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ARBITRATION PROCEEDING

In the Matter of a Controversy between:)
INTERNATIONAL BROTHERHOOD OF ELECTRICAL)
WORKERS, LOCAL NO. 1245,)
Complainant,)
and)
PACIFIC GAS AND ELECTRIC COMPANY,)
Respondent,)
Involving Termination)
_____)

ARBITRATOR'S
OPINION AND AWARD
ARBITRATION CASE NO. 169

APPEARANCES:

On behalf of the Union:

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IBEW Local 1245
P.O. Box 4790
Walnut Creek, CA 94596

On behalf of the Company:

Maureen L. Fries
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PRELIMINARY STATEMENT

David C. Nevins, Arbitrator: This proceeding involves a dispute between Local 1245 of the International Brotherhood of Electrical Workers (the "Union") and Pacific Gas and Electric Company (the "Company"). A hearing was held on February 15, 1990, where the parties were given a full opportunity to participate and present evidence. Post-hearing arguments were then submitted on or about March 30, 1990.

1 The following question is to be resolved in our
2 proceeding:

3 ISSUE

4 Was the discharge of the grievant,
5 S , for just cause; and, if not, what is the
6 appropriate remedy?

7 BACKGROUND

8 I. The Grievant's Work History.

9 The grievant was hired by the Company in 1971 as a
10 routine plant clerk at its Pittsburg power plant. He served as
11 a first plant clerk, the next highest classification in his line
12 of job progression, at the Martinez power plant from 1979 until
13 1984. He was promoted to senior plant clerk, a lead clerk
14 position, at the Martinez power plant in December, 1984. The
15 Martinez plant was closed in 1987, and in August of that year,
16 the grievant exercised his seniority to transfer into the senior
17 plant clerk position at the Pittsburg power plant. Senior plant
18 clerk is the highest position in the grievant's job progression.

19 The Pittsburg plant is the largest non-nuclear power
20 plant in the Company's system. In comparison, the Martinez
21 plant was quite small. There are approximately 400 total
22 employees at the Pittsburg plant, as compared with 100 who were
23 at the Martinez plant. As senior plant clerk in Pittsburg, the
24 grievant's position would normally have lead responsibility for
25 three routine plant clerks and three first plant clerks; while
26 at Martinez he had lead responsibility for only one routine
27 plant clerk. As senior plant clerk at Pittsburg, the grievant
28 managed a petty cash fund of \$3,000, as opposed to a \$500 fund
at Martinez. Beginning in 1986, the Martinez plant began the

1 process of shutting down, and from that point on the workload
2 for processing contracts and invoices, other duties associated
3 with a senior or first plant clerk, was quite low. At
4 Pittsburg, the grievant was responsible for overseeing the
5 processing of 30 to 60 contracts per month, while at Martinez
6 (at least beginning in 1986) there was an average of
7 approximately six contracts per month. Similarly, during the
8 shut-down period in Martinez there was a very low volume of
9 invoices to be processed. In comparison, the Pittsburg plant
10 has a high volume of invoices with more complicated processing
11 procedures.

12 When the grievant was first assigned to the Pittsburg
13 plant, his job duties were reviewed with him by Administrative
14 Supervisor Jose Palomino. The primary duties consisted of
15 processing invoices, processing contracts, and maintaining petty
16 cash. The grievant was familiar with these duties from his
17 prior work as senior plant clerk in Martinez, although the
18 volume and complexity was greater in Pittsburg. In addition,
19 the grievant wa given responsibility for checking daily on the
20 status of pool cars, calling building maintenance contractors,
21 and determining when the garbage dumpsters were full enough to
22 be taken to the compactor. Although the job of senior plant
23 clerk is normally a lead clerk position, initially the grievant
24 was assigned little or no responsibility at Pittsburg for work
25 assignments to other clerks and assisting other clerical
26 employees.

27 The grievant performed his duties satisfactorily for the
28 first two or three weeks in Pittsburg. After that, however,

1 Mr. Palomino began to notice that invoices were not being
2 processed in timely fashion and that the invoice log was not
3 being maintained. Palomino spoke with the grievant and the
4 grievant acknowledged that invoices were not being processed and
5 said he would get to them. The grievant's performance improved
6 for several days, and then no invoices were processed for the
7 next several days. In addition, problems arose in the
8 processing of contracts and maintenance of the contract log.

9 At the end of December, 1987, some four months after the
10 grievant began working at Pittsburg, the Union filed a grievance
11 over delays experienced by numerous employees in getting their
12 meal reimbursements. As part of administering petty cash, the
13 grievant provided employee meal reimbursements and this
14 grievance resulted from his lack of promptness. The grievant
15 says that because the Pittsburg plant must stay on line
16 constantly, there is much more overtime than he had experienced
17 at Martinez, and this increased overtime resulted in a larger
18 volume of meal claims that he failed to promptly reimburse.

19 Beginning on January 15, 1988, Mr. Palomino maintained a
20 record of his discussions with the grievant concerning his
21 performance problems. This record was maintained as part of the
22 Positive Discipline System negotiated with the Union and
23 implemented in September, 1987. As discussed in more detail
24 below, that system provides for coaching and counseling with
25 regard to performance problems, to be followed by three
26 disciplinary steps: oral reminder, written reminder, and
27 decision-making leave. On January 15, the grievant was given an
28 "oral reminder" (in written form), which referenced four

1 previous discussions about unsatisfactory processing of invoices
2 and, on one occasion, sleeping at his desk. In addition, the
3 grievant was advised of the availability of an employee
4 assistance program ("EAP") counselor to discuss any problems.

5 After January 15, Mr. Palomino recorded two other
6 discussions with the grievant concerning invoice processing, and
7 then on February 8, he gave the grievant a written job duty
8 requirement plan. In this memo, the grievant was instructed to
9 bring his performance to acceptable levels and to inform
10 Palomino of any problems in performing his assigned duties. In
11 discussing the job plan with Mr. Palomino, the grievant
12 concurred in the job requirements.

13 After February 8, there were two additional discussions
14 regarding invoices, contracts, and petty cash, and on February
15 18, the grievant was given a written reminder (step 2 in the
16 Positive Discipline System), following another incident in which
17 he was found asleep at his desk. He was again advised he could
18 contact the EAP counselor.

19 Between February 18 and July 5, there were 14 coaching
20 and counseling sessions for the grievant regarding his
21 processing of invoices and contracts, prompt petty cash
22 payments, and his tardiness. On July 5, the grievant was given
23 a one day decision-making leave (step 3 in the Positive
24 Discipline System) for continued poor performance in three
25 areas. According to a memo prepared by Mr. Palomino following
26 the grievant's return from his decision-making leave, the
27 grievant stated he was ready to perform his job and that he had

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1 the knowledge and ability to do so. The grievant was warned of
2 possible termination if his performance did not improve.

3 Between July 7 and the grievant's discharge on
4 December 9, there were 14 additional counseling sessions.¹ On
5 October 5, Mr. Palomino wrote a memo to the grievant stating
6 that invoices were still backlogged and that a contract file had
7 not been started. Although the grievant had been offered
8 overtime to bring his work current, he had availed himself of
9 less than two hours of overtime and had not brought his work
10 current. Mr. Palomino's memo also stated:

11 R. , you stated that your job is more than one
12 person can handle; that with all the office
13 activity, you are not able to keep up with your
14 work. I know that the office is busy at times,, but
15 it is not constant, and you should be able to manage
16 your priorities to accomplish your work. Again,
17 other work has not been assigned to you because you
18 have not been able to handle your present work. You
19 need to look at what you are doing and manage your
20 work so that the important tasks are accomplished
21 first.

22 An October 17 memo from Mr. Palomino stated that for the
23 previous two weeks the grievant had completed the work on his
24 desk and had met the requirements of the earlier, October 5
25 memo. The later memo noted that the grievant had stated a
26 concern that he would get backlogged if the office was short-
27 handed. Mr. Palomino stated that the grievant should let him
28 know if a problem developed, and help would be made available.
Mr. Palomino also stated in his October 17 memo that additional

1 During this time frame, an internal Company audit
2 determined five deficiencies in the plant's operation, three of
3 which related to office procedures within the grievant's area of
4 responsibilities. Those three findings related to incomplete
5 contract bid documents, unfiled contract change orders, and the
6 failure to maintain the invoice log.

1 duties, which had not been previously assigned to the grievant
2 because of his inability to complete his work, would be assigned
3 within a few weeks.

4 The final meeting prior to the grievant's termination
5 occurred on November 29. Mr. Palomino wrote a memo dated
6 December 5 documenting the discussion at that meeting, which
7 related to the grievant's backlog of 100 invoices and his
8 failure to process any invoices in the previous two weeks.
9 According to the memo, the grievant did not have any explanation
10 for failing to process the invoices except that he had been
11 working on contracts the previous two days. The memo also cites
12 the discussion about the grievant's incorrect processing of a
13 particular invoice and his tardiness on five of the last ten
14 working days. On December 9, a letter from Plant Manager E. W.
15 Simpson again confirmed the November 29 meeting, and it notified
16 the grievant that based the previous oral reminder, written
17 reminder, decision-making leave, and the grievant's continued
18 failure to meet work performance standards and his attendance
19 problems, his employment was terminated.

20 According to Mr. Palomino, a consistent theme as to the
21 many counseling sessions was that the grievant acknowledged he
22 was able to do the job and said he would improve. Mr. Palomino
23 recalls the grievant was generally told he should ask for help
24 if he needed it, but he nevertheless continued to fall behind in
25 his job. Although Palomino's October 5 memo reflects that the
26 grievant stated there was too much work to do, and although
27 Palomino's positive discipline log shows the grievant had made
28 similar complaints on two earlier occasions, Mr. Palomino does

1 not recall this to be a consistent complaint. According to the
2 grievant, however, during at least 75% of his counseling
3 sessions, he complained that the volume of work was too great
4 for him to handle. He did not deny any specific allegation of
5 work failure but he says that in comparison with his work as
6 senior plant clerk in Martinez, his Pittsburg job involved so
7 much greater volume and responsibility that he was unable to
8 complete all of his duties.

9 After the grievant's termination, W a first
10 plant clerk at Pittsburg, was promoted to the senior plant clerk
11 position.² For approximately the first three months W
12 occupied the position, she worked 30 to 40 hours of overtime per
13 month and received help from other clerks to eliminate the
14 backlog on her desk. Since that time, she has maintained the
15 work on the desk with only a slight amount of overtime.

16 Ms. W recalls that while the grievant was senior
17 plant clerk, she offered several times to help him since she was
18 aware that he was behind in his work, but he always refused.
19 She often observed him at his desk reading "PG&E Week" or some
20 other piece of material for excessive periods of time, and he
21 often appeared to be sleeping at his desk. He also left the
22 office frequently, lighting a cigarette on the way out. On
23 several occasions after the grievant was counseled for work
24 performance, Ms. W heard him remark, "Well, they slapped my
25 hand again."

26 Ms. W , along with other clerks with more
27 seniority, had pre-bid the senior plant clerk position at the
28 time that the grievant exercised his seniority to claim the job,
following closure of the Martinez plant.

1 II. The Positive Discipline System.

2 As previously noted, the Company and the Union have
3 negotiated a Positive Discipline System, which was implemented
4 beginning in September, 1987. The introduction to the System
5 states:

6 "Positive Discipline is designed to provide the
7 opportunity to correct deficient performance and
8 build commitment (not merely compliance) to expected
9 performance in a manner that is fair and equitable
to all employees. Each step is a reminder of
expected performance, stressing decision making and
individual responsibility, not punishment."

10 The System provides that a supervisor is to inform an
11 employee about work performance problems by coaching and
12 counseling, and that when an employee fails to respond to
13 counseling, positive discipline steps should be implemented in
14 accordance with the seriousness of the performance problem. The
15 three steps prior to discharge are oral reminder, written
16 reminder, and decision-making leave. Each of these steps
17 remains active for specified periods of time, and termination
18 may follow if a performance problem has not been corrected
19 within 12 months of a decision-making leave. However, the
20 System states,

21 . . . if a performance problem which normally would
22 result in formal discipline occurs during an active
23 DML, the Company shall consider mitigating factors
24 (such as Company service, employment record, nature
and seriousness of violation, etc.) before making a
decision to discharge, all of which is subject to
the provisions of the appropriate grievance
25 procedure for bargaining unit employees.

26 The System provides that in two situations demotion
27 should be considered: (1) in the case of "an employee who
28 exhibits an inability to work in a classification that is not

1 directly supervised," and (2) "[f]or some types of performance
2 problems, caused by an ability deficiency." Because a first
3 clerk in the Pittsburg plant was promoted to the grievant's
4 position upon his termination, and that clerk's position was
5 then filled by promoting a routine plant clerk from the Contra
6 Costa power plant, the grievant was eligible under section
7 206.15 for demotion to either of those vacated positions.

8 ANALYSIS AND DISCUSSION

9 I. The Parties' Basic Arguments.

10 The Company argues that the grievant's continued
11 unsatisfactory job performance constituted just cause for his
12 discharge. The Company says that the grievant was in a highly
13 responsible position, and he failed to perform even routine
14 tasks, such as logging invoices. The Company notes that in the
15 course of innumerable counselings the grievant acknowledged the
16 problems and agreed to improve; nevertheless, his continued
17 failure to perform his job jeopardized the plant's credit
18 status, caused complaints from vendors, and resulted in
19 deficient performance by the office. The Company argues,
20 therefore, that it had no choice but to discharge the grievant.

21 In addition, the Company argues that the grievant's
22 discharge was consistent with past precedential decisions,
23 including a pre-review committee decision and a recent
24 arbitration decision in Case No. 166, in which the discharge was
25 upheld under what the Company sees as very similar
26 circumstances. In addition to this precedent, the Company
27 argues that the grievant's discharge was consistent with the
28 Positive Discipline System, which provides for demotions in two

1 narrow and specific situations, neither of which is involved in
2 the grievant's case. The Company takes the position that the
3 grievant was not in an unsupervised position, nor was his poor
4 work performance due to a skill deficiency. The Company notes
5 that the grievant has a college degree in business
6 administration, more than 12 years experience as a plant clerk,
7 and two years as a senior plant clerk in Martinez. In addition,
8 the Company argues that the grievant acknowledged he could meet
9 the job requirements, and did so on occasion. Also, the Company
10 says the grievant had not been assigned actual lead clerk duties
11 and was therefore effectively performing first clerk duties,
12 making a demotion to that position inappropriate. The Company
13 argues that the examples of demotions offered by the Union
14 involved employees who were unable to perform in a higher
15 classification, whereas the grievant was able but unwilling to
16 perform, even after his decision-making leave. For these
17 reasons, the Company argues that the discharge should be
18 sustained.

19 The Union, on the other hand, takes the position that
20 given the grievant's long employment and demonstrated ability to
21 function at the lower positions of first plant clerk and routine
22 plant clerk, he should have been demoted rather than
23 terminated.³ The Union argues that demotion would be consistent

24 _____
25 3 Although noting that past performance evaluations are
26 not admissible under Arbitration Decision No. 45, the Union
27 argues that the grievant's past satisfactory performance in
28 lower classifications may be surmised from his job history and
promotions to first clerk and senior clerk. In a post-brief
letter, the Company has objected to this argument, noting that
the Union had objected at the hearing on the basis of Decision
(continued...)

1 with past practice and with traditional just cause. The Union
2 notes that the parties have provided for demotions for reasons
3 other than lack of work in Section 206.15 of their collective
4 bargaining agreement, which provides:

5 An employee who is demoted for any reason other
6 than for lack of work may be placed in a vacancy
7 created in such employee's headquarters by the
8 promotion of one or more employees to fill the job
9 which the demoted employee vacated. If no such
10 vacancy occurs the employee may be demoted to a
11 vacancy in a lower classification in the Division in
12 which he/she is employed or if no such vacancy
13 occurs, the employee may be demoted to a vacancy in
14 a lower classification in the Region in which he/she
15 is employed. In the application of this Section, an
16 employee shall be demoted to vacancy in the first
17 successively lower classification which the employee
18 is qualified to fill.

19 The Union argues that the grievant could have been
20 demoted to vacancies as first plant clerk in Pittsburg or
21 routine plant clerk at the Contra Costa plant, and because his
22 problems as senior plant clerk were caused by an "ability
23 deficiency," as that term is used in the Positive Discipline
24 System, he should have been demoted. In support of its position
25 that the grievant was unable to perform his job, the Union
26 argues that the record demonstrates he was simply overwhelmed by
27 the job in the Pittsburg plant, following the relatively
28 undemanding senior plant clerk job in Martinez. The Union
relies on numerous grievance committee and arbitration decisions

3(...continued)

No. 45 to the admission of the L.I.C. report from a prior
grievance filed by the grievant when he was first plant clerk,
and that the objection was sustained. That L.I.C. report had
not been offered to support the termination directly, but rather
to reflect some prior unsatisfactory work characteristics
manifested by the grievant and to counter the Union's proposed
remedy of demotion.

1 to demonstrate that there is a history of demoting employees for
2 poor work performance at the Company instead of discharging
3 them. The Union asserts that this practice was intended to
4 continue under the Positive Discipline System. The Union also
5 points out that the grievant told his supervisor he was unable
6 to keep up with the job, a fact which distinguishes this case
7 from Arbitration Decision No. 166, which upheld the termination
8 of an entry-level clerk for poor work performance. The Union
9 argues that the testimony of the current senior plant clerk
10 should not be relied on, and points out that the grievant must
11 have felt overwhelmed, battered, and harassed by the constant
12 counselings to which he was subjected. Therefore, the Union
13 argues that the grievant should have been demoted rather than
14 terminated and that he should be reinstated as a first plant
15 clerk at Pittsburg with commensurate backpay.

16 II. Discussion.

17 In support of its decision to discharge the grievant,
18 the Company has presented a meticulously documented record of
19 poor work performance by the grievant for a period of more than
20 a year after he was transferred to the senior plant clerk
21 position at the Pittsburg power plant. The record establishes
22 that the grievant failed to perform his required job duties with
23 respect to processing both contracts and invoices, that he was
24 repeatedly counseled, that on occasion he performed adequately
25 before lapsing into poor performance, and that he was offered
26 assistance and overtime to clear up his backlog but in general
27 failed to avail himself of these offers. Indeed, his poor
28 performance in reimbursing employees for meals from his petty

1 cash fund generated a grievance from the Union. During this
2 lengthy time period, an internal Company audit of the plant's
3 operations also found deficiencies in office procedures within
4 the grievant's areas of responsibility. He was twice counseled
5 for sleeping at his desk. In addition, he was counseled for
6 repeated tardiness, but continued to be tardy.

7 None of the above facts is disputed by the Union.
8 Rather, it is the Union's position that the grievant was
9 overwhelmed by the difficulties of his senior plant clerk job in
10 Pittsburg, which was far more demanding than the grievant's
11 former position at the Martinez plant. Because he was forced to
12 transfer due to the Martinez plant closure, and in view of his
13 eighteen years of service, the Union argues that the grievant's
14 lack of performance should be seen as an "ability deficiency,"
15 for which demotion, rather than discharge, is appropriate under
16 the terms of the Positive Discipline System.⁴

17 In presenting its basic argument, the Union relies on
18 the one area of counseling which is subject to some dispute.
19 According to Mr. Palomino, the grievant's supervisor, the
20 grievant only complained on a few occasions of having too much
21 work to do, while the grievant states he made this complaint
22 repeatedly.

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25 4 The Union seems to rely most heavily on the Positive
26 Discipline System provision which recommends demotion where
27 there is an employee unable to work in a classification that is
28 not directly supervised. This provision, however, clearly does
not apply in the grievant's case, and to apply it would ignore
the extensive record of close supervision and counseling in his
senior plant clerk job.

1 Several considerations arise in connection with the
2 dispute over the grievant's purported complaints of too much
3 work. First, from Mr. Palomino's October 5 memo and his log
4 entries it seems fair to surmise that if and when the grievant
5 brought up a complaint over too much work, Mr. Palomino
6 addressed it by indicating the grievant had to better manage his
7 time. Second, there is, however, no corroboration that the
8 grievant frequently or regularly brought up this complaint to
9 Palomino, and it can be noted that in a number of meetings
10 involving them the grievant had a representative present as
11 well. Third, as will be addressed further, if the grievant did,
12 in fact, believe the work was too much for him and so stated
13 this repeatedly to Mr. Palomino, it is quite surprising that he
14 made no effort to avail himself of Palomino's offer to have
15 others help him, or the offer to work overtime, or to take up
16 Ms. Webb's offer to help assist in his work, and that he would
17 regularly indicate his agreement with the work goals set by Mr.
18 Palomino. For someone who now claims that the work was too much
19 for him, the grievant did little or nothing to outwardly
20 manifest that view during his employment.

21 The central issue comes down to whether the grievant
22 could perform the job duties of the Pittsburg senior plant clerk
23 position, or could not because of "an ability deficiency."
24 Certainly, the position was more demanding than the one he held
25 at the Martinez plant during the year or so preceding that
26 plant's closure. During that period of time, the volume of
27 invoices and contracts was reduced, which reduced the grievant's
28 workload. The grievant was, however, in the senior plant clerk

1 position for over a year before Martinez began closing, and
2 presumably he carried a heavier workload during that time. In
3 addition, although the general workload in Pittsburg was far
4 greater than in Martinez, there were seven plant clerks in
5 Pittsburg to share the work as opposed to the two clerks in
6 Martinez. Although the Union suggests that the grievant's lead
7 responsibility for the additional clerks in Pittsburg increased
8 his job demands, in fact there is little available to dispute
9 Mr. Palomino's statement that lead responsibilities were not
10 assigned to the grievant due to his failure to complete the
11 other work duties he was assigned. Indeed, the grievant's
12 testimony as to his lead responsibilities was only in respect to
13 typing work brought to him by maintenance supervisors and that,
14 "I had to review what was needed to be typed and get it to one
15 of the other clerks to have the process done." It is not
16 terribly productive, however, to try to compare the grievant's
17 work loads at Pittsburg and Martinez, since there is no showing
18 that Martinez can be used as a work standard; indeed, it would
19 appear that Martinez provided an exception--namely, that the
20 workload was very light.

21 We do, nonetheless, have a number of factors which more
22 directly reflect on whether the grievant was unable or unwilling
23 to perform his necessary job duties. We know, for example, that
24 he did not perform them even though the lead responsibilities,
25 also a normal part of his job at Pittsburg, were not really
26 assigned to him. We know, too, that Ms. Webb, a co-worker,
27 recalls observing the grievant reading a Company newsletter at
28 his desk for extended periods of time and that he often appeared

1 to be sleeping. Although Ms. W was later promoted to fill
2 the grievant's job, her testimony appeared credible at the
3 hearing, and moreover essentially corroborated or confirmed Mr.
4 Palomino's observations. Thus, Mr. Palomino on at least two
5 occasions believed he observed the grievant sleeping at his
6 desk; Palomino, likewise, faulted the grievant for being
7 repeatedly tardy at work. These factors do not reflect a person
8 unable to perform his job, but one who is not seriously
9 attempting to perform it.

10 Other considerations also lend themselves to the same
11 conclusion. As noted, the grievant never availed himself of
12 Mr. Palomino's offer of other assistance to do his job. Nor did
13 the grievant take up Palomino's offer of overtime to help
14 accomplish his work. Similarly, the grievant did not pursue
15 Ms. W's offer of help. Nor did the grievant file any
16 grievances during the stages of discipline he experienced under
17 the Progressive Discipline System and he made no overt requests
18 that he be allowed to change jobs, either of which activities
19 one might expect if the grievant really felt the work was too
20 much or too difficult for him personally. Finally, at times the
21 grievant acknowledged as appropriate the amount of work he was
22 told he needed to perform, and at other times (e.g. at the
23 November 29 meeting) the grievant simply had no explanation why
24 he had not performed the required work (in that case he had not
25 processed invoices for some 12 days, without explanation).

26 In sum, our record is convincing that it was not his
27 inability to perform the job, but the grievant's unwillingness
28 to make a sufficiently serious effort to perform it that chiefly

1 led to his very poor work performance. The Company repeatedly
2 and patiently attempted to deal with the problem, without
3 success. Under those circumstances, it was not inappropriate
4 for the Company to conclude that it would need to discharge the
5 grievant, and its decision did not violate just cause
6 principles. The Company, in short, was not obligated under such
7 principles or under the Progressive Discipline System to keep at
8 work a person who was unwilling to make a serious effort to
9 perform his job, was certainly able to at least make that
10 effort, and despite long and repeated efforts to encourage the
11 grievant to make the effort the lack of success became
12 eventually obvious.

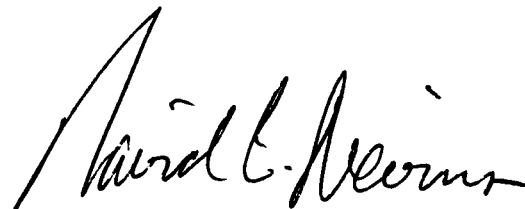
13 Both the Company and the Union have relied on prior
14 grievance settlements and arbitration decisions in support of
15 their opposing positions, but necessarily each case of
16 unsatisfactory job performance arises from its own unique
17 circumstances. Unquestionably, on many occasions the Company
18 has demoted employees for unsatisfactory job performance, but on
19 other occasions it has discharged them. The Positive Discipline
20 System which was negotiated with the Union explicitly directs
21 consideration of an employee's length of service and the
22 possibility of demotion for a performance deficiency, although
23 demotion is certainly not mandated under the System. In this
24 case, however, the Company repeatedly counseled the grievant on
25 his job performance for over a year, advised him of the
26 availability of employee assistance counseling, followed all
27 disciplinary steps of the Positive Discipline System, clearly
28 warning the grievant of possible discharge if he did not

1 improve, withheld assignment of full lead clerk responsibilities
2 from his job, and encouraged him to request assistance if he
3 needed it. None of these steps resulted in consistent
4 improvement in the grievant's job performance. Nor does our
5 record show by the grievant's detailed observations, or through
6 the observations of others, or through a detailed analysis of
7 his job that either the work was too heavy or that he was
8 physically or mentally unable to perform it (as opposed to some
9 lesser position). Even though the grievant was an eighteen year
10 employee, the Company gave him every reasonable opportunity to
11 improve and the Company cannot be required to continue to
12 employ, even in a lower classification, an individual who is
13 unwilling to make a sufficient effort to perform his job.
14 Accordingly, it is regrettable but necessary to conclude that
15 the Company was not required to demote the grievant as an
16 alternative to discharge.

17 AWARD

18 The grievant's discharge was for just cause.
19 The grievance is denied.

20 Dated: June 11, 1990

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24 David C. Nevins
25 Arbitrator
26
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28

~~Concur~~/Dissent

Margaret A. Short
Margaret A. Short
Company Member

6/21/90
Date

~~Concur~~/Dissent

Brett Knight
Brett Knight
Company Member

6/25/90
Date

~~Concur~~/Dissent

Roger W. Stalcup
Roger W. Stalcup
Union Member

7/20/90
Date

~~Concur~~/Dissent

Dorothy Fortier
Dorothy Fortier
Union Member

7-20-90
Date