



REVIEW COMMITTEE

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**CASE CLOSED
LOGGED AND FILED**

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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

ARBITRATION CASE NO. 199

- Bakersfield Grievance No. BAK-94-49(P-RC 1913)
- Central Coast Division Grievance No. CCH-94-3 (P-RC 1749)
- Central Coast Division Grievance No. CCH-94-4 (P-RC 1750)
- Central Coast Division Grievance No. COA-91-9 (P-RC 1611)
- Central Coast Division Grievance No. COV-52-18-91-13 (P-RC 1610)
- Central Coast Division Grievance No. COV-52-18-92-14 (P-RC 1660)
- Central Division Grievance No. CEN-92-28(P-RC 1689)
- DeAnza Division Grievance No. DEA-92-25 (P-RC 1690)
- Diablo Canyon Grievance No. NPG-553-93-024(FF 5516)
- Diablo Canyon Grievance No. NPG-548-93-19(FF 5501)
- Diablo Canyon Grievance No. NPG-585-94-018(FF 5786)
- Diablo Division Grievance No. CON-94-10 (P-RC 1970)
- Diablo Division Grievance No. CON-93-4 (P-RC 1972)
- Diablo Division Grievance No. DIA-92-11 (P-RC 1648)
- Fresno Division Grievance No. FRO-91-33 (P-RC 1574)
- Fresno Division Grievance No. FRO-92-26 (P-RC 1669)
- Fresno Division Grievance No. FRO-93-26 (P-RC 1743)
- Fresno Division Grievance No. FRO-92-6 (P-RC 1620)
- Fresno Division Grievance No. FRO-93-30 (P-RC 1816)
- Fresno Division Grievance No. FRO-93-31 (P-RC 1815)
- Fresno Division Grievance No. FRO-93-8 (P-RC 1700)
- Fresno Division Grievance No. FRO-92-18 (P-RC 1651)
- Fresno Division Grievance No. FRO-92-16 (P-RC 1663)
- Fresno Division Grievance No. FRO-94-51(FF 5942)
- Fresno Division Grievance No. FRO-93-28(P-RC 1746)
- Fresno Division Grievance No. FRO-94-22(FF 5937)
- Fresno Division Grievance No. FRO-94-10(P-RC 1860)
- General Construction Grievance No. SFO-GGR-92-10 (P-RC 1656)
- Humbolt Division Grievance No. HUM-91-3 (P-RC 1631)
- Kern Division Grievance No. BAK-94-1 (P-RC 1867)

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Kern Division Grievance No. BAK-94-35 (P-RC 1909)
Kern Division Grievance No. BAK-94-3 (P-RC 1819)
Kern Division Grievance No. BAK-94-53 (FF 5936)
Kern Division Grievance No. BAK-93-16 (P-RC 1852)
Kern Division Grievance No. BAK-94-37-300 (P-RC 1910)
Los Padres Division Grievance No. LOS-91-14 (P-RC 1609)
Los Padres Division Grievance Nos. LOS-92-10 and LOS-92-11 (P-RC 1637)
Mission Division Grievance No. MIS-91-33 (P-RC 1599)
Mission Division Grievance No. MIS-92-8 (P-RC 1683)
Kern Division Grievance No. BAK-94-35 (P-RC 1909)
Kern Division Grievance No. BAK-94-3 (P-RC 1819)
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Mission Division Grievance No. MIS-91-33 (P-RC 1599)
Mission Division Grievance No. MIS-92-8 (P-RC 1683)
Mission Division Grievance No. MIS-92-7 (P-RC 1697)
Mission Division Grievance No. MIS-92-9 (P-RC 1684)
Mission Division Grievance No. MIS-91-20 (P-RC 1578)
North Valley Division Grievance Nos. CHI-93-20, 21, 52(P-RC 1763)
North Valley Division Grievance No. CHI-93-11 (P-RC 1763)
Peninsula Division Grievance No. BEL-94-56(P-RC 1958)
Peninsula Division Grievance No. GG-PD-93-4 (P-RC 1672)
Peninsula Division Grievance No. GG-PD-93-5 (P-RC 1673)
Peninsula Division Grievance No. GG-PD-93-7 (P-RC 1711)
Peninsula Division Grievance No. GG-PD-93-8 (P-RC 1710)
Peninsula Division Grievance No. PD-92-13 (P-RC 1686)
Peninsula Division Grievance No. PD-92-14 (P-RC 1687)
Sacramento Division Grievance No. SAC-94-33 (P-RC 1804)
Sacramento Division Grievance No. SAC-94-40 (P-RC 1796)
Sacramento Division Grievance No. SAC-94-32 (P-RC 1803)
Sacramento Division Grievance No. SAC-94-41 (P-RC 1805)
Sacramento Division Grievance No. SAC-94-42 (P-RC 1806)
San Francisco Division Grievance No. GG-SF 42-2-89-14-5 (P-RC 1633)
San Francisco Division Grievance No. GG-SF-42-2-90-21-14 (P-RC 1695)
San Francisco Division Grievance No. SFO-92-35 (FF 5300)
San Francisco Division Grievance No. SFO-GGR-92-27 (P-RC 1705)
San Jose Division Grievance No. SJO-92-29 (P-RC 1725)
San Jose Division Grievance No. SJO-92-27 (P-RC 1726)
San Jose Division Grievance No. SJO-93-2
San Jose Division Grievance No. SJO-93-02/05 (FF 5424)
Stockton Division Grievance No. STKN-92-18 (P-RC 1661)
Stockton Division Grievance No. STKN-93-15 (P-RC 1736)
Yosemite Division Grievance No. MER-93-11 (P-RC 1755)
Yosemite Division Grievance No. MER-93-10 (P-RC 1754)
Yosemite Division Grievance No. YOS-93-15 (P-RC 1703)
Yosemite Division Grievance No. YOS-92-11(P-RC 1665)

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The above referenced grievances were referred to Review Committee as Review Committee No. 1763, Review Committee No. 1764 and Review Committee No. 1765 and have been returned to the Pre-Review Committee for settlement.

Subject of the Grievances

Each of these grievances involve an alleged violation of Letter Agreement 88-104 and Subsection 207.2 of the Physical Agreement. Although there are a significant number of grievances involved in this case, the areas of dispute stem from one of the following arguments:

- work that is normally performed by the bargaining unit has been contracted out while the total size of the bargaining unit in the affected department has been reduced, or;
- optimum use of voluntary overtime did not occur before the contracting out of bargaining unit work, or;
- temporary additional employees were hired under Subsection 106.12 even though the headcount within the hiring department had fallen below the established floor number, or;
- bargaining unit employees have been temporarily upgraded for extended periods of time.

Work Normally Performed

In order to resolve the first argument, the Committee reviewed those cases where the department work being contracted represented work that would normally have been performed by the bargaining unit. The following summarizes the cases that were reviewed.

P-RC 1609, P-RC 1637, P-RC 1958 and FF 5300 (LOS-91-14, LOS-92-10, LOS-92-11, SF0-92-35) and BEL 94-56

The specific issue in dispute in these cases is contracting the installation of substructures and conduit. The Pre-Review Committee agreed that this is work normally performed by the Electric T&D department.

P-RC 1867 and P-RC 1909 (BAK-94-1 and BAK-94-35)

These cases concern contracting out the clean-up work associated with PCB spills. The Committee agreed that this is work normally performed by the bargaining unit.

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P-RC 1815, P-RC 1816, P-RC 1819, P-RC 1970, P-RC 1763, P-RC 1796, P-RC 1803, P-RC 1804, P-RC 1805 and P-RC 1806 (FRO-93-31, FRO-93-30, BAK-94-3, CON-94-10, CHI-93-11, SAC-94-40, SAC-94-32, SAC-94-33, SAC-94-41 and SAC-94-42)

The situation which gave rise to these grievances involve contracting sand and gravel delivery to various job sites. According to the facts of each case, the Company established a contract for the delivery which was separate from the purchase of the sand and gravel. In light of Review

Committee Case No. 1755 and 1756, the Committee agreed that this contracting was in violation of the Agreement.

P-RC 1972 (CON-93-4)

This grievance concerns the use of contractors to sawcut concrete for trenching and excavation purposes. The Committee noted that the Fieldperson's job definition includes "use of concrete saws". Therefore the Committee agreed that this is work normally performed by the Gas T&D Department employees. The company reserves the right to put forth the argument in future cases that the company is not obligated to purchase specialized equipment.

P-RC 1700, P-RC 1710, P-RC 1750 and P-RC 1754 (FRO-93-8, GG-PD-93-8, CCH-94-4 and MER-93-10)

The issue in these cases involve the reduction in the number of employees in the Gas T&D Department at these headquarters while contracting was occurring in the same department at other headquarters in the system.

P-RC 1611, P-RC 1610, P-RC 1660, P-RC 1574, P-RC 1631, P-RC 1599, P-RC 1672, P-RC 1673, P-RC 1661, P-RC 1703, P-RC 1711, P-RC 1725, P-RC 1726, P-RC 1736, P-RC 1743, P-RC 1749 and P-RC 1755 (COA-91-9, COV-52-18-91-13, COV-52-92-14, FRO-91-33, HUM-91-3, MIS-91-33, GG-PD-93-04, GG-PD-93-05, STKN-92-18, YOS-93-15, GG-PD-93-7, SJO-92-29, SJO-92-27, STKN-93-15, FRO-93-26, CCH-94-3 and MER-93-11)

The issue in these cases involve the reduction in the number of employees in the Electric T&D Department at these headquarters while contracting was occurring in the same department at other headquarters in the system.

It is clear from the Electric T&D and Gas T&D cases described above, that the company contracted out work that is normally performed by those department employees. The remaining question then concerns whether the company had met it's obligation outlined in Subsection 207.2(b), by maintaining the total size of the bargaining unit in these two departments. As evidenced by the number of grievances which originated from headquarters where the headcount in the affected departments was below the established floor number, the company had not met that obligation. Therefore the Agreement has been violated in all of these cases. However, during the discussion which led to Letter Agreement 95-54, the parties agreed that these cases would be settled without adjustment.

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P-RC 1651, P-RC 1656, P-RC 1663, P-RC 1705, P-RC 1910 and FF 5424 (FRO-92-18, SFO-GGR-92-10, FRO-92-16, SFO-GGR-92-27, BAK-94-37-300, SJO-93-02, SJO-93-05

These cases concern the installation of back-up generators, weed abatement, and the sand blasting and painting of transformer radiators. The union alleged that this was work normally performed by Electricians and grievances were filed at several locations where the floor number had fallen below the 88-104 number. The Committee agreed that the work described above is not work normally performed by the bargaining unit and closed these cases without adjustment.

P-RC 1648 (DIA-92-11)

This case involves the installation of data collection meters. The meters, which were installed by a contractor, are used to measure the load on appliances. The contract was let in 1992. At that time, the number of employees in the Electric Meter Department exceeded the system-wide floor number. Based on that fact and without regard to whether this is work normally performed by the bargaining unit, the Committee agreed that there was no violation of the agreement.

P-RC 1746 FF 5937 and FF 5942 (FRO-93-28, FRO-94-22 and FRO-94-51)

In all of these cases the issue involved contracting bargaining unit work in the Hydro Department. The work at issue involved both snow removal and the maintenance of fence lines. The Committee agreed that based on Arbitration Case No. 191, snow removal at Helms is not work normally performed by the bargaining unit. Upon further investigation, the Committee determined that the company was not responsible for the contracting out of the fence line maintenance work. In fact this work was contracted out by the Helms Wildlife Habitat Fund and the company was not responsible for the contract. Therefore these cases are settled without adjustment.

P-RC 1727 (SJO-92-25)

The issue in this case involves contracting of bargaining unit work in the Electric Meter Department. The Committee reviewed the department floor number and determined that the adjusted floor number is 145. Currently the number of filled positions is 148, and the company is in the process of filling 25 additional positions. Based on this information, the Committee agreed to settle this case without adjustment.

FF 5516 (NPG-553-93-024)

This case involves a contractor driving the Fire Truck at Diablo Canyon. The committee agreed to refer this case back to the Local Investigating Committee to resolve. The Committee further agreed that this is work normally performed by the bargaining unit.

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FF 5786 (NPG 585-94-018)

This case concerns the contracting of janitorial services at Diablo Canyon. The Committee agreed that contracting occurred however, based on the VRI adjustment number the department was above the 88-104 floor number.

This case is closed without adjustment.

FF 5501 (NPG-548-93-19)

This concerns the contracting of Building Maintenance work at Diablo Canyon. The Committee reviewed the facts in the case and determined that a violation of Letter Agreement 88-104 had not occurred, however, there was a joint employer relationship established in violation of Review Committee Case No. 1637.

This case is referred back to LIC to settle in accordance with Review Committee Case No. 1637.

PRC 1913 (BAK 94-49)

This case concerns the construction of a block wall at the Topock Compressor Station. The Committee agreed that this is not work normally performed by the Title 200 work force. However, the department needs to consider having the work performed by General Construction prior to contracting.

It was determined in this case that no violation occurred and the case is closed without further adjustment.

P-RC 1860 (FRO 94-10)

This case concerns the contracting of street sweeping with the City of Avenal. The Committee reviewed the facts of the case and concluded that work was not performed and a contract was never executed. This case is closed without adjustment.

P-RC 1665 AND P-RC 1689 (CEN 92-28) (YOS 92-11)

The grievance issue in these cases concerns whether the company was contracting out Gas Service work while the bargaining unit was below the floor number. The Committee agreed that pilot relighting is bargaining unit work. Further, it was determined that the company is still below the floor number. However, the company is in the process of filling a number of positions in the Gas Service Department which will increase the bargaining unit number to the 88-104 floor number. Based on the above the committee agreed to settle this case without adjustment.

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Optimum Use of Voluntary Overtime:

Turning to the second argument, the union alleged that the company had not considered the use of optimum overtime before contracting out bargaining unit work. In previous cases it has been determined that Letter Agreement 88-104 obligates the company to consider the optimal use of overtime prior to contracting bargaining unit work (P-RC 1515). Therefore, Committee agreed that it is inappropriate for the General Construction Department to contract out work normally performed by division crews without giving consideration to accomplishing the work on overtime. However, it is not a violation of Subsection 207.2(a) in those instances where the work that is contracted out is work normally performed by General Construction (i.e. tower repair work).

The Committee reviewed the facts of the specific cases outlined below.

P-RC 1683 (MIS-92-8) and P-RC 1684 (MIS-92-9)

In both of these cases it was determined that work normally performed by division crews, had been reassigned to the General Construction Department and in turn the work had been contracted out. No consideration had been given to determining whether the work could have been performed by division crews on an overtime basis. Concurrently, the departments involved were below their established floor number while 106.12 temporary additional employees had been hired into the same departments.

The Committee agreed that Letter Agreement 88-104 had been violated, but due to the lack of information in the LIC report, was unable to determine whether any liability was due. Therefore, this case is being returned to the LIC to determine what if any liability exists.

P-RC 1578 (MIS 91-20) (RC 1763)

The grievance concerns the optimal use of overtime before contracting. The work in question was assigned to General Construction who then contracted the work out. The work contracted was work normally performed by the bargaining unit workforce in the division. The division supervisor stated that he did not consider overtime prior to assigning the work to General Construction.

In this case the Committee agreed that the company violated the provisions of 88-104. Therefore, currently active employees who would have performed the work in the Electric T&D department in Hayward at the time of the contracting are entitled to 26.5 hours at the overtime rate not to exceed 1033 hours. This settlement is in accordance with P-RC 1515.

P-RC 1852 and FF 5936 (BAK-93-16 and BAK-94-53)

Both grievances involve contracting out ballast installation, diffuser installation and converting incandescent lighting to fluorescent lighting. According to the Local Investing Committee report, the use of optimal overtime was never considered prior to contracting out this work. In addition, the number of employees in the Substation department was below the floor number. The

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committee agree that the company violated the provisions of 88-104 since the work described above is bargaining unit work. Therefore, the Committee is returning these cases to the Local Investigating Committee to be settled in accordance with P-RC 1515.

P-RC 1934 (CTS-93-1)

The issue in this case involves whether the company considered optimal use of overtime prior to contracting out work normally performed by Telecommunication Technicians. The Local Investigating Committee report shows that the supervisor in charge of the work did not consider overtime prior to contracting out the work. In this case the Committee agreed that the company violated the provisions of Letter Agreement 88-104. Therefore, the Committee is returning this case to the Local Investigating Committee for settlement with the understanding that the grievants will receive 15 hours of overtime pay per week for every week that the contractor was performing the work in question.

P-RC 1763 (CHI-93-20, 21 and 52)

These cases involve flume repair and the removal of debris from penstocks. The work was performed by a contractor. In a previous case, the Union grieved the same issue claiming that a joint employer relationship had been established. The grievance was sustained. It was also agreed to in that case that the work was normally performed by the Title 300 workforce. Therefore, in this case it was determined that there was no violation of Letter Agreement 88-104.

P-RC 1633 and 1695 (GG SF-42-2-89-14-5 and GG SF-42-2-90-21-14) (RC 1763)

The issue that gave rise to the grievance was the fact the Company was contracting work in Gas T&D. The allegation is optimal overtime was not granted. The supervisor in this case considered whether the work could have been performed by the company work force prior to contracting. Due to constraints by the city and other factors it was determine that the work could not be performed on an overtime basis. This case is closed without adjustment.

106.12 Temporary Additional Employees

P-RC 1669, P-RC 1690, P-RC 1686 and P-RC 1687 (FRO-92-26, DEA-92-25, PD-92-13 and PD-92-14)

Each of these cases involve hiring a 106.12 temporary additional employee into the Electric T&D department while at the same time the department headcount was below the established floor number.

Subsection 106.12(c) states that "the utilization of any temporary additional employee shall be considered as "contracting out of work" for the purposes of Letter Agreement 88-104." Therefore, it is a violation of Letter Agreement 88-104 if a department is below the established floor number and a 106.12 temporary additional employee is hired. The Committee agreed that the action in these specific cases violated Subsection 207.2 of the Agreement. However,

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during the discussion which led to Letter Agreement 95-54, the parties agreed that these cases would be settled without adjustment.

Long-term Temporary Upgrades:

The final argument in these cases concern those situations where bargaining unit employees have been temporarily upgraded to exempt positions for extensive periods of time.

Letter Agreement 91-60 established the agreed to method of accounting for employees on temporary upgrade out of the bargaining unit. The language in Letter Agreement 91-60 states that bargaining unit employees on upgrade, will be counted, for purposes of Letter Agreement 88-104, in their base classification. The union contends that long term temporary upgrades results in a reduction of the bargaining unit. In each case described below, the temporary upgrade exceeded one year.

P-RC 1620 (FRO-92-6) (RC 1764)

In this case, the Fresno Electric T&D Department temporarily upgraded four bargaining unit employees on an ongoing basis starting in March of 1989. One employee was upgraded continuously from January of 1989 through May of 1992 with the exception of a 2 month time period; another employee was upgraded from March of 1989 through May of 1992; the third employee was upgraded from April of 1990 to May of 1992 and the fourth employee was placed on a two year rotation starting in January of 1992.

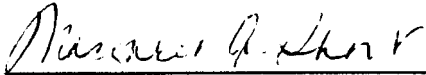
P-RC 1697 (MIS-92-7) (RC 1764)

At the time that this grievance was filed a bargaining unit employee had been temporarily upgraded to an exempt position for two years.

The Committee noted that most upgrade assignments are for a short duration and that it is unusual for employees to remain on upgrade beyond one year or for different employees to be upgraded consecutively beyond one year. The Committee agreed that temporarily moving a bargaining unit employee out the unit for periods in excess of one year without filling in behind the upgraded employee does in effect reduce the bargaining unit. Further, if temporary upgrades are occurring while bargaining unit work has been contracted out, it has the same effect as falling below the department's 88-104 floor number while contracting.

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Based on the above, the Committee determined that if an employee is upgraded beyond one year or there are consecutive upgrades which last beyond one year, the upgraded employee will no longer count towards the 88-104 number as currently provided for in Letter Agreement 91-60. Turning to the cases at hand, the Committee agreed P-RC 1620 and P-RC 1697 are considered settled and closed without adjustment as a result of Letter Agreement 95-54.



Margaret A. Short, Chairman
Review Committee

10/9/95

Date



Roger W. Stalcup, Secretary
Review Committee

10/16/95

Date