

**ARBITRATION
OPINION & AWARD**

IBEW LOCAL 1245,

Union,

and

Arbitration Case No. 255

PACIFIC GAS & ELECTRIC CO.,

Employer

Re: Tuesday-Saturday Work Week

ARBITRATION BOARD

Neutral Board Member: Kenneth N. Silbert

Union Board Members: Jim Lynn, Sam Tamimi

Employer Board Members: Margaret Short, Molly Williams

APPEARANCES

On Behalf of the Union:

Tom Dalzell, Esq.
IBEW Local 1245
P.O. Box 2547
Vacaville, CA 95696

On Behalf of the Employer:

Stacey A. Campos, Esq.
PG&E
Law Department
P.O. Box 7442
San Francisco, CA 94120

INTRODUCTION

The Parties mutually selected the Neutral Board Member pursuant to the terms of a collective bargaining agreement (JX 1). The prior steps of the grievance procedure were complied with or waived and the matter is properly in arbitration (JX 2). At a hearing conducted on February 14, 2002, in San Francisco, California, the Parties had a full opportunity to examine and cross-examine witnesses and to present other evidence and argument in support of their positions.¹ The matter was submitted for decision upon the receipt of post-hearing briefs.

In February, 1999, the Company instituted a Tuesday through Saturday workweek for one electric transmission and distribution crew in Fresno, California. This is the only Tuesday through Saturday work week for an electric crew in the PG&E system (TR 154). In May, 2000 (more than a year after the workweek was established) the Union filed the instant grievance asserting that PG&E violated Sections 3, 4, 7.1 and 202.2 of the Agreement by continuing to assign employees to the workweek.²

¹ The official transcript is cited as (TR __); Joint Exhibits, Employer Exhibits, and Union Exhibits are cited as (JX __), (EX __) and (UX __).

² The Union does not address the alleged violations of Sections 3, 4 and 7.1 of the Agreement in its post-hearing brief.

ISSUE

Did the establishment of a Tuesday through Saturday schedule for an electrical crew in the Fresno Service yard by the Company violate the collective bargaining agreement. If so, what shall be the remedy? (JX 2)³

RELEVANT PROVISIONS OF THE AGREEMENT

TITLE 202. HOURS

* * *

202.2 Except as otherwise provided herein, the basic workweek shall be from Monday through Friday, or from Tuesday through Saturday. The number of employees who shall be required to work the basic workweek of Tuesday through Saturday shall be kept at a minimum consistent with the rendition of adequate public utility service, and employees may be assigned to such workweek in rotation. (JX 1)

SUMMARY OF THE FACTS

In 1998, Gas and Electric Superintendent Roger Graddy became concerned about the high number of outages in the Fresno area and PG&E's ability to respond to the outages in a timely manner. Of particular relevance to this case is the fact that Graddy had received complaints from customers that PG&E was taking too long to respond to outages on Saturdays. Graddy concluded that, unlike prior years, customers were demanding service restoration quickly, even on Saturdays.

³ In its post-hearing brief PG&E argues that the grievance should be dismissed as untimely because it was not filed within 30 days after implementation of the Tuesday through Saturday crew. That position is not consistent with the stipulated issue that refers only the merits of the grievance (JX 2). Accordingly, the Board does not address that issue in this Opinion and Decision.

Graddy believed that the increased demand for service was related to several factors including: growth of business in the Fresno area; the large number of business open on Saturdays; increased dependance on computers by both business and residential users, including on Saturdays; and increased use of other electronic devices (TR 21-23, 34).

Before establishment of the Tuesday through Saturday workweek, PG&E depended on employees to volunteer to be available to respond to outages on Saturday, as provided for in Section 212 of the Agreement (the 212 list). Employees on the 212 list indicate their availability for overtime, but may decline any assignments and may elect to exclude themselves from Saturday work. To assemble an extra crew to respond to an emergency, a supervisor would first call employees on the 212 list. If a supervisor was not able to assemble a crew from the 212 list, the supervisor would have to call other employees to determine if they were willing to accept the overtime assignment (TR 29, 34, 39, 83, 94).

Electric Distribution Supervisor Dave Mills had responsibility for assembling crews to respond to Saturday outages in the Fresno area. He testified that many of 212 list volunteers exempted themselves from Saturday work. He found it particularly difficult to assemble crews from the 212 list, in November and December, because fewer employees signed the list during the holiday period (TR 84-84, 115-119). Mills testified that, on average, it took him about an hour and one half to assemble 212 crews to respond to Saturday outages. If he was not able to assemble a crew from the 212 list, it would take him even longer to assemble a crew by calling in general construction employees (TR 27-29, 34-42, 84-85, 91-94, 98 115 118-119).

Based upon these concerns, Graddy decided to implement the Tuesday through Saturday workweek for a four person crew, in February 1999, primarily to assist with responding to Saturday

outages. He instructed supervisors to assign the Tuesday through Saturday crew to maintenance work that could easily be set-aside when the crew was required to respond to an outage (TR 23-26). In 2000, Graddy believed that continuation of the Tuesday through Saturday workweek was an effective way to respond to timely outages on Saturdays (TR 36-37)

PG&E relies on OIS data to support its position that the Tuesday through Saturday crew is necessary to respond to Saturday outages effectively. According PG&E, the data shows that, during 1999, the crew responded to Saturday outages more than 50% of the time, and on several occasions responded to more than one outage on a given Saturday (TR 71, JX 3, page 44). In addition, even with the Tuesday through Saturday crew working, on some Saturday's there were so many outages in the Fresno area that additional crews had to be assembled from the 212 list (TR 71; JX 3, page 44).

The Union, on the other hand, relies on OIS data to support its position that the Tuesday through Saturday crew is not necessary to respond to Saturday outages effectively. The Union analyzes the data as follows:

| On Most Saturdays There Were No Saturday Outages During the Hours Worked by the Crew | | | |
|---|------|------|------|
| | 1999 | 2000 | 2001 |
| Saturdays Worked by the Crew | 48 | 51 | 49 |
| Saturdays with at least one outage between 7:00 a.m. and 3:30 p.m. | 15 | 11 | 14 |
| Saturdays with no outages during between 7:00 a.m. and 3:30 p.m. | 33 | 40 | 35 |

| Most Saturday Outages Were Not Worked by the Tuesday through Saturday Crew | | | |
|---|------|------|------|
| | 1999 | 2000 | 2001 |
| Saturday outages between 7:00 a.m. and 3:30 p.m. | 19 | 12 | 16 |
| Outages worked by Tuesday through Saturday Crew on Saturdays | 6 | 6 | 3 |
| Saturdays with not outages between 7:00 a.m. and 3:30 p.m. | 13 | 6 | 13 |

| Hours Worked By Tuesday through Saturday Crew on Saturday Outages (assuming it takes 2 hours to correct an outage) | | | |
|---|------|------|------|
| | 1999 | 2000 | 2001 |
| Total Saturday hours worked by the Tuesday through Saturday Crew | 384 | 408 | 392 |
| Hours restoring service after an outage | 12 | 12 | 6 |
| Percent of hours worked on Saturdays restoring service after outages | 3% | 3% | 1.5% |

The Joint Statement of Facts in the LIC includes the following summary of the data for 1999 and 2000 (JX 3, page 33 ¶3):

Committee reviewed a summary of Saturday crew activity for 1999 and 2000 (Exhibit 5). Company utilized information contained in DOLIP reports, employee timecards and supervisor 212 call out records to generate this summary.... Based on this information, a total of 44 emergencies occurred on 32 separate Saturdays in 1999, and 28 emergencies occurred on 21 separate Saturdays in 2000. All of these emergencies required a crew. On a total of 15 different Saturdays, either a 212 crew or 208 crew was utilized because there was either more than one emergency on that particular date, or because 2 or more Saturday crew members were absent from work on that date.

Testimony of Union witnesses establishes that, when the Tuesday through Saturday crew was first implemented, the employees were assigned primarily to maintenance work so that they could easily respond to outages. Over time, the crew was given other assignments that made it less

available to respond to emergencies. According to the Union's analysis, by 2001 the crew was so busy with normal assignment on Saturdays that it could respond to only 3 of 16 outages that took place during its shift.

Past Practice:

Section 202.2 was the subject of a previous arbitration: *IBEW Local 1245 and PG&E (Involving Tuesday-Saturday Gas T&D Crews)* Arbitration Case No. 56, Robert Burns, July, 1975 (hereafter "the Burns Award"). PG&E had established Tuesday through Saturday Gas Transmission and Distribution crews in seventeen districts. The Union filed a grievance asserting that the establishment and maintenance of the crews was inconsistent with Section 202.2. Burns found that each of the crews met the "minimum" requirement of Section 202.2 because there was only one crew consisting of two or three employees in each district (Burns Award at 43). With respect to the requirement that such crews be "consistent with the rendition of adequate public utility service" Burns recognized that "there is no exact formula which will mathematically or easily answer the questions posed (Burns Award at 44). He found the following factors to be relevant (not in order of their importance):

The number of emergencies in the district.

Response time from the time a dispatcher or supervisor starts to call a crew until a crew assembles at the service center and is ready to leave.

Size and population density of the district.

The number of employees called to obtain a crew.

The general consideration that an on-duty crew will usually, but not always, be able to arrive at the sight of the emergency in less time than a call-out crew.

(Burns Award at 44)

Burns applied this analysis to each of the seventeen crews at issue, and found that only five of those crews were consistent with Section 202.2 of the Agreement (Burns Award at 52-53).

POSITIONS OF THE PARTIES

The Union:

- » The Board must determine if the Tuesday through Saturday workweek is required for or consistent with the rendition of adequate public service.
- » Unlike the factual situation in the Burns Award, public safety is not a factor in this case. That case dealt with gas crews, while this case deals with electric crews. With gas crews, the crew is first on the scene to respond to an emergency and to abate any threats to public safety. With an electric problem, a Troublemaker is first to respond and abate the threat to public safety, then the Troublemaker will request a crew if required to correct the problem.
- » PG&E's reason for creating the Tuesday through Saturday workweek in Fresno was to reduce the time needed to restore service after outages on Saturdays. Initially, the Saturday crew was given assignments designed to make them easily available to respond to outages. Later, the crew was given job assignments that kept it productive, but made the crew largely unable to respond to outages. By 2001, the Saturday crew was so busy on normal assignments that it could respond to only 3 of the 16 outages that took place during its shift.
- » The Saturday crew has not been used in a manner consistent with PG&E's early intentions. Because there are so few Saturday outages, PG&E apparently decided to put the crew to work on normal assignments.

- » The Union did not grieve the establishment Tuesday through Saturday workweek immediately. Instead, it gave PG&E the benefit of the doubt. By April, 2000, the evolving work of the crew made it apparent that the crew was not necessary for the adequate rendition of public service, and the Union filed the instant grievance.
- » This is the only electric crew in the system regularly assigned to work on Saturdays. The data fails to establish that the Saturday crew helped reduce outage response time.
- » The Board should find that the continuation of the crew violates the Agreement; order PG&E to discontinue the Tuesday through Saturday workweek; and order PG&E to pay crew members who worked on Saturdays at the difference between the straight time rate and the overtime rate for all hours worked since thirty days prior to the filing of the grievance.

PG&E:

- » The Thursday through Saturday work schedule in Fresno is consistent with providing adequate public service, under the Burns analysis.
- » There is a high number of outages in the Fresno area. The crew has responded to a high number of Saturday outages. In 1999 and 2000, the crew responded to outages more than 50% of the Saturdays they worked.
- » Prior to the implementation of the crew, the number of employees that had to be called and the total time it took to respond to Saturday outages was inconsistent with the Company's obligation to provide adequate public service.
- » From 1995 to late 1998, it was taking supervisors longer and longer to assemble crews to respond to Saturday outages in the Fresno area, in part because fewer and fewer employees were willing to work on Saturdays. On average, Supervisors had to call six employees and

it took at least 30 minutes in phone calls to assemble a three-person crew. Then, it took an additional 60 minutes before the crew arrived at the Fresno yard, and additional time before the crews could respond to the site of the outage. Customers who lived up to 60 or more minutes from the service yard, waited up to two and one half hours for crews to respond to outages.

- » The size and density of the Fresno Area justifies the Tuesday through Saturday crew.
- » Changes in cultural demographics since 1975 justify the Tuesday through Saturday crew. There have been a multitude of changes since the Parties negotiated Section 212 of the Agreement and since the Burns Award, including the increased use of and dependence on computers and other electronic devices, the increased number of business open on Saturdays, and the construction boom in once agriculturally dominated areas of California. In addition, PG&E customers expect a high level of service and are not as patient as they once were when outages occur.
- » The Union's protest to the single crew in Fresno leaves the Company wondering whether the Union will ever agree to implementation of a Tuesday through Saturday crew.
- » The grievance is untimely because it was not filed within 30 days of the implementation of the Fresno Tuesday through Saturday crew.
- » For all of the above reasons, the grievance should be dismissed in its entirety.

OPINION

In this contract interpretation case, the Union as the moving party bears the burden of proving that the crew at issue is not permitted by Section 202.2 of the Agreement. It is clear that the crew

in question meets the “minimum” requirement of the Agreement because it is the only Tuesday through Saturday electric crew in the entire system. By permitting a minimum number of crews, the Agreement permits at least one, as long as the crew is “consistent with the rendition of adequate public utility service . . .” Burns wisely noted in his award that there is no precise formula or method for determining whether a Tuesday through Saturday crew is consistent with the rendition of adequate service. Rather, each case must be evaluated on its own facts, based on the factors articulated by Burns.

The number of emergencies in the district: The Parties sharply disagree on the analysis of data regarding outages in the Fresno area, particularly on Saturdays. The Board adopts the analysis of the LIC which found that, in 1999, there were 44 emergencies on 32 separate Saturdays, and, in 2000, there were 28 emergencies on 21 separate Saturdays. This means that during a two year period there was at least one emergency on 53 of the approximately 98 Saturdays worked by the Tuesday through Saturday crew, and there were multiple emergencies on several of those Saturdays. On 15 of those Saturdays, 212 crews or other employees were called to assemble a crew to responded to the emergencies, either because there was more than one emergency or the Tuesday through Saturday crew was not available. The data for 2001 shows that there was at least one outage on 23 Saturdays, and a total of 40 Saturday outages. The Tuesday through Saturday crew responded to 6 of those Saturday outages (JX 5).

It is noted that the number and frequency of Saturday emergencies, in 1999 and 2000 and 2001, exceeds the number and frequency of Saturday emergencies in three of the five districts in which Burns found a Tuesday through Saturday work week to be consistent with the Agreement: Stockton - Delta Division, 20 emergencies in two years; Sacramento Division, 32 emergencies in

two years; Marin District, 83 emergencies in two years; East Bay Division, 82 emergencies in two years; and Bay District, 21 emergencies in two years. In addition, testimony from PG&E establishes that, during 1999 and 2000, Fresno had the second greatest number of outages per region in the system (TR 19-21).

The Union points out that, in each of the years, a number of the Saturday outages occurred outside the normal shift of the Tuesday through Saturday crew (7:00 a.m. to 3:30 p.m.). In addition, the Union notes that, over time, the crew has been assigned to work that makes it less able to respond to emergencies, and that other employees have often responded to emergencies on Saturdays. Nevertheless, the availability of employees regularly assigned to a Saturday shift enhances the ability of the Company to respond to Saturday emergencies, consistent with the rendition of adequate public utility service.

Taking this evidence as a whole, the Board finds that the number and frequency of Saturday outages supports a finding that the Tuesday through Saturday crew is consistent with Section 202.2 of the Agreement. The fact that many of the outages occurred outside the working hours of the crew, and the fact that some of the outages were worked by other employees are outweighed by the sheer number and frequency of Saturday outages which, presumably, happen at random times during the day.

Response time from the time a dispatcher or supervisors starts to call a crew until a crew assembles at the service center and is ready to leave: The evidence clearly establishes that the response time is substantially greater when a supervisor has to assemble a 212 crew (or call in other employees) than when the Tuesday through Saturday crew is able to respond to a Saturday

outage. This factor supports a finding that the crew is consistent with Section 202.2 of the Agreement.

Size and population density of the district: It is undisputed that the Fresno Service yard provides service to a large, densely populated area. This factor supports a finding that the Tuesday through Saturday crew is consistent with Section 202.2 of the Agreement.

The number of employees called to obtain a crew: The testimony of Mills and Graddy establishes that PG&E encountered substantial difficulty in assembling a crews to respond to Saturday emergencies, prior to implementation of the Tuesday through Saturday. The difficulties included having to call numerous employees because employees, including those on the 212 list, were either unwilling or unavailable to work on Saturdays. While there is no comparable data for 2000-2002, there is no reason to believe that it was easier to compile ad hoc crews during those years. This factor supports a finding that the Tuesday through Saturday crew is consistent with Section 202.2 of the Agreement.

The general consideration that an on-duty crew will usually, but not always, be able to arrive at the sight of the emergency in less time that a call-out crew. For the reasons stated above, this factor also supports a conclusion that the Tuesday through Saturday crew is consistent with Section 202.2 of the Agreement.

For all of the above reasons, the Board makes the following award:

AWARD

The establishment of a Tuesday through Saturday schedule for an electrical crew in the Fresno Service yard by the Company did not violate the collective bargaining agreement. The grievance is denied.

K. Silbert
Kenneth N. Silbert

10/22/03
Date

Margaret Short
Margaret Short

Concur / ~~Dissent~~

10/29/03
Date

Molly Williams
Molly Williams *ms*

Concur / ~~Dissent~~

10/29/03
Date

Sam A. Tamimi
Sam Tamimi

~~Concur~~ / Dissent

10-29-03
Date

JiKeh Ball
JiKeh Ball

~~Concur~~ / Dissent

10-29-03
Date