

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

2000-301

1

RESPONSE
TYPE

FINAL



PARTIAL

REQUESTER

Glen R Mills

DATE

OCT 31 2000

PART I. -- INFORMATION RELEASED

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☐ APPENDICES
☐ Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ APPENDICES
A Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- ☒ APPENDICES
A Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☐ See Comments.

PART I.A -- FEES

AMOUNT *

\$

* See comments
for details☐ You will be billed by NRC for the amount listed.☐ You will receive a refund for the amount listed.

None. Minimum fee threshold not met.

☐ Fees waived.**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA 2000-301	DATE OCT 31 2000
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST			

PART II.A -- APPLICABLE EXEMPTIONS	
APPENDICES A	Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).
☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.	
☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.	
☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.	
☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).	
☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).	
☐ 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.	
☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.	
☐ The information is considered to be confidential business (proprietary) information.	
☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).	
☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).	
☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:	
☐ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.	
☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)	
☒ Attorney-client privilege. (Confidential communications between an attorney and his/her client)	
☐ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.	
☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.	
☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).	
☒ (C) Disclosure would constitute an unwarranted invasion of personal privacy.	
☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.	
☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.	
☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.	
☐ OTHER (Specify)	

PART II.B -- DENYING OFFICIALS			
Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).			
DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL EDO SECY IG
Guy P. Caputo	Director, Office of Investigations	Appendix A	✓
Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."			

**APPENDIX A
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	2/24/00	OI Report of Investigation 4-1999-037, San Onofre Nuclear Generating Station: Discrimination Against Contractor by Management for Reporting Security Concern (36 pages) EX. 5 and 7C

**United States
Nuclear Regulatory Commission**



Report of Investigation

SAN ONOFRE NUCLEAR GENERATING STATION:

**DISCRIMINATION AGAINST CONTRACTOR BY
MANAGEMENT FOR REPORTING SECURITY
CONCERN**

Office of Investigations

Reported by OI: **RIV**

A/1

Title: **SAN ONOFRE NUCLEAR GENERATING STATION:**

**DISCRIMINATION AGAINST CONTRACTOR BY MANAGEMENT FOR
REPORTING SECURITY CONCERN**

Licensee:

Southern California Edison Co.
P.O. Box 128
San Clemente, California 92674-0128

Docket No.: 50-206

Reported by:

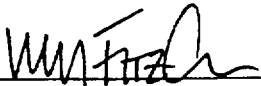
Case No.: 4-1999-037

Report Date: February 24, 2000

Control Office: OI:RIV

Status: CLOSED

Reviewed and Approved by:



W. Michael FitzGibbon, Special Agent
Office of Investigations
Field Office, Region IV



E. L. Williamson, Director
Office of Investigations
Field Office, Region IV

WARNING

**DO NOT DISSEMINATE, PLACE IN THE PUBLIC DOCUMENT ROOM, OR DISCUSS
THE CONTENTS OF THIS REPORT OF INVESTIGATION OUTSIDE NRC WITHOUT
AUTHORITY OF THE APPROVING OFFICIAL OF THIS REPORT. UNAUTHORIZED
DISCLOSURE MAY RESULT IN ADVERSE ADMINISTRATIVE ACTION AND/OR
CRIMINAL PROSECUTION.**

SYNOPSIS

This investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on July 13, 1999, to determine if a contract boilermaker employed by Bechtel Construction Company (Bechtel) at Southern California Edison's (SCE) San Onofre Nuclear Generating Station (SONGS) was the subject of employment discrimination by management for reporting security concerns regarding alleged aberrant behavior by a contract employee.

Based on a review of the testimony, documentary evidence developed during the investigation, and coordination with the RIV technical staff and Regional Counsel, the allegation that a contract boilermaker at SONGS was the subject of employment discrimination by management for reporting security concerns regarding alleged aberrant behavior by a contract employee was not substantiated. It was further concluded that the allegation that SONGS management deliberately failed to comply with the Continuous Behavioral Observation Program (CBOP) was not substantiated.

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Case No. 4-1999-037

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Case No. 4-1999-037

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EX.
7C

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Case No. 4-1999-037

LIST OF INTERVIEWEES

Exhibit

EX7C

[REDACTED]

CLARK, Barry W., SONGS Site Manager, Bechtel..... 30

DAVIDSON, Jerrold P., former Contract
Boilermaker, Bechtel..... 22

EASTO, Dennis B., Security Officer Supervisor,
SONGS, SCE..... 29

FEE, John F., Manager, Maintenance Division,
SONGS, SCE..... 26

GORDON, Glynn A., former General Foreman,
Bechtel..... 23

EX7C

[REDACTED]

MARQUEZ, Edward J., Business Manager,
International Brotherhood of
Boilermakers (IBOB), Local 92..... 25

TIMMONS, Joe E., former Superintendent, Bechtel.. 27

YOUNG, C. Wesley, former Building Trades
Representative, Bechtel..... 28

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Case No. 4-1999-037

DETAILS OF INVESTIGATION

Allegation

Discrimination Against Contractor by Management for Reporting Security Concerns

Deliberate Failure to Comply with Continuous Behavioral Observation Program (CBOP)

Applicable Regulations

10 CFR 50.7: Employee Protection (1999 Edition), Allegation 1

10 CFR 73.56: Personnel Access Authorization Requirements for Nuclear Power Plants (1999 Edition), Allegation 2

Purpose of Investigation

This investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on July 13, 1999, to determine if [REDACTED], former Contract Boilermaker employed by Bechtel Construction Company (Bechtel) at Southern California Edison's (SCE) San Onofre Nuclear Generating Station (SONGS), was the subject of employment discrimination by management for reporting security concerns regarding the alleged aberrant behavior of [REDACTED] former Contract Boilermaker, Bechtel (Exhibit 1).

Background

On April 13, 1999, Jim SLOAN, Senior Resident Inspector, SONGS, reported that [REDACTED] claimed he was wrongfully terminated for reporting a security event that involved potential aberrant behavior by [REDACTED]. [REDACTED] related that on April 9, 1999, he and Jerry DAVIDSON, former Contract Boilermaker, Bechtel, along with other Bechtel employees, reported to work on the night shift. When they were informed they would only be working 8 hours, they decided it was unfair that other shifts were working 12-hour shifts and they were only allowed to work 8 hours. [REDACTED] said he and DAVIDSON left the radiologically controlled area and encountered the night shift boilermaker superintendent, John CRANE, and voiced their complaint.

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According to [REDACTED] CRANE was busy and suggested they work things out later. Both [REDACTED] and DAVIDSON left the site at 8 p.m., and the remainder of the crew left at 9:15 p.m. [REDACTED] said he called Joe E. TIMMONS, Superintendent, Bechtel, and left a message that the night crew expected to be treated like the other crews. 7C

On April 10, 1999, [REDACTED] and several other Bechtel employees were waiting outside the north security access building before their shift, and everyone except [REDACTED] and DAVIDSON were told to go to work. [REDACTED] said he and DAVIDSON were informed that C. Wesley YOUNG, Building Trades Representative, Bechtel, had said they had quit the job. [REDACTED] said he inquired about talking to Carl VAN TINAN, Day Shift General Foreman, Bechtel, but was informed that their [REDACTED] and DAVIDSON] [REDACTED] so they could not enter the protected area with the rest of their crew. [REDACTED] explained this left him, DAVIDSON, and [REDACTED] standing outside the security access building. According to [REDACTED] told him that he did not appreciate him [REDACTED] causing trouble in their local union and said something to him [REDACTED] to the effect that he [REDACTED] "had better be glad we're in front of the security building or I'd whip your ass. I better not ever see you outside the gate." [REDACTED] said [REDACTED] began to walk away to another group of Bechtel employees, and he [REDACTED] 7C

[REDACTED] turned and started towards him, at which time several Bechtel employees intervened, preventing further escalation. [REDACTED] said he wanted to file a security report and was initially informed by the security shift commander that the incident happened outside the protected area, and security would not get involved. He said he did complete a security report and gave it to the security shift supervisor. 7C

On April 12, 1999, [REDACTED] said when he reported to work, he was informed he had been fired because he had left the site without permission. He said DAVIDSON [REDACTED] [REDACTED] said the rest of the crew was disciplined with a less severe violation for leaving the work site without a supervisor's approval. [REDACTED] said he was given Category I discipline which meant he could not be rehired at SONGS, but his termination form indicated he was terminated under favorable conditions. He said he asked to meet 7C

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with Bechtel management [NFI], but was not given the opportunity. On April 13, 1999, [REDACTED] said he called security and spoke with Randy [LNU], the shift commander, who said he had heard of the incident, but could not find a security report. [REDACTED] said he did not feel [REDACTED] should still be employed because of the incident with him. 7C

On April 20, 1999, the RIV Allegation Review Board (ARB) discussed this incident and determined there were no regulatory or safety issues that required immediate action by the staff. On April 29, 1999, Ken E. BROCKMAN, Director, Division of Reactor Projects, RIV, requested the licensee conduct an investigation into the misplaced security report allegedly submitted by [REDACTED]. On June 21, 1999, A. Bruce EARNEST, Physical Security Specialist, Plant Support Branch (PSB), Division of Reactor Safety, RIV, reported he reviewed the licensee's response (Exhibit 3) and recommended the issue be reviewed by the RIV:ARB for further investigation by OI:RIV (Exhibit 4). 7C

On June 28, 1999, the ARB:RIV discussed the licensee response to the staff's request for information on the security report and recommended PSB:RIV review the background information and provide final recommendations to the ARB.

On July 12, 1999, the ARB:RIV discussed this incident and PSB's review of the licensee's report. The PSB inspector determined the security report was not available and believed the report should have been processed because of the CBOP used to identify aberrant behavior. The ARB requested OI:RIV interview [REDACTED] and obtain additional information about the incident. 7C

Interview of [REDACTED]

On August 3, 1999, [REDACTED] former Contract Boilermaker, Bechtel, SONGS, from [REDACTED] was interviewed by OI:RIV. [REDACTED] related the following information in substance. 7C

According to [REDACTED], on April 9, 1999, he reported to SONGS at approximately 6 p.m. and began dressing out for work when he discovered the night shift would only work 8 hours that evening. [REDACTED] stated he thought it was unfair that the night shift was only scheduled for 8 hours and brought this to CRAIN's attention, but he [CRAIN] indicated he could not deal with the issue at that 7C

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time due to a problem with a reactor coolant loop nozzle.

██████████ stated he and DAVIDSON decided to walk off the job because of the work hour discrepancy and informed CRAIN on their way out. ██████████ said CRAIN agreed with him that it was not fair, although there was nothing he [CRAIN] could do about it at that time. ██████████ stated he left a note regarding his concerns on TIMMONS' computer, and he and DAVIDSON left the site at approximately 7:30 p.m. - 7:45 p.m. ██████████ related he later learned that approximately an hour and a half after he walked off the job, the entire boilermaker crew left the job. ██████████ stated he spoke to TIMMONS the following day and learned that he [TIMMONS] was not pleased that everyone had walked off the job, although he [TIMMONS] did not give any indication that he thought he ██████████ had quit. 7C

██████████ stated he reported to work the next day at 6:30 p.m. and met Eddie MARQUEZ, Business Manager, International Brotherhood of Boilermakers (IBOB), Local 92, and YOUNG outside the north security entrance. ██████████ said MARQUEZ expressed his disappointment that the boilermakers had walked off the job the night before. ██████████ explained to MARQUEZ and YOUNG that the boilermakers were the only group that had a work hour discrepancy between shifts. ██████████ indicated that DAVIDSON, Ron (LNU), Dan GARVER [NFI], Mark SMITH [NFI], and Brian AUSHARD [NFI] were also present during this discussion. ██████████ stated YOUNG informed him ██████████ and DAVIDSON that ██████████. After much discussion with YOUNG and security personnel, it was determined that he ██████████ and DAVIDSON would return to work on Monday, April 12, 1999. ██████████ related he and DAVIDSON were left standing at the gate while members of the oncoming shift processed through the turnstiles. According to ██████████ he observed ██████████ coming out the gate and overheard him ██████████ confront SMITH concerning the boilermakers creating problems by walking off the job the night before. ██████████ stated ██████████ processed out and approached him. ██████████ described ██████████ as being so mad, he was spitting on him. ██████████ said Glynn GORDON, General Foreman, Bechtel and Lee GATES, Day Shift Foreman, Bechtel, and several others were across the street. ██████████ stated he tried to tell ██████████ his side of the story, but ██████████ was taking it personally, stating he ██████████ had worked hard to get the boilermakers from Local 92 back into SONGS. ██████████ stated ██████████ told him that he [██████████] and DAVIDSON should "both better be glad that you all are standing in front of the security building, or I would whip you all's ass." According to ██████████ stated he was surprised at 7C

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his [REDACTED] actions, since he [REDACTED] responded to [REDACTED] that [REDACTED] 7C
[REDACTED] related [REDACTED] advised that when he said this, [REDACTED] ran towards him, although YOUNG restrained [REDACTED] before he reached him [REDACTED]. [REDACTED] stated he [REDACTED] then entered the security building to file a report.

[REDACTED] advised he reported the incident to a security guard on duty, who indicated he [REDACTED] needed to talk to the watch commander. [REDACTED] related when he described the situation to the watch commander, the watch commander indicated that security did not get involved in "personal deals, threats and stuff." [REDACTED] said he convinced the watch commander to provide him [REDACTED] with an SCE incident form, which he [REDACTED] completed and returned to the watch commander [NFI]. According to [REDACTED] YOUNG came in while he was completing the form and he [REDACTED] told YOUNG he was filing out a security incident report, as he had been taught in training to report any "aberrant behavior." 7C

[REDACTED] stated he returned to SONGS on April 11, 1999, to determine if his badge had been reissued and found that it had not. [REDACTED] related that on April 12, 1999, he and DAVIDSON went to the Bechtel office near SONGS, referred to as the "mesa," expecting to [REDACTED] so they could return to work that evening. According to [REDACTED] Bill TURNBOW, Lead Mechanical Superintendent, Bechtel, told him [REDACTED] and DAVIDSON that they were being [REDACTED] for the incident "Saturday." According to [REDACTED] TURNBOW stated he did not know any further details so [REDACTED] explained to him what occurred. [REDACTED] said TURNBOW responded that he only knew that [REDACTED] and DAVIDSON were being [REDACTED] for a Category I, Rule 8 offense. [REDACTED] advised TURNBOW recommended he file a grievance with the union, which [REDACTED] claimed he did later that day. [REDACTED] stated that on April 13, 1999, he called the security watch commander, Randy (LNU), to determine what became of his incident report and was told that no one knew its whereabouts. 7C

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██████████ related that on April 16, 1999, his grievance hearing was held, and as a result, his termination was changed to a reduction in force (RIF), and the Category I offense was stricken from his record. Furthermore, ██████████ claimed the other night shift boilermakers were to be written up for leaving the job without their boss' permission. 7C

██████████ admitted that the company was probably justified for terminating him for walking off the job, although he stated that when Bechtel reduced his work hours, he lost about \$150 each shift, which upset him. ██████████ stated he probably did not handle the situation properly. 7C

██████████ stated he later spoke with GORDON and learned that he [GORDON] overheard a conversation that an individual at the plant by the name of FEE [NFI] with SCE Maintenance witnessed the incident at security from his office and wanted ██████████ and DAVIDSON terminated [NFI].. ██████████ opined the only thing he [FEE] could have witnessed was ██████████ running toward him ██████████. ██████████ questioned how FEE could have heard anything from inside an office over 150 to 200 feet away. 7C

██████████ advised he was working in San Francisco following his termination when he was contacted by Bob HARRIS, Site Investigator, SONGS, SCE, to follow up on the security report. ██████████ stated he told HARRIS that he was fired over the security incident and HARRIS responded, "Oh, no; you didn't get fired; you quit." ██████████ said he asked HARRIS if that was the official stance, to which HARRIS responded that officially he ██████████ had quit. 7C

██████████ stated GORDON, GATES, MARQUEZ, VAN TINAN, and YOUNG were aware of his security report, although only YOUNG was present in the security building when he ██████████ submitted it.

██████████ concluded by stating this incident was more of a union-management issue than an NRC safety-related issue, and added that the issue did not have anything to do with nuclear safety. ██████████ stated that when the security report was reported missing, the NRC was the only organization he could think of to contact regarding the matter. 7C

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Coordination with Regional Staff

On August 11, 1999, OI:RIV provided the transcript of interview with [REDACTED] to the RIV technical staff for review and determination of any potential violations of NRC regulations (Exhibit 6). On August 25, 1999, EARNEST advised he had reviewed the transcript and determined that the aberrant behavior issue described in [REDACTED] transcript was not adequately addressed in the SCE investigation (Exhibit 3) and recommended OI:RIV continue the investigation (Exhibit 7). 7C

Coordination with Regional Counsel

On August 11, 1999, OI:RIV provided the transcript of interview with [REDACTED] to the RIV Regional Counsel for review and determination if [REDACTED] was engaged in protected activities and the possible subject of employment discrimination (Exhibit 8).. 7C

On November 24, 1999, Karla D. SMITH, Regional Counsel, NRC:RIV, advised]

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ex 5

Review of Documentation

On December 9, 1999, [REDACTED] attorney, Stephen A. MADONI, Attorney at Law, Madoni & Gould, Garden Grove, California, provided the following documentation:

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- photocopies of two Bechtel Disciplinary Warnings which were issued to [REDACTED]. The Disciplinary Warnings listed the offenses of "Category I, #8" and "Category III, #5" and indicated [REDACTED] refused to sign the first and was not available to sign the second (Exhibit 10).
- computer generated Security Badge Pull Form that indicated CLARK requested that [REDACTED] badge be pulled on April 10, 1999. The form also indicated that access levels "2-11" were removed at 1628 (4:28 p.m.) (Exhibit 11).
- SCE Termination/Change of Status Notification that indicated [REDACTED] site access was terminated under favorable conditions for violation of Bechtel work rules, "cat 1, rule #8" (Exhibit 12).
- computer generated Notice of Termination which indicated that [REDACTED] was terminated on April 12, 1999, for violation of "Cat 1 #8 Willful Violation of Jobsite Work Rules and Policies" and signed by CLARK (Exhibit 13).
- Bechtel Notice of Termination form which indicated that [REDACTED] was the subject of a layoff on April 12, 1999. The document was signed by CLARK (Exhibit 14).
- SONGS Exit Interview, dated April 12, 1999, which indicated that [REDACTED] was released for "Violation of BCC Work Rules Cat. 1, Rule #8." [REDACTED] indicated on the form that he had no SCE Nuclear Safety Concerns to report, but commented that he [REDACTED] was terminated for "expressing my right to be treated equally." The form was signed by TURNBOW and [REDACTED] (Exhibit 15).

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On January 19, 2000, Beth J. PEARCE, Senior Attorney, SCE, Rosemead, California, provided a memo to file prepared by Robert C. HARRIS, Security Agent, SONGS, SCE on June 4, 1999, concerning the failure of SCE security to respond to a complaint received from [REDACTED]. According to HARRIS' memo to file and attached response, an Incident Report/Witness Statement was completed by [REDACTED] reviewed by Alonzo MARIN, acting Security

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Shift Commander, SONGS, SCE; and forwarded via "pony mail" to HARRIS. The memo to file reported the Incident Report/Witness Statement was subsequently "lost in the company mail" (Exhibit 16).

On January 20, 2000, Charles P. MCCARTHY, Attorney at Law, Bechtel Corporation, San Francisco, California, provided a photocopy of a handwritten note from [REDACTED] to TIMMONS. The note stated [REDACTED] expected to work the same shift length as the day shift and instructed TIMMONS to call 1-800-522-MOST to learn that "there is plenty of work out there." [REDACTED] closed by stating he would be back when he could work the same hours as days (Exhibit 17). MCCARTHY also provided a copy of a National Labor Relations Board (NLRB) letter, dated July 23, 1999, and addressed to [REDACTED] which reported the results of the NLRB's investigation into [REDACTED] allegations. The NLRB's investigation determined [REDACTED] engaged in "an unprotected strike in violation of the no-strike clause..." and therefore was not protected under Section 8 of the National Labor Relations Act, as amended (Exhibit 18). 7C

On January 24, 2000, CLARK provided a copy of the Bechtel SONGS New Hire Orientation and Work Rules Handbook (Exhibit 19). A review of the Handbook determined that Page 1, Section A. 1. defined the normal work hours for all manual employees. Section A. 2. stated, in part, that "Multiple shift schedules are often worked on this project with varying work hours." Page 9 defined Category I infractions, to include "8. Willful violation of jobsite ... work rules..." and listed the punishment for the first infraction as termination. Pages 11 and 12 defined Category III infractions, to include "5. Leaving the work place without supervisor's permission" and listed the punishment for the first infraction as a written warning and possible suspension of up to 30 days. The final page of the handbook was an acknowledgment of responsibility for the work rules contained in the handbook. CLARK also provided a copy of [REDACTED] signed Bechtel Responsibility Acknowledgment Form (Exhibit 20) which indicated [REDACTED] read and understood the work rules and agreed to follow them. CLARK also provided a copy of a modified SONGS Exit Interview for [REDACTED] which indicated [REDACTED] original Exit Interview form was modified by CLARK after review with the "boilermaker BA" to indicate that [REDACTED] was released due to a "Voluntary RIF" (Exhibit 21). 7C

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Allegation No. 1: Discrimination Against Contractor by
Management for Reporting Security Concern

Testimony/Evidence

The following individuals were interviewed regarding [REDACTED] allegation that he was discriminated against for reporting a security concern and stated the following information in substance. 7C

Interview of Jerrold P. DAVIDSON (Exhibit 22)

On January 12, 2000, Jerrold Paul DAVIDSON, Contract Boilermaker, was interviewed by OI:RIV. DAVIDSON provided the following information in substance.

DAVIDSON advised he was employed by Bechtel and worked an outage at SONGS circa mid-March 1999 where he worked with [REDACTED] on the night shift. According to DAVIDSON, on approximately April 10, 1999, he discovered from a pipefitter [NFI] that the boilermakers were scheduled to work an 8-hour shift that evening, although the day shift boilermakers had allegedly worked 12 hours. DAVIDSON said he and [REDACTED] were both upset about this disparity, and [REDACTED] told him that he [REDACTED] was going to go home rather than work only 8 hours. DAVIDSON stated he decided to leave with [REDACTED]. DAVIDSON said he and [REDACTED] did not discuss their decision with the rest of the crew, although they did tell the pipefitter [NFI] and Mark SMITH, Night Shift Foreman, Bechtel, that they were leaving. According to DAVIDSON, prior to leaving the site, he and [REDACTED] went to TIMMONS' office, and [REDACTED] left a message on a "sticky note" on TIMMONS' computer screen. DAVIDSON stated the note read, "When you can get the day shift and night shift working the same hours, we'll be back," or words to that effect. 7C

DAVIDSON related he and [REDACTED] reported back to work the following afternoon and discovered that [REDACTED]. DAVIDSON stated that YOUNG and MARQUEZ told them Bechtel thought he and [REDACTED] had quit the previous evening. According to DAVIDSON, he and [REDACTED] were instructed to report to the Bechtel office on the following Monday to [REDACTED]. 7C

DAVIDSON stated he and [REDACTED] left the site and reported to the Bechtel office across from the site on the following Monday. DAVIDSON said TURNBOW and YOUNG were present. According to

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DAVIDSON, TURNBOW told them that they were [REDACTED] for "inciting a wobble." DAVIDSON related that YOUNG said he would do what he could to have the [REDACTED] and recommended he [DAVIDSON] and [REDACTED] file a grievance with the union. DAVIDSON stated he and [REDACTED] went to the union hall later that morning and filed a grievance with MARQUEZ. DAVIDSON said the [REDACTED] was subsequently changed to a [REDACTED]. DAVIDSON stated that [REDACTED] should have been terminated for threatening a coworker on-site. 7C

Interview of Glynn A. GORDON (Exhibit 23)

On January 13, 2000, Glynn A. GORDON, former General Foreman, Bechtel, was interviewed by OI:RIV. GORDON related the following information in substance.

GORDON stated he first met [REDACTED] during an outage at SONGS in 1995 and also worked with him [REDACTED] during an outage at SONGS in April or May 1999. GORDON related that he [GORDON] was the boilermaker general foreman for steam generators on the day shift and [REDACTED] was working on night shift. 7C

GORDON stated one evening [REDACTED] and DAVIDSON told him they were going home because of a discrepancy in hours worked by the day shift and the night shift. GORDON said [REDACTED] and DAVIDSON complained about only working 8 hours when the day shift worked 12 hours. GORDON stated that although he thought this was not right, he told [REDACTED] there was nothing he could do at that point. GORDON stated he did not believe [REDACTED] and DAVIDSON should have walked off the job. GORDON advised that [REDACTED] and DAVIDSON did not indicate to him that they had quit their job. 7C

GORDON recalled hearing that FEE, "a big wheel" at SONGS, had observed a confrontation between [REDACTED], DAVIDSON, and [REDACTED], although he [GORDON] doubted FEE could have been involved in the decision to [REDACTED] and DAVIDSON since [REDACTED]. GORDON understood that [REDACTED] because Bechtel thought [REDACTED] and DAVIDSON were leaving the job site and not coming back.

GORDON said he did not believe that [REDACTED] and DAVIDSON had quit, but were going home that night and would be back the next day. GORDON related that the remainder of the crew who walked off the job later in the shift received written citations without further repercussions. 7C

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GORDON stated there was a contract between the local boilermaker union and Bechtel which laid out what is expected of the workers, including work hours and pay. According to GORDON, the contract did not guarantee 12 hours of work. GORDON stated [REDACTED] and DAVIDSON were not allowed to return to work on April 10, 1999, [REDACTED] GORDON said he thought [REDACTED] and DAVIDSON were [REDACTED] at this point. 7C

Interview of [REDACTED]

On January 18, 2000, [REDACTED], former Contract Boilermaker, was interviewed by OI:RIV. [REDACTED] related the following information in substance. 7C

[REDACTED] related that during the outage, one portion of the boilermaker crew, 8 or 10 individuals, refused to go to work during the course of one shift and left the facility. [REDACTED] advised that this type of incident is commonly referred to as a "wobble" in the industry. [REDACTED] stated the boilermaker crew basically quit their positions and refused to go to work because they were unhappy with their overtime. [REDACTED] recalled that [REDACTED] and another "gentleman from Local 549" [NFI] were the two that "spearheaded the situation." [REDACTED] stated it was his understanding that [REDACTED] not only encouraged the other seven or eight to leave the job site, but when they left the job site, [REDACTED] entered Bechtel's computer system and left "a somewhat sarcastic note to the superintendent of Bechtel telling him he could supply his work for us through the MOST line." [REDACTED] explained that the "MOST line" was used to arrange for supplemental employment that was offered to the boilermakers. [REDACTED] related that "not only did they walk off the job, but they left a really nasty letter on the computer." [REDACTED] said he never saw the letter but only heard about it on the job site. 7C

[REDACTED] advised that based upon his experience as a journeyman, a foreman, a general foreman, and a business agent, it was his opinion that when a union member left a job site during the course of a shift and refused to go to work, industry standards were that the member had left the job permanently. 7C

[REDACTED] stated that [REDACTED] complaint regarding the inequality of work hours was unreasonable. [REDACTED] said that during an outage, many "intangibles" can occur during a shift that would make it impossible to be productive during a shift. [REDACTED] added events can occur that extend a shift and other shifts have to be 7C

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modified accordingly. [REDACTED] stated the general agreement between the boilermakers union and Bechtel did not guarantee a specific work day length, nor did it guarantee overtime pay. 7C

Interview of Edward J. MARQUEZ (Exhibit 25)

On January 18, 2000, Edward J. MARQUEZ, Business Manager, IBOB, Local 92, was interviewed by OI:RIV. MARQUEZ related the following information in substance.

MARQUEZ stated he was familiar with [REDACTED] and described him as a [REDACTED] or a [REDACTED]. MARQUEZ advised that Local 92 referred [REDACTED] to Bechtel when the union had a shortage of manpower for the outage. MARQUEZ stated [REDACTED] never made any complaints to him concerning work hours. MARQUEZ advised he was familiar with an incident that occurred at SONGS involving [REDACTED] and other members of the night shift. MARQUEZ related he was the acting agent in charge of SONGS at that time and received a call from YOUNG. According to MARQUEZ, YOUNG told him there was an incident with boilermakers at SONGS and asked if he [MARQUEZ] could come down and investigate the situation. MARQUEZ said YOUNG told him that several boilermakers had walked off the job, and he [YOUNG] did not know if they were coming back. MARQUEZ stated YOUNG contacted him the morning following the incident, and he [MARQUEZ] went to SONGS that afternoon. 7C

MARQUEZ related when he arrived at SONGS, he spoke with the individuals involved and advised them that they did not follow proper procedures to address their disagreements and six agreed they had been in error, apologized for putting Local 92 in a bad situation, and decided to go back to work. According to MARQUEZ, the [REDACTED] for [REDACTED] and DAVIDSON [REDACTED] prior to his [MARQUEZ'] arrival. MARQUEZ related that he told YOUNG there might be a misunderstanding and to let him [MARQUEZ] talk to [REDACTED] and DAVIDSON. 7C

MARQUEZ stated he told YOUNG it would be advantageous to get badges reissued and [REDACTED] and DAVIDSON back to work. According to MARQUEZ, YOUNG agreed and said he [YOUNG] had to make a call and would let him [MARQUEZ] know. MARQUEZ related that as he turned around, he noticed [REDACTED] and DAVIDSON entering the "guard shack." MARQUEZ said he followed them into the "guard shack" and asked them to come out, although they ignored him. MARQUEZ advised that although he did not see it, he 7C

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understood that [REDACTED] and DAVIDSON were arguing with the guards about [REDACTED]. MARQUEZ said at that point, YOUNG came back and informed him he would be able to get the [REDACTED]. According to MARQUEZ, he told YOUNG that [REDACTED] and DAVIDSON were in the "guard shack" arguing with the guards and their [REDACTED] and DAVIDSON's] attitudes were inappropriate for a nuclear site, and it was decided the [REDACTED].

7C

MARQUEZ stated he discussed the situation with CLARK the day after the walkout and learned that CLARK thought [REDACTED] and DAVIDSON deserved to be [REDACTED] for walking off the job and Bechtel planned to [REDACTED] [REDACTED] and DAVIDSON]. MARQUEZ said after much discussion, he and CLARK agreed to offer [REDACTED] and DAVIDSON [REDACTED], provided they drop their grievance. MARQUEZ stated CLARK never mentioned a security incident report allegedly filed by [REDACTED] as a reason for terminating [REDACTED].

7C

MARQUEZ said he approached [REDACTED] and DAVIDSON and told them what the terms and conditions were and that if they wished to file a grievance, they could. MARQUEZ related that [REDACTED] and DAVIDSON accepted the conditions and agreed to [REDACTED]. MARQUEZ described [REDACTED] as being "unhappy" with the conditions, but he [REDACTED] accepted it. According to MARQUEZ, DAVIDSON approached him [MARQUEZ] after [REDACTED] left and apologized for his actions and told MARQUEZ he realized he did not handle the situation properly.

7C

MARQUEZ related that he heard [REDACTED] left a note to a Bechtel supervisor which threatened that if they [REDACTED] and DAVIDSON] did not "get their share of overtime, that there was plenty of work out at that other new places, and they were leaving. Hence the mixup in wondering if they quit or they didn't quit." MARQUEZ stated the contract between the union and Bechtel did not guarantee overtime pay.

7C

Interview of John F. FEE (Exhibit 26)

On January 19, 2000, John F. FEE, Manager, Maintenance Division, SONGS, SCE, was interviewed by OI:RIV. FEE related the following information in substance.

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FEE stated he recalled an incident that occurred near the north gate security facility during a "cycle ten outage." According to FEE, he observed two "guys talking to each other in a fairly loud fashion." FEE stated he believed one of the individuals was a laborer and the other was a business agent. FEE related after observing the two individuals, he had a discussion with the "senior Bechtel labor guy" [NFI] who told him they were trying to work out some differences. FEE said he asked if he needed to get involved, and the labor representative said no. FEE advised he had no further involvement in the incident.

FEE did not recall asking that the two individuals involved in the incident be terminated for their conduct on-site and stated that since the two did not work for him, involvement on his part "would be unlikely." FEE explained it would be "very unusual" for him to be involved in the discipline of another division's employees. FEE stated he was unfamiliar with the security incident report allegedly filed by [REDACTED] and advised he did not normally receive copies of security reports. 7C

Interview of Joe E. TIMMONS (Exhibit 27)

On January 19, 2000, Joe E. TIMMONS, Nuclear Construction Engineer, Bechtel, was interviewed by OI:RIV. TIMMONS related the following information in substance.

TIMMONS stated that prior to assuming his current position in July 1999, he was a Bechtel superintendent. TIMMONS related that complaints regarding shift length differences were very common during previous outages but said SCE scheduled the outages and the work to be performed. TIMMONS stated it was his job to supply the manpower to meet that schedule and sometimes work was completed ahead of or behind schedule and shift lengths had to be adjusted accordingly. TIMMONS advised although he did not recall a complaint from [REDACTED] regarding a disparity in shift lengths, he [TIMMONS] recalled discovering a photocopy of a handwritten note on his desk one morning wherein the author of the note was dissatisfied with the number of hours he had been told that he would work that shift. TIMMONS stated he did not call [REDACTED] after reading the note and did not realize that [REDACTED] and DAVIDSON had left the job site until sometime later [NFI]. TIMMONS advised he thought [REDACTED] was upset, but did not know his [REDACTED] intentions. TIMMONS related although he was occasionally involved in determining if an employee's employment with Bechtel should be terminated, he was not involved in the 7C

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case of [REDACTED] and DAVIDSON. TIMMONS did not know who made the decision to [REDACTED] and DAVIDSON, but opined that the decision would normally be made by CLARK or Mike RODRIGUEZ, Construction Manager, Bechtel, and that YOUNG would usually be involved. TIMMONS stated he heard that [REDACTED] was not terminated, but had quit. 7C

Interview of C. Wesley YOUNG (Exhibit 28)

On January 19, 2000, Clay W. YOUNG, former Building Trades Representative, Bechtel, SONGS, was interviewed by OI:RIV. YOUNG related the following information in substance.

YOUNG stated that as the building trades representative at SONGS, he represented all the building trades bargaining unit crafts, including the boilermakers, and was the liaison between them, Bechtel, and SCE. YOUNG advised he first met [REDACTED] during a Unit 2 outage which started in mid-January 1999. According to YOUNG, [REDACTED] worked the Unit 2 outage and then stayed to work the Unit 3 outage which started in early March 1999. YOUNG could not recall if [REDACTED] had voiced a complaint to him regarding a disparity in work hours between the shifts, although he was aware of an incident where [REDACTED] left the job site one evening because he [REDACTED] was dissatisfied with the number of hours the night shift worked compared with the day shift. YOUNG explained that due to work scheduling during outages, "some crews just get shut out, and there's nothing anybody can do about it." According to YOUNG, he learned that [REDACTED] and DAVIDSON left the job site and that [REDACTED] had left a note which indicated that he [REDACTED] was not going to work at SONGS until Bechtel gave him 12 hours a shift. YOUNG related he saw [REDACTED] and DAVIDSON leave the superintendent's office, and [REDACTED] never said a word to him [YOUNG]. Later that evening YOUNG was told that [REDACTED] had left and the note was discovered. 7C

YOUNG advised he contacted MARQUEZ regarding the "wobble" and told him [MARQUEZ] that he needed to get [REDACTED] and DAVIDSON back on the job so they could work it out. YOUNG stated he told MARQUEZ he needed to make sure [REDACTED] and DAVIDSON understood "what they're doing and what they're not supposed to do." YOUNG explained the job had a no-strike clause and laborers were supposed to notify the supervisor if they were leaving the job site. YOUNG stated [REDACTED] walked right past him and did not let him know he [REDACTED] was leaving. 7C

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YOUNG advised that the following evening he met [REDACTED] at the security processing facility and told [REDACTED] because of his action and not notifying his supervisor, he was being terminated. YOUNG related MARQUEZ was also present to tell [REDACTED] that the company had taken that position and that the rest of the crew needed to go to work. YOUNG stated he had been notified by CLARK the morning after the incident that [REDACTED] and DAVIDSON [REDACTED] and [REDACTED] YOUNG related the decision to terminate [REDACTED] was probably discussed by both CLARK and Bill TURNBOW, the lead superintendent, although CLARK made the decision. 7C

YOUNG stated the decision to [REDACTED] and DAVIDSON was made the morning after the incident, once all the facts were gathered. YOUNG said since the steam generator work was so critical, [REDACTED] and DAVIDSON walking off the job "made the decision right there that those [REDACTED] YOUNG advised everyone who hired in with Bechtel received a set of job rules, which outlined what was expected of the employees. 7C

YOUNG related [REDACTED] and DAVIDSON were told to report to Bechtel's office the next morning, and TURNBOW informed [REDACTED] and DAVIDSON that [REDACTED] YOUNG advised he spoke with [REDACTED] and DAVIDSON and they asked him [YOUNG] that since they [REDACTED] and DAVIDSON] were on the road, could they get a [REDACTED] YOUNG advised that he told [REDACTED] and DAVIDSON to talk to MARQUEZ and have him [MARQUEZ] talk to CLARK. YOUNG stated [REDACTED] did not mention a threat from HAINES when they reported to the Bechtel office. YOUNG stated [REDACTED] and DAVIDSON were [REDACTED] because they "wobbled," and the decision to [REDACTED] was made before they reported back to work the evening after they walked out. YOUNG related that CLARK was very thorough with his investigation and determined that [REDACTED] and DAVIDSON had violated the work rules and left the job "unmanned without notification." 7C

Interview of Dennis B. EASTO (Exhibit 29)

On January 19, 2000, Dennis B. EASTO, Security Officer Supervisor, SONGS, SCE, was interviewed by OI:RIV. EASTO related the following information in substance.

EASTO recalled that [REDACTED] entered the security office one evening and requested a security form so he [REDACTED] could file a report regarding a verbal assault. EASTO said he asked 7C

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[REDACTED] about the nature of his complaint, and [REDACTED] told him that he [REDACTED] had been verbally assaulted outside the security office by another Bechtel employee. EASTO advised that he was initially reluctant to take the complaint since the alleged incident occurred outside the Protected Area (PA), although he [EASTO] subsequently provided [REDACTED] with an Incident Report/Witness Statement form. EASTO related that when [REDACTED] completed the Incident Report/Witness Statement, he [EASTO] had the acting Security Shift Commander, Alonzo MARIN, review the complaint. EASTO related that MARIN spoke with [REDACTED] and then returned the Incident Report/Witness Statement form to him [EASTO]. EASTO said he placed the Incident Report/Witness Statement form in a "pony mail" envelope in the security "out box" for delivery to the Site Investigator for further review. EASTO advised he did not see [REDACTED] Incident Report/Witness Statement form again and had no information regarding its whereabouts. 7C

Interview of Barry W. CLARK (Exhibit 30)

On January 20, 2000, Barry W. CLARK, Site Manager, Bechtel, SONGS, was interviewed by OI:RIV. CLARK related the following information in substance.

CLARK stated he became familiar with [REDACTED] who was employed as a boilermaker with Bechtel during the Unit 3 outage in March 1999, on a Friday evening after "some boilermakers on swing shift left ... the site..." CLARK advised that when the boilermakers left, steam generator work was being conducted, and Bechtel had to find other people on-site to conduct the necessary work. CLARK related that the next morning, he looked into the matter and determined that two boilermakers had left the work area and job site without the permission of the backshift supervisor, Bill HAMILTON. CLARK said his inquiries determined that [REDACTED] and DAVIDSON were the boilermakers involved in the walkout. 7C

CLARK advised that after [REDACTED] and DAVIDSON walked off the job, he was given a note, signed by [REDACTED], that basically said "We'd like to have the same amount of hours that everyone else is getting.... They're getting 10 or 12. We're only getting eight.... Give us a call when you're ready to talk" or words to that effect. CLARK related that the note felt like a challenge to him. CLARK stated the following day, he, YOUNG, and Mike RODRIGUEZ, Project Superintendent, Bechtel, discussed what had 7C

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happened and reviewed the work rules and proper corrective action. CLARK advised they determined that [REDACTED] and DAVIDSON had broken a Category I work rule, willful violation of work rules, and a Category III work rule, leaving the work place without supervisor's permission. CLARK said he applied the discipline outlined in the work rules which indicated [REDACTED] was the proper course of action for the Category I violation. CLARK stated the final decision to [REDACTED] and DAVIDSON was his alone. CLARK advised that [REDACTED] were made out by RODRIGUEZ and were provided to YOUNG. CLARK said that since [REDACTED] and DAVIDSON had walked off the job the previous evening, he [CLARK] was unsure if they were coming back to the site. For that reason, CLARK said he gave the [REDACTED] to YOUNG to have available if [REDACTED] and DAVIDSON came to work that evening. CLARK stated he also contacted MARQUEZ to inform him of what had happened. CLARK said in addition to preparing the [REDACTED] the [REDACTED] and DAVIDSON were flagged [REDACTED] CLARK related that on Saturday afternoon, [REDACTED] and DAVIDSON were told they were [REDACTED] and to report to "the mesa" on Monday morning to [REDACTED]. CLARK said the actual [REDACTED] took place Monday morning at "the mesa."

Agent's Analysis

An analysis of the evidence was performed to determine if [REDACTED] was the subject of employment discrimination by Bechtel management for reporting security concerns.

1. Protected Activity

According to [REDACTED], he filed a security incident report with the SONGS security office on April 9, 1999, regarding a verbal threat he received from [REDACTED]. Although the security incident report was misplaced and unavailable for review to determine the specific nature of [REDACTED]'s concern, it was determined that [REDACTED] did enter the SONGS security office following the confrontation with [REDACTED] on the afternoon of April 9, 1999, and he [REDACTED] did file a security incident report with the security office pertaining to a verbal threat (Exhibit 29). In view of the fact that [REDACTED] filed the incident report following what he perceived to be "aberrant behavior," the filing of the incident report can be described as protected activity.

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2. Employer Knowledge

Although Bechtel management was not aware of the nature of the report, many were aware that [REDACTED] was involved in a confrontation at the security gate and had entered the security office shortly thereafter. Although the security incident report was misplaced, several Bechtel managers were aware of its existence and subsequent disappearance. 7C

3. Adverse Action

[REDACTED] was formally terminated by Bechtel on April 12, 1999 for violation of Bechtel work rules Category I, Number 8 and Category III, Number 5, although [REDACTED] access had been revoked at 1628 (4:28 p.m.) on April 10, 1999, by CLARK in anticipation of terminating [REDACTED] for Bechtel work rule violations. [REDACTED] termination, although subsequently modified to a RIF, can be classified as an adverse action. 7C

4. Adverse Action Caused by Protected Activity

From the testimony of CLARK, YOUNG, and TIMMONS, it is apparent that [REDACTED] was terminated for work rule violations relating to his unauthorized departure from the work site. Additionally, the process of terminating [REDACTED] commenced hours prior to the alleged confrontation with [REDACTED] at the security gate and the subsequent filing of a security incident report by [REDACTED]. Therefore, the adverse action could not have been based on [REDACTED]'s "protected activity" since the activity had not yet occurred when the decision was made to terminate [REDACTED]. 7C

Conclusion

Based on review of the testimony, documentary evidence developed during the investigation, and coordination with the RIV technical staff and Regional Counsel, the allegation that [REDACTED] was the subject of employment discrimination by management for reporting security concerns was not substantiated. 7C

Allegation No. 2: Deliberate Failure to Comply with Continuous Behavioral Observation Program

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Testimony/Evidence

The following individuals were interviewed regarding [REDACTED] allegation that SCE failed to take appropriate action following [REDACTED] alleged aberrant behavior and stated the following information in substance. 7C

Interview of DAVIDSON (Exhibit 22)

DAVIDSON stated that after he and [REDACTED] reported to work on April 10, 1999, [REDACTED] approached [REDACTED] and him. DAVIDSON said [REDACTED] got in his 'DAVIDSON's' face and yelled at him for causing a "wobble" on the evening of April 9, 1999, which risked "a million man-hours by possibly getting the union kicked out of SONGS." DAVIDSON stated [REDACTED] was so upset, he spit on him [DAVIDSON] as he spoke. According to DAVIDSON, [REDACTED] told him he had better be glad he was on company property or he would "beat his ass" and would "get you off-site." DAVIDSON said [REDACTED] responded to [REDACTED] and said, [REDACTED] at which point [REDACTED] ran toward [REDACTED] DAVIDSON stated YOUNG grabbed [REDACTED] and prevented further confrontation. DAVIDSON said [REDACTED] then commented that he had just been threatened and was going to file a report. DAVIDSON stated [REDACTED] went into the security office, although he [DAVIDSON] did not because YOUNG wanted to talk to him. DAVIDSON related that YOUNG tried to get [REDACTED] to come out of the security office, although [REDACTED] refused to leave until he filed the report. DAVIDSON advised MARQUEZ was also present and was upset that [REDACTED] had filed the report. According to DAVIDSON MARQUEZ remarked "I don't know what I can do for you now." 7C

Interview of GORDON (Exhibit 23)

GORDON stated he was present in front of security at SONGS when there was a confrontation involving [REDACTED] DAVIDSON, and [REDACTED] GORDON said it was his understanding that [REDACTED] and DAVIDSON were [REDACTED] but that Bechtel was going to [REDACTED] GORDON related that although he did not hear the conversation between [REDACTED], DAVIDSON, and [REDACTED], he did observe [REDACTED] and DAVIDSON enter the security office when the confrontation was over. GORDON added that after [REDACTED] and DAVIDSON went into the security office, MARQUEZ and YOUNG tried to convince them to leave the security office, and although DAVIDSON came out, ANDERSON refused. GORDON recalled that [REDACTED] later told him 7C

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he [REDACTED] had filed a report with security concerning a threat he received from [REDACTED] [NFI].

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Interview of [REDACTED]

[REDACTED] related that after [REDACTED] and DAVIDSON walked off the job, they took a "glib" stance regarding their actions. [REDACTED] stated he was offended by the actions of [REDACTED] and DAVIDSON. [REDACTED] stated he met [REDACTED] several days later outside the security gate at the end of his [REDACTED] shift. [REDACTED] said he approached [REDACTED] and told him his actions were inappropriate. [REDACTED] stated he and [REDACTED] exchanged words, at which time [REDACTED] accused him [REDACTED] of threatening him. [REDACTED] said [REDACTED] asked him, "Are you threatening me?" and he [REDACTED] responded, "I'm absolutely not threatening you." [REDACTED] denied ever threatening [REDACTED] during the exchange and categorically denied telling [REDACTED] he [REDACTED] "would whoop [REDACTED] ass." [REDACTED] estimated the conversation lasted about 30 seconds. [REDACTED] said the exchange was not a major incident, but described it as two boilermakers having a disagreement.

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[REDACTED] recalled several other boilermakers and MARQUEZ were in the general area during the exchange, but did not believe they could have heard the conversation. [REDACTED] said the tone of voice he and [REDACTED] used with one another was at a normal level. Additionally, [REDACTED] related he heard that [REDACTED] attempted to go into security following the incident, although the security guard did not let [REDACTED] in. [REDACTED] advised he heard that [REDACTED] was subsequently terminated from employment, although he did not hear why he was terminated. [REDACTED] advised he had no further contact with [REDACTED] following the exchange.

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Interview of MARQUEZ (Exhibit 25)

MARQUEZ advised he was unaware that an incident occurred which involved [REDACTED] and was unaware that [REDACTED] had filed a report with SONGS security until [REDACTED] raised the issue at his [MARQUEZ'] office when discussing the grievance. MARQUEZ said he asked [REDACTED] if it was something he [MARQUEZ] needed to look into, and [REDACTED] responded, "No, let's get this over with. If these are the terms and conditions, then I'll live with it and be on my way." MARQUEZ stated [REDACTED] did not mention threats from [REDACTED], although [REDACTED] did mention that he felt Local 92 personnel were unhappy with him because of the way he handled the situation.

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Interview of FEE (Exhibit 26)

As described supra, FEE recalled an incident that occurred near the north gate security facility in which he observed two "guys talking to each other in a fairly loud fashion." FEE stated his inquiries at the scene determined it was two laborers "trying to work out some differences." FEE advised he had no further involvement in the incident.

Interview of TIMMONS (Exhibit 27)

TIMMONS said he heard rumors regarding an incident at the security gate, although he was not present during the incident. TIMMONS related he heard that a union official [NFI] for the boilermakers found out that [REDACTED] had left the job and the union official came to advise them that they were in violation of an agreement between the local union and Bechtel. TIMMONS recalled hearing that the union official asked [REDACTED] if he had quit, to which [REDACTED] allegedly stated "no." TIMMONS continued that the union official allegedly responded, "Well, you must have quit because you didn't come in. So you quit." 7C

Interview of YOUNG (Exhibit 28)

YOUNG stated he did not observe an incident between [REDACTED] and another individual at the gate the evening [REDACTED] was terminated and had no knowledge of [REDACTED] threatening [REDACTED] other than what he had heard at the job site. YOUNG said, "I didn't see anything that was out of the ordinary in -- I mean, these guys are construction guys, and everybody gets wound up, and especially two going, they get excited. I didn't see anything that caused any aberrant behavior, if that's what you're saying." YOUNG recalled that [REDACTED] and DAVIDSON may have gone into the security office to make sure [REDACTED] and believed MARQUEZ went in after them, but he [YOUNG] did not try to stop [REDACTED] from entering the security office. 7C

Interview of EASTO (Exhibit 29)

EASTO recalled that [REDACTED] entered the security office to file a report regarding a "verbal assault" he [REDACTED] received from [REDACTED] outside the security office. EASTO did not witness the "verbal assault" and was reluctant to take the complaint since the alleged incident occurred outside the PA and [REDACTED] did not feel "physically threatened" at the time. 7C

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Interview of CLARK (Exhibit 30)

CLARK stated he was unaware of an incident that allegedly occurred at the security gate on Saturday evening.

Agent's Analysis

Although [REDACTED] claimed [REDACTED] displayed "aberrant behavior" at the security access point on April 10, 1999, the interviews conducted with individuals alleged to be present [GORDON, YOUNG, MARQUEZ] did not corroborate the alleged "aberrant behavior." Additionally, YOUNG did not recall restraining [REDACTED] as described by [REDACTED]. YOUNG described the conversation between [REDACTED] as "nothing out of the ordinary..." and he "didn't see anything that caused any aberrant behavior..." FEE observed "two guys talking to each other in a fairly loud fashion."

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SCE's failure to comply with the CBOP was addressed by SCE in the June 4, 1999, memo to file prepared by HARRIS (Exhibit 16). The memo to file reported the licensee's receipt of [REDACTED] complaint on April 9, 1999; the actions taken by EASTO and MARIN; and the subsequent forwarding of the Incident Report/Witness Statement to the Site Investigator "for follow-up action." Although [REDACTED] Incident Report/Witness Statement was later misplaced, there were no indications the licensee deliberately chose not to comply with the CBOP.

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Conclusion

Based on review of the testimony, documentary evidence developed during the investigation, and coordination with the RIV technical staff and Regional Counsel, it was concluded that there was insufficient evidence to support the allegation that [REDACTED] displayed aberrant behavior. Furthermore, it was concluded that the allegation that SONGS management deliberately failed to comply with the CBOP was not substantiated.

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SUPPLEMENTAL INFORMATION

On February 7, 2000, EARNEST reviewed the SCE memo to file concerning the failure of SCE security to respond to a complaint received from [REDACTED] (Exhibit 16) and was provided a summary of the interviews conducted by OI regarding the alleged "aberrant behavior" of [REDACTED]. EARNEST advised the SCE memo to file and the OI interviews were sufficient to determine that there are no further unresolved issues regarding the lost Incident Report or SCE compliance to the CBOP. According to EARNEST, although SCE failed to adequately address the alleged "aberrant behavior" of [REDACTED] the OI interviews established the lack of corroboration for [REDACTED] assertion. 7C

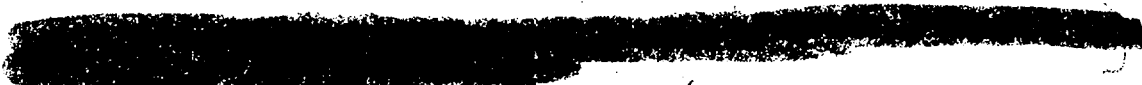
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Case No. 4-1999-037

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated July 13, 1999.
2	Letter from BROCKMAN, dated April 29, 1999.
3	Memorandum from EARNEST, dated June 21, 1999.
	
5	Memorandum to WISE, dated August 11, 1999.
6	SCE Investigation.
7	Memorandum from EARNEST, dated August 25, 1999.
8	Memorandum to SMITH, dated August 11, 1999.
9	Memorandum from SMITH, dated November 24, 1999.
10	Bechtel Disciplinary Warnings, dated April 12, 1999.
11	Security Badge Pull Form, dated April 10, 1999.
12	SCE Termination/Change of Status Notification, undated.
13	- Notice of Termination, dated April 12, 1999.
14	Bechtel Notice of Termination, dated April 12, 1999.
15	SONGS Exit Interview, dated April 12, 1999.
16	Memo to File from HARRIS, dated June 4, 1999.
17	Photocopy of Handwritten Note to TIMMONS from  undated.

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- 18 NLRB Letter, dated July 23, 1999.
- 19 Bechtel SONGS New Hire Orientation and Work Rules Handbook, undated.
- 20 Bechtel Responsibility Acknowledgment Form, undated.
- 21 SONGS Exit Interview, dated April 15, 1999.
- 22 Interview Report of DAVIDSON,, dated January 12, 2000.
- 23 Transcript of Interview of GORDON, dated January 13, 2000.
- ([REDACTED]) 7C
- 25 Transcript of Interview of MARQUEZ, dated January 18, 2000.
- 26 Transcript of Interview of FEE, dated January 19, 2000.
- 27 Transcript of Interview of TIMMONS, dated January 19, 2000.
- 28 Transcript of Interview of YOUNG, dated January 19, 2000.
- 29 Interview Report of EASTO, dated January 19, 2000.
- 30 Transcript of Interview of CLARK, dated January 20, 2000.

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