DANIEL F. ALTEMUS
735 ROSEMOUNT ROAD
OAKLAND, CALIFORNIA 94610

IN ARBITRATION PROCEEDINGS

PURSUANT TO AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy	)	
	)	
Between:	)	
	)	
PACIFIC GAS & ELECTRIC,	)	**OPINION AND AWARD**
	)	
Employer,	)	
	)	**ARBITRATION No. 318**
and	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	
OF ELECTRICAL WORKERS, LOCAL 1245,	)	
	)	
Union.	)	
	)	
(Relief System Operators' Wage Rate Dispute.)	)	

This dispute involves the application and interpretation of a Collective Bargaining Agreement between the above-named Union and Employer. ("Agreement"). Pursuant to the provisions of the Agreement, the parties selected the undersigned Arbitrator to serve as the Chairman of the Arbitration Board. The Employer Board members are Doug Veader and Steve Roland. The Union Board members are Ed Dwyer and Bob Dean.

A hearing was held in Vacaville, California on March 27, 2014. During the course of the hearing, the parties were given full opportunity to examine and cross-examine witnesses and to introduce relevant exhibits. The Union and the Employer submitted post-hearing written briefs which were received on or about July 31, 2014. The matter was deemed submitted upon receipt of the briefs.

APPEARANCES:

On Behalf of the Union:

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On behalf of the Employer:

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ISSUE

Did the Company violate the Agreement, specifically the rate of pay for Relief System Operators in Exhibit X, when it refused to pay Relief System Operators at the sixth step of the wage progression irrespective of the employee's length of service in the classification, and if so, what shall be the remedy? (Tr. 6.)

RELEVANT CONTRACT PROVISIONS

6.1 Attached hereto, made a part hereof, and marked Exhibit X, is a schedule of the wage rates applicable to employees described in Section 2.1.

* * * *

110.8 RELIEF PREMIUM

Employees in relief classifications shall receive a premium equal to the appropriate rate of the designated classification plus $5.00 per week plus 8 times the hourly Sunday premium. (Added 1-1-91)

* * * *

204.2 WAGES – DUAL AND PROGRESSION

* * * *

(b) An employee who has accumulated sufficient time in a classification having a time progression shall be advanced to the next step in such classification until such employee receives the maximum rate thereof. . . . . (Amended 1-1-91)

(JX 2.)

* * * *

EXHIBIT X

Relief System Operator

The rate of the System Operator at the highest schedule substation, hydro plant or power plant at which he is qualified to relieve, and at which he stands shift, plus $5.00 per week plus 8 times the hourly Sunday premium.

(UX 5, p. 37.)[1]

FACTS

1. Background.

The Employer is engaged in the business of generating and distributing electricity and operates various transmission and distribution facilities throughout Northern California.[2] These

[1] At hearing the parties stipulated that reference to the "Relief Operator classification was erroneously deleted from Exhibit X in the 2012-2014 contract when the parties agreed to rename the classification title 1819 System Operator Helms to Hydro-operator Helms and deleted 1812, System Operator Helms Provisional" (Tr. 10). The parties further stipulated that during the negotiations over the 2012 Agreement there were no discussions regarding the Relief System Operator classification or calculation of its corresponding wage rate (*Id.*).

facilities, variously known as "control centers," "substations," or "headquarters," are staffed by a variety of employees, including System Operators ("SOs") who occupy job classification 1805. In general, SOs are responsible for the smooth operation of a particular geographic jurisdiction, meaning that they monitor the transmission and distribution of electricity, identify and trouble-shoot problems as they arise, and initiate prompt restoration of service whenever troubles occur (Tr. 29; 74-5; UX 2, p. 56). SOs currently work exclusively on either the transmission or distribution sides of the business, and are assigned to specific work locations.[3] These work locations are staffed 24 hours per day, every day of the year. As a result, SOs are ordinarily assigned to rotating 8 or 12 hour shifts so that full staffing is achieved.

2. Relief System Operators.

If SOs are absent, or a staffing vacancy occurs, Relief System Operators ("RSOs") are called in to provide relief. Each work location is contractually required to employ designated RSOs, and the RSO position is considered a permanent classification (Tr. 31-3). RSOs receive the very same training as SOs, are considered full journeymen, and perform the very same functions as SOs when they provide relief (Tr. 78). Union Senior Assistant Business Manager [redacted] testified that for the last several decades RSOs have worked exclusively at the control centers and headquarters to which they are permanently assigned, except in the most extraordinary circumstances (Tr. 33).

The single most significant difference between the working conditions of SOs and RSOs pertains to their work schedules. As noted above, SOs are regularly scheduled for fixed 8 or 12

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[2] "Transmission" refers to the bulk transport of high voltage electricity (at or above 60 KV) from one location to another, while "distribution" involves the transport of lower voltage electricity throughout the electricity grid, and ultimately to PG&E customers (Tr. 29-30).

[3] All transmission SOs are currently employed at the Ground Control Center ("GCC") in Vacaville while distribution SOs work at various geographically dispersed control centers (Tr. 29).

hour shifts. By contrast, RSOs are assigned to a regular base schedule, but must also make themselves available to fill-in on a relief basis whenever the need arises (Tr. 36; 78). The inconvenience of this non-static work schedule is the underlying rationale for the parties' agreement that RSOs should be paid a special wage premium for their work (Tr. 78). This dispute concerns the proper method for calculating the RSO wage rate premium.

The specific rules governing the circumstances under which relief employees, including the RSOs, may be required to work in a relief capacity are set forth in a Labor Agreement Clarification entitled "Utilization of Relief Shift Employees" ("Relief Agreement") which has existed in one form or another since November 1967 (UX 6; Tr. 34). In general, this document authorizes the Employer to change relief employee schedules *without prior notice* in order to replace absent employees (Tr. 35). More specifically, the Relief Agreement authorizes the Employer to change RSO work hours and regular days off, move them from replacing one employee to another, and send them home early on any given day, provided the contractually specified conditions are met (Tr. 35-8). Union Representative [redacted] testified that these rules provide the Employer with a tremendous degree of discretion and control over RSO work schedules, which it has exercised with increasing frequency in recent years (Tr. 36).

3. <u>Historical Development of the RSO Wage Rate Provisions</u>.

Historically the parties' collective bargaining agreements have been memorialized in multiple documents consisting of a basic agreement, containing the primary terms and conditions of employment, and various supplementary exhibits, including Exhibit X which contains the various wage schedules for all covered employees. At hearing, the Union introduced into evidence the Exhibit X documents dating back to the parties' 1963-65 collective

bargaining agreement. These documents purport to trace the history of the parties' understandings with respect to the RSO wage rates.

a. 1963-65 Exhibit X Agreement.

At hearing the parties stipulated that the RSO classification and wage rate formula have existed in Exhibit X documents, in one form or another, since the 1963-65 agreement (Tr. 10). A careful review of the Exhibit X documents dating back to that time period reveals only minor variations in the governing language. Thus, the 1963-65 Agreement identifies a job classification called "First Operator" which was a predecessor classification for what later became the SO classification. Weekly wage rates are then set forth for 2 facilities ("Newark" and "Cottonwood Midway"). The wage schedule is next divided into 4 separate sub-schedules ("Schedules I through IV"), each of which pertain to specified work locations which share a common weekly wage rate (UX 4, pp. 1-2).

Central Valley Region Control Manager Steve Roland has worked for the Employer since 1973, and was employed as an SO for the 22 year period between 1982 and 2004. Roland testified that in prior years there existed a significant difference between the complexity of the equipment and circuitry utilized at various control centers and substations, and that the degree of skill and responsibility required of SOs working at these facilities varied accordingly (Tr. 76-7).[4] According to Roland, the differing wages rates paid to SOs at different locations – as reflected in the multiple wage schedules contained in Exhibit X over the years – were designed to reflect these differing skills levels and work demands (Tr. 76).

[4] As noted below, the Employer later adopted a formal rating system designed to measure the varying skill levels and knowledge required of SOs employed at each work location. *See infra* at p. 7.

The 1963-65 Exhibit X also contains a reference to "First Operator, Emergency Relief" and goes on to describe the wage rate for this classification as: **"The rate of the first operator at the highest schedule substation or power plant at which he is qualified to relieve, and at which he stands shift, plus $3.00 per week"** (UX 4, p. 2, emphasis supplied). The proper construction of this language lies at the heart of the present dispute. The 1963-65 Exhibit X goes on to describe a 4-step, 18 month wage progression for employees working in the classification "Assistant First Operator – Substations." In a subsequent entry, it indicates that the wage rate for "First Operator, Assistant – Emergency Relief" will also be calculated using the same formula used for the "First Operator, Emergency Relief, " as described above (*Id.*).

b. 1968 - 1970 Exhibit X Agreements.

The 1968 Exhibit X contains identical language regarding the wage rate for "Relief First Operator" (UX 4, p. 5). However, the wage rate for so-called "Relief Assistant First Operator" is modified slightly by addition of the words **"appropriate rate"** and reads as follows: **"The appropriate rate of the assistant first operator** at the highest schedule substation or power plant at which he is qualified to relieve, and at which he stands shift, plus $3.00 per week" (UX 4, p. 5, emphasis supplied.). Similar language, including the reference to "the appropriate rate," is contained in the 1968 Exhibit X wage rate for a classification identified as "Relief Second Operator" (*Id.*). The 1969 Exhibit X mirrors precisely the 1968 Agreement with respect to the wage provisions for each of these 3 relief positions (UX 4, p. 7).

In the 1970 Exhibit X, the wage rate language for Relief First Operators remains the same as in the 1969 Exhibit X, but the language governing the Relief Assistant First Operator **eliminates reference to "the appropriate rate"** and reverts to the prior language (UX 4, p. 9 & 10). Thus, the 1970 Exhibit X states that the Relief Assistant First Operator will be paid, **"The rate of the assistant first operator** at the highest schedule substation or power plant at which he is qualified to relieve, and at which he stands shift, plus $3.00 per week" (*Id.*, emphasis supplied).

c. 1973 – 1980 Exhibit X Agreements.

In the 1973 Exhibit X document the term "schedule" is replaced by the term "group" to identify the groups of work locations to which particular First Operator wage rates apply (JX 1, EX 2; UX 4, p. 11-13; Tr. 94-6.) This terminology continues in the parties' Agreements until the 1980 Agreement when a new numerical label was adopted for identifying the work location groupings (UX 4, p. 28). Throughout this period, the disputed language respecting the RSO wage rate remains constant.[5]

In 1979 the parties reached agreement over the creation of a 2-step wage progression for SOs which was later reflected in the 1980 Exhibit X (Tr. 97-9; JX 1; EX 3; UX 4, p. 28). This progression created an initial wage rate for the first six months, and a full journeyman rate thereafter. In addition, the job classification "First Operator" was replaced with the classification "System Operator," but the 2 jobs entailed precisely the same duties (Tr. 101). Further, geographic wage scales were now grouped according to a numerical label (i.e., Nos. 1,

[5] The **"appropriate rate"** language respecting the wage rates of the so-called Relief Assistant First Operators reappeared and disappeared on several occasions in the Exhibit X documents throughout this period, until the Assistant First Operator classification was apparently discontinued with the 1977 Agreement (*See* UX 4, pp. 13, 16, 19, 22, & 25).

2, 3, and 4) rather than by using the label "group." For example, the label "System Operator No. 1" was used to refer to SOs working in all those designated work locations whose skill levels and responsibilities warranted a common wage rate. Other numerical designations were similarly applied to differing SO skill groups (UX 4, pp. 28-9).

Most importantly, the substance of the disputed contract provision concerning RSO wage rates remained largely unchanged, with 3 minor exceptions. First, the term "System Operator" was substituted for "First Operator" though the 2 classifications shared the same duties. Second, the weekly wage premium referenced in the RSO wage scale was increased from $3.00 to $5.00 per week. Finally, the wage rate was supplemented by the factor of "8 times the hourly Sunday premium." Thus, the RSO wage rate provision read:

> The rate of the System Operator at the highest schedule substation, hydro plant or power plant at which he is qualified to relieve, and at which he stands shift, plus $5.00 per week plus 8 times the hourly Sunday premium.
>
> (UX 4, p. 29.)

This language has remained unchanged through the parties' 2009 Agreement (UX 5, p. 38).[6]

4. <u>Technological Developments and Creation of a Single SO Wage Rate</u>.

In 1988 the parties reached agreement over a formal methodology for evaluating SO job responsibilities for purposes of determining appropriate wage rates based on skill levels and job duties (EX 1). This system assigned specific points based on a careful assessment of SO responsibilities and duties, and resulted in grouping SOs according to the skill level required at their particular work location. Pursuant to agreement, the parties would periodically meet to

[6] As noted above, this language was inadvertently omitted from the parties' current collective bargaining agreement. *See*, footnote 1, *supra*.

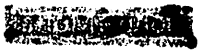
rerate specific work locations. This analysis was then used to establish the wage groupings reflected in the Exhibit X wage schedules (Tr. 102-3).

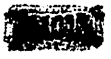
Former Director of Labor Contracts John Moffat testified regarding significant technological developments which have transformed the character of the Employer's operations as well as the duties and responsibilities of SOs. According to Moffat, beginning in the mid 1990s, new technologies enabled the Employer to automate and consolidate its switching and operation centers into a fewer number of facilities, resulting in the closure of some work locations. The parties conducted negotiations over the impacts of these operational changes (Tr. 86; 103). These discussions included the rerating of particular facilities to reflect changes to SO work responsibilities (Tr. 103). According to Moffat, this process resulted in some facilities being upgraded and becoming busier, while others closed entirely (Tr. 105). Ultimately, the differences between the skill levels required of SOs working at the various facilities became negligible. Thus, in 1995 the parties agreed that the numerical classes previously associated with the SO wage rates listed in Exhibit X would be eliminated entirely, and all SOs would thereafter receive the same wage rate (UX 2, p. 7; UX 4, p. 52; Tr. 108-9).[7] The disputed contractual provision concerning the RSO wage premium was not changed at this time (UX 4, p. 50 & 52).

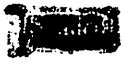
5. <u>RSO Job Selection and Prior Pay Practices</u>.

As noted above, Central Valley Region Manager Roland worked as an SO for 22 years prior to becoming a management official, including 5 years as an RSO between 1995 and 2000. In 2004 he began supervising SOs, a responsibility he continues to hold to this day (Tr. 73-4).

[7] This shared wage rate did not apply to Division System Operators, based in San Francisco, or Grid System Operators, based in Fresno, which occupy a separate job classification (Tr. 108).







Roland testified that the primary basis for the RSO wage premium is the inconvenience caused by serving in a relief capacity, and thus being subject to an unpredictable work schedule (Tr. 79). RSOs are paid at the RSO wage rate for every regular hour they work, even when not working in relief (Tr. 52-3; 82). In addition, if called on to work overtime hours, overtime is calculated using the RSO premium wage rate (*Id.*). Roland testified that in the past the RSO position was deemed attractive, not only because of its premium wage rate, but also because it provided employees additional opportunities to work overtime hours (Tr. 80).[8] According to Roland the RSO classification was typically filled at each location on the basis of seniority from among the various candidates volunteering for the job. Roland further stated that prior to 2005, there was never an occasion when this selection process resulted in an RSO possessing less than 6 months of service (*Id.*). Because of the 2-step SO pay progression first established in 1980, as a practical matter this meant that the RSO wage rate would be calculated using the highest contractual SO rate then in existence at a particular location.[9]

Union Representative Dean testified that beginning in 1991 he worked as a SO for 17 years at various locations, but never possessed sufficient seniority to secure an RSO position (Tr. 24; 46). According to Dean, until the mid 2000s the RSO position was considered a highly desirable job and was always filled by the most senior employees (Tr. 46-7). Dean further stated that during the last 20 years, RSOs have always been the most senior and highly paid employees working at a particular location (Tr. 33). Historically, SOs were never forced into these positions, but volunteered for them because they were viewed as desirable. According to

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[8] On occasion, non-RSOs may be called on to perform relief duties if there are no RSOs at the designated location available. In these circumstances, the non-RSOs are paid overtime at their regular rate of pay (Tr. 37-8).

[9] See *supra* at p. 7 and UX 4, p. 28.

[redacted] the desirability of these positions has declined significantly in recent times, and some employees have even been forced into accepting the RSO role (Tr. 48).[10]

In 2005 the parties agreed to adoption of a 30 month, 6-step wage progression for the SO position, which was subsequently incorporated into their 2006-8 Collective Bargaining Agreement (UX 2, pp. 54-6; UX 4, p. 57). This agreement was initially memorialized in a Letter Agreement, dated June 7, 2005, which contains several attachments (UX 2, pp. 54-65). With respect to the SRO "Relief Premium," the Letter Agreement specifically states, "Same as today" (UX 2, p. 64), and there was accordingly no change made to the governing contract language (UX 4, p. 58). Former Labor Contracts Director [redacted] testified that he participated in the negotiations concerning the new wage progression and that during these discussions the parties never agreed that RSOs would be paid at the 6th step of the wage progression, irrespective of their length of service (Tr. 114).

6. <u>The Underlying Grievances</u>.

Union Representative [redacted] testified that prior to the circumstances giving rise to the present dispute, the Employer consistently calculated and paid RSO wages based on the highest SO wage rate found in Exhibit X, in accordance with the Union's interpretation of the governing language (Tr. 55-6). [redacted] identified 2 developments which, in his view, created the conditions leading to the filing of the present grievances. First, the Employer began enforcing the Relief Agreement in a more stringent manner, and began assigning RSOs to perform relief duties more

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[10] [redacted] testified as follows:

> ARBITRATOR ALTEMUS: And because they were desired positions the position was often filled by the most senior person who wanted it?
> THE WITNESS: Yes. There was language to force people but at that time there wasn't any forcing. **That has since changed.**
>
> (Tr. 48, emphasis supplied.)

frequently than it had in the past. Second, the consolidation of the Employer's operations increased the need for RSOs to perform relief duties because now there were a far greater number of SOs working in a single facility, and thus more frequent absences and need for relief. According to [redacted] these factors have combined to mean that the Employer is assigning RSOs to perform relief duties with much greater frequency (Tr. 50; 56).

On January 29, 2011, the Union filed Grievance 20768 alleging that the Employer was not paying RSOs at the Vacaville Ground Control Center the contractually required wage rate, and asserting that the "actual loss" to the RSOs was almost $8.00 per hour (UX 2, p. 6).[11] On February 14, 2011, the Union filed Grievance 20800 alleging similar violations at the Fresno Headquarters (UX 3). Thereafter, Grievance 20768 was processed in accordance with the Agreement's fact-finding procedures, and on September 20, 2011 the Fact Finding Committee referred the matter to the Pre-Review Committee (UX 2). On December 1, 2011 the Pre-Review Committee issued a decision respecting the consolidated grievances which summarized the underlying facts and the parties' respective positions, and which concluded as follows:

> **Decision**
> The Pre-Review Committee was made aware that the parties have agreed to discuss this wage rate issue as part of broader Electric Operations ad hoc negotiations. The Committee agrees to close these grievances with the expectation that the issue will be resolved through the ad hoc negotiations. **Should the ad hoc not resolve this issue to the Union's satisfaction, the Union reserves the right to again challenge this issue through the grievance procedure.**
>
> (UX 1, emphasis supplied.)

[11] At hearing, the Union introduced a pay stub from RSO [redacted] who was employed at the Vacaville GCC in 2011. [redacted] paystub for the pay period ending January 15, 2011 indicates that he was paid at the rate of $41.41 per hour which is 86 cents in excess of the contractually established SO rate for new hires of $40.55, but **substantially less** than the full 30 month journeyman rate of $49.03 per hour (UX 5, p. 37).

The "ad hoc negotiations" referred to in the foregoing decision are conducted by the System Operator Ad Hoc Committee which was created by the parties during the course of their general negotiations to deal with special complex issues relating to the SO classification (Tr. 40).[12] Union Representative [redacted] testified that it was his understanding that the Pre-Review Committee's Decision contemplated that in the event the Ad Hoc Committee was unable to resolve the underlying contractual issue, the original grievances would be **revived**, and returned to the grievance procedure for further processing (Tr. 43). By contrast, Labor Contracts Manager [redacted] testified that it was his understanding that the Pre-Review Committee's Decision meant that the original grievances had been **closed without prejudice to the Union's right to file new grievances** in the future if the matter was not resolved to its satisfaction by the Ad Hoc Committee (Tr. 118-121).

On or about August 14, 2013 the Ad Hoc Committee concluded that the underlying dispute could not be resolved through negotiations.[13] That same day the Union filed the so-called "Business Manager's Grievance" reasserting the violations alleged in the original grievances (JX 1, p. 3). On November 20, 2013, the matter was referred to the Review Committee for disposition (JX 1, p. 2). Unable to resolve their dispute, the parties referred the matter to arbitration.

CONTENTIONS OF THE PARTIES

The Union

[12] *See generally,* Title 400 of the Agreement pertaining to "Interim Negotiations" (JX 2).

[13] Union Representative [redacted] served as the Union's lead negotiator at the Ad Hoc Committee and testified that at no time during these negotiations did the Employer ever suggest that the RSO language was obsolete, nor did it ever propose eliminating that language (Tr. 44-5).

The Union contends that the Agreement's clear and unambiguous language conclusively establishes that RSOs must be paid the absolute highest base rate of pay for SOs as provided in the Exhibit X wage schedule. The Employer should not be permitted to "play coy" with the plain meaning of the Agreement. The words "highest" and "appropriate" have distinct meanings. "Appropriate," in this case, suggests that the RSO wage rate could be determined according to a wage progression; "highest," by contrast, means exactly that: the absolute largest figure. Here, the Employer had no discretion but to pay the RSOs the highest wage on the Exhibit X wage schedule because that is what the Agreement's plain language required.

The Union further contends that because of the unambiguous nature of the governing contract language, the Plain Language Rule requires that it be construed without regard to extrinsic evidence of any kind, including bargaining history or past practice. The language of Exhibit X simply does not lend itself to multiple interpretations. By the Employer's own admission, Exhibit X is a "wage schedule," and the governing language therefore requires that RSOs be paid "at the highest schedule" pay rate. The Employer's attempt to inject ambiguity into this language through historical interpretation must be rejected. The phrase "at the highest schedule substation . . ." refers to *both* the headquarters location at which a RSO works, *as well as* the highest single rate afforded by the contract at that particular location. In other words, the contract definitively establishes the RSO as the highest paid person in the room.

The Union also contends that the parties' adoption of a six-step SO wage progression in 2005 was never intended to affect the RSO premium rate. The operative language has existed in the parties' agreements virtually unchanged since the early 1960s. During the same time period, the SO pay rate language has changed on several occasions. The original wage

schedules for "First Operators" were eliminated and replaced with "groups." Later, as the result of operational consolidation, all SOs were paid at a single pay rate. Despite these changes, the RSO pay language remained intact, reflecting the parties' intention to maintain RSOs at the very top pay rate. The adoption of the six-step SO wage progression had no impact on this practice. The Employer's contention that the parties intended to apply the six-step progression to the RSO wage rate is simply untrue, and flatly contradicted by the underlying bargaining documentation.

The Union further contends that the Arbitrator must reject the Employer's assertion that the word "schedule" no longer has the same meaning it once did, and has now been rendered obsolete in determining the appropriate RSO pay rate. The parties have a long-standing practice of specifically identifying obsolete contract language in the preamble to succeeding contracts, but the parties never did so with respect to the RSO wage language. This means there was no meeting of the minds to abandon the prior language. There is likewise no evidence that this matter was ever discussed during ad hoc committee negotiations, or at any time prior to this arbitration.

The Union also contends that the Employer has imposed much greater demands on RSOs despite paying them far less than their predecessors. The RSO classification was once a highly desired position despite its additional burdens, but over the past decade or more the Employer has come to expect far more from its RSOs while paying them less. This has resulted in fewer employees being willing to accept the job, and the historical anomaly of the position being filled by employees with very little prior experience. The entire premise of the RSO position is that the Employer would pay a premium in exchange for the right to exercise a very

high degree of control over RSO work schedules. Now, the difference in pay is so minimal – in Grievant [redacted] case a mere 86 cents per hour – that the very purpose of the wage premium is entirely undermined. In reality, [redacted] should have received an additional $8.48 per hour, in accordance with the Union's interpretation of the governing language. This unfair result was most certainly not what the parties intended when they first introduced RSOs back in 1963.

Finally, the Union contends that in the event the Arbitrator were to sustain its claims, back pay should accrue from the date the Union filed the original grievances rather than the subsequent filing of the so-called "Business Manager's Grievance" in 2013. The Pre-Review Committee's decision closed the original grievances, referring them to the Ad Hoc Negotiations, but expressly recognized that the Union's "right to challenge this issue through the grievance procedure" if the Ad Hoc Negotiations did not resolve the matter to its satisfaction. This means that the Union alone had the authority to revive the original grievances should the ad hoc process fail. It would have made no sense for the Union to limit back pay accrual, or impose other limitations on its authority to grieve the original claims. Moreover, the Employer did not object to Grievant [redacted] testifying at hearing even though he was a Grievant in the original grievances, and was no longer employed as an RSO at the time the Business Manager's Grievance was filed. Therefore, the Employer has effectively waived any argument that the original grievances are not at issue here.

In sum, the Union requests that the Arbitrator interpret the disputed provision as requiring that RSOs be paid at the maximum pay rate provided in Exhibit X, and that the grievants otherwise be made whole, including the award of back pay from the date the original grievances were filed.

The Employer

The Employer contends that the Union has failed to sustain it burden of proving that it violated the Agreement by paying RSOs in accordance with their years of service rather than at a higher rate. The Union has failed to establish that the phrase "highest schedule" means that RSOs are to be paid at the top of the SO wage progression irrespective of their length of service in that classification. The Union introduced no evidence of bargaining history regarding the disputed language, nor did its witnesses explain why "highest schedule substation" should be interpreted to mean "highest step in a wage progression." This is not surprising because the Union's argument is illogical and ignores Exhibit X's plain language. The Union's argument requires the Arbitrator to accept that the word "schedule" is synonymous with "progression" which clearly it is not. The top column in Exhibit X lists the steps in the wage progression and uses the label "Progression." This six-step wage scale is not identified as a "Schedule," nor is there any evidence that the parties ever referred to a wage progression as a "schedule." On these grounds alone, the Union's claims should be rejected.

The Union's argument should also be rejected because it requires the Arbitrator to ignore a significant portion of the RSO pay language, and interpret it in an ungrammatical way. The Union asserts that "highest schedule substation" refers to a specific wage schedule, but this requires that the word "schedule" be read as a **noun**. In fact, when read in its full context, the word "schedule" is an **adjective** for it modifies the larger clause "highest schedule *substation, hydro plant or power plat at which he is qualified to relieve, and at which he stands shift ....*" (emphasis supplied.) Because the word "schedule" cannot be read as a noun without totally

ignoring the language that immediately follows it, the Union's interpretation of the disputed provision is illogical and must be rejected.

The Employer further contends that the "highest schedule" language must be interpreted in accordance with the parties' past practice of basing SO wage rates on the particular location at which the operator worked, and has no current applicability. Prior to 1995, the parties negotiated SO wage rates which varied based on the complexity of duties and responsibilities at a particular work location. Due to these differences, in 1963 the parties agreed to group similarly complex stations into four categories and set a common wage rate for each category. Until 1972 each of these categories was referred to as a "Schedule" and an SO's wage rate was determined by the "Schedule" pertaining to his work location. The parties also agreed that RSOs should receive an enhanced wage rate to compensate them for the inconvenience of a non-static work schedule. The parties further sought to protect RSOs regularly assigned to a higher rated station from a wage penalty if they were required to perform relief at a lower rated station. Accordingly, when read in this context, the disputed provision meant that an RSO regularly assigned to a higher rated station who was required to perform relief work at a lower rated station would nevertheless be entitled to the rate at the higher station to which he was regularly assigned. In other words, RSO pay was specified as being the rate of the operator at the "highest schedule substation ... at which he is qualified to relieve, and at which he stands shift." The Union introduced no evidence to refute this interpretation of the origin of the "highest schedule station" phrase and its meaning. Moreover, when the work location categories were first negotiated there was no SO wage progression. This clearly refutes the Union's claim that the "highest schedule" was intended to

refer to the highest step in a wage progression because no wage progression existed at the time.

The Employer further argues that over time the label "Schedule" was replaced by "Group," and still later replaced by a numbering system (1 to 4) to refer to groupings of work locations sharing a common wage rate. At no time did the parties modify the RSO pay language to reflect any of these changes in terminology. Likewise, in 1995 the parties agreed that the SO wage rate would no longer be linked to a specific location, but the "schedule station" language in the RSO provision remained unchanged. Thus, since 1973 the "schedule station" language has been technically incorrect. Further, since 1995 it has had no applicability to the wage rates of SOs because since that date SO pay has ceased to be dependent upon work location. The Union has failed to offer any evidence contradicting this bargaining history. The Union can be expected to argue that the mere presence of the "schedule station" language in the Agreement requires that it be given meaning. However, this argument should be rejected because it would enable the Union to arbitrarily and unilaterally infuse meaning into language that persists solely as the result of the parties' administrative errors. Considering the parties' pattern of prior administrative oversights, and the undisputed bargaining history, the Union's arguments should be rejected.

The Employer further argues that the Union's interpretation of the disputed provision is inconsistent with past practice and unsupported by any bargaining history. [redacted] credibly testified that when the parties negotiated the six-step wage progression in 2005 there was no agreement to pay RSOs at the top of the progression, irrespective of length of service in the classification. Further, as the Union acknowledges, and the CBA demonstrates, all other relief

classifications are paid a rate that is commensurate with their length of service in the classification. Section 204.2 of the Agreement likewise states that an employee's wages increase only when he accumulates the requisite time in the classification. Because the Union's interpretation of the RSO pay language represents a significant departure from the prevailing practice, as well as the plain language of Section 204.2, one would expect the parties to have discussed it during negotiations, yet no evidence of such bargaining exists. Nor can the Union point to a past practice of paying RSOs at the top of the wage progression without regard to length of service. The Union admits that prior to the adoption of the six-step progression in 2005 the RSO position was desirable and always filled by someone with at least six months seniority (i.e., at the top of the two-step progression). Accordingly, the issue of skipping steps had never previously arisen, and the absence of bargaining history on this subject is therefore not surprising. Further, the Union admits that the instant Grievance was filed because the RSO position became undesirable in the mid-2000s as the result of the Employer's operational consolidation. However, during the five-year period following adoption of the six-step wage progression in 2005, the Union never challenged the Employer's practice of paying RSOs the wage rate that correlated with their length of service in the classification. This unchallenged past practice further supports the Employer's interpretation of the disputed language.

The Employer further contends that the Union is attempting to secure through these proceedings that which it was unable to obtain at the bargaining table. The Union admits that until the events giving rise to the instant Grievance, RSOs were always paid in a manner consistent with the Agreement (Tr. 55). However, when asked to describe the events giving rise to the Grievance, the Union did not point to a change in how payment was made, but

rather two operational factors, specifically: 1) more frequent RSO scheduling changes; and 2) the consolidation of operations which increased use of RSOs to provide relief. There is no evidence that the Company, in any way, changed the manner in which it interpreted or applied the disputed RSO wage provision. It was not until this application occurred in a different operational context that the Union alleged that the Employer had violated the Agreement. Notably, the Union admits that the actions which created this new operational context did not themselves violate the Agreement. Thus, the Grievance should be denied because the Union effectively admits that the Employer has not violated the CBA.

Finally, the Employer argues that in the event a contract violation is found, any back pay award should be limited to the period 30 days prior to August 14, 2013, when the instant Grievance was filed. In December 2011 the parties agreed to "close" the 2011 grievances subject to the Union's right to "again" challenge the issue through the grievance procedure. The written disposition does not state that the Union had the right to rely on the original grievance filing date were it to re-grieve the matter. Permitting such a result would be contrary to the Agreement's express intent. The Agreement states that when issues are submitted to an ad hoc committee following closure of a grievance the Employer is insulated from additional monetary liability. Although agreement can be reached as to the accrual of liability during such a closure period, no such agreement was reached here. Moreover, the 2011 grievances were referred to an ad hoc negotiating committee convened in connection with general contract negotiations in 2012, and not for the purpose of resolving the specific grievances. An agreement regarding liability accrual was therefore not even possible. In the absence of such an agreement, the Agreement's language regarding retroactive wage adjustments for

continuing grievances must be followed. Pursuant to that language, the potential liability period must be limited to "thirty (30) calendar days prior to the filing of such grievance." While the Union may ague that the grievance filing date should be based on the 2011 grievances, such an argument runs contrary to the stated purpose of allowing ongoing negotiations once a grievance is closed, as well as the express language of the written disposition of the 2011 grievances.

For all the foregoing reasons, the Employer requests that that the Grievance be denied in its entirety.

OPINION

1. Background and Legal Standard

This case presents a classic contract interpretation dispute. In such cases, the Arbitrator's first obligation is to determine whether the disputed language is found clear and unambiguous. If so, that language must be given its plain meaning, even if one party finds the result somewhat harsh or contrary to its initial expectations. On the other hand, if disputed contract language is found ambiguous and unclear, extrinsic evidence, including evidence of the parties' bargaining history or an established past practice may be considered in helping determine the parties' intent. In addition, words and phrases are rarely interpreted in isolation. Accordingly, to give force and effect to the entire agreement, disputed language must be interpreted as a whole and in context with its paragraph, section, article, and the Agreement as a whole.

Here, though the Union argues vigorously to the contrary, there can be little doubt that the RSO wage provision is unclear and ambiguous on it face. The disputed language provides

that RSOs shall be paid:

> The rate of the System Operator at the highest schedule substation, hydro plant or power plant at which he is qualified to relieve, and at which he stands shift, plus $5.00 per week plus 8 times the hourly Sunday premium.
>
> (UX 4, p. 29.)

The patent ambiguity in this language is reflected by the simple fact that each party to has advanced plausible alternative interpretations, which are incompatible and mutually inconsistent. Thus, the Union contends that the provision's introductory reference to "The rate of the System Operator at the highest schedule ..." means that the RSO must be paid at the *very highest SO rate appearing in Exhibit X.* According to this interpretation, the provision's use of the term "schedule" signifies Exhibit X in its entirety, rather than any specific wage schedule found in that document. Thus, in the Union's view, RSOs must be compensated at the very highest SO wage rate found in Exhibit X. By contrast, the Employer asserts that the term "highest schedule" must be viewed as a modifier of the clause that immediately follows it, and therefore refers to rates of pay at specific work locations. According to the Employer, the disputed language is rooted in the parties' historical practice of paying differing wage rates to SOs employed at various work sites based on differing skill levels and job responsibilities associated with those locations. During the period of time such differing wage rates existed, RSOs were to be paid the SO pay rate "at the highest schedule substation ... at which he is qualified to relieve, and at which he stands shift ...." From the Employer's perspective, the "highest schedule substation" language is a contractual anachronism because all SOs, regardless of work location, are now paid according to a single wage progression. Thus, the disputed language is obsolete, and has no bearing on current RSO wage rates.

At this point it is unnecessary to resolve the ultimate question of which of these

interpretations most accurately reflects the parties' underlying contractual intent. Rather, it is sufficient to note that the plain language of the Agreement provides at least some logical support for both interpretations, and it is therefore both unclear and ambiguous. For this reason, the Arbitrator must consider extrinsic evidence to determine the provision's underlying meaning.

2. Bargaining History

At hearing the parties stipulated that the RSO classification and the language regarding the calculation of RSO pay have been a part of their collective bargaining agreements, in one form or another, since 1963 (Tr. 10). Notwithstanding this lengthy history, the evidence of relevant bargaining history presented at hearing was rather incomplete. Neither party was able to present testimony or bargaining notes from any individual directly involved in negotiating the original language, or any of its subsequent minor modifications.[14] In the absence of such evidence, the Arbitrator is left to examine the historical development of the governing contract language in order to discern the parties' intent.

A careful analysis of the historical evolution of the disputed language, in the context of the larger agreement, provides considerable support for the Employer's interpretation of the RSO premium language. The record reveals that when the RSO premium was first adopted in 1963, Exhibit X provided four separate wage schedules for "First Operators" (the SO predecessor classification) based on groupings of the specific work locations at which these employees worked. The 1963 Exhibit X expressly labeled these four schedules as "Schedules I

[14] The only testimonial evidence regarding bargaining history concerned the parties' 2005 adoption of the six-step wage progression for SOs. In this regard, Former Labor Contracts Director [redacted]estified that during these negotiations the parties never agreed that RSOs would be paid at the 6th step of the wage progression, irrespective of their length of service (Tr. 114). *See* discussion at p. 21, *infra.*

through IV," and the differing wage rates reflected the differing skill levels and responsibilities associated with each category of work location. In this context, it appears quite logical – as the Employer contends -- that the reference to "highest schedule substation ... at which he is qualified to relieve, and at which he stands shift ... " was intended to mean that an RSO would be paid at the highest rate for which he qualified, even if he was called on to perform relief work at a lower category work location. Under these circumstances, the RSO wage premium appears to have been designed to protect RSOs from a reduction in pay when serving in relief in a lower-skilled control center or substation.

In the parties' next few collective bargaining agreements, the RSO wage language remained unchanged, at least with respect to the First Operator classification. However, beginning with the 1968 Agreement, the wage rate for so-called "Relief Assistant First Operator" is modified slightly by addition of the words **"appropriate rate"** and reads as follows: **"The appropriate rate of the assistant first operator** at the highest schedule substation or power plant at which he is qualified to relieve, and at which he stands shift, plus $3.00 per week" (UX 4, p. 5, emphasis supplied.). Similar language, including the reference to "the appropriate rate," is contained in the 1968 Exhibit X wage rate for a classification identified as "Relief Second Operator" (*Id.*). Unlike the First Operator classification, the Assistant First Operator and Second Operator classifications are also governed by a 4-step wage progression. A similar divergence between premium pay language for the First Operator Relief and the Assistant First Operator/Second Operator Relief exists in the parties' subsequent agreements until 1977 when the latter positions were apparently discontinued. This difference in language appears to indicate **that the parties understood that the term "appropriate" was useful in**

placing a relief employee on a particular step in a wage progression where one existed, and that such language was not necessary in the absence of a wage progression.

The record discloses additional changes in the contract language used to label the groups of work locations to which particular wage schedules would apply. Thus, in 1973 the term "Group" replaced "Schedule" as the label used to categorize these work locations. And in 1980 the numerical labels (i.e., Nos. 1 through 4) replaced the term "Group" to describe these work location groupings. Also in 1980, the parties adopted a 2-step wage progression for the SO position which superseded the First Operator classification (UX 4, p. 28). Despite these changes, the RSO wage premium language remained unchanged. As the result of technological developments and operational consolidation, in 1995 the parties agreed to eliminate the separate wage schedules for SOs working in various locations, and a single SO wage rate was established. Again, the RSO wage premium language remained unchanged in all material respects.

The most logical reading of this historical development is that the "highest schedule substation" language was intended to apply when differing SO wage schedules existed at various locations based on the skill levels and responsibilities of the SOs employed there. As the Employer persuasively argues, the disputed language appears to have provided RSOs rated for a higher schedule work location with a degree of protection against wage reduction when they were required to relieve at a lower-rated location. Once a single SO wage rate was adopted, the "highest schedule substation" language became superfluous, because there simply was no "highest" or "lowest" SO wage schedule, but a single schedule applicable to all employees in that classification.

Nothing in the bargaining history respecting the 2005 adoption of the six-step wage progression for the SO classification supports a different conclusion. The Letter Agreement reflecting the parties' agreement on the wage progression states simply that the SRO wage premium would remain "Same as today" (UX 2, p. 64), and there was accordingly no change made to the governing contract language (UX 4, p. 58). Further, former Labor Contracts Director [redacted] testified that during these negotiations the parties never agreed that RSOs would be paid at the 6th step of the wage progression, irrespective of their length of service (Tr. 114). In all likelihood, the parties probably did not consider or even discuss the impact of the six-step progression on RSOs because at that time all RSO positions were being filled by the most senior, highly paid SOs who already occupied the very top rung of the wage progression. There was therefore no need to adopt the "appropriate rate" language that had previously been used in the late 1960s and 1970s when a wage progression existed for the Assistant First Operator/Second Operator Relief classifications. In sum, the historical development of the disputed contract language supports the Employer's view that "highest schedule substation" no longer had any relevance after 1995 when a single SO wage schedule was established for all work locations, and that the Union's claims are without merit.

3. <u>Past Practice</u>

The evidence regarding the parties' past practice in applying the disputed provision provides little, if any, additional guidance as to its proper construction. The record is devoid of any payroll documents or other financial records which might indicate precisely how the RSO premium was actually calculated and paid during any prior period. The past practice evidence therefore consists primarily of the testimony of Employer and Union witnesses regarding how

the disputed language has been historically applied. This testimony reveals that until very recently the RSO position was considered a very desirable job, and was thus occupied by the most senior, highly compensated employees assigned to any particular work location. In this regard, Union Representative [redacted] testified that during the last 20 years, RSOs have always been the most senior and highly paid employees working at a particular work site (Tr. 33). [redacted] further testified that prior to the circumstances giving rise to the present dispute, the Employer consistently calculated and paid RSO wages based on the highest SO wage rate found in Exhibit X, in accordance with the Union's interpretation of the governing language (Tr. 55-6). The Union provided no specific documentary evidence to support this assertion. Moreover, the record does not make clear whether the specific RSOs allegedly receiving this pay did so because they were the most senior employees at the location, and thus already at the top of the wage progression, or because the Employer paid less senior employees at the highest rate, irrespective of their prior years of service, as the Union alleges. Conversely, on brief the Employer asserts, without citing any specific evidence, that since the adoption of the 6-step progression in 2005 it has consistently calculated RSO premium pay in accordance with its own interpretation of the Agreement, and argues that in the absence of prior Union objections, this practice became a binding past practice on the parties.[15] In making this argument, the Employer implicitly asserts that it has paid some RSOs less than the highest contractual rate for a period of 6 years without Union objection. Again, no documentary evidence is presented to support this claim.

[15] *See*, Employer's Post-Hearing Brief at p. 12.

As the foregoing makes abundantly clear, evidence of the parties' past practice in applying the disputed language is sketchy, incomplete, contradictory, and inconclusive. The record therefore fails to establish the type of clear, unequivocal, and long-standing practice that would be considered binding on the parties. Accordingly, the Arbitrator must rely instead on the historical development of the governing language to conclude that the RSO wage premium should be interpreted in accordance with the Employer's view.

4. <u>The Union's Arguments</u>

Notwithstanding the foregoing, the Union vigorously argues that the disputed provision requires that RSOs be compensated at the very highest SO rate appearing in Exhibit X, irrespective of their length of employment in that classification. First, the Union asserts that the term "schedule" appearing in the RSO pay language refers to Exhibit X in its entirety because the parties have long recognized that document as constituting a "pay schedule," and that "highest schedule" must therefore mean the highest SO wage rate appearing that "schedule." As the Employer notes, however, this argument conveniently ignores the fact that "highest schedule" is used ***not as a noun, but as a modifier*** of the phrase which immediately follows it, specifically, " ... substation, hydro plant or power plant at which he is qualified to relieve, and at which he stands shift ...." In other words, the RSO rate is to be based on the SO rate at the work location with the *highest pay schedule* for which the RSO is qualified to work, and at which he has previously worked. The Union's argument requires a grammatically tortured interpretation of "highest schedule substation" and must be rejected.

The Union further argues that the parties well knew the difference between the meaning of the terms "appropriate" and "highest" when crafting language regarding relief pay,

and that by intentionally adopting the term "highest" in the RSO wage premium, they did not intend that premium to be subject to the 6-step wage progression, but instead to simply mean the highest SO rate in Exhibit X. The Union accurately notes that the **all other relief classifications** in the Agreement possess wage progressions *and* specifically use the term "appropriate rate" when describing the relief employee's pay rate.[16] Further, Section 110.8 of the Agreement, entitled "Relief Premium," also uses the "appropriate rate" language to describe the pay rate for all other relief employees. The fact that the RSO classification, and only that relief classification, retained the use of the word "highest" is therefore indicative of the parties' intent to distinguish this classification from other relief classifications, and require that the highest SO rate be paid.[17]

On its face, the Union's argument bears considerable logical appeal. The RSO premium language is unique in the Agreement in using the term "highest schedule" rather than the "appropriate rate" language found for all other relief classifications. Standard rules of contract interpretation assume that when parties adopt different language to address analogous circumstances they do so with intention. Therefore it might be reasonably asserted that while the parties intended to use the "appropriate rate" language to place other relief employees at a particular place on the relevant wage progression, the "highest schedule" language intended a different result. However, as outlined above, the historical development of "highest schedule substation" language makes clear that it was adopted to address the differing skill levels, and pay schedules, associated with various work locations. There is no evidence of a similar system

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[16] *See* Union's Post-Hearing Brief at p. 13 and footnote 6.

[17] Additional support for this argument is found in the parties' intermittent use of the "appropriate rate" language with respect to the Assistant First **Operator** and Second Operator positions in the late 1960s and 1970s. *See*, discussion *supra.* at p. 19.

of work location differentiation being utilized with respect to the other relief classifications. This difference in circumstance is alone sufficient to explain the parties' selection of unique language for the RSO premium. Moreover, it is undisputed that at the time the 6-step SO wage progression was adopted in 2005, RSO positions were only filled by the most senior, highly paid SOs who already occupied the highest step of the wage progression. It is therefore quite likely that the parties never even contemplated the need to adopt alternative language because it would simply have no application to RSOs. In any event, the parties' use of the term "highest schedule substation" rather than "appropriate rate" appears to be more a vestige of the historical development of the Employer's operation, than a conscious decision to treat the RSO classification differently than other relief classifications. Thus, this distinction provides an insufficient basis for sustaining the grievance.

Finally, the Union asserts that the changing operational circumstances have caused the Employer to enforce the Relief Agreement more aggressively, utilize RSOs with greater frequency, and thus imposed considerable additional burdens on RSOs. Work schedules are changed more frequently and RSOs are required to work more relief shifts with little prior notice. Despite these additional burdens, the RSO wage premium, as applied by the Employer, provides employees with little additional pay to compensate them for these inconveniences. In the case of Grievant [redacted] the paltry sum of 86 cents per hour is hardly sufficient to compensate him for his additional duties. This fundamental unfairness could not have been contemplated by the parties, the Union asserts.

Herein lies the heart of the Union's claim. For there is no question that the RSO position has become far less desirable as operational and technological changes have increased the

Employer's utilization of this relief classification. This development is amply demonstrated by the fact that the position is now filled by less senior, more lowly compensated SOs, some of whom are forced to accept the relief role. While these changed conditions make the RSO position far less appealing, they do not alter the language of the Agreement which was adopted at a time when economic realities made the position highly coveted. Though the Union may legitimately perceive the RSO wage premium as currently insufficient to compensate employees for the increased scheduling inconveniences associated with that position, this perception alone does not establish a violation of the Agreement. Collective bargaining negotiations are the proper venue for attaining the additional compensation the Union seeks.

AWARD

The Employer did not violate the Agreement, specifically the rate of pay for Relief System Operators in Exhibit X, when it refused to pay Relief System Operators at the sixth step of the wage progression irrespective of the employee's length of service in the classification. The Grievance is denied.

Dated: September 11, 2014

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Daniel F. Altemus
Chairman, Arbitration Board

_____
Doug Veader
Employer Board Member

____ Concur ____ Dissent

Date:

_____
Steve Roland
Employer Board Member

____ Concur ____ Dissent

Date:

_____
Ed Dwyer
Union Board Member

____ Concur ____ Dissent

Date:

_____
Bob Dean
Union Board Member

____ Concur ____ Dissent

Date: