

FIBICH & GARTH, P.C.

ATTORNEYS AT LAW
2 HOUSTON CENTER
909 FANNIN, SUITE 800
HOUSTON, TEXAS 77010-9998

S. TANNER GARTH

(713) 751-0025
FAX (713) 751-0030

June 20, 1995

Director of the Office of Enforcement
Mr. James Lieberman
U.S. Nuclear Regulatory Commission
White Flint, Maryland 20555

Dear Mr. Lieberman

As by now I am sure you are aware, I attended the enforcement conference pertaining to the wrongful discharge of my clients, Messrs. Lamb and Dean.

The conference proceeded precisely as I had both expected and feared. Those speaking on behalf of HL&P merely reiterated the company line and presented absolutely no information pertinent to the actual purpose of an enforcement conference. Your staff members' questions generally elicited obviously rehearsed responses. Neither HL&P nor your staff spoke to or raised any question as to the significance of the violation or its cause, or any aggravating or mitigating circumstances.

It became clear from your staff members' questions that they were possessed of a relatively limited knowledge of the facts of this case. At best, it appeared that they had reviewed the Inspector General's findings set forth at Case No. 92-49i, the ALJ's Recommended Decision and Order and HL&P's various position papers and letters. This lack of information pertinent to the case was confirmed when your staff members admitted in response to my questions that none of them had read the transcript from the trial of this matter, reviewed the exhibits, or even read the briefs that were submitted to the Administrative Law Judge. After I asked for and received these admissions, one of your staff members apparently became agitated and ordered the court reporter to stop recording at that point and to delete my questions and their answers from the record of the proceeding.

I am providing herewith a copy of the brief of Dave Lamb and Jim Dean to the Administrative Law Judge, as well as our reply to HL&P's brief. I trust you would disseminate this brief to those concerned. I furthermore, would be more than happy to provide your office with a copy of the transcript itself should anyone develop an interest in becoming truly informed

e:\wp51\clients\stg\lam\95-6-19 .r

230033

9602230124 950620
PDR ADOCK 05000498
G PDR

IE14 Rev:
OF
11

of the matter. Had these briefs of the transcript been reviewed prior to the enforcement conference, many of the statements and/or issues raised therein might have been more adequately addressed. As it was, there were numerous inaccuracies or open questions which should be corrected. The following information, corrections and/or comments are provided in the order in which they were raised during the conference.

As you know, Mr. Cottle addressed your staff first, and for the most part simply regurgitated the company's position in the case. He did, however, make two important, although probably unwitting, admissions. First, he stated that the Recommended Decision and Order was premised in large part on the theory that South Texas Project Management routinely retaliates against whistle-blowers. Mr. Cottle went on to state that the premise was flawed because you simply cannot run a nuclear plant in that fashion. What Mr. Cottle said was true, and therein lies a large portion of the reason why the NRC shut-down the South Texas Nuclear Project for more than a year while they attempted to rectify wrongs from years of managing the plant in just such a fashion. The evidence of such perceived harrassment and intimidation was received from numerous witnesses at trial. Mr. Cottle's next unwitting admission was, that to the extent the wrongful terminations of Lamb and Dean were accomplished by means of conspiracy, such could not have been the case because "conspiracies do not succeed". What Mr. Cottle said was true. Conspiracies do not succeed, nor did this one. The conspiracy was clear to the witnesses at trial, the Department of Labor, the Office of Inspector General and the Administrative Law Judge. This conspiracy was exposed and did not succeed. Little else that Mr. Cottle offered was of any substance and, for the most part, the statements he provided fell well outside the proper purpose of an enforcement conference.

During Mr. Balcolm's statement and questioning, several false and/or inaccurate statements were made, as well as substantial misinformation conveyed. Dr. Montgomery, in one of the more interesting questions posed by your staff asked if in fact there had been an attitude among management at South Texas Nuclear Project that reportable events should not be reported because they lead to inspections and the less inspections the higher the ratings. Mr. Balcolm vehemently denied that such an attitude existed at the South Texas Project. To the contrary, the trial transcript of this matter contains many statements that exactly that attitude existed and prevailed at the South Texas Project during the subject time period. Most notable was the testimony from the then head of the South Texas Nuclear Project, Don Hall, who testified that was in fact the attitude of management and the policy at South Texas Nuclear Project (Hall Tr. pp. 954-957 and 965-956; Pomeroy Tr. pp. 2057-2058; see also Speak Out Report 12204)

One of the more disingenuous arguments offered by Balcolm was that it was not surprising that Dave Lamb got the lowest rankings on the SPP because he was in charge of the system which was experiencing poor performance. Mr. Balcolm was apparently of the belief that your staff would not look into this matter and determine the true facts. In fact, this theory was first asserted at trial but fell apart on cross-examination and based on evidence. The truth came largely from the testimony of Ray Lala, who's job it was and is to maintain the security

system. Mr. Lala testified that Lamb was a stickler on keeping the system up and running right, but that his hands were tied by management. (Lala Tr. pp. 1931-1932; Williams Tr. p. 1800) Where Lamb insisted on repairing the system by pulling new cable, Sheesley would accept it back in a degraded condition. (Lala Tr. pp. 1927-1928)

Essentially what happened in truth was that under Balcolm's "leadership" the system was accepted back in degraded condition while Sheesley made the system appear better than it was by tearing up problem reports and ignoring problems. (Lala Tr. pp. 1929-1930; Williams Tr. pp. 1781-1785) This was contrary to Balcolm's assertion and was confirmed by the NRC in its inspection report 93-23 wherein it was stated in pertinent part: "inconsistent logging of alarm response information, testing that did not challenge the equipment, degraded assessment aids, continued lack of aggressive compensation, and security equipment requiring frequent repairs . . ." (Exhibit C-73) The report went on to state that "compensation posting for some equipment had become the normal routine rather than the exception." Apparently, Mr. Balcolm and HL&P did not believe your office would thoroughly review the evidence when they developed their presentations. The truth is that Dave Lamb refused to turn his back on the system and ignore its problems. That was one of the reasons why he fell into disfavor with management.

In his discussions of the SPP process, Mr. Balcolm, once again appeared to be attempting to mislead your staff. Mr. Balcolm claimed that Mr. Moore did not know what the forms would be used for and that Mr. Moore did not realize he was in competition for the job at the time he filled out the forms. Very simply, this was not the case. Moore testified at trial that he knew in restructuring the department there were only four people in the management level category and that he was one of them (Moore Tr. pp. 1532-1533) Moore went on to testify that, based upon what Balcolm told him, he knew that the reorganization he was to participate in was going to result in terminations. (Moore Tr. p. 1530) Moore went on to state that he was aware of these facts before he filled out any of the SPP forms. (Moore Tr. p. 1532) In response to questioning by your staff, Mr. Balcolm stated that the CPP certification held by Dave Lamb was of no benefit or import to the nuclear security department. This was a position Mr. Balcolm asserted at trial, yet apparently HL&P failed to communicate that defensive theme to Mr. Watt Hinson, who testified clearly and unequivocally at trial that the CPP certification held by Lamb (and Lamb alone in the NSD) was applicable to the work in the nuclear security department and, in fact, would further one's value to the department. (Hinson Tr. p. 3550)

Mr. Balcolm was asked by Dr. Montgomery if, in fact, Mr. Moore knew of the protected activities of Messrs. Lamb and Dean. Mr. Balcolm stated unequivocally that Mr. Moore did not know. This, again, was directly contrary to the information adduced at trial. Moore testified clearly and unequivocally that he knew that both Lamb and Dean had been to Speak Out. (Moore Tr. p. 1561) Furthermore, following Messrs. Lamb and Dean's terminations, Moore was interviewed by the Department of Labor investigator. Moore testified that he recalled the interview. (Moore Tr. p. 1562) Moore went on to testify that he answered the

investigator, Mr. Perez's, questions truthfully and that he had no reason in the world to believe that Mr. Perez would include anything in his notes that Moore hadn't told him. (Moore Tr. p. 1566) Mr. Perez's notes, which were admitted into evidence in this case, document the following information received from Mr. Moore: "I was aware that Lamb and others had brought allegations to the HL&P Speak Out group and the NRC. I had such information during the Fall of 1991." (Exhibit C-13 at bates 68)

Mr. Balcolm attempted to assert his submission of the completed SPP forms to Human Resources for their review as proof of his innocence. Balcolm did not advise your staff however that Human Resources pointed out numerous improprieties in the scoring of Mr. Lamb, including the inconsistencies and application and lack of comments. Ms. Jones, the Human Resources reviewer, testified that she told Balcolm that the way he had filled out the forms really wasn't right. (Jones Tr. p. 1741) Mrs. Jones went on to testify at trial that Balcolm and Moore "did just the opposite of what the instructions told them to do". (Jones Tr. p. 1743) I would refer you and your staff to Section III-5, Termination Procedures section of Complainants' Brief, for a detailed discussion of the SPP process.

As anticipated, HL&P next presented Ms. Lynn Culmer to testify in bolstering the SPP process. Of course, nothing Ms. Culmer offered was pertinent to the purpose of the enforcement conference. However, to the extent her statements were given any weight, there were a few points she asserted which should be addressed. First of all, she stated that the SPP process was appropriate for use in a small group such as the Nuclear Security Department. However, it was Balcolm himself who testified that the SPP process was not appropriate for use in a small group. Ms. Culmer went on to assert that no training was necessary, that the instructions were enough to complete the forms. The problem is, according to the evidence adduced at trial, the instructions were not followed and in fact, Messrs. Balcolm and Moore, on at least one, did exactly the opposite of what the instructions advised. Finally, Ms. Culmer attempted to diffuse questions about "bumping". Bumping is a regular occurrence in HL&P and South Texas Nuclear Project reorganizations. The fact of the matter is that Mr. Moore was a manager and he bumped a supervisor, Mr. Lamb.

Mr. Balcolm next attempted to convince your staff that Messrs. Lamb and Dean were not in fact the most vigorous in pursuing these claims. Contrary to his assertion, the record virtually conclusively established that fact. I would invite your staff to review the testimony of Mr. Moore, Mr. Lala, Mr. Drymiller, Mr. Smith, Mr. Neal, Mr. Worth and Mr. Pomeroy on that subject.

Mr. Lieberman
June 20, 1995
Page 5


I believe that even the most cursory of examinations of the position asserted by Mr. Balcolm and HL&P will demonstrate the falsity of that position. That is exactly what had happened in the prior examinations conducted by the Department of Labor, the NRC Office of Inspector General and the Administrative Law Judge. Simply stated, the position taken by HL&P are not true and the statement made to the NRC pertinent thereto should constitute material false statements and be treated as such.

I trust this information will assist you and your staff in evaluating this matter. If I can provide any additional information, please feel free to contact me.

Very truly yours,

FIBICH & GARTH, P.C.

By:


S. Tanner Garth

STG/sr

c: Joe Barton
Ivan Sellin
Ron Wyden
John Dingle
Tom Bliley
Public Records Room
James Dean
Dave Lamb