

**United States  
Nuclear Regulatory Commission**



---

# Report of Investigation

**BYRON 1:**

**DISCRIMINATION AGAINST CONTRACT  
ELECTRICIAN BY MANAGEMENT FOR  
IDENTIFYING SAFETY CONCERNS**

**Office of Investigations**

Reported by OI: **RIV**

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5 & 7C  
FOIA 2000-0243

E/4

Portion  
Exempt to FOIA

Title: BYRON 1:

DISCRIMINATION AGAINST CONTRACT ELECTRICIAN BY  
MANAGEMENT FOR IDENTIFYING SAFETY CONCERNS

Licensee:

Byron 1  
Commonwealth Edison Co.  
17 MI SW of Rockford  
Rockford, IL

Docket No.: 050-00454

Case No.: 4-1999-059

Report Date: January 27, 2000

Control Office: OI:RIV

Status: CLOSED

Reported by:



W. Michael FitzGibbon, Special  
Agent, Office of Investigations  
Field Office, Region IV

Reviewed and Approved by:



E. L. Williamson, Director  
Office of Investigations  
Field Office, Region IV

WARNING

~~DO NOT DISSEMINATE, PLACE IN THE PUBLIC DOCUMENT ROOM, OR  
DISCUSS THE CONTENTS OF THIS REPORT OF INVESTIGATION OUTSIDE  
NRC WITHOUT AUTHORITY OF THE APPROVING OFFICIAL OF THIS  
REPORT. UNAUTHORIZED DISCLOSURE MAY RESULT IN ADVERSE  
ADMINISTRATIVE ACTION AND/OR CRIMINAL PROSECUTION.~~

## SYNOPSIS

This investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on October 26, 1999, to determine if a contract electrician employed at the Commonwealth Edison Company's (COM ED) Byron Generating Station (BYRON) was the subject of employment discrimination by management for identifying safety concerns.

Based on a review of the testimony, documentary evidence developed during the investigation, and coordination with the RIII technical staff and Regional Counsel, the allegation that a contract electrician at BYRON was the subject of employment discrimination by management for identifying safety concerns was not substantiated.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

THIS PAGE LEFT BLANK INTENTIONALLY

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

TABLE OF CONTENTS

	<u>Page</u>
SYNOPSIS.....	1
LIST OF INTERVIEWEES.....	5
DETAILS OF INVESTIGATION.....	7
Allegation: Discrimination Against Contract Electrician by Management for Identifying Safety Concerns.....	7
Applicable Regulations.....	7
Purpose of Investigation.....	7
Background.....	7
Interview of Allegor.....	8
Coordination with Regional Staff.....	12
Coordination with Regional Counsel.....	12
Testimony/Evidence.....	13
Agent's Analysis.....	22
Conclusions.....	23
LIST OF EXHIBITS.....	25

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

THIS PAGE LEFT BLANK INTENTIONALLY

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

LIST OF INTERVIEWEES

	<u>Exhibit</u>
ESCHEN, Thomas J., Assistant Business Manager, International Brotherhood of Electrical Workers (IBEW), Local 364.....	8
FENGER, Michael J., Business Manager, IBEW, Local 364.....	7
HALLSTROM, Michael R., Assistant Business Manager, IBEW, Local 364.....	9
JOHNSON, James D., former General Foreman, POPE.....	12
LEECH, Joe A., Jr., Employee Concerns Administrator, BYRON, COM ED.....	10
OHL, Dale L., former General Foreman, POPE.....	2
RAMSBY, Robert K., former Night Shift Superintendent, POPE.....	11

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

THIS PAGE LEFT BLANK INTENTIONALLY

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

## DETAILS OF INVESTIGATION

### Allegation

Discrimination Against Contract Electrician by Management for Identifying Safety Concerns

### Applicable Regulations

10 CFR 50.5: Deliberate Misconduct (1999 Edition)

10 CFR 50.7: Employee Protection (1999 Edition)

### Purpose of Investigation

This investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on October 26, 1999, to determine if Dale L. OHL, a former contract electrician employed by William A. Pope Company (POPE) at Commonwealth Edison Company's (COM ED) Byron Generating Station (BYRON), was the subject of employment discrimination by management for identifying safety concerns (Exhibit 1).

### Background

On October 1, 1999, Jim HELLER, Senior Allegations Coordinator, Region III (RIII) received a call from OHL who alleged that he had been blacklisted from employment by POPE and BYRON management for reporting problems associated with containment electrical work during a 1999 (April-June 1999) steam generator replacement outage.

According to HELLER, OHL related that (1) one of his assigned duties was to ensure workers entered the containment on time and stayed in containment for the assigned work shift. OHL stated he routinely challenged this practice during conversations with POPE management [NFI] when work packages were not available or the equipment needed to perform the work activity was not prestaged; (2) OHL stated he routinely challenged, to POPE management [NFI], the practice of working on equipment that had been safety related but was worked on without quality control (QC) coverage. OHL could not name the equipment but stated that his crews routinely rerouted cables to facilitate steam generator replacement

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

activities. OHL stated POPE management [NFI] told him to follow the approved BYRON work packages; (3) OHL stated he routinely questioned POPE management [NFI] about the practice of using nonskilled laborers versus qualified electricians to run cables, adding that he questioned this practice because the laborers routinely stepped on the cables or exceeded the minimum bend radius, including on power cables for the control rod drives where the junction boxes were on the refueling floor of containment; (4) OHL related that at the conclusion of his work assignment during his turnover with the replacement "B" shift general foreman [NFI], he noted the "B" shift foreman signed the work packages as the one who performed the work. According to OHL, the foreman stated he had overseen the work activity and could sign for the workers. OHL said the foremen suggested to him that the workers refused to sign the packages because of either poor work quality or in protest of poor outage management; and (5) OHL said he had been "blacklisted" for identifying these concerns, supra, to both POPE and BYRON management.

On October 25, 1999, the RIII Allegation Review Board (ARB) discussed OHL's concerns and the fact that some of his concerns did not involve safety related equipment and could be referred to the licensee for review. The ARB requested the OI, RIII, interview OHL and attempt to obtain more specific information regarding his technical concerns, the allegations of records falsification and employment discrimination.

AGENT'S NOTE: Due to the workload in OI:RIII, this allegation was transferred to OI:RIV for investigation.

Interview of Allegor (OHL) (Exhibit 2)

On November 3, 1999, OHL, a former contract electrician with POPE, was interviewed by OI:RIV. OHL related the following information in substance.

OHL stated he was contracted by POPE to work an outage at BYRON in the latter part of March or early April 1999. OHL described POPE as the current outside contractor for supplying manpower to BYRON, including electricians, fitters, and carpenters. According to OHL, the April 1999 outage started out normally, although two of the foremen quit, and he [POPE] had to appoint two new foremen, at which time he [OHL] was appointed to one of the foreman positions. OHL added that soon after his appointment

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

as a foreman, the general foreman (GF) stepped down and he [OHL] was appointed as a GF.

OHL related he identified several concerns during the outage. OHL advised the first concern involved his assignment to ensure that workers entered containment on time and stayed in containment for the assigned work shift. OHL stated he "routinely" challenged this practice during conversations with POPE management when work packages were not available or the equipment needed to perform the work was not prestaged. OHL related that POPE wanted "everybody inside there." OHL stated that normal procedure for work preparation would include a "tailgate" meeting to explain the job and to sign the radiation work packages (RWP) before entering containment. OHL related "we bypassed all of those. The men came in, and they were to immediately go up, get an RWP, go into the containment ... either be in containment or be ready to go in before 6:30, when you start at six o'clock." OHL advised that if they held a meeting, it was a quick meeting, saying, "You do this, you do this, and go. No questions; no concerns; no safety issues or anything important. It was just, get in there and go." OHL said that often when the crews entered containment, the proper paperwork to conduct the job was not available. OHL stated he felt that "a lot of the packages were what I felt a little bit on the vague side." OHL related he was used to having a package which listed exactly what was to be accomplished. Additionally, OHL stated that under normal circumstances, there would have been a QC person watching the electricians work, although during the April 1999 outage, QC did not observe "the majority of stuff we did." OHL stated that once the electricians were in containment, POPE wanted them to stay in "until they absolutely had to come out" and often "tried to keep it at five or six hours." OHL related that Robert RAMSBY, Night Shift Superintendent, POPE, was one individual who pressed him [OHL] to keep the electricians in containment during the shift. OHL stated he reported his concern about the electricians staying in containment to the "number two GF" [NFI] almost daily, although he could not recall specific dates.

OHL identified his second concern as the practice of working on equipment that had previously been safety-related but during the April 1999 outage was worked on without QC coverage. According to OHL, one such instance involved a vibration monitor. OHL advised the work order was 940012951 and the "mod" was

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

DCP 9302973. OHL stated that when the vibration monitor was installed the first time, it was "safety-related." According to OHL, when it was reinstalled by the electricians, it was nonsafety-related and not "QC'd." Another example cited by OHL was work conducted involving digital rod position indication (DRPI) cables. OHL advised that the DRPI cables controlled the control rod drives in the nuclear reactor, although the work was not considered "safety-related" and did not have QC coverage. OHL related that he was unsure if the lack of QC coverage was due to the way the work package was written or an oversight. OHL stated he asked RAMSBY and a QC person on the night shift [NFI] why there was no QC coverage, and the response was "We don't need them; don't worry about it ... we're doing things different. We don't have to do this nowadays, with the new NRC rulings and stuff, why, we don't have to do stuff that we used to do..." According to OHL, the QC person told him [OHL] that he could only QC what was written in the work package. OHL said he also reported problems with the method the electricians and laborers used to reinstall the DRPI cables in the junction box. According to OHL, "Guys my size and bigger were jumping on these wires to flatten them in there so they could close the door on this junction box." OHL stated he also complained to RAMSBY about this practice, although RAMSBY responded by saying "It's not a good way of doing it; we're not happy with...the way we're doing it; it's just too bad; it has to be done this way..." OHL stated that by jamming the DRPI cables in the junction box, the bend radius was violated. OHL related that in some cases, the cables were bent in "abrupt 90s or 180s, almost on top of each other, sandwiched..." OHL was also concerned that POPE used nonskilled labor in lieu of electricians to assist in the installation of the DRPI cables.

OHL's fourth concern was that during a turnover with Dave [NFI], the replacement "B" shift GF, "Dave" signed work packages for work he [Dave] did not oversee. According to OHL, "Dave" signed the work packages because the workers "refused" to sign them since the quality of work was not acceptable. OHL described the quality of work the electricians completed as "electrically, it probably was done normal. But you don't do things normal on a nuke..." OHL advised the work packages "Dave" signed involved the DRPI cables and the vibration monitor. OHL admitted that "Dave" may have overseen the work, although the way "things" were handled "bothered" him [OHL]. OHL stated that although the procedures provided to the electricians were "rather vague," the

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

electricians followed the procedures "the best that they could," and he [OHL] was unaware of any violations in procedures during the DRPI cable installation.

OHL stated that after approximately 2 weeks as GF, he requested to be laid off. OHL advised POPE gave him his voluntary lay off "quite willingly" because he [OHL] was getting "a little perturbed with them..."

AGENT'S NOTE: Review of documentation provided by POPE determined OHL was assigned as a GF for two days, April 11 and 12, 1999 (Exhibit 13).

OHL related he conducted an exit interview with a member of the COM ED staff [NFI] prior to his departure from BYRON. OHL stated he provided the exit interviewer with his concerns, supra, and was assured that COM ED had a policy prohibiting retribution. OHL said the exit interviewer told him that "this is the stuff that they want to know about; this is the stuff that they need to address..." OHL related that a coworker [NFI] had cautioned him about reporting concerns to the exit interviewer since it could impact his return to BYRON in the future, although he raised the concerns nonetheless.

AGENT'S NOTE: Subsequent inquiries with COM ED identified "Dave" as James David JOHNSON, a GF employed at BYRON during the April 1999 outage.

OHL advised that in late September 1999, he applied for a job at BYRON through IBEW, Local 364, in Rockford, Illinois. According to OHL, he contacted Mike FENGER, the Local Business Manager, and his [OHL's] name was added to a list of electricians to work an upcoming outage at BYRON scheduled for October 1999. OHL estimated his name was approximately number 25 on the call list. OHL related that when he went to the local to pick up his referral papers several days later, one of the secretaries [NFI] told him he had to speak with the dispatcher [NFI]. According to OHL, the secretary put him in touch with the dispatcher who told him [OHL] "they don't want you; you're not welcome there; sorry." OHL said that when the dispatcher said "they don't want you ...", he was under the impression that the dispatcher meant POPE. OHL opined that POPE should not have had knowledge of the contents of his exit interview. OHL felt that by voicing his concerns to the COM ED exit interviewer, he may have been blacklisted. OHL

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

stated he was not aware of any conversations between POPE employees and COM ED employees regarding his [OHL's] raising concerns and OHL advised he has no information regarding his blacklisting. OHL stated "I can't prove a thing, other than the fact I was told I'm not welcome." OHL offered that "Maybe Bob Ramosby (sic) doesn't like me."

OHL admitted to his involvement in an incident wherein he threatened to walk off the job with his crew during the April 1999 outage when he [OHL] had a disagreement with a "go between" working for COM ED [NFI]. According to OHL, he expressed concerns regarding vibration pipes to "this bird watching us" for COM ED. OHL related this individual attempted to tell him [OHL] how to install the pipe, and when it became apparent to him [OHL] that the individual did not appear to know what he was talking about, he [OHL] instructed his crew to "go out." OHL advised RAMSBY was contacted and he [RAMSBY] returned the electricians to work.

#### Coordination with Regional Staff

On November 16, 1999, OI:RIV provided the transcript of interview with OHL to the RIII technical staff for review and determination of any potential violations of NRC regulations (Exhibit 3). On December 1, 1999, John A. GROBE, Director, Division of Reactor Safety (DRS), NRC:RIII, advised DRS reviewed the transcript and did not identify any additional safety concerns (Exhibit 4).

#### Coordination with Regional Counsel

On November 16, 1999, OI:RIV provided the transcript of interview with OHL to the RIII Regional Counsel for review and determination if OHL was engaged in protected activities and the possible subject of employment discrimination (Exhibit 5). On December 2, 1999, Bruce BERSON, Regional Counsel, NRC:RIII, advised he reviewed OHL's transcript and [REDACTED]

[REDACTED] (Exhibit 6).

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

Testimony/Evidence

Interview of Michael J. FENGER (Exhibit 7)

On December 6, 1999, FENGER, Business Manager and Financial Secretary, Local 364, IBEW, Rockford, Illinois, was interviewed by OI:RIV. FENGER related the following information in substance.

FENGER stated Local 364 operated on a referral system which was standard with labor organizations throughout the United States. According to FENGER, electrician apprentices go through a 5 year apprenticeship program to become journeymen wiremen. FENGER said if the journeyman wireman was affiliated with Local 364, he/she would be classified as "Book 1" and would sign the Out-of-Work Book 1. FENGER related that the Local then refers electricians out in the order they signed the Out-of-Work Book. If the Local was unable to meet a manpower demand from Book 1, FENGER said the Local then goes to Book 2, which was similar to Book 1, although the journeyman electricians who sign Book 2 were travelers - electricians who were affiliated with another IBEW Local but have signed the Local 364 Book 2 to work in the region. According to FENGER, his research determined OHL signed the Book 2 at Local 364. In addition to Books 1 and 2, FENGER stated the Local maintained a Book 3 and Book 4, which were for apprentice electricians and nonunion journeyman electricians, respectively.

FENGER stated each electrician that signs a book in the Local was provided with a copy of the referral procedures. FENGER said new openings were posted each night on a tape recording and the electricians were responsible for calling the recording and identifying the opening they wish to fill to the dispatcher the following morning between 7:30 a.m. and 8:30 a.m.

FENGER stated that in the March 1999 time frame, POPE contacted Local 364 for electrician support at BYRON. FENGER estimated the total manpower requested as "90 men." FENGER stated he was unfamiliar with OHL and denied speaking to OHL on the telephone at any time. According to FENGER, as Business Manager, he does not get involved in the referral process so he would not have spoken to OHL concerning a referral. FENGER added that was the job of the dispatcher, Tom ESCHEN. FENGER stated he does not have any knowledge of OHL's rejection by either COM ED or POPE. FENGER opined that if OHL was in fact rejected, it was by either

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

COM ED or POPE since the union does not reject people from jobs. FENGER stated that the union does not have the authority to reject someone, although the contractor does under the management rights clause in the union contract. FENGER stated he did not have any knowledge of OHL being "blacklisted."

Interview of Thomas J. ESCHEN (Exhibit 8)

On December 6, 1999, ESCHEN, Assistant Business Agent and Dispatcher, Local 364, IBEW, Rockford, Illinois, was interviewed by OI:RIV. ESCHEN related the following information in substance.

ESCHEN stated that as the Dispatcher for Local 364, when he does a referral, he posts the positions on a recorder for access by Local members. ESCHEN said that when an electrician calls in for a position, he [ESCHEN] puts their name on a list until the required number of electricians is reached. ESCHEN related he then forwards the list of names and social security numbers to the contractor via facsimile. ESCHEN advised COM ED maintained a list of individuals that were not acceptable to COM ED for one reason or another, including incomplete work history or a serious offense, although ESCHEN stated the last list he received was a "thick list" so he threw it away. ESCHEN stated he usually does not hear anything from the contractor after the list was submitted, although on occasion the contractor has contacted the Local with various problems regarding names on the list [NFI].

ESCHEN stated he reviewed the Local's Book 2 and his call log and determined that OHL responded to a referral on September 27, 1999, and was subsequently rejected by "COM ED." ESCHEN denied speaking with OHL on the telephone and informing him [OHL] that "They don't want you. You're not welcome." ESCHEN stated he does not recall OHL being rejected by COM ED and related that the contractors rarely reject referrals, although they have the right to do so. ESCHEN advised that the secretaries in the Local usually handle telephone calls from Local members or other electricians concerning referrals. ESCHEN stated he did not have any knowledge of OHL being "blacklisted."

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

Interview of Michael R. HALLSTROM (Exhibit 9)

On December 6, 1999, HALLSTROM, Assistant Business Manager, Local 364, IBEW, Rockford, Illinois, was interviewed by OI:RIV. HALLSTROM related the following information in substance.

HALLSTROM stated he did not recall speaking to any representative of either BYRON or POPE regarding OHL's rejection in September 1999. HALLSTROM denied speaking with OHL and has no knowledge of OHL being "blacklisted."

Interview of Joe A. LEECH, Jr. (Exhibit 10)

On December 7, 1999, LEECH, Employee Concerns Administrator at BYRON, COM ED, was interviewed by OI:RIV. LEECH related the following information in substance.

LEECH stated that as the Employee Concerns Administrator, he assists in the administration of exit interviews for departing employees and contractors. LEECH related the exit interview is part of the out-processing checklist. LEECH described the purpose of the exit interview as a chance for the employee to disclose any concerns they may have prior to departure. LEECH said he investigates all concerns brought to him during this process. Although LEECH did not initially recall OHL and his concerns, he [LEECH] recalled an issue that caused a great deal of "heartburn and discontent" with the electricians during an outage in the March-April 1999 time frame. LEECH described the issue as the contractor, POPE, using laborers to do certain electrical work, which upset the union members. LEECH related that he recalled that Bob VIVIAN, Construction Superintendent, BYRON, COM ED, and Fred TALSMA, Project Manager, BYRON, POPE, had an agreement to allow the laborers to help pull cables in order to get the job completed on schedule. LEECH recalled that the Local was unable to provide an adequate number of electricians to fill the job request.

LEECH did not recall OHL providing him with any concerns during an exit interview, although he did state that OHL's name sounded familiar to him. LEECH advised he never had a conversation with RAMSBY regarding OHL's concerns and denied discussing the rejection of OHL's employment at BYRON in late September 1999. LEECH added that if OHL had filed concerns with him when he [OHL] left, he [LEECH] would have investigated the issues, although he

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

does not provide the name of the individual who filed the concern to others. LEECH stated he did not have any knowledge of OHL being "black listed."

Interview of Robert K. RAMSBY (Exhibit 11)

On December 7, 1999, RAMSBY, former Night Shift Superintendent, POPE, was interviewed by OI:RIV. RAMSBY related the following information in substance.

RAMSBY stated he was employed by POPE from 1976 until November 12, 1999, when he was laid off due to lack of work. RAMSBY advised he was familiar with OHL as an electrician who was employed by POPE on night shift during an outage in March and April 1999 at BYRON. RAMSBY related that during the outage, some problems arose and OHL became a general foreman on the shift and he [RAMSBY] became a superintendent on that shift in charge of OHL. RAMSBY described the problem that led to the changes as lack of production. RAMSBY related that George MEIER [NFI], the general foreman that worked for him prior to OHL, quit as a general foreman because he said he could not take the pressure anymore and wanted to go back to be a regular worker. RAMSBY described the outage as "very stressful to Commonwealth Edison, trying to meet ... their outage dates and the shorter outages and stuff like that. It was very stressful at the time ... So there was just a lot of pressure with the people involved in it."

RAMSBY estimated that he supervised OHL for about 3 to 4 weeks and rated his [OHL's] supervisory skills as [REDACTED] RAMSBY cited OHL's failure to keep track of his workers as one example of his deficiencies. RAMSBY opined that OHL did not belong in a leadership position. RAMSBY stated he left OHL in the position of general foreman until he understood what was going on with the shift. According to RAMSBY, once he got involved in the shift and the number of electricians started to decline, he cut OHL back from a supervisor to a "worker." RAMSBY related that he heard "rumors from the field" through JOHNSON that OHL threatened to have all of his men walk out if he [OHL] had to "work with the tools." RAMSBY said OHL was "dictating that he should be a foreman, and that that was his position." RAMSBY related that JOHNSON told him that he [JOHNSON] told OHL that "If you want a supervisor's job that bad, you can have mine," at which time OHL said, "No, I don't. I don't want the job that bad." RAMSBY stated that was the last he heard of the issue.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

RAMSBY stated OHL did not raise any concerns with him while he [OHL] was employed by POPE. RAMSBY said that after OHL left the job, he heard that there may have been a cable bend radius problem with the DRPI job. According to RAMSBY, the problem was investigated, and it was determined there were no cable bend radius problems. RAMSBY related he heard nothing more involving OHL until he tried to come back with POPE.

RAMSBY stated that if OHL had a problem with the lack of "tailgate" meetings and the lack of proper paperwork, it would have been his [OHL's] responsibility as foreman to take care of it. RAMSBY said he was responsible for assigning the work; OHL was responsible for having the tailgate meetings; and if he was not having them, it was his responsibility and a necessary part of the job. RAMSBY related that what usually occurred was that the foremen would be assigned their jobs, and it would be up to them to go out and have the tailgate meetings with their men. RAMSBY stated that when OHL arrived for the outage in March 1999, he was not a foreman, although he was made one later in the outage because POPE had a "hard time finding foremen." RAMSBY believed that OHL was selected as a foreman by MEIER [NFI]. According to RAMSBY, he [RAMSBY] was told that when MEIER quit the general foreman position, OHL "was voted in as a general foreman, which is unheard of." RAMSBY opined that OHL was chosen because the other foremen did not want the job. RAMSBY estimated that OHL was a general foreman for approximately 2 weeks.

RAMSBY stated that OHL did not report to him that some of the work packages were not available for the workers when it was time to go in and do work, although he added that would be OHL's responsibility as a foreman and general foreman. According to RAMSBY, the rule at BYRON was that once you were in containment, there were no organized breaks, although the workers were given a long lunch hour. RAMSBY stated that was a standard procedure which was given to POPE by the maintenance services department and was explained to all contract employees. RAMSBY said he gave the employees a list of all the expectations, and the break policy was one of them. RAMSBY stated he never reprimanded OHL for members of his [OHL's] shift taking a break.

RAMSBY stated OHL did not raise any concerns to him regarding work packages, nor did he raise concerns regarding the use of QC inspections. RAMSBY stated that the practice of a general foreman signing off on work packages during a turnover was

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

"acceptable." According to RAMSBY, not everyone was trained in signing off packages, and if the foreman deemed that the work was completed correctly, he could sign it off.

RAMSBY stated he rejected OHL during the outage which began in October 1999. RAMSBY said that per the union agreement, it is the contractor's privilege to deny individuals without providing a reason. RAMSBY stated he contacted Mike HALLSTROM, an assistant business agent at Local 364 [NFI], and rejected OHL as a contract employee during the outage because "the way he [OHL] acted when he was broke down from a foreman to a worker when he threatened to pull all his people off site. He refused the work." RAMSBY stated OHL said, "If I go to work, all the people on this crew are going to walk out with me." RAMSBY said he did not need individuals "stirring up those kinds of problems on-site." RAMSBY advised OHL was not reduced from a general foreman to a worker for any specific reason and not for raising any concerns. RAMSBY stated he did not discuss his decision to reject OHL with COM ED personnel, although he may have consulted with TALSMA. RAMSBY stated that the decision to reject OHL was his alone. RAMSBY said he did not "blacklist" OHL, and if OHL were to return to BYRON in the future, "everything would be fine." RAMSBY summarized that he felt that the way OHL departed BYRON the previous outage did not "prove" himself as a worker and with outages becoming shorter, OHL was "a hindrance to the work site more than a help." RAMSBY stated there is no such thing as a "blacklist."

Interview of James D. JOHNSON (Exhibit 12)

On January 4, 2000, JOHNSON, former General Foreman, POPE, was interviewed by OI:RIV. JOHNSON related the following information in substance.

JOHNSON advised he was employed by POPE during an outage at BYRON circa mid-March to mid-April 1999 and became familiar with OHL since they worked together on the day shift. According to JOHNSON, both he and OHL started the outage as "workers," although later they were both elevated to foremen. JOHNSON stated he [JOHNSON] was later elevated to a GF and OHL worked for him on the day shift for approximately 3 weeks. JOHNSON described the April 1999 outage as "smooth" and stated he was not aware that OHL had raised concerns during the outage. JOHNSON opined that OHL may have been concerned about the lack of

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

QC coverage during the crimping of the control rod drive mechanism (CRDM)/DRPI cables since that evolution had QC coverage during initial installation. JOHNSON said that the work conducted on the CRDM/DRPI cables during the April 1999 outage was a nonsafety-related package and did not require QC coverage.

JOHNSON stated he was unaware that workers under him refused to sign work packages as alleged by OHL. JOHNSON related that if someone quit prior to signing off a work package, he [JOHNSON], as the GF, would sign off on the package. JOHNSON stated he did not sign off any "work steps" on a work package that he did not complete, although he did sign off work packages as the foreman.

JOHNSON did not recall if OHL had problems working for RAMSBY, although he recalled OHL was reduced from a GF to a worker by RAMSBY. JOHNSON stated OHL was not angry about the decision, although he [OHL] did question why he was reduced. JOHNSON said he offered OHL his [JOHNSON's] "white hat," another term for a foreman's position, although he [OHL] refused. JOHNSON did not recall OHL threatening to walk off the job. JOHNSON advised that to the best of his recollection, OHL was laid off with the rest of the crew at the end of the outage, although he [OHL] may have departed prior to the end of the outage as many of the electricians asked for voluntary lay offs so they could go to an outage commencing at Braidwood. JOHNSON described OHL as an "easy-going guy who did not cause problems."

#### Review of Documentation

##### Work Package Traveler Number 940012951-01, undated (Exhibit 13)

This work package, provided by OHL, described the termination of various cables by the electrical department. The work package was marked as nonsafety. Step 1 of the work package states, in part, that "Prior to initiating work, Maintenance Supervisor and/or Lead Worker shall: ...perform pre-job briefing" and "Verify status of required material..."

##### POPE Field Shop Employment Record - Craft Personnel, dated March 22, 1999 (Exhibit 14)

This document indicated OHL was hired by POPE on March 22, 1999, and was terminated on April 14, 1999.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Letter from TALSMA to Karl MOSER, dated December 7, 1999  
(Exhibit 15)

This letter from TALSMA to Karl MOSER, Regulatory Assurance Manager, BYRON, COM ED, stated OHL was hired by POPE as a journeyman electrician on March 22, 1999. The letter further stated that OHL became a foreman on April 6, 1999, served as a general foreman on April 11 and 12, 1999, and was returned to journeyman electrician status on April 13, 1999. According to the letter, OHL was terminated on April 14, 1999.

COM ED Concern Disclosure Statement, dated April 12, 1999  
(Exhibit 16)

This document was submitted by OHL to LEECH and identified several "comments" OHL made concerning the outage. The comments included:

- the DRPI cables not being safety related
- packages not being ready
- no material for job
- "just get in and dose out"
- need better turnovers from shift to shift

AGENT'S NOTE: A review of this document disclosed that OHL did not list the DRPI cable bend radius concern on the form, although this concern was possibly brought to LEECH's attention verbally. Additionally, it was noted that OHL checked the "comment" box rather than the "concern" box.

E-mail from LEECH to James A. RAMAGE, dated April 16, 1999  
(Exhibit 17)

This e-mail requested RAMAGE, Project Manager, Site Engineering and Construction, BYRON, COM ED, investigate the DRPI cable bend radius concern.

E-mail from RAMAGE to LEECH, dated April 16, 1999 (Exhibit 18)

This e-mail forwarded to LEECH a response from Chris SEPANIAK, Field Engineer, COM ED, regarding the DRPI cable issue.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Memorandum from SEPANIAK to RAMAGE, undated (Exhibit 19)

This memorandum described SEPANIAK's investigation into the alleged violation of the DRPI bend radius. According to SEPANIAK, his inspection of the DRPI cables failed to identify any cables which exceeded the minimum bend radius of 10.5 inches.

Book Registration for Local Union 364, IBEW, dated September 27, 1999 (Exhibit 20)

This document indicated that OHL registered in the Out of Work Book for Local Union 364 on September 27, 1999.

Photocopy of Registration Log, undated (Exhibit 21)

This document indicated that OHL signed in at Local Union 364 on September 27, 1999. A comment in the log adjacent to OHL's name stated that OHL was "rejected by W. A. Pope," although OHL's name was to "stay in book."

Facsimile Transmittal from Local Union 364, IBEW, to POPE, dated September 29, 1999 (Exhibit 22)

This document forwarded 22 names, including OHL's, to POPE for employment during the October 1999 outage at BYRON.

Phone Call Log from ESCHEN, dated September 27, 1999 (Exhibit 23)

This handwritten phone log indicated that POPE requested 22 journeyman electricians for BYRON starting October 4, 1999. OHL's name was lined through and "rejected 9-30-99" written adjacent to his name.

IBEW, Local 364, Book 2, dated September 27, 1999 (Exhibit 24)

This computer printout indicated that OHL was listed on the IBEW, Local 364, Book 2.

Termination Notice, dated April 13, 1999 (Exhibit 25)

This notice, prepared by RAMSBY, notified the payroll department that OHL's employment was terminated on April 14, 1999. The reason for termination was listed as "Laid Off-No Work."

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

IBEW, Local 364, Member History, dated December 6, 1999  
(Exhibit 26)

This computer printout listed OHL's work history with Local Union 364.

Agreement between Northern Illinois Chapter of the National Electrical Contractors Association and Local Union 364, IBEW  
(Exhibit 27)

Page 28, Section 5.03, of this agreement stated "The employer shall have the right to reject any applicant for employment."

Agent's Analysis

An analysis of the evidence was performed to determine if OHL was the subject of employment discrimination by POPE management for reporting safety concerns.

1. Protected Activity

According to OHL, he reported numerous concerns to his supervisor, RAMSBY, regarding safety concerns he identified at the plant site. OHL's claims are supported by the exit interview sheet he completed which lists several "comments" (Exhibit 16). This report can be described as protected activity.

2. Employer Knowledge

Although his supervisors could not specifically recall OHL's identification of problems at the plant site, the availability of the exit interview sheet (Exhibit 16) bearing OHL's name indicates that the information was available to POPE.

3. Adverse Action

OHL's rejection by POPE for employment during the October 1999 outage can be classified as an adverse action.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

#### 4. Adverse Action Caused by Protected Activity

There is no linkage between the protected activity and the adverse action. OHL was rejected for employment during the October 1999 outage by RAMSBY due to OHL's behavior during the April 1999 outage. According to RAMSBY, he did not feel that having OHL on the job site during the October 1999 outage would be beneficial to the outage since OHL caused disruptions during the April outage. There were no indications that employees of POPE or COM ED had any communications regarding the "black listing" of OHL. According to RAMSBY, it was his decision alone to reject OHL for employment during the October 1999 outage, and according to his testimony, RAMSBY did not base the rejection on OHL's involvement in protected activity.

#### Conclusions

Based on review of the testimony, documentary evidence developed during the investigation, and coordination with the RIII technical staff and Regional Counsel, the allegation that OHL was the subject of employment discrimination by management for identifying safety concerns was not substantiated.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

THIS PAGE LEFT BLANK INTENTIONALLY

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated October 26, 1999.
2	Transcript of Interview of OHL, dated November 3, 1999.
3	Memorandum to CLAYTON, dated November 16, 1999.
4	Memorandum from GROBE, dated December 1, 1999.
5	Memorandum to BERSON, dated November 16, 1999.
6	E-mail from BERSON, dated December 2, 1999.
7	Transcript of Interview of FENGER, dated December 6, 1999.
8	Transcript of Interview of ESHEN, dated December 6, 1999.
9	Interview Report of HALLSTROM, dated January 3, 2000.
10	Transcript of Interview of LEECH, dated December 7, 1999.
11	Transcript of Interview of RAMSBY, dated December 7, 1999.
12	Interview Report of JOHNSON, dated January 4, 2000.
13	Work Package Traveler Number 940012951-01, undated.
14	POPE Field Shop Employment Record - Craft Personnel, dated March 22, 1999.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~

Case No. 4-1999-059

- 15 Letter from TALSMA to Karl MOSER, dated  
December 7, 1999.
- 16 COM ED Concern Disclosure Statement, dated  
April 12, 1999.
- 17 E-mail from LEECH to James A. RAMAGE, dated  
April 16, 1999.
- 18 E-mail from RAMAGE to LEECH, dated April 16, 1999.
- 19 Memorandum from SEPANIAK to RAMAGE, undated.
- 20 Book Registration for Local Union 364, IBEW, dated  
September 27, 1999.
- 21 Photocopy of Registration Log, undated.
- 22 Facsimile Transmittal from Local Union 364, IBEW,  
to POPE, dated September 29, 1999.
- 23 Photocopy of Phone Call Log from ESCHEN, dated  
September 27, 1999.
- 24 IBEW, Local 364, Book 2, dated September 27, 1999.
- 25 Termination Notice, dated April 13, 1999.
- 26 IBEW, Local 364, Member History, dated December 6,  
1999.
- 27 Agreement between Northern Illinois Chapter of the  
National Electrical Contractors Association and  
Local Union 364, IBEW.

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION IV~~