

# Designating “Special Shifts”: Lessons from a Recent Arbitration Win

Prepared by: Brent Garrett



aa/r/r

Atkinson, Andelson  
Loya, Ruud & Romo

A Professional Law Corporation

# Agenda

- Review Shifts Local 12 MLA
- Discuss Special Shifts
- Review MTCA Arbitration
- Review New Changes to MLA on Special Shifts

# Single Shifts

- Single Shift
  - 8 consecutive hours (exclusive of meal period)
  - Between 6 a.m. and 5 p.m.
  - Monday to Friday
  - Starting times must be either 6 am, 6:30 am, 7 am, 7:30 or 8 a.m.

# Single Shifts

- The starting time can only be changed to meet a “bona fide job requirement”
- Written notice must be provided to union to change the starting time
- Starting times cannot be staggered

# Single Shifts

- All time worked before 6 am and after 5 pm is paid at applicable OT rate
- All time worked on Saturdays, Sundays or holidays paid at applicable OT rate

# Single Shifts

- Earlier Start Option
  - Contractor may start earlier than 6 am
    - 24 hours advance notice required
    - Shift must operate for 3 or more days

# Multiple Shifts

- 24 hours advance notice to the union
- Must be worked for three or more consecutive days
- Workers assigned to a multiple shift not interchangeable with workers assigned to a single shift
- Cannot overlap shifts, except for shift change not to exceed one hour

# Multiple Shift Premium Pay

- Day shift (start between 7 am and 8 am) paid in accordance with Appendix A-1, B-1, C-1 or E-1
- Second shift paid per Appendix A-3, B-3, C-3 or E-3
  - \$1.00 premium per hour
- Third shift works 6.5 hours but paid 8 hours
- Time worked from Friday midnight to Sunday midnight paid at the appropriate OT rate
- The parties may mutually agree on different starting or quitting times



# Special Shifts

- Allows a contractor to establish a unique straight time shift
- Contractual conditions must be satisfied
- Paid in accordance with Appendix A-2, B-2, C-2 or E-2
- \$.50 premium per hour

# Contractual conditions

- Contractor produces “evidence in writing”
- Evidence must be provided 24 hours in advance
- Of a bona fide job requirement
- Work “can only be performed outside the regular day shift”
- Due to a requirement of a City, County, State or other contracting entity

# Special Shift (4x10)

- Consists of 4, 10 hour days
- May run either Monday to Thursday or Tuesday to Friday
- Union must be notified in writing prior to start of the shift

# MCTC Arbitration

- Mid-Coast Transit Constructors
- Extension of light rail from downtown San Diego to the La Jolla area
- \$3 billion project
- 7 years of construction
- Joint Venture consisting of Skanska, Flatiron and Stacy & Witbeck
- AGC San Diego

# MCTC Project

- Project occurred in the Cal Trans right of way
- Subject to Cal Trans District 11 lane closure charts
- Lane closure charts prohibited lane closures during the day and on Friday and Saturday nights

# MCTC Project

- Project required substantial and continuous freeway work requiring a lane closure
- A permanent night “special shift” was declared to perform freeway work
- Shift was Sunday night to Friday morning

# MCTC Arbitration

- From 2016 to 2018, MCTC ran the special shift without incident
- In 2018, a Local 12 BA informed MCTC that there was no “shift letter” in place for the night shift

# MCTC Arbitration

- After discussion with union, MCTC sent all of the lane closure charts in the contract specifications to Local 12
- Designated a project wide special shift
- The Union “rejected” the special shift, stating that MCTC did not meet contractual conditions
- Union took the case to arbitration



# MCTC Arbitration

- Union claimed the lane closure charts were not a bona fide job requirement
- The wording of the charts did not prohibit work without a lane closure
- The Resident Engineer did not direct in writing that work be performed at night

# MCTC Arbitration

- Arbitrator's Ruling
  - The lane closure charts were evidence of a bona a fide job requirement
  - The evidence showed that the Operator's scope of work could not be performed without a lane closure

# MCTC Arbitration

- Takeaways:
  - A letter from the Resident Engineer is not required to run a special shift
  - Lane closure chart is sufficient evidence of a job requirement
  - Other contractual requirements effectively requiring a different schedule can be sufficient evidence
  - A project wide notification is acceptable

# New Special Shift Language

- New designation for special shifts
  - Monday to Friday special shift
  - Sunday to Thursday special shift

# New Special Shift Language

- The Monday to Friday special shift is the legacy contract language
- Same requirements must be satisfied for a Monday to Friday special shift
- A \$1 hourly premium applies

# Sunday to Thursday Special Shift

- Do not need to meet all of the contractual conditions for a Monday to Friday special shift
- Requires 24 hours notice to the union
- Can begin on Sunday at 8 p.m. or later
- Can only be used on freeway or highway work
- A \$3 hourly premium applies

# Sunday to Thursday Special Shift

- Can only be initiated when “necessary . . . in order for an employee to complete a 40 hour work week”
- Must run the entire week
  - Exception for holiday or inclement weather
- Employees not interchangeable with employees working another shift
- If the shift is not a full week, the appropriate OT rate applies on Sunday

# Compliance tips

- Send regular letters via fax
- Send appropriate supporting documentation if required
- Keep all correspondence