

ARBITRATION PROCEEDINGS PURSUANT TO A
COLLECTIVE BARGAINING AGREEMENT BEFORE
CHARLES S. LOUGHRAN, ARBITRATOR

In the Matter of)
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)
Council of Prisons, American Federation of)
Government Employees (AFGE) Local 1122)
)
and)
)
)
U.S. Dept. of Justice-Federal Bureau of Prisons)
Sheridan, OR Correctional Institution)
)
Re: Lyons Powerhouse Overtime Grievance)
)
FMCS Case No. 10-56025)
_____)

NATURE OF THE DISPUTE AND PROCEDURAL BACKGROUND

This dispute arises under the collective bargaining agreement, (“Master Agreement”) between the parties identified above. Article 32 of that Master Agreement contains procedures under which this case has been processed. The Federal Bureau of Prisons, (“Agency”) operates a number of correctional institutions throughout the United States including the medium security facility in Sheridan, Oregon (“Facility”) which is located approximately 50 miles southwest of the city of Portland. The Union, AFGE Local 3979, is a labor organization that represents employees at the correctional institution in Sheridan. The grievance was filed by the Local Union on behalf of the Grievant, Robert Lyons.

This case concerns a grievance protesting the Agency’s failure to assign Mr. Lyons to overtime in the Facility’s Powerhouse sometime after he became an HVAC Foreman

not working in the Powerhouse. In addition to the merits of this grievance, the parties dispute whether or not the grievance is arbitrable, based upon issues raised by the Agency concerning the alleged lack of specificity in the text of the grievance and the Union's alleged improper invocation of arbitration. The parties satisfied the necessary steps required by the Master Agreement's grievance procedure, and the dispute was appealed to arbitration. From a list of arbitrators supplied by the Federal Mediation and Conciliation Service, the parties selected the undersigned to hear the case. A hearing was conducted in Sheridan, OR on May 3, 2012. The Union was represented by Mr. Michael Ellis, Vice President of AFGE Local 3979. The Employer was represented Ms. Ruby Navarro, Lead Labor Relations Specialist for the Federal Bureau of Prisons. Witnesses testified under oath, exhibits were admitted into evidence, and a verbatim transcript was made of the hearing. The parties submitted their arguments in written briefs filed subsequent to the hearing.

ISSUES PRESENTED

The parties presented differing versions of the issues for decision, and stipulated that the Arbitrator is authorized to frame the issues based upon their proposed versions and the evidence adduced in the hearing. The Arbitrator has framed the issues as follows:

- Issue 1: Is the grievance in this case arbitrable?
- A. Did the grievance contain the necessary specificity required by the Master Agreement?
 - B. Did the Union follow the proper procedure set forth in the Master Agreement for invoking arbitration?
- Issue 2: Did the Agency violate the Master Agreement or any Local Powerhouse Overtime Memoranda of Agreement by not assigning overtime work in the Powerhouse to Robert Lyons after he became an HVAC Foreman? If yes, what remedy is appropriate?

FACTS

Mr. Robert Lyons is an HVAC (Heating, Ventilation and Air Conditioning) Foreman at the Agency's Facility in Sheridan, Oregon. Mr. Lyons had previously been employed as a Systems Repair Operator in the Powerhouse for approximately seven years. He transferred to the position of HVAC Foreman on a temporary basis in July, 2007, and was awarded that position on a permanent or regular basis in October, 2007.

When Mr. Lyons was working in the Powerhouse, he was included on the monthly overtime roster and was permitted to sign the roster indicating that he desired available overtime in the Powerhouse. Beginning in the month of February, 2008, approximately six months after his temporary assignment as HVAC Foreman and two months after being permanently assigned to that position, Mr. Lyons' name was not included on the monthly roster for purposes of volunteering for overtime in the Powerhouse. According to Mr. Lyons' testimony, on several occasions he went to Mr. Stanley Labriere, the Facilities Manager at the time, and asked that he be included on the Powerhouse overtime roster, but Mr. Labriere either ignored or denied those requests. Mr. Lyons' testimony on this point was corroborated by that of Mr. Jim Primrose, Electrical Supervisor. Mr. Labriere did not testify in the hearing. Mr. Lyons' immediate supervisor at the time was Mr. David Childress, General Foreman, but Mr. Lyons did not request that Mr. Childress take any action to have Lyons' name included on the Powerhouse overtime roster. Because of the level of staffing and method of scheduling in the Powerhouse until the latter part of 2010, there had been a considerable amount of overtime. The parties stipulated that Mr. Lyons had the technical, knowledge and experiential qualifications to work in the Powerhouse. (TR 57-58)

Because of staffing needs created by a Powerhouse employee's absence from work due to a military leave, Mr. Lyons was temporarily transferred back to the Powerhouse in February, 2010. He remained there for a short period of time, the exact length of which was not covered in the record.

The process for allocating overtime in the Powerhouse was spelled out in a local Memorandum of Agreement which was signed by Denise M. Murphy, Associate Warden of the Sheridan Facility on behalf of the Employer and by Mr. Michael Ellis, then President of AFGE Local 3979 and was dated December 15, 2004. That agreement provided for overtime to be distributed to qualified staff in accordance with a posted overtime roster which qualified employees could sign to indicate their willingness to work overtime. In order to be considered for such overtime, the agreement required that employees other than Utility Systems Repairer Operators had to work one full shift each quarter on all three shifts and have conducted certain specified operating procedures within a six-month period. The parties stipulated that during the period Mr. Lyons worked as an HVAC Foreman he did not meet that requirement. (TR 70)

In approximately the Fall of 2010 Sheridan Facilities management instituted a remote system for operating the Powerhouse. As a result, the amount of overtime in that department diminished considerably to the point where overtime became very infrequent.¹ In conjunction with the new remote operating system, local facility and union representatives signed a new agreement to govern assignment of overtime in the Powerhouse. That agreement was signed by Mr. Israel Jacquez, Associate Warden of Programs and Mr. Danny Payne, President of Local 3979 on March 3, 2010, although by its terms it was not to go into effect until a remote operations agreement was signed.² This new overtime procedure stipulated that overtime was to be distributed to “qualified staff in accordance with a posted overtime roster” with names inserted in seniority order and that qualified employees could sign up for overtime each quarter should they desire to work overtime. This new agreement did not contain the requirement that eligible employees on the list had to have worked at least one full shift each quarter on all three

¹ According to the testimony of General Foreman Childress, overtime in the Power House after the remote operations system was instituted was reduced to an average of about one occurrence per month, varying from no overtime to 2-4 occurrences per month. (TR 190)

² The record shows that the remote operations agreement was not signed until sometime in the latter half of 2010.

shifts in the Power House as had the 2004 overtime agreement, although it did retain the proficiency requirements of that prior agreement.

Since the remote operations system was implemented sometime after July, 2010 and overtime opportunities diminished to a trickle, management has assigned available overtime to the two regular Powerhouse operators, and if they are not available, the work has been done by Facilities Manager Childress. (TR 191-192) No overtime roster has been prepared or utilized in the Powerhouse since remote operations commenced there.

On March 17, 2010 a grievance was filed by the Union claiming that the Employer had unfairly bypassed Robert Lyons for overtime in the Powerhouse. The grievance was denied in a memorandum dated April 16, 2010 issued by J.E. Thomas, the Facility's Warden.³ The grievance was then appealed by the Union to arbitration.

RELEVANT PROVISIONS OF THE MASTER AGREEMENT

ARTICLE 18 – HOURS OF WORK

Section p. Specific procedures regarding overtime assignments may be negotiated locally.

1. when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees; and ...

ARTICLE 31– GRIEVANCE PROCEDURE

...

Section d. Grievances must be filed within forty (40) calendar days of the date of the

³ That denial included an argument that the grievance was procedurally defective due to being insufficiently specific. It also denied the merits of the grievance.

alleged grievable occurrence. ... If a party becomes aware of an alleged grievable event more than forty (40) calendar days after its occurrence, the grievance must be filed within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence.

ARTICLE 32 – ARBITRATION

Section a. In order to invoke arbitration, the party seeking to have an issue submitted to arbitration must notify the other party in writing of this intent prior to expiration of any applicable time limit. The notification must include a statement of the issues involved, the alleged violations, and the requested remedy....

Section h. ...

The arbitrator shall have no power to add to, subtract from, disregard, alter or modify any of:

1. this Agreement; or
2. published Federal Bureau of Prisons policies and regulations

POSITIONS OF THE PARTIES

Union's Position

The principal arguments advanced by the Union are summarized as follows:

1. The grievance is sufficiently specific in that it alleges the Agency unfairly bypassed Mr. Lyons for overtime in the Powerhouse. The Agency obviously understood the issue the Union was raising.
2. The Union properly invoked arbitration. The method used is the same one the Union has always used, and until recently the Agency hasn't questioned that invocation.
3. The grievant, Robert Lyons, was fully qualified to perform the work of a Powerhouse Operator, yet was denied the opportunity to sign up for

overtime in that position.

4. Mr. Lyons requested the opportunity to sign up for overtime, but that request was ignored by Mr. Stanley Labriere, the Facilities Manager.
5. The Master Agreement requires that overtime be distributed and rotated equitably. The Agency violated that provision in denying Mr. Lyons the opportunity to work overtime in the Powerhouse after he became a HVAC Foreman.

Agency's Position

The principal arguments made by the Employer are summarized as follows:

1. The grievance in this case lacked sufficient specificity to allow the Agency to understand what action or inaction the Union was claiming to have violated the Master Agreement or Local Agreements. The grievance should be denied on that basis.
2. In filing its grievance the Union used the "kitchen sink" approach by including a wide range of claimed violations (including ones related to the Fair Labor Standards Act) which were not applicable in this case.
3. Because the Union's invocation of arbitration did not include a statement of the issues, the alleged contract violation or the requested remedy as required by the Master Agreement, the grievance should be denied.
4. Robert Lyons did not meet the requirements of the Memorandum of Understanding dated December 6, 2004, and therefore was properly denied the opportunity to work overtime in the Powerhouse.
5. The evidence shows that Mr. Lyons did not ask his immediate supervisor, David Childress, to be given Powerhouse work in order to meet the qualifications for overtime in that department.
6. Robert Lyons told Mr. Childress that he was not interested in overtime work in the Powerhouse.

DECISION

RE ISSUE 1– ARBITRABILITY / THRESHOLD ISSUES

The Employer has raised two threshold issues which it believes, singly or in tandem, should disqualify the grievance from being considered on its merits. These issues will be discussed in the order in which they were raised.

Was the grievance sufficiently specific?

The Agency argues that the Union did not clearly and specifically spell out in the grievance just what it was that the Agency did or didn't do that violated the Master Agreement or Local Memoranda of Agreement. The grievance in this case (Jt. Exh. 3) is admittedly less than perfectly clear as to what actions or inactions of the Agency were in violation of contractual obligations. It begins with an apparent complaint that Mr. Lyons was "arbitrarily reassigned" from HVAC Foreman to Powerhouse Operator in February, 2010. However, later in the grievance the Union clearly raises the issue of Mr. Lyons having been unfairly bypassed for overtime in the Powerhouse and petitions for compensation for lost overtime pay. This is, of course, the precise issue that was the crux of the hearing in this case. The Master Agreement does not spell out exactly how specific a grievance must be in order to be arbitrable, so it is problematic to conclude that the grievance in this case was too vague or uncertain. The fundamental principle of grievance filing generally is to put the other party on notice of what is being contested. This principle has been satisfied in this case.

The Agency's response (Jt. Exh. 4), while initially raising the issue of insufficient specificity, goes on to directly address the Union's complaint that Mr. Lyons was improperly denied overtime in the Powerhouse. Warden Thomas responded directly to the Union's contention that Robert Lyons should have been allowed to work overtime in the Powerhouse by pointing out that Lyons did not request verbally or in writing to work such overtime. He follows that up with other arguments that are directly on point with

the issues raised by the Union in this arbitration.

Although perhaps not a model of clarity, the grievance in this case sufficiently put the Agency on notice of what violations the Union was claiming and on that basis it is arbitrable. Any doubts about what underlying facts and arguments the Union was relying upon could have been clarified by direct discussions with the Union. In fact, that appears to have been done in this case.

Did the Invocation of Arbitration meet the requirements of the Master Agreement?

The second basis on which the Agency contests the arbitrability of the grievance is the failure of the Union to abide by the requirements of the Master Agreement in the manner in which the Union appealed the grievance to arbitration. The controlling contract language reads as follows:

In order to invoke arbitration, the party seeking to have an issue submitted to arbitration must notify the other party in writing of this intent prior to expiration of any applicable time limit. The notification must include a statement of the issues involved, the alleged violations, and the requested remedy... (Article 32, Section a)

The Agency claims that in invoking arbitration of this grievance, the Union failed to notify the Agency of the issue(s) it was submitting, the alleged violations of the agreement or the remedy the Union was requesting. The document constituting the invocation of arbitration was a memo dated April 21, 2010 from Danny Payne, President of Local 3979. (Jt. Exh. 5A) The Union counters the Employer's argument by pointing out that the invocation makes specific reference to the March 17, 2010 grievance and follows the Union's long-standing practice of appealing cases to arbitration.

The invocation, while not literally in conformance with the provision in Article 32 cited above, nevertheless makes reference to the March 17, 2010 grievance and the Agency's response to that grievance. There could have been little doubt as to what issue

was being submitted to arbitration and what remedy was being sought. Moreover, the Agency did not contest the adequacy of the invocation when it was notified of the Union's action, nor did it question what issue(s), violation(s) or remedy(ies) were being sought. Its silence on a timely basis can be considered to be a waiver of its right to contest them in this arbitration.

Workplace grievances and arbitration are usually handled by lay persons, not lawyers, and rigid adherence to technical requirements are not typically enforced, particularly where, as here, there does not appear to be any reasonable uncertainty as to the subject matter or substance of the dispute. It would be preferable, nevertheless, for the Union in the future to be more attentive to the Master Agreement's procedural requirements for invoking arbitration. For the reasons set forth above, the grievance in this case is held to be arbitrable.

**RE ISSUE 2-- WHETHER THE AGENCY VIOLATED THE MASTER
AGREEMENT OR ANY LOCAL MEMORANDA OF AGREEMENT BY NOT
ASSIGNING OVERTIME IN THE POWERHOUSE TO ROBERT LYONS
AFTER LYONS BECAME AN HVAC FOREMAN**

There are three possible contractual bases for the Union's contentions that Robert Lyons should have been assigned overtime in the Powerhouse, i.e., the Master Agreement, the December 6, 2004 Local Powerhouse Overtime Agreement ("2004 Overtime Agreement") and the March 3, 2010 Local Powerhouse Overtime Agreement ("2010 Overtime Agreement"). Each of these possible bases will be discussed in that order.

Did the Agency violate the Master Agreement?

The Master Agreement covering the parties to this case (Jt. Exh. 1) contains little or no specific direction as to how overtime is to be distributed. The only provision that

is even remotely relevant to this case is the following:

ARTICLE 18 – HOURS OF WORK

Section p. Specific procedures regarding overtime assignments may be negotiated locally.

1. when Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees; and ...

The very general admonition that overtime is to “be distributed and rotated equitably among bargaining unit employees” is of no help in resolving this case since what is “equitable” can only be assessed according to what specific procedures the parties have established at the Sheridan Facility. In fact, the preamble to the overtime provisions grants authority to local union and management representatives to establish the specific procedures by which overtime is to be allocated. The parties in this case availed themselves of that opportunity.

It is quite common in collective bargaining agreements covering multiple facilities to have local agreements covering certain subjects that normally vary by local conditions. Overtime distribution is typically one of those subjects. One of the major advantages of having such local flexibility is that the parties can more easily adapt the procedures to meet changing conditions. Thus, when the remote operating system was adopted for the Powerhouse at Sheridan, the local parties were able to craft overtime procedures to address the changed staffing and scheduling of the Powerhouse crew.

Consequently, in order to determine whether the Agency in this case violated its

contractual obligations, it is necessary to examine the local agreements, not the Master Agreement. It cannot be said that there was any violation of the Master Agreement.

Did the Agency violate the 2004 Agreement?

The 2004 Overtime Agreement contains the following procedures that are relevant to this case, with the most relevant portions shown in bold type:

1. Distribution of Overtime

- a) Overtime assignments will be distributed to **qualified staff** in accordance with a posted overtime roster; this roster will initially be drafted in order of seniority. All qualified staff will be afforded the opportunity to add or delete their name from the overtime roster at the start of each quarter.

- b) Facilities Management will develop a list of staff considered qualified to supervise the Powerhouse. All qualified are required to maintain proficiency and be familiar with all phases of the power plant. **Staff, other than Utility Systems Repairer Operators, must man one full shift each quarter on all three shifts**, and conduct the following procedures: Emergency Generator Test, Weekly Fire Pump Test, and Boiler Operation utilizing natural gas and fuel oil within a 6 month period to be considered proficient and qualified.

(Jt. Exh. 2; emphasis added)

The question is whether Mr. Lyons met the qualifications set forth in the above provisions. There is no disagreement between the parties as to whether Lyons possessed the proficiency requirements (i.e., technical competence) to fulfill the duties of Powerhouse Operator. The parties stipulated to the fact that he did. (TR 57-58). The critical issue is whether he satisfied the requirement that he have worked "one full shift in each quarter on all three shifts". That question was also answered by stipulation when the parties agreed that he did not. (TR 70) Nevertheless, the Union argues that Lyons should have been excused from that requirement because he repeatedly asked Facilities Manager Labriere to be included on the overtime roster. That argument fails for two reasons. First, there is no evidence that had Mr. Lyons been included on the Powerhouse

overtime roster he would have been able (when he was an HVAC Foreman) to work enough shifts to meet the “one full shift in each quarter on all three shifts” requirement. Second, it is a circular or “bootstrap” argument, i.e., Lyons was attempting to meet the qualifications for being on the overtime roster by first being placed on overtime roster. If he did not meet one of the requirements to be on the overtime roster, he would not have had an opportunity to work one full shift on all three shifts in order to be placed on the roster.

One might argue that because Robert Lyons possessed the proficiency requirements to do work in the Powerhouse, he should have been placed on the overtime roster notwithstanding the fact that he failed to meet the one full shift each quarter on all three shifts requirement. However, the Arbitrator is not empowered to make such an exception. The Master Agreement, as with virtually every other collective bargaining agreement containing an arbitration clause, prohibits the arbitrator from modifying the language of the agreement. Consequently, the Agency did not violate the 2004 Overtime Agreement when it did not assign overtime in the Powerhouse to Mr. Lyons.

Did the Agency Violate the 2010 Overtime Agreement?

The grievance in this case was filed on March 17, 2010, two weeks after the parties had signed the 2010 Overtime Agreement. The 2010 Overtime Agreement was negotiated specifically to address the forthcoming remote powerhouse operating system and was, by its terms, to go into effect when the parties had reached agreement on the new system. Even though the 2010 Overtime Agreement was not in effect at the time of Lyons’ grievance, it put the Agency on notice that there was a dispute concerning Mr. Lyons not having been placed on the overtime roster and therefore not having been permitted to sign up for available overtime.

The relevant portions of the 2010 Overtime Agreement are as follows with the most relevant language shown in bold type:

1. Distribution of Overtime
 - a) Overtime Assignments will be distributed to qualified staff in accordance with a posted overtime roster;... **All qualified staff will be afforded the opportunity to add or delete their names from the overtime roster at the start of each quarter.**
 - b) **The Facilities Manager, or designee will develop a list of staff considered qualified to supervise the Powerhouse.** All qualified staff are required to maintain proficiency and be familiar with all phases of the power plant. Staff wishing overtime must be proficient with the following procedures; Emergency Generator Test, Weekly Fire Pump Test, and Boiler Operation utilizing gas and fuel oil within a 6 month period.

The 2010 Overtime Agreement is particularly noteworthy in that it did not carry forward the prior “one full shift each quarter on all three shifts” requirement of the 2004 Overtime Agreement. It did incorporate the previous language of performing specific procedures which Mr. Lyons was admittedly capable of performing.⁴ Thus when the 2010 Overtime Agreement went into effect in late 2010, Mr. Lyons’ name should have been included on the Powerhouse overtime roster. Unfortunately for him, no such roster was ever prepared.

The 2010 Overtime Agreement specifically directed the Facilities Manager (who at the time it went into effect was David Childress) or a designee to develop a list of qualified staff who would be able to sign up for overtime on the roster that was prepared for that purpose. Mr. Childress testified that because the amount of overtime had been greatly reduced under the remote operations system, he did not think it necessary to have an overtime roster. He testified that such overtime that was available would be assigned

⁴ It is interesting that the 2004 Agreement required that to be eligible for Powerhouse overtime, an employee had to “conduct” those specific operations whereas in the 2010 Agreement the employee only had to “be proficient.” It would seem that the parties intended to liberalize overtime eligibility by making eligible former Powerhouse employees who were working in other departments and who still possessed the necessary skills, but weren’t necessarily using them in the Powerhouse on a regular basis. However, there was no evidence in the record as to the parties’ intent in negotiating the 2004 Overtime Agreement.

to the two regular Powerhouse operators, and if they were not available, he would do the work himself. Interestingly, he testified about his thinking concerning using others to do overtime in the Powerhouse as follows:

- A. Okay. Currently, right now, we use the Powerhouse operators as the main guys that we would call, because they work in the Powerhouse. Now we do not have an alternate schedule, because I don't have any staff members that have expressed any interest in coming in to reset a boiler. If I had some of these other guys, Terry Murrell, Jeff Peceyna, and Rob Lyons, for instance, that would want to be considered for that overtime to come in and reset that boiler, then we would probably set up a Roster Committee in conjunction with the Union to come up with this list and develop a rotation.

(TR 190-191)

The problem with Mr. Childress' approach is that he puts the burden on the employees to come to him to express an interest in working overtime in the Powerhouse whereas the 2010 Overtime Agreement places on him the obligation to develop the overtime roster and make it available to qualified employees to sign. This he did not do, and thus a violation of the 2010 Overtime Agreement resulted.

Had such a roster been developed and made available to qualified employees to sign, Mr. Lyons would have been permitted to sign up for available overtime. Whether or not he would have signed up for such overtime cannot be determined, but the fact that he had a pending grievance claiming to have been bypassed for overtime, it must be presumed that he would have signed the roster. Although overtime had diminished considerably from the period of time when the 2004 Overtime Agreement was in effect, there was admittedly some overtime available. Had Mr. Lyons' name been on that list he

would have been able to share in it with the other operators.⁵ Presumably, had an overtime roster existed with Lyons' name on it, it might have fully or partially eliminated the necessity of Childress doing Powerhouse work himself.

AWARD

- Issue 1- The grievance in this case is arbitrable in that, (a) the grievance contained sufficient information to put the Agency on notice as to what violation(s) the Union alleged the Agency had committed, and (b) the Union's invocation of arbitration sufficiently complied with the Master Agreement and/or the Agency waived its right to contest the grievance's arbitrability because it did not raise the issue of improper invocation of arbitrability on a timely basis.
- Issue 2- The Agency did not violate the Master Agreement or the 2004 Powerhouse Overtime Memorandum of Agreement by not assigning overtime in the Powerhouse to Robert Lyons after he became an HVAC Foreman. However, the Agency did violate the 2010 Powerhouse Overtime Memorandum of Agreement by not developing an overtime roster for the Powerhouse and by not affording Grievant Robert Lyons an opportunity to sign up for overtime in the Powerhouse when the 2010 Powerhouse Overtime Agreement was in effect.

REMEDY

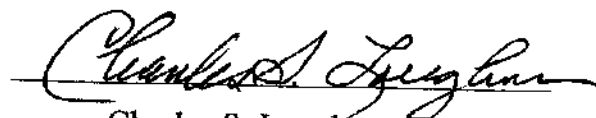
In order to remedy the violation of the 2010 Powerhouse Overtime Agreement, the Agency is directed to promptly establish an overtime roster for the Powerhouse

⁵ Although it may be argued that employees other than Mr. Lyons have been harmed by the Agency's violation of the 2010 Overtime Agreement and are entitled to back pay, the grievance itself did not adequately raise this point, there was no evidence in the record as to the interest of such employees performing overtime work in the Powerhouse, nor did the Union argue in its brief that relief should be granted to any employees other than Lyons.

containing the names of all eligible employees. The Agency is directed to make that list available to all employees who meet the qualifications set forth in the 2010 Overtime Agreement and to henceforth utilize that roster in accordance with the 2010 Overtime Agreement. The Agency is further directed to provide the Union with data showing all overtime hours worked in the Powerhouse (including any and all hours worked by David Childress on bargaining unit work in the Powerhouse) from the date of the institution of the remote control operations until the time when an overtime roster has been developed and in use in the Powerhouse. After reviewing the data, the Agency and the Union will ascertain how many hours of overtime Robert Lyons would have worked had an overtime roster been prepared and had Mr. Lyons' name been included on that list, and to pay him for all such overtime hours he would have worked in the Powerhouse but for the violation noted above. In so doing, the parties are to take into consideration the hours/days/shifts when Powerhouse overtime (including all hours of bargaining unit work done by Childress) occurred when Mr. Lyons was not available to perform such work due to him working on his regular job, on annual or other leave or otherwise not available to work the overtime. No back pay is to be compensated for any overtime in the Powerhouse that Mr. Lyons could not have worked.

Determining the specific amount of backpay owed Mr. Lyons is remanded to the parties for implementation. The Arbitrator retains jurisdiction in this case for 60 calendar days from the date of this Award to clarify any aspects of the Award that may be necessary and/or resolve any differences the parties may encounter in implementing the remedy.

Issued this 6th day of July, 2012 in the City of Oakland, County of Alameda, California



Charles S. Loughran, Esq.

Arbitrator