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RECEIVED
LOCAL 1245, I.B.E.W.

November 18, 1955

Mr. M. A. Walters
Assistant Business Manager
Local 1245, I.B.E.W.
1918 Grove Street
Oakland 12, California

Dear Mert:

This is in reply to your request for our opinion with respect to the following questions:

1. Does the Agreement provide that an employee must accept overtime if instructed to work same?

2. Is there any other relief from forced overtime?

3. If the Agreement provides that an employee must accept overtime work, can he be excused for good and sufficient cause? If so, what would constitute good and sufficient cause? (Would schooling in connection with his job be so considered?)

4. Would there be any different application to emergency or prearranged conditions?

Reviewing the arbitration decisions dealing with this matter, it appears that the general rule is as follows:-- an employee is required to work reasonable overtime upon request by the employer unless:

1) the collective bargaining agreement provides to the contrary; or

2) there are certain extenuating circumstances; or

3) justification exists for the employee's refusal.

In connection with the first of these exceptions, it appears that the contract must specifically prohibit the employer from requesting the employee to work overtime, or specifically provide that the employee may refuse to work overtime. Such a provision is not contained in the collective bargaining agreement with P G & E. To the contrary, the Agreement provides for the payment of premium time when an employee is required to work overtime.

In the case of Apponaug Co. and Textile Workers of America, CIO (1954) 13 L.A. 231, the Arbitrator held that an employer was justified in disciplining an employee who refused to work overtime. The Union contended that the employee was not required to work overtime, but the Arbitrator, in overruling this contention, stated that since the contract specifically provided for time and one-half for work performed after a certain number of hours in any one day, it was clear the parties assumed that overtime would not be an unusual situation. Other Arbitrators have similarly referred to premium pay provisions as a recognition by the parties that overtime work may be required.

With respect to the second exception, viz., extenuating circumstances, the following examples give some indication of the thinking of Arbitrators on this question:

In the case of Bethlehem Steel Company and United Steel Workers of America, CIO, (1955) 24 L.A. 163, an Arbitrator held that an employer was not justified in imposing a 2-day lay-off against an employee for his refusal to work overtime, since the overtime work was not reasonable under the circumstances because the amount of overtime demanded was a full 8-hour shift. The Arbitrator noted that this was extremely large and points out that there was no showing of an emergency or absolute necessity for the employee's services in this regard since his work was of an unskilled nature which could have been performed by almost anyone.

In the case of Wagner Malleable Iron Co. and United Automobile Workers (1955), 24 L.A. 526, the Arbitrator noted that the general rule almost uniformly held is that refusal to work overtime is ground for discipline if there is nothing in the contract which either limits the hours of work or gives the employees the option of refusing overtime. He went on to find, however, that in the particular case involved there were certain extenuating circumstances which excused the employee from his refusal to work overtime. These circumstances were that the overtime work was not being equitably distributed and that the refusal by the employee to work the overtime was due to certain racial tensions which existed in the plant.

With respect to the third exception, viz., justification on the part of the employee, in the main the cases appear to hold that:

1) Illness is a proper justification (Deere & Co., 11, L.A. 561);

2) Inadequate notice by the employer to the employee is a proper justification (Texas Co., 14 L.A. 146);

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3) Conditions under which the employee has to work the overtime are improper is a justification.

Reviewing the foregoing, it would appear to be clear that the circumstances must be of an unusual nature to justify the employee's refusal to work the overtime. The overwhelming number of cases sustain disciplinary action on the part of the employer for refusal by the employee to work the overtime. For your information, I refer to the following cases so holding:

<u>Huron, La. Portland Cement</u>, 9 L.A. 735
<u>Dorch & Company</u>, 13 L.A. 231
<u>Carnegie Illinois Steel Company</u>, 12 L.A. 810
<u>Ford Motor Company</u>, 11 L.A. 1158
<u>U.S. Rubber Co.</u>, 11 L.A. 305

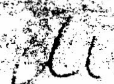
With the foregoing in mind, it would appear that with respect to your first question, the employee is required to work the overtime if the request is made sufficiently in advance and if the amount of overtime required is not unreasonable.

With respect to your second question, it would appear that an employee can be excused for good and sufficient cause from overtime work, but on the basis of the cases, schooling, if not agreed to in advance by the Company, would not constitute good and sufficient cause for a refusal to work overtime.

With respect to your fourth question, it would appear that the application made will be different to emergency or prearranged conditions. If the situation is one in which the employer requires unreasonable overtime either in terms of frequency or length of time, an Arbitrator would probably hold that an employee would be justified in refusing same. He would be less likely to so hold if it were an emergency condition.

With kindest personal regards,

Sincerely yours,



Albert Brundage

AB:br