

In The Matter of A Controversy

between

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 1245

Complainant,

and

PACIFIC GAS & ELECTRIC COMPANY

Respondent.

NOS. GEO-24-605-90-43
22NPG-270-88-029

ARBITRATION CASE NO. 185

OPINION AND DECISION

OF

BOARD OF ARBITRATION

Brett D. Knight, Employer Board Member

Joseph DeMartini, Employer Board Member

Robert Choate, Union Board Member

Roger Stalcup, Union Board Member

John Kagel, Neutral Board Member

San Francisco, California

ISSUE:

Did the Company's failure to provide a meal and pay time to IBEW Operators violate the Agreement.

AGREEMENT PROVISIONS:

TITLE 104. MEALS

104.1 INTENT

The provisions of this Title shall be interpreted and applied in a practical manner which shall conform to the intention of the parties in negotiating with respect to meals; namely, that a comparable substitute shall be provided when employees are prevented from observing their usual and average meal practices or are prevented from eating a meal at approximately the usual time therefor.

* * *

104.4 MEALS -- WORK BEYOND QUITTING TIME

If Company requires an employee to perform work for more than one hour beyond regular work hours, it shall provide him with a meal approximately one hour after regular quitting time and with meals at intervals thereafter of approximately four hours but not more than five hours for as long as he continues such work.

104.5 MEALS - PREARRANGED WORK ON NON-WORKDAYS

When an employee is required to perform prearranged work on non-workdays during regular work hours, he shall observe the lunch arrangements which prevails on his workdays. If such work continues after regular work hours Company shall provide him with meals in accordance with the provisions of Section 104.4 hereof.

* * *

TITLE 202. HOURS

202.4 HOURS - GENERAL RULE

In general, and except as otherwise provided herein, the regular hours of work shall be from 8 a.m. to 12 o'clock noon and from 12:30 p.m. to 4:30 p.m., or from 8 a.m. to 12 o'clock noon and from 1 p.m. to 5 p.m.; ...

* * *

202.6 SHIFT EMPLOYEE DEFINED

When by reason of the nature of the operation of a plant or other property of Company one or more eight hour watches must be maintained therein, an employee who is assigned to duty on any such watches shall, for the purpose of this Agreement, be known as a shift employee. Attached hereto, marked Exhibit III, and made a part hereof is a list of the classifications which come within the foregoing definition of service employee.

* * *

202.8 WORKWEEK AND HOURS -- SHIFT AND SERVICE EMPLOYEES

(a) The workweek of shift employees and service employees shall be regularly scheduled. It may start on any day of the week and at any hour of the day. The five workdays and two non-workdays in the workweek of shift and service employees in any plant or department may be arranged in cycles of one, two or more weeks, provided that any such arrangement shall first be agreed upon by Company and Union.

* * *

TITLE 208. OVERTIME

208.1 DEFINITION

Overtime is defined as (a) time worked in excess of 40 hours in a workweek, (b) time worked in excess of eight hours on a workday, (c) time worked on a non-workday, (d) time worked on a holiday as provided for

in Title 103, and (e) time worked outside of regular work hours on a workday. Company shall not be required to pay overtime compensation more than once for any single period of time worked. Overtime shall be cumulated each day and shall be compensated to the one-quarter hour." (Jt. Ex. 1).

BACKGROUND:

12-hour-day-shifts.

On January 21, 1987, the Parties executed a "generic" 12-hour-day shift schedule agreement which would apply to all future 12-hour-day-shifts negotiated at locations which wished to establish the 12-hour-day-shift. The following are pertinent provisions thereof:

"2. WAGES

Each individual agreement shall establish adjusted wage rates that provide the same compensation during any cycle equivalent to the current compensation for 40-hour workweeks for the same number of weeks. Overtime wage rates will be discussed in each individual agreement.

3. OVERTIME

(a) General: Overtime will be paid in accordance with the provisions of Section 208.1 and 208.2, except that for the purposes of this agreement item (b) under Section 208.1 shall be revised as follows: (b) time worked in excess of regular scheduled hours on a workday.

* * *

9. MEALS

Shift employees shall be permitted to eat their meals during work hours and shall not be allowed additional time therefor at Company expense. Overtime meals will be handled in accordance with Title 104." (Jt. Ex. 5, Ex. 4, p. 2).

Diablo Canyon Grievance.

Diablo Canyon Employee schedules are on a five week cycle. The first week they work four 12-hour shifts; the second week three 12-hour shift; the third week four 10-hour shifts; the fourth week four 12-hour shifts; the fifth week, three 12-hour shifts.

In order to compensate Employees, Code X was utilized so that Employees, while nominally receiving overtime actually receive 80-hours of normal straight time pay for a combination of 36-hours and the first 44-hours of the seven 12-hour shifts. The remaining 4-hours of overtime in a 48-hour week is considered "Code 1 overtime" and paid for at the rate of time and one half the straight time wage rate (Jt. Ex. 2, Ex. 2, p. 2).

With respect to the Diablo Canyon grievance, the following statement of facts was set forth:

"STATEMENT OF FACTS

1. The Company and Union locally negotiated a 12 hour shift schedule at DCPD (Exhibit 2). The one year test period started on January 11, 1988. Prior to the start of the 12 hour shift, Ron Ewing, Shift Foreman, and Mike Craig, Shop Steward discussed overtime meals. Mr. Ewing agreed to pay for overtime meals on the fourth day of the 48-hour workweek because this time was paid at the time and one-half rate. The payment of \$14 and 1/2 hour of overtime was paid to all operations during the 48-hour workweek from January 11 until the beginning of May 1988.

2. Before stopping the overtime reimbursement, Human Resources contacted Carl Poteet and Steve Rayburn from the Company's 12-hour shift negotiating committee. Both agreed that the payment of overtime meals during the regular hours of work was not provided in this agreement. Mr. Poteet confirmed this with Darrell Mitchel from the IBEW. Manny Maderos was also consulted and he noted that the overtime payment during the 48-hour work week was not considered true overtime, rather it was a payment formula that was developed to comply with the IWC Orders.
3. Union members stated that under the 8 hour schedules employees mandatorily worked the 'R' day. This time period was covered by extending a mid shift employee 4 hours and bringing a swing shift employee in 4 hours early. Under that arrangement, the employees received an overtime meal. Under the 12-hour shift schedule, the 'R' day has been incorporated into the regular schedule. As operators are regularly working the same number of hours per year under the 12-hour shift as they were under the 8-hour shift with the mandatory 'R' day, the Union believed that the compensation and benefits should be the same and that they were entitled to an overtime meal.
4. The Geysers Power Plant is also on a 12-hour shift. Their agreement allows the Company to send employees home 4 hours early during the 48-hour workweek if operational conditions permit. However, when employees do work 48 hours, they do not receive overtime meals during their regular hours." (Jt. Ex. 2).

At the hearing in this case Darrell Mitchell testified that, contrary to that statement of facts, he did not agree as stated that the payment of overtime meals during regular hours of work was not provided in the Agreement. Ron Ewing testified that he agreed with the Shop Steward that meals should be paid, but in doing so he had not discussed such payments with the local 12-hour Negotiating Committee or with Human Resources. The Company

ceased paying for meals by a letter dated May 10, 1988 (Jt. Ex. 4).

Geysers Grievance:

At the Geysers there are two local Agreements, East Geysers and West Geysers. The shift schedule are cycles of 36 and 48 hours of seven 12-hour shifts over two weeks. Work in excess of 36 hours in the 36-hour week hours and 44 hours in a 48-hour week is considered Code 1 overtime (Jt. Ex. 5, Ex. 2, p. 2). The Company, at its option, may allow Employees to go home early during a 48-hour week so that they work 44-hours of the 48-hour week. In that instance the Employee's do not receive Code 1 overtime for the remaining ^{45th} [44th) to 48th hours. One estimate was that an Employee work 44 hours instead of 48 hours in a 48-hour work week because of that option 50% of the time (Tr. 65-82). Another witness testified that while that was true for East Geysers, that West Geysers rarely worked a full 48-hours (Tr. 82)

The parties agreed to the following Statement of Facts:

"STATEMENT OF FACTS

1. The Committee reviewed Exhibits 2, 3 and 4; all Letter of Agreements referring to East and West Geysers 12 Hour Shifts.
2. The Company testified to the following:
 - Throughout East and West Geysers 12 Hour Shift Letter of Agreements it references the fact that Operators are regularly scheduled to work both 36 hours and 48 hours in a two week period.

- In accordance with the meals, Section 104.1, 104.4 and 104.14, (Please refer to Exhibit 5) the Company is not required to provide meals during regular work hours on regular work days.
3. The Union asked, how are employees paid during the day in question? The Company responded, employees are paid four hours straight time, four hours Code X (Code X is a formula that balances a two week work period), and four hours time and a half.
 4. The Union referred to Exhibit 6, Geothermal Operations 12 Hour Shift Committee Minutes dated May 20, 1987. Item No. 8 discussed the meals issue however, nothing was resolved.
 5. It was determined that some Operator's have been paid in the past; the Company indicated that these payments were made in error." (Jt. Ex. 5).

Case 4315-88-228

In that case, involving the application of Section 104.5 in conjunction with the 12-hour shift schedule at Diablo Canyon, the Joint Company-Union 12 Hour Shift Committee agreed the intent of such shifts provides for the 12-hour period to be considered as regular work hours.

"Accordingly, when prearranged work is performed during the regular hours of the 12 hour shift schedule, employees shall observe the lunch arrangement which prevails on workdays."

* * *

"The grievant worked prearranged overtime on his non-workdays during 'regular work hours' and, accordingly, is not entitled to any overtime meal payments." (Co. Ex. 1).

POSITION OF THE PARTIES:

Position of the Union.

With respect to the generic 12 hour agreement, the Parties agreed to limit any modifications to the Labor Agreement and make only those modifications necessary to conform to schedules containing more than 8 hours that were necessary to make an equitable transition; that the only discussion of meals with respect to the generic 12-hour shift agreement was that Title 104 of the Master Agreement would apply; that in 1989, the Company sent the Union a proposed Letter Agreement which would have modified the generic 12-hour day shift agreement by adding that regular work hours as provided in Section 104.4 should be considered to be 12-hours on a regularly scheduled workday, which was rejected by the Union; that paid time off is charged only at 8-hours on the fourth scheduled day of a 48-hour work week, whereas it would normally be charged on a 12-hour basis; that vacations are similarly treated; that a similar arrangement for paid time off applies at Diablo Canyon; that the question presented is whether the final four hours work by an Employee during a 48-hour work week is "beyond regular work hours;" that in interpreting Section 104.4 as the generic and local 12-hour day shift agreements are silent on that issue, analysis of the Agreement as a whole shows that a meal should be paid and Code 1 overtime is contractual overtime; that the implication of the paid time off practice is that an Employee is only deemed to be scheduled to

work 8-hours on the fourth day of a 48-hour week and thus paid only for 8-hours when off so that the fact for the purposes of paid time off, hours 45 through 48 are not deemed to be regularly scheduled hours; that supporting the Union's contention, Employees should be paid overtime meals for those same hours; that all that has been changed by the new schedules, while everything else remains the same with respect to compensation, is that the Company has failed to provide the overtime meal and one-half hour of overtime for the purpose of a meal during the five week cycle for the hours in excess of 80 for a 2-week period to in light of the expressed intent of the parties, produce the "same compensation" for Employee's working 12-hour day shift schedules; that Diablo Canyon Employee's should continue to receive that which they received before implementation of the new schedule, an overtime meal and one-half hour overtime twice during the five-week cycle; that the uncertainty which characterizes the work schedules of Geysers operators, for they are not told until late in the day during their 48-hour work week whether or not they will be sent home after 8 hours or are required to work the full 12-hour shift; that with respect to meals, under Section 104.1, the Employees are entitled to receive a meal under such circumstances for such Employees are "prevented from observing the usual and average meal practices;" that the Union's concession with respect to Section 104.5 is distinguishable from the facts presented here, for the Parties are dealing only with

the seventh of seven days and are dealing with a day which in every other respect such as overtime, sick leave and vacation is treated as an 8-hour day, not a 12-hour day; that therefore the 45th through 48th hours are treated as hours other than "regularly scheduled hours" for the purposes of contractual overtime payment, sick leave, vacation and jury duty, while Employees at the Geysers are guaranteed only 44-hours of work during a 48-hour week, in order to achieve an average of 40-hours week during a two week period, so that interpretation of the contract as a whole leads to the conclusion that an Employee's "regular work hours" on the 4th day of the 48-hour week ends after 8-hours; that the final four hours are in excess of regular work hours, entitling an Employee to an overtime meal and one-half hour overtime; that "regular hours" for the purpose of overtime meals should be the same as "regular hours" for the purpose of sick leave, vacation and jury duty and, ultimately, overtime.

Position of the Company.

That during bargaining for the generic 12-hour shift, the Parties agreed that they would change provisions of the basic Agreement only if necessary to accommodate the 12-hour shift arrangement and the provisions of Section 104.4 were not changed while other substantive provisions of the Agreement were, including the definition of overtime and Section 208.1(b) being revised; that time worked in excess of regular scheduled hours on a workday would be entitled to overtime; that because of California

law and the Industrial Welfare Commission rules time and one-half would be paid for hours over 40 in a week; that the express intent of Section 104.1, the meals provision, is to ameliorate inconveniences to Employees who were prevented eating meals at the time that they usually do; that the intent was underscored by Section 104.5 which does not provide for meal allowances for Employees pre-scheduled to work on a normal day off if they worked during their regular hours and Employees who are regularly scheduled to work seven 12-hour days in a two-week period are not prevented from observing their usual meal practices; that the purpose of Title 104 shows there is no difference between the seventh day of the cycle in any of the preceding sixth days; that no Section of Title 104 makes any mention of overtime pay nor is there any evidence which applies the provisions in any way dependent upon the Employee's rate of pay; that the Title only deals with the question of regular work hours; that at the Geysers the issue here was raised shortly after the Agreement but after it was denied it was not raised again until after the Diablo Canyon grievance; that the resolution of the grievance concerning Section 104.5 supports the Company's position; that there is no evidence that meals were paid for more than once at the Geysers and that mistake was immediately rectified, while meal allowances that were paid for three and one-half months at Diablo Canyon was

the error of the General Foreman who was not involved in the 12-hour shift negotiations and who had no authority to modify the Agreement.

DISCUSSION:

Title 104:

Under Section 104.4, a meal is provided if the Company requires an Employee to perform work for more than one hour "beyond regular work hours." From the face of the Agreement Provision where the Employee is pre-scheduled to work 12-hours and works 12 hours on the seventh day of the 12-hour two-week schedule, that Employee is not working beyond his or her regular work hours. And, given the intent of Title 104, found in Section 104.1, since the Employee is pre-scheduled for 12-hours, the Employee is not prevented from observing his or her usual and average meal practice or prevented from eating a meal at approximately the usual time therefor. Under Section 104.1, Section 104.4 must be interpreted and applied "in a practical manner" conforming to this intent. Therefore, Title 104.4 has not been violated in this case. No Employee is to be paid a meal for time worked within his or her regular work hours before his or her quitting time.

Agreement as a Whole:

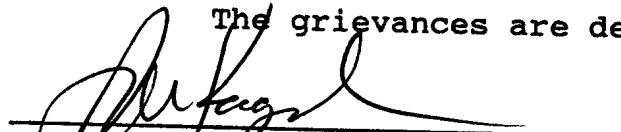
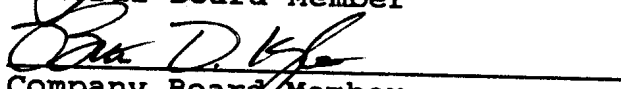



The Union has constructed its contentions based upon its reading of the Agreement as a whole, to view the 45th through 48th hours worked because as not being "regular work hours" because they are paid at the overtime rate, and because those hours are not charged against an Employee's sick leave or vacation. The treatment of those subjects are more specifically dealt with in the Parties' local and generic agreements. The meal provisions were not modified by either. The fact that Code 1 overtime was paid for the 45th to the 48th hours because of the overtime provisions, and that those hours may be treated differently for different subjects, does not modify the fact that the Employee is still scheduled and expected to work 12 hours on the seventh day of the 12-hour shifts and has no quitting time until the 12th hour is over. That an Employee may be relieved early on the seventh day at the Geysers at the Company's option is also part of the agreement, but such does not modify the fact that the Employee is scheduled for 12-hours on the final day of the 48-hour week. In fact, testimony was that in many instances the four hours are accounted for by relieving the Employer early on some other day during the 48-hour work week, as opposed necessarily to the final 12-hour day in the 48-hour week.

In short, the question of meals in this case is a separate and independent topic from overtime and the other cited provisions, Section 104.4 here does not require an interpretation

based upon whether or not the Employee is paid at an overtime rate or not. As the Parties own interpretation of Section 104.5 shows with respect to the definition of "regular work hours" in Case 4315-88-228, the compensation rate of the Employee during pre-arranged work on non-workdays is "Code 1 overtime," but the rate of pay does not govern when meals are paid. Rather, what governs is both the language of Section 104.4 and the intent that must be applied to it under Section 104.1. And, in this case, it is what work hours the Employee is scheduled to on a regular basis that governs whether a meal is paid under Section 104.4. The circumstances of these grievances does not show that such meals must be paid here.

DECISION:

The grievances are denied.

 _____ Neutral Board Member	Concur/ <u>Dissent</u> 8/19/91 _____ Dated
 _____ Company Board Member	<u>Concur</u> /Dissent 8/19/91 _____ Dated
 _____ Company Board Member	<u>Concur</u> /Dissent 8/19/91 _____ Dated
 _____ Union Board Member	Concur/ <u>Dissent</u> 8/19/91 _____ Dated
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AGREEMENT PROVISIONS:

TITLE 104. MEALS

104.1 INTENT

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* * *

TITLE 202. HOURS

202.4 HOURS - GENERAL RULE

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* * *

TITLE 208. OVERTIME

208.1 DEFINITION

Overtime is defined as (a) time worked in excess of 40 hours in a workweek, (b) time worked in excess of eight hours on a workday, (c) time worked on a non-workday, (d) time worked on a holiday as provided for

in Title 103, and (e) time worked outside of regular work hours on a workday. Company shall not be required to pay overtime compensation more than once for any single period of time worked. Overtime shall be cumulated each day and shall be compensated to the one-quarter hour." (Jt. Ex. 1).

BACKGROUND:

12-hour-day-shifts.

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(a) General: Overtime will be paid in accordance with the provisions of Section 208.1 and 208.2, except that for the purposes of this agreement item (b) under Section 208.1 shall be revised as follows: (b) time worked in excess of regular scheduled hours on a workday.

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9. MEALS

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Diablo Canyon Grievance.

Diablo Canyon Employee schedules are on a five week cycle. The first week they work four 12-hour shifts; the second week three 12-hour shift; the third week four 10-hour shifts; the fourth week four 12-hour shifts; the fifth week, three 12-hour shifts.

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"STATEMENT OF FACTS

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4. The Geysers Power Plant is also on a 12-hour shift. Their agreement allows the Company to send employees home 4 hours early during the 48-hour workweek if operational conditions permit. However, when employees do work 48 hours, they do not receive overtime meals during their regular hours." (Jt. Ex. 2).

At the hearing in this case Darrell Mitchell testified that, contrary to that statement of facts, he did not agree as stated that the payment of overtime meals during regular hours of work was not provided in the Agreement. Ron Ewing testified that he agreed with the Shop Steward that meals should be paid, but in doing so he had not discussed such payments with the local 12-hour Negotiating Committee or with Human Resources. The Company

ceased paying for meals by a letter dated May 10, 1988 (Jt. Ex. 4).

Geysers Grievance:

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The parties agreed to the following Statement of Facts:

"STATEMENT OF FACTS

1. The Committee reviewed Exhibits 2, 3 and 4; all Letter of Agreements referring to East and West Geysers 12 Hour Shifts.
2. The Company testified to the following:
 - Throughout East and West Geysers 12 Hour Shift Letter of Agreements it references the fact that Operators are regularly scheduled to work both 36 hours and 48 hours in a two week period.

- In accordance with the meals, Section 104.1, 104.4 and 104.14, (Please refer to Exhibit 5) the Company is not required to provide meals during regular work hours on regular work days.
3. The Union asked, how are employees paid during the day in question? The Company responded, employees are paid four hours straight time, four hours Code X (Code X is a formula that balances a two week work period), and four hours time and a half.
 4. The Union referred to Exhibit 6, Geothermal Operations 12 Hour Shift Committee Minutes dated May 20, 1987. Item No. 8 discussed the meals issue however, nothing was resolved.
 5. It was determined that some Operator's have been paid in the past; the Company indicated that these payments were made in error." (Jt. Ex. 5).

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In that case, involving the application of Section 104.5 in conjunction with the 12-hour shift schedule at Diablo Canyon, the Joint Company-Union 12 Hour Shift Committee agreed the intent of such shifts provides for the 12-hour period to be considered as regular work hours.

"Accordingly, when prearranged work is performed during the regular hours of the 12 hour shift schedule, employees shall observe the lunch arrangement which prevails on workdays."

* * *

"The grievant worked prearranged overtime on his non-workdays during 'regular work hours' and, accordingly, is not entitled to any overtime meal payments." (Co. Ex. 1).

POSITION OF THE PARTIES:

Position of the Union.

With respect to the generic 12 hour agreement, the Parties agreed to limit any modifications to the Labor Agreement and make only those modifications necessary to conform to schedules containing more than 8 hours that were necessary to make an equitable transition; that the only discussion of meals with respect to the generic 12-hour shift agreement was that Title 104 of the Master Agreement would apply; that in 1989, the Company sent the Union a proposed Letter Agreement which would have modified the generic 12-hour day shift agreement by adding that regular work hours as provided in Section 104.4 should be considered to be 12-hours on a regularly scheduled workday, which was rejected by the Union; that paid time off is charged only at 8-hours on the fourth scheduled day of a 48-hour work week, whereas it would normally be charged on a 12-hour basis; that vacations are similarly treated; that a similar arrangement for paid time off applies at Diablo Canyon; that the question presented is whether the final four hours work by an Employee during a 48-hour work week is "beyond regular work hours;" that in interpreting Section 104.4 as the generic and local 12-hour day shift agreements are silent on that issue, analysis of the Agreement as a whole shows that a meal should be paid and Code 1 overtime is contractual overtime; that the implication of the paid time off practice is that an Employee is only deemed to be scheduled to

work 8-hours on the fourth day of a 48-hour week and thus paid only for 8-hours when off so that the fact for the purposes of paid time off, hours 45 through 48 are not deemed to be regularly scheduled hours; that supporting the Union's contention, Employees should be paid overtime meals for those same hours; that all that has been changed by the new schedules, while everything else remains the same with respect to compensation, is that the Company has failed to provide the overtime meal and one-half hour of overtime for the purpose of a meal during the five week cycle for the hours in excess of 80 for a 2-week period to in light of the expressed intent of the parties, produce the "same compensation" for Employee's working 12-hour day shift schedules; that Diablo Canyon Employee's should continue to receive that which they received before implementation of the new schedule, an overtime meal and one-half hour overtime twice during the five-week cycle; that the uncertainty which characterizes the work schedules of Geysers operators, for they are not told until late in the day during their 48-hour work week whether or not they will be sent home after 8 hours or are required to work the full 12-hour shift; that with respect to meals, under Section 104.1, the Employees are entitled to receive a meal under such circumstances for such Employees are "prevented from observing the usual and average meal practices;" that the Union's concession with respect to Section 104.5 is distinguishable from the facts presented here, for the Parties are dealing only with

the seventh of seven days and are dealing with a day which in every other respect such as overtime, sick leave and vacation is treated as an 8-hour day, not a 12-hour day; that therefore the 45th through 48th hours are treated as hours other than "regularly scheduled hours" for the purposes of contractual overtime payment, sick leave, vacation and jury duty, while Employees at the Geysers are guaranteed only 44-hours of work during a 48-hour week, in order to achieve an average of 40-hours week during a two week period, so that interpretation of the contract as a whole leads to the conclusion that an Employee's "regular work hours" on the 4th day of the 48-hour week ends after 8-hours; that the final four hours are in excess of regular work hours, entitling an Employee to an overtime meal and one-half hour overtime; that "regular hours" for the purpose of overtime meals should be the same as "regular hours" for the purpose of sick leave, vacation and jury duty and, ultimately, overtime.

Position of the Company.

That during bargaining for the generic 12-hour shift, the Parties agreed that they would change provisions of the basic Agreement only if necessary to accommodate the 12-hour shift arrangement and the provisions of Section 104.4 were not changed while other substantive provisions of the Agreement were, including the definition of overtime and Section 208.1(b) being revised; that time worked in excess of regular scheduled hours on a workday would be entitled to overtime; that because of California

law and the Industrial Welfare Commission rules time and one-half would be paid for hours over 40 in a week; that the express intent of Section 104.1, the meals provision, is to ameliorate inconveniences to Employees who were prevented eating meals at the time that they usually do; that the intent was underscored by Section 104.5 which does not provide for meal allowances for Employees pre-scheduled to work on a normal day off if they worked during their regular hours and Employees who are regularly scheduled to work seven 12-hour days in a two-week period are not prevented from observing their usual meal practices; that the purpose of Title 104 shows there is no difference between the seventh day of the cycle in any of the preceding sixth days; that no Section of Title 104 makes any mention of overtime pay nor is there any evidence which applies the provisions in any way dependent upon the Employee's rate of pay; that the Title only deals with the question of regular work hours; that at the Geysers the issue here was raised shortly after the Agreement but after it was denied it was not raised again until after the Diablo Canyon grievance; that the resolution of the grievance concerning Section 104.5 supports the Company's position; that there is no evidence that meals were paid for more than once at the Geysers and that mistake was immediately rectified, while meal allowances that were paid for three and one-half months at Diablo Canyon was

the error of the General Foreman who was not involved in the 12-hour shift negotiations and who had no authority to modify the Agreement.

DISCUSSION:

Title 104:

Under Section 104.4, a meal is provided if the Company requires an Employee to perform work for more than one hour "beyond regular work hours." From the face of the Agreement Provision where the Employee is pre-scheduled to work 12-hours and works 12 hours on the seventh day of the 12-hour two-week schedule, that Employee is not working beyond his or her regular work hours. And, given the intent of Title 104, found in Section 104.1, since the Employee is pre-scheduled for 12-hours, the Employee is not prevented from observing his or her usual and average meal practice or prevented from eating a meal at approximately the usual time therefor. Under Section 104.1, Section 104.4 must be interpreted and applied "in a practical manner" conforming to this intent. Therefore, Title 104.4 has not been violated in this case. No Employee is to be paid a meal for time worked within his or her regular work hours before his or her quitting time.

Agreement as a Whole:

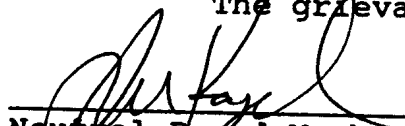
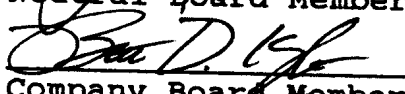



The Union has constructed its contentions based upon its reading of the Agreement as a whole, to view the 45th through 48th hours worked because as not being "regular work hours" because they are paid at the overtime rate, and because those hours are not charged against an Employee's sick leave or vacation. The treatment of those subjects are more specifically dealt with in the Parties' local and generic agreements. The meal provisions were not modified by either. The fact that Code 1 overtime was paid for the 45th to the 48th hours because of the overtime provisions, and that those hours may be treated differently for different subjects, does not modify the fact that the Employee is still scheduled and expected to work 12 hours on the seventh day of the 12-hour shifts and has no quitting time until the 12th hour is over. That an Employee may be relieved early on the seventh day at the Geysers at the Company's option is also part of the agreement, but such does not modify the fact that the Employee is scheduled for 12-hours on the final day of the 48-hour week. In fact, testimony was that in many instances the four hours are accounted for by relieving the Employer early on some other day during the 48-hour work week, as opposed necessarily to the final 12-hour day in the 48-hour week.

In short, the question of meals in this case is a separate and independent topic from overtime and the other cited provisions, Section 104.4 here does not require an interpretation

based upon whether or not the Employee is paid at an overtime rate or not. As the Parties own interpretation of Section 104.5 shows with respect to the definition of "regular work hours" in Case 4315-88-228, the compensation rate of the Employee during pre-arranged work on non-workdays is "Code 1 overtime," but the rate of pay does not govern when meals are paid. Rather, what governs is both the language of Section 104.4 and the intent that must be applied to it under Section 104.1. And, in this case, it is what work hours the Employee is scheduled to on a regular basis that governs whether a meal is paid under Section 104.4. The circumstances of these grievances does not show that such meals must be paid here.

DECISION:

The grievances are denied.

 _____ Neutral Board Member	<u>Concur</u> /Dissent	<u>8/19/91</u> Dated
 _____ Company Board Member	<u>Concur</u> /Dissent	<u>8/19/91</u> Dated
 _____ Company Board Member	<u>Concur</u> /Dissent	<u>8/15/91</u> Dated
 _____ Union Board Member	Concur/ <u>Dissent</u>	<u>8/19/91</u> Dated
 _____ Union Board Member	Concur/ <u>Dissent</u>	<u>8/19/91</u> Dated