

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**MADISON GAS & ELECTRIC COMPANY**

and

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 2304**

Case 76  
No. 66890  
A-6288

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**Appearances:**

**Kurt Kobelt**, Lawton & Cates, S.C., Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of International Brotherhood of Electrical Workers, Local 2304.

**Peter Albrecht**, Albrecht Labor & Employment Law, S.C., Attorneys at Law, 131 West Wilson Street, Suite 1202, Madison, Wisconsin 53703, appeared on behalf of Madison Gas & Electric Company.

**ARBITRATION AWARD**

Madison Gas & Electric (“MG&E”) and International Brotherhood of Electrical Workers, Local 2304 (“IBEW”) requested that the Wisconsin Employment Relations Commission designate a commissioner or staff member to serve as arbitrator of a grievance alleging that MG&E violated the collective bargaining agreement between MG&E and IBEW by failing to utilize a temporary work assignment (“TWA”) form when assigning certain work. The undersigned was so designated. A hearing was held on Friday, June 22, 2007, in Madison, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. A stenographic transcript of the proceeding was made and received on July 17, 2007. The parties subsequently submitted post-hearing briefs, which were received by the undersigned on August 27, 2007, whereupon the record was closed.

Now, having considered the record as a whole, the Arbitrator makes and issues the following award.

## ISSUE

The parties stipulated that the following issue should be determined herein:

Did the Employer violate the collective bargaining agreement when it failed to provide a temporary work assignment form after it assigned facilities management employees to perform work in the systems operations center? If so, what is the appropriate remedy?

## BACKGROUND

Within MG&E's general office facility in Madison, stands a segregated, concrete-reinforced room known as the systems operation center ("SOC"). The SOC, also known as the "emergency management center", houses computer equipment necessary for monitoring MG&E's electric and gas distribution systems and responding to incidents affecting them.

In 2006, MG&E undertook a renovation of the SOC known as the "storm restoration process". The purpose of the project was to add communication hubs to the SOC, which hubs would allow MG&E personnel to set-up temporary work stations with telephones, computers, radio telemotes, and other devices necessary to respond effectively to power disturbances caused by storms. The communication hubs were created in the form of recessed boxes installed in the floor of the SOC and connected to an under-floor power source, as well as telephone, data, and radio telemote cables. Some of this installation work was handled by outside contractors. One aspect of the project handled by MG&E personnel, however, required "terminating" the cables by attaching them to plastic connector clips such that they became floor jacks into which the necessary equipment could be plugged.

MG&E employs two electronics technicians, Bill Weber and Tim Gleiter, in its electric meter shop department. As electronics technicians, Weber and Gleiter generally provide electronic support for almost all areas of MG&E, but most specifically for the electric and gas systems in the electric substations and the SOC. Their general duties are described as follows:

Installs, wires, connects, tests, adjusts, operates, troubleshoots, repairs all types of electromechanical, semisolid state and solid state, metering, control, supervisory control, automatic control, remote control and relay devices, carrier equipment, radio or microwave equipment. Recognizes, detects, and makes corrections of improper wiring in transmission and distribution substations and Company control centers. Performs housekeeping duties at transmission and distribution substations. Performs driver maintenance on and operates Company vehicles. May direct and train helpers. Operates and maintains manually and electrically operated hand tools. Has demonstrated complete familiarity with and ability to maintain electromagnetic voltmeters and ammeters, electronic volt-ohmmeters, digital voltmeters, phantom load boxes, potentiometer, galvanometers, oscilloscope, transistor, and diode testers. Performs

miscellaneous repair work when assigned. Performs other incidental and related duties as assigned.

In May of 2006, as part of the storm restoration process, Electronics Technician Bill Weber was assigned the task of terminating the cables for three communication hubs in the SOC.

MG&E also employs, in the facilities management department, maintenance technicians. The function of the facilities management department generally is to oversee the maintenance, reconstruction, remodeling, and new construction of all MG&E facilities. As a result, maintenance technicians are given work assignments in every facility for which MG&E has responsibility or owns. The general duties of a maintenance technician are described as follows:

Installs, inspects, and maintains lighting systems and makes minor repairs. Performs lock-up, opening, and security of Company facilities. Moves, repairs, and assembles workstation and office furnishings and equipment. Performs maintenance on small grounds equipment, HVAC equipment, and plumbing systems. Maintains refrigeration equipment as well as computer room air handlers. Maintains electrical components including replacement of contacts, fuses and breakers, and data and telephone cable installation. Performs inventory control and has decision-making responsibility in relation to completion of job assignments. Performs building maintenance, including caulking, door hardware, and locking systems. Performs snow removal. Tests fire systems and tests and performs limited preventive maintenance to emergency generators and assists in programming the Building Automation System. Does occasional housekeeping and cleaning. Provides assistance to contractors as assigned. Subject to "on call" scheduling. Performs driver maintenance on and operates Company vehicles and equipment. May be assigned duties and MAGAEL facilities. Performs other incidental and related duties.

In late 2006, MG&E decided to add more communication hubs to the SOC for storm restoration purposes. Although the project would involve the same cable termination work as that which had been completed by the electronics technicians earlier that year, the work was to be assigned this time to maintenance technicians in the facilities management department.

Prior to the time when this second round of cabling work was started, Electronics Technician Bill Weber heard a rumor that the work was going to be assigned to maintenance technicians. Starting in late December of 2006, Weber was in contact with MG&E representatives, inquiring as to how they intended to assign the work and asserting that he believed it should be completed by electronics technicians. In early January of 2007, Weber received confirmation that MG&E representatives had decided to assign the work to maintenance technicians.

Maintenance Technicians Greg Esser and Reggie Schmidt performed the cabling work in the SOC, starting on or about January 21, 2007. They performed the work independently, without assistance from the electronics technicians or any other MG&E personnel.

At Article I, Section S(4), the collective bargaining agreement between MG&E and IBEW calls for a TWA form to be utilized in certain situations in which an employee is assigned to work outside of that employee's jurisdiction. A TWA form was not completed in conjunction with the assignment of the SOC cabling work to the maintenance technicians. IBEW grieved MG&E's failure to provide a TWA form, and it is that grievance which is the subject of the present case.

### DISCUSSION

This case focuses on Article I, Section 4(S) of the collective bargaining agreement between MG&E and IBEW, which reads as follows:

**Temporary Work Assignments.** The following outlines the procedure to be used for temporary work assignments:

1. The intention is to provide the best possible service to our customers, maintain safety, and increase the cooperation between the Union and the Company. The intent is not to move work from one department to another, but to put employees in the right place temporarily to address unexpected incidental work needs.
2. Allow short term, temporary work assignments without prior written notice for periods not to exceed five days.
3. As the short term, temporary work assignment is identified, supervision will notify an IBEW liaison person. A written temporary work assignment notification form will follow (to the liaison person) within two regular working days after completion of the identified temporary work assignment.
4. Temporary assignments will not exceed skills of those assigned. Temporary assignees will work with/under/assist a qualified person.
5. Temporary job assignments will not be utilized to the extent that the DOT Drug and Alcohol Testing program will be required for those assignees.
6. Long term temporary assignments may be used for all IBEW members in Gas and Electric Operations for a period not to exceed three months. Items 4 and 6 apply with completed notification form prior to start date.
7. All persons temporarily assigned will remain at their current wage during such assignment, and such assignment will not be detrimental for purposes of time progression advancement.

In 2005, MG&E and IBEW settled a grievance related to the question of whether, under a different set of circumstances than those involved in the present case, a TWA form should have been utilized. The settlement agreement between MG&E and IBEW contained the following statement, regarding Article I, Section 4(S):

The Labor Agreement does not contain a definition of “temporary work assignment” which has led to the parties’ different interpretations of the intent of the TWA requirement. The parties agreed that clarification of the intent of the TWA provision is warranted and will be addressed in the 2006 collective bargaining process.

The record in the present case is peppered with evidence and argument related to past uses of the TWA form, past work assignments in the SOC, as well as bargaining history pertaining to those subjects. The submission of such evidence indicates that MG&E and IBEW continue to believe, as they apparently did in 2005, that Article I, Section 4(S) is ambiguous.

While the TWA provision arguably does not contain the most rigorous definition of what constitutes a TWA, the language of Article I, Section 4(S) does provide criteria under which IBEW’s present claim can be evaluated. At paragraph 1, the provision states the following:

The intent is not to move work from one department to another, but to put employees in the right place temporarily to address unexpected incidental work needs.

Although phrased in the negative, the implication of the above sentence is that the TWA form is intended to accommodate the need to shift work between departments on a non-permanent basis. I conclude that MG&E did not violate the collective bargaining agreement by failing to provide a TWA form in the present case, because this is not a situation in which work was shifted from one “department” to another.

A “department” is defined as a “functional or territorial division”.<sup>1</sup> Inasmuch as a department represents a “territorial” division, I find that the maintenance technicians were not stepping out of their departmental boundaries by working in the SOC. One of the unique aspects of the facilities management department is its relatively boundless physical scope. The department is responsible for overseeing the maintenance, reconstruction, remodeling, and new construction of every MG&E facility. Thus, by definition, the facilities management department’s territory is company-wide.

IBEW argues that there is a uniform and consistent practice of assigning SOC work – and SOC cabling work in particular – to electronics technicians. Though it is undisputed that

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<sup>1</sup> Merriam-Webster OnLine Dictionary, (April 25, 2008) <<http://www.merriam-webster.com/dictionary/department>> .

the electronics technicians have done a fair amount of work in the SOC in the past, such evidence does not establish that a TWA form was required when the maintenance technicians went into the SOC. In fact, Bill Weber testified that, prior to the instance giving rise to the present case, facilities management employees have done cabling work in the SOC in the past. There is no evidence that TWA forms were utilized on those occasions.

IBEW also claims that it became a practice to assign SOC work to the electronics technicians in 1993, when Jim Montgomery, the director of the facilities management department, recognized that the “geographic” component of the electronics technician job description included the SOC. Although Montgomery denied having used a term like “geography”, he did acknowledge having said that he would give “heads-up notification” when facilities management employees were assigned work in the SOC. This admission does not, however, constitute evidence that Montgomery recognized the SOC to be outside the appropriate territory for the facilities management department. It also does not constitute evidence that Montgomery assented to a need to provide a TWA form when facilities management department employees performed work in the SOC or that the form ever has been used on such occasions.

Inasmuch as a department represents a “functional” division of a company, I also find that the cabling work did not exceed facilities management departmental boundaries. The position description for a facilities management department maintenance technician indicates that the position performs “data and cable installation”. IBEW argues that the work at issue did not fall within the parameters of this description. Specifically, it asserts that some of the wiring work performed in the SOC was at a higher level than the “data and cable installation” referenced in the maintenance technician position description, which otherwise encompasses relatively non-complex janitorial-type work. Weber’s testimony, however, describing the cabling project, simply does not support the contention that it entailed anything more than basic “data and cable installation”. Further, I find that the applicable language in the electronics technician position description – wherein an electronics technician “[r]ecognizes, detects, and makes corrections of improper wiring” – does not represent a more precise description of the work at issue than that found in the maintenance technician position description. The record before me suggests that the cabling work at issue here is encompassed by either position description.

I am not persuaded by IBEW’s assertion that, under the contract construction principle giving greater weight to exact terms over general language, cabling in the SOC cannot be considered part of the maintenance technician position description because the electronics technician position description makes a more specific reference to performing wiring work in SOC<sup>2</sup>. There is no support in the record for the premise underlying this assertion, which is that the SOC reference in the electronics technician position description is a negotiated part of the collective bargaining agreement between MG&E and IBEW<sup>3</sup>

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<sup>2</sup> The position description specifically identifies the “Company control centers”, which testimony established is a reference to the SOC.

<sup>3</sup> The collective bargaining agreement, at Supplement D, provides a “general statement” regarding job descriptions. While that statement indicates that MG&E and IBEW engage in some cooperative efforts with

Paragraph 4 of the TWA provision identifies temporary assignees as those who “work with/under/assist a qualified person”. I read this description to be consistent with the requirement that TWA forms are to be used when an employee is assigned work outside his or her department. Although I recognize, as IBEW points out, that being adequately skilled is an explicit precondition to a temporary work assignment, the unfamiliarity that nevertheless results from working in a different area or performing a different job – even where an employee is sufficiently skilled to do so – would warrant working with the assistance or under the supervision of a qualified person. Here, it is undisputed that the work was performed by maintenance technicians without the assistance of any other MG&E personnel. This fact is consistent with my above finding that a TWA form was not warranted.

The TWA provision also indicates that the TWA system is intended to address “unexpected incidental work needs”. Seemingly in relation to the “unexpected” requirement, both MG&E and IBEW have made much of the question of whether Bill Weber’s chance discovery that the second round of cabling work was to be completed, as well as the subsequent related discussions involving MG&E and IBEW representatives, constituted adequate notice such that MG&E was justified in not providing a TWA form. The question of whether sufficient notice was provided, however, is immaterial given the conclusion that the maintenance technicians were not working outside their department and a TWA form, therefore, was not required. For this same reason, I do not find it necessary to address the claim by IBEW that it was denied the opportunity it otherwise would have had to veto the work assignment.

IBEW argues that this case cannot be decided in favor of MG&E because Jim Montgomery admitted that he was ignorant as to the very existence of the TWA system. According to IBEW, Montgomery’s admission, first, undermines MG&E’s claim that it used the maintenance technician position description as a measure of whether a TWA form was needed and, second, should be viewed as a per se violation of the collective bargaining agreement because it resulted in MG&E’s failure to even consider whether a TWA form should be provided. The bottom line is that the internal process by which MG&E determined whether it would provide a TWA form – including Jim Montgomery’s seemingly ill-informed thought process – has no bearing on the outcome of this case. The present decision is controlled by the objective criteria set forth in the language of the collective bargaining agreement.

Based upon the foregoing and the record as a whole, the undersigned enters the following

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regard to position descriptions, it was not relied upon in the present case by IBEW and, indeed, does not appear to support the contention that MG&E and IBEW actually bargained for the SOC reference that appears in electronics technician position description.

**AWARD**

MG&E did not violate the collective bargaining agreement by failing to provide a TWA form when it assigned maintenance technicians to perform cabling work in the SOC. The grievance, therefore, is denied.

Dated at Madison, Wisconsin, this 6th day of May, 2008.

Danielle L. Carne /s/

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Danielle L. Carne, Arbitrator



