IN THE MATTER OF ARBITRATION
BETWEEN

FLORIDA POWER AND LIGHT COMPANY	)	**FMCS NO. 13-50519-3**
AND	)	**OPINION AND AWARD**
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS SYSTEM COUNCIL U-4	)	**OPERATORS TRAINING PAY**

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE COMPANY

Pamela M. Keith
Senior Labor Counsel

FOR THE UNION

Noah Scott Warman
Attorney at Law

SUBMISSION

This matter concerns a grievance filed on May 29, 2009 by the International Brotherhood of Electrical Workers, System Council U-4 (hereinafter referred to as the Union). The grievance alleged that there had been a violation of the Union's Collective Bargaining Agreement with the Florida Power and Light Company (hereinafter referred to as the Company) pertaining to employees who are scheduled to train outside of their regular work hours. The grievance specifically requested that the Company "cease and desist from scheduling operators in training to any schedule other than the day shift." Furthermore, the grievance requested that all Operators "being scheduled to work these illegal shifts be made whole." The grievance was denied by the Company at all stages of the grievance process. This matter proceeded to arbitration hearing on June 25, 2013 in Palm Beach Gardens, Florida. The parties subsequently presented post-hearing briefs.

BACKGROUND

The Company which provides electricity to most of the State of Florida operates two nuclear power plants, Turkey Point and St. Lucie. Both are regulated and subject to oversight by the Federal Nuclear Regulatory Commission (NRC). The grievance herein

concerns only the St. Lucie Nuclear Power Plant which the Company has operated since 1976. Union Local 627 represents the bargaining unit employees at the St. Lucie Plant.

At the Company's St. Lucie Nuclear Power Plant, there are three categories of Operators: non-licensed operators, NRC licensed operators, and senior licensed operators, all bargaining unit positions. Each is critical for the safe operation of the nuclear power plant. Licensed operators are required by the NRC regulations to undergo training five to six times per year. Michael Scheidegger, Operations Instructor for the Company, testified that licensed operators are required by the NRC to undergo requalification training about every seven weeks. The requalification training would include classroom work as well as time on the simulator which is an exact mockup of the St. Lucie control room. Mr. Scheidegger stated that the simulator is designed to test whether or not individuals have the capability to perform safety functions. He indicated that employees who seek to become licensed must also undergo training on the simulator.

Mr. Scheidegger further testified that for many years the Company has given licensed operators the highest priority in training on the simulator over those who are taking initial license training. The requalification training takes place during weekdays, Monday through Thursday. The initial license training for the ILC students are scheduled in the evenings and at night. Mr. Scheidegger indicated that the scheduling of training for ILC students at night has been taking place since 1986.

Mr. Craig Bushman, a licensed senior reactor operator as well as job steward for the Union, testified that training for a non-licensed operator typically takes about eighteen

months to complete. Mr. Bushman stated that only two or three class members can participate in the hands on training on the simulator at a time. Mr. Bushman indicated that in order for him to become a senior operator, he too had to take additional classroom training in systems as well as emergency operating procedures. Mr. Scheidegger stated that the initial license trainees must spend 122 hours on the simulator to be licensed. He stated that it would be impossible to train the initial license trainees on the day shift because there would be only one day, namely Fridays, when the simulator would be available. As Mr. Scheidegger stated, the Company simply cannot train everyone on the day shift.

Prior to 2001, all operators at the St. Lucie Power Plant worked eight hour shifts, five consecutive days per week. In 2001, the parties entered into an agreement which allowed employees at the Company's nuclear plants to work twelve hour shifts for the first time. In 2001, St. Lucie's licensed operators elected to switch to twelve hour shifts followed in 2002 by its non-licensed operators. To this day, they work twelve hour shifts at the plant.

In 2001, the parties entered into a local agreement that related to the Nuclear Division at the St. Lucie Plant. Stephen Lewandowski, the former Chief Job Steward for the Union at the time who was involved in the negotiations of the local agreement, testified that the parties negotiated that agreement to provide terms that would better suit the training and other operational needs at the facility. Mr. Lewandowski stated that the initial agreement pertaining to twelve hour shifts did not give the St. Lucie Plant any

latitude to train employees. As Mr. Lewandowski testified, the parties subsequently entered into an Addendum which addressed several issues including the requalification training of licensed operators and the training of initial license operators. Mr. Lewandowski testified that one of purposes of the Addendum was to ensure that requalification of licensed operators did not take place on the nightshift. The Addendum in Paragraph 5 stated that initial training classes could be held at any hour of the day, any day of the week. At the time that the Addendum was implemented, the Company was training ILC students at night.

It was stipulated by the parties that the Company has trained ILC students outside of their normal twelve hour shift from 6:00 a.m. to 6:00 p.m. and on days other than Monday through Friday. It was also stipulated that the Company has paid these trainees at their straight time rate. Mr. Bushman confirmed that he had trained on the back shift to become a licensed operator and throughout received straight time pay.

In 2009 Mark MacNichol, the Financial Secretary and Chief Job Steward of Local 627 as well as a St. Lucie operator, filed the grievance which is the subject of this arbitration. In his grievance, MacNichol requested that the Company cease and desist from scheduling the operators in training to any schedule other than the day shift. He also requested that all operators being scheduled to these illegal shifts be made whole.

The grievance was advanced to Step 2 where it was processed by then Local 627 President Wendell Mixon. According to Mr. Mixon, no Company representative raised the issue whether the grievance was untimely. There were several Step 3 meetings which

followed. Mr. Rick Curtis, representing the Company, testified that he raised the issue of timeliness of the grievance. Mr. MacNichol at a Step 3 meeting made it clear that the Union believed that the Company was violating the Nuclear Supplement, Article V, Paragraph 35 pertaining to schedules of work. Also at one of the Step 3 meetings, Union Business Manager Gary Aleknavich stated that for the first time he learned of the existence of the Addendum to the St. Lucie Twelve Hour Shift Agreement which is dated January 3, 2005. According to Mr. Aleknavich, neither the Union nor the Company ever agreed to that local Addendum and therefore it is not valid and enforceable. Mr. Lewandowski stated that the Addendum was entered into by the parties pursuant to the original SLA Twelve Hour Agreement at the St. Lucie Plant. A committee was to be put together to work out any inequities in the original Agreement. The committee did meet and the Addendum was signed off on by both the Operations Manager for the Company and the Local Union 627 President.

The pertinent contract provision cited by the parties includes the following:

> "PARAGRAPH 35 - Of the NUCLEAR SUPPLEMENT
>
> For the purpose of training and other special needs, employees may occasionally be rescheduled to work five (5) consecutive days of eight (8) consecutive hours (exclusive of meal time) per week between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
>
> ST. LUCIE LOCAL AGREEMENT - TWELVE (12) HOUR SHIFTS
>
> For the purpose of training and other special needs, employees may occasionally be rescheduled to work five consecutive days of eight consecutive hours per week between the 6:00 a.m. and 6:00 p.m., Monday through Friday.

ST. LUCIE TWELVE HOUR SHIFT AGREEMENT: ADDENDUM
(January 3, 2005)

5. As special needs exist or while in a training status an individual will work a 5 day 8 hour shift, and may have his schedule temporarily changed to a rotating 5 day 8 hour shift for in-plant duties or on shift training. The individual will be assigned to the operations department's normal 12-hour schedule after being released from the training department to the operations department or when the special need no longer exists. This rule will not apply to requal or continuing training."

POSITIONS OF THE PARTIES

POSITION OF THE UNION

The Union argues that the grievance is timely and properly before the panel for resolution of its merits. The evidence clearly establishes that the Company violated Paragraph 35 of the parties' Memorandum of Agreement by paying straight time wages to employees who are scheduled to train outside of their regular work hours.

The Union maintains that the grievance is timely because the violation committed by the Company is on-going. A recurring violation occurred each and every time the Company paid straight time compensation to operators training outside of their contractually permissible schedule. The grievance timely challenges this on-going breach of the Agreement. Moreover, the timeliness defense was waived in this case because the Company failed to raise it until the arbitration hearing itself. Arbitrators have long held that a timeliness defense is waived if the party allows a grievance to proceed through the process without raising the issue. The Union cites the testimony of its witnesses which support its argument that the Company did not raise the issue of timeliness until the arbitration hearing itself. Therefore, the Company waived this defense.

With respect to the merits of the grievance, the Union contends that the Company violated Paragraph 35 of the Nuclear Supplement to the Master Agreement by paying St. Lucie operators straight time wages for training outside of the two

contractually permitted schedules. Paragraph 35 addresses training schedules for employees who ordinarily work twelve hour shifts. It states that operators on twelve hour shifts may be paid straight time for training on either their regular shift schedule or on the five day eight-hour schedule from Monday through Friday within the specified hours allowed. The Union submits that training of the operators at any other time would result in overtime pay under the parties' Agreement which expressly provides that overtime will be paid for "all hours worked outside regular schedule in any one (1) work day." However, the evidence shows that the Company scheduled non-licensed operator training outside of the permitted schedules and paid those operators straight time wages. When the Union found out about the Company's practice, it filed its grievance herein and requested that the Company pay the operators in accordance with the clear and unambiguous language of the MOA.

The Union points out that it is not challenging the Company's right to schedule operator training whenever it chooses. The dispute concerns only the rate of pay those trainees receive. Training employees on their regular twelve hour schedule any day of the week would of course be paid at the straight time rate. However any training hours scheduled outside of the operator's regular twelve hour schedule and the training exception allowed under the Agreement which would be an off day or time off duty, must be paid at the overtime rate.

The Union disputes the Company's reliance on two "local agreements." Both contain language which is at odds with the express language of the Master Agreement.

One local agreement appears to allow training on a rotating five to eight hour shift without any reference to the weekdays or times of day for that training. Moreover, the Company's argument fails because the MOA forbids local agreements that are at odds with the terms of the MOA. Not only are both Company documents at odds with the plain language of Paragraph 35, there is also no evidence that the second local agreement ever was properly entered into by the parties and as such is not enforceable.

The Union also claims that the Company's reliance on a past practice to justify its failure to pay overtime for training cannot be upheld in this case. It is widely recognized that past practices may not contradict clear contract language. In this case, the parties' Agreement expressly obligates the Company to pay overtime for work, including training time, outside of an employee's regular schedule. The Employer's failure to do so means that the Company violated the Agreement and the grievance must be sustained. As a remedy, the Union requests a cease and desist order of the Company's practice of paying only straight time wages for training other than during the times set forth in Paragraph 35 of the MOA. It also requests that all affected operators be made whole for lost wages incurred.

POSITION OF THE COMPANY

The Company contends that the grievance has not been filed in a timely manner. As such, the grievance is not properly before this arbitration panel for its consideration. With respect to the merits of the grievance, the Company submits that it has not violated the MOA or the St. Lucie Plant Twelve Hour Shift Agreement by training initial license class students on the nightshift and paying them straight time wages.

The Company contends that the grievance is not arbitrable because it was not filed in a timely manner. The MOA states that the grievance must be filed in writing within four calendar weeks after its occurrence. In this case, the Union for almost eight years had been aware of the practice followed by the Company of training initial license class students at night and then paying them at their straight time wage. Because the Union was aware of this practice, it cannot rely upon the continuing violation theory which it has proposed. There simply was no excuse for the Union's failure to file a timely grievance in this case. Again, Union witnesses acknowledged that the alleged violation of the Contract occurred in 2001 at the time that the Company went to the twelve hour shifts. The filing of the grievance in 2009 clearly was not timely and for that reason it should be dismissed.

If the arbitration panel finds the grievance to be arbitrable then the Company submits that there is absolutely no basis to the merits of the grievance. The Company did not violate the MOU or the SLA when it trained initial license class students on the nightshift and paying them at their straight time wage. In particular, the plain terms of

the St. Lucie Local Agreement gives management the flexibility needed to schedule ILC students at night. As confirmed by Company witnesses, ILC students are on night training assignment for many months and can take more than eighteen months to complete their initial license class. In that the plant runs two shifts, twenty-four hours per day, it necessarily follows that management can assign ILC students for training to the nightshift in accordance with the MOA.

The Company also cites the terms of the Addendum to the SLA which clarifies that the parties never intended for ILC students to be included in the provision regarding training during the day shift. The language contained in the Addendum makes it clear that the Company may schedule employees in a training status such as ILC students on any eight hour per day, five day per week schedule. It cannot be said that this language requires the Company to train ILC students on the day shift. Rather as a Company witness indicated, the Addendum was written specifically to exclude ILC students from day shift training so that license operators could have their requalification training take place on the day shift.

The Company points out that there are two reasons why the training of ILC students should take place at night. First as a Company witness indicated, if the Company were to train ILC students only on the day shift and fit it around the requalification training of license operators, it would take the students up to seven years to complete the initial license training. It should be noted that their training on the simulator could only be made available on Fridays. Moreover to switch ILC students to

day shift training and to provide that requalification training for license operators take place on the night shift would constitute a violation of the provisions found in the SLA and the Addendum.

The Company further maintained that the remedy which the Union is requesting would provide an undue windfall for the ILC students. If those students were to be paid as requested by the Union at time and one-half, this would mean that they would be paid nearly twice what license operators make. As one of the witnesses stated, this would make the licensed operators furious because it would be totally unfair for someone in training status who is attempting to obtain a license to be paid much more than they are paid. Moreover as a witness pointed out, the Union never sought during negotiations over the SLA or even the Twelve Hour Supplements for the St. Lucie Plant that there is to be premium pay for students in the initial license class. As the witness pointed out, the Company would never have agreed to such unfair premium pay for students seeking their initial license. The grievance is clearly without merit and should be denied in its entirety.

OPINION

The first issue which must be addressed concerns one of arbitrability. As indicated, the Company claims that the grievance is untimely and as such is not properly before this arbitration panel. The Union counters by claiming that the Company waived the affirmative defense that the grievance was not timely because it failed to raise the issue prior to this arbitration hearing. Under the parties' Agreement, this arbitration panel can only rule on grievances that are properly presented in accordance with the terms of the MOA.

The grievance herein was filed on May 29, 2009 requesting that the Company cease from scheduling operators in training to any schedule other than the day shift. The grievance further requested that all operators being scheduled to work these "illegal shifts" be made whole. The evidence establishes that since 2001, the Company has followed a practice of scheduling ILC students for training on the nightshift and paying them at the straight time wage. Union witnesses agreed that the initial violation of the Contract which they raised in their grievance occurred in 2001. The Company is correct in stating that the grievance procedure states that a grievance is to be filed "within four (4) calendar weeks after the occurrence which is the subject matter of the grievance." The Company maintains that the grievable issue raised by the Union was fully ripe and discernable in 2001 when the practice was first initiated for ILC students being trained on

the nightshift. As a result, the Company claims that the grievance filed in 2009 is clearly untimely.

However, this arbitration panel must find that the grievance presented is timely because the contractual violation alleged is one of a continuing violation of the express language of the parties' Collective Bargaining Agreement. The dispute raised by the grievance does not concern a single event but a recurring violation of the Agreement each and every time that the Company pays straight time compensation to ILC operators training outside of their two contractually-permitted schedules. Continuing violations have been recognized in various types of cases including those where improper compensation is being challenged. In such cases it has been held that each improper paycheck constitutes a new violation of the contract. In the instant case, the practice followed by the Company since 2001 has been to pay the ILC students straight time wages for training outside of the hours provided by the MOA. It is apparent therefore that the dispute in this case does not concern a single event but an alleged recurring violation of the Agreement in that the Union is claiming that the Company should have paid overtime to the ILC students being trained outside of their regular work hours. As a result, this arbitration panel must find that the grievance is timely because it alleges an ongoing breach of the Agreement. For that reason the grievance is properly before the panel for resolution on the merits.

With respect to the merits, the issue is whether the Company violated Paragraph 35 of the Nuclear Supplement to the Master Agreement by paying straight time wages to

employees who it scheduled to train outside of their regular work hours. The Union contends that the Company violated Paragraph 35 of the Nuclear Supplement to the Master Agreement by paying St. Lucie operators straight time wages for training outside of their regular work hours. The Union submits that the parties' Agreement expressly obligates the Company to pay overtime for work, including training time, outside of an employee's regular schedule, and in this case the Company failed to do so. The Company argues that it has not violated the St. Lucie Nuclear Supplement by training initial license class students on the nightshift and then paying them at their straight time wage. The Company contends that a well-established practice exists of paying the ILC students training at night at their straight time wage. Therefore, the issue becomes one of determining if the Company violated the parties' Agreement by training initial license class students on the nightshift and then paying them at their straight time wage.

It is undisputed that the Company has trained ILC students at night, outside of the hours of 7:00 a.m. to 6:00 p.m, which is outside of their normal twelve hour shift and on days other than Monday through Friday. Moreover, the Company stipulated that it trained these employees at night and paid them at their straight time rate of pay. This practice has been followed at the St. Lucie Nuclear Power Plant since the employees went to twelve hour shifts in 2001. It is also important to note that no grievance was ever filed by the Union concerning the issues raised in this matter until its 2009 grievance.

After carefully reviewing the record presented, this arbitration panel must find that the Company has not violated Paragraph 35 of the Nuclear Supplement to the Master

Agreement by paying St. Lucie ILC students straight time wages for training outside of their regular work hours. The Union relies on Paragraph 35 in support of its position which provides in relevant part that "For the purpose of training...employees may occasionally be rescheduled to work five (5) consecutive days of eight (8) consecutive hours per week between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday." The Union argues that this provision means that if the Company trains ILC students at any time outside of their regular scheduled shift then they are to receive overtime pay. The Company contends that the language stating that employees "may occasionally" be rescheduled implies that ILC students can be trained outside of their regular twelve hour shift at their straight time rate of pay. It is apparent that this provision can be interpreted as either the Union or Company suggests. It should be noted that Paragraph 35 is silent as to whether ILC students are to receive premium pay for their training at night. As a result, this arbitrator must find that the contractual language in question is unclear as to whether the ILC students who are trained on the nightshift are to receive overtime pay.

In cases such as the instant one where the relevant contract language is considered to be unclear, it is appropriate to consider other evidence to determine the meaning of the training provision. As such, evidence as to how the provision has been applied in the past is relevant. Evidence of a well-established past practice is commonly used to indicate the proper interpretation of unclear contract language.

This arbitrator finds that the past interpretation given to Paragraph 35 of the Nuclear Supplement to the Master Agreement establishes the meaning of that provision.

Specifically, the evidence clearly demonstrates that there was a well-established past practice of training ILC students on the nightshift and paying them at their straight time rate of pay. The evidence shows that this practice existed for about eight years from 2001 through 2009 when the grievance was filed. Mr. Lewandowski, who was the Union's Chief Job Steward, testified that throughout those eight years the Union was well aware of the fact that the Company was training initial license class students on the simulator at night and paying them at their straight time wage. Mr. Bushman, a senior operator at the St. Lucie Plant who had been trained at night, also confirmed that the Union was aware of the practice which existed. It is clear from the testimony of Mr. Lewandowski as well as Mr. Bushman that the Union not only fully acquiesced in the practice but never raised any complaint over the Company's practice of not paying ILC students at a premium wage for training at night. Therefore, this arbitration panel finds that the well-established and consistent past practice followed at the St. Lucie Plant since the twelve hour shift was implemented shows that there was a mutual understanding between the parties that ILC students could be trained at night and paid at their straight time wage.

This arbitrator also must find that the contract language in Paragraph 35 of the Nuclear Supplement cannot reasonably be interpreted as prohibiting the Company from scheduling ILC students to train at night and then paying them at their straight time wage. The provision in question only states that "for the purpose of training...employees may occasionally be rescheduled to work five (5) consecutive days of eight (8) consecutive hours per week between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday."

The language "may occasionally" clearly implies that the Company may schedule employees in some manner other than that listed for purposes of training. Under such permissive language, it must be held that the Company had the contractual right to schedule ILC students for training outside of their regular work hours or at times other than those listed in Paragraph 35. Moreover, it is evident that Paragraph 35 is silent as to what compensation the trainees should receive in such cases. However, the practice followed at the St. Lucie facility for the eight years preceding the filing of the grievance herein clearly demonstrates that there was a mutual understanding between the parties that ILC students would be trained at night and paid at their straight time wage. Considering the well-established past practice followed at the St. Lucie Nuclear Power Plant as well as the permissive "may occasionally" contract language, it must be held that Paragraph 35 cannot be interpreted as the Union claims as requiring the Company to pay ILC students at a premium rate for training outside of their regular work hours.

The two St. Lucie Local Agreements referred to by the Employer provide further support for the conclusion that the Company has the contractual right to schedule ILC students for training at night outside of their regular work hours and paying them at their straight time wage. Mr. Lewandowski, who assisted in negotiating the local agreement on behalf of the Union including the Addendum in 2005, testified that it was never the Union's intention to try to get premium pay for the initial license class students being trained at night. With reference to the 2005 Addendum, Mr. Lewandowski stated that it was written to specifically exclude ILC students from day shift training so that licensed

operators could do their requalification training on the day shift. It is evident from the St. Lucie Local Agreement and in particular the 2005 Addendum that the parties agreed that the Company could train ILC students at night and then pay them at the normal straight time wage. While the Union objects to the validity of the St. Lucie Nuclear Power Plant Local Agreement including the Addendum, it is apparent that they reflect the intent of the parties in that the Company's Plant Operations Manager as well as the Local Union President both signed off on the documents. Therefore, it must be held that bargaining history of the St. Lucie Local Agreements also clearly show that it was never the intent of the parties to provide premium pay for ILC students who are trained outside of the regular work hours.

The reasonableness of the Company's decision to train ILC operators only on the nightshift cannot be questioned in this case. As explained by Mr. Scheidegger, the Company's Operations Instructor, it is necessary to train both licensed operators as well as ILC students on the simulator which again is an actual mockup of the control room at the St. Lucie Nuclear Power Plant. Pursuant to NRC regulations, the Company trains employees in three man crews on the simulator. As Mr. Scheidegger indicated, licensed operators must take requalification training including on the simulator about every seven weeks. Because of the limited number of hours for which a simulator could be made available to the ILC students during the day, it has become necessary for the Company to train the ILC students on the simulator on the nightshift. As Mr. Scheidegger stated, if the Company trained ILC students only on the day shift with the limited number of hours

available on the simulator, it would take those students up to seven years to complete initial license training. Obviously, this would be an unreasonable length of time. Therefore for practical reasons, it became necessary to schedule the ILC students for their training on the nightshift. This is another reason why this arbitrator must find that there is no merit to the Union's claim that the Company has acted improperly in this case.

The Union in its vigorous pursuit of the grievance herein claims that the Overtime Provision found in the parties' Memorandum of Agreement should be strictly construed and applied to the ILC students being trained at night outside of their regular work hours. The provision cited does state that overtime is to be paid for "all hours worked outside regular schedule in any one work day." However for several reasons, it must be held that the Overtime Provision cited is not applicable to the ILC students who are being trained at night. First as previously discussed, both the established practice followed under Paragraph 35 of the Nuclear Supplement as well as the bargaining history of the Local Agreements including the Addendum clearly demonstrate that it was the mutual intent of the parties to allow the Company to train ILC students at night and to pay them at their regular rate of pay. As the Union Negotiator of the St. Lucie Plant Local Agreements acknowledged, there was never an intent to provide premium pay to these ILC student trainees. Significantly, it was shown that the Union fully acquiesced in the practice that had been followed for about eight years preceding the filing of the grievance wherein the ILC students being trained at night were paid at their regular straight time wage. The fact that the Union never objected to this well-established

practice shows that there was a mutual understanding between the parties that at the St. Lucie Nuclear Power Plant the ILC students being trained at night would not receive premium pay.

Moreover, one of the basic rules of contract construction is that an interpretation which could lead to unreasonable or harsh results is to be avoided. In this case if this arbitrator were to hold that the Company must provide premium pay to the ILC trainees in question, then it would lead to harsh results. Specifically, it would mean that the non-licensed operators who are trained on the nightshift would receive premium pay while the licensed operators taking their requalification training on the day shift would only be getting their straight time wage. As Mr. Lewandowski stated, licensed operators would be "furious" if the non-licensed operators were to receive premium pay for training at night. Therefore considering the inequitable result which would occur if ILC student trainees were to receive premium pay, this arbitrator must hold that the Overtime Provision cited by the Union cannot reasonably be construed as applying to ILC students trained at night.

In summary, this arbitrator finds that the Company has the contractual right to schedule ILC students for training on the nightshift and to pay them at their straight time wage. In that Paragraph 35 of the MOA is unclear as to whether these non-licensed operators are to receive premium pay for their training, it becomes necessary to consider other evidence to determine the meaning of the training provision. It was shown that there was a well-established past practice followed at the St. Lucie Nuclear Power Plant

of training ILC students at night and paying them at their straight time wage. The Union fully acquiesced in the eight year practice and never objected until the filing of the grievance in 2009. The St. Lucie Local Agreement including the Addendum provide further support for the conclusion that the Company was permitted to train ILC students at night and pay them at their straight time wage. While the Union objects to the validity of the Local Agreements, it is evident that they reflect the intent of the parties in that the Plant Operations Manager as well as the Local Union President signed off on the documents. Moreover, it would lead to unreasonable results to find that the Overtime Provision in the MOA should be applied to the non-licensed trainees in this case. The well-established past practice as well as the bargaining history of the St. Lucie Local Agreements clearly demonstrate that their was a mutual understanding between the parties that the Company would be permitted to train ILC students outside of their regular work hours and to pay them their straight time wages. Therefore, this arbitration panel must conclude from the evidence presented that the Company did not violate Paragraph 35 of the Nuclear Supplement to the Master Agreement or any provision of the MOA by paying straight time wages to ILC students whom it scheduled to train outside of their regular work hours. In that it has been determined that there has been no contract violation committed by the Company in this case, the grievance presented must be denied.

AWARD

For the reasons indicated, the grievance is denied.

OCTOBER 3, 2013

James M. Mancini /s/
James M. Mancini, Impartial Arbitrator

Concurs Kelly Tveter /s/
Kelly Tveter, Company Representative

Dissents Kenneth R. Sims /s/
Kenneth R. Sims, Union Representative