - Personnel issued another document to the East Bay Division on the subject "Wage Attachments/Garnishments." It also identified as a problem an increase in the number of wage attachments/garnishments being processed. The document read, in part,

> As an approach to correcting this problem, the following procedure will be used:
>
> 1. Employees who have their wages attached/garnished will be counseled. Such counseling should include an admonition to the employee to get his/her finances in order and point out the cost and inconvenience to the Company of processing the writ. This counseling must include the offer of financial counseling through the local California Consumers Credit Financial Counseling Services. . . or other outside resources available through referral by the Company's EAP. The employee will be warned that future garnishments for other debts may result in serious disciplinary action, possibly discharge. This initial counseling session will be confirmed in a memo to the employee's 701 [file], with a copy to the employee.
>
> 2. If, following the above, the employee receives another garnishment for a subsequent debt, the

employee will be counseled again and be given a letter of reprimand. Such counseling and letter will cover the same information previously noted. Only participation in a financial counseling program will be stressed as a possible mitigating factor should the question of discharge occur from a subsequent garnishment. (The employee may choose his/her own counseling service or the Employee Assistance Program; however, this should be cleared through Division/Department Personnel). The employee will be given a period of time to accomplish this, e.g., 30 days . . .

3. If, following the above, an employee has not participated in a financial counseling program and receives a further garnishment for a subsequent debt, within a moving 24 months from date of first counseling, he/she will probably be terminated. If the employee has participated, however, the disciplinary action at this stage may be modified. In any event, these situations will be reviewed on an individiaul basis with Division/Department Personnel.

FACTS

The Grievant started working for the Employer in September 1970 in the East Bay. Starting from the time the Company issued its initial document on August 20, 1976, providing for application of "the constructive disciplinary process" against employees whose "wages are subjected to multiple garnishment," the Grievant's record showed the following list of garnishments.

Date	Amount	Creditor
12/01/78	$151.77	CBI Collections
5/24/79	444.09	Internal Revenue Service - 1976, 1977 Tax Year
5/06/80	258.50	Household Finance (Castro Valley)
7/27/81	861.44	Franchise Tax Board - State of California 1978,1979 Tax Year

(At the arbitration hearing, the Grievant testified that no money

was deducted from his wages pursuant to the Household Finance garnishment.)

About January 3, 1979, Supervisor P. Wilson had a counseling session with the Grievant relating to a garnishment against the Grievant's wages. Wilson later prepared a Report on the meeting. It states that Wilson told the Grievant that garnishments were "a cost and inconvenience to the company." Wilson wrote that he told the Grievant to get his finances in order and that he suggested financial counseling through participation in the Company's Employee Assistance Program (herein EAP). Wilson reported telling the Grievant that additional garnishments "will result in serious disciplinary action, possibly discharge."

In June 1979, the Grievant sought assistance from an EAP Counselor in relation to a garnishment. On June 21, 1979, Field Foreman Nelson Kouns wrote the Grievant,

> This letter of reprimand will confirm our conversation of June 12, 1979 concerning your excessive wage garnishments.
>
> On January 3, 1979 you were counselled by Field Foreman Phil Wilson, relative to your responsibility to not involve the Company in your personal financial affairs as the result of wage garnishments, and at that time you were offered the services of the Employee Assistance Program.
>
> As a result of todays counselling you elected to seek the services of the Employee Assistance Program. Whether you make such a contact and follow through with their recommendations is, of course, entirely your decision, however, you should understand that without regard to your decision in this matter, it is your responsibility not to involve the Company in additional wage garnishments.

> If in the future you should involve the Company in garnishments of your wages, you may subject yourself to more severe disciplinary action up to and including discharge.

About September 1979, it appears that the EAP referred the Grievant to "Consumer Credit Counselors" for financial guidance. Thereafter, the Grievant did go to that organization for assistance.

In a subsequent incorrectly dated letter, which was apparently written on June 2, 1980, Field Foreman W. Pfiester informed the Grievant,

> On May 6, 1980, the Company received another notice of attachment of your wages issued by Household Finance of Castro Valley for a total of eleven garnishments since you were first employed. As indicated during the meeting, wage attachments are very costly and time consuming to the Company. We expect our employees to manage their financial affairs in such a way as to avoid forcing the Company into the role of Bill Collector. It is your responsibility to take whatever steps are necessary to resolve your financial problems. If you need professional consultation, you may want to contact an agency such as the California Consumers' Credit Counseling Services . . . to assist you with your financial problems.
>
> The Employee Assistant Program is also available for consultation on medical and/or personal problems which might be contributing to your wage garnishments. You were informed that arrangements could be made for you to meet with a Company counselor during work hours, or that you could contact them directly on General Office extension 8-22-1629 or 8-12-1147.
>
> Despite previous counseling and letters of reprimand, you have once again involved the Company in an additional garnishment. As a result, you are being given 3 days off, June 9, 10, 11, 1980, without pay as disciplinary action.
>
> I strongly recommend that you consult with one or more of these referral resources within the next 30 days to see if they might be of any help to you in avoiding

additional wage garnishments and any personal problems that might have led to them. Whether you decide to seek professional consultation or not, it is incumbent on you to put your financial affairs in order and not involve the Company again. Future garnishments may lead to termination of your employment.

The record indicates that, in June 1981, the Grievant spoke to the EAP concerning his financial problems. The record contains an August 31, 1981, memo from an EAP Counselor which includes the statement - "I believe [the Grievant's] efforts to be thorough and sincere and so wrote a note to his supervisor to that effect. . ."

Then, on September 1, 1981, Acting Field Foreman Russell Neiner wrote the Grievant. The letter included the following:

> This letter will confirm our recent conversations concerning your excessive garnishments.
>
> * * *
>
> Despite previous counseling, along with the two letters of reprimand, you have again involved the Company in an additional garnishment. Accordingly, your employment with the Pacific Gas and Electric Company will be terminated, effective September 1, 1981.

Karen Savelich, Company Labor Relations Representative for the East Bay testified at the arbitration hearing. She stated that the termination of the Grievant was pursuant to the East Bay Division's October 16, 1979, document on "Wage Attachments/Garnishments." She also testified that the discharge action was based on the garnishments that issued against the Grievant's wages since August 1976. The same EAP Counselor mentioned above prepared a note on September 10, 1981, which included the comment - "[The Grievant] stopped in unannounced to say he had been terminated for garnishments. Supposedly the letter I gave him confirming his presence here a

month ago had not been taken into account or even put into his file."

THE EMPLOYER'S POSITION

The Employer asserts the evidence establishes that the Grievant had knowledge of its Attachment and Garnishment Policy. The Employer contends that it was entitled to terminate the Grievant pursuant to that Policy in light of the costs of its involvement with his financial problems, including the disruption of Company personnel. In this regard, the Employer notes such items as processing withheld wages, supervisors' hours spent in counseling, and hours spent in counseling by the Company's Employee Assistance Program personnel. (The record discloses a garnishment costs the Company $52.00 for checks for each pay period that the garnishment "continues to run.")

The Employer contends that the Grievant did not meaningfully "avail himself of the considerable efforts of his supervisors and the EAP counselors to assist him in retaining his employment." That failure, assertedly, "resulted in an unwarranted burden" on the Company and constituted just cause for termination under the Parties' Agreement.

The Employer anticipates a Union argument that the discharge of the Grievant constituted disparate treatment in comparison to the Company's handling of other employees with financial problems. The Company points out that its implementation of disciplinary actions related to garnishments takes "into account such variables

as length of service, attempts . . . to seek financial assistance, an employee's 'worth' to the Company; and so on."

THE UNION'S POSITION

In the first instance, the Union argues that discharge based upon the garnishment of an employee's wages is improper "as a matter of law" even where there are "excessive" garnishments. In this regard, the Union states, "A balancing of the equities, the Union believes, favors the argument that as a matter of law discharge is an improper response to multiple garnishments." In support of this view, the Union asserts there is "growing concern for consumer protection in garnishment situations," there are "racial overtones" in a policy permitting discharge for garnishments, there is "inherent lack of logic in discharging a financially troubled employee," and the Employer has not provided "convincing justification" for its rule providing discipline for employees whose wages are garnisheed.

In the alternative, the Union asserts that the facts of this case establish that the Company did not have just cause to discharge the Grievant. In support of this position, the Union advances a series of claims, as follows:

- The Company did not even-handedly apply its garnishment rules to all employees.
- The Company did not give the Grievant "effective" notice of the consequences of his garnishments.
- The Company did not objectively and fairly investigate the Grievant's case before terminating him.
- The Company did not follow its own garnishment procedures.

- The Company did not consider the Grievant's personal circumstances which gave rise to his financial problems.
- The Company did not duly consider the Grievant's efforts to discharge his financial obligations.
- Certain of the garnishments were levied in error against the Grievant and should not have been considered by the Company.

DISCUSSION AND CONCLUSIONS

There exist some statutory limitations against employer imposition of discipline that is based upon garnishment of workers' wages. Also, as suggested by the Union, it appears that wage garnishment has become "less acceptable" as a ground for terminating workers' employment. However, it has not been established - as a matter of law - that garnishment of wages may not be a valid basis for the discharge of employees in certain situations. In such circumstances, it is not deemed proper to find that the Company's wage attachment/garnishment procedures are contrary to law. Thus, it remains to decide whether the Company's implementation of those procedures constituted just cause for the discharge of the Grievant under the Parties' Agreement.

The Company has stated that its discipline based on wage garnishments takes into account a number of "variables." It has specified three such factors - namely, the employee's length of service, efforts to seek financial aid, and "worth" to the Company. Those variables are considered in the context of the particular evidence in this case.

First, the record discloses that the Grievant had worked for

the Employer about eleven years at the time of his discharge. That is a reasonably extended period of employment. It is a length of time that tends to support retention of an employee, rather than suggest termination.

With respect to the "variable" of an employee's efforts to obtain financial aid, the concept is referenced in the October 1979 "Wage Attachments/Garnishments" memorandum issued by the Company's East Bay - Personnel. Thus, item "1" of that document names one service as a source of financial counseling. It also identifies the Company's EAP as a referral agent for other financial counselors. Item "2" of the October 1979 document states that participation in a counseling program is a possible mitigating factor "should the question of discharge occur from a subsequent garnishment." General evidence in the record of the instant case shows that participation in such a program has, in practice, been considered a mitigating factor by Management. The record also contains evidence pertinent to the Grievant's particular efforts to obtain financial counseling.

In January 1979, Supervisor Wilson suggested to the Grievant that he seek financial counseling through the EAP. In June of that year, Field Foreman Kouns made the same suggestion. That month, the Grievant went to the EAP. The following September, an EAP counselor referred the Grievant to "Consumer Credit Counselors" for financial guidance. The Grievant acted on the referral. However, the program offered did not suit the Grievant's stated needs. Field Foreman Pfiester's subsequent letter suggested that the Grievant again seek help for his financial problems through the EAP. The Grievant con-

tinued to seek help through the EAP as late as June 1981.

It is seen that the Grievant did utilize financial counseling resources specified in the October 1979 memorandum. Indeed, as late as June 1981, an EAP Counselor characterized the Grievant's efforts in doing so as "thorough and sincere."

Third, there is the factor of the Grievant's "worth" to the Company. The September 1, 1981, letter issued by Acting Field Foreman Neiner stated that the Grievant was terminated because he had "involved the Company in an additional garnishment." Labor Relations Representative Savelich testified, at the arbitration hearing, that the Grievant's termination was based on the four garnishments that had issued against his wages since August 1976. There is no probative evidence that any factor, other than the garnishments, was involved in the Employer's discharge of the Grievant. Indeed, there is no independent evidence that the Grievant was other than a productive, worthwhile employee of the Company before his discharge.

In sum, review of the evidence of record has failed to show the existence of any of the three specified "variables" taken into account by the Company in deciding whether to discipline employees whose wages have been garnisheed.

In the review of the case on its merits, substantial consideration has been given to the extensive survey which the Company conducted concerning wage garnishments. The Company prepared "a listing of employees who have received garnishments since January 1, 1977." By the Chairman's count, the listing showed that the wages of more than 1760 employees had been garnisheed. In excess of one hundred

ninety of them had experienced four or more garnishments - the number for which the Grievant was discharged. Of those one hundred and ninety, approximately forty were part of the Company's East Bay operations. With respect to the remaining one hundred and fifty, the most serious penalty which the Company imposed against each one of them for any of the garnishments was as follows:

Official Counseling - 31

Letter of Reprimand - 63

One Day Suspension - 3

Two Day Suspension - 2

Three Day Suspension - 2

Four Day Suspension - 1

Discharged - 7

No Apparent Discipline - the remainder.

(It is noted that one of the discharges in this group was reversed when the employee subsequently complied with the following instruction of a February 20, 1981, letter.

> As mentioned during this meeting, your termination is final. This termination may be set aside if, by March 6, 1981, you contact and enlist the aid of a reputable financial counseling firm and produce a written plan to reduce your indebtedness and eliminate the issuance of future wage garnishments.

There is no indication that the Grievant in the instant was provided such an opportunity after his discharge.)

Of the approximately forty individuals in the East Bay operations whose wages were garnisheed on four or more occasions, the Company's survey showed the most serious penalty against each of them for any garnishment was as follows:

Official Counseling - 1

Letter of Reprimand - 27

Three Day Suspension - 3

No Apparent Discipline - the remainder

There is no clear evidence in the record of this case showing the general work histories of the seven other employees who were discharged after accumulating four or more garnishments on their wages. It is deemed reasonable to conclude that, in effecting those terminations, the Employer was concerned with individuals who were no longer employable in view of their generally unfavorable records in relation to the "variables" identified above.

Upon the overall record, it is not clear that the Company implemented its garnishment process in relation to the Grievant to accord with its stated policy and procedures. In such circumstances, it is concluded that the discharge of the Grievant was an excessive penalty and was not for just cause within the meaning of the Parties' Agreement. It is concluded otherwise that some penalty is warranted because of the general problems and expenditures caused the Company by the Grievant's financial difficulties. Thus, it is deemed justifiable in the particular circumstances of this case to impose a thirty day suspension against the Grievant. His record shall show such suspension from the day he was removed from the Employer's payroll.

AWARD

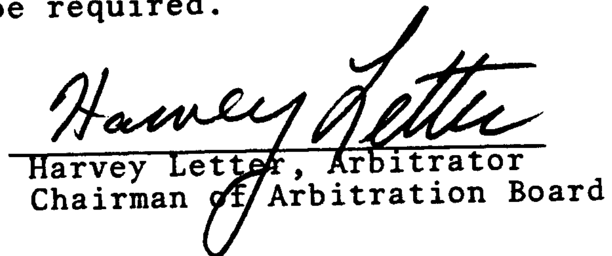
1. The Grievant was not terminated for just cause within the meaning of the Parties' Physical Labor Agreement.

2. Although the Grievant's record warranted the imposition of some corrective action, the penalty of discharge was not warranted.

3. The Grievant's record shall show a suspension of thirty (30) days from the date he was removed from the Employer's payroll in September 1981.

4. The Grievant shall be reinstated with no loss of seniority and shall receive back pay for the period dating from the end of his thirty (30) day suspension in accord with the Parties' Agreement and applicable procedures.

5. Pursuant to the Parties' stipulation, the Chairman of the Arbitration Board retains jurisdiction of this dispute until all of the terms of the Award are complied with so that he may interpret or correct the Award should it be required.



Harvey Letter, Arbitrator
Chairman of Arbitration Board

We ~~concur~~/dissent.

/s/ Rick R. Doering

/s/ Karen Savelich
Employer Members of Arbitration Board

We concur/~~dissent~~.

/s/ Kenneth L. Ball, Jr.

/s/ Corbett L. Wheeler
Union Members of Arbitration Board

Dated: January 31, 1983