

CHAIRMAN Resource

From: Mike Follett <mfollett@ibewlocal2150.com>
Sent: Wednesday, April 20, 2016 5:58 PM
To: CHAIRMAN Resource
Cc: anna_jerry@ibew.org
Subject: [External_Sender] Public comments Re: SECY-15-0149, ML16063A268
Attachments: NRC Public Comment Letter 4-2016.pdf

Dear Chairman Burns,

Attached are International Brotherhood of Electrical Workers, Local Union 2150's comments regarding:

SECY-15-0149, ML16063A268

Role of Third Party Arbitrators in Access Authorization & Fitness-for-Duty Determination Reviews at Nuclear Power Plants

Mike Follett
Business Manager
Local 2150, IBEW



IBEW LOCAL UNION 2150
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
N56W13777 Silver Spring Drive Menomonee Falls, WI 53051-6127
262-252-2552 FAX 262-703-3520 800-551-1151
www.ibewlocal2150.org
MICHAEL J. FOLLETT
Business Manager



April 20, 2016



Chairman Stephen G. Burns
U. S. National Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2746



Re: SECY-15-0149, ML16063A268

Dear Chairman Burns:



The International Brotherhood of Electrical Workers Local Union 2150 represents approximately 450 clerical, physical, professional and technical workers at Point Beach Nuclear Plant under a collective bargaining agreement with NextEra Energy. After reviewing SEC 15-0149, Local 2150 submits that further rulemaking on this issue would be unnecessary and unfair. Specifically IBEW LU 2150 is opposed to changing the Role of Third Party Arbitrators in Access Authorization & Fitness-for-Duty Determination Reviews at Nuclear Power Plants.



IBEW LU 2150 and NextEra's collective bargaining agreement requires just cause for discharge. When settlement of a termination case is not possible, IBEW LU 2150 historically has utilized the grievance procedure and sought arbitration. In 2012, however, NextEra discharged an employee after revoking his unescorted access, then refused to arbitrate the grievance, thereby forcing the Union to compel arbitration in federal court.



IBEW LU 2150 prevailed in its case to compel arbitration before the United States Court of Appeals Seventh Circuit and subsequently reached a fair and equitable confidential settlement in the subject grievance. LU 2150 also has a case pending in the United States District Court for the Eastern District of Wisconsin seeking to compel arbitration over two additional site access related grievances. In all three cases, the company denied our members' Unescorted Access Authorization at Point Beach Nuclear Plant.



The Grievance and Arbitration provisions in the Collective Bargaining Agreement typically result in NextEra Energy and IBEW LU 2150 resolving our differences without the assistance of a third party arbitrator. However, because the company denied our appeal of the above-mentioned grievances



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to a third party arbitrator, there was nothing to compel agreement to a fair and equitable settlement of the grievances. Since Nextera assumed operation of Point Beach in 2007, no employment termination grievances have been decided by a third party arbitrator; settlement in one case was reached only after the Seventh Circuit Court of Appeals ruled to compel arbitration.

It has been our experience that we can reach a fair settlement in traditional just cause determinations with the option of proceeding to arbitration. Conversely, when the company can terminate employment as a result of access denial, union-management relations related to just cause provisions do not apply.

Explicitly restricting unescorted access appeals to the company's internal appeal process, would effectively eliminate any real independent and impartial review of site access-related issues. Internal reviews are not impartial and independent in the context of grievance and arbitration processes. Without a truly independent and impartial review, an employer could simply determine that an employee is not "trustworthy or reliable" thus allowing the employer to terminate the employee's employment without the benefit of a just cause review when unescorted access is a condition of employment. Prior to the Seventh Circuit's ruling applicable to Point Beach, we experienced a trend of access denial determinations resulting in termination contrary to the established discipline process. A rule change would restrict our ability to challenge these terminations through our negotiated grievance arbitration process.

Title 10 CFR 73.56 Personnel Access Authorization Requirements for Nuclear Power Plants requires an appeals process for access authorization denial. LU 2150 supports current application of the regulation, which has allowed third arbitrator review without compromising security and without any other adverse consequences. Limiting appeals to an internal process unnecessarily removes the ability of unions to negotiate true independent review of access authorization decisions.

Sincerely,



Michael Follett
Business Manager/
Financial Secretary

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