

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

Case 28-CA-023391

Case 28-CA-066164

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION NO. 611, AFL-CIO**

**CHARGING PARTY'S EXCEPTION TO ADMINISTRATIVE
LAW JUDGE'S DECISION**

Charging Party, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 611, AFL-CIO (herein "Union"), by and through its undersigned counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, excepts to the Decision ("Decision") of Administrative Law Judge Eleanor Laws, JD(SF)-28-12, issued under date of June 22, 2012, as follows:

1. Whether PNM¹ violated Section 8(a)(1) and (5) of the Act when on or about January 3, 2011, PNM implemented a new requirement that meter-reading employees have to work on Saturdays, as alleged in paragraph 9(c) of the Complaint.

The Union excepts to lines 32-41, page 24 and line 5, page 5 of the Decision, reading as follows:

I find that the Acting General Counsel has not produced sufficient evidence to prove this allegation. The contract provision it cites to, Section 15A, sets forth the schedules for regular work hours. What is at issue, however, is the requirement to work overtime, not the regular schedule. Section 15A is silent as to overtime, but overtime work is

¹ Respondent Public Service Company of New Mexico is referenced herein, as at trial, as "PNM."

contemplated in Article 17A, which sets forth the overtime rates for meter readers and collectors. Tafoya testified that the meter readers complained to him about being required to work overtime on Saturday in January 2011. There was simply not testimony or other evidence sufficient to prove that this requirement violated the collective bargaining agreement or that it deviated from established past practice. As the Acting General Counsel has not met his burden in this regard, I recommend dismissal of complaint paragraph 9(c).

This allegation is related to the allegation of paragraph 8(g) of the Complaint, alleging that PNM failed to provide requested information regarding absences upon which ALJ Laws did find a violation (Decision at 48-9). ALJ Laws found: “In the Fall of 2010 meter readers were told they were required to work mandatory overtime on Saturdays.” The grounds for this exception are that the testimony (TR 100-103) establishes that the requirement of mandatory overtime on Saturdays for the meter-reader/collectors (“MRCs”) was both a new requirement and a unilateral change. The key to understanding this issue is to contrast the overtime requirements for the unit employees in the Electric Services Business Unit in Article 16A (Jt. Exh. 1 at 23) and those for unit employees at the San Juan Generating Station in Article 16B (*id.* at 28-29) with those for the MRCs in Article 17A (*id.* at 34-35). Articles 16A and 16B both expressly state:

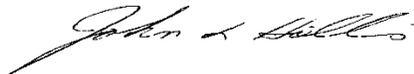
It is recognized by both parties that by the nature of the ESBU [Company’s] business, scheduled and unscheduled work in excess of the regular work week will be required.

Thus the parties provided for mandatory overtime for employees in the ESBU and at San Juan Generating Station. For the MRCs, however, Article 17A glaringly omits any reference to mandatory overtime. Moreover, PNM refused the Union’s proposal in the 2009 negotiations to include the MRCs under the ESBU overtime provisions (TR 103). Since the parties knew how to expressly require mandatory overtime and did so where desired, but did not do so for the MRCs, the conclusion follows that mandatory overtime

was not and is not required of the MRCs under the contract. Merely because overtime rates of pay are provided for the MRCs does not mean that overtime is mandatory. Moreover, because the MRCs were told in the fall of 2010 that Saturday overtime was mandatory as found by the ALJ, this shows that this was a new requirement.

As ALJ Laws recites (Decision at 11): “Well-settled law provides that an employer may not change the terms and conditions of employment of represented employees without providing their representative with prior notice and an opportunity to bargain over such changes. *See NLRB v. Katz*, 369 U.S. 736, 747 (1962).” As she also states (Decision at 12-13, 27): “It is well settled that the Board has the authority to interpret the terms of a collective-bargaining agreement to determine whether an unfair labor practice has been committed. *NLRB v. C & C Plywood Corp.*, 385 U.S. 421, 428 (1967); *Resco Prods., Inc.*, 331 NLRB 1546 (2000).” These well-settled principles should have been, and should be, applied to find that PNM’s making Saturday overtime work mandatory for the MRCs was unilateral and in violation of the contract, and therefore a violation of Section 8(a)(5). This unilateral change was clearly substantial, material and significant and therefore invoked the duty to bargain. *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Flambeau Airmold Corp.*, 334 NLRB 165, 171 (2001), cited by ALJ Laws in her Decision at 14.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2012, I e-filed the above with the NLRB, Office of the Executive Secretary and caused a true and correct copy of the foregoing to be served upon the following by email as indicated:

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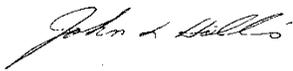
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