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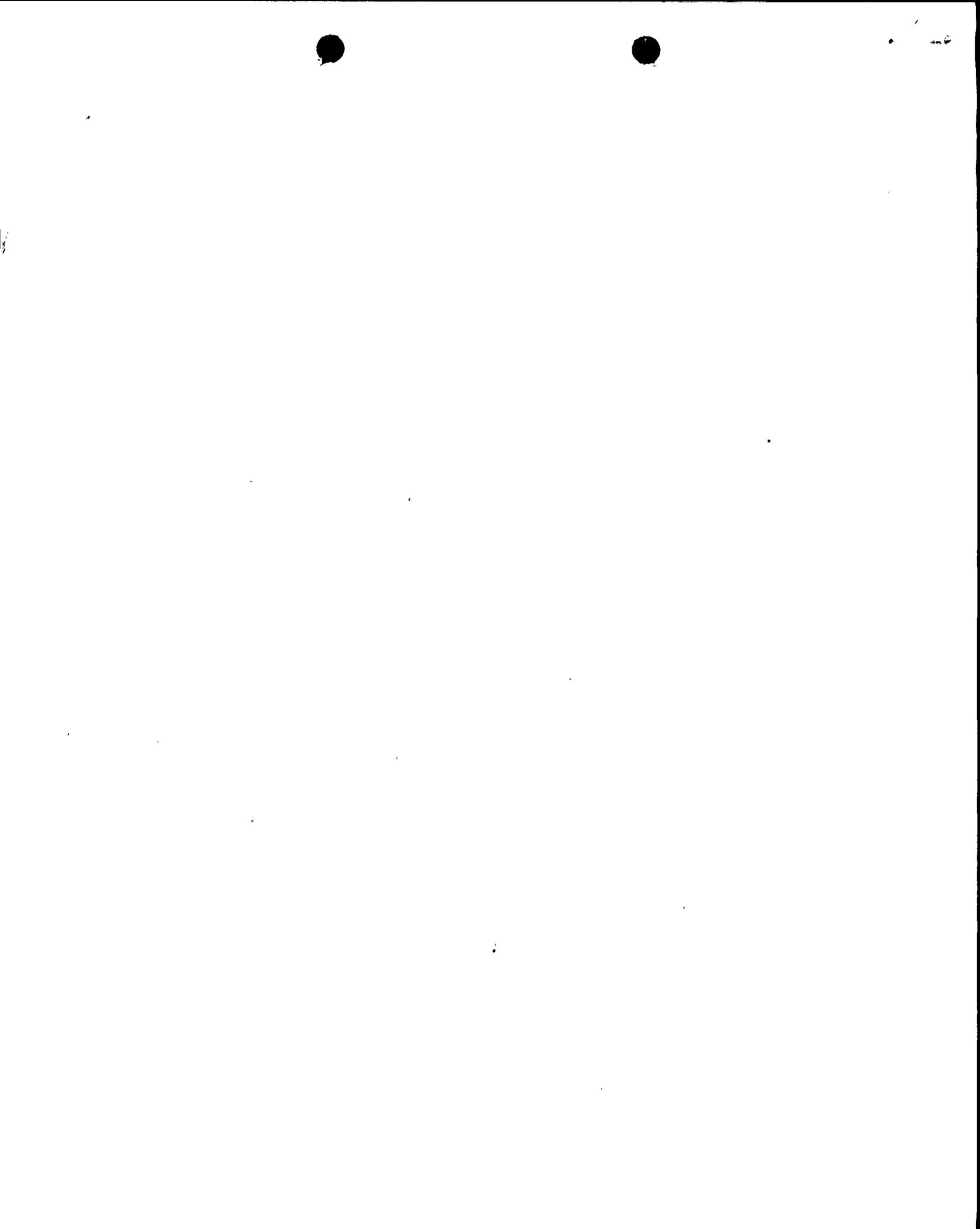
ACCESSION NBR: 8707080039 DOC. DATE: 87/06/26 NOTARIZED: NO DOCKET #
 FACIL: 50-275 Diablo Canyon Nuclear Power Plant, Unit 1, Pacific Ga 05000275
 50-323 Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Ga 05000323
 AUTH. NAME AUTHOR AFFILIATION
 SHIFFER, J. D. Pacific Gas & Electric Co.
 RECIP. NAME RECIPIENT AFFILIATION
 MARTIN, J. B. Region 5, Office of Director

SUBJECT: Responds to NRC 870527 ltr re violation of 10CFR50.7 re determination by US Dept of Labor Wage & Hour Div on 870506 that former employee of Bechtel denied reemployment. Denial based upon poor work performance & low force ranking.

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PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 77 BEALE STREET • SAN FRANCISCO, CALIFORNIA 94106 • (415) 781-4211 • TWX 910-372-6587

JAMES D. SHIFFER
VICE PRESIDENT
NUCLEAR POWER GENERATION

June 26, 1987

PGandE Letter No.: DCL-87-149

John B. Martin, Regional Administrator
U.S. Nuclear Regulatory Commission, Region V
1450 Maria Lane, Suite 210
Walnut Creek, CA 94596

Re: Diablo Canyon Units 1 and 2
Docket No. 50-275, DL-DPR-80
Docket No. 50-323, DL-DPR-82
Response to NRC Letter of May 27, 1987
Regarding Violation of 10 CFR 50.7

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REGISTRY

ATTENTION: MR. B. H. FAULKENBERRY

Dear Mr. Martin:

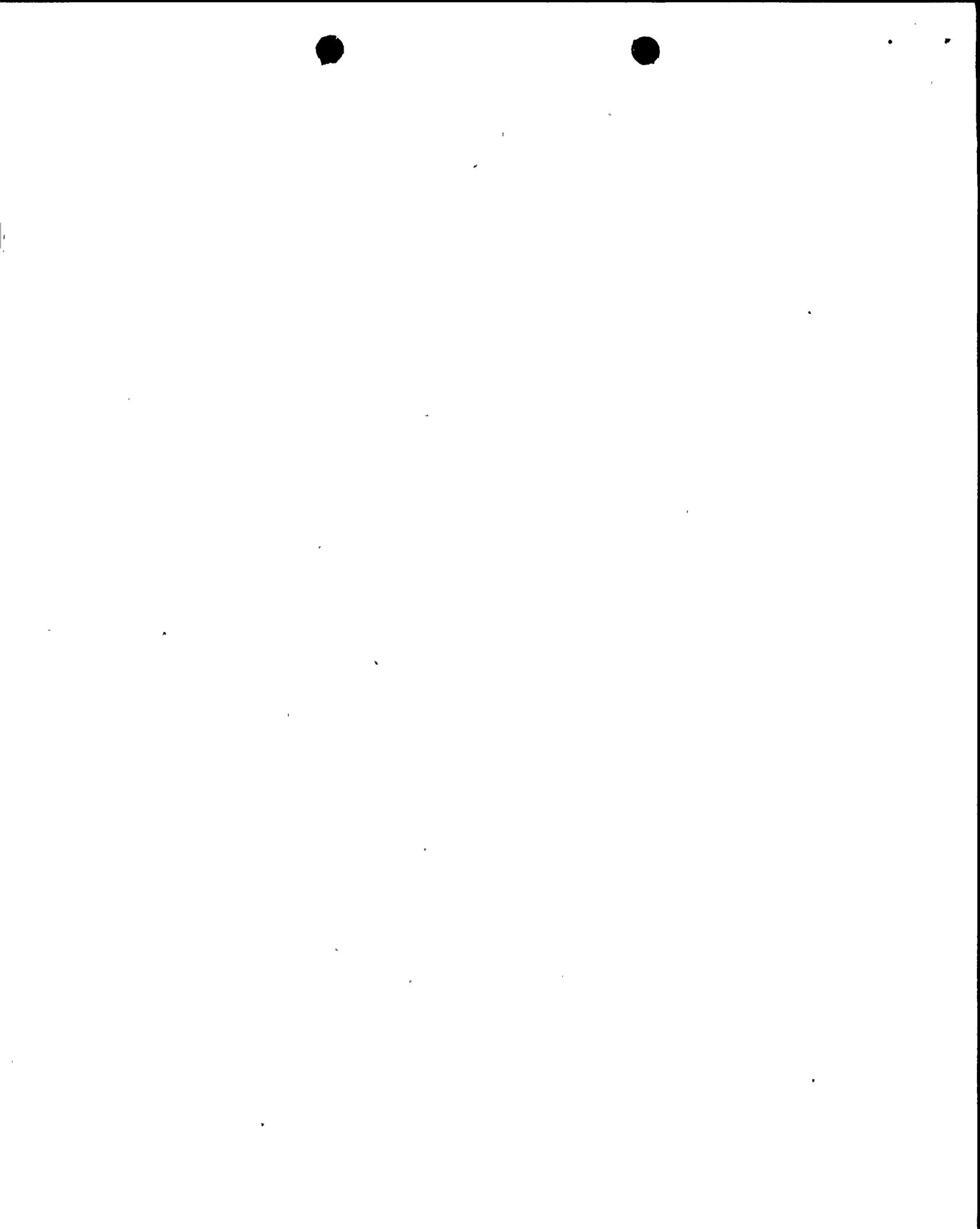
This is a response to your letter of May 27, 1987 regarding a determination by the U.S. Department of Labor's Wage and Hour Division on May 6, 1987 that a former employee of Bechtel has been denied reemployment at Diablo Canyon in violation of 10 CFR 50.7 due to safety concerns he had raised during previous employment with Bechtel at Diablo Canyon. In that letter, you requested that PGandE provide the basis for denying employment and describe our actions, if any, taken or planned to assure that this denial of employment did not "...have a 'chilling' effect in discouraging other licensee or contractor employees from raising perceived concerns".

Before discussing the background facts and subsequent developments in this matter, I would like to reiterate PGandE's commitment to the free and open exchange of safety concerns without fear of recrimination or adverse personnel actions. Periodically, we have reiterated this long-standing policy and, in addition, have created a Quality Hotline to enable individuals to communicate any quality concerns at Diablo Canyon.

With regard to the matter identified in your May 27, 1987, we have determined that it involves Ron Cowan, who was referred by the local union hall on April 3, 1987 for employment as an electrician for outage work being conducted by Bechtel at

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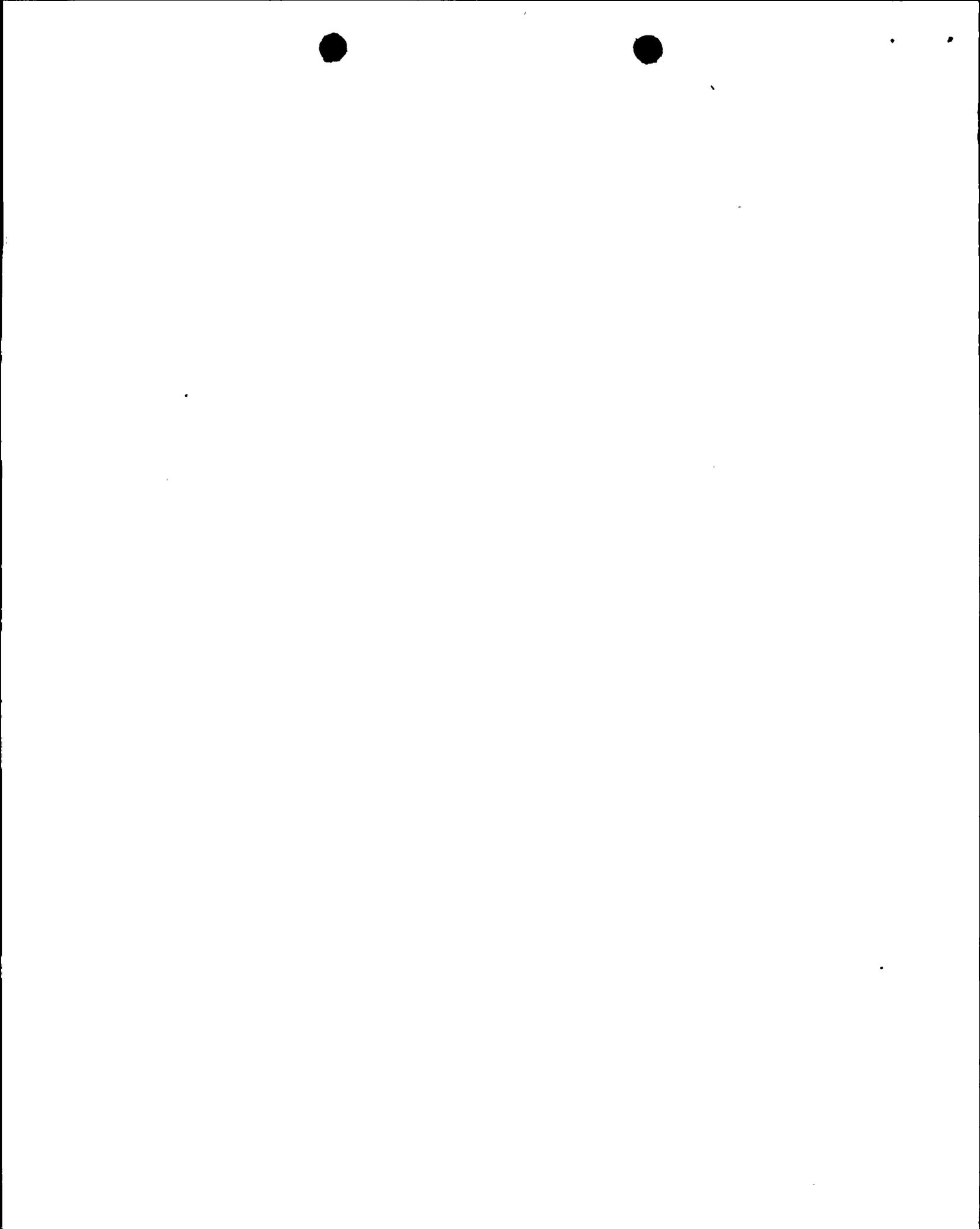


Diablo Canyon Unit 2. Bechtel site management refused to accept him based upon his prior poor work performance and low force ranking (8). This low force ranking (8 out of a possible 15) had been assigned by his foreman and general foreman - both union members - based upon his prior work performance during the Unit 1 outage in September/October, 1986.

Mr. Cowan immediately initiated a union grievance and concomitantly filed a complaint with the Secretary of Labor under the Energy Reorganization Act ("Act") on April 4, 1987. On May 4, 1987 Bechtel Construction filed its "position paper" with the Department of Labor's Glendale, California office, outlining its version of the facts surrounding Mr. Cowan's non-reemployment at Diablo Canyon (Enclosure 1). On May 7, 1987 the Department of Labor's Glendale office issued its decision that, after investigation, it had determined that Mr. Cowan was a protected employee and that Bechtel's failure to reemploy him on April 3, 1987 constituted discrimination as defined and prohibited by the Act. The decision also informed Bechtel of its right to appeal within five (5) days and seek a formal de novo hearing on the record (Enclosure 2). Bechtel filed a notice of appeal of this decision within the time prescribed. This action had the legal effect of setting aside the decision of May 7, 1987. We have been informed by Bechtel that the hearing on Mr. Cowan's complaint commenced before a DOL Administrative Law Judge ("ALJ") on June 24, 1987 in Los Angeles. However, shortly after the proceedings commenced, the ALJ strongly urged Mr. Cowan, who was appearing without counsel, to obtain the services of an attorney, and put the matter over 30 days for further proceedings.

During early April 1987, when the issue first arose, PGandE's personnel manager at Diablo Canyon reviewed Mr. Cowan's situation and determined that Bechtel's decision not to reemploy him was correct. This determination was memorialized in a memorandum dated April 9, 1987 (Enclosure 3).

Our review of the available information indicates that Bechtel's action in this case was correct. While we are mindful of the need to protect individuals who have engaged in protected conduct from arbitrary, capricious, and discriminatory conduct in employment matters, we believe such individuals are not entitled to a preference in employment. Rather, they are entitled only to an equality of opportunity for employment - a level playing field as it were. Otherwise, the "complaint" process could be invoked automatically by anyone to ensure continued employment to the detriment of non-complainants who would thus, ironically, suffer discrimination.



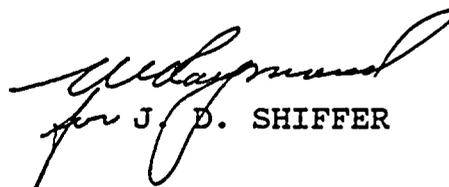
June 26, 1987

The facts of this case, notwithstanding the DOL May 7, 1987 action, reflected a reasoned and objective decision by Bechtel not to reemploy Mr. Cowan. PGandE feels that only the most capable workers should be performing maintenance and outage work at Diablo Canyon. We also concur with Bechtel's assessment that time is of the essence in this type of work and that "slow, inefficient, or non-productive workers can cause greater radiation exposure to themselves and their co-workers" than would be the case if more productive higher-skilled workers performed the work.

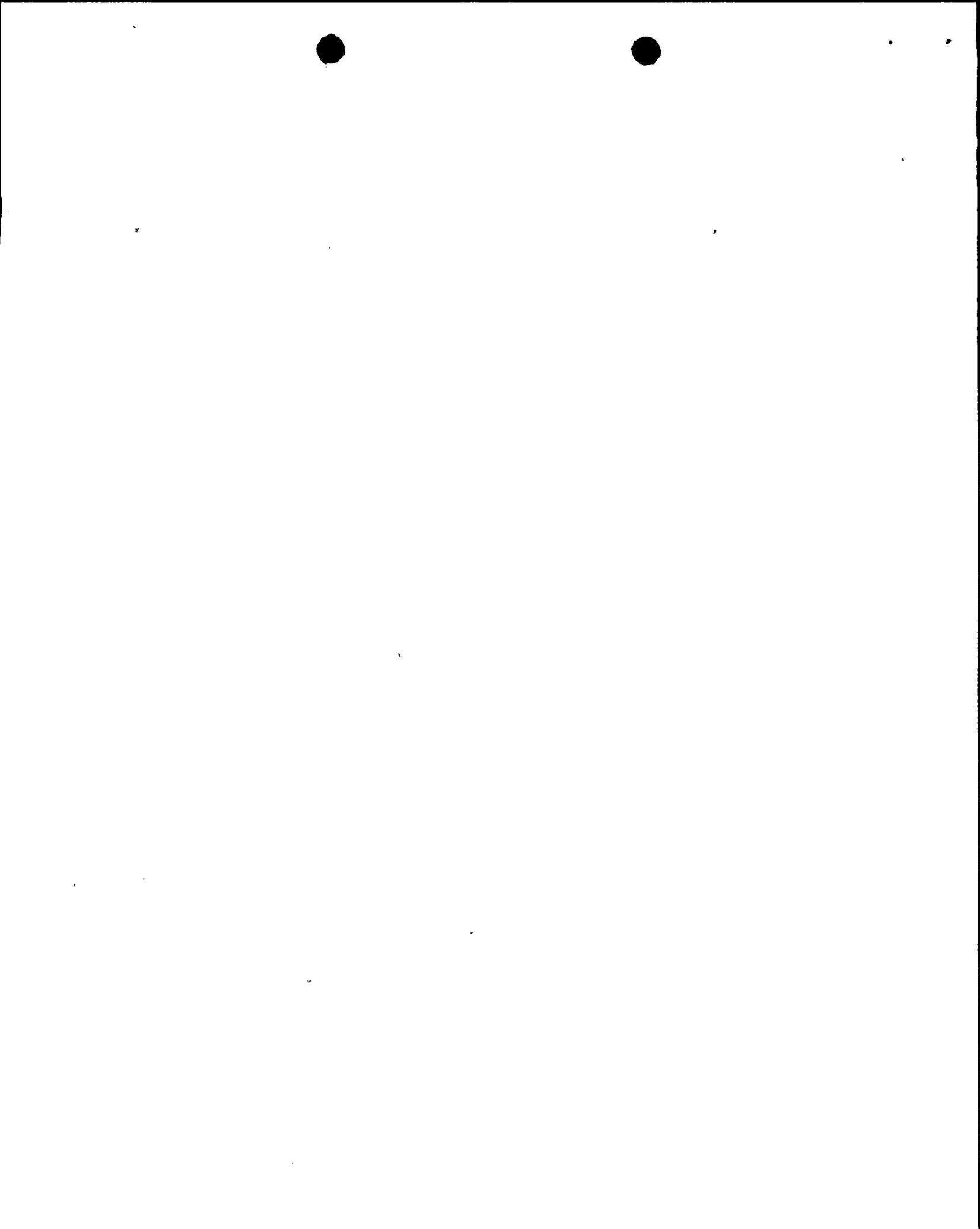
We do intend, however, to carefully monitor the DOL proceedings pending before the ALJ in Los Angeles. If any facts or information are developed at that hearing or otherwise come to our attention which cast doubt on our decision in this matter, you can be assured that we will take prompt and vigorous corrective and remedial action.

In this regard, we plan to send a supplemental report to you upon completion of the hearings and issuance of a decision by DOL in this matter. In that report, we will review the evidence and conclusions to determine what, if any, further action may be warranted. Pending completion of that proceeding, I intend to reaffirm in writing PGandE's commitment to equal employment opportunity in general and, in particular, of the need to be vigilant in assuring that protected employees are treated fairly.

Sincerely,


for J. D. SHIFFER

Enclosures (3)



Bechtel Construction, Inc.

Fifty Beale Street
San Francisco, California
Mail Address: P.O. Box 3965, San Francisco, CA 94119



May 4, 1987

VIA AIRBORNE EXPRESS

Mr. Ed Strickland
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
300 South Glendale Blvd., Suite 250
Glendale, Ca. 91205

Re: Ronald Cowan and Bechtel Construction, Inc.
(Diablo Canyon Project; BCI Job No. 17781)

Dear Mr. Strickland:

This will serve as a position statement on behalf of Bechtel Construction, Inc. ("Bechtel"). The information contained herein is based on my investigation to date, is offered solely in an effort to achieve an expeditious settlement of this matter and is subject to change in the event new information becomes available.

Bechtel is currently performing maintenance and outage work at the Diablo Canyon jobsite for PG&E. Unlike construction, which is manpower intensive, maintenance and outage work is highly specialized and requires the highest skill and production levels possible, particularly in technical trades like electrical. This is because craftsmen are often required to work in a nuclear environment where time is of the essence and slow, inefficient or non-productive workers cause greater radiation exposure to themselves and their co-workers than would occur if more productive higher skilled workers did the job.

Additionally, maintenance and outage work at Diablo is sporadic. There are only one or two outages per year, usually in the spring or in the fall. The outages usually last 4-8 weeks and result in a temporary buildup of men who will work extended hours until the outage is completed, and then are laid off. A "core" group of highly qualified electricians remains year round. Ronald Cowan was never part of this core group because his skills do not warrant it. His employment at



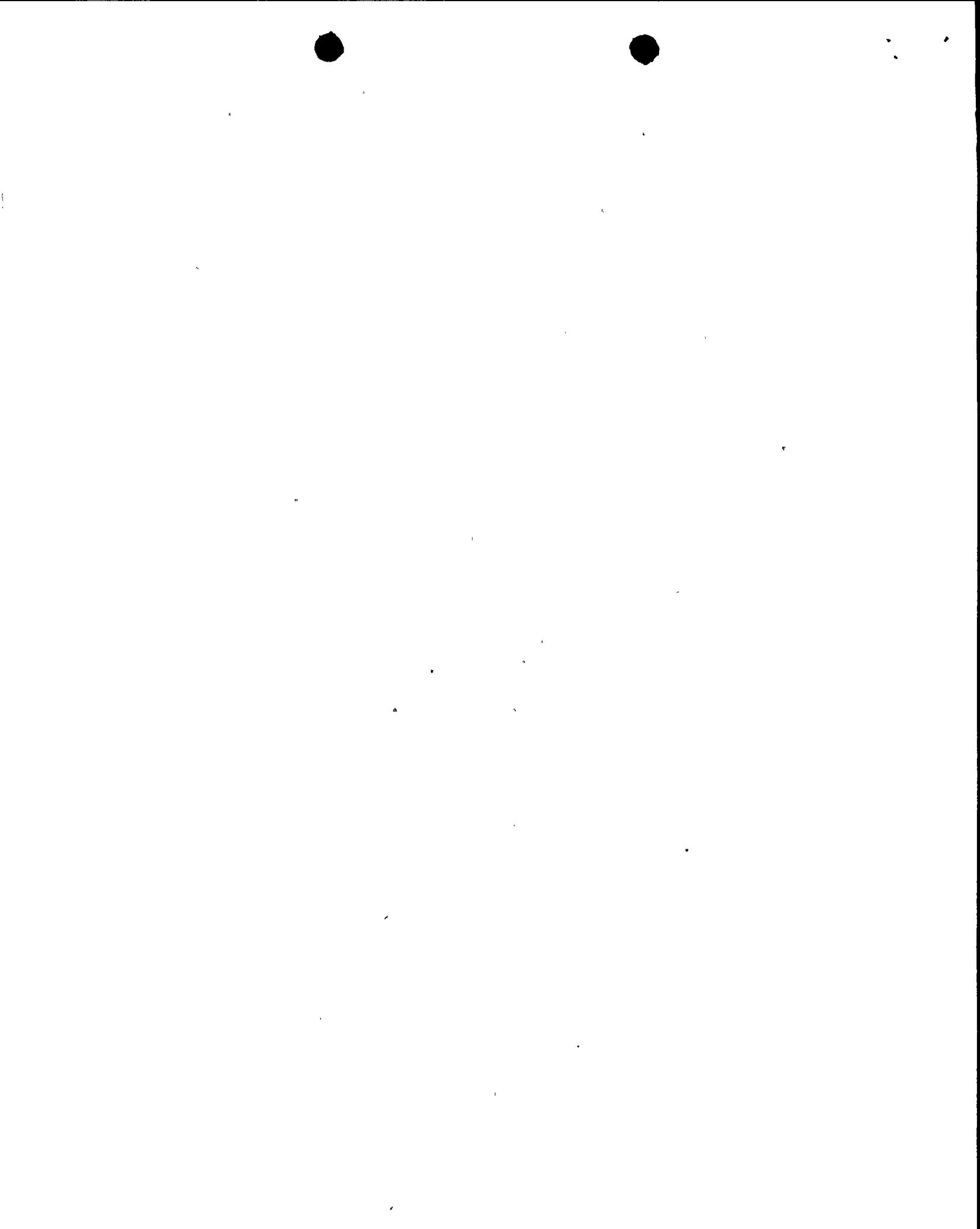
Bechtel, as will be explained below, was only related to outages.^{1/}

To determine skill levels electricians are force ranked by their foreman, general foreman and superintendent in three areas: quality of work, initiative and job knowledge. They are also ranked on safety and attendance by Bechtel safety and timekeeping, respectively. The higher the ranking, the better the worker; 15 is highest, 0 is lowest. This system has been in effect since 1985 and is used for employment decisions such as hiring and layoff.

Ronald Cowan's employment history is as follows. In January of 1985 he was laid off from work by Bechtel at Diablo Canyon. He filed his first ERA charge thereafter, which was settled in February of 1985. Subsequently, he went to work for Bechtel as an electrician at the Vandenberg Air Force Base project. He worked there for Bechtel on two separate occasions in 1985. He was rehired by Bechtel at Diablo Canyon on August 18, 1986 for an outage. At that time he was assigned to Foreman Chris Dennerlein and General Foreman Conrad Michel. Neither had worked with Mr. Cowan before. However, in an objective review of Mr. Cowan's performance by Mr. Dennerlein and Mr. Michel, both ranked him low in areas of productivity, job knowledge and initiative, as indicated on their statements, which are attached as exhibit 1. Both Mr. Dennerlein and Mr. Michel are union members. Both assert that their rankings of Mr. Cowan were not influenced by his ERA activity or direction from any higher level Bechtel supervision. Mr. Cowan's ranking was 8. By way of comparison, he was in the bottom 25% of electricians hired for the last outage. 90% of the electricians who worked on the outage were ranked 11 or better, as indicated in the following chart:

	<u>Rank</u>	<u>No.</u>	<u>%</u>
Top 25%	15	34	51
	<u>14</u>	5	8
Middle 25%	13	5	8
	<u>12</u>	8	12
Lower 25%	11	8	12
	<u>10</u>	2	3
Bottom 25%	9	4	6
Unranked		<u>4</u>	
		70	100%

^{1/} Because of limited access in the operating plant and PGandE's method of allocating work to Bechtel in discreet packages, outage work often results in the anomalous situation where some workers are working overtime and others are being laid off. This is unique to outage and maintenance work.



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Bechtel has not hired an electrician with an 8 or lower ranking since Mr. Cowan was laid off from the last outage.

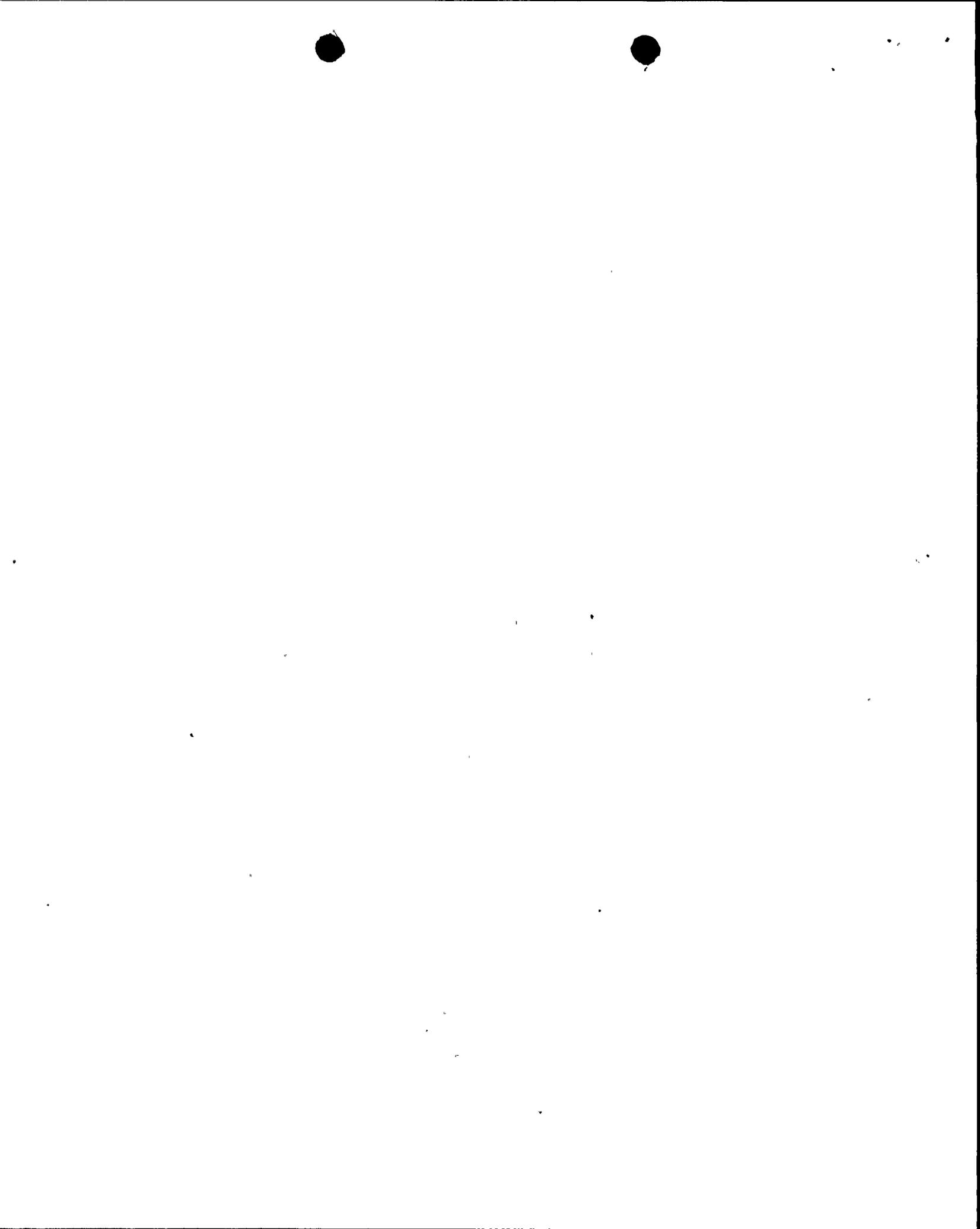
Mr. Cowan was given a reduction in force on October 27, 1986 based on his ranking. This ranking was done on October 13, 1986, before anyone at Bechtel was aware he had engaged in further protected conduct by raising a concern with the NRC. Because of his prior status as a "whistleblower" Mr. Cowan was actually removed from two layoffs lists to show our good faith in spite of his low rank before he was finally laid off. (See exhibit 2).

Subsequent to his layoff in October of 1986, Mr. Cowan filed an ERA complaint alleging he had been terminated for prior protected activity in 1985 and during the last outage. The complaint was found to be without merit, and was dismissed. A copy of the dismissal, which was not appealed, is attached as exhibit 3.

The next outage at Diablo Canyon occurred in the Spring of 1987. Bechtel placed a call for 18 electricians to the IBEW union hall. Unlike other crafts, Bechtel cannot call electricians by name. The manpower requisition is attached as exhibit 4. Ten electricians were referred out to the site on March 30, 1987 and 8, including Mr. Cowan, were referred out on April 3, 1987.

In accordance with Bechtel's normal practice, Tony Mesecher, the Bechtel site service manager's secretary, called the IBEW the day before to get the names and social security numbers of those who would be referred to facilitate their enrollment in PGandE mandated security and safety orientation classes (see exhibit 5). The notes of the PGandE training coordinator, made on April 2 when Ms. Mesecher called to schedule the training, are attached as exhibit 6. This list was also given to the jobsite steward and to Rich Doran, the electrical superintendent. In light of the number of people who had the names and social security numbers of the April 3 referral the previous day, there can be no serious doubt this information was provided to Bechtel on April 2, 1987.

Once Rich Doran had the names of those to be referred, he went to the project superintendent's office to check their rankings because he did not know them from memory. When he saw that Mr. Cowan's ranking was an 8, he decided not to hire him based on his prior poor work performance. He verified this decision with Tom Cutler, the site services manager, and Conrad Michel, the General Foreman. Neither had any objection



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based on Cowan's work performance; all confirm the decision had nothing to do with Cowan's alleged whistleblower status. In fact, two current members of Mr. Michel's crew have gone to the NRC with complaints and, further, have advised him they did so. This indicates craftsmen are not reticent about making complaints and are not in fear of their jobs if they do so. In that regard, Mr. Krewson, who was involved with Mr. Cowan's first complaint in 1985 is still employed and, further, is ranked as a 15, the highest ranking possible for electricians.

The next morning, April 3, 1987, when the eight electricians were referred to the site, Mr. Doran took Mr. Cowan aside, and, in the presence of the job steward and the night shift superintendent (who happened to be with Doran at the time) told him Bechtel was exercising its rights under the labor agreement not to hire him. (Under the GPMA, and pre-hire labor agreements generally, Bechtel has the right to reject applicants referred by the union). When Cowan asked why he was being rejected, Doran suggested he contact Mr. Cutler. Mr. Cutler advised Cowan, in writing, that his recourse was to file a grievance with his union, which was done.

At the first step grievance meeting, the union and Mr. Cowan, in accordance with the collective bargaining agreement, were told Mr. Cowan was not hired because of his prior poor performance.

In his union grievance, attached as exhibit 7, Mr. Cowan raises other matters not mentioned in his ERA charge. These matters will be briefly addressed here because they point out his lack of credibility generally, and specifically, his lack of any evidence that he was not hired for any reason other than his prior poor performance.

Mr. Cowan alleges he was singled out at some prior unspecified time for limited radiation training. Attached as exhibit 8 is a document showing that when he was last employed, Mr. Cowan received exactly the same training as his electrician co-workers. Allegation 2 in his union grievance is untimely; presumably it occurred when Mr. Cowan was last employed. If he had had a problem with his transfer to swing shift, he should have brought it to Bechtel's attention then, through his union representative, not now, almost eight months later. Allegation 3 concerned his last ERA complaint and simultaneous union grievance; both were resolved against him at that time and are not properly the subject of this proceeding some eight months later.



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The issue of why unranked electricians were hired ahead of Cowan was addressed by Mr. Doran and Mr. Michel but will be briefly touched on here. Simply put, Mr. Cowan was a poor worker. His fellow workers complained about his lack of job knowledge and skills as an electrician. He was slow, a significant detriment when work is required in hot areas, not only to himself but to his co-workers because, as explained by Mr. Dennerlein, the electricians usually work in pairs. A slow non-productive worker in a radiation area means his co-worker will be exposed to radiation longer than if paired with a good worker. Bechtel, in the interests of fairness, is interested in trying new workers in the hopes their skills will be in the high rank range, thus increasing the size of the pool of high ranked workers available to Bechtel through the union hall. This increases the likelihood that referrals will be high skilled electricians. Again, this is important to Bechtel because, unlike other crafts, we cannot call electricians by name. It also avoids the expense of turning around low skilled workers at the gate; since April of 1986, 23 electricians have been turned around for reasons like those for which Mr. Cowan was rejected. Some individuals have been turned around as many as 4 times, again because the IBEW will not allow name calls, and Bechtel will not hire low skilled, poor producers for outage or maintenance work.

As explained previously, Mr. Cowan was kept two lay offs past his normally scheduled time. This is evidence of good faith and explains why higher ranked workers like Mr. Koenig were laid off before he was.

It is true that Mr. Cowan never received any written disciplinary warnings. He claims that because two individuals hired instead of him received such warnings, this somehow indicates that he was a better worker than they. One of the individuals, Mr. Lawson, did receive a warning for early quits. This warning was issued in 1983, almost 4 years ago. Mr. Lawson, moreover, has received no warnings since that time and is currently ranked a 14. The other individual, Mr. Moorehead, received a warning for the same reason one year previously. At the time he was hired, Mr. Moorehead was ranked 9. And, as explained, under Bechtel's jobsite work rules and disciplinary procedures, written warnings do not count after a six-month period. In other words, if an employee gets two written warnings within a six-month period, he is terminated. However, if he gets a warning, and, then, a second one seven months later, he is not terminated; the first warning is not counted against him.



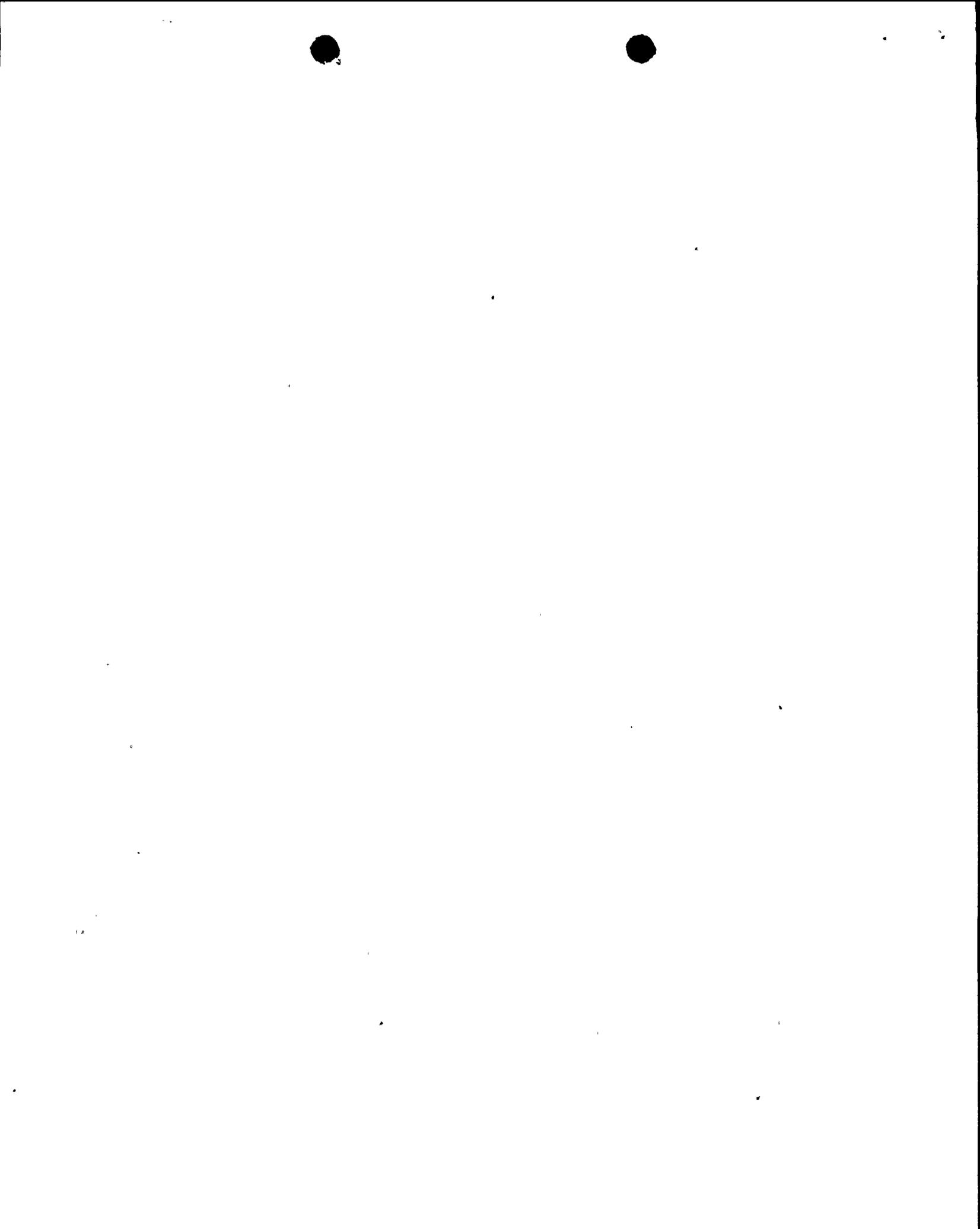
Mr. E. Strickland
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Finally, with respect to his current ERA charge dated April 4, 1987, Mr. Cowan makes two allegations. The first is that he was not hired because of allegation RV-86-A-0081. This allegation is without merit. Mr. Cowan was not hired because of his force ranking, 8. That ranking, 8, was made by Mr. Michel and Mr. Dennerlein before they were aware of allegation RV-86-A-0081. That ranking was also the basis for his last layoff, which was found not to be a violation of the ERA. Thus, Mr. Cowan, and the DOL are estopped from now re-opening the ranking issue which was the sole basis for his prior layoff and the current employment decision; one, because such a challenge would be untimely under the Act and, two, because the issue has already been considered and resolved against Mr. Cowan, a decision he did not appeal.

Mr. Cowan's second allegation is that he was granted permanent whistleblower status by Mr. Sullivan of your office because of his complaint and its settlement in 1985, two years previously. Whistleblower status is transactional, not generic. Moreover, the settlement resolving his first complaint was exactly that. It contained a standard non-admission of liability clause where neither party stipulated to the merits of Mr. Cowan's first complaint. Moreover, because of the sporadic nature of the work at Diablo Canyon, and the need for highly skilled workers, the settlement agreement expressly recognized that it was not a guarantee of future or permanent employment for Mr. Cowan, and that such employment, if it did occur, would be in the context of the project labor agreement which gives Bechtel the right to tailor its workforce to conditions on the job. Bechtel did so in this case, by hiring skilled highly productive workers, not workers with poor work records like Mr. Cowan. And, as stated previously, Bechtel currently employs at least 3 other "whistleblower" electricians, 2 with active complaints in Mr. Michel's crews and 1 from Mr. Cowan's original complaint in 1985 on night shift. Thus, prior whistleblower complaints are not held against employees as Mr. Cowan attempts to imply.

The U.S. Supreme Court, in Mt. Healthy City School District Board of Education v. Boyle, 429 U.S. 274 (1977) established the guidelines for resolving cases like this one where an employee has engaged in two types of conduct, protected and unprotected, and is claiming that the employer was motivated by the protected activity in its dealings with the employee. The Mt. Healthy test, which is accepted by federal agencies which deal with employee protection statutes, is directly applicable to his case.



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According to the Court in Mt. Healthy:

A rule of causation which focuses solely on whether protected conduct played a part, 'substantial' or otherwise in a decision not to rehire, could place an employee in a better position as a result of . . . protected conduct than he would have occupied had he done nothing. The difficulty with the rule enunciated by the District court is that it would require reinstatement in cases where a dramatic and perhaps abrasive incident is inevitably on the minds of those responsible for the decision to rehire, and does, indeed play a part in that decision. . . even if the same decision would have been reached had the incident not occurred. The [statutory] principle at stake is sufficiently vindicated if such an employee is placed in no worse a position than if he had not engaged in the [protected] conduct. A borderline or marginal [employee] should not have the employment question resolved against him because of statutorily protected conduct. But that [employee] ought not to be able, by engaging in such [protected] conduct, to prevent his employer from assessing his performance record and reaching a decision not to rehire on the basis of that record simply because the protected conduct makes the employer more certain of the correctness of its decisions (emphasis added).

This case differs from Mt. Healthy because the decision not to rehire Mr. Cowan was based solely on his prior poor record and ranking made before the allegation he claims was the cause of his prior layoff and this decision. This ranking was accepted by the DOL at the time and is not subject to consideration now because of untimeliness and estoppel principles.

However, even if the decision was in part motivated by protected conduct (an assumption which is not warranted under the circumstances of this case) Mr. Cowan's claim must still be dismissed.



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As stated by the Court in Mt. Healthy:

Initially, in this case, the burden was properly upon respondent [employer] to show that his conduct was [statutorily] protected, and that his conduct was a 'substantial factor' . . . or, to put it in other words, that it was a 'motivating factor' in the [employer's] decision not to rehire him. Respondent having carried that burden, however, the District Court should have gone on to determine whether the [employer. . . would have reached the same decision as to respondent's reemployment even in the absence of the [statutorily] protected conduct. (Emphasis added).

In this case there is no doubt that everyone on site was aware of Mr. Cowan's whistleblower activity because he took great pains to broadcast the fact. There is also no doubt based on the statements of Mr. Michel and Mr. Dennerlein, his fellow union co-workers, that Mr. Cowan was a poor worker whose work habits could put himself and others at risk during outage work where skill, initiative and fast production can make the difference in terms of greater or less radiation exposure for Mr. Cowan and his co-workers working in a radiation environment. Also, there is no doubt other "whistleblowers" who are better workers than Mr. Cowan are currently employed by Bechtel at Diablo Canyon. Finally, there is no doubt that the decision not to hire Mr Cowan was based on the same ranking and performance which have been found to uphold a prior employment decision under the Act. Mr. Cowan, moreover, has offered no evidence whatsoever in the form of any conduct, documents, statements or other factors which indicates Bechtel's decision not to rehire him was based on a pretext. From the time of his termination in 1986, Bechtel has not hired any electricians at or below Mr. Cowan's rank. 90% of all electricians hired have been ranked 11 or better, again, in accordance with the nature of outage work.

Finally, Mr. Cowan was not replaced on April 3 because at that time Bechtel had more electricians than it needed to work efficiently in outage conditions.

Accordingly, 4 electricians were laid off on April 14, 1987, again, in accordance with this ranking, as indicated in exhibit 9. Three more were laid off on April 27, 1987, again in accordance with their rank. More layoffs will follow so that the electricians hired for this last outage will all be terminated on or around May 12, 1987 barring unforeseen circumstances. Based on his ranking and his



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poor work skills, Mr. Cowan would have been in the first layoff group even if he had been hired.

In conclusion, Bechtel is safety conscious and security conscious. Employees with complaints or concerns are encouraged to go to their supervision, the hotline and the NRC. There is no atmosphere of oppression or coercion directed at employees who do so as indicated by Mr. Michel and Mr. Dennerlein. In my view, Mr. Cowan is exactly the type of employee referenced in Mt. Healthy - a poor worker who has broadcast a two year old safety concern in the hopes that whistleblower status, once earned, will shield him forever from his lack of skills. To allow this result flies in the face of the statute, the law as determined by the U.S. Supreme Court, and, far worse, penalizes his co-workers in the form of greater than necessary exposure to radiation hazards by forcing them to bear the consequences of Mr. Cowan's lack of skill.

It is Bechtel's position, therefore, that Mr Cowan's complaint is without merit and must be dismissed.

Very truly yours,

BECHTEL CONSTRUCTION, INC.



Michael A. Fletcher
Counsel

MAF:r
Attachments





May 6, 1987

300 South Glendale Avenue, #250
Glendale, California 91205

Reply to the Attention of:

Mr. Michael Fletcher, Counsel
Bechtel Construction, Inc.
P.O. Box 3965
San Francisco, California 94119

MAY 11 1987

RE: Ronald Cowan v. Bechtel Construction, Inc.

Dear Mr. Fletcher:

This letter is to notify you of the results of our compliance actions in the above case. As you know Ronald Cowan filed a complaint with the Secretary of Labor under the Energy Reorganization Act on April 4, 1987. 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 Ronald Cowan 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:

The complainant was denied employment by Bechtel on April 3, 1987. He was the only person not hired from a group that included persons without a previous Bechtel rating resulting from force ranking.

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

The complainant should be made "whole" by reinstatement in the desired job or if the position no longer exists through compensation for wages lost.

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:

ENCLOSURE 2

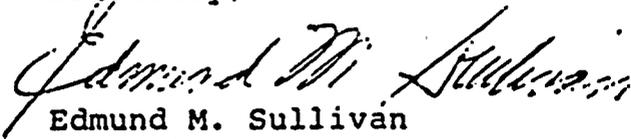


The Chief Administrative Law Judge
U.S. Department of Labor
Suite 700, Vanguard Building
1111 - 20th Street, N.W.
Washington, D. C. 20036

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 Ronald Cowan 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 Ronald Cowan and to me at 300 South Glendale Avenue, Suite 250, Glendale, CA 91205, phone (818) 240-5274. 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,


Edmund M. Sullivan
Area Director

cc: Ronald Cowan
Nuclear Regulatory Commission
Chief Administrative Law Judge
N.O. (Carl Smith)
R.O. (Herbert Goldstein)
R.O. Solicitor (Dan Teehan)





DIABLO CANYON POWER PLANT

JIM:

4/9

HERE IS THE INFORMATION FROM
BECHTEL ON RON COWAN. ALTHOUGH
HE WAS INTERVIEWED BY KSBY-TV
YESTERDAY, THEY DID NOT RUN THE
STORY LAST NIGHT.

I AGREE WITH BECHTEL'S DECISION
NOT TO HIRE HIM BACK. HOWEVER,
WARBURT MAY PUT SOME ADDITIONAL
PRESSURE ON TO DO SO WHEN HE RETURNS
NEXT WEEK.

ED

P.S. BECHTEL DOES NOT WANT IT LET OUT THAT
THEY TOOK THIS GUY OFF THE HAYWIRE LIST EVEN
THOUGH HIS NUMBER WAS UP. IT COULD DESTROY
THEIR CREDIBILITY ON THE POWER MARKET SYSTEM.
PG&E - BOX 55 - AVILA BEACH, CA 93424

ED CONWAY



PG-E

FOR INTRA-COMPANY USE

From Region or Department Nuclear Engineering & Construction Services/GC
 To Region or Department Edward M. Conway
 FILE NO. Personnel/General Services Manager
 RE: LETTER OF
 SUBJECT Chronological History of Events/Ron Cowan

April 8, 1987

Following our discussion of this morning, attached are events relating to Ron Cowan's employment with Bechtel. Also attached is a "note to file" prepared by Tom Cutler under date of April 3, 1987. One area we omitted during our discussion this morning, which further represents an unbiased approach to employment practices by Bechtel, is the fact that Mr. Cowan was employed on two separate occasions at Vandenberg Air Force Base.

Should you require additional information, please contact me at your convenience.

C. H. Capps
 C. H. Capps
 NECS

CHC:tt

Attachments

- cc: T.G. Cutler
 A.J. Donner
 M.A. Fletcher
 T.A. Mangelsdorf
 M.N. Norem
 R.S. Weinberg



TOM CUTLER - NOTE TO FILE

APRIL 3, 1987

I was notified by R. Doran that he exercised managements' rights and did not hire an electrician by the name of Ron Cowan.

At approximately 10:00 a.m., a Rita Mills, who identified herself as an employee of the San Luis Obispo Telegram Tribune newspaper, asked R. Doran if he did turn Mr. Cowan around back to the Union Hall and was it a result of his notifying the NRC on his last time on the job. Rich told her "no comment" and referred her to Todd Roberts.

I contacted Ed Manning and told him of the situation and he said that we should say "no comment, if Mr. Cowan has a grievance he may pursue it through his union."

When Todd talked to Rita Mills he told her "no comment, if Mr. Cowan has a grievance he may pursue it through his union." That concluded Todd's conversation.

I notified M. Norem of the incident at 10:30 a.m.

At 1:30 p.m., Paul Narbut of the NRC called me and told me that Ron Cowan had contacted him to see what he could do. He told Ron Cowan that he had no jurisdiction on the hiring of people. Paul asked me if there was any information that I could give him and I told him "no comment" and that Mr. Cowan could utilize his union to bring up any grievance.

There were eight (8) electricians who reported that day. Only one was turned around; replacement not ordered.





JANUARY 11, 1985

Bechtel Electrical Foreman terminated for "directing craft to violate construction entry procedures." Ron Cowan, Bennetts, Harris, and Hall all members of the crew.

JANUARY 22, 1985

Ron Cowan was terminated "Reduction in Force" along with three other electricians.

JANUARY 23, 1985

Ron Cowan filed grievance with I.B.E.W. against Bechtel.

JANUARY 29, 1985

Ron Cowan wrote to the Department of Labor stating he had notified the NRC on January 11, 1985, about working without proper paperwork.

FEBRUARY 4, 1985

Bechtel received notice from the Department of Labor on Mr. Cowan's charges.

FEBRUARY 28, 1985

Department of Labor ruled in favor of Ron Cowan.

Note: Ron Cowan employed by Bechtel at Vandenberg Air Force Base.

From: 7-9-85]
To: 9-10-85]

Terminated in RIF

From: 1-24-86]
To: 2-6-86]

AUGUST 15, 1986

Dispatched by Union Hall and turned down along with two other electricians.

AUGUST 16, 1986

Ron Cowan called Roberts and Cutler wanting to know why he was not being accepted for work. Made reference to being protected under the "Whistle Blowers Act," and also about going to the news media.

AUGUST 18, 1986

Notified E. Manning of August 16, 1986, conversation with Ron Cowan.



AUGUST 18, 1986

I called Mike Mowrey and told him the individual would be hired to show good faith in the agreement and that this is not a permanent job.

AUGUST 18, 1986

Ron Cowan wrote to the Department of Labor alleging discriminatory employment practices by Bechtel.

SEPTEMBER 30, 1986

Bechtel received notice from the Department of Labor in regard to Mr. Cowan's allegations.

OCTOBER 6, 1986

Received a copy of a letter form the Department of Labor they sent to Ron Cowan on September 30, 1986, closing the case on his allegations of discriminatory employment practices as being unfounded.

OCTOBER 13, 1986

All electricians' force ranked.

OCTOBER 17, 1986

Cowan was on the lay off list but taken off to show good faith.

OCTOBER 20, 1986

Cowan was on the lay off list but taken off to show good faith.

OCTOBER 23, 1986

I was informed by Rich Doran that the NRC (C. Hooker) wanted to talk to him and several of his electricians over some work going on in the Unit I containment. Rich asked Mr. Hooker if a complaint had been filed and was told, no.

OCTOBER 27, 1986

Ron Cowan was given a "Reduction in Force" with nine additional electricians.

OCTOBER 27, 1986

Mr. Narbut of the NRC questioned me on Mr. Cowan's termination.

OCTOBER 30, 1986

Received grievance from I.B.E.W.



NOVEMBER 12, 1986

Received a letter from the Department of Labor saying they had received a complaint in November 1986, from Ron Cowan, alleging discriminatory employment practices in violation of the Energy Reorganization Act.

DECEMBER 8, 1986

Received a letter from the Department of Labor ruling in favor of Bechtel. Termination was found to be part of a general reduction in force.

DECEMBER 18, 1986

Received notification that Cowan's Grievance was denied at Step II of the procedure "due to lack of evidence and/or merit."



Whistleblower turned away at Diab

By Margarita Mills
Telegram-Tribune

An irradiated Diablo Canyon worker was turned away at the plant's gates Friday when he reported to work.

Electrician Ron Cowan's number came up to start work for Bechtel Corp. last week. His union handed him a job referral card to be one of the more than 100 temporary electricians to work during the refueling of the Unit 2 reactor.

But at the gate he met Bechtel's Rich Doran who told Cowan the company wouldn't hire him.

Cowan wasn't given a reason for Bechtel's refusal, but he said it's probably because he complained about getting high radiation doses during his last job there, the Unit 1 refueling last year.

He was laid off during the height of maintenance last year.

Doran and his supervisor, Todd Roberts, declined to talk.

"We have no comment," said Roberts. "He can file a grievance through his union."

Cowan said he started the grievance procedure Friday morning.

"All I want is work. I've been waiting my turn."

Cowan was hired in September through the International Brotherhood of Electrical Workers, Local 10 during the Unit 1 shutdown.

During his two months of employment, Cowan performed a number of tasks.

In October he was assigned to access conduit in some pipes located in the containment building, a highly radioactive area.

According to a Nuclear Regulatory Commission report, two radiation protection employees — people who are that workers get "as low as reasonably achievable" doses of radiation — told Cowan and his supervisor not to do the conduit work in a radioactive "hot spot" was shielded with lead covering.

Those two employees worked for Pacific Gas & Electric Co. contractor, Bartlett Nuclear Inc.

Cowan said his partner called the radiation protection foreman, J.A. Ramirez, to ask for the active shielding.

Ramirez, the NRC report said, them that there was too much engineering and paperwork involved the lead blanket.

Cowan told us to work until we got done with it said Cowan

lanted area, is 120 millirem.

Cowan said he did the work, as told, because he didn't want to be fired for not doing work as assigned.

Cowan received 303 millirem during the three days he worked near the "hot spot," according to the NRC report.

In a 24-day period, including the three days he worked in the highly radioactive area, he had a total of 388 millirem.

During a three-month period, the NRC-established radiation exposure limit is 1,000 millirem. Anything higher than that must be reviewed and approved by the NRC.

Cowan was not given protective clothing to wear while he worked in the radioactive area.

"I had to crawl all over that thing," he said. "Who knows what happened to me."

Ramirez told the NRC, the report said, that he didn't think the electricians would be getting enough radiation to warrant a lead shield.

After the third day and after Cowan already received high doses of radiation, a lead shield was installed. Installation of the shield, the report said, took only 30 minutes.

Cowan called an on-site NRC inspector to complain that PG&E wasn't following the "as low as reasonably achievable" practices required by the regulatory agency.

He contended that if the shield were put up in the beginning, they could have gotten much less radiation. Cowan said some of co-workers got much higher doses than he did.

Only one other worker complained. He, too, was laid off, Cowan said. The ones who didn't are still working, Cowan said.

"I'm the type of person who won't keep my mouth shut when things like this happen," he said.

Some of the workers and their

Bechtel supervisor were interviewed by a special NRC inspector.

A few days later Cowan was reassigned to another job away from the containment building.

"I think that was so I wouldn't talk (to other workers about radiation exposure)," he said.

In about a week he was laid off. Bechtel was going through a "reduction of forces," supervisors told Cowan, less than two months after the 16-week shutdown.

"I went through the grievance procedure (through the union)," Cowan said. "But they ran me off. I had to go out of the area to work."

He ended up at Edwards Air Force Base.

The report that came out of the NRC investigation said no violations occurred.

"Although the allegation (of poor "as low as reasonably achievable" practices) was substantiated, no violations of NRC requirements were identified. It also appears reasonable to infer that the best judgment may not have been exercised (by Ramirez)," the report said.

Friday was not the first time Cowan has been turned away at the gate.

During the Unit 1 refueling, it was a similar scenario.

He was turned away at the gate when he went early one morning to start work. Cowan said it was because he had gone to the NRC.

He had been laid off in January 1985, while workers were getting the plant ready for start-up.

He refused to work in an area where the papers that authorized the workers had expired.

A foreman forged the expiration date, Cowan said, so he still refused to go in, knowing the papers had been tampered with.

He was sent home with three others for not doing their work.

He went to the NRC again.

And again, just a few weeks later, he was let go for another "reduction of forces."

Cowan filed suit against Bechtel through his union and the labor protection from the Department of Labor. Along with the suit, Cowan was assured by the NRC that he would be eligible for re-employment. But when he showed up at the plant Friday morning in 1987, he was turned away.

At that time, the Tribune asked Bechtel why Cowan wasn't allowed to work. They told the newspaper that Mike Morrey, a representative of the union, said Cowan's performance was "moderate" and that they had better quality workers than Cowan.

Cowan was hired for a job in the containment building the next Monday.



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