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D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

REVIEW COMMITTEE

JUN 25 1992

**CASE CLOSED
 LOGGED AND FILED**

RECEIVED JUN 24 1992

San Joaquin Valley Region Hydro Grievance No. HFRO-91-15
 P-RC 1557

2.1 -Recognition
 207.2 -Contracting

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 & supplies
 to Helms.

IBEW



INTERNATIONAL BROTHERHOOD OF
 ELECTRICAL WORKERS, AFL-CIO
 LOCAL UNION 1245, I.B.E.W.
 P.O. BOX 4790
 WALNUT CREEK, CALIFORNIA 94596
 (415) 933-6060
 R.W. STALCUP, SECRETARY

June 22, 1992

MELANIE CURRY, Company Member
 San Joaquin Valley Region
 Local Investigating Committee

FRANK HUTCHINS, Union Member
 San Joaquin Valley Region
 Local Investigating Committee

Subject of the Grievance:

This case questions whether the Company has entered into a joint employer relationship with an independent contractor whose employee provides mail and miscellaneous delivery services to the Auberry, Balch Camp, and Helms headquarters of the Hydro Generation Department's Southern Area.

Facts of the Case:

The Hydro Generation Department's Southern Area has contracted out mail and delivery services for Auberry, Balch Camp, and Helms since 1986. Over the last two years, the work has been performed by an individual employed by High Country Construction. The same contract employee has performed the work continuously for the two year period. Work performed includes pick up and delivery of both Company and U.S. mail to Auberry, Balch Camp and Helms as well as pick up and delivery of kitchen/camp supplies and materials for the warehouse. Prior to 1986, this work was performed by a Routine Hydro Clerk and General Construction.

While the contract specifies the contractor will provide the employee with direction, the nature of the work is such that PG&E employees/supervisors also provide the employee considerable direction. The employee testified at the Local Investigating Committee meeting that he gets most of his instructions from PG&E supervisors and employees rather than the contractor.

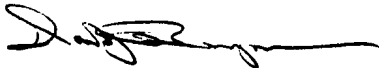
Discussion:

The facts of this case are similar to those discussed by the Pre-Review Committee in P-RC 1185. In that case, the grievance was resolved based on the Company's agreement to cease and desist contracting out mail delivery services.

Shortly after the settlement of P-RC 1185, the parties reached agreement on RC 1637. In that decision, it was agreed that the Company would not use contract personnel for the performance of bargaining unit work in excess of 90 workdays unless such use meets the test of true independent contractor status. The agreement also provides for specific remedies if it is determined that the Company is in a joint employer relationship. The remedies contained in RC 1637 go well beyond the cease and desist settlement contained in P-RC 1185.

Decision:

The Pre-Review Committee has determined that a joint employer relationship does exist in this case. The case is remanded to the Local Investigating Committee to determine the appropriate remedy in accordance with RC 1637. The Pre-Review Committee requests a copy of the settlement and retains jurisdiction if the Local Investigating Committee is unable to reach an agreement.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER W. STALCUP, Secretary
Review Committee

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