



In the Matter of:

RICHARDO ACORD,

ARB CASE NO. 97-011

COMPLAINANT,

ALJ CASE NO. 95-TSC-4

v.

DATE: June 30, 1997

ALYESKA PIPELINE SERVICE CO.,

and

ARCTIC SLOPE INSPECTION SERVICES,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Complainant Richardo Acord alleges that he was harassed, laid off and then fired from his position as a Quality Control Specialist in 1993 by his employer Arctic Slope Inspection Services, Inc. (ASIS), with the complicity of ASIS's client, Alyeska Pipeline Services, Inc. (Alyeska), in retaliation for activities protected under four of the environmental whistleblower laws.^{1/} After a hearing lasting seven days with the introduction of over 150 exhibits, the ALJ concluded that Acord failed to prove that Respondents were motivated by retaliation in his lay off or termination, Recommended Decision and Order (R. D. & O.) at 33, and that he did not show that he "suffered adverse actions in the form of harassment, intimidation or working conditions." *Id.* at 19.

Complainant excepts to the ALJ's findings that he was not subjected to retaliatory harassment and intimidation, that the reason for his lay off was not pretextual, and that his discharge was not motivated by retaliation. ASIS supports the ALJ's conclusions that Acord did not carry his burden of proof on any aspect of the merits of his case, but also argues that his complaint against ASIS was untimely. Alyeska takes the same position as ASIS on the merits

^{1/} The Toxic Substances Control Act, 15 U.S.C. § 2601 (1988), the Water Pollution Control Act, 33 U.S.C. § 1367, the Solid Waste Disposal Act, 42 U.S.C. § 6971, and the Clean Air Act, 42 U.S.C. § 7622 (referred to collectively as "Acts").

of the case and asserts in addition that the complaint against it was untimely and that the ALJ erred in finding that Alyeska and ASIS were Acord's joint employers.^{2/}

BACKGROUND

Acord worked as a quality control specialist, or inspector, inspecting the Trans-Alaska pipeline and associated machinery and equipment, for several different companies providing inspection services to Alyeska from 1991 until his discharge from ASIS in 1993. R. D. & O. at 4-5. When ASIS began providing inspection services to Alyeska in June 1993, Acord, as well as other employees of the previous inspection contractor, were transferred to ASIS. *Id.* at 4. At different times in the spring, summer and fall of 1993, Acord worked in the Anchorage office of ASIS and out of Fairbanks doing field inspections. One of Acord's primary responsibilities was inspection of mobile cargo tankers. *Id.* at 5. Acord began raising concerns about safety and quality in the maintenance and inspection of the Trans-Alaska Pipeline in 1992 and continued to do so in 1993. *Id.* at 5-7.^{3/}

Harassment

Acord alleges that there were six significant incidents of harassment in the spring and summer of 1993, which he argues were motivated by his longstanding, persistent whistleblowing:

- ▶ that the Alyeska supervisor of inspections questioned Acord about alleged drug and alcohol use;
- ▶ that in a meeting, a consultant to the President of Alyeska “physically approached [Acord] and stated that he was mad enough to pull out Acord’s hair and rip his testicles from his scrotum;”
- ▶ that an employee of Alyeska called Acord a “scum bag inspector” and threatened not to use Acord as an inspector in the Fairbanks area;
- ▶ that on the same day he was threatened by the consultant, Acord’s ASIS supervisor asked him to sign a confidentiality statement;
- ▶ that Acord was removed from his regular job assignments and required to provide more information about his quality and safety concerns, interfering with his ability to complete his paperwork;

^{2/} In view of our decision on the principal issue in this case, whether Respondents discriminated against Acord, we need not address Respondents’ respective timeliness arguments or Alyeska’s argument on joint employment.

^{3/} For a full statement of most of the relevant facts, *see* R. D. & O. at 4-6.

- ▶ that the Alyeska supervisor of inspections said to Acord “blowing the whistle does not guarantee employment. Take a look at Dick Green [another whistleblower].”

Acord’s claim that Larry Blachut, the Alyeska supervisor of inspections, harassed him by questioning him about “alleged drug use” is belied by Acord’s own concealed tape recording of the conversation. C- (Complainant’s exhibit) 57 (tape of July 23, 1993 conversation between Blachut and Acord), and C-57a (transcript of July 23, 1993 tape); T. 623. It is clear that Blachut, rather than accusing Acord of “alleged drug use,” was expressing concern and offering advice about Acord driving a car when he learned Acord was taking prescription medication. C-57a, pp. 3-5. There is also a striking inconsistency between the tape recording and Acord’s description of this incident in an e-mail letter of December 6, 1993 to the Chief Executive Officer of ASIS and the ASIS Human Resources Manager. C-284; *see also* C-114, p.2. In the e-mail, Acord described this incident as his having “been falsely accused of being intoxicated or on drugs.”^{4/} Acord conceded at the hearing that it was he who first raised the subject of drinking in the conversation with Blachut. T. 620.^{5/} These inconsistencies support the ALJ’s conclusion on this, as well as several other disputed incidents, not to credit Acord’s version of events.^{6/}

Acord urges us to interpret the incident in which Dan McGrew, a consultant to the President of Alyeska, allegedly physically threatened him and verbally abused him, as part of a pattern of harassment in retaliation for whistleblowing. McGrew was angry that Acord had made statements to others that a consultant working for the President of Alyeska was going to do away with or “purge” the quality compliance group. T. 1009; 1671-72. McGrew explained that any suggestion of this kind could seriously undermine his credibility, T. 1672, and that he became angry at a meeting with Acord when he perceived that Acord did not take the matter seriously. T. 1674. McGrew acknowledged that he had not acted professionally and had made improper remarks. T. 1676.

^{4/} On other occasions, Acord perceived events as retaliation against him when, in fact, it was he who may have acted improperly. Acord was asked to stop asking a secretary, Chrissy Matson, for dates after she told her supervisor she wanted him to stop. T. 1032-33; 1137-39. Acord then claimed that Alyeska had falsely accused him of sexual harassment when no such charge was ever leveled and no record of the incident was ever put in his personnel file. C- 284. Although the details of the events when Acord asked Ms. Matson for dates are not clear, if anything it was Acord who acted improperly by making these repeated requests, and Alyeska which acted appropriately under the sexual harassment guidelines, 29 C.F.R. § 1604.11(d) (1996), by counseling Acord on his unwelcome conduct, which he did not deny, as soon as Alyeska became aware of it. Although Acord’s original complaint to the Department of Labor claimed that falsely accusing of him of sexual harassment was illegal harassment under the Acts, ALJ Exh. 1, he no longer presses that claim here.

^{5/} *See, e.g.*, R. D. & O. at 18; 31; 33.

^{6/} For other examples of Acord’s evasiveness which undermine his credibility, *see* T. 647-53; 695-96.

Acord, who walked out of the meeting at that point saying “by the way, this was a Memorex moment,” T. 439, was evasive on cross-examination about whether he tape recorded the meeting, T. 612-15, and never provided the tape to Respondents, T. 616, or introduced it at the hearing. Acord also wavered in what he told Blachut about the “purge” remark. At first, Acord was quite certain that he, Acord, had heard the “consultant” make that comment and later told Blachut the man’s name was McGrew. Aly (Alyeska Exhibit) 54 (Blachut’s contemporaneous notes of this incident), T. 1-3. Blachut spoke to an employee who had been in a meeting with McGrew at the location where Acord originally said he heard McGrew make the remark, and he told Blachut no remarks had been made about specific departments. Aly. 54, p.4. A few days later, Acord told Blachut he had heard about this “purge” remark from someone else, whom he would not name, and had heard it at a different location. *Id.* at 4-5; T. 1009-10. We agree with the ALJ that McGrew made some very improper and intemperate remarks directed at Acord in a meeting, but that they were not motivated by retaliation against Acord for protected activities. R. D. & O. at 17.

The employee who made the “scum bag inspector” remark, Michael Cusick, was a quality generalist for Alyeska who had never worked with Acord and only knew of him as someone who worked with another contract employee with whom Cusick dealt. T. 1596-97. Cusick did not know that Acord had raised environmental concerns and did not hold a position in which he could have affected the terms or conditions of Acord’s employment in any way. *Id.* Cusick testified that he never called Acord a “scum bag contractor,” T. 1598, but that he had sometimes used the words “scum bag contractor” as a joking reference to Alyeska contractors. *Id.* When Acord complained about the use of that term, Cusick’s supervisor admonished him not to use the term again and he did not. T. 1599-1600. There is nothing in the record, other than the fact that this incident took place around the time of the other alleged harassment, that shows Cusick acted as part of an ASIS/Alyeska conspiracy to harass and intimidate Acord for his whistleblowing.

Marvin Swink, Vice President and General Manager of ASIS, T. 716, explained that he asked Acord to sign a confidentiality agreement that he had developed for all ASIS employees. T. 789. It was intended to protect proprietary information, not to restrict Acord in reporting alleged harassment. T. 789-90. Swink’s contemporaneous notes of the meeting with Acord in which he asked for signature of the confidentiality agreement, which occurred on the same day as the McGrew incident, do not indicate that Acord objected in any way to signing it or viewed it then as a restriction on his reporting of retaliatory actions. C-389 at p. AAS 00041. We find that this incident was not an adverse action or motivated by retaliation.

We also reject Acord’s claim that directing him to provide more complete information about his allegations of safety and quality violations, at a time when he was also required to complete overdue paperwork on inspections, constituted harassment or intimidation. Swink responded to Acord’s request that Swink set priorities for Acord among several assigned tasks, and left it up to Acord to set the dates for completion, C-144. Acord never did so. T. 734. Swink did not believe the task of writing up the details of Acord’s environmental complaints should have taken Acord more than two or three days, T. 821; 824, and Acord has not explained

how this task could have been so time consuming as to seriously interfere with his other work and thereby constitute harassment.^{7/}

Acord accuses Blachut, Alyeska supervisor of inspections, of commenting to him “blowing the whistle does not guarantee employment. Take a look at Dick Green.” Blachut denied having made such a comment, T. 960 and it is not clear from Acord’s testimony and exhibits when the incident took place. An e-mail in the nature of a note to the files of July 7, 1993 by William Bidy states that Acord told Bidy that Blachut had made this comment, C-90, but on cross examination Acord agreed that the incident occurred in December 1992. T. 554. Acord also conceded that the statement was just a miscommunication, and once clarified, had no further significance. *Id.*

Other evidence in the record persuades us that this alleged statement was not based on retaliatory motivation. Acord was evasive on whether he received a promotion, a pay increase of \$5 an hour, when he took a position in February 1993 as a quality inspector in the Anchorage office of a predecessor company of ASIS. T. 552-55.^{8/} It is significant that this promotion came

^{7/} Acord repeatedly failed to comply with the request to provide completion dates for each priority item or to submit the details on his environmental complaints; he resisted the direction to complete that task before doing other assigned work and submitted inadequate documentation after four months of requests. T. 822-826; 1140-41.

^{8/} Q. In February of 1993, you took the position . . . as a [q]uality inspector in the Anchorage office?

A. That’s correct.

Q. And your wage rate had been \$21 an hour . . . and it went to \$26 an hour when you got to Anchorage . . . ?

A. I don’t know if that’s correct.

* * * *

Q. Wasn’t your wage increased to \$26 an hour at that time?

A. Yes, it was.

* * * *

Q. And would you agree with me that the position in Anchorage you assumed in February of 1993 was a promotion?

A. I wouldn’t consider it a promotion.

Q. You don’t consider when you go from \$21 an hour to \$26 an hour to be an advancement of some sort?

A. It was a monetary advancement, yes.

Q. But not a promotion? In your mind?

It would have been an upgrade, yes. I would agree with you that it’s a promotion.

* * * *

Q. In fact you took the job that your supervisor, Mr. Nunn, had been doing prior to that time.

A. I assumed his duties, yes.

(continued...)

after the alleged December 1992 comment by Blachut, which negates an inference that, if any such comment were in fact made, it was intended to harass Acord for whistleblowing.

We find that Respondents did not harass or intimidate Acord or create an “abusive or hostile work environment” because of his protected activities. *English v. Whitfield.*, 858 F.2d 957, 964 (4th Cir. 1988).

Layoff and Discharge^{9/}

ASIS placed Acord on lay off on November 22, 1993, along with a number of other inspectors. ASIS 45; 35 and 80. ASIS explained that inspection work is seasonal and that the lay offs in the fall of 1993 followed the regular practice of placing inspectors on lay off during the cold months because it is physically difficult and could damage equipment to conduct certain inspections in those conditions. T. 749-50; T. 1386-87. Acord claims those reasons are pretextual because other inspection work was available; the layoff was within days of Acord meeting with two Alyeska officials to discuss his environmental concerns; and some statements in the record which appear to be evidence of discriminatory intent. For example, one comment at the end of July 1993, made by the Alyeska Manager of Quality Services to the Alyeska Vice President for Human Resources, appears to be direct evidence of discrimination: “ASIS will probably suspend Acord. Acord will probably become a whistleblower shortly.” C-106. The ALJ did not mention or discuss this part of the record and therefore did not make any findings on the inferences to be drawn from it or the weight to which it is entitled.

The ALJ did find that ASIS did not assign Acord to the mobile cargo tanker inspection work that was still available at the time he was laid off because Acord did not want to physically get into the tankers to do the inspections due to his respiratory condition. R. D. & O. at 26. Acord no longer takes the position, as he did before the ALJ, that the failure of ASIS to divide the inspection duties between two inspectors so that Acord would not have to go into the tankers was retaliatory. Rather, he argues that ASIS deliberately refused to consider Acord for non-inspection positions which would not have been subject to layoff. Acord has not identified specific positions that he sought, or shown that he was qualified for the positions ASIS filled at the time, some of which were supervisory. T. 903; *see, e.g., Von Zuckerstein v. Argonne Nat’l. Lab.*, 984 F.2d 1467, 1474 (7th Cir. 1993). Acord also has not shown that the other inspectors laid off in the fall of 1993 were considered or offered other positions with ASIS, that is, that he was treated differently because of his whistleblowing.^{10/}

^{8/}(...continued)
T. 552-55.

^{9/} We discuss the lay off and discharge together because ASIS fired Acord for failure to meet certain job requirements about which he was warned in the lay off notice.

^{10/} We do not imply that proof of disparate treatment is a necessary element of proof in a
(continued...)

The ALJ found that there was “nothing sinister or conspiratorial” about the meeting between Acord, the Alyeska Ombudsman, and the Senior Vice President for Operations, to discuss Acord’s environmental concerns, nine days before the decision to lay off Acord. In addition, he found that a diary note by the senior vice president that “ASIS will continue to watch [Acord] closely,” C-410, page AAL 00646, was related to the conversation Blachut had with Acord about taking medication and was not evidence of discriminatory intent. R. D. & O. at 27. Acord has not demonstrated that the ALJ’s findings are in error on this issue. It was logical for the ALJ to infer that meeting with Acord to discuss his environmental complaints was motivated by Alyeska’s concern that these issues be addressed at a time when there was heightened scrutiny through Congressional hearings on Alyeska’s environmental record. R. D. & O. at 4. Similarly, since the tape of Acord’s conversation with Blachut about taking medication shows nothing accusatory about Blachut’s remarks, it was logical for the ALJ to infer that “watching Acord” was related to his safety and the safety of fellow employees and not for the purpose of developing grounds to fire him.

Acord argues it is important to consider the events of the spring, summer and fall of 1993 in the context of the Congressional scrutiny of Alyeska and with attention to the timing and sequence of events, from which he claims discriminatory intent can be inferred. We find that it is equally important to evaluate Acord’s lay off and discharge in the context of the longstanding failure of Acord to comply with repeated requests by his employers, growing out of demands by their client, Alyeska, for him to meet one of his important job requirements, completing paperwork on inspections.

As early as October 1991, before Acord began work for ASIS, managers complained that Acord did not submit paperwork in a timely manner and expressed their frustration with his performance of this responsibility in writing. Aly. 8 (“Why don’t you address your question [about late paperwork] to SSI [Sonic Systems, Int’l.] [a predecessor of ASIS as an inspection contractor to Alyeska] and Mr. Acord? I’m not trying to be contrary, I am just tired of Rick [Acord] not responding!!! [sic]” Again in March 1992, a manager complained that certain required attachments to inspection reports submitted by Acord were missing. Aly. 11. Acord’s supervisor at Ocean Technology (the immediate predecessor of ASIS), Eugene Nunn, authorized Acord to work overtime in October 1992 to complete paperwork on inspections he had conducted. Nunn recognized that Acord could not spend all of his “free time” on this, but requested politely that “the paperwork be completed in a timely manner.” Aly. 14.^{10/}

^{10/}(...continued)

whistleblower case under the Acts, *see De Ford v. Secretary of Labor*, 700 F.2d 281, 286 (6th Cir. 1983), but the lack of such evidence supports the ALJ’s conclusion that Acord’s lay off was not retaliatory.

^{11/} Acord also did not meet repeated requests for completion of other types of paperwork such as time sheets, *see, e.g.,* Aly. 19; Aly. 20; Aly. 25, and this was reflected in the notice of layoff. ASIS 45.

This pattern of Acord not responding in a timely manner to requests for documents and paperwork continued in 1993 after ASIS became the Alyeska inspection contractor. *See, e.g.*, Aly. 30, 32, 45. Blachut told Acord in early June 1993 “You are seriously behind on your paperwork and need to get caught up. Extra help was provided in Fairbanks and I have yet to see a single report on the tankers you say are completed. . . .” Aly. 32; *see also* Aly. 45.

In July 1993, Alyeska gave Jim Kingrea responsibility for improving the performance of the quality division on periodic inspections, T. 1371; 1143, in particular the mobile cargo tanker inspection program. T. 1372. Kingrea’s previous position at Alyeska was senior construction supervisor, T. 1370, and he had never heard of Acord. T. 1377. Kingrea’s responsibility was to insure that the inspection contractor was performing the inspections required by the contract and providing the documentation to prove that the inspections had been done. T. 1382. The mobile cargo tanker inspection program was governed by U.S. Department of Transportation regulations, T. 1383, and Kingrea explained that proper completion of periodic inspections with required paperwork is very important to Alyeska. As the owner of the equipment, Alyeska is responsible for proving to DOT that the inspections have been performed in compliance with the regulations and to protect against liability for personal injury or damage to the environment. T. 1390.

As Kingrea educated himself about the mobile cargo tanker inspection program, he found that the “files appeared to be very incomplete, and not very well organized at all. [He] couldn’t really tell what we had.” T. 1383. Kingrea asked the inspection program coordinator at ASIS, Aaron Miller, to review the inspection documentation and learned that there were many gaps in the files. T. 1396. We find it significant that, when his review of the mobile cargo tanker inspection program began in late July or early August 1993, Kingrea “was not focusing on [paperwork by] one person or one individual [but] was focusing on a program” T. 1396.

Kingrea asked Miller to do a complete review of the files on the tankers, T. 1396; 1416, and he found “serious gaps” in documentation on Acord’s inspections. T. 1398. Kingrea also had difficulty getting Acord to respond to requests for documents and information. T. 1395-1399; 1419; Aly. 68; 75; 91. Based on the information supplied by Miller, Aly. 92, Kingrea prepared a letter for Steve Newcomer, Alyeska Manager of Quality Services, to ASIS putting ASIS on notice of the missing documentation and pointing out that, if the tankers had to be cleaned and reinspected, ASIS would have to bear those costs. Aly. 95. During the fall of 1993, Alyeska continued to try to get the missing documentation from ASIS and Acord, Aly. 102, 104, 107, 110, 119, 120, and although some of it was supplied, Aly. 108, eventually several tankers had to be cleaned and reinspected because of missing documentation and some were removed from service and replaced by other tankers. T. 1431-1462.

The comment by Newcomer about ASIS suspending Acord and anticipating that he will become a whistleblower must be evaluated against this history of longstanding performance deficiencies by Acord on this aspect of his job duties. At the end of July when Newcomer made the statement, Alyeska was bringing in Kingrea to review the entire tanker inspection program and the frustration with Acord’s failure to respond to requests for documentation was evident.

The only record of these comments was diary notes of a telephone call from Newcomer written by William Howitt, Alyeska Vice President of Human Resources. Howitt explained that the two thoughts, ASIS possibly suspending Acord and Acord possibly becoming a whistleblower, were not related; that Newcomer was keeping him informed of possible developments in personnel matters. T. 193-94. We find that, in the context of the facts discussed above, these comments are not sufficient evidence of discrimination.

When ASIS laid Acord off in November 1993, it stated explicitly that he was eligible for rehire on the condition that he complete the inspection reports, as well as supply other documents. ASIS 45. ASIS also responded to an Alaska Employment Service inquiry in connection with the payment of unemployment insurance to Acord that it did intend to rehire Acord. ASIS 40. When Acord still did not supply all the requested documents, ASIS 78,^{12/} ASIS fired him. ASIS 57. The Vice President and General Manager of ASIS, Marvin Swink, explained that ASIS made repeated attempts during the fall of 1993 to obtain the documents from Acord to complete the inspection files or simply to get Acord to make a commitment that the documents would be provided by specific dates. T. 765; T. 734; T. 599; T. 1395; T. 1451-1454; T. 1461; T. 1618-19; T. 1632-33; ASIS 30; ASIS 71; Aly 45; Aly. 93; Aly 98; Aly. 107; Aly.110. Swink concluded that he “saw no other choice, even after giving an extension to the timeframe to have data in to me, but to terminate him. It was an ongoing problem, it was not something that happened just once or twice.” T. 766.

Acord argues vigorously that certain documents demanded of him, such as Inspection Summary Memorandums (ISMs), T. 115, were not required at the time ASIS and Alyeska were pressing him for completion of his paperwork. To begin with, the record is abundantly clear that ISM’s were required, T. 993-995; ASIS 78 at p. AAS 00802 and 00803, or that his supervisors were requiring him to complete them, even if the formal written inspection procedures were unclear. ASIS 78 at pp. AAS 00800; 00804-00805; Aly. 62. In fact, Acord himself had trained another inspector on how to fill out and process an ISM. T. 1340-42.

If one were to believe Acord’s theory that insisting on the submission of documents not actually required was part of the conspiracy to get rid of him, one would have to believe the following: that Respondents were willing to string him along from June 1993 to December on this issue; to go through a charade of laying him off, in which they said they would be willing to recall him from layoff when work became available as long as he completed the paperwork; to have several managers spend a considerable amount of their time, going well beyond the date Acord was fired, going over all this material, checking it, exchanging numerous e-mails, letters and memos, having some tankers reinspected and removing others from service, *see, e.g.,* T.

^{12/} Acord argues that an independent review of the disputed missing documentation showed that he had in fact supplied the requested documents. That review concluded that some documents had been received, but that “[a]ll other items mentioned in the Newcomer letters remain unresolved....” ASIS 78 at p. 00803.

1433-65; 1632-33,^{13/} just to cover up their plot to discharge him. This is simply not believable when weighed against the substantial amount of evidence of legitimate reasons that Alyeska wanted these documents completed, to be in compliance with Department of Transportation regulations and for its own files to be up to date. ASIS wanted this work to be done so that it would not be required to pay for reinspection of the equipment. In fact, as mentioned above, a number of tankers did have to be reinspected, T. 1454, Aly. 157, and ASIS had to pay for some of the reinspections. T. 857; 1633

If Respondents sought a reason to fire Acord to cover up their intent to retaliate against him for protected activities, an adequate reason was available which would not have required the considerable effort put into the missing documents issue. Acord came to Anchorage in August to meet with Kingrea to discuss gaps in his paperwork. T. 1399. When Acord missed the appointment for the morning meeting, they rescheduled the meeting for after lunch. Acord never showed up and left Anchorage without notifying Kingrea. *Id.* Alyeska would have been justified in having Acord fired immediately for such insubordinate behavior and the toleration of this incident by Respondents further negates any inference that their later actions in suspending Acord and discharging him were motivated by retaliation.^{14/} See *Hartsel v. Keys*, 87 F.3d 795, 808 (6th Cir. 1996) (refusal to meet with supervisor is insubordination and grounds for dismissal); see also *Essex v. United Parcel Service, Inc.*, 111 F.3d 1304, 1309 (7th Cir. 1997) (insubordination is legitimate grounds for discharge).

^{13/} As late as the first week of December 1993, after the December 3 deadline to which Acord had agreed for submission of missing documentation, the ASIS Vice President/ General Manager and the Director of Human Services continued going over the documents, checking the files and contacting the Fairbanks office to make certain they were correct about the gaps in Acord's documentation. T. 1632-33.

^{14/} We do not suggest by this discussion that we have concluded that Alyeska and ASIS were Acord's joint employers.

We find that Acord has not proven either that his lay off or discharge was motivated by retaliation for protected activities and accordingly, the complaint in this case is **DISMISSED**.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member