IN ARBITRATION PROCEEDINGS

PURSUANT TO AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy

between

PACIFIC GAS & ELECTRIC COMPANY,

Employer,

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245,

Union.

RE: Discharge

ARBITRATION CASE NO. 181

OPINION AND AWARD

FRANKLIN SILVER,
Chairperson of Board
of Arbitration

JOHN A. MOFFAT
LARRY KNIGHT
Company Members

RON VAN DYKE
ROGER STALCUP
Union Members

This dispute arises under the Collective Bargaining Agreement between the parties, pursuant to which this Arbitrator was selected as neutral Chairperson of the Board of Arbitration. A hearing was conducted on February 11, 1991, in San Francisco, California, at which time the parties had the opportunity to examine and cross-examine witnesses and to present relevant evidence. Both parties submitted closing briefs, which were received on April 19 and 22, 1991.

APPEARANCES:

On behalf of the Company:

Cesar V. Alegria, Jr., Attorney at Law
Pacific Gas & Electric Company
77 Beale Street, Room 3033
San Francisco, CA 94596

On behalf of the Union:

Jane Brunner, Staff Attorney
IBEW Local 1245
P.O. Box 4790
Walnut Creek, CA 94596

## ISSUE

Was the termination of the Grievant for just cause; and, if not, what is the appropriate remedy?

## PERTINENT PROVISIONS OF THE AGREEMENT

Section 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 direct and supervise the work of its employees, to hire, promote, demote, transfer, 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.

Lines of Progression, General Construction, Mechanical Services Department

1270 - Field Garage Mechanic "A"

An employee who is a journeyman, and who performs all types of tool, vehicle and construction equipment maintenance and repair work, including welding. Completes job tags, prepares repair cost estimates, and performs other paper work in connection with his job. Inspects for wear and condition. The employee's background and experience must be such as to qualify him to perform these duties with skill and efficiency.

## FACTS

A. Basis of the Discharge.

The Grievant was hired in August, 1977, and was transferred to in December, 1984 to the Gregg substation as a field garage mechanic "A", the position he occupied until his termination November 1, 1988. The termination letter from garage foreman Floyd Alger stated:

> "The cause for this action is your inability to qualify for and hold a valid California Drivers License. As you were notified in my letter of confirmation, on July 2, 1987, a California State Drivers License is a condition of employment for the Field Mechanic A classification."

The immediate cause of the termination was an 18 month suspension of the Grievant's driver's license by the Department of Motor Vehicles as a result of a DUI conviction. As discussed below, the previous year the Grievant's license had been suspended as a result of his failure to take prescribed medication, and that suspension had resulted in the July 2, 1987 letter referred to in the termination letter. The July 2, 1987 letter confirmed an oral agreement between the Grievant, Alger, and Fleet Management Supervisor Darrell Hayworth that a valid California driver's license was a requirement of his present classification.

B. Field Garage Mechanic "A" job duties.

Field garage mechanics "A" are General Construction employees assigned to field garages operated by Encon (Engineering and Construction) Fleet Management. Primarily, "A" mechanics are assigned mechanics trucks, and they are responsible for maintaining and repairing Company vehicles at

various departments and job sites within a geographical region. Because many job sites are in remote areas, many "A" mechanics average 100 miles per day in their trucks. In addition, mechanics must often road test the vehicles they repair, both to diagnose the problem and to assure that the repair has been done properly, and to do this they must normally drive the vehicles on public roads. Most of the vehicles serviced by "A" mechanics require a class 1 California drivers license, and as a result nearly all "A" mechanics possess a class 1 license. Alger testified that the only exceptions are mechanics who loose their class 1 license for a period of time (Tr. 16).

Fleet Management Supervisor Hayworth testified that some "A" mechanics work in garages where they are not always on the road, but most are constantly on the road (Tr. 52). When working at a garage, it is generally necessary to road test the vehicles on public roads since the yard is not big enough to get up adequate speed (Tr. 12).

C. The Grievant's job history.

When the Grievant was initially hired, he was provided training in the operation of various Company vehicles and was issued an internal Company driver's permit. He was subsequently issued Company permits through 1981. At the time, such permits were required of all Encon personnel, but they are no longer uniformly required and they are issued primarily in conjunction with Company training for employees applying for a class 1 California drivers license (Tr. 14-16). When the Grievant was hired, he held a regular, class 3 California

driver's license, but by 1981 he had qualified for and had been issued a class 1 license.

When the Grievant was transferred to the Gregg yard, he was assigned a mechanic's truck and had primary responsibility for servicing vehicles at a jobsite near Auberry in the Sierra Nevada foothills. As a result of an accident in July, 1986 the Company had the Grievant examined by a neurologist, who diagnosed him as epileptic and prescribed certain medication. The Grievant objected to the medication because of its side-effects, and he felt his condition had not been correctly diagnosed. He stopped taking the medication, and his doctor informed the DMV which suspended his license effective April, 1987. Although the record is unclear as to the exact sequence of events, it appears that at the time his license was suspended the Company had already restricted him from driving Company vehicles because of one or two accidents related to his medications (Tr. 148, 155). As a result, some one else had to test drive the vehicles which the Grievant repaired (Tr. 154).

When Alger learned that the Grievant's license had been suspended, he arranged the meeting with the Grievant and Hayworth at which it was agreed that the Grievant would be required to have a valid driver's license. The Grievant did not inform the Union of this agreement, nor initiate a grievance relating to the requirement of a driver's license. The Grievant was placed on sick leave until his class 3 license was reinstated on August 19, 1987 (Co. Ex. 2). At that time, he returned to work although he was not able to drive vehicles

requiring a class 1 license.

Approximately 10 months later, on June 27, 1988, the Grievant was involved in an off-duty automobile accident which involved drinking. His license was immediately suspended for lack of proof of insurance. Following the accident, the Grievant checked into an alcohol rehabilitation program furnished through the Employee Assistance Program. He was released on August 1, and he then took vacation time in an effort to get his driver's license reinstated. He was granted leaves of absence until November 1, at which time it had been determined that his driver's license would be suspended for 18 months as a result of a DUI conviction. At that point, the Grievant was terminated.

Alger testified that the Grievant was a good worker, and that the decision to terminate was made with regret. Alger testified further that prior to the termination, he had accommodated the Grievant by allowing him to work in the shop while having other people test drive the vehicles he had repaired. Because the Company was downsizing, he lacked the manpower to continue these conditions for the entire time the license would be suspended. In addition, Alger contacted the operating departments in his geographic area to attempt to locate another job for the Grievant. Because the entire Company was downsizing and because the Grievant's lack of a driver's license limited his usefulness to other departments, even in helper positions, Alger was unable to locate another

job.[1] In addition, an attempt was made to locate an equipment mechanic job at the Davis Service Center. These jobs are very similar to the field garage mechanic A position, but they are restricted to shop work. No equipment mechanic job was available at Davis due to the general downsizing.

D. Negotiating history.

The job description for field garage mechanic "A" was initially negotiated in 1953, and it has never contained an express requirement for any type of driver's license. Some negotiated job descriptions do contain references to driving or to driver's licenses. For instance, the Electric Department job definitions state that the lineman and apprentice lineman classifications may be required to drive a truck, and the T&D driver must possess a valid class 1 driver's license. Similarly, the Gas Transmission and Distribution job definitions state that the fitter and fieldman classifications may be assigned to drive certain types of equipment, and the heavy truck driver must possess a valid class 1 driver's license.

Union senior assistant business manager Darrell Mitchell testified that the parties have interpreted job descriptions of the type which state the employee may be assigned to drive to mean that if the employee has a license, he or she may be required to drive but that possessing a driver's license is not a condition to maintaining that classification. With respect

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[1] Union assistant business manager Roger Stalcup testified that in December, 1988, the Company employed 77 field garage mechanics A systemwide, and that in December, 1989 there were 80.

to job descriptions stating the employee must hold a license, the requirement is a condition of employment at that classification.

In 1985, the parties negotiated revised General Construction lines of progression. During those negotiations, the Company proposed the addition of an express requirement for a class 1 driver's license to the field garage mechanic "A" job description. Mitchell testified that the Union orally countered with a proposal using the language "may be required to hold a class 1 license" with the intent that the license would not be a condition of holding the classification. The Union's concern was with a "safety net", that an employee's job would not be lost because of loss of a license. Ultimately, however, the proposal was dropped and the existing job definition remained unchanged.

Margaret Short, a consultant in the Company's industrial relations department, participated in the 1985 negotiations over General Construction lines of progression. She testified that the Company proposed a class 1 requirement for most field garage classifications in order to provide maximum flexibility for operating all types of equipment. There was recognition by both sides that there was a driving component to these jobs, and that a class 3 license was sufficient in most cases. At least on the Company's part, there was an understanding that a class 3 license was required, but since they were operating successfully at that point the Company did not pursue the class 1 license requirement. (Tr. 161-3.) Mitchell testified,

however, that the Company never stated at the table its understanding that a class 3 was required. (Tr. 164-5.)

During the 1987 general negotiations there were discussions concerning consolidation of General Construction jobs, and those discussions were deferred to ad hoc bargaining which took place in 1988. After a number of meetings, these negotiations were suspended, to be resumed in 1989 and again in 1990. Ultimately, agreement was reached in 1990 on General Construction classification consolidation and lines of progression. The final agreement contains a class 1 license requirement for new employees in some classifications, but with a provision that incumbent employees are not required to obtain a class 1 license in order to retain their jobs. The agreement does not affect the field garage mechanic "A" classification, and Union assistant business manager Roger Stalcup testified that at no time during the negotiations beginning in 1987 did the Company propose a driving requirement for the mechanic "A" classification.[2] (Tr. 120-1.)

## POSITIONS OF THE PARTIES

### The Company

The Company argues that the field garage mechanic "A" classification requires a valid California driver's license. The Union acknowledged this during the LIC proceedings where its sole disagreement with the termination was that the Company

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[2] Another set of negotiations resulting from changes in the California Motor Vehicle Code took place in 1990 and affected the current requirements for class 1 licenses. Since those negotiations occurred well after the Grievant's termination, they are not directly relevant to the issue here.

should have accommodated the Grievant by demoting him to a job which did not require driving. It is argued further that the Union has implicitly acknowledged the requirement of a driver's license by failing to grieve the Company's July, 1987 action placing the Grievant on sick leave pending reinstatement of his license and by failing to protest when mechanics have been required to drive Company vehicles and to undergo training and testing for class 1 licenses. It is a long-standing practice that mechanics are required to drive, including driving commercial vehicles, and the Union has never contended that driving is outside the scope of the mechanic "A" job. The Union is attempting to confuse the issue by abandoning its position at the LIC and contending that the Grievant's job did not require a license.

In addition, the evidence is clear that a mechanic "A" cannot perform his job without a driver's license. He is required to drive a field truck because his primary responsibility is to help crews in field locations, some of which are remote. In addition, a mechanic "A" must test drive vehicles to diagnose the problem, to assure that the repairs are complete, and to maintain the vehicles in good operating condition. These basic job requirements cannot be met without a license. Further, the Company requires mechanics to undergo driver training and testing for a class 1 license, and the Grievant in fact participated in this program shortly after he was employed by the Company.

The Company argues further that a driver's license

requirement may be implied where the written job definition is silent on the subject. The written document does not contain the entire agreement between the parties, and it is common that job duties are simply implied and understood. It is impossible to write down each and every job duty, and the mechanic "A" job definition does require the employee to be qualified to perform his job "with skill and efficiency." The Grievant was unable to perform his job efficiently without a license, since he could not drive a field truck or test drive vehicles. Assigning another employee to test drive vehicles is clearly inefficient and expensive, and a mechanic who cannot test drive vehicles is unable to perform proper maintenance and repair work. In addition, the Company argues, without citation to the record, that other classifications, including troubleman, gas serviceman, and patrolman, require driver's licenses although the job definitions are silent on the issue.[3]

Although the Company proposed a requirement for a class 1 license in 1985, it had always understood that a class 3 license was required for the mechanic "A" classification. The Grievant was terminated not because he lacked a class 1 license, but because his inability to hold any type of license

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[3] In its brief, the Company has named two gas servicemen who it states were demoted because of the loss of their driver's licenses. The Union objected to this aspect of the Company's brief on the grounds that it had been denied discovery relating to other employees who had been demoted or disciplined under such circumstances. Aside from the question of the Union's right to discover such information, it is concluded that since the Company failed to introduce evidence at the hearing, the statements regarding these two employees may not be considered by the Board of Arbitration.

rendered him incapable of performing his duties. Finally, although not required by the contract, the Company did attempt to accommodate the Grievant, but it was unable to locate another position because the corporation and the workload were downsizing dramatically. Even in entry level field positions the lack of a driver's license severely restricts an employee's efficiency and flexibility. Further, the Company could not reasonably be required to maintain the Grievant in a shop location with no driving responsibilities for 18 months.

For all of the above reasons, the Company urges that the discharge should be upheld.

The Union

The Union argues that the Grievant was unjustly terminated primarily because there is no requirement for a field garage mechanic "A" to hold a driver's license. Such a requirement must be negotiated. Nevertheless, the Company failed in negotiations to obtain the requirement in 1985, and it never proposed such a requirement during the 1988 through 1990 negotiations over General Construction lines of progression. It is well-established in arbitral precedent that when a party attempts but fails in contract negotiations to include specific language, an arbitrator will not read it into the agreement. To do so would, in effect, constitute an amendment of the contract which is beyond the arbitrator's authority. In addition, the parties negotiated for four years over driver's licenses, and the Company did not propose the requirement for "A" mechanic. It is undisputed that any time there is a

requirement for a driver's license, it is a part of the negotiated job description, but for 38 years there has never been such a requirement in the "A" mechanic job description.

The July 7, 1987 letter to the Grievant is not a negotiated Letter Agreement and it could not supersede the negotiated job description. In addition, at the LIC the Union merely proposed a demotion pending outcome of the grievance, and it did not acknowledge that the "A" mechanic position required a driver's license.

Finally, without waiving its position that the Grievant's job did not require a driver's license, the Union argues that in the past the Company has not terminated employees for not having a driver's license, and that such employees have only been demoted. In spite of this practice, the Company justified its failure to demote the Grievant pending reinstatement of his license on the basis that there were no jobs available at a lower classification. This statement raises a broad and potentially catastrophic issue, since it implies that all field jobs in General Construction, including jobs as helper, require a driver's license. While it may be that new employees are not hired without a driver's license, when transferring an employee no such requirement may be imposed unless it has been negotiated by the parties.

The Union never agreed that a class 3 license was required for mechanic "A", and the Company allowed the Grievant to work for two years at the Gregg yard without driving due to his medication. Under all of these circumstances, it should be

concluded that the Company may not unilaterally impose a requirement of a driver's license, and the grievance should be sustained.

## DISCUSSION

### A. The Class 1 Driver's License.

From an operational point of view, it is quite important that a field garage mechanic "A" possess a class 1 driver's license. Most of the vehicles repaired by "A" mechanics require a class 1 license to operate, and the mechanics must drive the vehicles to diagnose the problem and to test drive the vehicles after making the repairs. In addition, mechanics must drive the vehicles for purposes of assuring that they are maintained in safe operating condition. For these reasons, Encon has for years trained mechanics to operate all types of vehicles and to qualify for class 1 licenses issued by the State of California. According to garage foreman Alger, at one time the training was uniformly required of all "A" mechanics, although this is not the case at present.

Nevertheless, a class 1 license has never been required as part of the field garage mechanic "A" job definition. There is an express requirement for a class 1 license in some job descriptions, such as those for the Electric Department T&D driver, and the Gas Department heavy truck driver. In addition, as a result of the 1987-90 negotiations for consolidation of General Construction job definitions, a class 1 requirement was added for at least two of the consolidated classifications, but with a provision that incumbent employees

would not be required to obtain a class 1 license in order to retain their jobs.[4]

In 1985, during negotiations for revised General Construction lines of progression, the Company proposed adding an express requirement for a class 1 license to the job definitions for field garage classifications, including the "A" mechanic. The Union opposed such a change arguing that there should be a "safety net" for employees, i.e. that an employee's job should not be lost because of loss of a license. Ultimately, the Company dropped its proposal for a class 1 license requirement, and the job definition remained unchanged.

Addressing at this point only the question of a class 1 license, in spite of the very significant operational problems created when a field garage mechanic "A" does not possess a class 1 license, the above negotiating history establishes that a class 1 license is not required for that classification. Such a requirement has traditionally been the subject of negotiations between the parties, but it has not been included in the "A" mechanic job description. Although most "A" mechanics have been trained by the Company to qualify for a class 1 license, in 1985 the Company proposed a class 1 requirement and then dropped the proposal in the face of the

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[4] The pattern of protecting the jobs of incumbents when a class 1 license is first required goes back to a 1975 Review Committee decision which concluded that the T&D driver job definition, which at the time required driving a truck but did not explicitly require a class 1 license, should be read to require a class 1 license in order to comply with state law, but that incumbents would be given a year to qualify for a class 1 license or be demoted (Un. Ex. 2).

Union's concern that employees should not lose their jobs if they lost their licenses. Further, in the General Construction job consolidation negotiations which began in 1987, the Company never proposed a class 1 requirement for "A" mechanics, although a class 1 requirement for other classifications was a major aspect of the negotiations. Under these circumstances, the Company may not require a class 1 license as a condition of holding a field garage mechanic "A" position.

B. The Class 3 Driver's License.

Although the Company has presented substantial evidence concerning the operational difficulties caused by the Grievant's lack of a class 1 license, it does not in fact contend that the Grievant was required to hold a class 1 license. He was not terminated when he lost his class 1 license in 1987. Rather, he was only terminated on November 1, 1988 as a result of the 18 month suspension of his class 3 license. At the point when he had the accident which resulted in the suspension of his license, he had been without a class 1 license for over a year and had been restricted from driving Company vehicles for a somewhat longer period of time. The July 2, 1987 letter on which the Company relies stated only that a valid California driver's license, i.e. a class 3 license, was a condition of the Grievant's employment. Therefore, it must be determined whether the Grievant's loss of his class 3 license constituted grounds for termination.

Although the Union presented extensive history with respect to the parties' negotiations for class 1 license

requirement, there is no evidence of negotiations or grievance settlements specifically relating to a class 3 license requirement. Darrell Mitchell testified that the parties have interpreted job descriptions stating that an employee "may be required to drive" as meaning only that if the employee is properly licensed he or she may be assigned to drive but that a driver's license is not a condition of the classification. Although this testimony was not specifically rebutted by the Company, without evidence of specific circumstances in which that interpretation has been applied, it is difficult to conclude that this is an authoritative, mutually accepted interpretation. Margaret Short, on the other hand, testified that during the 1985 General Construction negotiations, the Company believed that a class 3 license was required, although she did not testify that there was an explicit discussion of this and Mitchell testified there was no such discussion.

In the absence of evidence of negotiations or grievance settlements relating specifically to a class 3 license requirement, it cannot be concluded that such a requirement may never be an implied condition of a classification. The Company argues that job definitions cannot be expected to address explicitly each and every job duty and that because of the driving component of the "A" mechanic classification, a driver's license requirement may be implied in the job definition. In fact, according to this argument, a driver's license is necessary for an "A" mechanic to perform the job "with skill and efficiency," as stated in the job definition.

The problems with the Grievant's job performance, however, preceded the loss of his class 3 license. Because of the Grievant's medical problems and the loss of his class 1 license, the Grievant had for at least ten months been limited to a yard assignment and restricted from driving Company vehicles even though the Grievant had a valid class 3 license during that time. This was a frustrating situation for Alger because it was necessary to find other employees to road test the vehicles worked on by the Grievant. Presumably the Grievant's lack of ability to drive heavy vehicles was the main reason that he was not sent to repair vehicles in the field, since he was licensed to drive a mechanic's truck to get to the job sites.

Alger felt that he had kept the Grievant in a yard assignment as an accommodation due to his loss of his class 1 license, and that he could not afford to continue accommodating the Grievant when he lost his class 3 license. The fact is, however, the Company had been contractually required to accommodate the Grievant when he lost his class 1 license since the negotiating history establishes the Company had abandoned efforts to include a class 1 requirement in the "A" mechanic job definition. The question which must be answered is whether the suspension of the Grievant's class 3 license, in and of itself, imposed such limitations on his ability to perform his job that the Company was justified in terminating him. In view of the evidence that the Grievant had been restricted to the yard even when he had a valid class 3 license it cannot be

concluded that the suspension of that license substantially impacted his job duties so that there were grounds for termination.

The Company argues, however, that the Grievant had accepted the requirement of valid California driver's license in July, 1987 when his license was on suspension due to his failure to take prescribed medications. That understanding, however, was between the Grievant's supervisors and himself, none of whom informed the Union of its terms. An agreement such as this was necessarily subject to the terms of the collective bargaining agreement which did not itself impose a requirement for a valid California license. For this reason, the Union was not bound by the July, 1987 letter, and the letter did not effectively impose new terms of employment.

Finally, the Company argues that the Union in effect conceded at the LIC that a driver's license was a valid condition of the "A" mechanic job by arguing the Grievant should be reinstated to a position not requiring a driver's license. The Union representative at the LIC testified that he had only argued that the Grievant should be reinstated at a lower position pending the outcome of the grievance, and the LIC decision cannot be interpreted so strictly as to constitute a binding concession. More importantly, the LIC is only the second step of the grievance procedure, and the Company does not contend that the Union waived its position that a driver's license is not required for the mechanic "A" position at the higher steps of the grievance procedure. Therefore, it has not

been demonstrated that the Union accepted a requirement of a valid California driver's license as a condition of employment for field garage mechanic "A".

Since under the circumstances of this case the Company has not demonstrated that the suspension of the Grievant's class 3 driver's license substantially impacted his ability to perform his job duties, the grievance must be sustained.

## AWARD

1. The discharge of the Grievant, H , was not for just cause.

2. As a remedy, the Grievant is entitled to immediate reinstatement to his former position without loss of seniority and with full backpay and other economic benefits provided in the Agreement, less outside earnings, from the date of his termination to the date of his reinstatement pursuant to this award.

3. Computation of the amount due the Grievant is remanded to the parties, the Board of Arbitration retaining jurisdiction in the event that the parties cannot agree.

Dated: May 22, 1991

Franklin Silver, Chairperson

Company Board Member (~~Concur~~/Dissent)

Company Board Member (~~Concur~~/Dissent)

Union Board Member (Concur/~~Dissent~~)

Union Board Member (Concur/~~Dissent~~)