

BEFORE THE UNITED STATES
DEPARTMENT OF LABOR

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OSHA-REGION X

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OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

In the Matter of:)
)
WALTER E. FORD)
)
Complainant,)
)
v.)
)
BECHTEL NATIONAL, INC. and)
URS, INC. d/b/a URS ENERGY AND)
CONSTRUCTION, INC.)
)
Respondents.)
_____)

COMPLAINT OF DISCRIMINATION

Complainant Walter E. Ford hereby brings this action based upon discrimination against him by his employers in violation of the Energy Reorganization Act, 42 U.S.C. § 5851, as amended

I. PARTIES

1. Walter E. Ford, Complainant, 9612 W. Court Street, Pasco Washington, 99301, was an employee at the Hanford Waste Treatment Plant, jointly employed by Bechtel National, Inc., and URS, Inc.. Complainant was a Millwright at the Waste Treatment Plant project (also known as WTP) at the Hanford Site until his termination on November 17, 2011.
2. Bechtel National, Inc. (BNI) is a government contractor hired to design, build and commission the Hanford Waste Treatment and Immobilization Plant, which is intended to stabilize the radioactive and chemical wastes stored in underground tanks at the Hanford Nuclear Site.

3. URS, Inc. ("URS"), also doing business as URS Energy and Construction, Inc. located at 723 The Parkway, Richland, WA, 99352, (509) 946-3100, is a partner and Principal Subcontractor to Bechtel National, Inc. ("BNI") in a government contract to design, build and commission the Hanford Waste Treatment and Immobilization Plant, which is intended to stabilize the radioactive and chemical wastes stored in underground tanks at the Hanford Nuclear Site. While URS is called a "subcontractor" they function as a partner in that they split profits (fees paid) 50/50 with BNI and also staff key positions. Their earnings are a direct result of contract milestone performance with BNI as judged by DOE rather than a typical subcontractor payment schedule.

II. BACKGROUND AND PROTECTED ACTIVITY

HANFORD HISTORY AND THE WASTE TREATMENT PLANT

4. The Hanford Nuclear Site ("Hanford"), is located in Southeastern Washington State, and is a former nuclear weapons production facility. Since 1990, the DOE has been dedicated to a clean-up mission to deal with the cold-war legacy of high-level pollution on site. Hanford sits adjacent to the Columbia River and is home to 53 million gallons of hazardous high-level nuclear waste.
5. For more than forty years, reactors located at Hanford produced plutonium for America's defense program. The process of making plutonium is extremely "inefficient" in that a massive amount of liquid and solid waste is generated while only a small amount of plutonium is produced. The DOE's mission is to ensure that all of the facilities and structures that were associated with Hanford's defense mission are deactivated, decommissioned, decontaminated, and demolished. Over 9,000 employees are currently employed at Hanford for that purpose.

6. High-level nuclear waste, which is composed of chemical and radioactive waste ("high-level nuclear tank waste"), is currently stored in 177 large underground tanks, all of which have exceeded their projected stable lifetime by at least twenty years and a third of which are confirmed to have leaked into the ground beneath the tanks. DOE estimates that approximately 1 million gallons of high-level nuclear tank waste have leaked into the ground at Hanford. The groundwater under more than 85 square miles of the Hanford site is contaminated above current standards.
7. The cornerstone of the high-level nuclear tank waste cleanup project at Hanford is the Hanford Tank Waste Treatment Plant ("WTP"). The WTP will be an industrial complex of facilities for separating and vitrifying (immobilizing in glass) millions of gallons of high-level nuclear tank waste. Vitrification technology involves blending the high-level nuclear tank waste with glass-forming materials and heating it to over 2,000 degrees Fahrenheit. The mixture is then poured into stainless steel canisters to cool and solidify. In this glass form, the high-level nuclear tank waste is currently considered stable and impervious to the environment, and its radioactivity will dissipate over hundreds or thousands of years.
8. The five major components of the WTP will be: the Pretreatment Facility for separating the high-level nuclear tank waste into the high level radioactive waste stream and the low level stream, the High-Level Waste and Low-Activity Waste facilities where the high-level nuclear tank waste will be immobilized into glass, the Analytical Laboratory for providing chemical analysis for plant operations and testing the quality of the glass, and the Balance of Facilities, which will comprise several support facilities such as compressed air and treated water.
9. The WTP is currently one of the largest, if not the largest, project in the United States and once complete, the WTP will be the largest facility of its kind in the world.

10. The original Bechtel cost estimate for the WTP was about \$5 billion and with a time estimate of seven years to complete it.
11. The current estimate for constructing the WTP is over \$13 billion and the time estimate to complete it is nearly twenty years. Both cost and schedule for the WTP have grown by over 240 percent.
12. Construction of the WTP is projected to be complete in about 2019, and, following commissioning, the plant is planned to be fully operational by 2022.
13. The WTP is being built with a design life of forty years. There are parts of the WTP that must operate for forty years with no maintenance including, for example, tanks, pipelines, mixers in tanks, level control instrumentation, steam spargers, and air system control devices.
14. The high-level nuclear tank waste in the Hanford waste tanks includes plutonium and enriched uranium. A criticality accident occurs when a nuclear chain reaction is accidentally allowed to occur in fissile material such as plutonium and enriched uranium. This chain reaction releases radiation, which is highly dangerous to personnel and could result in contamination of the surrounding facilities and structures. When such incidents occur outside reactor cores and test facilities where fission is intended to occur, they pose a high risk both of injury or death to workers.
15. A criticality incident of sufficient magnitude could also damage the facility and endanger the public.
16. While the actual probability of a criticality may be low, the consequences of a criticality would be significant. Consequences include notification and reviews by state, federal, and international agencies, which could result in a shutdown for an indeterminate period.

17. The hazardous high-level nuclear tank waste in the Hanford waste tanks contains materials that constantly generate explosive hydrogen gas. The hydrogen gas can become trapped and accumulate in the waste.
18. A combined criticality with explosive gas release at the WTP could be an accident of the worst magnitude and could cause injury and death to workers as well as endangering the public and the environment.
19. Respondents are contractors who have come under heavy criticism for establishing and maintaining a retaliatory work culture.
20. In January, 2005, a **Department of Energy** report documented the existence of a hostile working environment at the Waste Treatment Plant¹. The investigation team interviewed 117 employees, and found:

“Greater than 50% of the workers interviewed believed their job would be in jeopardy due to their participation in this inquiry. Most of the interviewees mentioned other workers had issues but felt they could not risk their employment by coming forward. .. Roughly 20% voiced the belief that when individuals raise safety concerns, those individuals are targeted for future lay-off lists. Roughly 15% of the interviewees claimed there was fear of lay-offs for workers who reported issues to Labor Relations or with the Employee Concerns process.”

21. In September 2008, the DOE imposed a civil penalty for nuclear safety violations against Bechtel National, Inc. based upon the findings of a DOE hearing officer that a Bechtel engineer had been terminated after having raised nuclear safety concerns.²
22. In an October 2010 review³, the DOE Office of Health, Safety and Security (HSS) looked at the safety culture in the engineering division at the Waste Treatment Plant.

¹ Letter, R. Schepens, DOE ORP to J.P. Henschel, BNI, “Contract No. DE-AC27-01RV14136 – Employee Concerns Inquiry and Analysis Report,” January 18, 2005, Att. p. 2.

² Letter, M. Thompson, DOE-HSSA, to W. Elkins, BNI, Preliminary Notice of Violation, September 15, 2008.

The report found that a framework was in place for a Safety Conscious Work Environment at WTP, but also had this finding:

“Chilled Work Environment. Some individuals within WTP believe that BNI management has created a “chilled” atmosphere that discourages individuals from reporting safety concerns. Further, some individuals expressed their belief that individuals who raise safety concerns could be subject to retaliation, including the threat of losing their jobs. One of the most significant concerns was subtle retaliation – i.e., that individuals who raise safety issues would not be selected for new assignments as their current assignments are completed. . . In this environment, a significant number of employees are understandably concerned that a reputation as a “trouble maker” could adversely impact their opportunities for continued or future employment. In addition, several interviewees, including senior staff and managers, indicated that the situation surrounding the individual who raised concerns to the DNFSB (prompting the request by EM to perform this review) contributed to a chilling effect that may reduce their willingness to raise technical or safety issues. While some organizations had a higher fraction of personnel with concerns than others, the concerns about a chilled environment were not limited to a single organizational element or job category.” (*DOE HSS review, page 15*)

23. On June 9, 2011, the **Defense Facilities Nuclear Safety Board (DNFSB) issued a letter⁴** to Energy Secretary Steven Chu, transmitting DNFSB Recommendation 2011·1 to the Secretary of Energy, Safety Culture at the Waste Treatment and Immobilization Plant. The Board wrote:

“The Board finds that expressions of technical dissent affecting safety at WTP, especially those affecting schedule or budget, were discouraged, if not opposed or rejected without review. Project management subtly, consistently, and effectively communicated to employees that differing professional opinions counter to decisions reached by management were not welcome and would not be dealt with on their merits. There is a firm belief among WTP project personnel that persisting in a dissenting argument can lead, as in the case of Dr. Tamosaitis, to the employee being removed from the project or reassigned to other duties. As of the writing of this finding, Dr. Tamosaitis sits in a basement cubicle in Richland with no meaningful work. His isolated physical placement by contractor management and the lack of meaningful work is seen by many as a constant reminder of what management will do to an employee who raises issues that might impact budget or schedule.”

³ *Independent Review of Nuclear Safety Culture at the Hanford Site Waste Treatment and Immobilization Plant Project, Office of Health, Safety and Security, Department of Energy, October 2010.*

⁴ DNFSB Recommendation 2011·1 to the Secretary of Energy, Safety Culture at the Waste Treatment and Immobilization Plant, June 9, 2011.

“The investigative record shows that the DOE Office of River Protection Employee Concerns program is not effective. One safety expert explicitly testified that employees would not and did not use the program, and believed that individuals running the program would “bury issues” brought to them. The record shows that in the removal of Dr. Tamosaitis, Human Resources (HR) for URS was interested only in implementing management's demand that the employee be removed immediately. The record shows HR did not assert any consideration or concern regarding the effect the process and manner of his removal would have on the remaining workforce and the effectiveness of the contractor employee protection program required under 10 CFR Part 708.”

24. On January 11, 2012, the DOE’s Office of Health, Safety and Security released its **HSS Report and Supplemental HSS Report**⁵. Some key findings from the report include:

- “...during the safety culture evaluation, a significant number of staff within ORP, DOE-WTP, and BNI expressed reluctance to raise safety or quality concerns for various reasons. Fear of retaliation was identified in some BNI groups as inhibiting the identification of problems.
- “For example, 48 percent of the responding electricians disagreed or strongly disagreed with a statement on the K-MR survey stating “I am confident that the ‘zero tolerance’ policy against retaliation at WTP is enforced.” p. x
- “In this atmosphere, instances where individuals perceive that their concerns about design questions are not listened to, that management does not want to hear problems, that technical dissent is suppressed, and that blame is being assigned unfairly are almost inevitable (for both Engineering and E&NS staff members). The end result is that a significant number of staff either express a general reluctance to raise issues or indicate perceptions of retaliation; the situation is not consistent with a healthy safety culture.” p. viii
- “ORP, DOE-WTP, and BNI management has not achieved timely resolution of important issues, including those discussed above; in some cases, issues have remained unresolved for about ten years.” p. viii
- “Interviews with construction crafts personnel indicated a widespread perception that the performance rating system ... is arbitrary and unfairly implemented in a way that inhibits or penalizes the raising of safety and quality issues.” – p. ix
- “...many crafts workers identified concerns about safety culture, including mistrust of the construction superintendents; frustration with inconsistent disciplinary actions and the

⁵ *Independent Oversight Assessment of Nuclear Safety Culture and Management of Nuclear Safety Concerns at the Hanford Site Waste Treatment and Immobilization Plant*, Office of Enforcement and Oversight, DOE Health, Safety and Security, January 2012.

craft rating system; fear of retaliation for raising safety issues; inconsistent application and communication of rules and procedures among WTP buildings; and inadequate planning, scheduling, and coordination of work.” P. 32

- Some interviewees indicated that they had heard that colleagues working on the Pre-Treatment (PT) and High Level Waste (HLW) facilities have been asked to leave things out of their reports, e.g. pipe erosion and criticality issues.
- “Overall, only 30% of all survey respondents feel that they can openly challenge decisions made by management.” p. 20
- “Approximately 50% of survey respondents agreed with the statement that they feel that they can approach the management team with concerns.” P. 21

BECHTEL AT HANFORD

25. Bechtel is a prime contractor for the DOE-ORP at Hanford. Bechtel was awarded the project in December 2000 and is directly responsible for the overall project management including design, construction, and startup/commissioning as well as other support functions such as project controls.
26. Bechtel has contract and legal obligations prohibiting retaliation against whistleblowers at Hanford.

URS AT HANFORD

27. URS is a partner and principal subcontractor to Bechtel at Hanford for work on the WTP. While URS is referred to as a "subcontractor," URS functions as a partner in that it splits profits and fees paid equally with Bechtel and URS also shares key staff positions with Bechtel.
28. URS' earnings are a direct result of contract milestone performance with Bechtel as judged by DOE, rather than a typical subcontractor payment schedule.
29. The milestone performance includes both distinct milestones as well as subjective judgments by the DOE in areas such as responsiveness and percentage of work completed.

30. URS has contract and legal obligations prohibiting retaliation against whistleblowers at Hanford.

WALTER FORD

31. Complainant Walter Ford is a Millwright who has worked at the Hanford Site for various contractors at Hanford since 1985.

32. Complainant started work at the Hanford Nuclear Facility in 1985 for Westinghouse Hanford, Inc., whose contract and operations were eventually assumed by Fluor Hanford, Inc.. Complainant was assigned to the K Basin Spent Nuclear Fuel project in December 2000. During his work at the SNFP, Complainant filed safety concerns with Fluor management using a document called an Employee Concern Form.

33. In 2004, Complainant Ford played a prominent role by testifying in a Department of Labor whistleblower action on behalf of his supervisor, Richard Cecil. *Cecil v. Fluor Hanford, Inc.* DOL OALJ Case No. 2004-ERA-00011 (Aug. 16, 2006). The Administrative Law Judge in that case found for Complainant Cecil in that case.

34. In 2005, Complainant filed a Complaint of Discrimination under the Energy Reorganization Act against potential employers Energy Northwest, Inc., and Battelle National Labs. Complainant chose not to pursue that complaint following the investigative stage of that complaint.

35. In October 2007, Complainant was hired by Bechtel National, Inc. to work as a millwright at the Waste Treatment Plant at Hanford. During the course of his employment there, he witnessed and reported several safety violations, including unsafe

acts on the part of workers. Complainant's reports resulted in harassment, isolation, discriminatory work assignments and false allegations against him. Complainant wrote a detailed account of the situation in 2008, which resulted in a company investigation which cleared Complainant, and he was offered a position as a foreman in the Materials Hanford Facility off the Hanford site, near Richland, WA.

36. At the Materials Handling Facility, Complainant's performance was consistently rated highly. Complainant was asked to head up and start the MHF Safety Council, by his manager, Darrel Bice, because of his past experience and the leadership and safety attitude that he had shown in his work ethics. Complainant wrote the MHF Safety Council Standard Implementation Procedures. Later, Complainant was elected Chair of the MHF Safety Council. Complainant received positive feedback on his performance, and was told that his position was secure.
37. In May 2011, the Bechtel supervisor in charge of the Materials Hanford Facility, Darrel Bice, was replaced by a Respondent URS manager, Steve Bishop. Initially, Bishop's attitude towards Complainant was friendly and welcoming. However, Bishop's demeanor and attitude towards Complainant changed even though Complainant's work habits did not change.
38. In September 2011, Complainant was removed from his foreman position, along with the other foremen at the Materials Handling Facility, and moved back to the Waste Treatment Plant and given a new assignment.

39. Upon information and belief, Respondent's managers learned of Complainant's earlier protected activity in testifying in actions before the Department of Labor, and in bringing complaints on his own behalf. Complainant was suddenly downgraded in his performance in September 2011, and subjected to layoff on November 17, 2011.

40. In March 2012, Complainant sought work with Respondent URS for which he was qualified. His application was well received, and he was interviewed and told that he was a good candidate for the position, for which he was made an offer. However, the offer was subsequently withdrawn with no explanation.

V. CAUSES OF ACTION

41. Respondents have engaged in the above individual retaliatory acts, and the indicated pattern of reprisal and discrimination against employees who raise concerns generally, and Complainant specifically, including the termination from his position as Millwright and in the failure to hire and the blacklisting of Complainant for future work, in reprisal for Complainant's protected activities, in violation of the above-cited Act.

VI. REQUEST FOR RELIEF

Complainant respectfully requests the following relief from the Department of Labor:

- affirmative action in the way of declaratory relief be afforded Complainant directing the institution of safety-committed work environment, free from retaliatory animus;
- an Order reinstating Complainant to his former position as Millwright;

- back pay for lost wages and overtime as a direct result of the Respondent's discriminatory actions, with interest;
- restoration of any and all benefits that would have accrued to Complainant but for Respondent's retaliatory actions, including but not limited to reinstatement of pension benefits and 401K retirement benefits;
- an award of damages to compensate Complainant for emotional distress and the deliberate infliction of pain and suffering;
- prominent posting of the order granting relief to Complainant throughout the plant, with instructions to all Hanford employers to distribute the order to all personnel;
- affirmative actions to abate the hostile working environment, including an Order to provide triple damages against Respondent for engaging in discrimination or committing acts of reprisal against employees who engage in protected activity;
- all costs for bringing this action, including attorney fees and litigation costs;
- any and all such other relief to which Complainant may be entitled.

SUBMITTED this 11th day of May, 2012.

Respectfully submitted,

Walter E. Ford, III 05/08/2012
WALTER E. FORD, III Date

Prepared with assistance by Tom Carpenter, Hanford Challenge, 219 1st Avenue S., Suite 120, Seattle, Washington, 98104, (206) 292-2850, ex. 22.