

BEFORE THE NEUTRAL ARBITRATOR  
SHERI E. ROSS

In the matter of:

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
LOCAL 1245,

GRIEVANCE NO. 24915

UNION,

AND

PACIFIC GAS & ELECTRIC  
COMPANY

ARBITRATOR'S DECISION AND  
AWARD

EMPLOYER

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FOR THE UNION

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ARBITRATOR

Sheri E. Ross

## INTRODUCTION

On February 5, 2019 the Union filed a grievance seeking to fill the Materials Facility Person, (MFP), position vacated by B ■■■ R ■■■■, (R ■■■■), in late 2018 pursuant to section 205 of the Collective Bargaining Agreement, (CBA). A PG&E/IBEW Grievance Local Investigating Committee completed and signed off on its Joint Statement of Facts in early March 2020. The parties did not settle the grievance and the Union requested arbitration thereon. An arbitration hearing was conducted in this matter on January 23 and 24, 2023. All parties were present and represented by counsel. All parties were given the opportunity to present witnesses and to make relevant arguments on behalf of their respective positions. The parties filed cogent and persuasive closing arguments. The record was closed by the Arbitrator after receipt of the written closing arguments on March 27, 2023.

## ISSUES

The parties did not agree upon the exact wording of the issues and agreed that the Arbitrator would frame them. The issues are:

1. Did PG & E violate Section 7.2 and 7.3 of the CBA by assigning the job duties at Diablo Canyon Power Plant, (DCPP), of R ■■■■ to a supervisor after his February 1, 2019 retirement? If so, what is the appropriate remedy?
2. Did PG & E violate the CBA by failing to backfill the MFP position held by R ■■■■ after his February 1, 2019 retirement? If so, what is the appropriate remedy?

## JOINT EXHIBITS

1. Physical Agreement, Collective Bargaining Agreement, 1/1/2016 – 12/31/2019
2. Job Definitions and Lines of Progression, Updated January 2014
3. PG & E/IBEW Grievance Local Investigating Committee Joint Statement of Facts
4. PG & E Referral to Pre-Review Committee Dated April 9, 2020
5. Letter Agreement No. 13 – 17 – PGE

## UNION EXHIBITS

- A. Physical Agreement, Collective Bargaining Agreement, 1/1/2020 – 12/31/2021
- B. Physical Agreement, Collective Bargaining Agreement, 1/1/2022 - 12/31/2025
- C. Job Definitions and Lines of Progression, Updated September 2021
- D. Materials Facility Person B [REDACTED] R [REDACTED] Career History
- E. IBEW Full-Time Employee List Date January 3, 2023
- F. S [REDACTED] B [REDACTED] Pay Stub 12/9/17
- G. S [REDACTED] B [REDACTED] Pay Stub 1/12/18
- H. S [REDACTED] B [REDACTED] Pay Stub 1/24/28
- I. 'I' Codes
- J. B [REDACTED] R [REDACTED] Subpoenaed payroll records

## EMPLOYER EXHIBITS

- ER1 S [REDACTED] B [REDACTED] Temporary Upgrade List  
ER2 L [REDACTED] S [REDACTED] Temporary Upgrade List

## RELEVANT COLLECTIVE BARGAINING PROVISIONS

### 2.1 RECOGNITION

For the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment Company recognizes Union as the exclusive representative of those employees for whom the National Labor Relations Board certified Union as such representative in Case No. 20-RC-1454 ...

## **7.1 MANAGEMENT OF 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; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities; provide, however, that all the foregoing shall be subject to the provisions of this Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandum of understanding clarifying or interpreting this agreement.

## **7.2 BARGAINING UNIT WORK**

Supervisors and other employees shall not perform work usually assigned to employees in IBEW 1245 bargaining unit classifications...

## **7.3 CLASSIFICATIONS WITH SUPERVISORY DUTIES**

... Upon agreement by the Company and the Union, Company may eliminate certain classifications, which are within the bargaining unit but have supervisory responsibilities, including the elimination of such classifications from Exhibit X (Added 1-1-80)

## **LETTER OF AGREEMENT R2-13-37, 205.3 FILLING TEMPORARY VACANCIES**

### **205.3 Filling Temporary Vacancies**

(a) (1) Whenever a vacancy occurs in any job classification, Company may temporarily fill it by assignment. In making temporary assignments to fill job vacancies, Company shall first consider employees in Relief classifications, and then, when practicable, consider the employees at the headquarters in which the job vacancy exists in the order of their preferential consideration under Section 205.7. The foregoing shall apply whether or not the vacancy is one which must be filled on a regular basis.

## FACTS PRESENTED AT THE HEARING

During the two days of hearing, the following individuals testified:

- N [REDACTED] A [REDACTED], (A [REDACTED]), DCCP Warehouse Superintendent
- S [REDACTED] B [REDACTED], (B [REDACTED]), PG & E Parts Clerk
- C [REDACTED] O [REDACTED], (C [REDACTED]), PG & E Principal Negotiator
- P [REDACTED] D [REDACTED], (D [REDACTED]), IBEW 1245 Business Representative
- B [REDACTED] E [REDACTED], (E [REDACTED]), Manager of Material Distribution Operations
- P [REDACTED] H [REDACTED], (H [REDACTED]), retired Superintendent for Materials at DCCP
- K [REDACTED] L [REDACTED], (L [REDACTED]), Labor Relations Manager
- L [REDACTED] S [REDACTED], (S [REDACTED]), retired Lead Material Handler

DCCP is a nuclear power plant with two reactors creating electricity for the grid. The Materials Department is responsible for warehousing and procurement to maintain everything at DCCP. The Santa Fe warehouse is a COSTCO sized building with shelves and forklifts on the ground floor and offices on an upper floor about 20 miles from DCCP. The Santa Fe warehouse was opened in 2014 but it took until 2015 to complete the move from DCCP to Santa Fe.

D [REDACTED] states that over the past decade between 400 and 450 bargaining unit employees have worked in the power plant and materials facilities. Material facilities are defined as warehouses attached to power plants. The DCCP warehouse is a materials facility. No other materials facilities are left as all other PG & E power plants with materials facilities have been sold off or closed.

Eleven lines of career progression exist in the bargaining unit, but there are very few lead roles. Each team has a crew lead and tiers of positions below that. In the material line, there are 10 -15 employees, which include a senior lead, 2 lower level leads and handlers. According to D [REDACTED], most lead roles border on supervision.

When members learn of a retirement, they become interested in the position and when it looks like the position is not being filled, a grievance is filed due to the

infrequency of such opportunities. The grievance process consists of 5 steps. If the grievance is not resolved, arbitration is the final step.

CBA negotiations occur every 3 to 4 years. The last negotiations were in 2010 or 2011 and 2015 or 2016. The parties have not negotiated since the 2016 CBA expired, but did extend the CBA. D████ is not aware of any bargaining over the removal of the MFP position either in general negotiations or between contract negotiations via a letter of agreement. There are no letters of agreement about the MFP classification.

B████ R████ (R████), worked at DCPD from 2000 to February 2019<sup>1</sup>, when he officially retired. R████ was paid as a Material Facility Person (MFP). The Union became aware in January 2019 that no one was being upgraded to the MFP role. No other system wide MFP positions are tied to power plants. Individuals perform work of lower level classifications daily, according to D████.

D████ referenced the PG&E/IBEW Grievance Local Investigating Committee's Joint Statement of Facts in the matter, specifically statements by A████ as proof that R████ work was now being done by a supervisor. In this regard D████ referenced points 13 through 15 in the statement of facts:

13. D████ asked what R████'s role was specific to the MP job duties. A████ stated the salvaging of materials was capture through Inventory Control and the RTS/IR process.
14. A████ stated one of R████' primary functions was inventory Control including the production of cycle counts (rolling inventory Counts) and inventory adjustments that were generated by the

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<sup>1</sup> From November 2018 through February 2019 Rodriguez was vacationing out.

outcomes of said counts. One of the other roles that was frequented in the inventory area was part number and batch discrepancies that required research through records of obsolete computer systems to resolve (i.e., PIMS)

15. D ■■■ asked, who performs those tasks now that R ■■■ is gone. A ■■■ said he generates the cycle counts and handles the quantity/batch discrepancies. The Handlers perform the remainder of the cycle count process.

None of the information provided to the Local Investigating Committee was under oath. The Joint Statement of Fact is not an official document. D ■■■ had no personal knowledge of R ■■■' duties or whether or not his duties changed when he moved from DCPD to the Santa Fe warehouse.

In explaining the Union's position underlying the grievance he stated that:

- Nothing in the CBA states that PG&E needs to keep a position, but by creating one, the Employer needs to fill it when the position is vacated
- Title 7 of the CBA holds that if work is established as a specific class within the bargaining unit, supervision/management cannot take it over.
- Title 205 requires a position be filled when such position is vacated if there is work which has to be done.
- The parties have not negotiated either a letter of agreement or provision in the CBA to eliminate the MFP position.

B ■■■ worked in the Materials Warehouse Department at DCPD from 2012 to 2015 and returned in 2017. R ■■■ was part of his training program in 2012 and again when he returned in 2017. From 2012 to 2015 he worked with R ■■■ on a daily basis. B ■■■ is a material handler, who answers to a lead.

He described the DCPD warehouse as being set up in protected and non-protected areas, but at the Santa Fe warehouse the protected area was outside

the warehouse, where items were received from manufacturers and vendors in a secure area. The personnel at Santa Fe could receive materials, verify them, x-ray and search the material all before entering the protected area. Santa Fe is used for receiving. The DCPD facility is a primary storage location with shelving 20-30 feet in height and an issuance counter for customers. Material handlers generally work two shifts at DCPD, 6 AM – 3 PM and 4 PM – 2 AM.<sup>2</sup> They take orders from a lead person who delegates picks, which the handlers take off the shelf, package and stage for delivery. Picks are driven to customers on forklifts.

B [REDACTED] asserts that MFPs perform part number research, batch number trace and procedure compliance. According to B [REDACTED], MFPs answer higher level questions involving protocols and gray areas. R [REDACTED] was an MFP and a SME. B [REDACTED] would consult with him 2-3 times a day on procedures and leverage R [REDACTED] points of contact with customers and others for information. If the MFP is not there, questions would go to a supervisor. The Lead Person is just an enhanced material handler who can sometimes answer questions about company, DCPD, and/or material policies and procedures.

R [REDACTED], according to B [REDACTED], would perform cycle counts without shutting down the warehouse, but using a rolling inventory method which would only lock off a few select items at a time. As MFP R [REDACTED] would print out sheets for the material handlers to verify by count on the shelves. The material handlers write down what is physically seen and returns the sheet(s) to the completed box in R [REDACTED]' office. R [REDACTED] would enter the information into the SAP system because he had access as an MFP. Leads do not have access to the SAP system.<sup>3</sup>

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<sup>2</sup> During emergencies, it is a 24-hour facility.

<sup>3</sup> A Systems Administrator sets the computer system roles for SAP. If a position is receiving inventory, that position cannot control or modify inventory entries. Since Handlers and Leads receive material, they cannot modify counts in the SAP system.



The MFP also handles the material salvage process. One type of salvage may occur when an item comes back from the field with a part removed. The MFP is authorized to change the description or stock code in the system to indicate the item is in a different form. Another example relates to original plant material which is only listed in the PIMS legacy system. The MFP has access to the old system to maintain traceability to the new one. The MFP would research when and where original plant material came from and transfer it to the new system. Finally, there might be a return to stock item (RTS) where the bar code did not match the system code and resolution could take days.

B [REDACTED] estimates that R [REDACTED] spent 80 to 90% of his time on cycle counts and RTS. If R [REDACTED] was not present, items were just stored in a problem area until he returned.

Per B [REDACTED], the MFP stands as a single point of contact between the warehouse and the field, if a supervisor is not present. The MFP is also involved in tail boarding, which is the bridge between shifts. B [REDACTED] states that A [REDACTED] began taking over R [REDACTED]' duties once he started vacationing out to retirement.

Finally, B [REDACTED] testified that he upgraded himself in the payroll system to MFP to cover the position when a supervisor was not available and the supervisor would subsequently approve the upgrade. He asserts that he upgraded to the MFP position for about a year after R [REDACTED] retired at which point the position disappeared from the dropdown menu in the system.

When presented with payroll upgrade records, B [REDACTED] contends that he put in for an upgrade to lead for the period 12/10 to 12/23. The pay was on in his check but removed in the next check. A payroll clerk told him the upgrade had been removed. He states that he asked H [REDACTED] about it and she denied removing the upgrade. She paid him the lead rate without the title in a subsequent check. He did not file a grievance on the changes to the upgrade.

A [REDACTED] was a material handler prior to his 2014 promotion to night supervisor at DCP. In 2019 he was promoted to Superintendent Materials for the DCP and Santa Fe warehouses. The two sites are physically separate, but considered one headquarters per a letter of agreement with the Union. One lead and 9 handlers are located at DCP. One lead and two handlers are located at Santa Fe, the main hub to receiving materials. Supervisors report to A [REDACTED]. Leads report to the supervisors. The eleven handlers may take direction from the leads, the supervisors or A [REDACTED]. Handlers are in charge of receiving material, unloading, processing in SAP, issuing and delivering material. Leads perform handler duties plus if supervision is not available, they can set the direction for the day. MFP have duties similar to a lead.

In 2014 when he was promoted to night shift supervisor, A [REDACTED] put material on shelves, performed cycle counts and RTS discrepancies as well as deliveries. With regard to cycle counts, he was performing all functions except the physical count. Before R [REDACTED] moved to Santa Fe, he was assisting A [REDACTED] in the supervisory duties of researching discrepancies because he had a good working knowledge of SAP. Once he moved to Santa Fe, R [REDACTED] continued to report to A [REDACTED] and performed lead functions and security searches. He was not researching discrepancies once he relocated to Santa Fe.

When R [REDACTED] retired, A [REDACTED] did not assume any of his job functions and his (A [REDACTED]'s) job functions did not change in any way due to R [REDACTED] retirement.

A [REDACTED] confirmed that he signed the Joint Investigating Committees' Joint Statement of Fact. No one questioned A [REDACTED] as to the statements, excerpted above, attributed to him.

H [REDACTED] retired in 2019 when she held the position of Superintendent of Materials at DCP. When she started work as a handler in 2005, R [REDACTED] was a lead. He later worked at Morro Bay as an MFP. When Morro Bay closed, she brought R [REDACTED] over to DCP reporting to her. While at the DCP main warehouse, R [REDACTED] performed as a lead, doing material searches and receiving items electronically into the database. H [REDACTED] structured a position at DCP that involved doing cycle counts.

R [REDACTED] was a really good receiver, so H [REDACTED] had discussions with the Union about moving him to Santa Fe in 2017. The Union never asked that the Santa Fe position be an MFP. The operation at Santa Fe never warranted an MFP. Typically, a lead would perform the duties required at the Santa Fe location. A MFP can perform functions below the classification per the CBA. The amount of material at Santa Fe was minimal, so H [REDACTED] may have asked R [REDACTED] to verify items, but it would have been an unusual ask. Cycle counting was usually done by the night supervisor as it is a quiet time to do those functions.

After R [REDACTED] retired, his position was not backfilled. There is no requirement in the CBA or any letter of agreement, that a position be backfilled once it has been vacated.

C [REDACTED] has been the principal negotiator for over three years and provided labor relations support to the materials department in 2016 – 2018. He participated with H [REDACTED] and D [REDACTED] in discussions regarding the MFP position prior to the grievance being filed. They offered a lead position in response to concerns by D [REDACTED] about no lead being present at Santa Fe, although they did not believe the facility needed a lead. As a result of their agreement, R [REDACTED] was moved to Santa Fe to act as a lead person. They did not agree that the MFP position would continue after R [REDACTED] retired as it was not even discussed with D [REDACTED]

MFPs are only used when no supervision is on site. In this regard Santa Fe did not need an MFP position as in addition to Hickey, there was a manager on site as well.

Per C [REDACTED], nothing in the CBA or any letter of agreement requires backfilling. Management has the right to determine if a position needs to be filled or not.

E [REDACTED] was the Manager for Material Operations from 2013 to November 2019, when he became Senior Manager for Material Distributions Operations. In his current position, he manages all material distribution centers and field locations where there are materials. There is one populated MFP position in the West Sacramento billing center. No MFPs are located at material facilities.

S [REDACTED] a retired Lead Material Handler on January 1, 2019, testified for the union in rebuttal, that although he did not work near R [REDACTED], he worked with him after R [REDACTED] arrived at DCPD from Morro Bay and believes he has an understanding of his job duties. S [REDACTED] describes R [REDACTED]' job duties as: finding discrepancies in inventory, performing cycle counts, finding materials and reconciling records.

S [REDACTED] was passing discrepancies to R [REDACTED]. 90% of R [REDACTED]' time was spent on discrepancies. The resolution of discrepancies would wait for him if he was not at work to handle them. As of 2017 S [REDACTED] did not know what R [REDACTED] was doing at Santa Fe.

R [REDACTED] was sent to Santa Fe, because S [REDACTED] told H [REDACTED] that he did not want to go. R [REDACTED] was the most senior person in the group. S [REDACTED] went to Santa Fe when R [REDACTED] went back to DCPD to finish his career.

S [REDACTED] entered upgrades on his timecard, but know he would not always get them as the supervisor could change his timecard. He believes he got a few MFP

upgrades. H [REDACTED] changed his timecard 2 - 3 times, which he did not grieve. A printout of S [REDACTED]'s upgrade list shows that he was never paid for the MFP position.

## SUMMARY OF PARTIES POSITIONS

### IBEW's Position

- PG & E is violating the CBA by having supervisors perform MFP work that was usually assigned to the Bargaining Unit at DCPD
  - Under the mandatory language of Section 7.2, Supervisors “Shall Not perform work usually assigned to employees in IBEW 1245 Bargaining Unit Classifications.”
  - MFP R [REDACTED] was ‘usually assigned’ cycle counting and RTS Discrepancy work.
  - MFP R [REDACTED] was ‘usually assigned’ to answer questions on procedure and policy.
  - In violation of Section 7.2, “Supervisors... Perform” cycle counting and RTS Discrepancy work and serve as key contact for procedure and policy questions --- all work that was ‘usually assigned’ to MFP R [REDACTED]
- PG & E does not have discretion to assign bargaining unit work to supervisors
- PG & E must be ordered to pay backpay, return the work to the bargaining unit and hire a Materials Facility person.

### PG & E's Position

- The Union bears the burden of proof in this non-disciplinary contract interpretation case.
- The Company was not and is not required to backfill the MFP position.
  - Based on both the CBA and past practice, the Company had the discretion to decide not to backfill the MFP position upon R [REDACTED]' retirement.
  - The Company had and presented to the Union a compelling business case in support of exercising its discretion not to backfill the MFP position.
- The Company did not eliminate the MFP classification company-wide
- The Company did not delegate Materials Facility Person duties to non-bargaining unit supervisors following the retirement of R [REDACTED]
- The Union's grievance regarding lower-classified employees performing the duties of a Materials Facility Person without receiving upgrades in violation of the CBA is untimely and in fact Union employees were not denied temporary upgrades.

## DISCUSSION

The testimony in this matter lacked specificity. In this regard, B's testimony about R's performance of MFP duties did not specify a timeframe beyond 2012 to 2015. Additionally, B's testimony was based upon observations of R's work at DCPD. Since B never worked at Santa Fe, his testimony was based solely upon dates prior to R's 2017 transfer from DCPD to Santa Fe.

S likewise related his observations of R's work duties at DCPD, but did not know what R was doing once he had moved to Santa Fe in 2017.

Finally, the Union produced the Joint Statement of Fact, referencing items 13 through 15 in particular. These assertions are not specific as to timeframe. Neither party took the opportunity to question A when he was under oath during the hearing about any detail in the Joint Statement other than the fact that he signed it.

A's testimony established that beginning in 2014 as night supervisor at DCPD, he performed cycle counts, except for physical counts; R assisted him in researching discrepancies because of his expertise with the old software system, and that once R moved to Santa Fe in 2017, R's involvement in cycle counts and discrepancies ceased.

At some unspecified date, Morro Bay closed. At that time Hinkley structured a lead position at DCPD which included cycle counts for R. She was not questioned about how, if at all, the cycle count duties R performed, changed in 2014 when A became night supervisor at DCPD.

In other words, the testimony of all these witnesses could be consistent: that R performed lead duties at DCPD including cycle counts until A became the night supervisor in 2014 and at that point, R continued to

assist A [REDACTED] in researching discrepancies in the SAP software until he was moved to Santa Fe in 2017. Without evidence as to work tasks R [REDACTED] was performing after his 2017 transfer to Santa Fe, the Union has not established that R [REDACTED] performed anything more than assistance in the research of discrepancies from 2014 to 2017, after A [REDACTED] become a supervisor, and certainly that he did not perform anything more than lead duties once he moved to the Santa Fe facility in 2017.

Based upon a Union's request to staff the Santa Fe facility with a lead person or H [REDACTED]'s desire to have a lead person at the Santa Fe facility, H [REDACTED] and D [REDACTED] agreed, in C [REDACTED] presence, to move R [REDACTED] to the Santa Fe facility as a lead in 2017. No MFP duties were required for the Santa Fe position. No evidence that R [REDACTED] performed duties at Santa Fe over and above those listed in the lead specification was produced.

Even if R [REDACTED] was performing cycle counts and RTS discrepancies in his capacity as an MFP prior to A [REDACTED] being promoted to a night supervisor at DCPD in 2014, A [REDACTED] did perform the cycle counts and RTS discrepancy duties at DCPD starting in 2014. The Union did not grieve bargaining unit work being performed by a supervisor (A [REDACTED]) in 2014. The Union did not grieve bargaining unit work being performed by a supervisor in 2017 when R [REDACTED] moved to Santa Fe.

Further the Union knew or should have known that no cycle count or RTS discrepancy work was performed at Santa Fe, as it was a receiving only facility. The Union did not demand the MFP position at DCPD be backfilled when R [REDACTED] assumed the role of lead at Santa Fe in 2017 or grieve the failure to backfill the position in 2017.

As to the insistence that a vacancy needs to be backfilled, a scan of all the mentions of 'vacancy' in the CBA, shows the following language at 305.7 (b):

whenever a vacancy occurs in any job classification *which the company intends to fill on a regular basis*.... (and then proceeds to discuss bidding procedures.)

While this language applies to General Construction Classifications, such language reflects the parties' agreement and understanding that vacancies may or may not be filled.

The Letter of Agreement referenced by the Union concerning temporary filling of vacancies has no bearing in this matter as no vacancy was temporarily filled.

No reference in the CBA to position vacancies mandates that PG&E fill any position. If the Union wishes to make this a provision of the CBA for Materials Distribution classifications, it can only do so through the negotiation process. Finally, the Union has not established its premise, that the MFP position has been eliminated as there is one such position in Sacramento nor has it established that individuals filled in for R [REDACTED] at an MFP pay level.



## AWARD

The grievance is denied inasmuch as the Union failed to meet its burden of proof that MFP bargaining unit work was performed by a supervisor after R [REDACTED] retired in 2019.

The grievance is also denied with regard to the assertion that the CBA was violated when an MFP position was not backfilled after R [REDACTED] 2019 retirement.




Respectfully submitted this 11th day of April, 2023,




A handwritten signature in cursive script that reads "Sheri E. Ross". The signature is written in dark ink and is positioned above the printed name and title.

Sheri E. Ross  
Arbitrator


Arbitration Board Signatures  
Arbitration No. 388  
Grievance No. 24915

**Company Board Members**

 \_\_\_\_\_ Concur/Dissent 04/13/2023  
K  L  \_\_\_\_\_  
Date

 \_\_\_\_\_ Concur/Dissent 04/21/2023  
L  B  \_\_\_\_\_  
Date

**Union Board Members**

 \_\_\_\_\_ Concur/Dissent 04/24/2023  
D  S  \_\_\_\_\_  
Date

 \_\_\_\_\_ Concur/Dissent 04/29/2023  
P  D  \_\_\_\_\_  
Date