

In the Matter of a Controversy]	
]	
between]	
INTERNATIONAL BROTHERHOOD OF]
ELECTRICAL WORKERS, UNION]	
LOCAL NO. 1245,]	
]	
Complainant,]	Arbitration Case
]	
and]	No. 37
]	
PACIFIC GAS AND ELECTRIC COMPANY,]	
]	
Respondent,]	
]	
(Involving suspension of employees]	
of the San Francisco District]	
Electric Overhead Line Department]	
on October 23, 1970.]	
_____]	
_____]	

OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, CHAIRMAN

LAWRENCE N. FOSS, Union Member

JOHN J. WILDER, Union Member

I. WAYLAND BONBRIGHT, Employer Member

KENT H. ANDERSON, Employer Member

San Francisco, California
April 2, 1971

ISSUE:

"Was the suspension of employees of the San Francisco District Electric Overhead Line Department on October 23, 1970, for refusing to work scheduled overtime on Sunday, October 25, 1970, in violation of the Physical Labor Agreement dated September 1, 1952, as last amended?"

DECISION:

By stipulation, the parties requested an immediate decision in this case, which decision was issued on November 5, 1970, Union members of the Board of Arbitration dissenting. That decision was:

"The suspension of the employees of the San Francisco District Electric Overhead Line Department on October 23, 1970, for refusing to work scheduled overtime on Sunday, October 25, 1970 was not in violation of the Physical Labor Agreement dated September 1, 1952, as last amended."

Pursuant to the parties' Submission Agreement of October 27, 1970, an opinion in this case is required, and is hereinafter stated.

FACTUAL SITUATION:

On Sunday, October 25, 1970, the Company was to perform service for Atlas Universal Company in San Francisco. The service required that the power be cut to the customer and the Company agreed to perform it at a time when the customer's operation would not be interrupted, namely, on a Sunday.

Early in the week before October 25, Richard Butler, the Company's Field Line Forman prepared a list of employees in each classification in ascending order as to overtime eligibility. Mr. Butler and another Company employee contacted employees in order on

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the list and asked them if they would volunteer to perform the overtime work in question. All employees contacted did not so volunteer and stated a reason therefor. The response of each individual and the reasons stated were listed.

On Friday, October 23, at 8:00 A.M., Butler and others again contacted each man and stated:

"I have been requested to order you to work Sunday. In the event that you should refuse, you are not to work until you are notified by the Company to do so, do you understand that?"

Those contacted replied, "Yes," Butler then asked: "What is your answer?" The answer was, "No." (Tr. p. 54.) Butler then stated "For the same reasons?" or "Are your reasons the same?", referring to the reasons given previously in the week as to why the employees did not volunteer to work. (Tr.p.55.) In most cases, the reasons given were the same.

AGREEMENT PROVISIONS:

"Section 3.1 Company is engaged in rendering public utility services to the public, and Union and Company recognize that there is an obligation on each party for the continuous rendition and availability of such services.

"Section 2.3 The duties performed by employees of the Company as part of their employment pertain to and are essential in the operation of a public utility and the welfare of the public dependent thereon....

"Section 3.3 Employees who are members of Union shall perform loyal and efficient work and service, and shall use their influence and best efforts to protect the properties of Company and its service to the public, and shall cooperate in promoting and advancing the welfare of

Company and in preserving the continuity of its service to the public at all times.

"Section 103.6(b) A regular employee may be required to perform prearranged or emergency work on a holiday which falls on a work day in his basic workweek, in which event he shall, in addition to his holiday pay, be compensated therefor as provided in Title 208 or 308.

"Section 104.5 When an employee is required to perform prearranged work in non-work days during regular work hours he shall observe the lunch arrangement which prevails on his workdays. If such work continues after regular work hours Company shall provide him with meals in accordance with the provisions of Section 104.4 hereof.

"Section 104.6 If Company requires an employee to perform prearranged work wholly outside of regular work hours on either work days or non-work days such employee shall be permitted to have time off for a meal approximately four (4) hours but not more than five hours after he starts work, such meal to be furnished by the employee at his own expense. The time necessarily taken for any such meal up to one-half (1/2) hour shall be at Company expense....

"Section 104.8 If the Company requires an employee to perform prearranged work starting two (2) hour or more before regular work hours on work days or non-work days and such employee continues to work into regular work hours, he shall provide for one meal on the job and Company shall provide other meals as required by the duration of the work period...."

....

"Section 202.1 A workweek is defined to consist of seven (7) consecutive calendar days, and a basic work week is defined to consist of five (5) work days of eight (8) hours each. The days in the basic workweek shall be known as work days and the other days in the workweek shall be known as non-work days. Employees may be scheduled to work more or less than five (5) days per week or for more or less than eight (8) hours per day, but in any such event the basic work week shall continue to be as herein defined.

"Section 208.12 When, at the request of the supervisor in charge, an employee reports for prearranged work....(2) on non-work days or on holidays he shall be paid overtime compensation for actual work time and for travel time in connection therewith. For the purpose of this section prearranged work is deemed to be work for which advance notice has been given by the end of his preceding work period on a work day.

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"Section 208.13 The minimum time for which overtime compensation shall be paid under the provisions of Section 208.12 shall be two (2) hours, except that if an employee, who has been called for prearranged work outside of his regular work hours on work days, continues to work into or beyond regular work hours, he shall be paid overtime compensation only for actual work time up to regular work hours, and for travel time as provided in Section 208.12 hereof.

"Section 208.14 If an employee is instructed by his supervisor to report for prearranged work on a non-work day,....and such work is canceled, he shall be paid overtime compensation for a minimum of two (2) hours, inclusive of any travel time as provided for in Section 208.12, if he is not given notice of the cancellation of such work by the end of his preceding work period on a work day.

"Section 208.16 Prearranged overtime work shall be distributed among employees in the same classification and in the same location as equally as is practicable.

"Section 212.1 Employees shall not be required to be on call. However, Company with Union's cooperation shall establish schedules for employees who volunteer to be readily available for duty in case of emergency. Assignments to of emergency work shall be distributed and rotated as equitably as practicable among employees in the same classification and in the same location who have volunteered to be available. The time during which an employee is available for duty shall not be considered as hours worked."

POSITION OF THE PARTIES:

Position of the Company

That the Employees were assigned properly; that the Company considers the reasons given by Employee as to whether or not to order them to work overtime; that in the event there was any specific dispute, the Employees are required to work first and file a grievance thereafter; that the totality of the Agreement must be considered rather than a single section; that the East Bay Division letter cited by the Union is inapplicable; that the section dealing with being on call for emergency service is inapplicable to this case.

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Position of the Union:

That if prearranged overtime is to be handled in the same way as emergency overtime, there would not have developed the concept of having different lists in which volunteers would appear; that coincidental with the concept of prearranged overtime is a concept of the right to refuse overtime; that this concept has been adopted as shown by the East Bay and North Bay practices; that there is nothing in the Agreement that would allow the Company to discipline Employees if they refuse to volunteer to perform overtime; that there are arbitration cases that have authority to support the Union's position; that in this case there was no reasonable consideration given to the reasons asserted by the Employees for their refusal to perform work; that resolution to this problem was required to have been by mutual agreement between the parties rather than by reference to a residual management rights doctrine.

DISCUSSION:

Agreement Requirements:

There are two kinds of overtime work, emergency overtime work and prearranged overtime work. In this case, the work to be performed on October 25, 1970, was prearranged work "for which advance notice was given by the end of [employees] preceding work period on a work day." (See Section 208.12.) Separate overtime lists are maintained for prearranged overtime work and emergency overtime work. (See Section 208.16 and 212.1.)

In this case the essential Union argument is that the Company cannot order Employees to perform prearranged work, but it can have such work performed only in the event that volunteers are available to do it.

Reference to the specific Agreement provisions refer to the fact that an employee can be "required" to perform prearranged work (Section 104.5); that the Company can "require" employees to perform prearranged work (Sections 104.6, 104.8); that employees can be "instructed to report " for prearranged work (Section 208.14.)

The specific use of such language, without evidence to the contrary, shows unequivocally that the parties' intent was that the Company was entitled to schedule prearranged overtime work and to obligate the Company's employees to perform such work. These specific references show that, without question, the parties agreed that prearranged overtime work is mandatory.

Volunteers for Overtime Work:

The record shows that the Company had generally sought that prearranged overtime work be performed by volunteers, rather than requiring specific individuals to perform such work. The Union referred to a letter from the East Bay Division stating that an Employee who declines prearranged overtime for any reason shall be charged with the overtime he missed. The Union also cited the policy of the North Bay Division. These policies do not establish, as the Union contends, that Employees may refuse prearranged overtime without penalty. That the Company allows Employees to avoid working prearranged overtime on a mandatory basis does not amount to a waiver of its rights to require Employees to perform prearranged overtime if in fact there are no volunteers to perform such work.

Distinction from Emergency Overtime:

Apparently, primary Union reliance is based upon Section 212.1 wherein it is stated that Employees are not required to be "on call." The evidence establishes that this provision is applicable only to emergency overtime. It is inapplicable to prearranged overtime where notice of such work was given during a work day prior to the time on which the prearranged overtime work was to be performed.

Reasons for Refusal:

The Union cites an arbitration case from a different industry to the effect that in the event that overtime is required, it is a matter for collective bargaining, rather than for unilateral policy pronouncement by the Company, as to who is to be required to perform mandatory overtime work, taking into account such matters as seniority, reasons for declining to perform overtime, etc. In this case, the Union states that there was neither resort to the Collective Bargaining process to reach agreement concerning this issue, nor was there any particular attention paid to specific reasons given by the Employees for the refusal to work. The record does establish that consideration was given to Employees' reasons, but that the Company was entitled to not give them weight in light of what appeared to be concerted action on the part of the Employees.

Moreover, since, as stated above, the Agreement specifically requires mandatory overtime, such failures on the part of the Company, if applicable in this case, would be applicable to mitigation for any disciplinary action taken. In this case, even though Employees were suspended, it does not appear as if any Employees lost any work time for all Employees reported as usual on Monday, October 26, 1970. (See Union Statement of Facts, p. 4.) Consequently, what effects such factors would have in terms of mitigation, if any, are inapplicable in this case since no damages accrued to the Employees involved.

Reference to Travel Time:

The Union, in its Statement of Facts, make reference to the fact that it alleged a violation of travel time provisions of the Agreement. Whatever the effect of such allegation may be, it is clear that such allegations are subject to the grievance procedure and are not a subject for determination by this Board of Arbitration in this case.

