

**IN THE MATTER OF ARBITRATION BETWEEN**

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<b>International Brotherhood of</b>	)	
<b>Electrical Workers, Local 160</b>	)	<b>ARBITRATION</b>
	)	<b>AWARD</b>
	)	
<b>and</b>	)	
	)	<b>PREMIUM PAY</b>
	)	<b>CLASS GRIEVANCE</b>
	)	
	)	
<b>Minnesota Electrical Cooperatives</b>	)	<b>FMCS CASE No. 060628-57489-7</b>

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Arbitrator: Stephen F. Befort

Hearing Date: December 7, 2006

Date of decision: January 3, 2007

APPEARANCES

For the Union: Richard A. Williams, Jr.

For the Employer: Harold LeVander, Jr.

**INTRODUCTION**

International Brotherhood of Electrical Workers, Local 160 (Union) is the exclusive representative of several units of electrical workers employed by various electrical cooperatives operating in the State of Minnesota (Employer). The Union and the individual Employers have negotiated collective bargaining agreements providing for the terms and conditions of employment for covered unit employees. These various agreements uniformly provide that electrical linemen will receive double time for work on Sundays and holidays and that they will serve on a rotating on-call basis throughout

the year. The application of these provisions has resulted in a disagreement as to the amount of pay due for unit employees when working on a Sunday or holiday during an on-call week. The parties have agreed to submit this disagreement to arbitration based upon a hypothetical set of facts and with the understanding that the resolution of this hypothetical will be binding on the parties with respect to the overall context of this dispute. The parties presented their respective interpretations concerning the pay practice at an arbitration hearing and decided not to submit post-hearing briefs.

### **ISSUE**

Does the Employer violate the collective bargaining agreements at issue by compensating employees who work on a Sunday or holiday during an on-call week at a strict double-time contract rate rather than by multiplying the regular rate of pay as adjusted for on-call purposes?

### **THE HYPOTETICAL CONXTEXT**

The parties have agreed to the following set of hypothetical facts as the context for this grievance:

1. The provisions of the collective bargaining agreement provide that all work performed by any employee on a Sunday or holiday the employee shall receive double time.
2. A Lineman employee's regular rate of pay is \$32.00/hour.
3. Linemen, as part of their job duties, are required to be on-call for a one-week period on a rotating basis throughout the year.

4. During the week in which Linemen are on-call they receive an additional eight (8) hours of straight time on-call pay regardless of whether they are actually asked to perform any work on an on-call basis.

5. During the week the Linemen are on-call, the Lineman must be available twenty four (24) hours a day to respond to on-call emergencies.

6. Lineman A is on-call for the one week period. He works his normal forty (40) hour workweek Monday-Friday. A major outage occurs on Saturday.

Lineman A, who is on-call, is called out and works four (4) hours. On Sunday, Lineman A works eight (8) hours.

7. Lineman B, who is not on-call for this week, is also called out for purposes of dealing with the emergency. On Saturday, Lineman B, like Lineman A, works four (4) hours. On Sunday, Lineman B also works eight (8) hours.

8. The FLSA hourly rate for Lineman A, when recalculated in accordance with the Fair Labor Standards Act, is \$36.92 per hour for actual work performed during the on-call week, taking into account the eight (8) hours additional on-call pay received during that week.

9. Pursuant to the Fair Labor Standards Act, the Employer was required to compensate lineman A for the Saturday and Sunday work at a minimum, the following amounts:

a. Saturday:  $\$36.92$  (adjusted FLSA rate)  $\times 1.5 \times 4$  hours =  $\$221.52$ .

b. Sunday:  $\$36.92 \times 1.5 \times 8$  hours =  $\$443.04$ .

10. Lineman B's FLSA hourly rate, since he was not on call and had not received the additional eight (8) hours pay for that week, was the regular contract hourly rate of \$32/hour.

11. Lineman A was paid by the Employer for forty (40) hours contract straight time pay at the regular hourly rate, plus four (4) hours at time and one-half of the contract rate for work on Saturday; and double time at the contract rate for work on Sunday, for a payment of \$1,984 for actual hours worked plus on-call pay of \$256

12. Lineman B was paid by the Company for forty (40) hours contract straight time pay at the regular hourly rate, plus four (4) hours at time and one-half at the contract rate for the work on Saturday, and double time at the contract rate for the work on Sunday, for a total payment of \$1,984.

### **POSITIONS OF THE PARTIES**

#### **Union:**

The Union contends that the Employer is committing a contract violation by failing to calculate double time pay for Sundays and holidays with reference to the regular rate of pay as adjusted for on-call pay. The Union maintains that double time pay in such instances under the contract is not two times the straight time pay rate, but instead 1.5 times the FLSA regular rate of pay which encompasses both the straight time rate and an additional amount reflecting the hourly value of on-call pay, plus .5 times the straight time pay rate.

In terms of the parties' hypothetical, the Union asserts that the Employer is obligated to provide the following premium pay for work performed on Saturday and Sunday:

Saturday:	\$221.52 (\$36.92/hour x 4 hours x 1.5)
Sunday:	\$571.04 (\$36.92/hour x 8 hours x 1.5 + \$32/hour x 8 hours x .5)
Total:	\$792.56

**Employer:**

The Employer argues that it is properly complying with its obligations under both the FLSA and the parties' contract. The FLSA requires time and one-half pay for work in excess of 40 hours per week, while the parties' contract requires double time pay for work performed on Sundays and holidays. The Employer submits that it satisfies both of these obligations in the hypothetical context by providing the following amounts of premium pay:

Saturday:	\$192 (\$32/hour x 4 hours x 1.5)
Sunday:	\$512 (\$32/hour x 8 hours x 2)
Total:	\$704

**DISCUSSION AND OPINION**

This grievance concerns the interplay between the respective premium pay obligations imposed by the FLSA and the parties' collective bargaining agreement. Under the FLSA, the Employer is required to compensate an employee at one and one-half times his or her regular rate of pay for any time worked in excess of 40 hours in a workweek. 29 U.S.C.A. § 207(a)(1). The FLSA does not contain any additional pay requirements for work performed on Sundays or holidays. The parties' collective

bargaining agreement, on the other hand, obligates the employer to provide pay at a double time rate for Sunday and holiday work.

This regulatory framework is further complicated by applicable on-call rules. The parties' contract provides that employees will earn an additional eight hours of straight time pay during an on-call week regardless of whether they are actually required to perform any on-call work. Under the FLSA, such additional on-call compensation is to be added to straight time pay in calculating the regular rate of pay for determining overtime pay compliance.

Both parties suggest plausible interpretations of these provisions. The Employer essentially urges a FLSA solution to the dispute. Under this construction, the on-call enhanced regular rate of pay is relevant only to the FLSA's time and one-half obligation, but not to the contract's double time provision. Accordingly, the Employer asserts, it is appropriate to calculate the Sunday pay rate without the on-call bump because the \$64/hour rate satisfies both the FLSA's time and one-half requirement ( $\$36.92 \times 1.5$ ) and the contract's double time requirement ( $\$32 \times 2$ ). In contrast, the Union essentially urges a collective bargaining agreement solution. The Union contends that the contract's double time requirement applies to the regular rate of pay applicable to the workweek in question. Since the on-call pay results in a \$36.92 regular rate of pay in our hypothetical context, the Union argues that this higher rate must be taken into account in calculating double time pay as well.

Neither party cites to any precedent in support of their position, and this issue appears to be a matter of first impression. Although this is a close call, I find the Union's position to be more persuasive for two reasons.

First, the Union's position is more consistent with the plain language of the parties' collective bargaining agreement. The agreement obligates the Employer to compensate unit employees at double the regular rate of pay for Sunday and holiday work. In the vast majority of instances, the Employer fulfills this obligation by paying double the straight time rate of pay. But, in a week in which an employee is on-call, the regular rate of pay for FLSA purposes is adjusted upward to reflect the added compensation provided for the on-call obligation. In this limited circumstance, an employee earns twice the applicable regular rate of pay only if that rate incorporates the on-call bump. Put another way, an employee on-call does not earn the full benefit of the contractual on-call differential unless it is included in the regular rate of pay for double time purposes.

Second, the Employer's position results in anomalous outcomes. Take, for example, the situation of our hypothetical on-call Lineman A if he or she works four hours of overtime on Saturday, but none on Sunday. As the Employer acknowledged at the hearing, it must compensate Lineman A in this situation at the adjusted on-call regular rate of pay ( $\$36.92/\text{hour} \times 4 \text{ hours} \times 1.5$ ) in order to comply with the FLSA. But, if Lineman A works on both Saturday and Sunday, the Employer's current pay practice is to provide compensation for the Saturday work at the non-adjusted regular rate of pay ( $\$32/\text{hour} \times 4 \text{ hours} \times 1.5$ ). The Employer can pay the reduced amount of pay in this context without violating the FLSA only because of the double time pay provided for the Sunday work. In essence, the Employer is borrowing from its double time pay obligation in the latter context in order to satisfy its weekly FLSA obligation. But, the end result is

that Lineman A loses more than one-third of the weekly on-call bonus (\$88.56 out of \$256).

For these reasons, I conclude that the Union's position should be awarded in order to effectuate the contract double time provision in the context of a period of premium on-call pay.

**AWARD**

The grievance is sustained. The Employer is directed to compensate employees who work on a Sunday or holiday during an on-call week by multiplying the regular rate of pay as adjusted for on-call purposes.

Dated: January 3, 2007

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Stephen F. Befort  
Arbitrator