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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
COMMONWEALTH EDISON COMPANY)
(Braidwood Nuclear Power)
Station, Units 1 and 2))

Dockets 50-456
50-457 /oc

MOTION TO ADMIT CLAIMS OF INTIMIDATION AND HARASSMENT
OF COMSTOCK QUALITY CONTROL (QC) INSPECTORS
AND MOTION FOR PROTECTIVE ORDER

As permitted by the Licensing Board's June 21, 1985, Memorandum and Order Admitting Rorem, et al. Amended Quality Assurance Contention, Slip op. at 13-14, Intervenor Rorem et al., by their counsel, herewith submit a further specification of their claims of systematic intimidation and harassment of Quality Control (QC) inspectors employed by the Braidwood site electrical contractor, the L.K. Comstock Engineering Company, which claims were initially filed as Paragraph 2C of Intervenor's Amended Quality Assurance contention of Jun 21, 1985, pp. 23-24, together with a listing of the witnesses and testimony subjects which Intervenor's intend to present in support of these claims.

Intervenor's further move that the Board adopt a protective order needed "to encourage those with knowledge of possible safety-related deficiencies in facility construction or operation to put their information before the Commission." Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric

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Station, Units 1 and 2), ALAB-714, 17 NRC 86 at 92 (1983). Such a protective order should include measures to protect the identities of the present and former Comstock employees who would testify from personal knowledge of widespread harassment and intimidation but for their fear of retaliation by Comstock which has "chilled" their freedom to cooperate in this proceeding. See, Affidavit of John D. Seeders, Exhibit A.

Intervenors would propose that such protective order permit the identification of witnesses and the presentation of testimony, in camera; and the dissemination of identifying information be limited to only approved persons who have subscribed to affidavits of confidentiality, all as may be needed on a case by case basis. Such protective measures are contemplated by the Commission under analagous circumstances. Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings, September 7, 1984, 49 F.R. 36032.

Protective orders and related measures to assure the integrity of the Commission adjudicatory process in addressing harassment issues have been adopted by licensing boards facing similar circumstances. Carolina Power & Light Company, et al. (Shearon Harris Nuclear Power Plant), Memorandum and Order (Ruling on Certain Safety Contentions and Other Matters), Slip. op. p. 5 (January 15, 1985); Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1418, 1428-1413 (1984). Intervenors urge that this Board take up this matter at the July 23, 1985, Prehearing Conference, and adopt such measures in this proceeding in order to assure that the full

extent and significance of harassment, intimidation and retaliation evidence known to Comstock QC inspectors is available to this Board.

On the basis of the information now known to Intervenors, limited by the fear of retaliation which has inhibited the cooperation of present Comstock QC employees from coming forward now in the absence of Board protection, Intervenors submit the following recast claim for litigation:

Contrary to Criterion I, "Organization" of of 10 C.F.R. Part 50, Appendix B, and 10 C.F.R. Section 50.7, Commonwealth Edison Company and its electrical contractor, L.K. Comstock Engineering Company have failed to provide sufficient authority and organizational freedom and independence from cost and schedule as opposed to safety considerations and correction of quality and safety significant deficiencies. Systematic and widespread harassment, intimidation, retaliation and other discrimination has been directed against Comstock QC inspectors and other employees who express safety and quality concerns by Comstock management. Such misconduct discourages the identification and correction of deficiencies in safety related components and systems at the Braidwood Station.

Instances of harassment and intimidation include:

1. More than twenty five (25) Comstock QC inspectors complained to the NRC in September 1984 about harassment and intimidation by Comstock supervisors including QC Manager Irv DeWald, Assistant QC Manager Larry Seese, QA Manager Bob Seltman and QC Supervisor R.M. Sakalac.

Such harassment included widespread pressure to approve deficient work, to sacrifice quality for production and cost considerations and to knowingly violate establish quality procedures. Harassment and retaliatory treatment included threats of violence, verbal abuse, termination of employment, transfer to undesirable jobs or work in areas where quality deficiencies could not be noted, assignments to perform burdensome or menial "special projects" and other adverse treatment. Such discriminatory action was taken because of the victim's expression of

quality or safety concerns. Former Level II QC inspector John D. Seeders has knowledge of these widespread instances of harassment. By letter of August 17, 1984, Seeders complained to the NRC, Edison and Comstock management regarding instances of harassment directed against him. Subsequently, Mr. Seeders was involuntarily transferred to the position of Engineering Clerk in retaliation for his expression of quality concerns. Such assignment was intended by Comstock to keep Mr. Seeders away from sensitive work areas. Although QC Supervisor R.M. Sakalac was finally terminated in 1985 for his mistreatment of QC inspectors and other misconduct, the effects of his harassment remain uncorrected and systematic harassment continues at Comstock to the present. The existence of widespread harassment impugns the integrity and effectiveness of on-going corrective action programs designed only to address other widespread QA failures at Comstock. As stated in Mr. Seeder's affidavit, these Comstock QC inspectors are eager to cooperate with the licensing board in identifying and correcting the harassment problems at Comstock, but require board protection from retaliation in order to provide testimony and documentation of their harassment.

2. Comstock management, including QC Manager Irv DeWald and Corporate QA Manager Bob Marino harassed, discriminated and retaliated against, and ultimately terminated Level III QC Inspector Worley O. Puckett because Mr. Puckett made numerous complaints about safety and quality deficiencies which he identified in the course of his duties at Braidwood.

Mr. Puckett was hired by Comstock in May 1984 in the newly created position of Level III QC Inspector whose duties included conducting a review of Comstock procedures, tests requirements for the more than 50 Level II QC Inspectors, review of the Level II's inspection work, and the resolution of inspection disputes. Mr. Puckett was highly qualified with 20 years' nuclear Navy and nine years' nuclear power experience. See, Resume, Exhibit B. During the course of his employment with Comstock Mr. Puckett was shocked by the widespread deficiencies in procedures, qualifications and workmanship. He identified numerous instances of improper construction procedures, improper qualification of welders, and material traceability deficiencies. He ultimately recommended a complete stop work order for all welding activity to permit effective corrective action. See, Memos of August 10 and August 17, 1984, Exhibits C and D.

Finally, he warned QC Manager Irv DeWald that "we are approaching a complete breakdown in our QC program." August 22, 1984 Memo, Exhibit E. Puckett was subjected to harassment and retaliation because he raised these safety and quality concerns and was terminated on August 27, 1984 by DeWald on the pretext that he should have scored higher than his 86% on a qualification test. He filed a complaint with the U.S. Department of Labor, alleging violation of the employee protection provisions of the Energy Reorganization Act, 42 USC 5851. Letter, September 5, 1984, Exhibit F. The U.S. Department of Labor Area Director sustained Mr. Puckett's complaint finding unlawful discrimination by Comstock against Puckett and ordered relief. Notes of Decision, November 6, 1984, Exhibit G. Mr. Puckett presented his case at a hearing before an Administrative Law Judge on Comstock's appeal. See, Complainants' Pre-Hearing Exchange, Exhibit H. Comstock settled Mr. Puckett's claim before putting on its case. The terms of settlement are subject to a non-disclosure agreement between Comstock and Mr. Puckett.

Intervenors' intend to offer the following witnesses in support of these harassment claims:

1. The 30 or more present or former Comstock QC inspectors known to John D. Seeders, whose identities have not been disclosed due to their fear of retaliation. See, Seeders Affidavit, Exhibit A.

2. John D. Seeders, with regard to his own harassment and harassment of other QC inspectors, including Worley O. Puckett.

3. Worley O. Puckett, with regard to his own harassment and harassment of other QC inspectors, including John D. Seeders.

4. Commonwealth Edison Company's Manager of Quality Assurance, Walter J. Shewski, with regard to Edison's knowledge or lack of knowledge of harassment and discrimination by Comstock,

and company policies and practices with regard to enforcement of 10 CFR 50.7.

5. Comstock QA Manager Irv DeWald, with regard to the harassment of QC inspectors including Mr. Seeders and Mr. Puckett.

6. Comstock Assistant QC Manager Larry Seese, with regard to the harassment of QC inspectors including Mr. Seeders and Mr. Puckett.

7. Comstock QA Manager Bob Seltman, with regard to the harassment of QC inspectors including Mr. Seeders and Mr. Puckett.

8. Former Comstock QC Supervisor R.M. Sakalac, with regard to the harassment of QC inspectors including Mr. Seeders and Mr. Puckett.

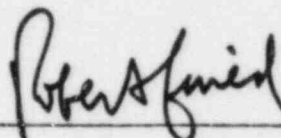
9. NRC Resident Inspector R.D. Schultz, with regard to the harassment of QC inspectors including Mr. Seeders and Mr. Puckett, and the NRC investigation of such harassment.

Due to the time constraints facing Intervenor in preparing this filing, the Affidavit of John D. Seeders is submitted initially unsigned although authorized, read and affirmed by Mr. Seeders by telephone with Intervenor's counsel. See, Affidavit of Robert Guild, Esquire, Exhibit I.

WHEREFORE, Intervenor respectfully request that their harassment claims be admitted for litigation in this proceeding, and that this Board issue a protective order as herein described.

July 12, 1985

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert Guild", is written over a horizontal line.

Robert Guild

One of the Attorneys for
Intervenor Bridget Rorem et al.

Douglass W. Cassel, Jr.
Robert Guild.
Timothy W. Wright, III
109 North Dearborn
Suite 1300
Chicago, Illinois 60602
(312) 641-5570

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
COMMONWEALTH EDISON COMPANY)	
)	Dockets 50-456
(Braidwood Nuclear Power)	50-457
Station, Units 1 and 2))	

AFFIDAVIT OF JOHN D. SEEDERS

John D. Seeders, being duly sworn, deposes and says:

1. I have been employed by the L.K. Comstock Engineering Company at the Braidwood Nuclear Station since August 1, 1982. I worked as a Level II Quality Control Inspector, certified in Calibration and Receiving until my retaliatory transfer in October 1984 to my present position as an Engineering Clerk.

2. I have had extensive discussions with Robert Guild, counsel for Intervenor in the NRC licensing proceeding regarding the continuing harassment and intimidation by Comstock Management directed against QC inspectors because of their expression of quality and safety concerns and the performance of their quality assurance responsibilities. I have personal knowledge of widespread intimidation, harassment and retaliation at Comstock and I am willing to appear as a witness in this proceeding to present sworn testimony and documentation on this subject. I have authorized counsel for Intervenor to submit my concerns as part of their contention in this proceeding.

3. I have also had extensive discussions with at least thirty (30) other Comstock QC inspectors who have knowledge of harassment and intimidation by Comstock management. They share my concerns about the breakdown of the Comstock Quality Assurance program and, like me, they are tired of the continuing cover-up of these problems. We all want to see the Braidwood Station built safely "by the book" and hope that the NRC licensing board will help us accomplish this objective. I believe that all of these inspectors would cooperate with the licensing board in getting to the bottom of this problem.

4. I have discussed with at least ten (10) Comstock QC inspectors the specific question of testifying about harassment and intimidation in this proceeding. Each inspector I spoke with was eager to present such testimony and provide documentation of their technical concerns in order to finally correct these problems. However, each of these inspectors also expressed fear of retaliation by Comstock management for their cooperation or testimony. These men have families who depend on them and they are afraid of losing their jobs. This fear is based on the harassment which they have already experienced. These men are willing to testify in this case if provided protection from retaliation by the NRC licensing board.,

5. While I share the same fear of retaliation by Comstock for my participation in this case, I decided last August when I wrote the NRC, Edison and Comstock management that I would do whatever it takes to see these problems straightened out.

6. I have authorized counsel for Intervenorors to act on my behalf in seeking a protective order from the licensing board to prevent Comstock from intimidating or retaliating against myself and other QC inspectors for our participation in this case.

Further affiant sayeth not.

John D. Seeders

Subscribed and sworn to before me
this ____ day of July, 1985:

Notary Public

My Commission Expires:

RESUME

WORLEY O. PUCKETT

ADDRESS:

3672 Spring Grove Road
Bethel, Ohio 45106

TELEPHONE:

Business: (513) 732-5416
Home: (513) 734-6310

OBJECTIVE:

To obtain employment in management within a Nuclear Power environment.
To obtain employment in the management of personnel, administration, supervision, training, and development with a view towards advancement to higher levels of administration.

SUMMARY OF QUALIFICATIONS:

Lead Historical Weld Engineer Supervisor for compiling information from historical weld documentation for input into computer data base.

Project Weld Engineer/Chief Weld Engineer - Responsibilities include the supervision of the weld engineering department, writing and qualifying procedures for welding and post weld heat in accordance with ASME Section IX, AWS D1.1 and ANSI B31.1, compiling and maintaining welder qualification records on 471 craft welders.

Lead Mechanical QA Inspector, Senior QA Mechanical Inspector at the Wm. H. Zimmer Nuclear Power Plant. Certified Level II non-destructive testing inspector in accordance with ASNT-TC.1A in the field of liquid penetrant, visual and magnetic particle testing. Qualified in the inspection of post weld heat and hydro-pneumatic surveillance. Performed QA audits and surveillance of nuclear equipment installation and nuclear construction activities. Twenty years in the U. S. Navy as a hull technician, pipefitter, nuclear component welder, and welder instructor.

EXPERIENCE:

Henry J. Kaiser Company
P. O. Box 201
Moscow, Ohio 45153

Lead Historical Weld Engineer, Project Weld Engineer, Chief Weld Engineer, Lead Mechanical QA Inspector, and Senior QA Inspector.

Sept., 1975 to Present

Senior Mechanical QA Inspector, Lead Mechanical QA Inspector, Chief Weld Engineer, Project Weld Engineer, and Lead Historical Weld Engineer. Present responsibilities include the initiating and writing procedures and supervising of the input of historical weld documentation into a computer data base at the Wm. H. Zimmer Nuclear Power Plant.

Jan., 1956 to Aug., 1975

Pipefitter, ship fitter, nuclear component welder in various Navy installations

RESUME
WORLEY O. PUCKETT
PAGE 2

located in the United States and overseas. Supervised and performed inspection, welding testing and maintenance on surface craft, nuclear component submarines and prototypes.

Worked in Planning and estimating; writing step by step procedures for repairs. Both major and minor on nuclear submarines.

Analyzed manufacture's manual and government publications, researched, devised, initiated and supervised all phases of work on nuclear power submarines.

EDUCATION:

High School Graduate

Courses Attended:

Management Training and Human Resources Development - 42.5 Hrs.
Welding Inspection and Quality Control (ASM) Graduate.
Defects and failures in Pressure Vessels and Piping - 32 Hrs. (ASME)
Maintenance Welding in Nuclear Power Plants - 32 Hrs. (AWS)

June, 1972 to Aug., 1975

USS L. Y. Spear (AS36) Submarine Tender - Norfolk, Virginia.
Supervisor of pipe shop - repair department. Planning and estimating - repair department. Providing technical and systems support services for thirteen nuclear submarines and surface crafts.

Nov., 1968 to June, 1972

N.P.T.U. - Idaho Falls, Idaho.
Nuclear component welder and shop supervisor. Made repairs and installed new systems in three nuclear prototypes. A1W, S1W, and S5G Plants. Instructed and/or familiarized officers and trainees on welding and silver brazing techniques and repair procedures.

April, 1966 to Nov., 1968

USS Hunley (AS31) Submarine Tender - Charleston, South Carolina.
Weld shop in repair department. Performing major and minor repairs on nuclear submarines. Nuclear component welder working with Freeze Seals in containments, glove bags and anti-contamination clothing.

April, 1965 to April, 1966

C-1 Welding School Service Command Annex - San Diego, California.
Welding School. (Graduated with Honors).

April, 1963 to April, 1965

Naval Station Brig - Norfolk, Virginia.
Supervised and retrained confinees and made all repairs on Naval Station Brig Complex.

RESUME
WORLEY O. PUCKETT
PAGE 3

Nov., 1959 to April, 1963

USS Boxer LPH4 - Norfolk, Virginia.
Ship fitter, pipefitter.

April, 1956 to Nov., 1959

USS Lake Champlain (CVA39).
Pipefitter - on the job training.

SUMMARY U.S. NAVY:

Promotions from Seaman Apprentice to Chief Petty Officer. Top Secret Security Clearance, Atomic Energy Commission Clearance based on background investigation. Retired from active duty August, 1975.

SERVICE SCHOOLS:

1. Atomic, Biological Chemical Warfare School - Portsmouth, Virginia. 1957.
2. Fire Fighting School - Portsmouth, Virginia. 1957.
3. Damage Control School - Norfolk, Virginia. 1958.
4. Nuclear Biological Chemical Warfare Refresher Course - Norfolk, Virginia. 1958.
5. Plate Welding School - Portsmouth, Virginia. 4 weeks in 1958.
6. Pipewelding School - Portsmouth, Virginia. 8 weeks in 1959.
7. C-1 Welding School - San Diego, California. 32 weeks 1965.
8. Radiation Control - Charleston, South Carolina. 40 hrs. in 1967.
9. Race Relation School - Norfolk, Virginia. 40 hrs. in 1974.

PERSONAL DATA:

Date of Birth: Feb. 23, 1938.
Health: Excellent.
Height: 71 Inches.
Weight: 185 Pounds.
Marriage Status: Married, 4 children.
Hobbies: Collecting old bottles and post cards.
Sports: Hunting and Fishing.

L. K. COMSTOCK & COMPANY, INC.

READ & REPLY

PRIORITY

URGENT

SOON AS POSSIBLE

NO REPLY NECESSARY

TO: I DEWALD
 B.C. MANAGER
 L.K. COMSTOCK

DATE 8-10-84

SUBJECT WELD PROCEDURE

4.3.14 REV. 09-17-80

MESSAGE

IRV.

IT IS MY RECOMMENDATION THAT ALL WORK BE DISCONTINUED UTILIZING PROCEDURE 4.3.14 REV. 09-17-80 THIS PROCEDURE IS ONLY QUALIFIED IN THE FG POSITION. AWS D1.1 75 PART B PARA. 5.8.1.2 REQUIRES THAT IT BE QUALIFIED IN ALL POSITIONS. 16-26856

RETURN

SIGNED W.D. Puckett

RETURN COPY

W. PUCKETT WHAT IS YOUR SUGGESTED SOLUTION TO THE PROBLEM? THERE POSSIBLY COULD BE A RECALL OF THE WELDERS TO REQUAL & REQUAL THE PROCEDURE, THIS IS YOUR RESPONSIBILITY TO FIND THESE PROBLEMS, FIND SOLUTIONS AND GET THEM RESOLVED — WHAT IS THE SOLUTION TO YOUR NEMO,

SIGNED

DATE

8-11-84

RECEIVER: WRITE REPLY, DETACH STUB, KEEP PINK COPY, RETURN WHITE COPY TO SENDER.

EXHIBIT C



Comstock Engineering, Inc.

Memorandum

To: R. Saklak

From: W. Puckett

Subject: Rod Slips

Control No: 84-08-15-14

Office: Braidwood

Date: August 17, 1984

During the period of time that I was doing Research on Weld Rod Slips for the months of May, June and July of 1982 it occurred to me that the problems we were having during the afore mentioned period could possibly be generic through other periods, so I performed a spot check on the Rod Slips Issued in December 1982, September 1983, January 1984, June and July 1984 and during this period the problem did persist, however not as prevalent in the year 1984. In addition during the period prior to May 1982 Heat Numbers for E-6013 electrode were not entered on the weld filler material withdrawal form. I also took a sampling of heat numbers off of these previously issued Rod Slips to see if they could be traced to documentation the Heat lot numbers in the Research of Twelve separate heat numbers I was successful in all but three heats 401S7441 and 401S9011 for E-7018 and 35202061 for E-6013. It would be my suggestion at the very earliest convenient time that a more thorough review be performed on all the Rod Slips so as to have an in-house identification of any major problems we may have.

Respectfully,

W. O. Puckett
W. O. Puckett

WOP/pb
cc: QC File
QC Mgr.



EXHIBIT D

TO: Irv. DeWald
FROM: W. Puckett

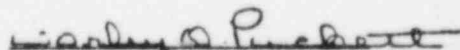
August 22, 1984

Irv:

Over the past few weeks I have been performing a preliminary review of our Weld Procedures. In addition to the ones that I have already recommended stop work on i.e all stainless and A36 to A446 using E-7018. There are at least five others that were incorrectly qualified. These being all the procedures involving galvanized ASTM A446. The afore mentioned procedures were qualified using the criteria of AWS D1.1 1975 and it should have never been done. AWS D1.1 criteria was never intended to be used to Weld materials less than an 1/8" thickness our heaviest guage unistrut is 12GA which is .105 all of our procedures that involve A-446 should have been qualified using the criteria of D.1.3 which has a completely different set of test requirements and a completely different set of essential variables. In addition to these procedures that I can assure you are not qualified there are so many inconsistencies in the remaining procedures that we are using that I'm sure their qualification would be considered indeterminate. I'm aware of the impact it would have but I strongly recommend that all weldings be stopped and that and all out effort be started to do a complete review of our procedures, welders qualification and welders filler material Withdrawal Forms and once the magnitude of our problems have been determined we can better address our non-compliances and formulate a plan that will bring us back under the codes and specifications we should be working too.

Irv I work for Comstock too and I speak from a lot of experience with the Procedures being what they are and the moral of the QC Inspectors being what it is we are dangerously approaching a complete break down in our QC Program. I think you are aware of this and I'm sure neither of us would want this to happen.

Sincerely,


Worley O. Puckett

WOP/pb
cc: R. Seltmann


EXHIBIT E

3672 Spring Grove Road
Beth, Ohio 45106
September 5, 1984

EXHIBIT F

Dept. of Labor
Dept. of Wage + Hour Div.
Fed. Office Building - Room 2525
Cincinnati, Ohio 45202 X 550 Main St.

Dear Sir:

I am writing in solicitation of your support.

It is my belief that I was unjustly terminated from my job at the Braidwood Nuclear Power Plant, Braidwood, Illinois.

I was hired by L.K. Comstock Engineering, Inc. on May 28, 1984 as a Level 3 Quality Control Inspector. I was terminated August 27, 1984.

It is a requirement within the Nuclear Industry that you take and pass prepared written ^{and} practical exams. I took these exams and received passing scores on all of them - most, with 100%. It is a fact that several QC Inspectors failed the exams more than once and are still employed. It is my understanding that I am the first QC Inspector to be terminated by L.K. Comstock, Inc. at the Braidwood Nuclear Power Plant. Their reason for termination was a low test score - 86%.

For a little better clarification as to why I feel that I was unjustly terminated, I will give you an outline of my qualifications and responsibilities as a QC Inspector.

I am a retired Navy Chief Petty Officer with twenty years service. My duties in the Navy were in Nuclear Repair as a Nuclear component welder. I have eight additional years in Nuclear Construction as a Qualified Level 2 Quality Assurance Inspector and Lead Mechanical Inspector. I also worked as a Project Weld Engineer.

I am very informed and ^{have} worked in all aspects with the various codes required in the Nuclear Industry - ASME, AWS, ANSI, and Con-

Construction Federal Regulations. It is my contention that I was terminated because I was too quality-conscious. That would be like saying a person is too good a driver to drive on our highways.

I feel that I was being manipulated by L.K. Comstock Engineering, Inc., but as a professional in the Nuclear Industry, my every deed is governed by the codes and Construction Federal Regulations. These, along with my moral obligations to the surrounding communities of a Nuclear Power Plant, dictate that if work is being performed in direct violation of these codes, that I must take action to make corrections and report those items that cannot be corrected to be dispositioned. This is exactly what a level 3 QC Inspector is suppose to do, and I did.

In a review of L.K. Comstock procedures and documentation, I found numerous non-compliances. I reported these to management, and their first reaction was to try and justify them rather than initiate action to identify and correct them. I finally recommended, through a memo, that work be stopped, before any action was taken. Management was very upset that I recommended this stop-work order even though I am required to do so by the Construction Federal Regulations. I was terminated after I submitted the stop-work order due to management being quantity conscious rather than quality conscious.

I have been contacted by the Nuclear Regulatory Commission, and they have asked me to come to the Region Three office for an interview. Based on this interview, a major investigation is forthcoming. I feel that this investigation will show that I was only doing the job that is required of a level 3 Inspector.

It is my sincere hope that if it is determined that I was unjustly terminated, that I will be reinstated in my position and receive full compensation for my loss of work and inconveniences.

I would like to add that during the three months I was employed with L.K. Comstock, I was never late or absent from work. I worked many hours of overtime and many Saturdays.

I am a professional - I knew my job. I will appreciate any assistance you may afford me. Thank you.

Sincerely yours,

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
230 South Dearborn, Room 412
Chicago, Illinois 60604
Telephone: 312/353-8145



November 6, 1984

Reply to the Attention of:

Mr. T. Trumble
Corporate Administrator
Comstock Engineering, Inc.
912 Fort Duquesne Blvd.
Pittsburgh, PA 15222

Re: Worley O. Puckett Vs.
Comstock Engineering, Inc.

Dear Mr. Trumble:

This letter is to notify you of the results of our compliance actions in the above case. As you know Worley O. Puckett filed a complaint with the Secretary of Labor under the Energy Reorganization Act on September 11, 1984. A copy of the complaint, a copy of Regulations, 29 CFR Part 24, and a copy of the pertinent section of the statute were furnished in a previous letter from this office.

Our initial efforts to conciliate the matter revealed that the parties would not at that time reach a mutually agreeable settlement. An investigation was then conducted. Based on our investigation, the weight of evidence to date indicates that Worley O. Puckett was a protected employee engaging in a protected activity within the ambit of the Energy Reorganization Act, and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint. The following disclosures were persuasive in this determination:

1. With regard to the examinations Mr. Puckett had been said to fail, no objective criteria had been developed to determine the minimum successful score for a Level III inspector.
2. The mistakes or errors committed by Mr. Puckett are subject to dispute and not of sufficient magnitude to justify his dismissal in so brief a period of employment.

This letter will notify you that the following actions are required to abate the violation and provide appropriate relief:

1. Reinstatement of Mr. Puckett to the Level III Q.C. inspector position or a mutually acceptable monetary award.
2. Payment of wages lost to Mr. Puckett for the period from his dismissal to date.
3. Payment of relocation and temporary living costs for Mr. Puckett's move to Illinois and return to Ohio (and return to Illinois if reinstated), under the terms of Comstock's relocation policy.

This letter will also notify you that if you wish to appeal the above findings and remedy, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to:

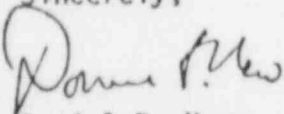
Mr. T. Trumble
Corporate Administrator

The Chief Administrative Law Judge
U.S. Department of Labor
Suite 700, Vanguard Building
1111 - 20th Street, N.W.
Washington, D.C. 20036

Unless a telegram request is received by the Chief Administrative Law Judge within the five-day period, this notice of determination and remedial action will become the final order of the Secretary of Labor. By copy of this letter I am advising Worley O. Puckett of the determination and right to a hearing. A copy of this letter and the complaint have also been sent to the Chief Administrative Law Judge. If you decide to request a hearing it will be necessary to send copies of the telegram to Worley O. Puckett and to me at 230 South Dearborn Street; Chicago, Illinois 60604; (312) 353-8145. After I receive the copy of your request, appropriate preparations for the hearing can be made. If you have any questions do not hesitate to call me.

It should be made clear to all parties that the role of the Department of Labor is not to represent the parties in any hearing. The Department would be neutral in such a hearing which is simply part of the fact-development process, and only allows the parties an opportunity to present evidence for the record. If there is a hearing, an Order of the Secretary shall be based upon the record made at said hearing, and shall either provide appropriate relief or deny the complaint.

Sincerely,



Daniel P. New
Area Director

DPN:lm

cc: ✓Mr. Worley O. Puckett
Nuclear Regulatory Commission

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

In the Matter of:

WORLEY O. PUCKETT

Complainant

Case No. 85-ERA-00004

v.

COMSTOCK ENGINEERING, INC.

Respondent.

COMPLAINANT'S PRE-HEARING EXCHANGE

Complainant Worley O. Puckett, through his attorney Lee Hornberger, submits the following as his Pre-Hearing Exchange pursuant to Administrative Law Judge McKenna's Order dated November 26, 1984.

1.(a) Issue to be Presented:

Was complainant discharged or otherwise discriminated against by respondent in violation of the Energy Reorganization Act of 1974, 42 USC 5851, because complainant made numerous complaints about safety problems and violations of NRC rules and regulations to respondent and engaged in other activity protected by 42 USC 5851?

It is complainant's position that he was discharged and otherwise discriminated against by respondent in violation of 42 USC 5851 because complainant made numerous complaints about safety problems to respondent and brought to respondent's attention violations of NRC rules and regulations and engaged in other activity protected by 42 USC 5851.

The applicable citations include 42 USC 5851; DeFord v. Secretary of Labor, 700 F.2d 281 (6th Cir. 1983); Consolidated Edison v. Donovan, 673 F.2d 61 (2nd Cir. 1982); Ellis Fischel State Cancer Hospital v. Marshall, 629 F.2d 563 (8th Cir. 1980); Marshall v. Springville Poultry Farm, Inc., 445 Fed. Supp. 2 (M. D. Pa. 1977).

1.(b) Worley O. Puckett
 3672 Spring Grove Road
 Bethel, Ohio 45106

Mr. Puckett, the complainant, will testify about his prior experience in the nuclear field. This experience includes being a Chief Petty Officer with the United States Navy for approximately 20 years. His duties in the Navy were in the nuclear repair area as a nuclear component welder. In addition he has approximately eight (8) additional years in nuclear construction as a qualified quality assurance inspector and lead mechanical inspector. He has worked as a project weld engineer.

In light of his work experience, he is very qualified and has worked in all aspects with the various codes required in the nuclear industry including ASME, AWS, ANSI, and the construction federal regulations.

Mr. Puckett was hired by respondent in May, 1984 as a level three quality control inspector. During the course of his employment with respondent, he took several qualifying tests. Mr. Puckett consistently did better on these tests than numerous of respondent's quality control inspectors who were not terminated.

During the course of his employment with respondent, Mr. Puckett reviewed respondent's welding procedures and documents. He found numerous situations where these procedures and documents did not comply with standard procedure and/or NRC rules and regulations. He repeatedly reported these non-compliances to respondent's management. (Exhs. 26, 27, 31 et al) Mr. Puckett finally recommended in writing that a stop work order be issued. (Exhs. 21-24) Respondent's management was very upset by this recommendation even though it eventually had to implement a large part of it. (Exh. 25)

Mr. Puckett was doing his job in an outstanding and commendable fashion. In addition, based upon his work performance and his qualification test results, he was one of the best

quality control persons at respondent's facility. In spite of this, respondent, with no prior notice and with no justification whatsoever, terminated Mr. Puckett on late Monday afternoon, August 27, 1984.

1.(c) Complainant's Proposed Pre-marked Exhibits Are As Follows:

1. Resume of Worley O. Puckett
2. 7-1-80 Appraisal
3. 5-1-80 Appraisal
4. 3-24-83 Test
5. 3-25-83 Test
6. 3-28-83 Test
7. 3-28-83 Test
8. 3-29-83 Test
9. 3-29-83 Test
10. 4-1-83 Evaluation
11. 4-7-83 Test
12. 4-7-83 Test
13. 4-7-83 Test
14. 4-7-83 Test
15. 4-8-83 Final Exam
16. 4-29-83 Certificate of Completion of Metallurgical Course entitled "Welding Inspection and Quality Control"
17. 5-29-84 Letter
18. Undated Files

19. 7-12-84 Speed Letter
20. 7-26-84 Speed Letter
21. 8-9-84 Memo Recommending That All Welding Be Stopped
22. 8-10-84 Memo
23. 8-11-84 Reply to Stop Work Recommendation
24. 8-13-84 Memo Repeating Stop Work Recommendation
25. 8-15-84 DeWald Memo Admitting Welding "Inconsistencies" and Recommending Stop Work Order
26. 8-15-84 Puckett Memo
27. 8-17-84 Memo
28. 8-17-84 Nonconformance Report
29. 8-22-84 Speed Letter
30. 8-23-84 Speed Letter
31. 8-22-84 Memo
32. 8-22-84 Minutes
33. 8-23-84 Form #14
34. 8-24-84 Memo
35. 9-5-84 Letter
36. 9-28-84 OBES Determination
37. 10-9-84 OBES Notice
38. 11-6-84 OBES Reconsideration Decision
39. 11-6-84 Letter
40. 11-12-84 Telegram.
41. Undated Report by Compliance Officer Raymond Wyzguski, U.S. Department of Labor.

1.(d) Complainant submits that production of the following documents by respondent will aid in the expeditious and judicious handling of this case;

(i) All documents relating to or refering to the complainant.

(ii) All documents constituting the unpurged personnel files of the complainant.

(iii) All documents relating to complainant's performance and his potential to perform at a satisfactory level.

(iv) Any and all records, notes, diaries or documents relating to respondent's separation of complainant and the factors leading up to that separation.

(v) All of the documents relating to the qualifying and other tests and the results thereof for respondent's other quality control persons and applicants.

1.(e) Complainant is seeking reinstatement and to be made whole, including back pay, travel expenses, compensatory damages, and his attorneys fees and costs.

2. Complainant submits that the following facts should not reasonably be in dispute;

(i) Respondent is a person within the meaning of 29 USC 5851.

(ii) Respondent is a contractor or a sub-contractor of a NRC licensee applicant.

(iii) Complainant was hired by respondent in May, 1984 as a level three quality control inspector.

(iv) Complainant was terminated by respondent on August 27, 1984.

(v) Prior to the afternoon of August 27, 1984 respondent did not inform complainant that his job was in jeopardy or that he was not performing satisfactorily.

(vi) While employed by respondent, complainant made complaints about safety conditions to respondent.

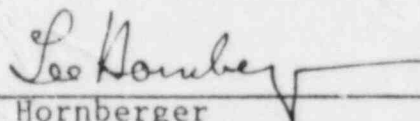
(vii) While employed by respondent, complainant made complaints about welding procedures and documentation problems to respondent.

(viii) While employed by respondent, complainant made complaints about what he viewed as violations of NRC safety rules and regulations to respondent.

(ix) Complainant did better on respondent's quality control qualification tests than several quality control employees of respondent who were not terminated.

(x) Complainant filed a complaint with the Secretary of Labor alleging a violation of 42 USC 5851 by respondent within 30 days of the August 27, 1984 discharge.

(xi) All of the documents attached hereto as proposed exhibits are genuine and true and accurate.

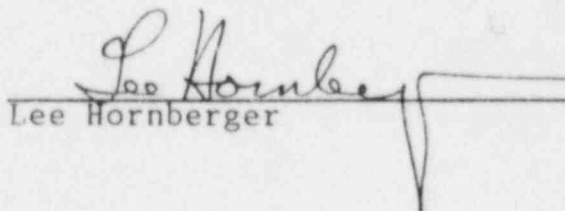


Lee Hornberger
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Cincinnati, Ohio 45230
(513) 528-2685

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been forwarded by regular U.S. Mail to all counsel of record on the date indicated.

Date: 11.7.84



Lee Hornberger