



REVIEW COMMITTEE

IBEW



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INTERNATIONAL BROTHERHOOD OF
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ROBIN WIX, CHAIRMAN
 DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

KIT STICE, SECRETARY

Review Committee Number 23022 Electric – Operating Clerical – Colma

Kelda Davies
Company Member
Local Investigating Committee

Landis Marttila
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the Company's denial to pay bypass pay to an Operating Clerk at the Colma headquarters for prearranged overtime assignments during a storm event.

Facts of the Case

In February, the Company prearranged three Operating Clerks to work a storm event over a four day period, February 6, 7, 8, and 9, 2015. The grievant is headquartered in Colma, where the work originated, and the other two clerks are headquartered in San Jose. The grievant requested bypass pay for February 6th from 7:00 p.m. to Midnight, and for February 9th from 7:00 p.m. to 9:00 p.m. when the storm event was concluded.

The supervisor prearranged rotating shifts for each day of the storm which included a day shift 6:00 a.m. to 7:00 p.m. and a night shift 6:00 p.m. to 7:00 a.m. The grievant notified the supervisor she wanted to work overtime however she would not be available to work between 5:30 p.m. to 10:00 p.m. on Saturday and Sunday. In order to accommodate the grievant, and maintain consistent rotating shifts, the supervisor scheduled the grievant to work the day shift all four days. The clerks from San Jose were prearranged to work the night shift each day. The grievant was released at 7:00 p.m. each day in accordance with her scheduled prearranged overtime shift.

Discussion

The Union argued that the Company violated Letter Agreement 85-61 (Arb 120) by not allowing the grievant to work until she was too tired, until the supervisor observed her to be too tired, or until the work was completed. The Union argued the overtime originated in the Colma service territory and therefore the clerk(s) at the Colma headquarters have first rights to all overtime. Additionally, the overtime worked by the clerks from outside of the Colma headquarters will not be considered for overtime equalization purposes at the end of the year, therefore, the Union argued that paying bypass pay to the grievant is appropriate in this case as she was released from overtime in violation of Arb 120.

The Company argued that there was no violation of Arb 120. The prearranged overtime assignments were scheduled in rotating shifts for the duration of the storm event. The purpose of scheduling the prearranged overtime rotating shifts was to ensure adequate clerical coverage during the entire storm event. The grievant notified the supervisor she was unable to work the entire night shift on both Saturday and Sunday and was therefore scheduled to work the prearranged day shift over the four day period, which she did work.

The Company cited PRC 2170 where no violation was found when crews were scheduled in 8 hour rotating shifts during a storm event. The Committee in that case concluded:

- Company has the right to manage the business, to plan and direct the work of its employees. During major emergencies Company has the right to utilize additional employees from other areas including General Construction and to make non-traditional work assignments.
- The duration of overtime assignments is not guaranteed. However, the principles of Arbitration 120, PRC 2182, and Letter Agreement 85-61 are to be followed.

The Company further argued that PRC 2182 found no violation as other employees (replacement employees) were not called-out to replace the relieved employees. In the immediate case, additional clerks were not called-out to replace the grievant at the conclusion of her pre-arranged overtime assignment. The Company further noted that bypass pay is not a contractual remedy outside of clerical year-end equalization in accordance with Section 12.3 Equal Distribution.

Decision

The Committee agreed that the provisions of Section 12.3 provide for the remedy to pay clerical employees when overtime for the accounting period cannot be equalized at the end of the year, but also agreed that equalization of a storm room is not possible as the hours worked by the out of area clerks are not documented on the headquarters overtime equalization list.

The Union Committee members opined that the grievant should have first rights to work the Friday prearranged overtime assignment following her regular shift before out of area clerks were utilized, and therefore the Company should have allowed the grievant to work until midnight Friday as requested in her bypass request as out of area clerks actually worked 24 hours straight from Friday morning until 7:00 a.m. Saturday morning. The Company Committee members opined that the grievant was allowed to work overtime Friday in accordance with the scheduled rotating overtime assignments.

After much discussion regarding this case, the Committee agreed to a one time equity settlement specific to this case and without prejudice or precedence to either party's position, allowing the grievant to work a pre-arranged overtime assignment equal to 5 hours at the 1.5x rate of pay during 2016. The overtime will not be recorded as hours worked or charged for overtime equalization purposes during the 2016 accounting period. If the grievant declines any of the offered overtime hours, those hours shall be considered as declined and will be considered as part of the equity settlement. The Committee agreed to close this case without adjustment and without prejudice or precedence. This case is closed based on the foregoing.

For the Company:

Robin Wix
Laura Sellheim

For the Union:

Kit Stice
Robert Mohler

Rod Williams
Chris Zenner

Karen Russell
Andrew West

Robin Wix 8/24/16
Robin Wix, Chairman Date
Review Committee

Kit Stice 8/24/16
Kit Stice, Secretary Date
Review Committee