

Case No. LWN-0003

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Interim Order

Name of Petitioner: Dr. Naresh Mehta

Date of Filing: July 18, 1994

Case Number: LWN-0003

On March 17, 1994, the Department of Energy (DOE) issued an Initial Agency Decision in the matter of Universities Research Association (URA), Case No. LWN-0003. In the Decision, we found that URA had discharged Dr. Naresh Mehta in violation of the Contractor Employee Protection Regulations, 10 C.F.R. Part 708. Universities Research Association, 23 DOE & 87,506. As part of Dr. Mehta's remedy, we ordered URA to reinstate him to his former position as Scientist II, or to a comparable position.

URA requested a review of our Decision by the Secretary of Energy pursuant to 10 C.F.R. ' 708.10(c)(2). The request is still pending. Because the Decision has not become final, Dr. Mehta has not received any remedy for the retaliatory discharge.

Dr. Mehta had been employed by URA at DOE's Superconducting Super Collider (SSC) Laboratory in Waxahachie, Texas. He was discharged in December 1992 and filed a complaint with the DOE's Office of Contractor Employee Protection in February 1993. In October 1993, before Dr. Mehta's complaint was resolved, the U.S. Congress cut off funding for the SSC project. Preparations were made to shut down the SSC Laboratory and lay off the employees. In November 1993, a severance benefits package was announced for employees of project contractors, including URA. The benefits package includes a dislocation allowance, severance pay, medical insurance, and job placement assistance.

On July 15, 1994, Dr. Mehta filed through counsel a petition for interim reinstatement. Dr. Mehta proposes that interim reinstatement would help alleviate the burden of eighteen months without employment, to tie up loose ends at his workplace, and to secure personal effects that are still in his office. Authority for interim reinstatement is found in 10 C.F.R. ' 708.10 (c) (3), which provides that:

[I]f the agency decision contains a determination that a violation of ' 708.5 has occurred, it may contain an order requiring the contractor to provide the complainant with interim relief, including but not limited to reinstatement, pending the outcome of any request for review. This paragraph shall not be construed to require the payment of any award of back pay or attorney fees before the DOE decision is final.

URA claims in its response to Dr. Mehta's request that there is no relevant work for Dr. Mehta to do at the SSC Laboratory. Even if this were true, we do not believe it would be adequate reason for denying him interim reinstatement. By delaying the resolution of the case through various appeals processes, URA is prolonging and thus increasing the harm to Dr. Mehta. Moreover, because of the imminent shut down of the SSC laboratory, delay in providing interim relief to Dr. Mehta could reduce the value of any restitution that the DOE could provide to him.

If URA has no work for Dr. Mehta after reinstating him, it should treat him like its other employees at the SSC Laboratory and provide him with the severance benefits package. URA has not alleged that any harm will come to it from the interim reinstatement of Dr. Mehta. For the reasons stated above, we will grant Dr. Mehta's petition.

It Is Therefore Ordered That:

(1) Universities Research Association shall reinstate Dr. Naresh Mehta on August 15, 1994 to his former position as Scientist II or a comparable position. This reinstatement shall be on an interim basis, pending the outcome of the review by the Secretary of Energy or designee of the Initial Agency Decision issued March 17, 1994. Furthermore, the reinstatement shall be notwithstanding any appeal or request for review.

(2) This is a final Order of the Department of Energy.

Thomas L. Wieker

Deputy Director

Office of Hearings and Appeals

Date: