

ARBITRATION CASE 266

Mediated Settlement

HR Advisors

Business Representatives

Background

The parties added Exhibit XVI, Contracting Out, to the Physical Labor Agreement effective January 1, 2000. Since then, numerous grievances have been filed over its provisions. The issues raised in the grievances have included work jurisdiction, staffing numbers, and the utilization of optimum overtime. The parties settled many of the grievances, and referred the balance to arbitration (#266) for resolution. The parties met several times up to and including the date of the scheduled arbitration hearing in an attempt to resolve the grievances. At the January 20, 2005 Review Committee meeting, the parties agreed to a procedure to facilitate the Company's ability to meet its Exhibit XVI optimum overtime obligation prior to contracting bargaining unit work.

On January 24, 2005, the scheduled arbitration date, the parties met with the neutral arbitrator, who acted in the capacity of a mediator. In reviewing the grievances, the parties and neutral considered three factors:

- Whether or not local management communicated there would be no POT authorized
- Whether little or no POT was authorized

- Whether or not contractors were performing bargaining unit work in the local service area when no POT was authorized

Decision

The parties and neutral arbitrator agree to close or leave closed all Exhibit XVI grievances filed between October 1, 2003 and April 21, 2005, with the exception of Grievances 15457 (BM-04-03) and 15810.

The Review Committee will reissue the Recommended Prearranged Overtime Procedure in PRC 1118, amended to resolve this Arbitration Case 266. (Attached hereto.) The amended procedure provides guidelines for the equitable distribution of Prearranged Overtime (POT) by utilizing quarterly sign-ups for POT. Employees will be able to designate which days during the following quarter they would be available to work overtime. The sign-up sheets will only be used by Company as a planning tool and a factor in the determination of what work can be performed on straight time and overtime by employees.

Overtime will be authorized by management on an as needed basis; signing the list is not an entitlement to overtime on a specific day. The parties agree that optimum overtime is not a contractually specified number and varies depending on workload and resources.

Local headquarters have the option of continuing weekly sign-ups or whatever other administrative procedure is in place to equitably distribute POT.

However, whether there are procedures in place or not, all headquarters are required to comply with the overtime provisions of Sections 208.16, 308.12, and Exhibit XVI of the Physical Agreement. Records of POT offerings, declinations, and charged hours shall be kept for a minimum of 2 years, or longer, if a grievance is pending in their area regarding POT.

The parties and the neutral agreed to a transitional period, from the date of execution of Arb. 266 until June 30, 2005, to implement the Recommended Guidelines for Prearranged Overtime. Any grievances received during the transitional period are to be settled at the lowest possible step with the intent of correcting the problem on a forward-going basis.

A joint committee will be established for the purpose of more timely resolving grievances alleging violation of Exhibit XVI. Within one week of receiving such a grievance, an HR Advisor shall answer the grievance and forward a copy to the joint committee chairperson. In future grievances, IBEW will name those employees allegedly harmed and when the missed opportunity occurred.

Company will regularly communicate its business plans, specifically as it relates to contracting of work normally performed by IBEW Physical employees, to Union at the system wide and local levels.

The parties and neutral agreed to a confidential equity settlement for missed overtime opportunities which Company will pay to employees in Bakersfield, Jackson, Los Banos, and San Francisco. The Union shall provide a spreadsheet detailing the confidential payment allocation to select employees in these areas. The parties and neutral agree that the equity payments ordered herein are without prejudice or precedence.

K. Silbert Date 6/1/05

Kenneth Silbert – Neutral Arbitrator/Mediator

FOR COMPANY

FOR UNION

[Signature]
Date 6/10/05

[Signature] Date 6-5-07

Robert C. Lipscomb concur/dissent

Kenneth Ball concur/dissent

[Signature] Date 6/9/05

[Signature] Date 6-10-05

Margaret A. Short concur/dissent

Salim A. Tamimi concur/dissent

Chair of the Review Committee

Secretary of the Review Committee

RECOMMENDED PREARRANGED OVERTIME PROCEDURE

PRC 1118, et al dated May 23, 1989

AMENDED January 20, 2005 Per Arbitration Decision 266

Section 208.16(a) of the Physical Agreement states, in part, prearranged overtime work shall be distributed among employees in the "same classification and in the same location as equally as is practicable."

Section 308.12 states, in part, prearranged overtime shall be distributed among employees in the same classification and on the same job assignment as equally as is practicable."

Outlined below is a procedure for the equal distribution of prearranged overtime (POT) that is recommended by the -Review Committee.

1. Quarterly Sign-up (Template Attached):

On January 1 of each calendar year, accumulated overtime will be reduced to zero for all employees. This procedure will continue annually thereafter.

Not later than ten days prior to the beginning of each quarter, Company will post a sign-up list for employees to indicate a commitment to work POT during the next quarter. Volunteers may sign up by classification for prearranged overtime for specific dates during the following quarter.

The Quarterly Sign-up will be used by Company to aid in the planning of work to be performed by employees. The quarterly sign-up meets Company's obligation under Exhibit XVI to consider the utilization of optimum overtime prior to contracting work normally performed by bargaining unit employees.

Signing the list is not an assurance that overtime will be authorized.

Signing the list does not entitle the signer to overtime scheduled for that specific date.

2. Posting of List:

A. Subsection 208.16(a) of the Physical Agreement states, in part, "The Company will post accumulative prearranged overtime worked or credited as worked for each person each month". Such list shall include a column for actual hours worked, hours credited and hours assigned. Hours assigned shall include:

- 1) hours posted in a temporary classification per item 12, below; and
- 2) hours worked and/or charged while working in a temporary classification or headquarters.

The list will be updated and posted at least on a monthly basis. However, it is recommended that such list be updated and posted on a weekly basis.

B. Subsection 308.12 requires overtime to be equalized as practicable among employees at a work location. It is likely that employees may sign the quarterly list in a different location than where the overtime work is needed. If there are more overtime volunteers at the location than needed, preference shall go to those that signed the quarterly list with the least number of hours.

3. Balancing Within Schedules:

Employees who work schedules such as four day/ten hours or ten days on/four days off shall be combined with all other employees in the classifications) at the headquarters for the purposes of equalizing prearranged overtime, unless by written agreement at the local level other provisions are established.

For example, employees who work a ten-day on/four-day off schedule shall balance with other employees in the same classifications) at the headquarters who work a five-day on/two-day off schedule.

Similarly, employees who work a four-day/ten-hour Monday-Thursday schedule shall balance by classifications) with employees who work a four-day/ten-hour Tuesday-Friday schedule.

4. Scheduling

First consideration for scheduling an employee to work prearranged overtime will be given to the senior qualified volunteer with the lowest number of total accumulated prearranged overtime hours (the combination of all hours actually worked, credited and assigned).

Section 208.12 states, in part: "...Company shall make a good faith effort to notify the employee at least 24 hours in advance of the need to perform overtime on workdays or holidays." In the spirit of this language, prearranged overtime assignments should be made as far in advance as is reasonably possible, but must be made on the day that the greatest possible number of employee/volunteers in the required classification(s) are at work. To do otherwise will potentially create an out-of-balance situation.

For example, at a headquarters where some employees work a four-day/ten-hour Monday-Thursday schedule and others work a four-day/ten-hour Tuesday-Friday schedule, prearranged overtime is to be assigned for the following Saturday. If the assignment is offered on Monday to only those at work, the Tuesday-Friday work group would be excluded. The same situation would occur if the assignment were made on Friday. Making the assignment on Tuesday, Wednesday or Thursday would make the greatest number of employees available.

There will be situations where for operational reasons it is not possible to make prearranged overtime assignments while the greatest possible number of volunteers in the necessary classifications are at work. In that situation, Company and Union have agreed that, during the workdays of Monday through Friday and during the regular work hours of the employees being called, a supervisor will call at home those volunteers who have the least number of accumulated prearranged overtime hours and offer them the opportunity to work. Such call shall not be considered time worked and shall not result in the employee receiving pay. If the employee accepts such work assignment, it shall not be considered an emergency overtime callout pursuant to Subsection 208.2(c). If the employee is contacted but declines to work, such employee shall be credited with the number of hours worked by the employee who did work, in the same manner provided for in Item 5, below. If the employee is not contacted, such employee shall not be credited with the number of hours worked by the employee who did work.

5. Refusal of Overtime:

if an employee declines an opportunity to work prearranged overtime, or, after being scheduled to work prearranged overtime calls in sick, he/she will be credited with the number of hours actually worked by the employee who does work or the average number of hours worked by several employees, whichever is appropriate.

6. Removal from List:

A volunteer may remove his/her name from the list at any time. However, should such individual subsequently wish to be reinstated on the prearranged overtime list during the same calendar quarter, such employee shall initially be assigned one hour more than the maximum accrued in his/her classification. In other words, he/she would go to the bottom of the list.

7. New Employee on the List:

A new hire, a person coming back off of a leave of absence, or a person not previously volunteering for prearranged overtime during the current calendar year will initially be assigned one hour more than the maximum accrued in his/her classification. In other words, he/she will go to the bottom of the list.

8. Addition Due to Bidding, Etc.:

A person bidding into or demoted to a new classification and/or new headquarters will initially be assigned the mean accumulated hours for the new classification and/or headquarters. In other words, he/she would go to the middle of the list on the assumption that overtime had been equitably distributed at his/her previous headquarters. A person coming back off an extended sickness or from the compensation payroll (a period in excess of two weeks) will be assigned the mean accumulated hours worked in his/her classification during his/her absence and such hours will be added to his/her previous total of hours worked, charged and/or assigned.

9. Forced Prearranged Overtime:

In the event there are insufficient volunteers for a prearranged overtime assignment in the necessary classification(s), prior to requiring employees in the necessary classification(s) to work, such prearranged overtime assignment shall be offered to the qualified employee in the next lower classification who has the fewest number of prearranged overtime hours accumulated in the next lower classification. However, should that employee decline an offer to work prearranged overtime in the higher classification, such employee shall not be credited with the number of hours worked by another employee who does work.

Should a situation arise where there are no volunteers or the number of volunteers for prearranged overtime are insufficient for the work that must be performed, and no employees are available to be assigned on a temporary upgrade basis, Company shall assign the work to the employee(s) in the needed classification who has the least number of actual prearranged overtime worked, including both those employees who have signed the quarterly prearranged overtime list and those who have not signed the list. If a forced prearranged overtime situation is invoked, all employees in the needed classification(s) shall be charged with the number of hours worked by the employee(s) who did work, whether signed up on the quarterly prearranged overtime list or not.

In each such situation of forced prearranged overtime assignment, where more than one employee has the same number of actual pre-arranged overtime hours worked and one or more of these employees is to be required to work, the employee(s) with the least Service (as defined in Section 106.3 of the Agreement) shall be required to work. If an employee has been notified that he/she is to be required to work as provided for above and such employee can thereafter locate a volunteer in the necessary classification or a qualified employee in the next lower classification to work in his/her place, such employee shall be excused from working but will be charged with the hours worked by the employee who did work. The employee must notify the supervisor of the substitution not later than the end of regular work hours on the last work day preceding the prearranged overtime assignment.

10. Absence Due to Vacation, Sick, Etc.:

Subsections 208.16(b) and 308.12(b) provide that an employee scheduled to be on vacation or absent due to illness or injury shall not be scheduled to work prearranged overtime during the period of such absence. Each headquarters must establish a procedure to ensure that the person assigned responsibility for making prearranged overtime assignments is aware of absences due to vacation or sick leave. However, should a supervisor offer a prearranged overtime assignment to an employee scheduled to be absent the workday prior to the overtime assignment; the employee should so inform the supervisor.

11. Temporary Upgrades Out of the Bargaining Unit:

An employee temporarily assigned to a classification that is out of the bargaining unit on a payroll change tag shall not be eligible to volunteer for or work prearranged overtime in a bargaining unit classification. While temporarily assigned to such non-bargaining unit classification, prearranged overtime hours actually worked or overtime hours offered to but declined by such employee shall be posted and/or credited to the employee in his/her base (bargaining unit) classification.

12. Temporary Upgrades Within the Bargaining Unit:

Payroll Change Tag Upgrades: An employee temporarily upgraded to a bargaining unit classification on a payroll change tag shall be eligible to volunteer for and work prearranged overtime in the temporary classification but may not volunteer to work in the base classification. Upon entry to the temporary classification, such employee shall be assigned the mean hours of overtime of the temporary classification. He/she shall thereafter be considered for prearranged overtime work and will have hours worked, credited or assigned accumulated in the temporary classification.

At the conclusion of the period of temporary upgrade, the employee may have accumulated prearranged overtime hours that are posted as hours worked, hours credited, and hours assigned. All hours accumulated and posted as assigned hours in the temporary classification should be eliminated upon such employee's return to his/her base classification. Those remaining hours, accumulated and posted as hours worked and/or hours charged in the temporary classification shall be transferred and posted in the assigned hours column in the employee's base classification.

Daily Timecard Upgrade: An employee temporarily upgraded to a bargaining unit classification on a daily time card basis shall be eligible to volunteer for and work prearranged overtime in his/her base classification but shall not be eligible to volunteer to work in the temporary classification, unless such hours are contiguous with the regular work hours, except as provided for in Item 9 - Forced Prearranged Overtime.

13. Temporary Headquarters:

A. A Title 200 employee who temporarily reports to a headquarters other than his/her regular headquarters shall have overtime worked or credited posted as hours assigned in his/her base classification at their regular headquarters. However, these provisions shall not apply to employees in Steam Generation Department traveling maintenance classifications, for whom other provisions apply.

B. A Title 300 employee who is sent on special assignment pursuant to Subsection 301.9 shall have overtime worked or credited while on special assignment posted as hours assigned in his/her established classification and headquarters.

14. Penalty Payments Are Not Overtime

Hours for which the overtime rate is paid in the following situations shall not be posted on the accumulated prearranged overtime list:

- a) first four days of a Section 202.17 schedule change; first four days of a Section 302.7 schedule change
- b) short change pursuant to Section 208.17;
- c) relief assignments for which a relief employee has not been off for 12 hours before reporting to the next shift, pursuant to Section 208.20;
- d) time paid in the 48-hour week for employees working a 12-hour shift schedule, pursuant to Letter Agreement 86-89, the generic 12-hour shift agreement;
- e) overtime during regular work hours after earning a rest period pursuant to Subsection 208.11(f) and 308.14(f)
- f) any other payment for time worked at the overtime rate where such payment is considered to be penalty payments.

OVERTIME AVAILABILITY

To be completed by the Employee: _____

2005

To be completed by the Supervisor: _____

Name: _____

Classification: _____

Location: _____

1) Please indicate the type of work being considered for contracting

1) Please indicate in the current quarter (below), your availability to work pre-arranged overtime.

2) Please indicate the quarter in which the work needs to be performed:

| | | | |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
|---|---|---|---|

2) Once you have indicated that you are available for a pre-arranged overtime assignment, it is expected that you will be available to work.

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|-----|----|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 1st Qtr | JAN | CH | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| | DEC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Employee Signature Date

Supervisor Signature Date

= Saturday & Sunday

CH = Company Holiday