



REVIEW COMMITTEE



IBEW

PACIFIC GAS AND ELECTRIC COMPANY
50 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
(916) 974-4282

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(510) 933-6060
R.W. STALCUP, SECRETARY

RECEIVED
FEB. 24, 1999
CASE CLOSED
FILED & LOGGED

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

Peninsula Division Grievance BEL-98-06
Pre-Review Committee No. 2173

San Francisco Division Grievance No. SFO-98-26
Pre-Review Committee No. 2174

Kern Division Grievance Nos. BAK-98-08, 09
Kern Division Grievance Nos. BAK-98-12, 15
Pre-Review Committee No. 2178

Fresno Division Grievance No. FRO-98-24
Pre-Review Committee No. 2186

Kern Division Grievance No. BAK-98-16, 19
Los Padres Division Grievance No. SLO-98-08, 10, 11,
Los Padres Division Grievance No. SLO-98-13, 16, 18
Pre-Review Committee No. 2198

San Francisco Division Grievance No. SFO-98-32, 33, 37
Pre-Review Committee No. 2199

**ARBITRATION CASE NO. 231
(REVIEW COMMITTEE FILE NO. 1819)**

SHAWN HOOVER/MERI ISSEL
VERN WITTMAN
JEFF NEELEY
MONICA OAKES
MARGARET PERRYMAN
Company Members
Local Investigating Committee

HUNTER STERN
MIKE GRILL
JIM LYNN
MIKE HAENTJENS
Union Members
Local Investigating Committee

Subject of the Grievances

These cases concern the application of the provisions of Subsection 208.11(e)(3) of the Physical Labor Agreement. Beginning about April 1998, Electric OM&C established a policy that if a rest period overlapped regular work hours, all employees are to return to work by the conclusion of the eight hour rest period in all instances. In at least one case, the supervisor also required anyone calling in sick after a rest period to provide proof of illness.

Facts of the Cases

There are 18 separate grievances in this file from San Francisco, Kern, Fresno, Los Padres, and Central Coast Divisions. These files had been scheduled for arbitration. However, representatives of the arbitration board comprised of Margaret Short and Stacy Campos for the Company; Darrel Mitchell, Roger Stalcup, and Tom Dalzell for the Union met and resolved the issue prior to the hearing.

It should be noted that the grieved contract language applies to all Title 200 employees and not just those of the Electric OM&C Department, where the grievances at issue in this decision arise. In each of the grievances at issue in this decision, employees were required to return to work at the conclusion of an eight (8) hour rest period, as opposed to being permitted to return at the beginning of the second half of the work day or at the beginning of the next following work day. There is no dispute as to whether the grievants were entitled to a rest period. Rather, the dispute is whether the work they performed upon return at the conclusion of the rest period falls within the meaning of **operational need**. The records in many files contain little detail about what specific work employees performed, referring generically to back log of FACTS tags which are the work orders for maintenance and repair of the Electric distribution system. There are some files that do contain sufficient detail as to what FACTS tag work or other work was performed to make a determination that in some instances the work did fall within the meaning of operational need and in others it did not. Some of the work assignments and FACTS tag related examples include patrolling, maintenance on a capacitor bank, replacement of underground transformers, replacement of a damaged street light pole caused by a car/pole accident.

In addition, there are files with examples of other work performed such as new business construction, service work such as voltage complaints and no power tags.

There are examples of employees returning to work to sit in the service center on an inclement weather day, to watch another crew work, to conduct a walk around safety inspection. It was agreed at the Review Committee that these activities **do not fall within the meaning of operational need** within the context of the grieved subsection.

Discussion:

These grievances arise from Company's efforts to become as productive and economically efficient as possible. The Union supports this goal and cites Sections 3.1 and 3.3 of the Agreement. These sections note the obligations of Company, Union, and

employees in providing for the continuous rendition of utility service to the public. In furtherance of this obligation, the parties recognize that new ideas, changes in practices or work procedures aimed at increased efficiency, productivity, safety, and/or cost reduction are allowed and encouraged under the terms of the Labor Agreement. However, unless such changes are clearly within management's unilateral purview, they must be accomplished in compliance with applicable contract language or be negotiated.

Subsection 208.11(e) of the Physical Labor Agreement is what is at issue in these cases. It was last amended January 1, 1988. There two substantive wording changes: "may" was changed to "shall" and "unless otherwise instructed" was changed to "due to operational needs". The significance of the change of may be excused from reporting until the second half of the workday or until the next work day with pay to shall be excused from reporting...is obvious. The second change was from "unless otherwise instructed" to "for operational need" set some limits on management's ability to require employees to return to work at the conclusion of a rest period rather than the second half of the work day or the next work day. These changes resulted in a shift in emphasis from an application where returning to work immediately following an 8 hour rest period was the normal and usual application to an application where returning to work immediately following an 8 hour rest period was the exception. The intent of these changes was to increase employees' opportunities for a full eight hours of rest since travel time home, dismissal meal time, and travel back to work all count as part of the rest period. This section has built-in non-productive costs. Limiting its financial impact to the Company must be based on operational need.

Discussion of this committee focused on trying to close the gap between the parties' respective positions regarding what constitutes operational need. The Union described situations that constituted immediate response while Company opined that any meaningful work constituted an operational need. A very unrestrained interpretation of operational need would be any work the Company authorizes to be performed and pays for. In the context of Subsection 208.11(e)(3), such an interpretation is overly broad. So somewhere between the overly restrictive "immediate response" and the overly broad "any work", is the definition of operational need intended by the Subsection.

At the Review Committee step of the grievance procedure, Company agreed that it was inappropriate to have a blanket rule about returning to work and further agreed with Union's examples of the types of work that are appropriate under Subsection 208.11(e)(3). Recognizing the emphasis on "exception" rather than "the rule", this committee agreed that the following variables should be considered when making work assignments: the nature and priority of the work to be performed, the availability of others to perform the work, the length of time employees worked prior to the rest period, the amount of time left in the workday. These variables need not be given equal weight.

In addition, the committee agreed that operational need is work that would be performed on overtime, relates to public safety, service restoration, property damage, customer

promised work and scheduled clearance work. Further the committee agreed that operational need is not make work, find work, or continuation of the same work from which the employee had been released on overtime.

One of the grievances addressed in this file has to do with a car/pole that was made safe on overtime. When the employees were required to return at the end of the rest period they were assigned to complete this job by replacing the street light pole. Since the replacement had been delayed to the next day, it could have been delayed a couple of hours longer until the second half of the work day or assigned to another crew.

The above understandings are intended to set guidelines and are not intended to be all inclusive or to contemplate every business situation.

DECISION

The committee agreed to close these cases without adjustment recognizing that some of the situations did violate the meaning of Subsection 208.11(e)(3). Company agreed to cease and desist its blanket policy in the Electric OM&C Department and to apply the above guidelines within the department. The Union indicated that should this continue to be a significant problem in the future by ignoring the above guidelines, it would seek to establish some penalty for future violations.

For the Company

Stacy A. Campos
Margaret A. Short

By: Margaret Short

Date: 2/24/99

For the Union

Tom Dalzell
Roger Stalcup
Darrel Mitchell

By: Roger Stalcup

Date: 2/24/99