IN ARBITRATION PROCEEDINGS PURSUANT TO THE

COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of the Controversy between INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNION NO. 1245, and PACIFIC GAS AND ELECTRIC COMPANY, Involving Tuesday-Saturday Gas T&D Crews.	Arbitration Case No. 56 OPINION BY ROBERT E. BURNS CHAIRMAN

BEFORE ARBITRATION BOARD:

ROBERT E. BURNS, Esq., 155 Montgomery Street, San Francisco, California 94104; Chairman.

LAWRENCE N. FOSS, Assistant Business Manager, IBEW, Local No. 1245; Member appointed by the Union.

DARREL L. MITCHELL, Business Representative, IBEW, Local No. 1245; Member appointed by the Union.

J. A. FAIRCHILD, Manager, Gas Distribution Department, Gas Operations, Pacific Gas and Electric Company; Member appointed by the Company.

I. W. BONBRIGHT, Manager, Industrial Relations, Pacific Gas and Electric Company; Member appointed by the Company.

APPEARANCES:

ON BEHALF OF THE UNION:

PETER D. NUSSBAUM, Esq., For NEYHART, ANDERSON & FREITAS, 100 Bush Street, Suite 2600, San Francisco, California 94104.

APPEARANCES CONTINUED:

ON BEHALF OF THE COMPANY:

L. V. BROWN, Esq., Industrial Relations Department, Pacific Gas and Electric Company, 245 Market Street, San Francisco, California 94105.

The Parties and the Issues

Pacific Gas and Electric Company (the "company") and International Brotherhood of Electrical Workers, Local Union No. 1245 (the "union") are parties to a collective bargaining agreement applying to operation, maintenance and construction employees effective January 1, 1974 (the "agreement").

Pursuant to the agreement hearings were held in San Francisco on February 5, 6, and 11, 1975 and on March 19, 20, 21, 1975.

The parties have stipulated that the case is properly before the Arbitration Board and that the steps of the grievance procedure have been exhausted. The parties did not agree upon a statement of the issues involved in the dispute and have delegated to the Arbitration Board the authority to state the issue or issues within the scope of the case as presented by the parties. The union states the issues as follows:

> "Did the company violate the collective bargaining agreement by changing the basic workweek of certain of its gas T&D employees from Monday through Friday to Tuesday through Saturday; and, if so, what shall the remedy be?"

and that the foregoing issue involves two subissues;

"1. Absent extraordinary circumstances, does section 202.2 of the agreement require the company to provide the union, prior to instituting a Tuesday through Saturday workweek with sufficient information from which the union can make a reasoned judgment as to whether the proposed change is necessary for the 'rendition of adequate public utilities service' and whether the number of employees to be placed on such schedule is being 'kept at a minimum' consistent with such adequate service?

"2. Did the company, prior to instituting a Tuesday through Saturday work schedule for gas T&D crews in December 1974, provide the union with sufficient information so that a reasoned judgment could be made as to whether that change was justified under section 202.2?"

The company submits that the issues to be decided by the Arbitration Board are as follows:

"1. Did the company violate the provisions of section 202.2 of the agreement and the supplemental understandings, by adding a Tuesday-Saturday alternate regular workweek for a single crew at 17 of its headquarters.

"2. Has the union lived up to its obligations under the agreement?"

The Arbitration Board has determined that the decision

and award may be given within the scope of the issues submitted by the parties.

At the conclusion of the hearings, the case was submitted to the Arbitration Board upon the filing of briefs by the parties. The briefs were filed with the Board on June 10, 1975. The Board met in executive session on July 18, 1975.

Provisions of the Agreement

Section 202.2 of the agreement provides:

> "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."

Title 212 of the agreement is entitled "Emergency Duty" and provides in part:

> "212.1(a) The provisions of this Title shall be interpreted and applied in a manner consistent with the parties' purpose and intent in negotiating a voluntary on-call system for emergency duty contained herein, namely that when employees volunteer for emergency duty they are making a definite commitment to be readily available for call-out; and in turn, Company will call the volunteer with the least amount of recorded emergency overtime hours. When there are insufficient volunteers available for emergency duty, Company will continue to require employees to report for work on an emergency basis.
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> "(b) Employees shall not be required to be on-call, however, Company with Union's cooperation shall establish a call-out procedure for employees who volunteer to be readily available for duty in case of emergency. Assignments of emergency work shall be distributed and rotated as equitably as practicable among qualified employees in the same classification and in the same location who have volunteered to be available. The time during which an employee is available for duty

shall not be considered as hours worked.

"212.2(a) Company will prepare a list at each headquarters of those employees who volunteer for emergency work. In calling employees to respond to emergency situations involving immediate hazard to life or property, Company may give preferential consideration to employees whose residences are located within 30 minutes' automotive travel time, under ordinary travel conditions, from their headquarters. This list will start on January 1 and continue until June 30 at which time a new voluntary call-out list will be prepared to run from July 1 to December 31. On January 1 and July 1, the employee with the lowest accumulated overtime will have his overtime reduced to zero; and all others in the corresponding classification will have their overtime reduced by a like amount. This procedure is to be continued semi-annually thereafter.

"(b) In administering Subsection (a) above, Company shall establish a sign-up procedure whereby a form will be posted in each headquarters on Monday of each week soliciting voluntary sign-up overtime for the period of the following Friday at 4:30 p.m. through the next Friday at 8:00 a.m. The list should provide for sign-ups by classification. It is to be removed on Tuesday evening and reposted Wednesday afternoon showing the names of those who have volunteered by classification, with the employees having the least overtime accrued at the head of the list. Until quitting time on Thursday afternoon, employees whose names appear on the list will have the opportunity to remove themselves from the call-out roster. This open period will allow employees to reevaluate their commitment after they determine where they stand in the call-out sequence. Employees who do not take the opportunity to remove their names from the roster will be expected to meet the commitments of availability as described earlier in this interpretation."

Title 7 of the agreement, entitled "Management of Company" provides:

"7.1 The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control

operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement."

Title 3, entitled "Continuity of Service" provides in part:

"3.1 Company is engaged in rendering public utility services to the public, and Union and Company recognize that there is an obligation on each party for the continuous rendition and availability of such services.

"3.2 The duties performed by employees of Company as part of their employment pertain to and are essential to the operation of a public utility and the welfare of the public dependent hereon. During the term of this Agreement employees shall not partially or totally abstain from the performance of their duties for Company. Union shall not call upon or authorize employees individually or collectively to engage in such activities and shall make a reasonable effort under the circumstances to dissuade employees from engaging in such activities, and Company shall not cause any lockout.

"3.3 Employees who are members of Union shall perform loyal and efficient work and service, and shall use their influence and best offorts to protect the properties of Company and its service to the public, and shall cooperate in promoting and advancing the welfare of Company and in preserving the continuity of its service to the public at all times.

"3.4 Company and Union shall cooperate in promoting harmony and efficiency among Company employees.

"3.5 Consistent with the provisions of this Title which pertain to the continuity of service to the public, service employees who fill job vacancies on and after July 1, 1974, may be required to reside within the community in which the Company headquarters to which they regularly report is located, unless for good cause such requirement is waived or varied by joint agreement of Union and Company as to any such individual appointment. Such residential requirement shall be determined solely on the basis of obligations relating to the con-

tinuous rendition and availability of Company service to the public. The waiver provided for above shall be reduced to writing, the conditions thereof set forth, and signed by the Company's Manager of Industrial Relations and Unions' Business Manager.

"For the purposes of this section, an employee will be considered to be residing in the 'community' if his residence is located no more than 30 minutes automotive travel time, under ordinary travel conditions, from the employee's headquarters."

Review of the Evidence

On October 2, 1974 the company by letter informed the union of its intention to establish Tuesday through Saturday workweeks for certain gas transmission and distribution (T&D) employees in eighteen districts (later reduced to seventeen districts) of nine of its divisions in accordance with section 202.2 of the agreement. After further communications and a meeting, the company informed the union that it would institute the Tuesday through Saturday workweeks in the first week of December. The union filed grievances and on December 6, 1974 obtained a temporary restraining order from the United States District Court, Northern District of California, enjoining the institution of the Tuesday through Saturday workweeks for gas T&D employees pending arbitration of the grievance and dispute. This case is the result of the dispute.

The company is an investor-owned utility serving 94,000 square miles in 48 counties of Northern and Central California. The company's operations are divided in 13 geographic divisions between the Oregon border on the north and the Tehachapi Mountains on the south and extend from the coast to the Nevada border. The company distributes natural gas in the area which it serves and

operates and maintains 30,110 miles of gas service mains, of which transmission lines account for 4,621 miles while distribution lines (the direct tie with the customer) cover about 25,489 miles. The transmission and distribution of natural gas is a 24-hour, seven-day operation. The crews which install and maintain these lines are called "gas T&D crews" (gas transmission and distribution crews). Gas T&D crews which respond to emergency situations usually are comprised of a foreman and one or two other employees from the classifications of fieldman, helper or fitter.

The company also employs gas servicemen who are the first link in the continuous rendition of adequate service to the public. The work schedules of gas servicemen normally cover seven days of the week with eight-hour regular work schedules spread over 16 or, in some cases, 24 hours of the day during which service problems most frequently occur in the particular areas. Gas servicemen establish and discontinue gas service, service appliances and perform other related work. They are mobile and equipped to take immediate response to a trouble call. On arrival at the site of the problem, the gas servicemen can sometimes stop the gas flow where the riser valve has been broken by plugging the steel pipe or squeezing the plastic pipe where the breaks are exposed. The serviceman's responsibility is normally to make the condition safe until the gas T&D crew arrives, or in some cases, restore service where the problem is within his capabilities and the tools he has on his truck.

When the gas leak is beyond the capability of the service-

man, gas T&D crews are available for immediate response during regular hours of work (8 a.m. to 4:30 p.m., or 8 a.m. to 5 p.m.), Monday through Friday. Such crews are notified of a fractured main or broken or leaking distribution line when the serviceman calls in to describe what he has found and the type of work which may be required.

The procedure for responding to an emergency is generally as follows: a call regarding a gas leak or other problem with gas service is received by the company dispatcher who notifies a serviceman and dispatches him to the site of the problem. Servicemen, as indicated above, are not gas T&D crewmen, and are on duty at all times. Servicemen work alone and generally have their trucks with them, even when off duty at home. After the serviceman arrives at the scene he takes whatever emergency action he can to shut off the flow of gas and make the area safe. If the serviceman believes that the problem requires a gas T&D crew, he notifies the dispatcher who in turn notifies the supervisor. The supervisor proceeds to the site and verifies that a crew is needed. At times the emergency is such that the supervisor will notify the gas T&D crew to proceed to the site of the emergency at once.

If an emergency occurs between 8 a.m. and 4:30 p.m., Monday through Friday, a gas T&D crew is dispatched directly to the site of the emergency. Except for those headquarters where a Tuesday through Saturday gas T&D crew had been previously established, the last being at Colma, without objection by the union during April 1974, the dispatcher or supervisor will telephone

employees who have volunteered to be on call, or if sufficient employees have volunteered or the volunteers are not available, will telephone other employees and request them to respond to the emergency. When sufficient employees are located to form the crew, they travel from their homes or wherever they have been located to the service center (headquarters) where they load the necessary tools and material on a truck and proceed to the emergency site. Several periods between the first notice of the emergency and the restoration of service to customers have been called "response time". The time interval between the first notification of the emergency and the time that the crew is assembled and ready to leave the service center is designated in this opinion as "response time".

The company's experience has been that Saturday is a common workday both for construction people and home mechanics. Damage to transmission and distribution lines resulting from use of heavy equipment and damage to distribution lines and connections by home mechanics working in their gardens frequently occur on Saturdays. If a gas T&D crew is on duty, the crew ordinarily can be dispatched immediately to the site of the emergency. If it is necessary as in the case of the 17 headquarters involved here to call and assemble a crew, there is the delay in reaching the employees and assembling them at the service center so that they may be dispatched to the site of the emergency. Jack F. Senteney, Field Foreman - Gas, of the Peninsula District, where a Tuesday-Saturday gas T&D crew is regularly on duty, testified that with

nine T&D crews an overall average of assembling a crew at the service center ready to be dispatched to the emergency site is 45 minutes. Mr. Senteney testified that on Saturday, March 23, 1974, the regularly assigned Peninsula District Gas T&D crew responded to a reported leak in a residential gas service line at 343 Barton St., Hillsborough. The crew was performing a routine work assignment on that Saturday. Upon receiving the call, the crew preceded immediately to the emergency site, arrived there about five minutes before an on-call crew could have been contacted and assembled at either the San Mateo or Belmont headquarters.

Frank M. Macklin, Kern District, San Joaquin Division, Gas Superintendent, testified concerning the emergency gas leak which occurred on Saturday, December 21, 1974 in an alley at El Tejon Avenue, Bakersfield. The break involved gas blowing in a residential district and was a serious threat to the safety of persons and property. It was necessary on that date to utilize the call-out procedures of the agreement. Two of the bargaining unit employees out of 13 crews had volunteered on the Title 212 list for emergency call-out on that weekend. The gas leak required a foreman-welder and neither of the volunteers was available. It was necessary for the company supervisor to get two qualified employees including a welder to respond. One hour and fifteen minutes elapsed before the T&D crew arrived at the site and stopped the escaping gas. In Macklin's opinion 57 minutes of that time was attributable to getting the crew to the site to begin work. If there had been a Saturday crew, the crew could have

arrived at the emergency site in about 20 minutes and proceeded to shut off the gas and make the necessary repairs, and return customers to service.

Another example submitted by the company involved a gas leak in Chico. No volunteers had signed up to work on that weekend and the dispatcher found it necessary to go down the list of employees to obtain a crew. Nineteen employees were called for two responses and it was one hour and twenty minutes before they assembled at the yard to make ready to proceed to the emergency site.

In those headquarters where Tuesday through Saturday T&D crews exist, the crews spend a substantial portion of their time doing routine work which would otherwise be done on a weekday. Sometimes these Saturday crews are unable to respond to an emergency immediately because it is necessary for them to make safe the area in which they are working. Occasionally the Saturday crew is unable to discontinue this work and respond. There is no method of anticipating the point at which an emergency will occur and in some districts where a Saturday crew is working, the crew may be a substantial distance from the emergency site.

The company has had under consideration for several years the establishment of Saturday gas T&D crews. The division gas superintendents have reported to John A. Fairchild, Manager of Gas Distribution and Gas Operations, a lengthening trend of the time required to get on-call crews to the work site on Saturdays. Reports to the company's gas control for 1971 through 1973 showed

an overall increase in the number of emergency situations occurring between 8 a.m. and 4 p.m. on Saturdays. Division gas superintendents were contacted to determine whether Saturday crew coverage should be instituted. In general the 17 headquarters are in the more densely populated areas. Response time problems were increasing because of the difficulty of locating employees on Saturdays and reaching those employees who were willing to respond. There was also pressure in recent years through response time investigations and published cirtical reports of the National Transportation Safety Board through the Office of Pipeline Safety. Reports and recommendations in connection with other public utilities (but not PG&E) stated that the utility should have been able to handle the emergency in less time and that the particular utility was too slow in responding to the emergency. These reports were notices of a national pressure to shorten the interval between the report of an emergency and the time a crew arrived at the site.

Response problems were the subject of negotiations in 1973 and 1974 leading to the current agreement. Title 212 of the agreement relating to emergency duty was substantially revised by the company and the union to meet the problems with respect to response time. The revised title provided for a list at each headquarters of those employees who volunteered for emergency work whereby a form would be posted in each headquarters on Monday of each week soliciting voluntary sign-up for overtime for the period of the following Friday at 4:30 p.m. through the next Friday at 8 a.m. Five of the 17 headquarters involved follow the new system.

In the Kern District, the foreman and most of the journeymen withdrew from the voluntary weekly sign-ups. No volunteers have signed up in the Merced District.

The superintendent of the San Joaquin Division recommended that Tuesday through Saturday crews be established in three districts of that division. The district gas superintendent in Kern had less problems getting crews prior to the effective date of the agreement in July 1974. In April 1974 the proposed change was discussed with the crews involved, the local union business representative and John Wilder, an assistant business manager of the union. The commencement of the Tuesday through Saturday crew was delayed at the suggestion of Mr. Wilder because negotiations for the current agreement were still continuing and it was considered that the proposed Tuesday through Saturday crews might be a negative factor in the voting on the new agreement by the union members. The union did not indicate to the company that it considered the proposed change as being justified.

The company survey included setting up plans for the establishment of Tuesday through Saturday crews in the several district headquarters. In three of them there were sufficient volunteers to set up a static crew arrangement. In others rotating schedules were established among the crews at each headquarters. The range was from a minimum of once every third week to once every 37th week, the latter now being in effect in Oakland. Twelve headquarters adopted the rotational system. Three would require each employee to work on Saturday once every fifth month; two once every fourth month; three once every third month; and four once every

month to two months.

Pursuant to its plan to institute the Tuesday through Saturday work schedules, the company under date of October 2, 1974 sent to the union the following letter:

> "During the recently concluded General Negotiations, Company discussed the need of regularly scheduling Gas Department crews to provide Saturday coverage. The factors indicating the need for Saturday work are the increasing public and governmental criticism of gas utilities during the past several years because of fatalities, injuries, and property damage resulting from gas-related incidents. This growing pressure has become particularly noticeable since the Natural Gas Pipeline Safety Act, adopted by Congress in 1968. The Office of Pipeline Safety within the Department of Transportation is responsible for administering the Federal regulations and in the state of California does so through the CPUC by means of their General Order 112-C. This General Order was amended several times since 1968 to incorporate the more restrictive regulatory requirements of the Office of Pipeline Safety. This order allows utilities to rely on their experience in meeting the performance requirements and the general safety intent of the Federal standards. The Office of Pipeline Safety has established its rules as a mimimum requirement for the design, construction, maintenance and operation of facilities to safeguard life and limb, health, property, public welfare and to provide adequate service. The intent of the regulations is that all work performed shall meet or exceed prescribed safety standards.
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> "Reports of gas incidents involving fatalities, injuries, property, damage, outages, and those that attract public concern and receive news coverage must be reported to the CPUC and the OPS in writing within a specified time limit. A portion of the information on these reports requires that the Company state the amount of time it takes to make the condition safe and the amount of time that was required to completely stop the escape of gas. Every reportable incident is audited by a CPUC staff engineer. During 1973, we had 155 incidents of sufficient seriousness to require reporting. Major incidents such as those involving fatalities or major damage are further investigated by the National Transportation Safety Board. The Board's activities in the area involving natural gas have increased significantly recently. There have been many public hearings

and investigations by the Board during the past six years. The outcome has been revealed publicly in formal reports. Recommendations made to the OPS and to utility companies involved in the incidents direct them to respond to what the NTSB determines were shortcomings in their operations. In almost every report utilities have been criticized for their slow action in responding to emergencies. The utilities in general cannot remain impassive to NTSB recommendations, particularly in the matter of delayed response because behind them lies the threat of restrictive legislative action on the part of Congress.

"Because of the above considerations, we have our response time record per instance and on the average it is not good when compared to other utilities in the nation. As a consequence, prusuant to Title 202.2 of the Physical Agreement, Company intends to schedule crews throughout the system on a Tuesday through Saturday work week starting November 3, 1974. The number of crews involved in this scheduling are outlined below:" (Thereafter, followed a listing of 2 and 3 man crews in 18 districts, together with a listing of Saturday crews existing in certain districts. The proposal for a crew in the Petaluma District (North Bay Division) was later withdrawn).

It will be noted that there were three principal reasons for instituting the Tuesday through Saturday schedules: (1) Increasing public and governmental criticism regarding injuries and damage caused by gas-related incidents and growing pressure from the government; (2) 155 incidents of sufficient seriousness to require reporting to the Public Utilities Commission or Office of Pipeline Safety during the year 1973; and (3) The company's response time record on the average was not good when compared to other utilities in the nation.

The union took the position that the October 2 letter did not give it sufficient information to make a reasoned judgment as to whether the proposed changes were necessary for the rendition of

adequate public service as provided by section 202.2 of the agreement. The response time problem had been discussed by the parties during negotiations for the current agreement, but the union asserted that it had never been provided with specific response time figures. The negotiations for the current agreement with respect to Tuesday-Saturday crews had resulted in an amendment to section 3.5 of the agreement requiring certain service employees to live within 30 minutes travel time by car from their headquarters, an amendment to overtime provisions in Title 208 of the agreement for the purpose of encouraging employees to respond to emergencies and a revision of Title 212 of the agreement redrafting emergency call-out provisions which has been referred to above. The union believed these provisions would solve the problems of Saturday gas T&D crews. The company believed that Saturday response time in the named districts was not consistent with adequate public service.

In response to the October 2, 1974 letter the union requested a meeting to discuss the questions which were raised by the letter. The meeting was held on October 16, 1974. At the meeting the union did not take the position that its consent and agreement was necessary before the company could institute Tuesday through Saturday schedules, but that it was entitled to learn the company's justification for the changes which were being proposed. The union requested a breakdown as to the times and locations of the 155 incidents mentioned in the October 2 letter; the times, locations and nature of other emergencies; and information as to response time and response time problems in the districts where

crews were proposed. The company agreed that it would supply to the union whatever information it had and would delay the institution of the new schedules pending union review of the information. The company also advised the union that in addition it intended to establish a Tuesday through Saturday schedule in the Coast District of the San Jose Division.

On November 18, 1974 the union received from the company a letter setting forth the number of emergency call-outs for the years 1972 and 1973. That letter reads in part as follows:

> "In our meeting of October 16, 1974 with you concerning the establishment of Tuesday-Saturday workweeks pursuant to Section 202.2 of the Physical Agreement, Company indicated a number of reasons why it is becoming imperative to provide more coverage by Gas T&D personnel during the weekend.
>
> "Reasons for the establishment of such a workweek relate to Company's concern with growing governmental pressures relative to gas utilities handling of emergency situations and the Company's own concern with the adequacy of our response to emergency situations. These statistics are attached.
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> "As indicated in our letter of October 2, 1974 to you on the subject of the Tuesday-Saturday workweek, our response time per instance is on the average not good. Accordingly, pursuant to Section 202.2 of the Physical Agreement, Gas T&D crews will be regularly scheduled on a Tuesday-Saturday workweek commencing with the week of December 1, 1974. Headquarters and numbers of crews involved in this change were outlined in the October 2, 1974 letter and in our meeting of October 16, 1974."

The statistics enclosed with the letter listed emergency call-outs in the several districts during 1972 and 1973 on Saturdays, Sundays and Holidays and weekdays. There were 59 reportable incidents in 1973 which did not occur on Saturdays.

The union believed that the November 14 letter was an inadequate response to its questions since the emergency call-outs on Sundays and after 5 p.m. on Saturdays or weekdays were in excess of the emergency call-outs on Saturdays between 8 a.m. and 5 p.m. The union concluded that the Tuesday through Saturday schedules posed by the company were based on economic rather than service considerations.

The union contacted the company and informed it that the November 14 letter was not an adequate response. The company thereafter advised the union that the proposed change in schedules would be placed into effect during the first week of December 1974. Grievances were filed by the union and the union requested that the changes in work schedules be postponed until the grievances could be resolved. The company refused to accede to this request.

The union then filed an action and an application for a temporary restraining order in the United States District Court, Northern District of California on November 27, 1974. The union's reason for filing this action and requesting injunctive relief was because the proposed change in work schedules was system wide and would disrupt the lives of many employees and because if the changes were placed into effect, it would be extremely difficult, if not impossible, for an arbitrator later to compute monetary damages to which the employees would be entitled. A temporary restraining order was issued by the District Court on December 6, 1974. The company later agreed that the restraining order would remain in effect until the dispute between the parties was settled

through arbitration.

In the past the company has furnished the union with information prior to establishing a Tuesday through Saturday workweek. In June 1973 the company was contemplating the establishment of a Tuesday through Saturday workweek for underground electric department employees in the East Bay Division. Upon learning of this matter, the union requested justification and was informed by the company that the crews were needed to perform certain maintenance work which could not be performed during the week. The union was given a six-month list of overtime that had been done on Saturdays because the work could not be done Monday through Friday. Based on this information the union concluded that there was a need for such crews. A grievance was filed on the ground that the number of crews being scheduled was excessive. The company requested that the Tuesday through Saturday crews be kept on for a six-month trial period so that records could be kept. Records were provided to the union which finally agreed that the crews were justified.

In 1973 the company determined to place electric department employees in the North Bay Division on a Tuesday through Saturday workweek. The union requested information to justify this change in schedule. The information was provided prior to the proposed schedule being placed into effect. It was thereafter concluded that the change was not justified and it was never placed into effect.

One of the company's industrial relations representatives testified that the company should make a prior showing to the union

as a matter of good labor-management relations. The manager of industrial relations stated to Mr. Fairchild in July 1974 that the institution of the Tuesday through Saturday schedules for gas T&D employees was of a nature that required discussion with the union before the divisions take action.

Evidence concerning particular facts in the several headquarters and other evidentiary matters will be discussed in the opinion.

Positions of the Parties

The Union

The union contends that absent extraordinary circumstances section 202.2 of the agreement requires the company upon request by the union to provide the union, prior to instituting a Tuesday through Saturday workweek, with sufficient information from which a reasoned judgment can be made as to whether the proposed change in work schedules is necessary for the "rendition of adequate public service" and whether the number of employees to be placed on such schedules is being "kept at a minimum" consistent with such adequate service.

The company must provide the union with all the information it has available at the time it proposes to make a change pursuant to section 202.2. If the union believes that the information provided is not sufficient for it to make a reasoned judgment as to the propriety of the proposed change under section 202.2, it may then request the company to supply additional information and to give the union a reasonable period of time to study and discuss

that information with the company before the change is put into effect. If the company fails to provide such additional information, and if the union takes the dispute to arbitration, then the company must justify the Tuesday through Saturday work schedules it has instituted, and, in attempting to do so can rely only on the information it provided to the union prior to instituting those schedules.

The union further contends that the company is barred in this case from relying on any information it did not give to the union prior to December 1, 1974. The information provided as of that date did not afford the union an opportunity to make a reasoned judgment as to the changes proposed by the company and does not justify those changes. Moreover, according to the union, the additional information provided at the hearing does not justify the changes. Therefore, the arbitrator should find that the company violated the agreement by instituting Tuesday through Saturday schedules that went into effect during the week of December 1, 1974 and should order the company to make appropriate back pay awards to the employees who were affected; and further, the arbitrator should hold that the proposed Tuesday through Saturday schedules may only be put into effect through agreement with the union pursuant to section 202.16(b) of the agreement.

The injunctive relief as found by the federal court was appropriate because there was no immediate need for instituting the workweek changes and had they been implemented prior to arbitration, the union's members would have been irreparably harmed

without the likelihood of eventually being adequately compensated. Nothing in the collective bargaining agreement prevents the union from seeking injunctive relief and while reluctant to go to court, the union will do so when it is necessary to protect its members from irreparable harm.

The agreement, particularly section 107.1, prevents the company from unilaterally changing working conditions of any employee to his disadvantage unless such change has been negotiated and agreed to by the union. Section 202.2 gives the company a limited right in limited circumstances to alter the basic Monday through Friday workweek subject to proof of the conditions provided therein.

Titles 3, 8 and 102 of the agreement (102 is grievance procedure) show that the parties have recognized the need for continuous operations uninterrupted by work stoppages, the need for loyal and efficient work and the best efforts of the employees to protect the company's properties, to advance its welfare and to serve the public. It would be inconsistent with these provisions if the company did not have a duty under section 202.2 to provide the union prior to the institution of a Tuesday through Saturday work schedule with all the information it has to justify such a change.

In the present case the information provided to the union prior to December 1, 1974 was not sufficient for the union to make a reasoned judgment under section 202.2.

The union did not violate the agreement by seeking and

obtaining a temporary restraining order in Federal Court. Nothing in the agreement prevents the union from exercising its rights under federal labor law to obtain injunctive relief in appropriate cases.

The Company

The evidence in this case must be examined in the light of the company's two-fold obligations to the public and its customers: first, to properly alleviate hazards to life and property; and secondly, to provide "continuous service" within the terms of the agreement negotiated with the union.

The union would limit the application of section 202.2 to gas leak emergencies. The union appears to believe that the customer who is without heat or gas can wait until the company finds employees who won't be inconvenienced and are willing to work on Saturday. Title 3 of the agreement emphasizes that the company is engaged in rendering public utility service to the public. Both the union and company recognize that there is an obligation on each party for the continuous rendition and availability of such services and good faith response to this obligation is essential to the operation of a public utility and the welfare of the public dependent thereon.

Emergencies caused by line breaks as well as gas service interruptions are unpredictable as to time or place. The response time of a crew in the field is necessarily going to be better than the response time of a crew, the members of which must be summoned from their homes or elsewhere to report to a service center.

The revised provisions of Title 212 have not been effec-

tive and have not solved the response time and service problems which the company urged upon the union in the negotiations for the current agreement.

The Board must consider whether the union realistically needed more information of the type requested after announcing it was seeking a restraining order. In short, the union's position was unchangeable despite the facts.

The union was totally committed to forcing the Tuesday through Saturday scheduling issue to arbitration because of the tense internal union political situation.

The company clearly acted within the framework of the agreement in a way consistent with past practice. An adequate forum for resolution of the dispute exists through the grievance procedures. The union chose to disregard its duty to uphold the agreement by proceeding to court instead of to arbitration. The company has the initial responsibility to determine what must be done to satisfy the company's responsibility to provide continuous service, as recognized by section 7.1 of the agreement. The union and company have spelled out explicitly the rights and obligations of the parties with respect to this responsibility. The company has the right to place into effect the Tuesday through Saturday schedule as provided in section 202.2 and if the union grieves, then the company must come forward and show that the work is for the purpose set forth in that section; that is, to provide adequate service to the public and secondly, only enough employees are to be assigned to the Saturday schedule to satisfy that purpose.

The company acted well within the confines of its responsibilities since the Tuesday through Saturday work schedules in 17 headquarters will provide quicker, dependable, emergency coverage and faster restoration of service and is therefore reasonably necessary in the face of the present uncertainties of obtaining immediate responses of on-call volunteers on Saturday. Moreover, the number of employees assigned to Saturday work was kept to a minimum necessary to fulfill the purpose of the schedule.

The company is not contractually required to give prior notice that it is establishing a Tuesday through Saturday work schedule or furnish information to the union at that time to justify the schedule before it is put into effect. If the schedule is challenged through the grievance procedures, the company has a contractual, as well as a statutory, duty to furnish the union such relevant information that can reasonably be made available.

The Board must find that the company has more than met its contractual obligations to foster an harmonious and cooperative relationship with the union as provided by section 3.4 by (1) giving prior notice and affording the union ample opportunity to meet and discuss Saturday schedules before putting them into effect; (2) procuring additional information requested by the union to assist them in their explanations to the affected employees; and (3) delaying the implementation of the schedules three times at the union's request, the first in May and twice after the October 2 notification.

The heart of the Title 102 procedure is the added provi-

sion for fact finding. This procedure was by-passed by the union.

Although much time and effort went into the final solution of the 1961 to 1965 hours cases, the consultative approach to grievance settling highlights the significant gains to both union and company when the negotiated provisions are followed. The same is true with respect to the Tuesday through Saturday controversy in the East Bay Electric Division.

The union's action in obtaining a temporary restraining order was in direct contravention of the agreement and the intent of the parties in adopting the agreement. The union inaccurately portrayed to the court an erroneous need for a temporary restraining order and all of this could have been avoided by the union by resort to ordinary care and the grievance procedures.

The Arbitration Board must order that the union make restitution to the company of all moneys out of pocket as a result of having to revert to the on-call method of handling Saturday emergencies between the hours of 8 a.m. and 4:30 p.m., that is restitution of one-third of all wages paid to employees who worked at the overtime rate on any such day and times beginning with December 9, 1974 and continuing until the issuance of the decision herein.

The Board is further requested to find that the union has not responsibly fulfilled the affirmative duties imposed by the agreement, letters of understanding and past practice.

The Board should also recognize the damage to customers for time delays in the restoration of service as caused by the union's temporary restraining order and the Board should award a

suitable amount of money payable by the union to a charitable institution selected by the Board so as to clearly impress upon the union and its members that while they hold the power to frustrate good faith bargaining relationships there is an economic consequence that runs with their concerted pressure to violate any provision of the agreement.

Discussion and Opinion

Section 202.2 establishes the basic workweek 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." The section does not say "necessary for the rendition of adequate public utility service, but "a minimum consistent with the rendition of adequate public utility service."

There is evidence that in the past before instituting a change in weekly work schedules, the company has furnished the union the information which it had and explained the necessity of placing in effect the Tuesday through Saturday workweek. Mr. Fairchild in his letter of July 19, 1974 to Mr. Bonbright, the manager of industrial relations, stated that Bonbright felt that the change in scheduling was "of a nature that required discussion with the union before the divisions take action." Section 202.2 on its face does not require prior consultation, but the practice appears to have been that the company did consult with the union pursuant to its recognized contractual obligations as generally

set forth in Title 3 to cooperate in promoting harmony and efficiency among company employees and to maintain the continuous rendition and availability of public utility services. The union says that the company was required, upon request, to provide the union prior to instituting the Tuesday-Saturday workweek with sufficient information from which a "reasoned judgment" could be made as to whether the proposed change was necessary for the rendition of adequate public utility service and whether the number of employees to be placed on such schedules was being kept at a minimum consistent with such adequate service. There is no method suggested for determining the amount and type of information which would be sufficient for a reasoned judgment. The facts in this case illustrate the practical difficulties of meeting the union request. The information furnished by the company prior to December 1, 1974 was insufficient in the union's opinion to constitute the basis for a reasoned judgment. The information which was furnished was substantially all, if not all, the information the company had at that time. During the hearing the union objected to the admission in evidence of an extensive survey which the company prepared in preparation for the arbitration. That information was collected from district headquarters over a period of weeks and is complied in an elaborate set of tables of 80 large sheets containing entries which are estimated to exceed 30,000 under the following headings: date, job number, location, problem, first man and time on emergency site, number of men called, number responding, classifications, response time (time between first call and assembly of crew at the

service center), work done, job time, and Public Utilities Commission or Department of Transportation report (Company Exhibit No. 15). Company records are not kept in form or content to produce the foregoing information. Many thousand employee hours were taken to produce the information contained in the exhibit. The data will be discussed later in this opinion.

In response to this document and other evidence offered by the company, M. A. Walters, the assistant business manager of the union, in an analysis of the company exhibit testified that Saturday crews may be justified in the Sacramento, Mission and Marin Districts, although the union would like further data and an opportunity to discuss the data with the company. He found that in other districts Saturday crews did not appear to be justified either because adequate information was not available or because the information revealed a small number of call-outs, good response times, good availability of crew members, or all of these factors. If the later acquired information and data had been submitted to the union prior to December 1, 1974, it may be concluded that the union response would have been substantially the same as it was through Mr. Walters at the arbitration hearing. In other words, there would not have been sufficient information upon which the union could base a reasoned judgment with respect to any of the districts since even in the case of the Sacramento, Mission and Marin Districts, the union would require further data and an opportunity to discuss the data with the company.

Because of past practice which has been incorporated in

the agreement by the on-going relationship of the parties, the company had an obligation with respect to institution of Tuesday through Saturday workweeks under section 202.2 to furnish the union the data and information which it had at the time it notified the union of its intention to place the Tuesday-Saturday workweek into effect. The company did not have the obligation to furnish the union sufficient information to make a "reasoned judgment" because there does not appear to be any method of measuring or ascertaining the amount of information and data which would be sufficient in order to arrive at such a reasoned judgment. The extensive information which was furnished during the arbitration was not sufficient in the union's opinion to constitute the basis of a reasoned judgment except, possibly for three districts, and even there more information was desirable. If the company does not have the information and if to furnish the information it would be necessary for the company to make extensive studies and surveys, there could be no end to demands for further information upon which to base a "reasoned judgment."

After furnishing the union with the information and data which it has, the company has the right to institute the basic workweek of Tuesday through Saturday provided it meets the requirements of section 202.2. This right flows from Title 7 of the agreement vesting in the company exclusively the direction of its working forces subject to the provisions of the agreement. There is nothing in section 202.2 which prohibits the company from instituting the Tuesday through Saturday workweek except that such a

workweek "shall be kept at a minimum consistent with the rendition of adequate public service and that employees may be assigned to such workweek in rotation." The company makes the first determination that the Tuesday through Saturday basic workweek is consistent with the rendition of adequate public service. Past practice and the relations between the parties require the company to notify the union of its intention and to furnish the union with the data available to the company at that time. If the union believes that the information is not sufficient upon which to base a reasoned judgment, the union may always, as it did in this case, request additional information which the company will presumably furnish to the union if it is reasonably available to the company. If the union continues to be dissatisfied, then its remedy is to be found in Title 102 of the agreement. Section 102.6(a) specifically provides that grievances concerning interpretation or application of any of the terms of the agreement shall be determined by the grievance procedure established in Title 102.

There is nothing in the agreement which has been brought to the attention of the Board which required the company to obtain the consent of the union prior to placing into effect the Tuesday through Saturday workweek provided for in section 202.2. Section 202.16(a) provides that the regular hours of work may be changed by the company at the request or direction of public authorities provided that before any such change is made the company shall discuss it with the union. Section 202.16(b) provides that hours of work and the basic workweek may also be changed by agreement between

the company and the union. Section 202.16 is not applicable to the facts in this case.

After the company places into effect the Tuesday through Saturday workweek pursuant to section 202.2 it is incumbent upon the company to establish that the number of employees assigned to such a workweek has been "kept at a minimum consistent with the rendition of adequate public utility service." If the parties do not agree during the course of the grievance procedures, as provided in Title 102, that the company was justified in establishing the Tuesday through Saturday workweek as provided by section 202.2, the workweek may be rescinded by the company and appropriate overtime payments may be made, or the union may withdraw its opposition in whole or in part, or the dispute may be submitted in whole or in part to arbitration. The agreement, and particularly Title 102 with its elaborate and detailed grievance procedures, contemplates that a dispute over the application of section 202.2 to a particular set of facts shall be disposed of in this manner.

The United States District Court did not come to the foregoing conclusion when it issued its temporary restraining order. The court determined that the status quo should be maintained pending the resolution of the dispute by the arbitration procedures of the agreement. The agreement provides that grievances relating to the interpretation or application of any of the terms of the agreement shall be determined by the grievance proceudre established by the agreement in Title 102. The agreement does not provide for a mandatory stay when the company determines that it has the right

or obligation under section 202.2 to institute the Tuesday through Saturday workweek.

The Boys Markets Inc. v. Retail Clerks Union, 398 U.S. 235 (1970) held that anti-injunction provisions of the Norris-La Guardia Act did not preclude a federal district court from enjoining a strike in breach of a no-strike obligation in an agreement providing for binding arbitration of the grievance concerning which the strike was called. The court found that the plaintiff by reason of the strike had suffered irreparable injury and would continue to suffer irreparable injury and quoted from the dissent in Sinclair Refining Co. v. Atkinson, 370 U.S. 195, principles which the court adopted:

> "When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity - whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance."

The principles of Boys Markets are: (1) Whether an injunction would be warranted under ordinary principles of equity; (2) whether breaches have been threatened and will continue; (3) whether they will cause irreparable injury; and (4) whether the union (or the employees) will suffer more from the denial of an injunction than will the company from its issuance.

Steelworkers v. Blaw-Knox Foundry, 319 F. Supp. 636, concerned the reduction in the size of a crew at an open hearth furnace. The court held that the reduction in the number of employees threatened the health and safety of the crews because the smaller number of men in the crew might be unable to control "runouts" of molten metal and the proposed reduction in crew size should be enjoined until the issue was finally determined by arbitration.

Teamsters Union v. Armour, 294 F. Supp. 168, concerned the closing of a plant and seniority up to 15 years of employees affected by the closing. The court held that the loss of seniority would be an irreparable loss and if the union prevailed it would be extremely difficult to award relief because loss of seniority was not measurable in monetary terms.

Amalgamated Motor Coach Employees v. Eastern Greyhound Lines, 225 F. Supp. 28, involved the moving of repair and maintenance operations from Washington, D.C. to Chicago. The court issued its injunction pending arbitration of the dispute whether the employer had the right to do so under the collective bargaining agreement because the balance of convenience weighed heavily in favor of the union since the employees would have to move to Chicago. If the employer lost the arbitration, it would have to return its operations to Washington and the employees would also have to return.

Mailers Union No. 6 v. New York News (New York Supreme Court, 1971), 76 LRRM 2619, involved an agreement which provided

that pending arbitration "conditions existing prior to the dispute shall be maintained." A change in the workweek was a prior existing condition and the court issued its restraining order against changing the workweek pending arbitration because of the specific provision in the agreement.

Teamsters Local 17 v. Ringsby Truck Lines, 77 LRRM 2928 (Colo.Dist.Ct., 1971). All parties were signatory to National Master Freight Agreement and Western States Pick-Up Agreement. The latter agreement provided that a Tuesday-Saturday workweek could be instituted only with consent of the union involved or when the appropriate committee had issued its final decision authorizing such change in workweek schedule. The injunction issued because the union had not consented and the committee had not issued its final decision.

Neither Mailers Union nor Teamster Local 17 are applicable here since the agreement does not provide for maintenance of conditions pending arbitration nor does it require prior approval of the union or arbitration before a change in workweek is instituted under section 202.2. The other cases present examples of clear, irreparable injury to the plaintiffs with little or no damage to the defendants.

The union claims that its case falls within the Boys Markets principles in that irreparable damage would have been done to the employees if the Tuesday-Saturday workweek had been instituted before a final determination was made by arbitration. Undoubtedly the computation of overtime would have been difficult

and there may have been hazy areas where such computations would not have been completely accurate. Such situations sometimes arise in computing back pay or in computing lost pay or lost overtime in seniority grievances. In the past the company and the union have settled complex overtime disputes. Difficulties in making computations do not necessarily constitute irreparable damage.

The volunteers in three headquarters and the rotational schemes in 12 headquarters ranging from one Saturday every fifth month to once every month to two months are evidence tending to negate the extent of inconvenience or interference with the lives of the employees. Most occupations involve limitations of one kind or another on the private segments of the lives of persons who work. The inconvenience here is small, if not minimal. Moreover, work-week schedules involve no threat to the health or safety of employees and they are not irreversible or similar to the moving of a plant or employees from one city to another or the destruction of seniority rights.

The company has the right to call out a gas T&D crew on Saturday and pay them overtime. The work may be refused, but in the case of a serious and dangerous break in a gas transmission or distribution line, the refusal of qualified employees to accept an overtime call on a Saturday during which a serious break occurred would create a condition contrary to the general purposes and intent of the parties as expressed in Title 8, in section 202.2 and in other provisions of the agreement.

The damages to employees by instituting the Tuesday-

Saturday workweek were not irreparable. Any breach of section 202.2 by the company could be compensated. The changes were not irreversible. It cannot be said that the union or employees would suffer from the denial of the injunction. The agreement here contemplates that in its management the company will institute the changes in the workweek which it believes consistent with the rendition of public utility service and the union may use the grievance procedures if it objects to the company action.

Section 107.1 provides that the company may not unilaterally change the conditions of employment of any employee to his disadvantage. A workweek of Monday through Friday is a condition of employment and a change to Tuesday through Saturday without the employees' consent may be a change to the employees' disadvantage. But section 202.2 is a specific provision defining basic workweeks and specifically provides that Tuesday through Saturday is an alternative basic workweek, but that the basic workweek of Tuesday through Saturday shall be kept at a minimum consistent with the rendition of adequate public utility service. The specific controls the general. Proof of compliance with those conditions of section 202.2 is sufficient for the establishment of the Tuesday through Saturday workweek and is not prohibited by the general provision of section 107.1 relating to working conditions.

The union urges that if the company believes it has given the union sufficient information to evaluate the proposed changes, it need do no more and may institute the changes, but if the union then takes the matter to arbitration, the company should not be

allowed to present additional information. Moreover, the union says that if the company truly believes that it has given the union sufficient information before instituting the change, the company should be ready to stand on that information alone at the arbitration and to allow otherwise would mean that the arbitrator is entitled to more information than the union. The foregoing proposition is an engaging one and has some basis in arbitrations of disciplinary actions where the employer, except in special circumstances, is not permitted to rely on grounds of which the employer was unaware and on which the employer did not rely at the disciplinary action. But the situation here is substantially different because the ultimate question is whether the facts are within the provisions of section 202.2.

The union further urges that if the company had conducted the survey which it did conduct after December 1 in preparation for the arbitration, the arbitration might have proved unnecessary or at least much narrower in scope and shorter in duration and that some of the changes proposed might have been instituted six months ago. The substitution of arbitration for the procedures of discussion and negotiation is not desirable and could be destructive of or harmful to the healthy and cooperative relationship that the company and union have worked hard to achieve. The relatively small number of arbitrations which the parties have had during the course of their collective bargaining relationship is witness to their continuing efforts to solve their problems at the outset before they reach the Board of Arbitration. The desirability of

negotiation and settlement within the framework of the agreement and the collective bargaining relationships of the parties cannot be gainsaid, but it does not follow that if a controversy such as the one here before the Board is not adjusted or settled the company or the union is limited to the production of evidence which it has submitted to the other party before the filing of the grievance. The ultimate facts are whether the company has the right to institute a basic workweek for gas T&D crews of Tuesday through Saturday in certain districts in accordance with section 202.2 of the agreement.

The posture of this case is such that it is necessary to examine the evidence with respect to each of the districts. The union contends that with the possible exception of the Sacramento, Mission and Marin Districts, the facts as produced both before and after December 1974 do not comply with the requirements of section 202.2. The union has referred to the opinion of the gas superintendent in the San Joaquin Division that the capability of the districts in that division to respond to emergencies with supervisory service and/or T&D personnel has in his opinion been excellent. In the North Bay Division the division gas superintendent informed Mr. Fairchild that a Saturday schedule was needed only in Marin, but in its October 2 letter the company proposed Saturday crews not only in Marin, but also in the Santa Rosa, Petaluma and Napa and Vallejo Districts, the proposal with respect to the Petaluma District ultimately being withdrawn. The union also points to evidence that an on-duty crew is not necessarily able to respond

more quickly to an emergency than an on-call crew and in some instances the company was required to call out a crew to handle an emergency because the on-duty Saturday crew was assigned to routine work which could not be abandoned.

The survey conducted by the company after December 1974 is incorporated in company exhibit No. 15. The union contends that the document is inadequate and does not establish what it purports to establish: first, exhibit 15 includes incidents which were not emergencies or did not occur on Saturdays; second, the exhibit contains estimates of time which it took the T&D crews to assemble at the service centers and of the number of employees who had to be called to obtain these crews; third, where accurate records of response times were kept, those response times were in the company's own estimation good; and finally, Mr. Fairchild admitted that based on exhibit 15 he would want more information before stating that Saturday crews were necessary in some of the districts.

The company asserts that the union is playing a "numbers game" as the determining factor in deciding for or against a Saturday crew, and that such a contention is completely without basis because even a neophyte in the business would be held to know that in the distribution of natural gas emergencies caused by line breaks of any degree of hazardness as well as gas service interruptions are unpredictable as to either time or place. As expressed by Mr. Bonbright, the overall position of the company is that the crew in the field ready to go on a few minutes' notice obviously will respond to an emergency in a shorter time than even a crew

which has been called out at home under the best possible circumstances and that circumstances are not always the "best possible" because of the refusal of the employees in some districts to sign the voluntary call-out list and the unavailability or refusal of employees to accept a call-out. Moreover, the company's decision was made at a time when both union and company acknowledge that employees were not making an adequate response to critical emergencies such as the El Tejon incident despite the revised provisions of Title 212.

Emergencies do occur after 4:30 p.m. on Saturdays and on Sundays. The company says that emergencies during these times are less likely because there is less construction activity and fewer home projects. Even if emergencies were as frequent during night time hours and on Sundays, there is no provision in the agreement for a Wednesday-Sunday workweek and regular shifts are limited to 8 a.m. to 5 p.m. by section 202.4 despite the fact that gas service must be maintained 24 hours a day, seven days a week. "Adequate public service" is a matter of degree and is not perfect public service although that is the objective. The fact that Sunday crews might be desirable in some districts does not make Saturday crews inconsistent with the rendition of adequate public service.

The initial responsibility to determine what must be done to satisfy the company's responsibility to provide continuous service is upon the company and this proposition is recognized in section 7.1 of the agreement. If the union grieves the action of the company, then the company must come forward and show that the

work is within the provisions of section 202.2.

The union contends that economic considerations entered the decision of the company to establish Tuesday-Saturday workweeks since overtime payments would be reduced. There is evidence that econimic considerations did enter the decision. Economic considerations are not mentioned in section 202.2. The motives of the company or the union should not enter the decision whether Tuesday-Saturday crews are appropriate in one or more districts pursuant to section 202.2.

The Arbitration Board, being faced as it is with the opposed interpretations of section 202.2 and of the facts, deems it necessary to examine the evidence with respect to emergencies in each of the districts and to make a determination with respect to each of those districts whether the requirements of 202.2 have been met. Admittedly, the results will not be as satisfactory to either party as the results would be if the parties had been able to resolve the dispute.

The test under section 202.2 then is whether the Tuesday-Saturday workweek is "consistent with the rendition of adequate public service" and whether the number of employees has been kept to a minimum. Since only one crew is proposed for each district and the rotation of crews substantially reduces the frequency of service, the "minimum" requirement has been met under section 202.2 because a crew of two or three is the smallest unit. The serviceman is capable of stopping some leaks, but a T&D crew is normally necessary to restore service. Adequate public service involves

the prompt stopping of leaks and the return of gas service to the customers with the knowledge that there is no way to anticipate the locations of the leaks or breaks in transmission and distribution lines, the severity of the breaks, the nature or extent of the hazards, the number of customers involved, and in some cases, the size of the crews and the skills required for the particular job. Some leaks may be stopped by the serviceman who usually is first on the scene. In such cases additional delay in calling out a T&D crew may not be inconsistent with the rendition of adequate public service. An additional half hour or one hour without gas service because of possible delay in calling out a crew is not an unreasonable burden on the customer. In other cases where the serviceman cannot stop the gas flow and the break is in a populated area, every minute adds to the hazards to life and property and adequate public service demands the presence of a qualified crew at the emergency site as soon as possible. The Board has examined the evidence, having in mind that there is no exact formula which will mathmatically or easily answer the questions posed. Factors considered (but not in order of their importance) are the number of emergencies in the district, response time (from the time the 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 men called to obtain a crew, and the general consideration that an on-duty crew will usually, but not always, be able to arrive at the site of the emergency in less time than a call-out crew.

The Districts Involved

DeSabla Division. There was one emergency in 1973 and seven emergencies in 1974, two of which were on the same day. Response time ranged from 20 minutes to an hour and 55 minutes. In one emergency it was necessary to call 19 men to obtain three men. Four of the emergencies in 1974 were in Paradise which is one-half hour from Chico where the service center is located. In one incident where response time was an hour and 20 minutes, a car had hit a meter and it is reasonable to conclude that the serviceman could have stopped the gas flow. A crew would serve once every six weeks. The evidence is not sufficient to establish that a Tuesday to Saturday crew is appropriate under section 202.2 in this district.

Stockton Division - Delta District. There were eight emergency call-outs in 1973 and 12 in 1974. Response times ranged from 30 minutes to one hour and 30 minutes. The responses of the men called were not good. In over half of the emergencies seven to 16 men were called before crews were obtained. The district includes Stockton. A crew would serve once every 10 weeks. This district presents a borderline case, but the poor responses and long response times in a district including the City of Stockton establishes that the Tuesday through Saturday crew is justified under section 202.2.

Stanislaus District. In 1973 there were nine emergencies, eight in Modesto where the service center is located. In 1974 there were eight emergencies, four of them being in Modesto and the balance in Turlock, Riverbank and Oakdale. Response time ranged from

10 to 40 minutes. The median average being about 20 minutes. The response to the call-out was good except in three or four instances. The crews were the first men on the emergency site. During 1973 the breaks were in plastic lines. There is no indication why a serviceman could not have handled the leaks in the first instance. In any event the response times of the crews were very good. A crew would serve once every five weeks. The evidence, therefore, does not establish that a Tuesday to Saturday crew is consistent with the rendition of adequate public service in this district.

Sacramento Division - Sacramento District. There were 18 call-outs in 1973 and 14 in 1974. Response time ranged from 10 minutes to an hour and 45 minutes. Crews instead of servicemen were dispatched to stop the flow in one-half inch plastic pipes in a number of instances. The call-out experience was not good. As high as 12 men being called in order to obtain a three-man crew. There appears to be a relationship between a high response time and the number of men called. A great majority of emergencies were in Sacramento, which is a built up, densely populated area. If rotated, a crew would serve once every 18 weeks. This district is close to the borderline but the totality of the evidence indicates that a Tuesday-Saturday crew is proper under section 202.2.

Solano District. There were seven emergencies in 1973 and nine in 1974. Response time was good ranging from ten to 30 minutes to assemble at the service center and the response of the men called was also good. If rotated, a crew would serve every four weeks. It does not appear that a Tuesday-Saturday crew is

required under section 202.2 in this district.

Coast Valleys Division - Salinas District. In 1973 there was one emergency in King City and one in Salinas and four in Hollister. In 1974 there was one emergency in Salinas and one in Hollister. Response time in Hollister was 15 to 20 minutes in all cases except one for 15 to 35 minutes. Response time in Salinas was 30 minutes. Response by crew members in Hollister was excellent. A crew would serve every seven weeks. The evidence does not establish that a Tuesday through Saturday crew is required in the Salinas District by section 202.2.

Monterey District. There were nine emergencies in 1973 and three in 1974. Response time was 25 minutes and the response of the men called was good. A crew would serve every eight weeks. The evidence does not establish that a Tuesday-Saturday work crew is required in this district under section 202.2.

Drum Division - Placer District. There were nine emergencies in 1973 and 15 in 1974. In 1973 there were three emergencies in Auburn, two in Roseville and two each in Citrus Heights and Rocklin. It is about 20 miles from Auburn to Roseville and Citrus Heights. A crew could be called out in each of those cities. The responses of the men called were not good, ranging up to 19 men called in several instances to obtain a crew of one, but response time in 1973 and 1974 were good on the whole, averaging from 20 to 30 minutes with one being one hour. The evidence does not establish that a Tuesday to Saturday crew is required by section 202.2 in this district.

San Joaquin Division - Yosemite District. There were five emergencies in 1973 and two in 1974. Response time was fair ranging from 30 to 50 minutes, but the response of the men called was very good. The evidence does not establish that the Tuesday to Saturday workweek is required under section 202.2 in this district.

Kern District. The data supplied is not complete. Call-out times for the thirteen 1973 emergencies and six emergencies in 1974 were estimated at one hour. There is the incident at El Tejon Avenue. Employees failed to sign up for voluntary overtime under the Title 212 procedures. There is insufficient evidence to establish that a Tuesday-Saturday crew is required under section 202.2.

Fresno District. There were six emergencies in 1973 and 14 in 1974. Response times were 30 minutes and except in two instances the responses of the men called were good. The evidence does not establish that a Tuesday-Saturday crew is required under section 202.2.

North Bay Division - Santa Rosa District. There were 21 emergencies in 1973 and four in 1974. Response times are not given except in four instances. There is no indication of the number of men called to obtain crews of one to three, most of them being two-man crews. There is insufficient evidence to establish that a Tuesday-Saturday crew is required under section 202.2.

Vallejo - Napa District. There were five emergencies in 1973 and 14 in 1974. Response time is not provided with respect to some of the emergencies and response times which are listed, except for one instance, appeared to be in the range of 30 minutes of less.

The response of the men to call-out was not good in some instances. Because of what appears to be reasonable response time, the evidence does not establish that a Tuesday-Saturday crew is required under section 202.2 in this district.

Marin District. There were 42 emergencies in 1973 and 41 in 1974. Response times are fair and the responses of the men called, so far as shown, appear to be good. Some of the information as to location of the emergencies is not supplied. Under rotation a crew would serve about once every 22 weeks. The number of emergencies listed, many of them being gas leaks, indicates that a Tuesday-Saturday crew in Marin District is required under section 202.2.

East Bay Division - Mission District. There were 82 emergencies in 100 Saturdays during 1973 and 1974. Response time averages were 42 minutes. There are headquarters in this district in Livermore, Fremont and Hayward. At Fremont crews assembled in 46 minutes. At Livermore in 36 minutes average. There was a wider range of response times at the Hayward headquarters. Under rotation a crew would serve once every 22 weeks. The number of emergencies and the population density in areas of this district indicate that a Tuesday through Saturday crew is appropriate under section 202.2.

Bay District. Nineteen emergencies are listed for 1973 and 12 for 1974. The information is not complete concerning response times or the number of men called in order to fill the crews. There are wide ranges in the response times shown from 30

minutes to one hour and 15 minutes. Richmond is a densely populated, built up area with many industrial establishments. East Bay Central which adjoins has Tuesday to Saturday crews. San Francisco and adjoining Colma have Saturday crews, indicating the importance of such crews in densely populated areas. On rotation a crew is expected to serve once every 23 weeks. Under all the circumstances it appears that a Tuesday through Saturday crew is required in this district under section 202.2.

Diablo District. This district consists of headquarters at Antioch, Concord and Walnut Creek. There were 166 emergencies in a two-year period. No response time is shown for any headquarters in this district; nor is there data concerning the number of men called in order to fill the crews. The number of emergencies in the two-year period, during which there were 104 Saturdays, suggests that Tuesday through Saturday crews are appropriate, but the evidence is not sufficient at this time to find that such crews are required by section 202.2.

Tuesday-Saturday crews are required under section 202.2 in five of the above-named districts.

The Remedies

Title 7 of the agreement vests in the company the management of the business and the direction of the working forces. By virtue of Title 7 and section 202.2, the company initially had the right to establish Tuesday-Saturday workweeks subject to the conditions of section 202.2 and the grievance procedures of Title 102 and also subject to the obligation to pay additional compensation

in the event it was found that Tuesday-Saturday crews were not proper under section 202.2 in particular districts.

Both the company and the union have available to them the remedies to maintain the status quo under the principles of Boys Markets, but the resort to such remedies in court does not relieve the applicant from its obligations under the agreement, particularly Title 7 and Title 102 thereof, or from the consequences of an arbitration award under Title 102. The union here acted in good faith in applying for the temporary restraining order, but in doing so it undertook the risk that it might not prevail in the arbitration and that it might be found under section 202.2 and pursuant to Title 102 that Tuesday-Saturday workweeks were proper in one or more of the districts.

There is before the Board the issue involving additional costs to the company arising from overtime paid to crews called out to handle emergencies in those districts in which Tuesday to Saturday crews have been held to be proper under section 202.2. The proper procedures and forum for the determination of those costs are established by Title 102 of the agreement.

The company here is entitled to reimbursement by the union for the difference between the overtime paid to call-out crews in the five districts and the wages which would have been paid to Saturday crews working at straight time during the periods the call-out crews were paid while working on the particular emergency jobs on Saturdays between 8 a.m. and 4:30 p.m.

The employees who worked on Tuesday to Saturday crews

during December before the injunctive stay in those districts where it is held Tuesday-Saturday crews are not required under section 202.2 are entitled to overtime pay on Saturday and straight time pay for Monday.

This case will be remanded to the parties for them to make whatever adjustments which they may deem to be advisable or proper, the parties having in mind that theirs is an on-going relationship which will continue to require their cooperation and implementation of the provisions of the agreement.

The Board agrees that the parties are far more able, experienced, and knowledgeable in the rendition of service to the public, the conduct of the business, and in the administration of the agreement than the Board and thus should decide on the appropriate adjustments as the result of this decision and award.

Award

Pursuant to the agreement, the stipulations of the parties and the evidence, the following award is made:

1. The company violated the agreement in adding Tuesday-Saturday regular workweeks in: Stockton Division - Stanislaus District; Sacramento Division - Solano District; Coast Valleys Division - Salinas District, and Monterey District; Drum Division - Placer District; San Joaquin Division - Yosemite District, Kern District, and Fresno District; North Bay Division - Santa Rosa District and Vallejo - Napa District; DeSabla Division; East Bay Division - Diablo District.

2. The company did not violate the agreement in adding

Tuesday-Saturday regular workweeks in: Stockton Division - Delta District; Sacramento Division - Sacramento District; North Bay Division - Marin District; East Bay Division - Mission District and Bay District.

3. When the union applied to the court for a temporary restraining order to maintain the status quo and to prevent the institution of the Tuesday to Saturday workweeks pending arbitration, it undertook the risk that the Arbitration Board might decide that Tuesday to Saturday workweeks were proper under section 202.2 in one or more districts and that it might be held responsible for costs incurred by the company by reason of the stay issued by the court.

4. This award does not hold that either the union or the company has waived any rights under the law with respect to resort to court proceedings.

5. This award does hold that in this case by virtue of Title 7 and section 202.2 the company had the right initially to institute Tuesday to Saturday workweeks in December 1974 subject to the company's obligation to pay additional compensation to the Tuesday to Saturday crews in the event it was found pursuant to the procedures of Title 102 that Tuesday to Saturday workweeks were not proper under section 202.2 in one or more of the districts.

6. The matter of the payments of overtime on Saturday plus straight time pay for Monday to crews who worked on Tuesday to Saturday schedules in the districts (and one division) described in paragraph 1 of this award is remanded to the parties.

7. The matter of reimbursement to the company for overtime payments to crews called out on Saturdays in the five districts described in paragraph 2 of this award is remanded to the parties.

8. Jurisdiction is reserved to the Arbitration Board to implement this award, and to decide any disputes between the parties with respect to this award.

Dated: July 24, 1975.

ARBITRATION BOARD

Robert E. Burns

Robert E. Burns, Chairman

We concur as to paragraphs 2,3,4,5,7&8 and dissent as to paragraphs 1&6 of the Award.

G. W. Cubright

J. S. Fairchild

We concur as to paragraphs 1,4,6&8 and dissent as to paragraphs 2,3,5&7 of the Award.

Dana Mitchell

Laurence N. Joss