

March 29, 1993, Monday, 2 STAR Edition

SECTION: A; Pg. 1

LENGTH: 2702 words

HEADLINE: Clamp down;
THE SILENCING OF NUCLEAR INDUSTRY WORKERS;
Up against a stacked system;
Nuclear industry whistle-blowers face great risks

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BODY:

The process can be hopelessly long and treacherous. It can cost highly trained people their jobs, ruin marriages and lead to bankruptcy, blacklisting and breakdowns. It can expose once-valued workers to death threats, puerile badgering and isolation.

This is the Kafkaesque world of nuclear industry whistle-blowers -- utility or contract employees who report potential safety problems to their supervisors and/or the U.S.

Nuclear Regulatory Commission and risk dismissal, demotion or other punishment.

Some make no effort to defend themselves once they have been rebuked, retreating out of fear for their careers and their families' well-being. Others elect to fight, either by filing a lawsuit or, more commonly, plunging into a U.S. Department of Labor process that is rarely gratifying and often maddening.

"The system is stacked against you," said Larry Simmons, 47, of Perry, Fla., a former contract welder who reluctantly became a whistle-blower at Florida Power Corp.'s Crystal River nuclear power plant five years ago.

"Someone once said that in a whistle-blower case, if you've got the law and the facts and God on your side, you've got a 50 percent chance of winning. "

The Labor Department process had its origins in a 1978 amendment to Section 210 of the Energy Reauthorization Act of 1974.

The amendment says that an employee in the nuclear industry cannot be discriminated against for raising safety concerns. As of late January, 142 such discrimination cases were pending nationwide, and it is widely suspected that many more would-be whistle-blowers, knowing the possible repercussions, choose not to file complaints.

The law was intended to "make whole" a whistle-blower

subjected to intimidation and harassment: If a worker can prove discrimination, the Labor Department can order reinstatement, back pay, promotion and other compensation.

The **NRC**, for its part, can fine an employer and, in egregious cases, refer the matter to the U.S. Department of Justice for possible criminal prosecution. The agency has made such a referral against Houston Lighting & Power Co

The **NRC's** mission is to ensure that a mishandled whistle-blower case does not have a "chilling effect" on other employees who might want to raise safety concerns.

In theory, the law affords protection for conscientious nuclear workers, the people who serve as the **NRC's** "eyes and ears" inside vast power plants. In fact, Houston Chronicle interviews with 35 whistle-blowers and others indicate that a worker who enters the Labor Department process may stay there for years and emerge with little or nothing.

"There sure do seem to be a whole lot of people who are hung up out there," said **NRC** Chairman Ivan Selin.

Vera English was hung up for eight years. Laid off from the General Electric nuclear fuels laboratory in Wilmington, N.C., in 1984, English fought her dismissal in a Labor Department case. She won favorable rulings along the way, and a confidential GE investigation found that her allegations against the company had substance.

But when it was over, GE prevailed. English didn't get a dime, although GE paid a \$ 20,000 **NRC** fine for harassing her.

Her case "sends a very loud message not to become a whistle-blower," said English, 68, who is retired and living in rural Virginia. "There's no justice. "

"We all discovered that the process doesn't do anything but put a big bull's-eye on your back," said a former nuclear engineer with the Tennessee Valley Authority who was among many whistle-blowers in that organization in the 1980s. "The only people who make any money or get anything out of it are lawyers. "

Those who have been through the process say it is a David and Goliath affair, with one significant plot variation: Goliath usually wins.

It is nearly impossible, they say, for a whistle-blower to win against a multibillion-dollar utility with a battery of high-priced attorneys. Such a company is able and willing to drag out a case for years, appealing any adverse decision and hoping for a reversal at some stage. In the meantime the worker's savings and patience are depleted.

""There's no protection for you," said the former TVA engineer, who asked to remain anonymous. ""The **NRC** doesn't protect you. You're alone. It's you versus a huge corporation, and because of blacklisting you're probably finished in terms of future work" in the nuclear industry.

Industry officials deny that blacklisting exists, and it is difficult to prove. But ""the fact is that people's careers get wrecked," said Dr. Henry Myers, a retired science adviser to the House Interior and Insular Affairs Committee (now the Natural Resources Committee) who investigated the nuclear industry for 15 years.

No one maintains that all whistle-blower allegations are true or -- if they are true -- have major safety significance.

""Sometimes what whistle-blowers blow is hot air," said Carl Goldstein, a vice president with the U.S. Council for Energy Awareness, a nuclear industry trade group.

But **NRC Inspector General** David Williams, whose office is conducting a nationwide inquiry into whistle-blower intimidation and harassment, said: ""It's dangerous to think about the world without these people. We're dependent on their continued willingness to come forward. "

Owen Thero, a consultant who ran employee-concerns programs at four nuclear plants from 1981 to 1988, said that he saw whistle-blower allegation ""verification rates" as low as 10 percent and as high as 80 percent.

""As a rule, the people we dealt with absolutely felt that they had genuine concerns," said Thero, whose Quality Technology Co. interviewed more than 4,000 whistle-blowers. ""Very seldom," he said, did a person appear to be harboring ulterior motives -- a desire to get even with a boss, say, or keep alive a construction job when layoffs were imminent.

""Our feeling is that whistle-blowers should not exist in the numbers that they do," Thero said. But some utilities and contractors ""cut corners" and expect those who work for them to do the same. Some employees won't oblige and suffer the consequences, despite ""open-door" policies encouraging workers to come forward.

""I've been involved with whistle-blowers since 1985, and I have yet to come across a single instance where an employee brought forth a safety allegation and received any sort of praise," said Michael Kohn, a lawyer in Washington, who specializes in such cases. ""By and large, the people I'm aware of have suffered retaliation, from termination to being burned in effigy. "

Why would a utility doggedly fight a whistle-blower rather than fix a problem?

"A safety allegation can result in a plant shutdown and a loss of millions of dollars in revenue for a utility," Kohn said.

"The economic pressures are so severe that utilities often sidestep safety requirements to maintain their profit margins. "

Five utilities have been fined by the **NRC** in the past five years for retaliating, or appearing to retaliate, against whistle-blowers. The fines ranged from \$ 25,000 against TU Electric of Dallas, owner of the Comanche Peak plant, to \$ 240,000 against the TVA, owner of the Watts Bar plant.

"Don't mean much

Although those amounts may seem large, Myers, the former House science adviser, said that they "don't mean much" to utilities that stand to lose \$ 1 million every day a reactor is out of service.

Indeed, many utilities accused of oppressive behavior aren't penalized at all. For this reason and others, whistle-blowers who take their concerns to the **NRC** often end up disappointed.

In some cases, their expectations are unrealistic: The **NRC** cannot get their jobs back or get money for them, and it will not shut down a plant for anything less than a major accident or the most egregious of violations.

Yet there is ample evidence that **NRC** officials -- particularly at the regional level -- do not always give whistle-blower concerns the attention they deserve. The **NRC's inspector general** has concluded as much on several occasions.

Part of the problem has been the nature of the process. Until very recently, the **NRC** and the Labor Department had an understanding: The **NRC** wouldn't jump into a discrimination case until the secretary of labor had issued a ruling.

The reasoning was that this would eliminate duplication of effort among agencies with limited resources. And it did. All too often, however, the whistle-blower was suffering extraordinary pressure while the case collected dust on the secretary's desk.

Things might have changed

Had the **NRC** acted swiftly over the years and stung utilities with stiff fines and threats of license suspension or revocation, some believe, fewer workers might have been in such a predicament.

Today, the **NRC** begins investigations into harassment and

intimidation "as fast as we can," Selin said, and the agency's findings are more likely to come in time to help people who file Labor Department cases.

Even a whistle-blower with a strong case, however, must clear a series of high hurdles. The Labor Department process starts with a quick investigation by the department's wage and hour division.

If the investigator finds in the worker's favor, the employer almost certainly will appeal and a trial will be held several months later before an administrative law judge.

If the worker wins again, the employer likely will appeal to the secretary of labor, at which point the case may stall for years, despite a statutory requirement that the secretary make a ruling within 90 days.

"Very, very few people have actually gotten relief" from the Labor Department, said Tom Carpenter, a Seattle lawyer and director of the West Coast office of the Government Accountability Project, which provides legal help to whistle-blowers. "They are totally ignoring the statute. "

The Chronicle made repeated attempts to speak with top Labor Department officials about the whistle-blower process. The only official made available for an interview was Charles Pugh, acting administrator of the department's wage and hour division in Washington.

Pugh said that he was "unable to address" lengthy case delays attributed to administrative law judges and the secretary of labor. He would say only that the process "has worked reasonably well. Obviously, we can do better in some areas. "

Carpenter said the process was designed in good faith to "quickly resolve" worker discrimination cases, but "the reality is that it takes as long or longer than traditional litigation and can be as expensive. The process has failed, in my opinion, on that basis alone. "

"If you don't have \$ 40,000 to \$ 100,000 (for legal expenses), you might as well not file" a Labor Department case, said Sarah Thomas, 45, a technician at the Palo Verde nuclear plant in Arizona. She brought an action against her employer, Arizona Public Service Co., in 1988.

Thomas, who contends that she was denied promotions, ostracized and assigned higher-risk jobs because she reported problems with safety-related valves and pumps, continues to work at the plant as she waits for the secretary of labor to act. An administrative law judge ruled in her favor four years ago, and last year the **NRC** proposed a \$ 130,000 fine against APS for intimidating and harassing her and former co-worker Linda Mitchell.

Mitchell's clinical psychologist, Dr. Brady Wilson of Scottsdale, Ariz., specializes in workplace stress, including that induced by whistle-blowing. In addition to physical symptoms -- migraines, high blood pressure, ulcers -- his clients suffer from ""a kind of neurosis of helplessness," Wilson said.

""These people not only are doing what they think is right, but what they've been encouraged to do. Then, unexpectedly, they experience these negative consequences. It's kind of like getting 100 on a test and then getting a failing grade. "

The lucky whistle-blowers, like Mitchell, reach settlements with their employers and get out of the nuclear business, albeit with a great deal of emotional baggage. The unlucky ones twist in the wind. Among them is Arnold Gundersen, 44, of Warren, Conn.

Unlucky whistle-blower

Gundersen spent 11 years with Nuclear Energy Services (NES), a nuclear consulting firm in Danbury, Conn., that is licensed by the **NRC** to handle radioactive materials. He was a senior vice president, making \$ 120,000 a year, when he brought a number of alleged license violations to the attention of NES President William Manion in April 1990.

Manion, according to Gundersen, was livid: ""He said, "You're nothing but a goddamned backstabber. ' " Three weeks later, Gundersen was laid off as part of a ""reduction in force. "

He lost a Labor Department case against NES, and the **NRC's** Region I office found no violations on the company's part. The **NRC inspector general's** office looked into the matter at Gundersen's request and found last summer that Region I had not ""fully and adequately" investigated Gundersen's allegations.

The **inspector general** also found that documents in the company's Region I file ""contradicted" key statements made by Manion. NES subsequently was cited for seven violations, which the company is contesting.

An NES secretary said Manion had no comment.

In the nearly three years since his dismissal, Gundersen has worked a total of 900 hours on three minor consulting jobs. ""I've been told that I'm blackballed," he said, noting that NES sent letters to ""utilities, industries and state government officials in Connecticut, saying I'm a snitch and unethical. "

Exactd a high cost

Gundersen said that his whistle-blowing has cost him and his family -- he has two children, one with a learning disability -- at

least \$ 500,000 in lost wages and expenses. ""We've tapped out our savings," he said. ""We've tapped out our retirement. We've borrowed against our life insurance. We've maxed out all our credit cards. "

The family faces foreclosure and bankruptcy. Gundersen also must deal with a \$ 1.5 million libel and slander lawsuit filed against him by NES as a result of his continued discussions with state and federal regulators about the alleged violations.

Gundersen is planning to go to law school and begin a new career. ""I am dead meat forever" in the nuclear industry, he said.

Last fall, Congress amended Section 210 in an attempt to make it easier for nuclear industry whistle-blowers to pursue discrimination cases. Under what is now Section 211, a worker has 180 days to file an action instead of 30 days.

Also, a whistle-blower who was fired and receives a favorable ruling from an administrative law judge can now be reinstated, pending a final decision by the secretary of labor. Such a worker could see the fruits of a Labor Department case in several months rather than several years.

But the new law is not a panacea, said Stephen Kohn, a Washington lawyer and brother of Michael.

Long wait for review

Anyone who loses a case before an administrative law judge ""will still be in the Black Hole of Calcutta, waiting for review" by the secretary of labor, he said. Whistle-blowers whose cases are dismissed on technicalities -- about a third are, in Kohn's experience -- won't benefit. Nor will those who reach second-rate settlements with their employers or give up and voluntarily dismiss their cases.

Kohn figures that the changes in the law will help only about a quarter of those who file discrimination cases. In his view, it is ultimately up to the **NRC** to put a stop to intimidation and harassment in the nuclear industry.

The agency could hold the prospect of a license suspension or revocation over the heads of recalcitrant utility executives, Kohn said. ""Most utilities," he said, ""fear the **NRC** much more than the Department of Labor. "