

A MATTER IN ARBITRATION

ARB-340
Grievance 23330_23838

In a Matter Between:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245,

UNION

And

PACIFIC GAS & ELECTRIC COMPANY,

EMPLOYER

Grievance: Grievant A/Grievant B
BYPASS

Hearing Dates: October 1 & 15, 2018

Award: February 6, 2019

Hirsch Case #: H18-045

REVISED DECISION

**DECISION AND AWARD
ROBERT M. HIRSCH, ARBITRATOR**

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STATEMENT OF PROCEDURE

The International Brotherhood of Electrical Workers, Local Union 1245 (IBEW or Union) and Pacific Gas & Electric (PG&E or Employer), are bound to a collective bargaining agreement which requires all unresolved disputes to be submitted to binding arbitration. Such a dispute exists, and the parties have proceeded to arbitration before this Arbitrator.

The parties agree that this matter is properly before the Arbitrator and all procedural requirements had been met. A hearing was held in this matter on October 1 & 15, 2018, at which time the parties had the opportunity to present evidence and cross-examine witnesses. At the conclusion of the hearing, the parties agreed to file post-hearing briefs, which they have done. Having had the opportunity to review the record in its entirety, this Arbitrator is prepared to issue a decision.

ISSUE

The parties could not agree upon the statement of the issue, and authorized the Arbitrator to articulate it:

Did PG&E violate the CBA when it assigned emergency overtime work to Operating Clerks rather than to Grievants Grievant A (Grievant A) and Grievant B (Grievant B), who were both Foreman's Clerks? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

A. Title 7.1 – Management of Company

The management of the Company and its business and the direction of its working forces are vested exclusively in [the] 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. (Joint, hereafter (“Jt.”), Exhibit 1, p. 6., Emphasis added)

B. Title 102 – Grievance Procedure

102.4. Finality

The resolution of a timely grievance at any of the steps provided herein shall be final and binding on the Company, Union and the grievant. A resolution at a step below Step Four, while final and binding is without prejudice to the position of either party, unless mutually agreed to otherwise. (Id. at 14.)

C. Title 208 – Overtime

208.12. Prearranged Overtime

... For purposes of this Section prearranged work is deemed to be work for which advance notice has been given by the end of the employee’s preceding work period on a workday. However, Company shall make a good faith effort to notify the employee at least 24 hours in advance of the need to perform prearranged overtime work on non-workdays or holidays.

208.16. Equal Distribution – Prearranged Overtime

(a) Prearranged overtime work shall be distributed among employees in the same classification and in the same location as equally as practicable...Where an imbalance cannot be justified, paying the aggrieved employee(s) is an appropriate remedy after the end of the accounting period, although this does not preclude other local agreements. (Id. at 78.)

D. Title 212 – Emergency Duty

212.1. General Principles

(a)...[W]hen employees volunteer for emergency duty they are making a definite commitment to be readily available for call-out; and in turn, [the] Company will call the volunteer with the least amount of recorded emergency overtime hours.

(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 practical 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. (Id. at 80.)

212.11. Grievance Settlement

...(b) When it has been determined by the Local Investigating Committee that the Company made a mistake in the administration of this procedure, the Company will pay the aggrieved employee for the time lost.

(c) When it has been determined by the Local Investigating Committee that the overtime was improperly assigned to an employee in another classification or crew in another service area thereby making equitable distribution impossible, the aggrieved employee(s) will be paid for the time that was lost. (Id. at 82-83.)

FACTUAL BACKGROUND

PG&E provides gas and electrical service to residential and commercial customers in Northern California and elsewhere. On occasion, the Employer is faced with storm related emergencies which require it to staff clerical overtime work with qualified employees. This is the scenario which generated the current dispute between the Union and PG&E.

Both Grievants Grievant A and Grievant B, are clerical employees covered by the terms of the CBA. Neither was called to work overtime during specific dates when emergency overtime work was necessary. Therein lies the disagreement.

Both Grievants are Foreman's Clerks under the CBA (also referred to as the Physical Agreement by the parties), designated under Title 200 of the labor agreement – meaning they are assigned to a particular headquarters and service territory. Under the CBA, Title 300 employees are part of the Employer's mobile workforce. Both Grievants also work within PG&E's Electric Transmission and Distribution Department (Electric T&D) – the line of business which maintains PG&E's electric grid.

PG&E maintains separate labor agreements covering Foreman's Clerks and Operating Clerks. There is significant overlap in their clerical job assignments and skill sets, however the Foreman's Clerks have historically been asked to perform physical work at times, including operating forklifts, and handling materials. Currently, the work of the two job classifications is virtually identical and the Foreman's Clerks are being slowly eliminated through attrition.

Jurisdictional work disputes involving the two clerk positions have arisen in the past. In 1998, the parties resolved a grievance which addressed the concern over clerical work which entailed the "computer inputting of Electrical Maintenance Tags."¹ As part of the grievance process adopted by the parties, a "Pre-Review Committee," made up of labor and management representatives, concluded, "Given that the work in dispute is generated out of the office of the supervisor responsible for Electric T&D, the P-RC agrees that the work is appropriately assigned to the Foreman's Clerk or Assistant Clerk."² This decision is known as Pre-Review Committee decision (PRC) 2127. The decision was consistent with prior Pre-Review Committee decisions including one from 1991 – PRC 1472.,³ and deemed final and binding upon the parties.⁴ IBEW contends that the decision in PRC 2127 controls the dispute at hand. In short, the Union states that clerical work generated within the Electric T&D Department, including overtime, belongs to physical employees, – meaning the Foreman's Clerks. Thus, argues the Union, the Foreman's Clerks have the first right of refusal to perform any clerical overtime work generated by Electric T&D.

¹ Union Exhibit (UX) 1.

² Id. Pre-Review Committee No. 1472.

³ UX 2.

⁴ Joint Exhibit (JX) 1, p 14 (§102.4)

In 2006, PG&E engaged in a “Business Transformation” which its Labor Relations Manager Kathy Ledbetter, described during her testimony in this matter, as an initiative to “streamline the company and make it more efficient.” Under this initiative, the Employer sought to consolidate its clerical operations, even proposing a merger of the classifications into a single line of progression within a Clerical Bargaining Unit, covered by the Clerical bargaining agreement.⁵ IBEW rejected this proposal. Instead, in April 2006 the parties agreed to Letter Agreement (LA) 06-19, which stated the following:

(c) Incumbents in Title 200 and 300 clerical classifications remaining at the service centers will perform dual commodity functions in those locations including the full scope of the duties of their classification (Title 200 clerical employees may perform Title 300 clerical work and vice versa, **as well as Operating clerical work, etc.**) The remaining title 200/300 incumbents may also be required to perform physical work historically performed by their classification.” (Emphasis added).⁶

(e) As Physical Clerk jobs are vacated, the positions may be filled as Operating Clerical positions. Once these jobs are filled as Operating clerical (sic), they will perform the same clerical duties as listed in “c” above (dual commodity, etc.).

Another Letter Agreement, LA 07-10, signed by the bargaining parties in 2007, reinforced the notion that “Under the terms of the letter agreement Field Clerks, Shop Clerks, and Operating Clerks **may perform clerical support of either Title 200 or Title 300 employees.**”⁷ (Emphasis added).

⁵ UX 3&4.

⁶ JX 3, Exhibit 7.

⁷ Employer Exhibit (EX) E.

PG&E maintains that LA 06-19 and LA 07-10 consolidated clerical work and, along with its management's rights recognized in the CBA and other PRC agreements, allowed it to assign Operating Clerks to perform the emergency overtime work at issue in this grievance arbitration. Specifically, the Employer points to its general right to manage the business of the utility company, set forth at Section 7.1 of the CBA, and Titles 208 (Overtime) and 212 (Emergency Duty) of the contract to bolster its view that the work assignments challenged here were proper.

IBEW Senior Assistant Business Manager Joe Osterlund, testified at the arbitration hearing that for a few years after LA 06-19 was authored, PG&E continued to award backpay to Foreman's Clerks who were denied overtime work which had been assigned to Operating Clerks. Osterlund mentioned this occurred on three or four occasions.⁸ He stated that in the past couple of years, the Employer has taken its current position – denying the backpay to a bypassed clerk.

Grievant A Grievance:

During all relevant time periods, Grievant Grievant A was a Foreman's Clerk working in the San Rafael headquarters. She was properly listed on the 208 and 212 overtime lists for overtime clerical work in her service area. On June 30, 2015, weather related events caused PG&E to commission clerical overtime work, assigning it to two Operating Clerks, [REDACTED] and [REDACTED]. The parties agree that the work was generated within the Electric T&D. The assigned work was the type generally performed by the two assigned clerks.

⁸ Transcript pp. 40-41.

The Union contends that Grievant A had the first right of refusal for the assigned work, whether the other two individuals were qualified or not.

Grievant B Grievance:

Grievant B is also a Foreman's Clerk, serving in the Employer's Ukiah service area. He was on the appropriate overtime work lists during the relevant time period. The emergency overtime work for which he believes he had a right of first refusal, occurred in Clearlake, a distinct service area from his own.⁹ The Employer looked outside the Clearlake service area, having apparently exhausted the list of local clerks seeking overtime work. There is no issue here about that decision. Instead of choosing a Foreman's Clerk for the emergency work, it summoned [REDACTED], an Operating Clerk. She was selected, according to PG&E, because she had the lowest overtime hours for the week – a distribution the parties seek to keep in balance.

The Union urges this Arbitrator to award the lost overtime pay to the two Foreman's Clerks whom it says were wrongfully denied the overtime assignments. The Employer asks that the grievance be denied.

DISCUSSION

PG&E and IBEW maintain a complex array of grievance settlements, contracts and decisions which become part of the parties' bargaining agreement, controlling the relationship and governance of a variety of labor-management issues.¹⁰ One such issue involves the manner in which overtime is awarded to Foreman's Clerks and Operating Clerks where the overtime

⁹ The fact that PG&E used the services of a Clerk from outside the Clearlake service area for the work at issue is not a source of conflict in this grievance, and accordingly I will not spend time on that aspect of the case.

¹⁰ CBA Section 7.1 makes Letter Agreements and Pre-Review Committee decisions part of the labor agreement between the parties. JX 1.

work is generated by the Electric T&D department. The Employer and the Union appear comfortable with the elaborate inter-relationship of these grievance settlements and letter agreements – at least to the point where a conflict arises over competing and inconsistent decisions/agreements – the case here.

It appears that at the heart of this case, we have conflicting documents which address who may, or should, be assigned work generated by the Electric T&D Department. PRC 2127, issued in 1998, clearly stated that work generated out of the supervisor's office "for Electric T&D...is appropriately assigned to the Foreman's Clerk or Assistant Foreman's Clerk."¹¹ That decision also advised the bargaining parties to negotiate an agreement, if they wished, to allow PG&E to assign the work to someone in the Clerical Bargaining Unit – that is, the Operating Clerk, if they did not want to bring a Foreman's Clerk in from another location. The parties never quite did that. Instead, PG&E proposed language, in 2006, that would have merged the clerical classifications into a single line of progression. The Union rejected this proposal.

Pursuant to the committee decision in PRC 2127, the Union is correct in asserting that the Employer had the obligation of assigning the work at issue here to the Foreman's Clerk. The storm related work in the San Rafael service territory was generated by the Electric T&D department and Grievant A was there, waiting on the overtime lists for assignment. The overtime work in the Clearlake area was also generated by the Electric T&D group, and Grievant B qualified under PRC 2127 and other precedential grievance decisions, to travel from his Ukiah base to perform that work.

¹¹ UX 5.

Our inquiry however, cannot end there. Letter Agreement 06-19, negotiated and signed in 2006, authorized Foreman's Clerks to perform Operating Clerk's work. Letter Agreement 07-10, permitted Operating Clerks to perform work assisting Title 200 and 300 employees (Electrical T&D staff). PG&E says that in the two cases at issue here, it merely assigned Operating Clerks to assist Title 200 employees. Factually, that point is undisputed. And IBEW does not explain what the language in LA 07-10, authorizing Operating Clerks to perform clerical work for the Electrical T&D Department means. The Union says that work can't be assigned across bargaining units, however that seems to be exactly what the parties agreed to in 2006 and 2007. The two Letter Agreements, negotiated and signed several years after PRC 2127, take precedence over the prior award as subsequent expressions of the bargaining parties' intent.

Noteworthy, is PRC 22276, decided in 2014, which specifically acknowledges that the Employer has the "right to determine which classification is necessary and will be used to perform work" where the work is common to more than one classification."¹² Although the dispute there did not involve multiple bargaining units, the rationale is applicable here where the bargaining parties have expressly allowed employees in two different clerical units to perform the same work.

Complicating our consideration here is the fact that the work at issue was overtime as opposed to straight time work. PG&E contends that the CBA gives it the unfettered right to assign work to its workforce, including overtime. Section 7.1 of the labor agreement does give the Employer managerial discretion to operate the utility company. Titles 208 and 212 of the

¹² JX 5, Ex 6.

CBA grant the Employer broad powers in assigning overtime work. Those provisions address overtime, in its various forms, as it pertains to the bargaining unit members. It does not mention work assignments across bargaining units – from Foreman’s Clerks to Operating Clerks for example.¹³

The overtime provisions of the CBA, when read in conjunction with LA 06-19 and LA 07-10, lead this Arbitrator to conclude that PG&E had the right to assign overtime work, generated by the Electrical T&D Department, to either the Foreman’s Clerks or the Operating Clerks. Nothing in the two letter agreements stipulates that the work which may be performed across bargaining units must be straight time work. LA 07-10 simply states that the Operating Clericals may perform work for the Title 200 and 300 employees. Nor is there any distinction drawn between straight time and overtime assignments in any other evidence introduced by either party, germane to our issue here – that is, whether the Grievants had a first right of refusal for the assigned emergency overtime work in the San Rafael and Clearlake areas.

The fact that PG&E may have paid overtime, bypass pay, a few times in the years following the two Letter Agreements does not persuade this Arbitrator that the Employer waived its right to eventually assert its authority to assign work as the collective bargaining parties had agreed in 2006 and 2007. A waiver must be clear, unmistakable and intentional.¹⁴

The record here, taken in its entirety, supports PG&E’s position that Employer had the right to assign the clerical overtime work at issue to the Operating Clericals. The Union has not

¹³ PG&E also has cited PRC 11532, decided in 2002, to support its contention that it has the exclusive right to assign both overtime and straight time work, where work can be performed by more than one classification. EX D.

¹⁴ See, *Elkouri & Elkouri*, *How Arbitration Works* (Bloomberg-BNA 8th Edition), Ch 10.9.B.

carried the burden of persuasion, to wit, it has not shown that the CBA along with the accompanying PRC's and Letter Agreements prohibit the Employer from assigning the Operating Clerks to perform emergency clerical work for the Electric T&D Department. Although LA 06-19 and LA 07-10 don't expressly overrule the 1998 committee decision, PRC 2127, they do expressly authorize PG&E to assign clerical work across bargaining units. Thus, the Employer did not violate the CBA when it assigned the subject overtime work to Operating Clericals.

AWARD

Based upon the evidence presented and the arguments of counsel, I find the Employer did not violate the CBA in assigning the underlying, overtime clerical work to Operating Clericals. Accordingly, the grievances are denied.

IT IS SO ORDERED.

Date: February 6, 2019



Robert M. Hirsch, Arbitrator