

2.1 -Recognition: Use of contract dump trucks in a jt emplr relationship.



REVIEW COMMITTEE

IBEW



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NOV 19 1993

**CASE CLOSED
LOGGED AND FILED**

RECEIVED NOV 18 1993

RICK R. DOERING, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Review Committee File Nos. 1755 and 1756
General Construction Grievance Nos. 3-2349-92-55, 3-2334-92-40, and 3-2379-92-85

Pre-Review Committee File No. 1643
General Construction Grievance No. 3-2364-92-70

Grievance Issue: Company's continued use of contract dump trucks in violation of Arbitration Case No. 184.

Facts of the Cases: Company used contract dump trucks to haul away spoil from job sites. The trucks were loaded, directed and scheduled by the Company.

Discussion:

Company argued that the contracts have been rewritten since Arbitration Case 184 and that the Company no longer supervises the contract driver or allows the contract driver to mingle with or assist the crew. In Arbitration 184, Arbitrator McKay cited several cases from RC 1637 to support his decision that are not applicable in this case. P-RC 1073 involved the contracting out of building department work in Chico. The Review Committee determined the Company had entered into a joint employer relationship due to day-to-day direction given by PG&E supervisors. The same is true in P-RC 1122 and 1123 concerning garage work in San Joaquin Region. The difference with these cases is that PG&E supervisors do not give day-to-day direction. The contract drivers receive direction from contract supervisors on the time and date to be at a location to pick up spoil. P-RC 1154 involved contracting out electric meter work in East Bay Region. In that case, contract employees reported to a PG&E facility and received work orders from a PG&E supervisor. In the current cases, drivers do not report to a PG&E facility or get schedules from a PG&E supervisor.

The Union argued that contract dump truck drivers are supplementing Company truck drivers who are capable of performing the same type of work.

Contract drivers work alongside PG&E employees and may be considered part of the same crew. The crew is responsible for site excavation. Company crew members dig up the soil. Crew members from the contractor truck the soil away.

McKay states that in a "normal subcontracting relationship", a general contractor may tell the subcontractor to move 40,000 yards of material and it is then up to the subcontractor to determine what equipment he will need to perform the task, how to best load the material, and where to dump the material. In the current case, Company tells the contractor what type of equipment to use, PG&E crews load the trucks, and Company advises the contractor where to dump the spoil.

There is no evidence that the contractor's supervisor directs the driver at the job site. Company personnel determine when the truck should be on site and position the truck for loading.

Arbitrator McKay cited paving as an example of appropriate subcontracting work. A key factor cited by McKay was that paving contractors do not work as supplemental employees to Company crews, but independently of crews. A truck driver whose truck is loaded by Company crews is not working independently of those crews.

Disposition: The committee agreed that the Company violated the Agreement and that remedy of Arbitration 184 apply in these cases.

These cases are referred back to the Local Investigating Committee for resolution.

FOR COMPANY
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