

# Northwestern Ohio Building and Construction Trades Council

DOCKET NUMBER  
PROPOSED RULE

PR 11 25 95  
(54FR 38863)

ONE MARITIME PLAZA, SUITE 410  
TOLEDO, OHIO 43604

'89 NOV 21 P4:20

4

JAMES E. SALISBURY  
Executive Secretary, Business Manager



Telephone 242-5910  
Area Code 419  
Fax 242-6973

November 20, 1989

GEORGE RAY MEDLIN, JR.  
President

ALLAN J. SEGUR  
Vice President

GERALD R. HALL  
Recording Secretary

RAYMOND SCHLAGHECK  
Secretary-treasurer

THOMAS F. JACOBS  
Sergeant-at-Arms

DONALD R. DeBOLT  
Trustee

WILFREDO HINOJOSA  
Trustee

ROGER KERNER  
Trustee

Secretary  
United States Nuclear  
Regulatory Commission  
Washington, D.C. 20555

Attn: Docketing and Service Branch

Re: Proposed Rule(s) Which Seek to Expand the  
Investigative Scope for Security Clearance  
Applicants by Adding a Credit Check

Dear Sir or Madam:

I am the Executive Secretary-Business Manager for the Northwestern Ohio Building and Construction Trades Council (hereinafter referred to as the "Council"). The Council is an affiliation of labor organizations in the building and construction industry in the Northwest Ohio area. The Council serves as a channel for the voicing of opinions and comments on legislation, public policies and other matters which impact or otherwise have an effect upon working men and women who depend upon the building and construction industry for their livelihoods. In this regard, through the various unions which compose the Council, the Council serves as a united voice for approximately ten thousand (10,000) building trades men and women in the Northwest Ohio area.

A substantial number of the members of unions affiliated with this Council work for employers who perform building and construction work at the Davis-Besse Nuclear Power Station in Port Clinton, Ohio. Thus, it is these men and women who will bear the brunt of any rules or regulations which seek to expand the investigative scope for security clearances by adding a credit check.

In this regard, I have recently become aware that the Nuclear Regulatory Commission has proposed to amend its existing regulations to expand the investigative scope for "L" security clearance applicants by adding a credit check and investigation into the financial situation of employees working for contractors performing work at nuclear power

8911220430 891120  
PDR PR  
11 54FR38863 PDR

25/10

plants. See 54 Fed Reg. 38863 (September 21, 1989). The Nuclear Regulatory Commission (hereinafter referred to as the "NRC") has attempted to justify the proposed rule by stating that "the credit check is necessary to achieve a higher degree of assurance that ... licensee applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail or coercion to act contrary to the national interest." *Id.* at 38863. The NRC goes on further to state that "[i]n view of recent espionage for money cases, it is important to identify those individuals who have serious financial difficulties and are, therefore, more susceptible to committing espionage or similar activities against the United States. *Id.* Finally, the NRC states that based on actual experience it has found that "an individual's financial difficulties may be an indicator or result of other more serious problems such as drug abuse, alcohol abuse or dishonesty." *Id.*

While the Council and its affiliated unions are equally concerned with and in no way condone drug use in the workplace, espionage and/or terrorism, it is the Council's position that the addition of a credit check requirement for employees of contractors at nuclear power plants goes far beyond the bounds of permissible government inquiry. Specifically, it is the Council's position that the proposed rule constitutes an undue and arbitrary infringement upon the rights of members of unions affiliated with the Council to privacy and/or to keep certain aspects of their lives private. Furthermore, it is the Council's position that the proposed rule is irrational in that there is no standard which would determine what degree of financial debt would place an employee at risk. Moreover, the Council believes that the proposed rule, as stated in the NRC's supplementary information in 54 Fed. Reg. 38863, would stamp individuals with financial debt as being espionage agents, terrorists, drug abusers, alcoholics, or simply dishonest. Thus, The Council believes that the proposed rule amounts to NRC overkill; and, believe that the following discussion supports the Council's position.

It is well established that there are certain personal rights which are "implicit in the concept of ordered liberty" and that are so fundamental that the "shadows" cast by the several provisions of the Bill of Rights provide them with constitutional protection. See *e.g.*, Palco v. Connecticut, 302 U.S. 319, 325 (1937); Roe v. Wade, 410 U.S. 113, 152-153 (1973); Whelan v. Rowe, 429 U.S. 589, 598 n.23 (1977).

One of the personal rights which is entitled to

constitutional protection is the "right to privacy". See Whelan v. Rowe, 429 U.S. 589, 599-600, 605-606 (1977). See also Stanley v. Georgia, 394 U.S. 557 (1969). Implicit in the right to privacy "is the individual's interests in avoiding disclosure of personal matters." See Whelan, 429 U.S. at 599. In Whelan v. Rowe, the United States Supreme Court recognized, "the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files." Id. at 605. Indeed, the United States Supreme Court has recognized that even the Presidents of the United States are "not wholly without constitutionally protected privacy rights in matters of personal life unrelated to any acts done by them in their public capacity," including "matters concerned with family or personal finances." Nixon v. Administrator of General Services, 433 U.S. 425, 457 (1977).

Other courts have also recognized the existence of a right to privacy in personal matters which is an interest protected by the United States Constitution. See e.g., Barry v. City of New York, 712 F.2d 1554 (2nd Cir.) cert denied, 464 U.S. 1071 (1983) (financial information); Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978), cert denied, 439 U.S. 1129 (1979) (personal financial information); U.S. v. Westinghouse Electric Corp., 638 F.2d 570 (3rd Cir. 1980) (medical information); Dow v. Webster, 616 F.2d 1226 (D.C. Cir. 1979) (criminal record); Caesar v. Mountanos, 542 F.2d 1064 (9th Cir. 1976) cert denied, 430 U.S. 954 (1977) (patient's communication of psychotherapy).

It is clear, then, that individuals have a right to the privacy in personal matters, and, this right to privacy which is of constitutional dimension. This right to privacy certainly includes the right to avoid disclosure of financial matters. See Barry v. City of New York, 712 F.2d 1554 (2nd Cir. 1983); Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978).

In light of the recognized right to privacy in financial matters, the NRC's proposed rule unnecessarily and arbitrarily impinges upon this right. To assume that persons with debt may be susceptible to "pressures, blackmail, or coercion" is akin to assuming that persons of Irish ancestry are susceptible to pressures from the Irish Republic Army and/or that persons of Puerto Rican ancestry are subject to pressures from the National Armed Liberation Front and/or that persons of Arabic ancestry are subject to pressures from the Palestinian Liberation Organization. Certainly, such assumptions cannot be made. Likewise the proposed rule is irrational because it assumes that persons who have financial problems are not reliable and

trustworthy, while it assumes that persons who do not have such financial problems are reliable and trustworthy. In this regard, there is simply no connection between reliability and truthfulness and financial matters. Indeed, it is the Council's belief that the NRC would be hard pressed to demonstrate any correlation between financial condition and reliability and trustworthiness. Indeed, it is my understanding that the owner of the Davis-Besse Nuclear Power Station, the Toledo Edison Company, has a very substantial debt. Notwithstanding this debt, I do not believe that the NRC has had any reason to not credit the reliability and trustworthiness of Toledo Edison.

As I mentioned earlier, the proposed rule is simply an administrative overkill. Any questions which may exist regarding the reliability and trustworthiness of an individual can already be identified through the presently existing background investigations which are required by NRC regulations. These thorough investigations can readily identify individuals who have a background which may make them questionable security risks (i.e., drug abuse, political sympathies, etc).

In sum, while the Council sympathizes with the security concerns expressed by the NRC, the Council cannot endorse the NRC's position that Americans shed their constitutional rights at the doorstep of a nuclear power plant. There is no rational reason, much less a compelling one, which would require an individual to disclose potentially embarrassing financial debts solely because the NRC believes that persons with debt problems are to be branded as security risks. This is especially so when the Council does not believe that the NRC has any evidence that financial difficulty indicates susceptibility to disloyalty, drug abuse, alcoholism or dishonesty. Thus, the Council would object to the proposed rule and request that the NRC keep the views expressed in this letter in mind when deciding whether to make the proposed rule a final one.

Your cooperation in this matter is greatly appreciated. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

NORTHWESTERN OHIO BUILDING AND  
CONSTRUCTION TRADES COUNCIL

*James E Salisbury*

James Salisbury  
Executive Secretary