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AFL-CIO

International Brotherhood of Electrical Workers

LOCAL UNION NO. 245

705 LIME CITY ROAD ROSSFORD, OHIO 43460

May 17, 2013

Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

RE: Docket ID NRC-2013-0024

Dear Ms. Vietti-Cook:

My name is Larry Tscherne, and I am the Business Manager for the International Brotherhood of Electrical Workers, Local Union No. 245. Our members work as Reactor Operators, Operators, Trainers, Electricians, Instrument and Control Technicians, Maintenance Mechanics, Maintenance Serviceman, Chemistry, Radiation Control Technicians, Certified Welders, Health Physics Serviceman, Storekeepers, and Material Handlers at the Davis-Besse Nuclear Power Plant and periodically at the Perry Nuclear Power Plant, which is located in Ohio and the Beaver Valley Nuclear Power Plant which is located in Pennsylvania all of which are operated by FirstEnergy. Local 245 has enjoyed a collective bargaining relationship with Toledo Edison, Centerior Energy and now FirstEnergy since the construction and startup of Davis Besse.

I have reviewed the NEI Petition for Rulemaking to Amend 10 C.F.R. §73.56, "Personnel access authorization requirements for nuclear power plant," dated January 25, 2013. I am writing to explain why, based on my 19 years of representing employees working in two different nuclear facilities ("Power Plants"), it would be unfair and unwise for the U.S. Nuclear Regulatory Commission ("NRC") to adopt NEI's proposal.

First, Local 245 negotiates with FirstEnergy to secure collective bargaining agreements ("CBAs") that outline the wages, hours and terms and conditions for our members working in the Power Plants. Among the most essential provisions of any CBA is a binding arbitration procedure through which the employer and the union can seek redress of contractual violations. The arbitration process also permits employees who are terminated from their jobs to grieve their loss of employment. Our negotiated grievance process has always allowed an arbitrator to determine whether termination was appropriate, and if it was not, the employee is re-instated as if he were never unfairly fired. As you can certainly understand, termination of employment is the "capital punishment" of labor relations, and reinstatement of an employee without loss of

pay, benefits or seniority is the appropriate remedy where capital punishment is wrongly imposed without Just Cause.

The grievance and arbitration process we negotiated with FirstEnergy into our CBAs permit the affected employee and the employer a full opportunity to be heard by an arbitrator, who then makes credibility determinations and sometimes legal determinations based on the information presented to him or her. The importance of the "neutral party" in labor arbitration is that he or she is purely "neutral" because they come to the arbitration hearing without any notice of the facts or personnel surrounding the particular grievance. The neutral party is like a blank slate on which the employer and the employee are permitted to present and arrange their evidence. The negotiated use of an arbitrator allows for a fundamentally fair review process.

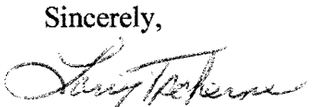
The NEI's proposed amendment would restrict power of labor arbitrators and remove the "make whole" remedy to which an unfairly terminated employee should be entitled. The "make whole" remedy is normal and accepted for employees in all manner of professions where a collective bargaining agreement exists. This includes professions where security and health are primary issues, like police officers, fire fighters, and nurses. The NEI proposal would carve out collectively-bargained employees in nuclear facilities from having at arbitration the full remedy of reinstatement. The rule, if adopted, will cause hostility to the nuclear plant employers and the NRC, because they would be working together to affect labor relations that do not have any identifiable or quantitative effect on safety.

In the history of our Local's bargaining relationship with FirstEnergy, we have never used the grievance and arbitration process to reinstate an employee who, upon return to work, proved to be either untrustworthy or unreliable under §10 C.F.R. 73.56. Where an employee's termination has been subject to the grievance process, either the employee has been reinstated and made whole, or the employee has remained without employment. The Union shares the NRC's commitment to protecting Power Plant security and public safety. We have no interest in protecting anyone who might constitute a genuine threat to either.

Where employers negotiate CBAs for terms and conditions of employees within Power Plants, the employers can negotiate restrictions on the power of the arbitrator in their grievance procedure. The NEI's proposed rule amendment is an effort to secure through regulation something that our particular Power Plant employer, FirstEnergy, has not even attempted to secure through negotiations. Local 245 believes that restrictions on labor arbitrators is not an appropriate use of the NRC's rulemaking authority, especially where the employers and labor organizations expressly share the NRC's commitment to secure and safe nuclear facilities. The proposed rule will only make employees at Power Plants subject to unfair terminations without Just Cause and without making the Power Plants or the public any safer.

Second, NEI states in its request that the licensee's unescorted access review process is "fundamentally fair." However, it has been our experience, in the Power Plants where our members work, that the review procedures used by the employer to deny or revoke access authorization are fundamentally *unfair*. Employees rarely receive a full or clear explanation of

Sincerely,



Larry Tscherne
Business Manager, IBEW Local 245

why their access has been revoked or denied or why the company's internal management review denied their appeal.

For example, we presently are arbitrating the termination of one of our members who worked at the Davis-Besse facility for more than twenty-seven (27) years without any challenge to his unescorted access privileges. In July 2012, the employer determined the employee had improperly completed his time cards for the previous two years. The employee's supervisor reviewed and approved the time cards each week. Nonetheless, the employer fired our member, and the access review board then revoked his unescorted access privileges. The denial notification said "unescorted and escorted access" is denied under 10 C.F.R. 73.56 for "willful omission/falsification," which clearly is intended under the regulations to pertain to a person's employment application.

In this case, the alleged falsification was not even "falsification," since the member's supervisor reviewed and approved his time entries every week. And the alleged falsification was not about the employee's application for employment – the member had been screened more than once over the 27 years with the background check and other verification of employability. The member's "offense," concerning how he reported his pay rate, had nothing to do with security of the site and safety of the public – there was absolutely no basis for the access review committee to revoke the member's unescorted access privileges.

So our member appealed the denial of his access privileges, and the access review committee did not let him appear before it to defend himself. The access review committee included the same Employer's representative who had terminated our member, meaning the access review process was neither neutral nor objective. The access review committee denied our member's appeal and provided our member no reason for its decision. Our member is unable, now, to secure work in any Power Plant because of the access denial, despite the fact that our member has provided 27 years of quality, safe service to the industry. This is tremendously unfair.

Accordingly, our experience as demonstrated in this case is that the access authorization review committee, established by the employers at Power Plants, is not "fundamentally fair," as it does not make decisions based upon concerns of site security or public safety.

For these reasons, on behalf of Local 245 and our approximately 800 members, we request the NRC decline to exercise its rulemaking authority in the manner proposed earlier this year by NEI.

Sincerely,

Larry Tscherne
Business Manager, IBEW Local 245