



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION V

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WALNUT CREEK, CALIFORNIA 94596-5368

JAN 11 1994

EA 93-240

Inter-Con Security Services, Inc.
900 South Garfield Avenue
Alhambra, California 91801

Attention: Mr. E. Hernandez Jr., President

SUBJECT: NRC SPECIAL INSPECTION REPORT NOS. 50-206, 361,
362/93-30

This refers to the special inspection conducted by Mr. F. R. Huey of this office on August 31 through September 24, 1993, at the San Onofre facility. The results of this inspection were documented in the referenced NRC inspection report, which was transmitted to you on October 1, 1993. This report addressed two apparent violations of 10 CFR 50.7 concerning discrimination against contractor personnel employed at San Onofre. These issues were discussed with you during an enforcement conference held in the Region V Office on October 18, 1993. Our discussion during the enforcement conference was summarized in Meeting Report No. 50-206/93-33, transmitted to you on November 8, 1993.

One of the violations occurred on October 21, 1991, and involved an Inter-Con Security Services (Inter-Con) security guard employed by SCE as a contract employee. He was discharged by an Inter-Con manager because he raised safety concerns to Inter-Con management related to his radiological safety during Unit 1 outage activities. During the enforcement conference, the involved manager indicated that he had been trained and clearly understood the licensee's non-discrimination policy, and did not believe that he had violated that policy, saying that the employment action was taken because Inter-Con considered the individual insubordinate. Although Inter-Con advised the security guard that it was safe to work, in the NRC's view Inter-Con did not satisfy the standard set down in Department of Labor cases with respect to the qualifications of the person who advised the employee on the safety of working as directed or with respect to the detail of the explanation that was provided to the employee. Therefore, the NRC has concluded that a violation occurred. In reaching its conclusion, the NRC relied on the following facts: (1) the watchperson was engaging in protected activity, and (2) under DOL case law, Inter-Con did not provide sufficient information to the watchperson to make the termination a legitimate action for a refusal-to-work.

The Secretary of Labor has held that refusal to work is subject to protection if the employee has a good faith, reasonable belief

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that working conditions are unsafe or unhealthful. The Secretary has explained that whether the belief is reasonable depends on the knowledge available to a reasonable man in the circumstances with the employee's training and experience. However, a refusal to work loses its protection after the perceived hazard has been investigated by responsible management officials and government inspectors, if appropriate, and, if found safe, adequately explained to the employee. See Pensyl v. Catalytic, Inc., Case No. 83-ERA-002, Decision and Order (of Remand), January 13, 1984, and Tritt v. Fluor Constructors, Inc., Case No. 88-ERA-029, Decision and Order (of Remand), August 25, 1993.

The NRC views employee discrimination as a very serious matter and, as provided by 10 CFR 50.5, "Deliberate Misconduct," licensee contractors are subject to escalated enforcement action, including orders to remove individuals when appropriate, for violations of 10 CFR 50.7, "Employee Protection." However, since the NRC has concluded that the discrimination in this case did not involve deliberate misconduct and was more closely related to the failure to adequately answer the employee's concerns regarding the safe working conditions, the NRC has classified this violation at Severity Level IV and is exercising the discretion allowed in the Enforcement Policy in classifying this as a non-cited violation.

Nonetheless, based on our discussion during the enforcement conference, it does not appear that Inter-Con has taken aggressive action to implement measures to ensure that its supervisors involved in NRC-licensed activities are appropriately trained on or sensitive to discrimination matters. The NRC is also concerned that shortly after the incident, when SCE concluded that there had been discrimination, Inter-Con disagreed with this conclusion despite facts that clearly supported SCE's conclusion. Furthermore, during the enforcement conference, representatives of Inter-Con continued to appear unconvinced that discrimination had occurred. Inter-Con is encouraged to promptly correct these problems. Future occurrences of discrimination likely will result in NRC enforcement action not only against Inter-Con, but against the involved individuals as well.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

Sincerely,



K. E. Perkins, Jr.
Acting Regional Administrator

cc: See Next Page

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cc: H. Ray, Southern California Edison Company
R. Krieger, Southern California Edison Company
R. Rosenblum, Southern California Edison Company

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