

#158

IN THE MATTER OF ARBITRATION
UNDER THE CONTRACT

Between:

The State of Ohio and its
Department of Transportation

THE EMPLOYER

and the

Ohio Civil Service Employees
Association, Local 11
A.F.S.C.M.E., AFL-CIO

THE UNION

Grievance No. 66-86-D8.

Class Action Grievance on
behalf of Signal Electricians

ND 565

Before: NICHOLAS DUDA, JR., ARBITRATOR

OPINION AND AWARD:

February 29, 1988

CASE DATA**SUBJECT**

Stand-by pay.

APPEARANCES**FOR THE EMPLOYER**

Rebecca C. Ferguson, Labor Relations Officer, Presenting the Case
Rachel Livengood, Senior Labor Relations Officer
Gary M. Ketron, Traffic Engineer, District 8

FOR THE UNION

Mike Muenchen, Staff Representative, Presenting the Case
Linda Fiely, Associate General Counsel, OCSEA, Local 11
Gary Hursh, Signal Electrician
Connie Mbore, Signal Electrician
Ivis Caudill, Carpenter, Steward

GRIEVANCE TRAIL**"EMPLOYEE GRIEVANCE"**

WHAT HAPPENED? (STATE THE FACTS THAT PROMPTED YOU TO WRITE THIS GRIEVANCE.) As of July 1, 1986 stand-by was put in contract. As Signal Electricians working emergency calls we were required to work calls 1 nite a week on weekdays and the weekend every 5 weekends without receiving any standby pay.

WHEN DID THIS HAPPEN? (BE SPECIFIC.) As of July 1, 1986

WHERE DID THIS HAPPEN? (BE SPECIFIC.) Traffic Signal Shop, Dist. #8, Lebanon....

WHAT WAS YOUR SUPERVISOR'S RESPONSE? (No back pay will be paid)
He stated he has no control over situation

IF YOU ARE A MEMBER OF LABOR ORGANIZATION, WHAT SPECIFIC ARTICLE(S) AND SECTION(S) OF THE LABOR AGREEMENT DO YOU BELIEVE TO HAVE BEEN VIOLATED? Article 13 Section #13.12 or any other applicable article

WHAT REMEDY ARE YOU REQUESTING? Any and all back pay for standby from July 1, 1986 to August 28, 1986 to be made paid in full. And to be paid stand-by pay from this pay forward.

STEP 2 ANSWER BY EMPLOYER

The Union contended that the grievant should be compensated for standby pay from the effective date of the agreement, July 1, 1986, through August 28, 1986 when a standby pay policy was implemented by the District. The grievant stated that he felt that he was required to respond and did not feel that it was a voluntary arrangement and therefore was in a standby status.

Management stated that the grievant was not required to be in a standby status until the pay period beginning August 28, 1986 when the District instituted a standby policy for the signal electricians. Mr. Ketron further stated that none of the signal electricians were told to remain in a standby status prior to August 28, 1986 and that no one had been disciplined for failure to respond.

I find no contractual violation and this grievance is denied in its entirety.

STEP 3 ANSWER BY EMPLOYER

I find that the prerogative of the use of stand-by pay does belong to Management and to them alone. When the grievants were told that the "Stand-By" notations on the daily time sheets would not be honored they should have been aware that the restrictions that go with stand-by did not apply. I do not find any contract violation as claimed by the Union. This grievance is denied in its entirety.

JOINT STIPULATIONS OF FACT

1) The Grievants: Mr. Jack O'Boyle, Signal Electrician 1, was hired by the Department on April 16, 1984; Mr. Connie Moore, Signal Electrician 1, was hired by the Department on September 17, 1984. Mr. Gary Hursh, Signal Electrician 2, was hired by the Department on May 30, 1972; Mr. Clyde King, Signal Electrician 1,

was hired by the Department on August 15, 1977 and was employed by the Department during the time at issue.

2) The grievants normal work week is 7:30 a.m. until 4:00 p.m. Monday through Friday.

3) The stipulated hours referred to in the issue before the Arbitrator are as follows; 4:00 p.m. - 7:30 a.m. Monday through Thursday, 4:00 p.m. - 7:30 a.m. Friday through Monday, and the Fourth of July.

4) Mr. George Barker, Signal Electrician Supervisor, is the direct supervisor of the grievants.

5) Mr. Barker and the grievants agreed to a rotating schedule to cover the hours stipulated in fact number 3. This schedule was at times posted on a calendar posted in the office (Stipulated Document #8).

6) This grievance is properly placed before the Arbitrator.

STIPULATED ISSUE

Did Management violate Article 13.12 of the collective bargaining agreement by not paying District 8 Signal Electricians (1s and 2) standby pay for the stipulated evenings, weekends and Holiday hours for the period of July 1, 1986 until August 28, 1986? If so what shall the remedy be?

POSITIONS OF THE PARTIES

UNION POSITION

The Union puts forth Article 13.12 as straight forward, clear and concise contract language which defines "stand by" as "to be available for a possible call to work."

[Historically] the Signal electricians have availed themselves for work on a prearranged, rotational basis....[There were]...restrictions placed upon Signal Electricians as a result of their status.

...the Signal Electricians meet the stand-by definition of Article 13.12—that is availability for the possible call to work.

Management will contend that the ability to discipline for failure to respond must be present to constitute "stand-by" status. Grievants...testif[ied] as to their understanding of the potential consequences of failure to respond. The threat of discipline, combined with the diligence of the employees, and the effectiveness of the rotational system, accounts for the absence of discipline

for the July 1-August 28 period in question and for the years prior.

Furthermore, Management cannot legitimately make the claim that they did not require Signal Electricians to stand by during the period in question. Management has the duty to assure that there is a reliable system which guarantees that capable Signal Electricians are responding in a timely manner to signal malfunctions which can result in traffic problems which jeopardize the health and safety of the traveling public.

The system...was the system of choice--a system endorsed by management and participated in by Management personnel. Management provided beepers, which assured restricted activity; they posted calendars denoting coverages and the availability of the employees. Management participated in conversations with Signal Electricians and Union Officials indicating that the payment of stand-by was just a matter of working out a computer logging problem--not a denial of the pay. They further allowed Signal Electricians to keep track of stand-by time on their time sheets with numerous and separate entries made between July 1-August 28, 1986. Finally, they on August 29, approved essentially the same stand-by system in effect previously and began to pay the stand-by pay.

The Union urges the Arbitrator to grant the grievance and order stand-by payment for the time District 8 Signal Electricians have spent awaiting the call to work for the period of July 1, 1986 through August 28, 1986.

EMPLOYER POSITION

...testimony and documentation [prove] that [the Employer] complied with Article 13.12 of the contract during the period of time in question - July 1, 1986 through August 28, 1986. Ms. Rachel Livengood, Labor Relations Officer,...initiated conversations with the Union in mid to late July to ascertain the Signal Electricians reactions to the implementation of Article 13.12 or standby pay....she wrote the current policy in accordance with Article 13.12 prior to its implementation in august of 1986....We request that you find in the Department's favor and deny this grievance in its entirety.

RELEVANT LABOR AGREEMENT PROVISION

Article 13.12 - Stand-By Pay

An employee is entitled to stand-by pay if he/she is required by the Agency to be on stand-by, that is, to be available for possible call to work. An employee entitled to stand-by pay shall receive twenty-five percent (25%) of his/her base rate of pay for each hour he/she is in stand-by status. Stand-by time will be excluded from overtime calculation.

ANALYSIS

FINDINGS OF FACT

The Ohio Department of Transportation is organized into a number of districts. District 8, involved in this case, is under the jurisdiction of the Operations Engineer. He directs district Traffic Engineer Ketron. In turn Mr. Ketron supervises several groups including the Signal Electricians, four Employees directed by Supervisor Barker.

The Signal Electricians install, maintain, repair, check and test signals and other electrical equipment used to control traffic. One specific duty is to make service calls to diagnose malfunctions and restore normal operations.

The normal work hours of the Signal Electricians is 7:30 a.m. to 4:00 p.m. Monday through Friday. Each Employee is assigned a truck which he uses to commute between his home and his next place of work. Several trucks are limited in the amount of equipment that they carry and thus are limited to the kinds of trouble calls that they can make.

Sometimes malfunctions occur at times other than the work hours for which Signal Electricians are scheduled. Historically the District has had a policy requiring prompt response to traffic signal malfunctions by calling out Employees rather than waiting until the next scheduled work turn. Typically one of the Signal Electricians is called from home to handle the emergency.

Several years ago the Employees and Supervisor Barker developed a "stand-by system" under which Employees were scheduled to respond to emergencies during their assigned stand-by period. The Employee was held accountable to promptly reply to phone assignments for emergencies. This standby system involved several features:

1. Orally and/or on a posted calendar supervision designated the Employee who was to be on stand-by for a specified period.

2. When he departed work prior to his stand-by period, the Employee was given two items:
 - a. A phone beeper; and
 - b. One of the trucks considered to have all the equipment necessary for any kind of repair.
3. After leaving work, the Employee on standby was expected to:
 - a. restrict his physical location so that he was accessible by phone and could respond promptly with the truck.
 - b. remain physically able to report and especially would not drink alcohol, etc. or do anything that would impair his physical ability to work effectively and safely.
4. Signal Electricians and their supervisor understood that a stand-by Employee who failed to respond promptly was subject to disciplinary action.

Under the system developed by Barker, an Employee was not paid for stand-by status. He was paid only for time worked in response to a call. Prior to July 1, 1986 the Labor Contract did not have a stand-by pay provision.

When Employees received their orientation about the new 1986 Labor Contract they inquired whether they would be eligible under the new stand-by pay provision in Article 13.12. The District Engineer reviewed the question with Department Headquarters. Management decided that 13.12 would not apply because supervision did not consider that the Signal Electricians had standby status within the meaning contemplated by Section 13.12.

Supervision told the Employees that they did not want Employees on stand-by status within the meaning of 13.12 in the future and thus would not pay stand-by pay. The Employees considered that reply and concluded amongst themselves that if the Employer would not pay, they would not "stand-by." The Employees told supervision specifically that they would no longer accept

the stand-by conditions described above, e.g. restrict their activity, take the beeper, change trucks, etc.

For several weeks the Employees acted as they had notified supervision. They did not take the beeper or change trucks. District Supervision became concerned that the District's good response time to Signal emergencies would be jeopardized by not having someone available to promptly respond to malfunctions. A deterioration in response time might increase state liability in certain situations. The District considered several possible ways to handle emergencies after the normal work hours. One suggestion was to increase force and hire an Employee who would be scheduled to work at night.

These matters were considered by local supervision during the month of July. District 8 decided to seek authorization from the Department to reinstate the stand-by system but with pay. Before the end of July 1986, District 8 received oral approval from Department Headquarters subject to processing of the specific requirements and procedures in writing. As reflected in the Employer's written position, it next "initiated conversations with the union in mid to late July to ascertain the Signal Electrician reactions to the implementation of Article 13.12 or stand-by pay." During those conversations supervision told the Employees expressly or implicitly that the state was willing to pay if the Employees were receptive to reestablishment of a stand-by system. The Employees indicated their willingness, and supervision said it would initiate a formal request to Headquarters for approval to pay for stand-by. While the papers were being processed supervision resumed issuing the beeper and truck and posting a stand-by schedule; the resumption occurred on or about August 1, 1986. The Employees accepted the beeper, changed trucks as needed and otherwise "stood-by" as they had before July 1986.

By the end of August Management's internal arrangements and review were completed. District 8 supervision arranged a meeting with the Union and Employees to read the details of the policy, to which supervision sought Employee and Union agreement. The provisions, essentially a restatement of the prior conditions, were acceptable to the Union. However the Employees objected to the stated effective date of August 31, 1986. The Employees and Union were dissatisfied with that date because it ignored the reality that the policy had been resumed sometime before. Thereafter Management unilaterally installed the policy on August 29, 1986. That policy was read to the Employees:

It has been determined that standby status will be instituted in the District 8 Traffic Department for the following bargaining unit positions; Signal Electrician 1 and Signal Electrician 2. Individuals holding these classifications will be placed in a standby status on a rotational basis.

Those employees required to remain in a standby status will be compensated at 25% of their base rate of pay for each hour they are required to be in a standby status as specified in Article 13 of the labor agreement. An employee required to remain in a standby status shall restrict their physical location in order to remain telephone accessible, they shall remain physically able to report and lastly, if they fail to respond to a call they are subject to disciplinary action.

The employee will only be on standby when told by the District 8 Signal Electrician Supervisor or when indicated by the posted schedule.

There was no change on August 29, 1986 in scheduling and assignment for stand-by; supervision just continued the system it had used for the entire month of August.

EVALUATION

At the end of July, acting under express oral approval of Department Management, District Supervision made statements about stand-by pay in conjunction with reinstitution of the former system and *resumed issuance of* beeper and other equipment that had been used in the old system. It may be

that Supervision did not expressly announce in so many words that it was establishing stand-by on a current basis. However, at the very least, Supervision's actions and words to the Signal Electricians led the Signal Electricians to believe stand-by ~~was~~ reinstituted, not merely that it ~~would~~ be reinstituted later. The Employees relied on supervision's action and statements and resumed the system. District 8 got the benefit it desired; Employees again stood-by and protected response time.

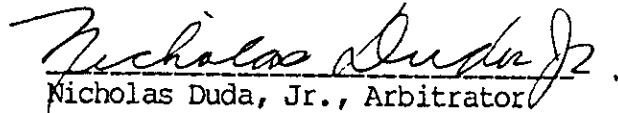
Given the statements District 8 made to Employees at the end of July, 1986, the state is now estopped from denying it installed the system before August 29, 1986. The re-adoption of stand-by occurred no later than August 1, 1986. Accordingly stand-by pay applies to the concerned Employees effective with the true date of readoption of the stand-by systems, August 1, 1986, not when the "paperwork" was completed at the end of the month.

In view of the foregoing, the Arbitrator finds that management violated Article 13.12 of the Contract, because it did not pay the Signal Electricians stand-by pay in the period August 1, 1986 through August 28, 1986.

In making this decision the Arbitrator notes that the stand-by pay applies to Employees specifically required "to be available for possible call to work" by "restricting their physical location in order to remain telephone accessible and who are subject to disciplinary action if they fail to respond to a call". Occasionally Employees in this department consider themselves to be "on call" if the forecast is for inclement weather which may cause signal malfunctions but there is no physical restriction imposed on Employees. That situation is different from being required to be on stand-by under the quoted procedure and this case does not involve a request for stand-by pay in that situation.

AWARD

The grievance is sustained. The State is directed to make retroactive application to August 1, 1986 with appropriate pay adjustments to the four Employees in District 8 Traffic Department on the bargaining unit positions of Signal Electrician 1 and Signal Electrician 2 for the stipulated evenings, weekends, and holiday hours in the period August 1, 1986 through August 28, 1986.


Nicholas Duda, Jr., Arbitrator