
ARBITRATION IN THE MATTER	*	
	*	Grievance No.
	*	
Between	*	Issue: Mandatory Overtime
	*	
United Auto Workers	*	*
	*	
and	*	
	*	
Airline Parts Group	*	Judy A. Gust, Arbitrator
	*	

PRELIMINARY STATEMENT

The above-captioned parties are covered under a collective bargaining agreement effective November 20, 2004. That Agreement provides for final and binding arbitration in Article VI, Section 2, on page 7. The arbitration hearing in this matter was held on December 12, 2007 at the Airline Parts Group offices in Los Angeles, California. The parties appeared through their designated representatives and presented evidence through exhibits and the testimony of sworn witnesses who were subject to cross-examination. The record in this case was closed on that date following oral argument by the representatives.

APPEARANCES & WITNESSES

For the Union

- Dick Lehman Spokesperson
- Manny Vista Union Chairperson
- Mark Connor Bargaining Unit Recording Secretary
- Frank Smith Union Representative

For the Company

- Rick Nunn Spokesperson, Hope & Barnett LLP
- Jim Villa Vice President of Operations
- Bob Franz Director of Operations
- Ray Oscar Director of Human Resources

BACKGROUND AND FACTS

This case arises from a dispute over the Company's assignment of mandatory overtime. Overtime provisions were negotiated and set forth in Article XI of the collective bargaining agreement. Section 6, particularly, identifies how overtime will be offered and assigned (see

Relevant Language below). Overtime is first offered on a voluntary basis and, if sufficient employees do not volunteer, management has the right under the agreement to post mandatory overtime within a specific time frame for certain classifications of employees. The agreement also limits the amount of mandatory overtime that can be assigned between Monday and Friday. There is no limit in the agreement as to the amount of hours that can be offered or assigned on a Saturday. In this case, the posting deadlines for voluntary and mandatory overtime are not in dispute. What is in dispute is the Union's allegation that the Company has established a past practice of not exceeding six (6) hours of mandatory overtime on Saturdays. The Company asserts that although not often requiring more than six (6) hours of mandatory overtime on Saturdays, it has not given up that right and exercises that right when needed to meet production requirements.

On January 4, 2007, the Company posted eight (8) hours of mandatory overtime for Tube Technicians on Saturday, January 6, 2007. As a result, the Union filed grievance No. 9635 alleging that the Company violated Article XXII – General Conditions, Section 3, of the agreement by ignoring its past practice of posting no more than six (6) hours of mandatory overtime on Saturdays.

ISSUE

The parties were unable to agree on a statement of the issue or issues to be decided. The Union set forth the issue as: Did the Company violate a long standing past practice by demanding employees work 8 hours on Saturday? If so, what is the remedy?

The Company set forth the issue as: Did the Company violate the Agreement by posting 8 hours of mandatory overtime for Composite Metal Tube Technicians for Saturday, January 6, 2007? If so, what is the appropriate remedy?

The parties stipulated that the Arbitrator would formulate the issue or issues to be decided. Having reviewed the record of evidence, the Agreement, and the parties' proposed statements of the issues, the Arbitrator formulates the issue as follows:

Did the Company violate Article XI, Section 6, of the collective bargaining agreement when it required 8 hours of mandatory overtime for Tube Technicians on Saturday, January 6, 2007? If so, what is the remedy?

RELEVANT PROVISIONS of the AGREEMENT

ARTICLE VI - GRIEVANCE PROCEDURE

SECTION 3. Before submission of a grievance of dispute to arbitration, the Company and the Union must promptly attempt to agree and set forth in writing specifically the issue or issues to be submitted to arbitration. In the event no agreement regarding the issue or issues to be submitted to arbitration is reached, each party shall have the right to unilaterally submit the issue or issues to the arbitrator and the arbitrator shall have the right to decide the issue as well as render an award upon hearing the case. The arbitrator shall not have the right to add to nor subtract from no modify any of the terms of this Agreement, and all decisions must be within the scope and terms of this collective bargaining agreement.

ARTICLE XI - OVERTIME

SECTION 6. . . .

Overtime is voluntary after ten (10) hours, Monday through Thursday, and after eight (8) hours on Friday. For employees working in the job classifications of Assembler, Deburrer, Stock Clerk, and Shipping / Receiving Clerk, Saturday overtime will be voluntary. If sufficient employees do not volunteer for Saturday overtime, the Company will draft employees for such overtime in the reverse order of seniority from among those employees in the job classification involved who are qualified to perform the work required. The drafted employees must accept the overtime. For all employees other than those designated above, Saturday overtime will be voluntary for 7 of the 13 scheduled by the Company. The Company will designate which Saturdays are required in order to meet production requirements.

For the purpose of this section the term emergency shall mean those situations that are the result of a customers immediate need, including but not limited to Aircraft on Ground, line shutdown, interruptions in the production due to causes beyond the control of the Company, etc.

. . .

ARTICLE XXII – GENERAL CONDITIONS

SECTION 3. The parties hereto acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

This Agreement is agreed upon in final settlement of all demands and proposals made by either party during negotiations culminating in this Agreement, and the parties intend to finally conclude bargaining on the subjects set forth in this Agreement throughout its duration.

POSITION OF THE UNION

The Union's position is that the Company is precluded by past practice from requiring eight (8) hours of mandatory overtime on Saturdays. According to the Union, since 1990, the Company has followed a practice of requiring no more than six (6) hours of mandatory overtime on Saturday even though more than six (6) hours was offered. The Union alleges that on January 4, 2007, the Company unilaterally changed the past practice regarding mandatory overtime by making eight (8) hours of overtime on Saturday, January 6, 2007, mandatory without any negotiations or contact with the Union. It argued that the Company acquiesced to accepting a six (6) – hour mandatory overtime limitation on Saturdays because it neither proved that employees had actually worked mandatory hours in excess of six (6) hours on the three past occasions cited nor that any employees had been disciplined for failing to work mandatory Saturday hours in excess of six (6) hours.

Finally, the Union argued that Arbitrator Dallas R. Jones, in 50 LA 48-51, stated the following:

"It is generally accepted that certain, but not all clear and long-standing practices, can establish conditions of employment as binding as any written provision of the agreement."

The Union asked that the Company abide by its past practice and limit mandatory overtime hours to six (6) on Saturdays.

POSITION OF THE COMPANY

The Company's position is that the crux of this dispute is the Company's right to impose unlimited mandatory overtime on Saturday, as provided by the Agreement; not whether or not they have exercised that right. The Company argued that the Union failed to sustain its burden to prove that the contract was violated. The evidence that showed that the Company had required mandatory overtime on six occasions prior to this grievance being filed was presented only to refute the Union's argument that a past practice had altered the specific terms of the Agreement. According to the Company, the Agreement contains some limitations on the amount of overtime that can be made mandatory. If there was agreement on the six (6) – hour Saturday mandatory overtime limitation, as suggested by the Union, it would have been specifically included in the contract. The Company asserted that the Union made no proposals in the last negotiations to modify the Saturday overtime provisions. The only evidence presented with regard to the last contract negotiations was the change of the mandatory overtime limitation period from six (6) out of thirteen (13) weeks to seven (7) out of thirteen (13) weeks.

Next, the Company argued that it reasonably and infrequently assigned the mandatory eight (8) – hour Saturday overtime only when its business needs required it to catch up on delinquent orders. It did not assign the mandatory overtime to punish employees. Further, the Company cited Elkouri and Elkouri at page 741 that stated in part:

"neither the fact that the employer may have been lenient in exercising the right to require overtime work nor the fact that overtime has been voluntary in the past, precludes management's right to mandate overtime where the volunteer approach fails to supply the number of workers needed."

Finally, the Company argued that employees still have a choice either to work the mandatory overtime or be subject to an attendance violation penalty. The Company asked that the grievance be denied.

DISCUSSION

As a contract interpretation case, the Union has the burden to prove by a preponderance of the evidence that the Company has violated the contract. In this case, the Union argues that the Company has established a long-standing past practice of not requiring (or mandating) more than

six (6) hours of overtime on Saturdays. The Company introduced evidence that over six (6) hours of overtime had been made mandatory on at least three (3) to six (6) occasions over the past three (3) years. The Union then argued that the Company failed to prove either that the employees who were assigned over six (6) hours of mandatory overtime actually worked more than six (6) hours or that they received discipline if they did not work more than six (6) hours of mandatory overtime. This argument is not persuasive for the following reasons.

Whether or not the employees who were assigned over six (6) mandatory hours of overtime actually worked the mandatory hours is not relevant to whether the Company has the authority under the Agreement to assign mandatory hours.

As to the Union's argument that the Company failed to prove that it disciplined employees for failing to work over six (6) hours of mandatory overtime, there was no evidence that the assigned employees did not work the assigned mandatory overtime which would trigger the attendance system penalty. The Vice President of Operations, Jim Villa, testified that employees who failed to work mandatory overtime received one-third (1/3) point in the attendance system for leaving early and one (1) point if they missed the overtime entirely. He also testified that employees had, in the past, been assessed these points for missed overtime but could not specifically cite any examples. Union Chairperson, Manny Vista, similarly testified that the one-third point and one point attendance system consequences were assessed for failure to work mandatory overtime. Later, he testified that no one who was assigned eight (8) hours of mandatory overtime on Saturday, January 6, 2007, the day at issue in this grievance, received attendance system consequences. However, there was no evidence introduced that any of those assigned eight (8) hours of mandatory overtime on January 6, 2007 failed to work their eight (8) hours of overtime. The absence of attendance system consequences does not establish a binding past practice that would prohibit the Company from assigning more than six (6) hours of mandatory overtime on Saturdays.

The consideration of past practice is generally raised where the contract language is either ambiguous or, in fewer circumstances, where the contract is silent on a particular subject and Union members have come to rely on a particular personal benefit that has been provided over a

long period of time, evidencing mutual acceptance of the practice. In this case, the contract language is neither ambiguous nor silent. Rather, Article XI provides a number of specific limitations on the assignment of mandatory overtime. It protects certain, specific classifications from the assignment of overtime. More on point, it limits the amount of overtime that can be required between Monday and Friday. Finally, it limits the period of mandatory Saturday overtime to six (6) Saturdays out of any thirteen (13) Saturdays that overtime is posted. Clearly absent from the written agreement is any limitation as to the number of hours that can be made mandatory on a Saturday. While one might argue that the second cause for consideration of a past practice is present in this instance (the employee's reliance on only six (6) hours of mandatory Saturday overtime), the Company's proof of having assigned more than six (6) hours of mandatory Saturday overtime in the past prevents a finding that the alleged practice was long-standing, known to both parties and mutually acceptable.

The Union's own argument about the binding nature of *certain* long-standing past practices acknowledges that not all past practices are controlling nor do they have the standing and effect of unambiguous written contract language. (emphasis added)

Despite the helpful efforts of the Union in the past to encourage employees to work voluntary overtime, those efforts do not overcome the Union's burden to prove that the Company violated the Agreement. It has not done so.

Arbitrator Whitley P. McCoy effectively expressed the limitations of past practice where the issue involves a clear, unlimited management right when he stated:

" . . . The mere failure of a Company, over a long period of time, to exercise a legitimate function of management, is not a surrender of the right to start exercising such right. . . ." 16 LA 73, 74

Accordingly, it is found that the Company did not violate Article XI, Section 6, of the collective bargaining agreement when it required eight (8) hours of mandatory overtime for Tube Technicians on Saturday, January 6, 2007. Further, it did not violate Article XXII, Section 3 of the Agreement regarding General Conditions.

AWARD

Based upon the foregoing analysis of the evidence and arguments presented, the grievance is denied.

Judy A. Gust, Arbitrator
Ramona, California
January 8, 2008