



REVIEW COMMITTEE

IBEW



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INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

San Francisco Grievance No. SFO-98-07
Fact Finding No. 6668-98-043
Pre-Review Committee No. 2167

San Francisco Grievance No. SFO-98-05
Fact Finding No. 6667-98-042
Pre-Review Committee No. 2168

SHAWN HOOVER
Company Members
Local Investigating Committee

HUNTER STERN
Union Members
Local Investigating Committee

Subject of the Grievances

These cases involve the termination of Hiring Hall employees based on information determined during background reference checks conducted in the employment process.

Facts of the Cases

PRC 2167

Grievant was hired as a probationary Miscellaneous Equipment Operator-Electric on March 31, 1997 in the San Francisco area. His background check showed he will be on probation until April 1999 for an April 1996 conviction for Driving Under the Influence. Grievant was discharged as unsuited for continued employment on May 18, 1997. He was marked eligible for rehire. This termination was the subject of a grievance settled as Fact Finding Case 6611. Company held the position that the case was not a proper subject for the grievance procedure and the case was closed without adjustment.

Nevertheless, the grievant was rehired the following day, May 19 as a Hiring Hall MEO-E, in the same area. He was returned to the Hiring Hall with a 12-month letter on January 16, 1998.

PRC 2168

Grievant was hired as a Hiring Hall Fieldman-Gas on September 4, 1996. In September 1997 the grievant passed the Physical Pre-employment Test, in November was offered a probationary Fieldman position, and continued to work in the Hiring Hall until the results of the background check were known. He was then discharged January 7, 1998 and returned to the Hiring Hall with a 12-month letter. The background check revealed two felony drug convictions in 1990 for which he was incarcerated and later paroled. His parole expired in May 1994.

Discussion

These cases are variations on the same theme. Company began conducting background checks on all applicants beginning about 1992. Company conducts background checks on Hiring Hall employees who are considered customer contact employees. Company has set the standard for criminal backgrounds that anyone who: is actively on probation; who has been convicted of a misdemeanor and whose probation has been expired less than three years; and who has been convicted of a felony and whose probation has been expired less than five years shall not be hired by PG&E whether in a probationary or Hiring Hall status.

As these cases demonstrate, Company has had some difficulty consistently applying this standard.

Company takes the position that PRC 2167 and 2168 are not proper subjects for the grievance procedure as outlined in L/A 95-145, however, since they were grieved Company believes that these cases need to be viewed in light of the recently decided Arbitration Case 223 and that these former employees may be barred from employment consistent with Company's employment policies. Arbitrator Angelo states:

"Although Company has agreed to accept most hiring hall referrals without background checks, it is not precluded from taking action when it discovers a temporary employee has a history that precludes continued employment. This has certainly been true where pre-employment criminal activity has been discovered...". "The grievant's personal history made him unsuitable for employment as a temporary hire and the Company had just cause to terminate his services."

Union cited the following from ARB. 223:

"...The Union is justifiably concerned with the possibility of unilateral changes to the 1995 hiring hall agreement. However, there is nothing about this case to suggest the Company has invoked a policy of background checks for hiring hall referrals, [except for Gas Service Rep. and Meter Readers...language added], or that: it seeks to adjust what the Union has termed a 'carefully crafted set of trade-offs' between the parties. To the contrary, the evidence demonstrates the Grievant was caught by pure happenstance rather than on the basis of some systematic review of his

background. Therefore, there is no indication the Company has changed the nature or operation of the hiring hall agreement".

With respect to PRC 2167, Company believes that the closure of Fact Finding Case 6611 without adjustment in effect precluded the grievant from Hiring Hall employment. Arbitration Case 15A dealt with the termination of a probationary employee for unsuitability and upheld Company's right to make such determination, within certain parameters, without the employee having redress through the grievance procedure. Fact Finding Case 6611 fit within the parameters set by Arbitration Case 15A. Therefore, the grievance challenging the termination of his probationary status was not a proper subject for the grievance procedure. As such the grievant should have been ineligible for rehire as has been the practice for many years with such terminated probationary employees. Company regularly provides Union with a list of former employees who are ineligible for rehire for purposes of Paragraph D of L/A 95-145 which precludes them from Hiring Hall employment.

DECISION

Without regard to Company's position on the eligibility status of the grievant in PRC 2167, the Pre-Review Committee agrees that his subsequent termination from the HH and that of the grievant in 2168 was appropriate based on ARB. 223.

Assuming there is a business based reason for conducting a background check, HH employees who are terminated as a result of such information fall within the meaning of ARB. 15 and 15A and such terminations are not subject to challenge in the grievance procedure.

Margaret A. Short
Margaret A. Short, Chairman
Review Committee

10/29/98
Date

Roger W. Stalcup
Roger W. Stalcup, Secretary
Review Committee

10/29/98
Date