

DeD/DeB
(RDS)

December 10, 1990

Docket No. 30-10749

AMS No. R111-90-A-0082

Mr. Donald Paschen
President
Midwest Inspection Service, Ltd.
3171 Gross Street
Green Bay, Wisconsin 54304

Dear Mr. Paschen:

On November 5, 1990, the U. S. Department of Labor's Wage and Hour Division in Milwaukee, Wisconsin, received a complaint from a former employee of Midwest Inspection Service, Ltd. The former employee alleged that his employment was terminated improperly because of his concerns with the radiation safety program of Midwest Inspection Service, Ltd. In response to that complaint, the Wage and Hour Division conducted an investigation, and in the enclosed letter dated November 29, 1990, the Area Director of the Wage and Hour Division found that the evidence obtained during the Division's investigation indicated that the employee was engaged 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 comprised his complaint.

Based on a review of the complaint filed with DOL, a violation of 10 CFR 30.7 may have occurred which could have a chilling effect on other licensee or contractor personnel.

Therefore, you are requested to provide this office, within 30 days of the date of this letter, a response which:

1. Provides the basis for the employment action regarding the former employee and includes a copy of any investigation reports you have regarding the circumstances of the action; and
2. Describes the actions, if any, taken or planned to assure that this employment action does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns.

After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter will be placed in the NRC Public Document Room.

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Mr. Donald Paschen

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December 10, 1990

The response requested by this letter is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,

Carl Paperello for

A. Bert Davis
Regional Administrator

Enclosure: As stated

cc w/enclosure:
DCD/DCB (RIDS)

bcc w/enclosure:
H. Thompson, DEDS
J. Lieberman, OE
J. Goldberg, OGC
R. Bernero, NMSS
E. Pawlik, OI:2111
Errol J. Patenaude,
Assistant District Director,
U.S. Department of Labor

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Paperello
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Davis
12/7/90

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Room 108 Federal Building
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4504
Telephone: 414/297-3585



Reply to the Attention of: EJP:sp

**COPY FOR YOUR
INFORMATION**

November 29, 1990

Mr. Donald Paschen
President
Midwest Inspection Service, Ltd.
3171 Gross Street
Green Bay, Wisconsin 54304

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: Gordon Lederhaus vs. Donald Paschen

Dear Mr. Paschen:

This letter is to notify you of the results of our compliance actions in the above case. As you know, Gordon Lederhaus filed a complaint with the Secretary of Labor under the Energy Reorganization Act on November 5, 1990. 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 to you in a previous letter from this office.

Our initial efforts to conciliate the matter did not result in a mutually agreeable settlement. A fact-finding investigation was then conducted. Based upon our investigation, the weight of evidence to date indicates that Gordon Lederhaus was a protected employee engaging in a protected activity within the scope 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 information supported this determination.

Mr. Lederhaus was terminated by you when he was engaged in a protected activity - that is reporting violations of the above noted Act to the Nuclear Regulatory Commission. Mr. Lederhaus was a satisfactory employee as reflected in the last performance review as noted on the Quarterly Inspection Review which was dated September 20, 1990. The reasons you gave Compliance Officer Paul Keppeler for terminating Mr. Lederhaus were more than rebutted by Mr. Lederhaus and other parties.

This letter is notification to you that the following actions are required to remedy the violation:

You are to offer reemployment to Mr. Lederhaus at his former rate of pay, offer him the same fringe benefits he was receiving, see that his hours of work and amount of time worked is comparable to that which he was receiving prior to termination and make him "whole" in terms of lost wages from the time of termination until the time of reinstatement.

This letter is also notification to 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:

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

Unless a telegram is received by the Chief Administrative Law Judge within the five-day period, this notification of findings and remedial action will become the Final Order of the Secretary of Labor which must be implemented within 30 days. By copy of this letter, Gordon Lederhaus is being advised of the determination and the right to a hearing. A copy of this letter and complaint have also been sent to the Chief Administrative Law Judge. If you decide to request a hearing, it will be necessary for you to send copies of the telegram to Gordon Lederhaus and to me at 517 East Wisconsin Avenue, Room 108 Federal Building, Milwaukee, Wisconsin 53202-4504, telephone number 414/297-3585. 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 U. S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Sincerely,

Errol J. Patenaude
Errol J. Patenaude
Assistant District Director

cc: Gordon Lederhaus
National Regulatory Commission
Regional Solicitor
Deputy Regional Administrator
Chief Administrative Law Judge