IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245,	]	
Union,	]	
and	]	
PACIFIC GAS & ELECTRIC COMPANY,	]	
Employer.	]	
Re: Grievance No. BM 06-01 RC 16748 Garage second shift hours	]	Arbitration Case No. 277

OPINION AND DECISION

OF

BOARD OF ARBITRATION

MARGARET SHORT, Company Member

JOHN MOFFETT, Company Member

SALIM "SAM" TAMIMI, Union Member

BOB CHOATE, Union Member

JOHN KAGEL, Chair

APPEARANCES:

For the Union: Sanford N. Nathan, Esq., Leonard Carder, McPherson, KS

For the Employer: Stacy Campos, Esq., PG&E, San Francisco, CA

ISSUE:

The issue arises out of the following facts: There are certain garages of the Company which up until August 2006 had a second shift of Title 200 Mechanics. Those Mechanics were scheduled at the worksite for eight hours and within that eight hours had one half-hour for lunch. The Union maintains that those Mechanics could be required to work during that lunch period. The Company asserts that they have not been required to do that. The number of Mechanics who had that eight-hour shift was plus or minus 73. Twenty-nine garages had been on that schedule, the number of employees on second shift ranging from 1 to 7. (Un. Ex. 1, Tr. 19-20)

There was another group of 14 garages which had a second shift and those Mechanics were present eight-and-a-half hours. They worked eight hours and had a one half-hour unpaid lunch period. There were 24 of those Mechanics, the number of employees on the second shift ranging from one to four. (Un. Ex. 1)

In August 2006, the Company mandated that all Mechanics on the second shift irrespective of where they were working were required to be present for eight-and-a-half hours, one half-hour of which would be an unpaid, non-working lunch period. In addition, 60 to 66 Mechanics were moved from the day shift to the second shift, spread among all garages. (Tr. 27) Day shift Title 200 Mechanics get a half hour unpaid lunch period over an eight-and-a-half hour shift. (Tr. 34)

According to a Company witness it is very rare at night to get a call to have to provide some kind of service, although it may happen. (Tr. 34, 49)

The issue is whether the Employer violated the Agreement by requiring Mechanics to be present for eight-and-a-half hours; and if so, what should be the remedy?

The remedy sought is a return to the eight-hour period of time to be at work at those garages where such second shift hours had been in effect and payment for half an hour pay. (Tr. 7-8)

ADDITIONAL FACTS:

The Mechanics involved in this case are Title 200 employees. At garages at which there were Mechanics who were required to be present for the eight-and-a-half hours there were also nine Title 300 employees who are Mobile Mechanics and who are not involved in this matter.

The Union seeks that those garages which had been second shift "eight-hour garages" be returned to that schedule (Tr. 20-21); if any new second shifts are established at garages where there currently are no second shifts, those shifts should be eight-and-one-half hour shifts. (Tr. 9) Both "eight-hour garages" and "eight-and-a-half hour garages" had their work hour schedules on the second shift for 40 years or more. (Tr. 21) Two garages had both eight-hour and eight-and-a-half hour Mechanics. (Tr. 30-31)

POSITION OF THE PARTIES:

Position of the Union:

That paragraph 107.1 of the Agreement protects employees' wage rates or a change in the condition of their employment to their disadvantage; that the 8-hour shift has became a binding past practice even if unwritten in the Agreement; that the Parties had consistently agreed to the practice for many years; that the Review Committee in 1974 ruled that the eight-hour shift was a protected right for employees in a garage where they had been working an eight-hour shift for a long time; that this ruling was again upheld in 2002; that even though the latter was "without prejudice" it reflects the Company's awareness of the practice; that there is no language in the Agreement inconsistent with the practice; that the Company in 2003 failed to bargain about the issue notwithstanding the IWC Order that went into effect in 2001; that past arbitration decisions support the Union's position; that the Agreement expressly specifies that some employees are granted an eight-hour day but does not do so for Fleet Employees does not mean the Parties intended to preclude fleet workers from having an 8-hour day; that the practice in question has been clear, consistent and unchanging at the identified garages for 50 years.

Position of the Company:

That Title 200 Mechanics are neither Shift nor Service employees under the Agreement, Sections 202.6 and 202.7, for those employees are contractually entitled to work an eight-hour shift with an on duty meal period and Fleet Mechanics do not appear in the enumerated lists of such employees; that Section 202.15 of the Agreement allows

the Company to establish a work schedule and hours other than a standard Monday through Friday 8 a.m. to 4:30 p.m. work schedule for several classifications, including garage employees; that the Company has the exclusive right to establish the work week and hours of work for General Service employees; that moving Title 200 employees to the second shift and clearly enforcing an eight-and-one-half work day with an unpaid 30 minute meal period is entirely consistent with the Agreement; that the Union cannot void Section 202.15 by insisting the Company cannot require those employees who worked an eight-hour shift to work eight-and-a-half hours with a 30 minute unpaid meal period without gaining that right in bargaining; that Section 202.15 trumps any past practice of a paid meal period; that a past practice cannot modify clear and unambiguous contract language; that the Company may have knowingly allowed the Title 200 fleet Mechanics to work an eight-hour shift does not negate its right to insist on future compliance with the Agreement; that those employees who went from days to the second shift are working the same amount of time as they did prior to their shift change; that the Parties are obliged to provide a 30 minute uninterrupted meal period because of California wage orders and court decisions; that employees who did not work in the eight-hour garages prior to the change in Company policy are not entitled to a remedy in this case.

AGREEMENT PROVISIONS:

"TITLE 107. MISCELLANEOUS

107.1 ANTI-ABROGATION CLAUSE

Company shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to the employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to the employee's disadvantage. The foregoing limitation shall not limit Company in making a change in a condition of employment if such change had been negotiated and agreed to by Company and Union. (Amended 1-1-91) ...

TITLE 202. HOURS ...

202.15 HOURS AND WORKWEEKS – GENERAL SERVICES

Nothing contained in this Agreement shall be construed to limit the right of the Company ...to establish hours of work other than as provided in Section 202.4 hereof, for employees assigned to work which cannot conveniently or practicably be performed at the times established by said Sections. The foregoing reservation shall be deemed to apply to such employees as ... shop and garage employees. (Amended 1-1-80) " (Jt. Ex. 1)

DISCUSSION:

Eight-hour Shift Garage Mechanics:

In Review Committee Decision File No. 1167-72-44 (1974) two employees on an eight-hour schedule were changed to an eight-and-a-half hour schedule with 30 minutes off for a meal, the Company changing the scheduled "for purposes of convenience in performing the work as specified in Section 202.15." All other employees worked an 4 p.m. to 12 p.m. schedule. The Committee stated:

"...The situation here deals with the change in hours of an established garage schedule of eight consecutive hours. The previous schedule had been in effect for a long time, and all concerned were aware of the deviation. This case is somewhat analogous to the 'Grandfather' exception common to Labor Agreement interpretations. The effect of that exception is to

> preserve the status quo of employees that would otherwise be adversely affected by a change to conform a practice to the current Labor Agreement provisions. The Review committee is of the opinion that this is a proper case to preserve the status quo by employment of a 'Grandfather' exception.
>
> Decision
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> In accordance with the foregoing discussion, the change of hours in this instance should have provided for eight continuous hours of work. The schedule will be changed accordingly and this case closed on that basis." (Jt. Ex. 2 p. 20)

Pre-Committee Nos. 12652 *et al.*, in 2002, acknowledged that most garages on a second shift scheduled employees for a consecutive eight hours. Vacancies there were filled beginning in 2001 by employees with eight-and-a-half hour schedules. The Union there maintained, among other contentions, that the 1974 Review Committee decision determined that all second shift employees at those garages should have eight hour shifts. The Company, among its other contentions, according to the Pre-Review Committee, "believes the exception applied to incumbents, which is why with these current grievances Company began changing the schedules as positions vacated and were filled anew. The Company stated the reason for the change was to increase productivity." The outcome of those grievances were determined "without prejudice to Company's position." (Jt. Ex. 2, pps. 27-28)

Given the Company's position in 2002 as a recognition of the interpretation of the Agreement as to incumbents, namely those occupying eight-hour shifts at the time the Company filled new schedules would not have their schedules changed, there is no basis to contest that view as to that same group of employees here. There was no applicable changed Agreement provision between 2002 and the schedule changes in this case nor

other reasons shown to change the Company's 2002 position as to how the Agreement should be applied. That position was maintained "without prejudice." It is noted that as to it that the IWC's order concerning non-duty meal periods was in effect in 2001. (Jt. Ex. 2, pps. 30 *et seq.*) Further, the Parties have agreed how it is to apply in the Company's operations. (Un. Ex. 2)

New Employees on Second Shift:

In August 2006 the Employer also assigned a number of day shift Mechanics to the second shift to garages where Mechanics had had eight-hour second shifts. These new Mechanics had had a eight-and-a-half hour schedule on the day shift. After an initial grievance, the Parties agreed the Agreement allowed the reassignment of those Mechanics. The Union, however, maintains that Section 107.1 of the Agreement requires that those newly-assigned second shift Mechanics be scheduled for eight-hour shifts as well in the applicable garages, given the long-standing practice of eight-hour schedules there.

Section 107.1 (b), to the extent it applies where the Company and Union have not agreed to changes in a condition of employment, prevents any change to the condition of employment of "employees." In the context of this case the newly-assigned Mechanics had not enjoyed an eight-hour shift on the shifts they had been assigned from so that their eight-and-a-half hour schedule on the second shift, irrespective of the work location or the inconvenience to them of going from a day to a second shift, was not a change of a condition of employment as to those employees, it being noted that the Agreement allowed their assignment from the day to the second shift in accordance with the

Agreement. In short, the Union's contention shows that Section 107.1 protects employees' working conditions, not those of the specific garage locations involved in this case.

Practice:

The Union maintains that as to the new second shift Mechanics that the practices of the garages they were assigned to were of such long standing that nonetheless those scheduling practices required eight-hour second shifts there. Not all garages had eight-hour shifts on the second shift. Garage Mechanics, other than those recognized by the Company as incumbents, specifically do not have eight hour shifts, unlike Service or Shift employees. (*Compare* Sections 202.6, 202.7 *with* Section 202.15) Section 202.15 would apply to the new Garage Mechanics as garage employees are specifically mentioned therein. Accordingly, as in past arbitration cases, a practice would give way to specific Agreement provisions unless, as in the case of the incumbent eight-hour Garage Mechanics, the Parties have mutually recognized how the Agreement is to be applied.

The Union contends that Section 202.15 is not implicated in this case because that Section does not specify meal periods, one way or the other. However, given its silence it does not prevent the Employer, once it determines convenience and productivity requires a second shift, from mandating the same schedule for employees moved from day shift to that shift. There is nothing in that provision which limits such discretion, and practice has been mixed including two garages which have had both eight and eight-and-a-half scheduled Mechanics on the second shift.

Accordingly, as determined above, the Agreement as interpreted by the Parties has limited the Company's application of that provision to not apply to incumbent eight-hour Title 200 Garage Mechanics on the second shift; but not to newly scheduled garage Mechanics on that shift, even if they were forced into that schedule by inverse seniority.

DECISION:

1. Those Title 200 Garage Mechanics who had been scheduled to eight-hour second shifts prior to August 2006 shall be forthwith returned to such shift schedules and be paid one-half hour at the overtime rate for each eight-and-a-half hour shift scheduled when they worked that schedule. The identification of such Mechanics and the computation of the pay due them is remanded to the Parties, the Board of Arbitration retaining jurisdiction in the event they cannot agree thereon.
2. The grievance is denied in all other respects.

Chairman, Neutral Member	Concur/Dissent Decision 1 Concur/Dissent Decision 2	7/22/08 date
Salim A. Lamiri Union Member	Concur/~~Dissent~~ Decision 1 ~~Concur~~/Dissent Decision 2	5-12-08 date
Union Member	Concur/Dissent Decision 1 Concur/Dissent Decision 2	5/14/08 date
Company Member	Concur/Dissent Decision 1 Concur/Dissent Decision 2	5/13/08 date
Company Member	Concur/Dissent Decision 1 Concur/Dissent Decision 2	5/12/08 date