

RAS 4574

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Tennessee Valley Authority  
Watts Bar Nuclear Plant, Unit 1  
Sequoyah Nuclear Plant, Units 1 and 2  
Browns Ferry Nuclear Plant, Units 1,2,3

Docket Number: 50-390-CivP; ASLBP No.: 01-791-01-CivP

Location: Chattanooga, Tennessee

Date: Friday, June 14, 2002

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
TENNESSEE VALLEY AUTHORITY ) Docket Nos. 50-390-CivP  
(Watts Bar Nuclear Plant, Unit 1; ) 50-327-CivP; 50-328-CivP  
Sequoyah Nuclear Plant, Units 1&2; ) 50-259-CivP; 50-260-CivP  
Browns Ferry Nuclear Plant, Units ) 50-296-CivP  
1, 2 & 3) ASLBP No. 01-791-01-CivP  
EA 99-234

Chickamauga Room  
Read House Hotel  
827 Broad Street  
Chattanooga, Tennessee

Friday, June 14, 2002

The above entitled matter came on for hearing  
pursuant to Notice at 9:02 a.m.

BEFORE:

CHARLES BECHHOEFER, Chairman  
ANN MARSHALL YOUNG, Administrative Judge  
RICHARD F. COLE, Administrative Judge

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APPEARANCES OF COUNSEL:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Phillip E. Reynolds	3342	3531	3550	3564

EXHIBITS:                      FOR IDENTIFICATION      IN EVIDENCE

<u>Staff:</u>		
152 and 154	Premarked	3486

P R O C E E D I N G S

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CHAIRMAN BECHHOEFER: We're on the record. I wish you all a happy Flag Day, and I guess -- are there preliminary matters the parties wish to raise today?

MR. DAMBLY: None for the staff, Your Honor.

MR. MARQUAND: No, Your Honor.

CHAIRMAN BECHHOEFER: Staff?

MR. DAMBLY: We would call at this time Mr. Reynolds.

THE WITNESS: Phillip L. Reynolds, P-h-i-l-l-i-p.

COURT REPORTER: Phillip R.?

THE WITNESS: Phillip L. Middle initial "L," last name Reynolds, R-e-y-n-o-l-d-s.

Whereupon,

PHILLIP L. REYNOLDS

appeared as a witness herein, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAMBLY:

Q Mr. Reynolds, where are you presently employed?

A I'm presently employed by the Tennessee Valley Authority in Chattanooga, Tennessee.

Q In what position?

A My current position is that of Vice President of Operation Support.

1 Q And what responsibilities do you have as Vice  
2 President of Operation Support?

3 A Currently I have the functions of human resources,  
4 technical training, and health and safety.

5 Q When you say health and safety, what do you mean  
6 by health and safety?

7 A I have the safety program for the COO  
8 organization, and I administer things like the drug testing  
9 program, nurses stations, medical reviews in the COO  
10 organization.

11 Q And please explain what COO means.

12 A Chief operating -- Chief Operating Officer's  
13 Organization. It is comprised of the nuclear power program,  
14 the fossil power program, our river systems operations and  
15 environmental, and our transmission and power supply, bulk  
16 power trading, power resources and planning.

17 Q Okay. And so when you're talking health and  
18 safety, you're not talking public health and safety involved  
19 in regulating nuclear power plant kind of issues?

20 A No, sir, I am not.

21 Q I was going to say that's a broad responsibility  
22 that you would have had there.

23 What's your educational background?

24 A I have a bachelor's degree from Southern Illinois  
25 University in Carbondale, Illinois.

1 Q Okay. And that's -- do you have any graduate  
2 degrees?

3 A No, I do not.

4 Q And what's your professional employment?

5 A My...

6 Q Since you got out of college.

7 A Oh, okay. I started in the 1976 time frame  
8 working for a construction company out of Schaumburg,  
9 Illinois, at the Clinton Nuclear Power Station. I began  
10 there in the payroll department. I subsequently worked in -  
11 - started out in payroll, and then was moved into the human  
12 resources organization, and ultimately became the manager of  
13 -- it was industrial relations with the company at that  
14 point in time.

15 I left the Clinton Station in late 1985, I  
16 believe, and went to Arizona Public Service to work at the  
17 Palo Verde Nuclear Generating Station, where I was the  
18 manager of industrial relations. I was responsible for our  
19 relationships with the contract. We were still finishing  
20 Unit 3 at that point in time, so I was responsible for the  
21 relationship with Bechtel and the labor contracts. I also  
22 had other duties as assigned out there in the employee  
23 relations department.

24 In April of 1987, I came to the Tennessee Valley  
25 Authority. I was initially hired in as a labor relations

1 officer. I spent about six months in the Chattanooga office  
2 complex. I was subsequently moved to Sequoyah Nuclear  
3 Plant. I spent two, two-and-a-half years at Sequoyah  
4 Nuclear Plant, and then was...

5 Q Are we talking '87 to '89 or '88 to '90 or...

6 A Probably '88 to early '90 I was at Sequoyah. And  
7 then subsequently, in 1990, I was moved to the Chattanooga  
8 office where I was the manager of employee relations. At  
9 that point I had responsibility for the fitness for duty  
10 program, Department of Labor complaints, and Affirmative  
11 Action and Equal Opportunity employee complaint processing  
12 for the nuclear program.

13 Q And when you say you were manager of employee  
14 relations, is that a -- a position title, manager, as in a  
15 technical position, or as a -- did you have people working  
16 for you?

17 A I had people working for me.

18 Q So you were the head of the ER function?

19 A Yes.

20 Q Okay.

21 A In the 1994 time frame, I had a couple of  
22 rotational assignments where I helped out in the fossil  
23 organization for six to eight months. But in 1994, I was  
24 the manager of nuclear human resources left the organization  
25 and went to Carolina Power. I replaced him as the manager



1 of nuclear human resources, so I had responsibilities for  
2 all the human resources activities in the nuclear power  
3 organization. I held that position...

4 Q Well, now, what -- what's different about that  
5 from being the manager of employee relations? What  
6 functions did you pick up?

7 A At that point in time, then, the functions that I  
8 had that reported to me as the manager of employee relations  
9 also reported to me as manager of nuclear human resources.  
10 I had -- all the site activities in a dotted line  
11 relationship reported to me, and then I had a corporate  
12 staff of human resource consultants and officers and  
13 administrative folks that reported to me here in  
14 Chattanooga.

15 Q You didn't have any other functional -- any  
16 different functional areas than you had as the manager of ER  
17 when you became the manager of nuclear human resources?

18 A Yes, at that time I picked up all of the human  
19 resource activities.

20 Q Oh.

21 A That I did not have as manager of employee  
22 relations.

23 Q And what were those? What's different?

24 A I had responsibility at that point in time for,  
25 you know, pay actions; what we would do in our compensation

1 cycle; items that we would perform in terms of, you know,  
2 working with the organization on org structures; how the --  
3 you know, advising senior managers on -- or and managers in  
4 general on pay issues. You know, I worked with the  
5 corporate organization in Knoxville corporate human  
6 resources when new initiatives, like a flex benefits program  
7 would be rolled out. Just those type of activities.

8 Q Okay. And when did you leave as manager of  
9 nuclear human resources?

10 A I believe in 1995 I became the general manager,  
11 and I need to set the stage with you for that a little bit.  
12 At that -- when I had nuclear human resources or when I was  
13 the manager of nuclear human resources, the organization of  
14 nuclear and fossil were combined into a generating group.  
15 And there was a vice president of employee relations that I  
16 worked for. In that early '95 time frame, the board of  
17 directors and Mr. Kingsley at that time, they had made a  
18 decision to split the fossil organization from the nuclear  
19 organization so they were both stand-alone organizations at  
20 that point in time.

21 Once they did that -- excuse me. Once they did  
22 that, I became -- the person who had been the vice president  
23 of human resources for the generating group or for -- vice  
24 president of employee relations for the generating group  
25 left the organization, and then I became the general manager

1 of nuclear human resources reporting directly to the chief  
2 nuclear officer, where I had responsibility for any non-  
3 technical training activities, I had some responsibilities  
4 for labor relations, compensation, all the human resource  
5 activities, safety, the full gamut of activities.

6 Q Okay. And did you leave that position?

7 A In, oh, gosh, '97 or '98 time frame, I was  
8 promoted into a position, vice president of nuclear support,  
9 where I had business services, employee concerns, capital  
10 projects, security, and human resources assigned to me.  
11 Then in 1999, 2000, when Mr. Zeringue -- when they formed  
12 the Chief Operating Organization and -- and had a chief  
13 operating officer with the fossil-nuclear, RSO and  
14 transmission power supply organizations reporting to him, I  
15 was moved into a role that -- my current role, which is Vice  
16 President of Operation Support for the COO organization.

17 Q Okay. Now, am I correct, from what you said, that  
18 your first job dealing with federal personnel issues,  
19 federal employee issues was when you got to TVA?

20 A Yes, it was.

21 Q And have you taken any training with regard to  
22 federal personnel requirements?

23 A I have received on-the-job training that I  
24 received at my work locations, but no formal education or  
25 seminars, like that.

1           Q     When TVA takes a personnel action, and in the rest  
2 of government documents personnel actions are standard form  
3 50s, how do you document personnel actions?

4           A     We have a computer system called HRIS, human  
5 resource information system, and that information is entered  
6 into that system, and it's documented in that system. Let  
7 me -- let me see if I can clarify that. Are you talking  
8 about if we take a pay action or something like that?

9           Q     Pay action, promotion, demotion.

10          A     Yeah, it's documented in our information system.

11          Q     And what document goes into that system? I mean,  
12 is there a specific document somebody fills out and signs,  
13 and then that's information (sic) is entered in the system  
14 or...

15          A     There is information that is received from -- to  
16 the human resource assistants, who input that data into the  
17 system. And there are a variety of forms that are used.

18          Q     Okay. In 1993, I think you told us you had  
19 responsibility for DOL actions.

20          A     Yes, I believe so.

21          Q     And Mr. Fiser filed a DOL complaint in 1993?

22          A     Yes, he did.

23          Q     And that was while you were responsible for  
24 handling those from an HR perspective or an ER perspective?

25          A     Yes.

1           Q     Okay.  What's normal process at TVA back then,  
2 when somebody files a DOL complaint?  What did ER do?

3           A     We would get a complaint -- a complaint would be  
4 filed, and at that time we would receive it from the  
5 Department of Labor, Wage, and Hour.  And we would receive  
6 the complaint, and our first action was to write a letter  
7 that I would sign to our inspector general's office, asking  
8 them to investigate that complaint.

9                     We subsequently -- the person on my staff that at  
10 that time I had investigating or looking into and handling  
11 complaints, tracking them, things like that, would do a  
12 quick review of the complaint, see what kind of issues there  
13 may or may not be with it, kind of give us a thumbnail  
14 sketch of, you know, what the circumstances were regarding  
15 the complaint.  And then we would make a decision on, you  
16 know, was it a case where we thought maybe we should try and  
17 go settle it, or is it a case that we thought we should go  
18 forward with.  And we would advise management.  We would  
19 provide management a recommendation.

20          Q     And why would you forward it to the IG's office?

21          A     In -- in the 1987 or 1988 time frame---it's a  
22 little bit before I got involved in the process---as a  
23 result of a series of meetings that Mr. Kingsley at that  
24 point in time was having with the NRC because of our large  
25 number of Department of Labor complaints, I believe there

1 was a commitment made to the NRC that we would have -- that  
2 once we received a complaint, that the investigation -- we  
3 would have an independent arm within TVA, the inspector  
4 general's office, investigate that complaint and give us a -  
5 - a report on that complaint, with recommendations and  
6 findings out of it. And I believe that's how that  
7 originally began, as a result of a commitment.

8 Q And typically during the OIG investigation, did  
9 you or your staff have any interaction with the IG people,  
10 other than say as a -- as a witness?

11 JUDGE YOUNG: As a what?

12 MR. DAMBLY: Other than as a witness.

13 JUDGE YOUNG: Witness.

14 A We might call up and ask what the status of it is  
15 or, you know, when did they think it was going to be  
16 completed, or if they needed some documentation, we might  
17 forward that. But, you know, it was pretty minimal, our  
18 contact with him, during those investigations.

19 Q And when they completed the investigation, did ER  
20 get a complete copy of their investigation with all the  
21 exhibits?

22 A What would happen is we would get a copy -- a copy  
23 of the report -- or the report, itself, I should say, was  
24 sent to the chief nuclear officer, Mr. Kingsley at that  
25 point in time, and I would -- I would be on a copy of that

1 complaint. Would we get a copy? I do not remember us  
2 getting a copy of exhibits. Sometimes we would get reports,  
3 and there would be copies of maybe a -- handwritten notes or  
4 notes from a planner or things like that attached to it.  
5 But on -- normally we didn't have -- there weren't a lot of  
6 exhibits attached to the complaint or the -- excuse me, not  
7 the complaint, the report or the investigative report that  
8 the IG did.

9 JUDGE COLE: The IG report?

10 THE WITNESS: Excuse me, sir?

11 JUDGE COLE: The IG report.

12 THE WITNESS: The IG report. Yes, that's correct.

13

14 Q But you wouldn't normally get the reports of  
15 interviews, statements?

16 A No, I would not.

17 Q Do you know if the employee was given a copy of  
18 the IG report?

19 A I believe if an employee was interviewed by the  
20 IG, that at some time they were given a preliminary copy of  
21 the report to comment on, and they could provide comments  
22 back to that report.

23 JUDGE COLE: So that's just a summary of the  
24 interview, not the IG report, or which -- when a -- when an  
25 employee is interviewed, they have a summary statement of

1 the interview that goes back to the employee for his  
2 information or correction?

3 THE WITNESS: The -- the employee would get a  
4 draft of the investigative report, which would essentially  
5 be their findings and conclusions. It would not be the  
6 details of the specific interview. And the employee would  
7 then comment back on how the IG had written that report, and  
8 what their conclusions and findings and those kind of things  
9 may be. I don't know whether they would actually see their  
10 statement.

11 MR. MARQUAND: Your Honor, I think there's some  
12 confusion here.

13 MR. DAMBLY: Okay, let me ask a clarifying  
14 question.

15 MR. MARQUAND: Okay.

16 BY MR. DAMBLY:

17 Q When you said "the employee," you're talking about  
18 the one who filed the complaint, not everybody who was  
19 interviewed?

20 A I believe everybody who was interviewed, if -- has  
21 an opportunity to -- to review that draft if they had  
22 significant comments in it.

23 Q Okay.

24 JUDGE YOUNG: The -- the whole investigative  
25 report?



1 MR. MARQUAND: Your Honor...

2 JUDGE YOUNG: Each employee that was interviewed  
3 got a copy of the draft investigative report? Is that what  
4 you're saying? That's not what he said.

5 THE WITNESS: When -- when the IG would complete  
6 or come close to completing their investigation, it's my  
7 understanding that employees would have an opportunity to  
8 respond back to that. Now, I don't know if it was every  
9 employee who was interviewed, or if it was...

10 JUDGE YOUNG: To the whole report, or to their --  
11 to the report of their individual interview?

12 THE WITNESS: I think it's just to their  
13 individual interview.

14 JUDGE YOUNG: Okay. That's what...

15 JUDGE COLE: Right. That's what I thought it was.

16  
17 THE WITNESS: Yeah, I -- I mean, I'm sorry if I  
18 confused you all on that, but I just...

19 JUDGE COLE: There's an IG report that's a summary  
20 of the investigation, then there's an interview summary.

21 THE WITNESS: They respond back to their -- their  
22 interview statements.

23 JUDGE COLE: Okay. Thank you.

24 MR. DAMBLY: And since Mr. Hickman will be in  
25 here, I'm sure he can tell us what...

1 THE WITNESS: He knows that much better than I do,  
2 I can assure you.

3 MR. DAMBLY: Let's hope so.

4 BY MR. DAMBLY:

5 Q Now, with regard to Mr. Fiser's '93 complaint, did  
6 you review the OIG report from that complaint?

7 A I believe so.

8 Q On that one, do you know if you looked at the  
9 exhibits or asked to see the exhibits?

10 A I do not remember seeing the exhibits or asking to  
11 see the exhibits; no.

12 Q Do you recall any issues that came out of that  
13 report?

14 A I do not remember the specific issues around the  
15 report. I remember, you know, that there were some issues  
16 that we had in terms of his reduction in force and how it  
17 was conducted, and I thought there were some problems with  
18 it, and I recommended a settlement on that complaint.

19 Q Do you recall if you ever saw, in the '93 time  
20 frame, Mr. Fiser's sequence of events which was an exhibit  
21 to that report? That's an 80, 90 page document.

22 MR. MARQUAND: Wait. I'm going to object. That's  
23 an ambiguous question. Is it an exhibit to what report?

24 MR. DAMBLY: The IG report.

25 MR. MARQUAND: It was not. That's a

1 mischaracterization. I'm objecting.

2 MR. DAMBLY: Okay.

3 BY MR. DAMBLY:

4 Q Did you ever see Mr. Fiser's '93 sequence of  
5 events?

6 A I do not remember seeing them; no.

7 Q Prior to his filing a DOL complaint in '93---and  
8 we'll get to this other one in a minute---there was a time  
9 when Mr. Fiser and Mr. Jocher switched positions. Do you  
10 recall that?

11 A Yes, I do.

12 Q Were you involved at all in that?

13 A I was involved from the standpoint that I knew we  
14 were rotating Mr. Jocher and Mr. Fiser -- or Mr. Jocher from  
15 the corporate organization into Sequoyah, and Mr. Fiser to  
16 the corporate organization. I was aware of that rotation;  
17 yes.

18 Q Okay. You didn't have any personal role in that?

19 A No.

20 Q Okay. Now, you indicated you were involved in Mr.  
21 Fiser -- in settling the complaint. What was your  
22 involvement in the settlement?

23 A One of my staff members -- if I can kind of set  
24 the stage for that. The -- the nuclear power organization,  
25 since 1988, had been going through -- or '90 -- '87,

1 actually, had been going through a series of -- of  
2 reductions in force. And, you know, every year in our  
3 business plan there were some number of reductions that were  
4 going to occur from our workforce.

5           And specifically to 1993 and Mr. Fiser, there was  
6 a -- we were downsizing, reducing in force the corporate  
7 organization, the nuclear corporate organization. And as I  
8 remember, there was -- Mr. Fiser was scheduled to receive or  
9 -- and I think maybe actually did see a reduction in force  
10 notice. We subsequently went back, and I believe Mike Pope  
11 brought it to my attention that there were some problems in  
12 terms of what Mr. Fiser's job of record was. And his job of  
13 record was still that of the Sequoyah chemistry manager  
14 position. So if we reduced him in force from a chemistry  
15 program manager in the corporate office, we were actually  
16 reducing him from the wrong position. And, based on that, I  
17 made a decision that it wasn't something we could defend in  
18 a merit systems protection board hearing, and it was not  
19 done correctly, so I made a recommendation that we resolve  
20 and settle the complaint.

21           Q     Okay. Now, just so I'm clear, Mr. Fiser's  
22 position of record at that time was the Sequoyah chemistry  
23 superintendent?

24           A     Yes. We had -- since he was on that rotational  
25 assignment, we had not -- my understanding is we had not

1 changed his position description to be that of a corporate  
2 chemistry manager. He was in a rotational assignment.

3 Q Okay. And...

4 CHAIRMAN BECHHOEFER: Is that standard practice?  
5 When a person is on a -- when a person is on a rotation, not  
6 to change his job description while on rotation?

7 THE WITNESS: No, we do not, because that's their  
8 official position of record at that point in time.

9 CHAIRMAN BECHHOEFER: The point that they're --  
10 the position they're transferred from is still their  
11 official...

12 THE WITNESS: Yes.

13 CHAIRMAN BECHHOEFER: ...position of record? I  
14 see.

15 JUDGE YOUNG: And so if -- if the -- if there was  
16 still a position there, that's why you concluded that he  
17 could not be RIF'd from the position that still existed?

18 THE WITNESS: Yes.

19 BY MR. DAMBLY:

20 Q Okay. And at first the Jocher and Fiser switch  
21 was designed to be a one -- one-year rotation; is that  
22 correct?

23 A I believe so; yes.

24 Q Okay. And then just Mr. Fiser never got un-  
25 rotated?

1           A     I -- as a result -- as I remember the sequence of  
2 events, as -- when it came to light that we had incorrectly  
3 reduced Mr. Fiser from the wrong position, after that  
4 incident, then we went in and -- and Mr. Fiser filed the  
5 complaint, we went in and resolved his complaint by offering  
6 him a chemistry program manager's position in Chattanooga on  
7 a permanent basis.

8           Q     Okay.

9           JUDGE COLE: What basis, sir?

10          THE WITNESS: On a permanent...

11          JUDGE COLE: Permanent basis. Okay.

12          THE WITNESS: We offered him a permanent position  
13 at the Chattanooga location, is what I mean, sir.

14          Q     All right, now, so you're saying Mr. Fiser was  
15 incorrectly RIF'd or surplusd from his headquarters  
16 position, when his position of record was the chemistry  
17 superintendent at Sequoyah?

18          A     Yes, I do.

19          Q     Okay. Let me first turn you -- you have a bunch  
20 of books in front of you. One's entitled, "Joint Exhibits."

21

22          A     Exhibits 24 through 65?

23          Q     Right.

24          A     Got them.

25          Q     If you'd turn to Joint Exhibit 59. Do you have

1 Joint Exhibit 59 in front of you?

2 A Yes, sir.

3 Q And is this the notice of transfer for Mr. Fiser  
4 for the '93 surplusings?

5 A Can you give me a moment to look at it, please.

6 (The witness reviews certain material.)

7 A Your question again, please.

8 Q Is this the notice that was sent to Mr. Fiser that  
9 he was being surplused in '93?

10 A I believe it is.

11 Q And from what position does it say he was  
12 surplused?

13 A "This is to notify you that as a result of a  
14 reorganization, your position of manager, chemistry, PG-9,  
15 Sequoyah Nuclear Plant, has been determined to be  
16 surplused."

17 Q So he wasn't surplused from the corporate  
18 position, he was surplused from the chemistry position at  
19 Sequoyah?

20 A My understanding is he -- we had made a error  
21 (sic) in surplusings him from a corporate chemistry position.

22 Q All right. If you want to look in volume -- Book  
23 6 of 8 there for the NRC staff exhibits.

24 A I've got it here.

25 Q Go to Staff Exhibit 110.

1 COURT REPORTER: I'm sorry. Staff exhibit what?

2 MR. DAMBLY: 110.

3 A I have it.

4 Q All right. And could you identify that document,  
5 please.

6 A It is a declaration of Phillip L. Reynolds before  
7 the Office of Administrative Law Judge, United States of  
8 America, Department of Labor.

9 Q Okay. And does your copy have a date -- or a date  
10 stamp in the upper right-hand corner indicating it was  
11 received by the U.S. Department of Labor?

12 A Yes, it does.

13 Q Do you recall this document being prepared and  
14 your signing it?

15 A Yes, I do.

16 Q Okay. Unfortunately, we've never been able to get  
17 a complete copy, we've only got through Page 3. I'm not  
18 sure whatever happened to the rest of them. But if you'd  
19 look on Page 2, Paragraph 3.

20 A Number 3?

21 Q Paragraph #3.

22 A Okay.

23 Q And if you want to read that, see if that  
24 refreshes your recollection of what happened to Mr. Fiser in  
25 terms of what position he was in in 1993.



1 A You want me to read this?

2 Q Yeah.

3 A Out loud or...

4 Q No, read it to yourself.

5 A Okay.

6 (The witness reviews certain material.)

7 Q Actually, I think the date stamp says January 20<sup>th</sup>  
8 of 1998 in the upper right-hand corner. And, again, we've  
9 never been able to get a complete copy, so I'm not sure what  
10 the date it was signed on is.

11 Okay, having read that document, does that refresh  
12 your recollection of what position Mr. Fiser was in and --  
13 and why you made the decision to settle?

14 A The basis for my decision to settle was that I  
15 didn't think Mr. Fiser had been treated properly in a  
16 reduction in force.

17 Q And is it true that you thought the paperwork  
18 hadn't caught up; he was actually in a corporate position,  
19 but since the paperwork hadn't caught up, he was reduced  
20 from Sequoyah, and that was not proper?

21 A He was inappropriately reduced from a position  
22 that I didn't think was right, and so I subsequently settled  
23 the complaint.

24 Q Well, you thought it wasn't right because he was  
25 reduced from a position he didn't occupy?

1 JUDGE YOUNG: In what way did you not think it was  
2 right?

3 THE WITNESS: I think that in Mr. Fiser's case he  
4 had been rotated out of a position. He had been performing  
5 functions in the corporate office, to my understanding, in a  
6 satisfactory manner. He'd been working there for about a  
7 year period of time. He goes in, and we reduce him out of a  
8 position he hasn't held for a year. And I don't think we  
9 treated him fairly.

10 JUDGE YOUNG: Because of the fact that he hadn't  
11 held the position that he was reduced from for over a year?

12 THE WITNESS: That's -- yeah. And I just don't  
13 think we treated him right. And I think, you know, we may  
14 have -- you know, it looks like, from the paperwork, that we  
15 actually reduced him out of the corporate chemistry  
16 manager's position and, you know, it says we had not caught  
17 up with his reassignment, not issued any paperwork.

18 Q Well, it says, "When NHR informed TVA management  
19 that Mr. Fiser was being reduced in force from a position  
20 which he did not actually occupy, TVA canceled the RIF  
21 notice."

22 A Yes.

23 Q And that was the reason, because he was reduced  
24 from a position he wasn't in, except on paper?

25 A Except on paper. He was in that position --

1 understanding is, he was in that position based on his  
2 position of record, but he wasn't actually occupying the  
3 position. They came to me and said, "We don't think we've  
4 done the right thing here," and so I agreed with them, and  
5 we settled Mr. Fiser's complaint.

6 Q At the time you settled the complaint, did you  
7 look in to see if, in point of fact, Mr. Fiser's position of  
8 record, the chemistry position at Sequoyah, actually was  
9 eliminated?

10 JUDGE YOUNG: Actually was what?

11 MR. DAMBLY: Eliminated.

12 A I -- I don't know. I didn't -- you know, my staff  
13 came to me with a recommendation, and I accepted, you know,  
14 their recommendation once they presented me the facts, and  
15 we did what we thought was the right thing.

16 Q Now, in '93 you were not responsible for the  
17 sites?

18 A The sites were in a matrix relationship. I mean,  
19 they had -- they reported directly to the site vice  
20 president, I believe, at that time. And we had a matrix  
21 relationship. You know, we'd bring him in for information  
22 meetings, and when we were rolling out new programs, and  
23 things like that. So they weren't a direct report to me at  
24 that point in time.

25 Q Okay. If a DOL complaint was filed by somebody in

1 a position at the sites, would that have come under you?

2 A Yes, we would have been involved in that  
3 complaint.

4 Q Now, and as I -- or as you said earlier---I'm  
5 sorry---the reason or one of the reasons you settled this  
6 was you knew you didn't have a case in front of the MSPB?

7 A I didn't think we had a very good case, and I  
8 basically -- you know, we -- we had had, as you well know, a  
9 large number of DOL complaints filed on the TVA  
10 organization. And one of my charges that I was given by the  
11 chief nuclear officer, was Oliver -- or was Oliver Kingsley,  
12 was to make sure that I treated employees fairly. And, you  
13 know, if we had made errors or if there were perceptions  
14 that we weren't treating people right or if we had problems,  
15 that he wanted me to look -- if I could settle a complaint,  
16 try and settle complaints, if we -- if we thought we had  
17 some problems with them. This is one I thought we had some  
18 problems, so I made a recommendation to settle it.

19 Q Now, did Mr. Kingsley's statement to you about  
20 make sure you treated employees fairly and all, did that  
21 have any time frame on it?

22 A I'm not sure I understand your question.

23 Q Well, in '96 were you still supposed to be looking  
24 at treating employees fairly and making sure you did the  
25 right thing?

1           A     Yeah, Mr. Kingsley never wavered from that, that  
2 he felt that we should treat employees fairly and -- and do  
3 the right things in regards to...

4           Q     How many MSPB -- MSPB cases have you been  
5 personally involved in?

6           A     I have probably prepared, from the standpoint of  
7 compiling all the documentation and sending up for the  
8 lawyers to review, probably a couple hundred. I have  
9 probably been in 15, maybe 20 actual MSPB hearings before.

10          Q     When you testified?

11          A     I either testified or I was -- our attorneys would  
12 handle the cases in front of the administrative law judge.  
13 I might be there as a representative or as a technical  
14 expert or as a -- more of a representative, or there to  
15 testify. Usually one of those two roles.

16          Q     Now, what knowledge do you have of OPM's RIF  
17 regulations?

18          A     Limited.

19          Q     Okay.

20          A     I mean, I have been trained in them, in terms of  
21 how -- TVA's interpretation in conducting of a RIF. But for  
22 me to cite sections of it, that would be difficult for me to  
23 do.

24          Q     Well, in conducting a RIF, does TVA conduct a RIF  
25 based on a person's official position that they occupy, or

1 on the PD of record that's in their folder somewhere?

2 A My training or on-the-job training on that has  
3 been, and the guidance I have received from the Office of  
4 General Counsel and their interpretation is, is that we will  
5 conduct a reduction in force of someone as the result of  
6 their position description of record which is contained in  
7 their permanent personnel file; PHR, as we call them.

8 Q So then Mr. Fiser was RIF'd from the right  
9 position back in '93?

10 A You know, I'd have to go back and -- and relook  
11 that again. I mean, apparently my understanding of the  
12 events is, is that his official position of record at that  
13 point in time was corporate -- or was chemistry manager --  
14 manager of chemistry at Sequoyah Nuclear Plant.

15 Q And you just saw the surplus notice and it said  
16 that's what he was surplusd from?

17 A Yes, I did.

18 Q Then you saw your DOL declaration when you said  
19 because the paperwork didn't catch up with him, but he was  
20 actually in a different position, and he'd been RIF'd from a  
21 position he didn't occupy, you settled the case.

22 A I think there were some problems with the case, so  
23 I recommended we settle it.

24 Q Because you'd RIF'd him from one that he wasn't  
25 in?

1           A     That was my understanding at that point in time;  
2     yes.

3           Q     And to your knowledge, is there -- have you ever  
4     looked at the OPM RIF regs?

5           A     I may have seen them in some training with the --  
6     the lawyers did with us on how to prepare MSPB cases.

7           Q     But, to your knowledge...

8           A     I haven't read them.

9           Q     ...is there any mention of position description of  
10    record in OPM's RIF regs?

11          A     I don't know.

12          Q     Do you know if it's based on an employee's  
13    official position?

14          A     All I know is, is that the guidance and  
15    interpretation that I've received from our general counsel's  
16    office has been that we must operate from by position of  
17    record, and that is determined by their last official  
18    position description in their permanent human resource  
19    record.

20          Q     Okay. You were also involved in a situation in  
21    1996 where Wilson McArthur was taking -- taken from the  
22    position he was in as rad con manager and placed in a  
23    position in the corporate rad con and chemistry manager  
24    position? Do you recall that?

25          A     I was involved in that situation; yes.

1 Q And that was done non-competitively?

2 A Mr. McArthur was -- and I -- off the top of my  
3 head, do not remember the exact positions. But there was a  
4 -- he was ultimately put into the corporate chemistry and  
5 rad con manager's position in the '96 time frame.

6 Q And there wasn't a posting and a competition for  
7 that one?

8 A No, there was not, because we felt like it was his  
9 job of record.

10 Q Well, you -- you do, in fact, know he was put in  
11 and appointed as the rad con manager?

12 A What time frame, sir?

13 Q 1994.

14 A He may have been.

15 Q Do you know if there was ever a position  
16 description prepared for the rad con manager in 1994?

17 A Based on my information on the case, no, I do not  
18 believe they ever did make a -- or a position description of  
19 just rad con manager was given to Mr. McArthur, that I'm  
20 aware of.

21 JUDGE YOUNG: That's the job that you said -- that  
22 you're referring to when you say the new job of rad chem  
23 manager was the same as his old job?

24 THE WITNESS: That was the recommendation given to  
25 me by my staff, that he had previously held a position, and



1 his position description of record supported that he should  
2 have rights to the new rad con chemistry manager position  
3 that was done in the '96 reorganization.

4 JUDGE YOUNG: In the new rad chem manager?

5 THE WITNESS: Excuse me?

6 JUDGE YOUNG: The new 1996 rad chem manager?

7 THE WITNESS: Yes, that I -- we felt like he had  
8 rights to that position based on his last position  
9 description of record.

10 JUDGE YOUNG: Which was the rad con manager?

11 THE WITNESS: No, it was a -- I don't remember the  
12 exact title, but it had rad con, chemistry, environmental.  
13 I believe it had security in it, and it may have had one  
14 other function in it.

15 JUDGE COLE: Would that have been a technical  
16 programs manager position?

17 THE WITNESS: That may have been the title that he  
18 had at that point in time. I'm not exactly sure, sir.

19 MR. DAMBLY: We'll actually get to the PD in a  
20 little bit, so...

21 CHAIRMAN BECHHOEFER: I have one follow-up.

22 THE WITNESS: Yes, sir.

23 CHAIRMAN BECHHOEFER: If there were -- if there  
24 were an attempt to eliminate a position which a person was  
25 in on rotation, and for which no job -- no transfer had

1 actually been recorded on the books, what would happen to  
2 the person in the rotated -- or the position he had rotated  
3 to, assuming there were a desire to eliminate that position  
4 at the time?

5 THE WITNESS: Eliminate the rotated position?

6 CHAIRMAN BECHHOEFER: Yeah, the rotated-to  
7 position for which the person did not have a job  
8 description.

9 THE WITNESS: They would go back to what their  
10 original position was. You know, if -- if someone...

11 CHAIRMAN BECHHOEFER: So there would be no RIF,  
12 vis-a-vis that...

13 THE WITNESS: From that rotational position; no.

14 CHAIRMAN BECHHOEFER: ...rotational position?

15 THE WITNESS: No. That's correct.

16 CHAIRMAN BECHHOEFER: Okay.

17 BY MR. DAMBLY:

18 Q Okay, if you'd look at -- that over there is Staff  
19 Exhibit 130. Do you have it? This is an organization chart  
20 with a date on it of -- in the right-hand corner, 2/13/95.

21 A Yes, it is.

22 Q With nuclear operations support, radiology, and  
23 chemistry control.

24 A Yes, it is.

25 Q What position does Mr. McArthur occupy on that

1 organization chart?

2 A Mr. McArthur, on this org chart, is the rad  
3 control manager.

4 Q Had a PG-11?

5 A Yes, sir.

6 MR. MARQUAND: Can he -- does the witness need a  
7 pair of glasses?

8 THE WITNESS: Yeah, and I forgot them today. I'm  
9 sorry.

10 MR. DAMBLY: Unfortunately I didn't wear my  
11 contacts, because I'd let him have mine.

12 THE WITNESS: You know, I -- as long as I -- you  
13 know, if we're at arms length, I'm okay.

14 MR. DAMBLY: Okay.

15 BY MR. DAMBLY:

16 Q And it shows Mr. Grover as a PG-11, chemistry and  
17 environmental protection?

18 A Yes, it does.

19 Q And on this chart there's no technical program  
20 manager position?

21 A No, there is not.

22 Q And what position did Mr. Sorrell occupy?

23 A Mr. Sorrell was the rad -- excuse me, radiological  
24 and chemistry control manager on a PG senior level.

25 Q And that's not the same position as the technical

1 program manager position, is it?

2 A It is not the same job title. It has several of  
3 the same functions.

4 Q And do you know, was there a position description  
5 created for the radiological and chemistry control position  
6 that Mr. Sorrell was in?

7 A I do not know.

8 Q Okay, let's go to -- back to the book. We had  
9 100, and go back to 99.

10 A In the same book, sir?

11 Q It would be in -- wherever we were looking at  
12 the...

13 A The one that starts 103 to 115?

14 Q Oops. I guess that...

15 MS. EUCHNER: Volume 5.

16 A I believe I have it in front of me.

17 Q If you will turn to Exhibit 99. Do you recognize  
18 this, or this form of document?

19 A You want me to -- can I look at all the pages?

20 Q Sure. Go ahead.

21 (The witness reviews certain material.)

22 A Yes, I recognize this document.

23 Q Okay. What is it?

24 A It's a -- as I spoke to you earlier, when you  
25 asked me how we documented things, this is information that

1 has been put into the human resource information system and  
2 has been printed out, shows an employee. This one, the  
3 first page, one of two, I think it is, it's titled,  
4 "Employee Action Reasons."

5 Q And it -- it indicates it's for McArthur, Wilson  
6 C.? You need those glasses.

7 A Yes, it does. Yeah. It's not that bad.

8 Q Okay. And this would be what you talked about  
9 earlier, where -- where you would document the various  
10 actions that occurred officially to Mr. McArthur, or Dr.  
11 McArthur?

12 A This is a -- yeah, this is a report of -- of  
13 various actions that had occurred.

14 Q And it shows that in -- we go down to -- I guess  
15 it's in reverse chronological order.

16 A Let's see if I can borrow these so I can...

17 Q Okay.

18 A I left them in my coat that I had on yesterday.  
19 I'm sorry. That's better. No pictures, please.

20 Q Okay. If we go down to about the middle of the  
21 first page, there's an action says, "Paid," and it's got an  
22 effective date of 10/3/94. Action date 11/15/94, and it has  
23 Mr. McArthur in a grade senior; is that correct?

24 A Yes, it does.

25 Q With a salary of 98,000. And then the line above

1 it shows that in 1994 he went to a Grade 11; is that  
2 correct?

3 A Yes, it does.

4 Q And then back, going up toward the top, I guess,  
5 four entries, we'll get to them in '96, he went back to a  
6 senior position; correct?

7 A Which line are you on, sir?

8 Q I'm the third line down from the top. This is in  
9 reverse chronological order, apparently, so...

10 A Oh, okay, I have you.

11 Q In '96 he went to a...

12 A 6/17/96 was the effective date, 6/20. Yeah, his  
13 grade level was changed of that from a PG-11 to a senior.

14 Q Okay. And a...

15 A That's what's reflected on the document; yes.

16 Q And going from a senior to an 11 is actually a  
17 lowering of your grade?

18 A Going from an 11 to a senior is a...

19 Q No, go from a senior to an 11.

20 A From a senior to an 11 would be a lowering of your  
21 grade; yes.

22 Q And from an 11 back to a senior would be a  
23 promotion?

24 A Would be an upward movement in your grade; yes.

25 JUDGE YOUNG: Would be an upward what?

1 THE WITNESS: Your grade level would change.

2 Our...

3 JUDGE YOUNG: I just didn't understand the word  
4 you said. Would be an upward...

5 JUDGE COLE: I think he said "upward movement."

6 THE WITNESS: Yeah, I...

7 JUDGE YOUNG: Movement?

8 THE WITNESS: ...1 through...

9 JUDGE YOUNG: I understand the concept. I just...

10 THE WITNESS: ...1 through 11, and then senior.

11 JUDGE YOUNG: Right.

12 MR. DAMBLY: Okay, and...

13 CHAIRMAN BECHHOEFER: But is there some overlap in  
14 salary between some of the senior levels and the PG levels?

15 THE WITNESS: I believe there was.

16 CHAIRMAN BECHHOEFER: Pay overlap?

17 THE WITNESS: Yes, there was some overlap between  
18 -- a PG level, I believe at that time, could potentially go  
19 up to over \$100,000, and a senior could also go down into  
20 the \$90,000 range.

21 CHAIRMAN BECHHOEFER: I see.

22 THE WITNESS: So there -- yes, there was pay  
23 overlap within those grades.

24 CHAIRMAN BECHHOEFER: Was an employee who was  
25 transferred from a senior level to a PG level guaranteed a

1 continuation -- at least a continuation of whatever pay he  
2 had for the past some months or years?

3 THE WITNESS: From an 11 to a senior level?

4 CHAIRMAN BECHHOEFER: No, from a senior level to  
5 an 11 level?

6 THE WITNESS: Typically...

7 CHAIRMAN BECHHOEFER: If the person would be  
8 guaranteed at least the salary that he had as a senior?

9 THE WITNESS: ...typically, if he had stayed  
10 within that -- that pay range...

11 CHAIRMAN BECHHOEFER: Right.

12 THE WITNESS: ...and that overlap, we would  
13 maintain that individual's salary. We didn't want to harm  
14 them in any way from a financial standpoint. So if it still  
15 fit within that range, we would maintain their salary in  
16 that, that overlap.

17 I'm sorry, Mr. Dambly, you were getting ready to  
18 ask me a question.

19 BY MR. DAMBLY:

20 Q Okay. In looking at Exhibit 99 and the entries we  
21 just talked about, I think that's the one you're on.

22 A Okay.

23 Q Do you have any doubt that Mr. McArthur -- Dr.  
24 McArthur went from a senior position in 1994 to a grade 11  
25 position, and then back in '96 was promoted back to a senior



1 position?

2 A Based on the documentation, it seems -- your  
3 statement -- that's true.

4 Q And this is how you told us earlier...

5 COURT REPORTER: I'm sorry, I couldn't hear him.

6 A Based on -- yeah, I agree, Mr. McArthur, at a  
7 point in '94, was moved from a senior level to an 11; and at  
8 a time frame in the June time frame of '96, was moved from a  
9 management pay grade 11 to a management pay grade senior.

10 Q And this is what you indicated earlier, this is  
11 how you keep official track of what an employee position  
12 was?

13 A It's a report out that you can get kind of a  
14 running history on an employee.

15 Q All right. If you would turn in the same book to  
16 Exhibit 102. Staff Exhibit 102, which is a performance  
17 review and development plan for Wilson C. McArthur with the  
18 dates 10/1/94 to 9/30/95.

19 A That's correct.

20 Q And it indicates his position was manager,  
21 radiological control?

22 A Yes, it does.

23 Q And that's the position we looked at in that org;  
24 chart that -- that in '95 showed him as the manager of  
25 radiological control?

1 A Yes, it does.

2 Q Do employees at TVA typically get appraised on  
3 positions that they don't occupy?

4 JUDGE YOUNG: Do they get what on positions  
5 they...

6 MR. DAMBLY: Appraised. Reviewed.

7 JUDGE YOUNG: Appraised.

8 A Typically, no.

9 Q Do you get -- you issue elements and standards for  
10 employees to positions that they're not in?

11 A Can you ask me that again, please. I'm not sure I  
12 understood.

13 Q I said does one normally get elements and  
14 standards applicable to a position that you don't occupy?

15 JUDGE YOUNG: Elements and standards?

16 MR. DAMBLY: Yes, ma'am.

17 MR. MARQUAND: What are we talking about, elements  
18 and standards? I don't see that in this document.

19 THE WITNESS: I may not -- I may not be familiar  
20 with that terminology.

21 MR. DAMBLY: Well, okay.

22 BY MR. DAMBLY:

23 Q Do you issue performance objectives to employees  
24 for -- for -- performance objectives for positions they're  
25 not in?

1           A     Typically, no.

2           Q     Okay, getting back to the non-competitive  
3 promotion of McArthur in '96 from the rad con manager to the  
4 rad con chemistry manager, how did it come about?

5           A     Do you want me to -- do I need to move back to  
6 Exhibit 99?

7           Q     Well, I don't know. If that's going to tell you  
8 how it happened, then that's fine.

9           A     No. No, I -- I can tell you how it happened.

10          Q     Okay.

11          A     It may help me in terms of the dates, if I could  
12 use it for that.

13          Q     Okay.

14          A     And your question was specific to the 1990 to  
15 1996; is that correct?

16          Q     Right, the 1996 promotion.

17          A     In 1996, we had -- again, I'd like to set the  
18 stage for that. In 1996, we had undergone reorganizations  
19 throughout the nuclear organizations, and we were still in  
20 that downsizing, reduction in force mode. And at that point  
21 in time, we were looking at our engineering organizations at  
22 our sites, we were looking at our corporate nuclear  
23 organizations, we were looking at -- I was looking at my  
24 human resource organizations, and there were a few other  
25 organizations involved, and my business services may be

1 involved in that, also.

2 But at that point in time we had about 900  
3 employees who were -- could have been potentially impacted  
4 by downsizing within the organization. So it wasn't just  
5 specific to the rad con chemistry area or the operations  
6 support area at that time. And in regards to Mr. Carther --  
7 Mr. McArthur, excuse me, a decision had been made that at  
8 that point in time we were going to combine back into rad  
9 con and chemistry; we were going to separate out  
10 environmental out of the chemistry organization, I believe.  
11 And so we started going through -- or my staff started going  
12 through, you know, who would be impacted. They started  
13 working with the organizations in terms of what the new org  
14 structure looked like, and developing position descriptions,  
15 and making determinations and calls on, you know, were these  
16 new positions, were these transfers. Were there people who  
17 had rights to positions and those kind of things.

18 And specifically to Mr. McArthur, my staff came to  
19 me, Mr. Boyles and Mr. Easley, and told me that they had  
20 gone through and looked at the new position that was being  
21 proposed as rad con chemistry manager in the corporate  
22 organization, and they felt like that Mr. McArthur had  
23 rights to that position based on a position that he had held  
24 in the '90 -- I'm not exactly sure of the date, the early  
25 '90s time frame. I believe it was tech programs manager,

1 which would contain chemistry, rad con, environmental, the  
2 labs in Mussel Shoals. I believe we call that ERMI. And  
3 that based on their review and their recommendation, they  
4 felt like Mr. McArthur had rights to that new position,  
5 based on his old position description of record from the  
6 technical programs position.

7           So they reviewed that with me, made their  
8 recommendation to me. I concurred with their  
9 recommendation. And, based on that, we placed Mr. McArthur  
10 in that position.

11           Q     Did you, yourself, actually look at the PDs?

12           A     No, I did not.

13           JUDGE YOUNG: Look at the what? PD?

14           MR. DAMBLY: PDs. Position descriptions. I'm  
15 sorry.

16           THE WITNESS: Position description. I -- you  
17 know, I would have been -- you know, like I said, there were  
18 about 900 people we were impacting at that time. I...

19 BY MR. DAMBLY:

20           Q     But how many of them came up to you in a non-  
21 competitive promotion situation?

22           A     There were a few scenarios that came up about --  
23 in engineering, specifically, about we had discipline leads  
24 in mechanical and electrical, and I don't remember the exact  
25 scenario about how we were reorganizing it, and -- and did

1 we feel like that there was, you know, the current leads --  
2 did they have rights to those jobs. We had issues where we  
3 were taking...

4 JUDGE YOUNG: Excuse me for a second.

5 THE WITNESS: Uh-huh.

6 JUDGE YOUNG: You had disciplined leaves? Is that  
7 what you...

8 THE WITNESS: Disciplined leads. Like the  
9 mechanical lead engineer. L-e-a-d.

10 JUDGE YOUNG: Okay. "Discipline," as in an area  
11 of work?

12 THE WITNESS: Yeah. An expertise, like in  
13 mechanical, electrical.

14 A We had situations where we were reducing the  
15 layers of managers in our engineering organization, and we  
16 were now creating a position that would subsequently be  
17 represented by our engineering association, the group that  
18 bargains for our engineers.

19 So we had -- I had several scenarios that we  
20 worked through over issues. So I saw, you know, a few of  
21 them. But I didn't look at PDs. You know, I relied on my  
22 - the expertise of my staff to fill me in.

23 Q And so your staff told you Dr. McArthur had rights  
24 to the rad con chemistry manager position because the only  
25 position description they could find was one for a 1990

1 technical program manager position?

2 A Yes. Their recommendation to me was that his  
3 position of record was that of the technical programs  
4 manager, and they felt that it was -- that, based on this  
5 new position and what was contained in those functions, that  
6 he would have rights, and we would have a difficult time in  
7 a hearing, in an MSPB hearing, defending it.

8 Q You just said his...

9 JUDGE YOUNG: Excuse me. His -- his position of  
10 record at that time?

11 THE WITNESS: Yes, ma'am.

12 JUDGE YOUNG: And, so, when had -- he had been  
13 rotated out of it, I'm assuming you're saying?

14 THE WITNESS: Yeah, he had been moved out of that  
15 position. I...

16 JUDGE YOUNG: Do you know when?

17 THE WITNESS: No, I do not.

18 BY MR. DAMBLY:

19 Q Well, we just went through this chart that's 99,  
20 Exhibit 99, that shows in 1994 he went from the PG senior  
21 position of technical program manager to a PG-11 position.

22 A Okay, it doesn't have a -- a job title, so I just  
23 saw that in '99 he was moved from a senior to 11. I didn't  
24 know if that was -- what job title he was holding at that  
25 point in time.

1 Q And you don't mean '99, you mean '90...

2 A '94.

3 Q ...'4.

4 A I'm sorry.

5 Q But what you just said a minute ago, you said his  
6 official position was technical programs manager?

7 A His -- his position description contained in the -  
8 - in his personal history record was...

9 Q That's what I wanted to make the distinction on.  
10 His official position or his position of record is what's in  
11 this document we just talked about in Exhibit 99. That's  
12 where you told me you document the official actions of...

13 MR. MARQUAND: That is a misstatement by counsel.  
14 That's not what he...

15 MR. DAMBLY: That's not a misstatement, that's  
16 what he said earlier.

17 MR. MARQUAND: I wrote down what -- counsel asked  
18 him that, and that's not the answer he gave you.

19 JUDGE YOUNG: What's the answer he gave that you  
20 wrote down?

21 MR. MARQUAND: All he said was that these are the  
22 documentation of -- he said -- he identified the specific  
23 lines that counsel gave him and said, "Yes, on those dates  
24 his job grade changed according to this and his pay didn't."  
25 He did not state that this was the official position. It



1 doesn't indicate positions on here.

2 JUDGE YOUNG: What -- what does that indicate,  
3 again?

4 THE WITNESS: Exhibit 99?

5 JUDGE YOUNG: Right.

6 THE WITNESS: It's a record of transactions that  
7 have occurred in the employee's history, of their employment  
8 history. I mean, this is a -- are you on that document,  
9 Your Honor?

10 JUDGE YOUNG: Right. And so can you tell what a  
11 person's position of record is?

12 THE WITNESS: To determine a -- an employee's  
13 position of record, we have a document that is called a PHR,  
14 personal history record, that would contain -- typically  
15 would contain job descriptions, it would contain performance  
16 appraisals, it might have letters of discipline, or it could  
17 have certificates, awards, recognition, those kind of things  
18 in it. So it's a personnel file.

19 JUDGE YOUNG: And that's where you would like to  
20 find the position of record?

21 THE WITNESS: Yes, it is.

22 JUDGE YOUNG: If there -- if it shows that -- that  
23 someone has changed grades, would that indicate a change in  
24 the position of record, or could that indicate a rotation,  
25 or what...

1 THE WITNESS: On this document?

2 JUDGE YOUNG: Exhibit 99.

3 THE WITNESS: It could be -- it could show that  
4 we've gone through and reevaluated a position description,  
5 and it's now fallen into a new pay band; it could reflect  
6 that...

7 JUDGE YOUNG: And the person would retain the same  
8 position?

9 THE WITNESS: Could. I mean, we've had situations  
10 where an employee has -- I guess a good example of that  
11 would be, is we went through one time where all three of the  
12 nuclear sites, for example, had given a different  
13 evaluations (sic) to the same jobs. You know, one of them  
14 may have been a PG-8 and one of them may have been a PG-10.  
15 And when...

16 JUDGE YOUNG: They've given different evaluations?

17 THE WITNESS: Different evaluation in terms of  
18 assigning a grade level.

19 JUDGE YOUNG: Uh-huh.

20 THE WITNESS: And we had gone through and -- and  
21 standardized the org strictures and standardized the  
22 position descriptions.

23 JUDGE YOUNG: Does it -- does it make any  
24 difference whether you're raising or lowering a pay grade,  
25 whether a person's position -- position of record changes?

1 THE WITNESS: It may not. I mean, you could...

2 JUDGE YOUNG: So a person could stay in the same  
3 position of record, have their pay grade lowered, and then  
4 later raised?

5 THE WITNESS: It would kind of depend on the  
6 evaluation.

7 JUDGE YOUNG: But what I'm -- what I'm asking is  
8 would that be a possible thing that could happen?

9 THE WITNESS: It's possible.

10 BY MR. DAMBLY:

11 Q When we first started this discussion today, and  
12 before we got into any specifics, I asked you, "You don't  
13 use SF-50s to document personnel actions like the rest of  
14 the government. How do you do it?" And you told me there  
15 are entries made into the computer to document all the  
16 official actions.

17 A Yes.

18 Q Then, when I asked you about this piece of paper  
19 and you said, "As I said earlier, this is the kind of thing  
20 that we do to document what happened."

21 A This -- this reflects an entry that we made into  
22 the system that would show a change in the employee's work  
23 history; yes.

24 Q And this would reflect the official changes made  
25 to their work history?

1           A     This would be a history of that; yes. I mean,  
2 there would be -- a form may have been turned in where the  
3 action would have been cut.

4           Q     And you didn't tell me...

5           A     And then you could track that better.

6           Q     ...that the only official documentation of an  
7 employee's position or change of position is some position  
8 descriptions, a PD? That is not the way you document  
9 position changes, is it?

10          A     I'm not sure I understand the question.

11          Q     You don't make entries into the computer system  
12 where you keep track of employees' personnel history and  
13 what happened to them based only on position descriptions?

14          A     No, because they could have a pay change rate,  
15 they could...

16          Q     Or if they get a promotion or a demotion without  
17 their being a PD written at the time?

18          A     There shouldn't be. But it has happened; and it  
19 has happened in this case.

20          Q     And it happened in Mr. Fiser's case?

21          A     Or in Mr. Fiser's case; right.

22          Q     And you went by the official position for Mr.  
23 Fiser, which you said was as corporate and not the Sequoyah,  
24 which was his PD of record; is that right?

25          A     That's what I said; yeah.

1 CHAIRMAN BECHHOEFER: Mr. Dambly, just to correct  
2 the record, I think standard form 50 has been superceded by  
3 a different numbered form.

4 MR. DAMBLY: I guess I haven't been promoted in a  
5 long time.

6 CHAIRMAN BECHHOEFER: It's been -- there's another  
7 number or another designation, but essentially the same  
8 form.

9 MR. DAMBLY: Well, thank you.

10 CHAIRMAN BECHHOEFER: And I don't have my list of  
11 forms in front of me to tell you what it is, but...

12 MR. DAMBLY: Actually, we could pull it off the  
13 computer, probably.

14 CHAIRMAN BECHHOEFER: Yeah.

15 JUDGE YOUNG: I want to see if I understand now.  
16 You're saying that the way you tell what someone's position  
17 of record is or was at any time in the past is to look at a  
18 document called a personal work history?

19 THE WITNESS: It's called a PHR, personal history  
20 record. And at -- in the '94, '95 time frame, we would have  
21 a microfilm document, and we'd put it on a reader, and we'd  
22 go through there and check to see what their position  
23 description was.

24 JUDGE YOUNG: Do we have that?

25 MR. MARQUAND: Yes. It's a proposed exhibit.

1 BY MR. DAMBLY:

2 Q And, again, when somebody receives a promotion,  
3 there's a form that's filled out and is entered into the --  
4 your computer database for that individual?

5 A Yeah, there may be a form, there may be a -- a  
6 letter that triggers the administrative staff to enter this  
7 data into the system, because it feeds the payroll system  
8 and adjusts how an individual was paid, if there was a  
9 dollar amount change.

10 Q And following up on the question Judge Young asked  
11 you, to the best of your knowledge, Mr. -- or Dr. McArthur's  
12 position of technical program manager wasn't reclassified  
13 from a PG senior to a PG-11 in 1994, and then reclassified  
14 to a PG senior in 1996, was it? Nobody in your staff told  
15 you about any reclassification of his position?

16 A They -- like I said, they discussed the '96 move  
17 with me. And I think if you look at the '96 move, that you  
18 see Dr. McArthur at 115,000. And when he was moved to the  
19 senior level, his pay rate seemed -- excuse me, stayed the  
20 same at \$115,000.

21 Q Okay, that's his pay rate, which you've told us  
22 overlaps between grades.

23 A It can; yes.

24 Q Because when he went from a senior before to an  
25 11, lower, he went from 90 -- 98,000 to 98,000, when he went

1 from PG senior to PG-11?

2 A Correct.

3 Q And if an employee competed for a position that  
4 earned a PG-9, and there's a competition for a PG-10  
5 position, and they applied on the vacancy and were selected,  
6 and no position description was written, but it was entered  
7 in your computer and they got a promotion and they got more  
8 money, what would control? Would you take their money away  
9 because there was no PD?

10 A If there was a -- a new position and it was -- if  
11 we have a new position that has been created, we will have a  
12 new position description for that -- for that position.

13 Q Well, you didn't have one for rad con chemistry  
14 manager -- I mean, rad con manager when Dr. McArthur was in  
15 it, although he said he wrote one.

16 A I'm not aware if Mr. McArthur wrote one or not.  
17 But, no, we did not have one. We had -- you know, it was a  
18 -- we were laying off 6- to 700 people a year. It was tough  
19 to keep up with a lot of administrative details at that  
20 point in time, and we made some mistakes.

21 Q And the position description, whether it existed  
22 or not, was more of an administrative detail than the actual  
23 paperwork that said you'd been promoted and placed in the  
24 PG-10 position?

25 A If you're selected on a vacancy, there's going to

1 be a position description that will go with that.

2 Q Well, there was a vacancy in 1994 for the rad con  
3 manager, and there was a posting, as a matter of fact, and  
4 we haven't got a PD for it.

5 A I'm -- I don't know.

6 Q And we've got a draft of...

7 A I don't know if there was a draft or not. I have  
8 not seen that.

9 Q Just -- you talked about reclassification, and I  
10 used the word -- what's the word? Talking about the same  
11 thing. When you reclassify a position, somebody from HR  
12 comes in and does an audit of the position to determine  
13 whether or not it's properly graded as it presently exists,  
14 with the person's duties and all, whether they're at the  
15 right grade level?

16 A Yes, typically that would happen.

17 Q And if they decided they were at a too high a  
18 level or too low a level, you can make that change without  
19 competition? If you came in and looked at a PG-9 and said,  
20 "No, this is a PG-10," you could make it -- they would stay  
21 in that job? They don't have to post it and compete for  
22 their own job?

23 A If the job had not changed significantly, the  
24 employee would typically have rights to that job.

25 JUDGE COLE: Mr. Reynolds, are TVA's job



1 descriptions and levels monitored or reviewed by OMB, Office  
2 of Management and Budget?

3 THE WITNESS: I do not...

4 MR. DAMBLY: OPM.

5 JUDGE COLE: OPM. I'm sorry.

6 THE WITNESS: ...I do not believe they are, sir.

7 JUDGE COLE: So, okay. Thank you.

8 JUDGE YOUNG: Before we go from this document,  
9 Exhibit 99, could you just explain -- I can understand some  
10 of the acronyms, but some I'm not clear on. Where it says,  
11 "Pay base compensation plan," well, for example, look at the  
12 second line from the top. "Pay base compensation plan 2001  
13 1996." The pay hasn't changed. What's the action? And  
14 then there's several places where it says, "Data change,"  
15 and -- but I don't see any change in the salary. And I'm  
16 wondering what's the data change?

17 THE WITNESS: Well, I'm going to have to be  
18 honest with you. I'm not -- I don't look at these a  
19 terms of...

20 JUDGE YOUNG: So you don't know what they mean?

21 THE WITNESS: Yeah. I mean, these are some  
22 usually my staff works with. Typically, when I see these  
23 things, they've done it for me in a white paper.

24 MR. MARQUAND: Your Honor, this is -- as the  
25 says, these are reasons, and there's -- these are codes

1 There's a whole lot more -- frequently a whole lot more  
2 paper behind each single line item. Base compensation plan,  
3 as you see, is on 9/30/96, which is the end or beginning of  
4 a fiscal year. And there could be -- typically, TVA changes  
5 salaries or awards, lump sums at the end of a year, and it  
6 could be simply a lump sum payment he got, and that's not  
7 shown in a simple line item because it didn't change his  
8 base salary. I mean, there's a whole raft of a document  
9 that supports each of these line items here.

10 BY MR. DAMBLY:

11 Q And, as long as we're on that document, if you  
12 look at the third entry on that document.

13 A Third from the top?

14 Q Third from the top. The one that says,  
15 "Promotion."

16 A Yes.

17 Q That's the time when Dr. McArthur went from an 11  
18 to a senior?

19 A I believe it was in the June of '96 time frame;  
20 yes.

21 CHAIRMAN BECHHOEFER: Why are -- why are there no  
22 entries at all under "within grade due"? Doesn't everybody  
23 qualify for "within grade," or is there...

24 THE WITNESS: You mean an increase or more money?

25 CHAIRMAN BECHHOEFER: Well, I'm just reading the

1 words on the chart, "within grade due." I assume there  
2 would be a date for each...

3 MR. MARQUAND: That's on the right-hand column,  
4 Your Honor; correct?

5 CHAIRMAN BECHHOEFER: Yes.

6 MR. MARQUAND: I believe that applies only to  
7 represented employees who are governed by the union  
8 contract, and so it wouldn't apply to management.

9 CHAIRMAN BECHHOEFER: I see. Okay.

10 MR. MARQUAND: This is just a standard form.

11 THE WITNESS: We use this for all employees,  
12 whether they might be executives or art craft employees.

13 CHAIRMAN BECHHOEFER: So that would not apply even  
14 when the PG-11 pay range applied?

15 THE WITNESS: As Mr. Marquand talked earlier,  
16 typically in the September time frame we go through a base  
17 compensation cycle review where employees have an  
18 opportunity at that point in time to receive a monetary  
19 award which can either be applied to their base rate, or can  
20 be awarded to them in a lump sum payment.

21 CHAIRMAN BECHHOEFER: I see.

22 THE WITNESS: In this cases (sic), it may be that  
23 the Mr. McArthur may have gotten base -- or gotten lump sum  
24 payments which would not have impacted or increased his  
25 salary -- his base salary of \$115,000.

1 CHAIRMAN BECHHOEFER: I see. Okay.

2 THE WITNESS: Thank you.

3 MR. DAMBLY: Okay. Could we take a five minute  
4 recess at this point?

5 CHAIRMAN BECHHOEFER: Yes.

6 (A brief recess was taken.)

7 BY MR. DAMBLY:

8 Q If you would look at Staff Exhibit 100, which will  
9 be the one right underneath 99.

10 A Okay.

11 Q You got it? Okay. This is a position description  
12 for Wilson C. McArthur as manager, technical programs; is  
13 that right?

14 A That's correct.

15 Q And this is the PD of record you were talking  
16 about earlier?

17 A That's correct.

18 Q And how many employees did Mr. McArthur supervise  
19 in this position?

20 A Well, it says, "Employees, direct and indirect,  
21 635."

22 Q All right. And what functions did he have  
23 responsibility for?

24 A Protective services, which would be security;  
25 chemistry; radiological services; and emergency

1 preparedness.

2 Q Fire protection?

3 A I was reading off the position purpose on the  
4 front of the page. I didn't go to the second page of the  
5 document. If you'll give me a second, let me take a look at  
6 that.

7 Yeah, I -- I was looking at -- when I made that  
8 about protective services, chemistry and radiological  
9 services, and emergency preparedness, I was just reading the  
10 front cover of position focus. I'm now going to go and turn  
11 the page and look at the other document, the second page of  
12 the document. All right, the incumbent has responsibility  
13 for the nuclear protective services, which, as I said  
14 earlier, would be the nuclear security organization.

15 Q At that time that covered all the plants, as well?

16 A I believe so. I don't know if they were -- if the  
17 site's security programs or site security organizations were  
18 a direct report to this position or to the site VP. But he  
19 was responsible for the protective services programs.

20 It says he was also responsible for the  
21 development of training requirements, implementation, the  
22 training program and conduct of training for the fire  
23 protection personnel. He manages and implements the  
24 chemistry and radiological services functions, and it goes  
25 on to list some other things in terms of controls,

1 procedures, generation of records, obtaining permits.

2 He was responsible for the overall management of  
3 the environmental protection program, you know, regarding  
4 permits from regulatory authorities, and that they met  
5 environmental limits. He was responsible for the management  
6 of the emergency protection function. And then the last  
7 paragraph deals with managerial duties in terms of budget  
8 preparation, budget performance, staffing, Level 3 goals and  
9 performance with nuclear power policy and procedures,  
10 business planning activities.

11 Q Now, I think it also indicated, in the paragraph  
12 for fire protection personnel, that he was responsible for  
13 implementation of the industrial safety program. You see  
14 that?

15 A Yes, it does, in the third line down. You see  
16 that there, Your Honor? It says, "The development and  
17 implementation of the industrial safety programs to insure  
18 that hazardous conditions are recognized and corrected and  
19 a trained response team is properly prepared to contain and  
20 eliminate any active hazard, such as a fire or chemical  
21 spill."

22 Q Now, if you'd turn to Staff Exhibit 101 --  
23 yeah, 101.

24 A 101?

25 Q Yes.

1 A Okay.

2 Q And that's the position description for the  
3 position Dr. McArthur assumed in '96 for the corporate  
4 radiological and chemistry control manager; is that correct?

5 A Yes.

6 Q And how many employees did Mr. McArthur supervise  
7 in that position?

8 A Looks like it is ten professional -- or management  
9 professional, technical, and 14 clerical and technical  
10 support, for 24.

11 Q And in this position description, he did not have  
12 responsibility for protective services; is that right?

13 A No, he does not.

14 Q Or -- or emergency preparedness?

15 A Does not appear to be; no.

16 Q Industrial safety and fire protection training?

17 A No.

18 Q And these are the two positions or two position  
19 descriptions your staff reviewed and told you were  
20 interchangeable?

21 A I don't know if they used the word  
22 "interchangeable." They used the words with me that they  
23 felt that he had rights to the new position that was being  
24 created.

25 Q And rights how? How do you get rights at TVA?

1           A     How do you get rights at TVA?

2           Q     Right.

3           A     I think when they go through and they reviewed the  
4 position description, they make a -- you know, the word  
5 "rights," I think what I'm talking about is they made a  
6 determination that they felt in their mind that the position  
7 of record in the PHR of Mr. McArthur was -- put him in a  
8 position that, with the new corporate rad con chemistry  
9 position, they felt that he had -- if they had to go through  
10 an MSPB hearing or a trial on MSPB, that they felt that  
11 those jobs -- he should have a right to the position as in  
12 the new corporate rad con chemistry manager, based on his  
13 position description of record.

14          Q     Let me -- how does one determine -- what is it you  
15 look at to determine rights? You're talking about he had  
16 rights to the position. What do you compare or how do you -  
17 - what gives you rights?

18          A     The staff -- my staff would go through and they  
19 would sit down with the position descriptions and they would  
20 look at, you know, were there functions that were being  
21 retained into the new from -- from the old position  
22 description to the new position description. And based on  
23 their review of that and their recommendation, they would  
24 say, "We feel this person has," quote, "rights to this  
25 position," or, "We don't feel this position -- person has



1 any rights based on the functions that are being carried  
2 forward."

3 Q And when you say "rights," you're talking about if  
4 there was to be a reduction in force, that this would be a  
5 position that would be identical, or for OPM purposes, RIF  
6 purposes, would be similar and interchangeable? I can pull  
7 out that...

8 A I think, based on our -- our guidance that we have  
9 been given as a human resource organization, based on the  
10 guidance that we have been given from our -- our general  
11 counsel on the interpretation of OPM regulations and  
12 conducting of a RIF, that's the way they have been  
13 indoctrinated and done over, you know, numerous times about  
14 how do you find out -- you know, is it position description  
15 of record, and does an employee have a right to that  
16 position based on the previous position description and the  
17 functions that they perform.

18 Q And so, when you're comparing these two, you're  
19 looking at does this position that supervised 635 people  
20 with corporate -- or TVAN-wide security responsibilities,  
21 whatever, was that substantially the same position as the  
22 rad con chemistry manager, with 24 people, 14 of whom were,  
23 I guess, clerical support?

24 A I think one of the things you have to look -- and  
25 I can't answer this question for you, but position

1 descriptions at that point in time, had people that you  
2 directly and indirectly supervised. I, for example, as  
3 manager of nuclear support, I had responsibility for  
4 security. Site -- the security staffs at the sites didn't  
5 work for me, but I was responsible for the security  
6 programs. You know, I was responsible if -- if training was  
7 an issue, or if we had people -- or issues with people and  
8 their qualifications at the range, or if we had issues on  
9 background investigations, I was responsible for that.

10 Q Now, when you say...

11 A But they did not report to me.

12 Q You mean direct reports?

13 A They were not a -- I had a manager of security  
14 that worked for me, that was responsible for the security  
15 program at TVA nuclear power stations. If an issue came  
16 out, new NRC guidelines on security measures at plants, just  
17 like today, after September 11, the corporate security  
18 organization is responsible to make sure that the sites  
19 implement those. They don't work for -- you know, the site  
20 security organizations don't work for the corporate  
21 organization, they work for the sites. But from a  
22 programmatic standpoint, I had responsibility to see that  
23 any changes that were done or if there were problems, I was  
24 responsible to make sure those were implemented, and  
25 implemented properly.

1 Q Well, what would it list on your position  
2 description for the number of direct and indirect reports?  
3 Would it include the security people?

4 A At that point in time?

5 Q Yeah.

6 A It probably would not, because it would have been  
7 indirects.

8 Q Okay. So then you think that Dr. McArthur had 635  
9 direct reports?

10 A I don't know if security was a direct report to  
11 him at that -- I mean, I don't know if, you know, the  
12 security managers at the sites were a direct report to Mr.  
13 McArthur at that point in time.

14 CHAIRMAN BECHHOEFER: Mr. Reynolds,...

15 THE WITNESS: Yes, ma'am -- yes, sir.

16 CHAIRMAN BECHHOEFER: ...when you're comparing one  
17 position to another to determine whether a person has rights  
18 to a position, is there any type of percentage of similar  
19 functions that you look for, or dissimilar functions, to  
20 determine whether positions are similar?

21 THE WITNESS: Typically, what is -- typically,  
22 what is done is, you know, they -- they take a look at the  
23 functions, and they look to see if there's a majority. Is -  
24 - is there a percentage. Now, they -- I'm not aware of a  
25 percentage that is applied. But they looked at it for a

1 majority of the functions to be carried into the new  
2 position.

3 CHAIRMAN BECHHOEFER: So you're not aware of any  
4 guidelines or policies which might say that if more than  
5 five or ten or 15 percent of the functions are different,  
6 the positions are different, are to be considered different  
7 positions? Something along that line. I'm not...

8 THE WITNESS: No. I mean, there's no percentage  
9 that we have -- that we have applied to things, that I'm  
10 aware of.

11 CHAIRMAN BECHHOEFER: I see. Thank you.

12 THE WITNESS: Thank you.

13 JUDGE YOUNG: You said something else I'd like a  
14 little clarification on. I think I heard you say that you  
15 look at the functions that they had performed.

16 THE WITNESS: Yes, ma'am.

17 JUDGE YOUNG: If a position description lists  
18 several functions, but, in fact, the person or persons in  
19 that position don't perform all the functions, do you look  
20 at what they actually did, what functions they actually  
21 performed, or do you look at what the position description  
22 says they performed?

23 THE WITNESS: I look at what the position  
24 description says they have performed or what their position  
25 description says these are the functions they are

1 responsible for.

2 JUDGE YOUNG: And you said that your -- basically,  
3 you rely on your staff to make these determinations?

4 THE WITNESS: Yeah, I -- yeah, well, I mean, we  
5 have -- probably since 1987, you know, we've had -- you  
6 know, in '96 alone we had almost 1,000 of these occurrences  
7 where we were reorganizing and we had to take a look at --  
8 at jobs and make comparisons and did people have rights. So  
9 it was -- back in those days it was a fairly frequent  
10 occurrence, or an annual occurrence, quite frankly.

11 JUDGE YOUNG: And so what did they base their  
12 judgements on, their -- were they recommendations to you  
13 that you made the final decision on, or what -- what would  
14 their -- when a -- one of your staff made a determination,  
15 would they right a memo to you, or how was that handled?

16 THE WITNESS: They typically would execute those  
17 at their -- at their level.

18 JUDGE YOUNG: And so they would make the decision  
19 and -- and just tell whoever it was that was the supervisor  
20 of the person, "That person stays," or, "That person..."  
21 "That person stays because their -- it's the same as their  
22 previous..."

23 THE WITNESS: Yes.

24 JUDGE YOUNG: "...position of record," or, "That  
25 person goes"?

1           THE WITNESS: They would typically work with the  
2 managers in that fashion. I mean, this one came up to me  
3 just based on the sensitivity of the situation and -- and  
4 Mr. Fiser, in my opinion, threatening us with a complaint,  
5 that I felt like I needed to take a look at this one. And  
6 Mr. Boyles and Mr. Easley came to me and had a kind of a --  
7 you know, laid out for me that, you know, here's the  
8 functions that Mr. McArthur had previously had in this  
9 position, and here's what he was going to have in his new  
10 position. And their recommendation to me was he look at --  
11 or that he have rights to that position.

12           JUDGE YOUNG: And so what was the relationship of  
13 Mr. Fiser to that, now? You said Mr. Fiser.

14           THE WITNESS: Because Mr. Fiser, you know, at this  
15 point in time had kind of threatened to file a -- you know,  
16 we were going through the reorganization of the chemistry-  
17 environmental. We were splitting those two functions out.  
18 And Mr. Fiser had -- you know, and my word is, is that he --  
19 I feel like he threatened us by said (sic), "You know, if  
20 you post these jobs and make me go through this, I'm going  
21 to file a DOL complaint." When the issue came up around Mr.  
22 McArthur, my staff---excuse me---had the sensitivity to come  
23 to me and say, "You know, hey, this is -- you know, Mr.  
24 Fiser's out there threatening us with this DOL complaint,"  
25 and he may have filed it at this time. I don't remember.

1 "You know, this -- we think this is probably pretty  
2 sensitive, and we want to keep you apprised of it and  
3 abreast of what's going on. And here's -- here's a decision  
4 we've made or here's our recommendation, and the  
5 recommendation we're going to take to the management staff.  
6 We want you to be aware of it."

7 JUDGE YOUNG: And -- and the reason that -- that  
8 the decision about Mr. McArthur was sensitive with regard to  
9 Mr. Fiser's threatened filing of a complaint or actual  
10 filing, what was the reason -- what was the relation there?

11 THE WITNESS: I think it was just that, you know,  
12 we were reorganizing that organization. That, you know,  
13 when -- when we had made Mr. Fiser a chemistry program  
14 manager in that settlement, and then we went through a  
15 period of time, and then we combined chemistry and  
16 environmental. And Mr. Fiser applied -- we made a decision  
17 at that point in time, since we were combining those two  
18 functions, that they were new positions. We created new  
19 position descriptions, we posted those positions because we  
20 thought they were new, subsequent a vacant position.

21 JUDGE YOUNG: You're talking about the chemistry-  
22 environmental now?

23 THE WITNESS: Right.

24 JUDGE YOUNG: Okay.

25 THE WITNESS: And Mr. Fiser applied on those. And

1 then, when we made the decision, which we think was the  
2 right decision, that we were separating those two positions,  
3 and we felt like that, you know, since we had -- when we'd  
4 combined them, we had posted them and created new positions.  
5 When we'd separate them, we looked back at what our track  
6 record in history had been, and we said, "Gosh, you know, we  
7 feel like we need to post this because, you know, it's  
8 essentially just a split. And, you know, there are -- there  
9 are new functions."

10 And then Mr. Fiser, you know, says he's going to  
11 file a DOL complaint if we do that. Just based on that, you  
12 know, they came to me and said, "Hey, you know, you better  
13 take a look at this. Here's the decision that we've made.  
14 Here's our recommendation to management, and we want you to  
15 be aware of it. We were just kind of sensitive to the fact  
16 that we had a potential DOL case, and that anything that we  
17 did from there on would be subject to scrutiny.

18 JUDGE YOUNG: Anywhere in -- anywhere in the  
19 organization? Was it the -- simply because Mr. McArthur was  
20 in a supervisory role and -- or what?

21 THE WITNESS: Just because it was a decision we  
22 were making about that organization. And...

23 JUDGE YOUNG: The corporate chemistry or the  
24 corporate...

25 THE WITNESS: The corporate chemistry



1 organization. Because we were making a decision about them,  
2 and that's why we felt there was some sensitivity around it.

3 JUDGE YOUNG: And when you make it -- when one of  
4 your staff would make a determination that somebody had  
5 rights to a -- a new job or new position, it was based on  
6 their current position of record or prior -- could it be  
7 based on a prior position of record?

8 THE WITNESS: It was on their last position of  
9 record that was contained in their personal history record.

10 JUDGE YOUNG: So the one that they were in right  
11 up to the moment of the -- of the changeover?

12 THE WITNESS: Yes. That they had a position  
13 description for; yes.

14 JUDGE YOUNG: Okay. Now, when your staff made  
15 these decisions, what did they base -- were there -- I think  
16 someone mentioned earlier, were there guidelines, were there  
17 rules, were there -- how did they -- how did they know what  
18 to do in any given circumstance? Was it all sort of verbal,  
19 unwritten knowledge; were there written guidelines or...

20 THE WITNESS: Well, what -- what they would do is,  
21 they would have taken the two position descriptions and  
22 compared them, you know, and this...

23 JUDGE YOUNG: And they knew to do that how? I  
24 mean, what told them that that's what they were supposed to  
25 do? Regulations, guidelines?

1           THE WITNESS: Our -- you know, at that point, in  
2 time we had never gone through or -- up until 1987, '88 time  
3 frame, we had never gone through -- TVA had never gone  
4 through large reductions in force. So, you know, at this  
5 point in time we'd probably done -- you know, we'd taken the  
6 staffing down from about 11,000 to 4,000 or so at that point  
7 in time.

8           So they knew at that point in time they had to  
9 compare if there were jobs -- job descriptions being  
10 written, because we're going to reorganize, and here's what,  
11 you know, the new organization's going to do. They knew to  
12 take -- go to the PHR and get the last -- you know, whatever  
13 that individual's last position description of record was,  
14 and compare it with the position descriptions that were  
15 going to be in the new organization.

16           JUDGE YOUNG: I understand that they knew that.  
17 What I'm asking you is how did they know that? Had they  
18 been given a course, a training course? Was it written  
19 down? How did they know to do that?

20           THE WITNESS: From interpretations from our  
21 general counsel.

22           JUDGE YOUNG: Okay.

23           THE WITNESS: From our attorneys.

24           JUDGE YOUNG: Now, I'm -- I'm still trying to  
25 understand the McArthur one. And I -- I think that there's

1 maybe some earlier testimony that he had made a request that  
2 -- that he -- that the new position be deemed equivalent to  
3 his position of record. And if I'm mischaracterizing that,  
4 feel free to correct me, counsel.

5 But, so when the staff looked at these things, did  
6 they look for everyone, or only when someone requested? And  
7 when someone like Mr. McArthur requested, were there ever  
8 recommendations from senior management about how to handle  
9 it?

10 THE WITNESS: They would look at -- if...

11 CHAIRMAN BECHHOEFER: Who's "they"?

12 THE WITNESS: My staff.

13 JUDGE YOUNG: The staff.

14 CHAIRMAN BECHHOEFER: Oh, okay.

15 THE WITNESS: The human resource staff.

16 If -- let me provide you two scenarios. If I was  
17 going in today to my organization in human resources and I  
18 said, "You know what, I've decided I'm going to do away with  
19 my human resource assistants, or I'm going to do away with  
20 two of them. I'm not changing their jobs. I'm not changing  
21 their duties and all that." And then you'd go through and  
22 it would be a matter of, you know, seniority based, and who  
23 had the most time, and, you know, the bottom two on the  
24 retention register would go away.

25 If it's a matter of I'm taking the human resource

1 organization and I'm moving functions around, I'm changing  
2 jobs and what people do and what functions they've had  
3 responsibility for, then we'd have to take the old -- or the  
4 position description of record for that employee, with --  
5 compared to, all right, what's the new organization and --  
6 and the positions in it going to do. And then from that  
7 make a determination: Is this a brand new position that  
8 none of these employees in the organization had rights to,  
9 that would cause us to post it? Or would we look at it and  
10 say, "You know what, a majority of these functions are still  
11 being performed in this new organization by this  
12 classification of employee, and Deborah Lane has rights to  
13 this position."

14 JUDGE YOUNG: And that was done for every single -  
15 - reorganization for every single job?

16 THE WITNESS: Yes.

17 JUDGE YOUNG: Okay, now, with Mr. McArthur, as I  
18 said, I think that there's been some testimony that that  
19 determination to -- determination that he had rights to the  
20 job was made after he made a request that that determination  
21 be made.

22 THE WITNESS: Oh, I don't know.

23 JUDGE YOUNG: You're not aware of that?

24 THE WITNESS: No, I'm not aware of that. I just,  
25 you know -- Mr. Boyles and Mr. Easley came to me and said,

1 "Hey, we've got a -- an issue here we need to look at, and  
2 we want to go over our recommendation with you."

3 JUDGE YOUNG: So is there ever any -- are there  
4 ever any communications from senior management about that  
5 they want a determination to be made one way or another  
6 about any given person?

7 THE WITNESS: You know, to be quite honest with  
8 you, this is so -- can be so complicated at times, when I  
9 even try to explain it to my senior managers I'm not sure  
10 they can understand it. So, you know, is there a request  
11 for them? No. Have we had employees come to us and say,  
12 "Hey, we think we've got a right to this -- or I have a  
13 right to this job that's being posted"? Yeah, because I've  
14 had grievances on it or I've had employees give us calls or  
15 things like that. You know, I'll have the senior managers  
16 typically will give us (sic) what the new organization  
17 structure looks like. We may help them write the new  
18 position descriptions for that organization, but those calls  
19 that are made about does an employee have rights or do we  
20 need to have to post this position are typically done by the  
21 human resource staff.

22 JUDGE YOUNG: What I was trying to get at is  
23 whether senior management ever indicates somehow to you or  
24 your staff that they want a particular outcome that would  
25 influence what your staff would recommend or how your staff

1 would recommend they -- they go in order to achieve...

2 THE WITNESS: In terms of they want this person in  
3 this job?

4 JUDGE YOUNG: Whatever. That they want this  
5 person in this job or out of this job or whatever.

6 THE WITNESS: You know, it hasn't happened to me.  
7 I mean, I...

8 JUDGE YOUNG: It what?

9 THE WITNESS: It hasn't happened to me. I'm not  
10 aware of any. I mean, my staff has never come to me and  
11 said, "Gosh, I felt pressured by the managers to put this  
12 person in this job." So I'm not aware of that. And I think  
13 my staff would come and tell me about that if it happened.

14 JUDGE YOUNG: Okay.

15 THE WITNESS: If they felt pressured like that.

16 JUDGE YOUNG: Thank you.

17 CHAIRMAN BECHHOEFER: At some point I'd like to  
18 make another short break.

19 MR. DAMBLY: This is -- this is as good as any  
20 time. That's fine with me. We can turn the air on for a  
21 couple of minutes.

22 (A brief recess is taken.)

23 CHAIRMAN BECHHOEFER: Ms. Young has a question  
24 she'd like to ask.

25 JUDGE YOUNG: Just to continue in the line of

1 clarification that I was trying to get before. How were --  
2 how are you staff trained in -- in what to do in their jobs?

3 THE WITNESS: Typically, what will happen is --  
4 example, I have a new employee today. New employee. He's  
5 been with us for about a year, right out of college. What  
6 we did with him, and similarly what happened with me when I  
7 came into the organization, you're assigned to an  
8 organization. Typically, when you come in, we give you some  
9 specific projects to work. It may be -- this employee, we  
10 used him on a couple of things, like take a look at our sick  
11 leave program, you know, and doing some analysis work on it.

12 And then we subsequently moved him to one of our --  
13 -- in this case, we moved him to our Sequoyah site location.  
14 He's working with an experienced staff out there. He will  
15 work with them in terms of learning the systems, about how  
16 to go about making pay adjustments. He'll go with another  
17 seasoned employee on how to handle grievances. They  
18 essentially are assigned to an experienced human resource  
19 person on the staff, and they learn with them through on-  
20 the-job training. And that's how they get their  
21 familiarization and training into the organization about how  
22 to perform their duties.

23 JUDGE YOUNG: So if I have an impression that a  
24 lot of how things are done in your division or department --  
25 whatever you want to call it, that how things are done there

1 is a lot of word-of-mouth, general understandings, as  
2 opposed to written guidelines and rules or standards, would  
3 that impression be incorrect or correct?

4 THE WITNESS: I think there -- there are a lot of  
5 written rules and standards in terms of, you know, how you  
6 handle a positive drug screen or, you know, in terms of the  
7 -- you know, talk about position descriptions and how you go  
8 about writing one. You know, there's a standard format.  
9 We'll have -- we'll give an new employee, here's what  
10 position descriptions look like. Here's what's contained in  
11 them. We'll tell them that their responsibility is to work  
12 with the managers and help them define the duties, the scope  
13 of responsibilities, and who they're working with. And then  
14 we will work them through, you know, are they managing a  
15 department or are they an individual contributor.

16 JUDGE YOUNG: And who is "they" there? Are they  
17 managing an appointment (sic), are they an individual  
18 contributor. Who is "they" in that...

19 THE WITNESS: And that's -- in that context that I  
20 was speaking, that, you know, that's kind of the person who  
21 is helping this new employee learn the ropes, so to speak.

22 JUDGE YOUNG: So getting back to this impression  
23 that a lot is -- is just sort of word-of-mouth, when it gets  
24 down to -- you said they're told they would go work with the  
25 manager to help write a position description. They might



1 have a model position description there.

2 THE WITNESS: Yes. Yes, they would.

3 JUDGE YOUNG: On -- on issues relating to what to  
4 do in reductions in force and reorganization and so forth  
5 and so on, is that -- are there any -- any written models,  
6 or is it more general verbal understandings, word-of-mouth  
7 from old time employees to new employees, et cetera?

8 THE WITNESS: I would tell you today that it is  
9 more of a word-of-mouth from the experienced employees to  
10 the new employees, those that have been through those  
11 scenarios and situations of reductions in force that were --  
12 like I said earlier, back in the '87, '88 time frame,  
13 reductions in force within TVA were -- didn't occur. And in  
14 that time frame, we went and got guidance from the Office of  
15 General Counsel about how we would conduct a RIF and what  
16 retention registers look like and how you -- you know, what  
17 your responsibilities were in comparing job descriptions and  
18 things like that. And my seasoned staff, you know, is  
19 transferring that knowledge to my new hires that I'm  
20 bringing in in this -- I mean, I have three right now in the  
21 organization, and the average age of my organization is 51.

22 JUDGE YOUNG: You said that the -- in writing  
23 position descriptions, they would do that with the managers.  
24 In working out these reorganizations and RIFs and so forth,  
25 would they also work with the managers fairly closely or --

1 or in any way?

2 THE WITNESS: Yeah. When a -- a RIF or a  
3 reorganization -- for example, if a reorganization would  
4 occur, you know, a manager's going to come to us and say,  
5 you know, here's this function, or, you know, we're going to  
6 have somebody that will manage this function. And in that  
7 organization, you know, they've typically been given kind of  
8 budget and head count guidelines about how many people you  
9 can have in your organization, and here's what we want them  
10 to do, and the kind of relationships we want them to have  
11 with either the corporate or the site organization. That  
12 manager would draft up an org chart. They may sketch it out  
13 on the back of a piece of paper. And the human resource  
14 person will take that back, and typically what will happen  
15 is they'll build kind of a -- an org chart that'll say, you  
16 know, here's what the org structure would look like in terms  
17 of the reporting relationships, and here's what functions  
18 are going to be performed in each one of these areas.

19 And then the next step from that would be to start  
20 writing position descriptions about -- to match up what --  
21 you know, what functions are going to be in these areas.  
22 Then you go through an evaluation or a grading process to  
23 figure out where it falls on the hierarchy of the pay scale  
24 or grade levels. And...

25 JUDGE YOUNG: So they -- so they would work with

1 the managers?

2 THE WITNESS: Yeah. I mean, because they wouldn't  
3 be able to say...

4 JUDGE YOUNG: They wouldn't know the information  
5 to put in themselves without talking to the managers?

6 THE WITNESS: Correct. They wouldn't know that  
7 information.

8 JUDGE YOUNG: Okay. Now, there's been some  
9 testimony about -- about how, in a reorganization, reduction  
10 in force, when people are going to be losing jobs, that it's  
11 a -- that it's a tense time and there's a lot of anxiety  
12 about -- with regard to who's going to lose their job, who's  
13 going to keep their job.

14 THE WITNESS: Yes.

15 JUDGE YOUNG: And that's probably fairly well  
16 know, even without the testimony, that that kind of thing  
17 occurs. And in that kind of situation, when everybody's  
18 tense and everybody knows what's at stake for the -- for the  
19 people involved, I've asked some of the previous witnesses  
20 in any organization, in addition to what's said outright, a  
21 lot of times there's -- there's an atmosphere, there's a  
22 climate, there's sort of unspoken understandings about, oh,  
23 there's the expression, "Go along to get along," et cetera.  
24 Is there anything that you do in your organization to try to  
25 make sure that that kind of influence does not infect the

1 process, or is that something that could conceivably take  
2 place when -- when your staff are working with the managers  
3 in deciding how to do a reorganization, which would  
4 obviously have the effect of some people losing their jobs?

5 THE WITNESS: Let me see if I can -- I think what  
6 you're asking me is: Can a manager -- a manager who's  
7 responsible for reorganizing a group, you know, they -- they  
8 still have to play by the rules of -- of writing a job  
9 description, and the comparison of the old ones to the new  
10 ones. Will they try to write those or influence it so  
11 somebody gets a job or doesn't get a job? Is that -- is  
12 that what you're asking me?

13 JUDGE YOUNG: Yeah. I mean, there's a -- there's  
14 an allegation that TVA or people at TVA may have used the  
15 reorganization or reduction in force process to achieve an  
16 end of retaliating against an employee who has filed or who  
17 -- who, you know, management wants to get rid of because  
18 they have filed complaints against management.

19 THE WITNESS: I think, when you go through the  
20 process of having to compare the two job descriptions and  
21 the job description of record, and when that call is made by  
22 the human resource organization and not by the line manager.  
23 I think he -- you eliminate that possibility that you can  
24 purposely structure something around one individual.  
25 Because it -- the human resource person is kind of

1 independent and, you know, although they have a working  
2 relationship with the line organization...

3 JUDGE YOUNG: I guess what I was trying to get at  
4 is: You say there -- the human resource people are  
5 independent. What measures are taken to insure that  
6 independence, that -- that they're not going to be infected  
7 by this kind of influence, you know? Subtle influence,  
8 sometimes.

9 THE WITNESS: Well, one, that they typically don't  
10 -- like in this situation, there's -- you know, Mr. McGrath  
11 or Mr. McArthur had no impact over the pay that Mr. Boyles  
12 or Mr. Easley could get. They would have no impact over  
13 whether they would be promoted. They would have no impact  
14 over they got disciplinary actions. I mean, they might send  
15 me a note that said, "Hey, they were really helpful and they  
16 did a good job," but they don't have any impact over their  
17 career or...

18 JUDGE YOUNG: Did they have any impact over your  
19 career?

20 THE WITNESS: No.

21 JUDGE YOUNG: Okay.

22 THE WITNESS: I don't think so. I mean, I worked  
23 for the chief nuclear officer, Mr. Kingsley, and that's who  
24 impacted my career. You know, sometimes when you work in  
25 staff positions, like I do, you're not always liked, you

1 know. And when you work in human resources, it's probably  
2 even less liked sometimes. So, you know, I can't be  
3 impacted by that. That's -- you know, I work for the chief  
4 nuclear officer. That's who impacted me.

5 JUDGE YOUNG: Thank you for clarifying that.

6 THE WITNESS: Thank you.

7 JUDGE YOUNG: Go ahead.

8 BY MR. DAMBLY:

9 Q Follow up on that last couple of questions on can  
10 a manager affect who gets jobs or keeps jobs in a reorg.  
11 It's not the HR person who decides what duties are going to  
12 be maintained and which are going to be changed in the  
13 reorg, is it?

14 A What duties are going to be retained?

15 Q Yeah. What positions and how you're going to  
16 structure the position descriptions and potentially  
17 restructure duties and whatever. That's up to the manager.

18 A That's up to the manager. I mean, the human  
19 resource person is going to decide, well, look, you know,  
20 you say you're going to have this function in this job.  
21 But, you know, that's being performed over there. I mean,  
22 it's their responsibility to challenge them on things like  
23 that.

24 But in terms of the structure of an organization  
25 and what functions are going to be performed in it, are

1 typically done by the managers. What -- what grade levels  
2 those end up and what pay level those end up are typically  
3 calls that are done by the human resource organization, in  
4 terms of pay and...

5 Q So if you had a manager and he had three employees  
6 and he knew that in a reduction in force, one who was going  
7 to stay was one he didn't want to stay, he could change the  
8 positions around significant enough to post them and  
9 influence the outcome? He can get by the RIF regs and the  
10 rights of employees by dropping environmental from a PD and  
11 transferring that function somewhere else in the  
12 organization.

13 A You know, there has to be a business reason for  
14 doing things. There's also a checks and -- check and  
15 balance that, you know, they -- they have a boss, also. And  
16 they'd have to go through and -- and discuss that. And the  
17 -- you know, when I reorganized human resources, I didn't  
18 sit down there and say, "Okay, well, here's what I'm going  
19 to do," and do it in a vacuum. I went to my boss and said,  
20 "Here's what I'm doing. Here's why I'm doing it. Here's  
21 why I'm moving this function. We're going to do away with  
22 this, we're going to keep this and do those." So that --  
23 you know, in the instance of the decision to separate  
24 environmental and chemistry, there was some discussion --  
25 you know, that would have gone through another review in the

1 presentation of the org chart through the business plan or  
2 through a review with the supervising manager.

3 Q And for those positions, that manager would have  
4 been Mr. McGrath? He was the second level supervisor?

5 A Yeah, he was the -- I think he was the general  
6 manager of operations support at that time, I believe.

7 Q And were you aware that Mr. McGrath's the one that  
8 told McArthur and Grover that there would be a PWR and a BWR  
9 position?

10 A No.

11 Q Now, with respect to what you were talking about  
12 with position descriptions of record -- and, again, you are  
13 aware that the OPM regulations talk about a person's  
14 official position, are you not?

15 A You asked me earlier if I had read OPM regulations  
16 and, you know, I have seen them. I'm not an expert in them.  
17 I rely on my general counsel to interpret those for me.

18 Q Okay. If you have an employee---let's say, Dr.  
19 McArthur---who's in the rad con manager position, and you  
20 decide to make some changes to that position. And you go,  
21 then, to look at the new PD and compare it with the old PD,  
22 and you find out his old PD is one that has nothing -- it's  
23 not the rad con position. Do you then remove him from the  
24 job because you don't have -- he's not in that job?

25 A Let me make sure I understand the scenario you're



1 describing to me. If -- if Mr. McArthur or Dr. McArthur is  
2 currently in a rad con manager's job and we made significant  
3 changes or we made changes to that position.

4 Q And what we were talking about earlier is a  
5 reclassification. You went back and looked and you compared  
6 with the -- if the duties were enough different that you'd  
7 have to advertise, versus just upgrading tell person.

8 A Okay.

9 Q And you find out they don't have a PD. That  
10 they're in a whole different file, according to your files.  
11 Do you just go, "Well, I'm sorry, we're going to have to  
12 terminate you now because you don't have a PD for the job  
13 you're in," and assuming the other job's no longer in  
14 existence?

15 A No, I don't think we'd do that. I mean, we'd have  
16 to look at it and work through it and see what we would do.

17 Q But you'd determine a third party's rights under  
18 the congressionally mandated RIF regulations by doing that?

19 A I'm not sure I understand the question.

20 Q Well, in the Grover-McArthur situation, if you  
21 don't make the call on McArthur, then you enter a surplus  
22 situation, because two PG-11 positions are going out, and  
23 they would have been both been surplus and had to compete.  
24 You determined Mr. Grover's right by using a document for a  
25 position you knew that Mr. McArthur was not in, and had not

1 been in for at least two years. And we went through the  
2 records. You've seen. You said yeah, you agree he's in the  
3 PG-11 position.

4 A Right.

5 Q How do you determine Mr. Grover's rights by using  
6 an inaccurate document?

7 MR. MARQUAND: Objection. That's so  
8 argumentative, I don't even understand the question being  
9 posed.

10 MR. DAMBLY: Well, I think everybody else does.

11 JUDGE YOUNG: Well, why don't you -- I'm not sure  
12 I followed all of that. Why don't you rephrase the  
13 question.

14 BY MR. DAMBLY:

15 Q In a reduction with Mr. McArthur and Mr. McGrath -  
16 - I mean, Mr. McArthur and Mr. Grover, they're both PG-11  
17 managers. One's a rad con; one's chemistry-environmental.  
18 You're eliminating those two positions.

19 A Okay.

20 Q To the extent that we're in a reduction situation,  
21 individual's rights are determined on their positions.

22 A Position description of record.

23 Q Positions of record.

24 MR. MARQUAND: Well, counsel...

25 Q How do you determine to tell Mr. Grover, "I'm

1 sorry, you don't have rights to compete for a position  
2 because Dr. McArthur has a position description that's  
3 inaccurate in his file, so we're going to give him a job  
4 because he's got the wrong PD, and you don't get an  
5 opportunity to compete"? How do you do that?

6 MR. MARQUAND: I'm going to object. The question  
7 still is -- my understanding, is not capable of being  
8 answered. The witness has said, "Here's the standard we  
9 use. I'm sorry if we don't use the standard Mr. Dambly  
10 thinks we ought to use." That's not the situation.

11 MR. DAMBLY: It's in the regulations that are as -  
12 - in the Exhibit 62.

13 MR. MARQUAND: The witness...

14 MR. DAMBLY: It says official position, doesn't  
15 say a thing about the position description of record.

16 MR. MARQUAND: Show him the exhibit.

17 THE WITNESS: You know, and I'm -- well, I guess I  
18 need to respond to you.

19 BY THE WITNESS:

20 A As I have told you three or four, maybe five times  
21 today, we make a determination based on our interpretation  
22 that we've received from our general counsel. My guidance  
23 that I have been given is that I refer to the official  
24 position description of record contained in the PHR to  
25 determine which position the employee has rights to.

1 Q All right.

2 A Now,...

3 Q In 1993...

4 A ...if I can go on.

5 Q All right.

6 A I think you were asking me what kind of discussion  
7 did we have with Mr. Grover about, "You can't compete for  
8 this job"? Is that what you asked me?

9 Q No, I didn't ask you. Mr. Grover's rights to have  
10 an opportunity to compete depend upon whether or not -- how  
11 you make a determination as to what job Mr. McArthur's had?

12 A It had a bearing on it; yes.

13 Q And so basically you determined that Grover was  
14 going to be surplusd without an opportunity to compete for  
15 the manager job because Dr. McArthur at least allegedly  
16 didn't have a PD of record for the job he was in?

17 A Because of Mr. McArthur's position description of  
18 record.

19 Q Okay. Now, let me ask you this, then. If you're  
20 going to go on that, and you go back into Dr. McArthur's  
21 file and you find out he's got a position description of  
22 record for the technical programs manager position, which  
23 had been eliminated, why didn't you RIF him because he was  
24 in a job that didn't exist?

25 A Why didn't we RIF him when? Back in...

1           Q     In '96. When you looked and said, "Well, he's in  
2     -- he's in a technical program manager's job, and that job  
3     was eliminated in '94." Why did you say that gives you  
4     rights in '96 to something, if you're not -- not even in a  
5     job that's in existence?

6           A     Because that was the interpretation in how we had  
7     received information from our general counsel about how to  
8     interpret the OPM regulations, that that decision was made  
9     that Mr. McArthur or Dr. McArthur had rights to that  
10    position.

11          Q     Okay. And in 1993---we've been through this  
12    earlier this morning---Mr. Fiser was reduced in force or  
13    surplused from the Sequoyah chemistry manager position?

14          A     Yes. And the -- actually...

15          Q     And he was not in that position.

16                MR. MARQUAND: Objection. Let the witness --  
17    counsel's being argumentative and loud and talking over the  
18    top of the witness.

19                MR. DAMBLY: I'm asking specific questions that  
20    I'd like a yes or no answer to, not a half-hour dissertation  
21    that's off point.

22                JUDGE YOUNG: Okay. All right, Mr. Reynolds...

23                THE WITNESS: Yes, ma'am.

24                JUDGE YOUNG: ...when he asks you a question,  
25    first answer yes or no.

1 THE WITNESS: Okay.

2 JUDGE YOUNG: Then you can explain.

3 THE WITNESS: Okay.

4 JUDGE YOUNG: And then wait for him to finish his  
5 answer.

6 THE WITNESS: Thank you.

7 MR. MARQUAND: Can he finish the answer he was --  
8 got interrupted on?

9 MR. DAMBLY: In 1993...

10 JUDGE YOUNG: Pardon?

11 MR. MARQUAND: Can he finish the answer he was  
12 interrupted on?

13 CHAIRMAN BECHHOEFER: Yes, he may.

14 JUDGE YOUNG: Did you -- right. Go ahead.

15 CHAIRMAN BECHHOEFER: But you better repeat the  
16 question, before you repeat...

17 THE WITNESS: Quite frankly, I'm at the point now  
18 I'm not sure I understand -- remember what I was talking  
19 about.

20 BY MR. DAMBLY:

21 Q In 1993, Mr. Fiser's official position description  
22 of record was for the Sequoyah chemistry superintendent; is  
23 that correct?

24 A That is correct.

25 Q And in 1993, as you testified earlier today, you

1 decided you had to settle his DOL case because you couldn't  
2 win -- I mean, his -- you couldn't win in front of the MSPB,  
3 is what you said, if he'd have filed an action, because he  
4 wasn't -- he wasn't in the position of the chemistry  
5 superintendent at Sequoyah. He was actually in a chemistry  
6 program manager position at headquarters; is that correct?

7 A That's what I said this morning; yes.

8 Q And so -- and you also said, and it's in your DOL  
9 declaration, that the paperwork hadn't caught up, and so he  
10 was reduced in force from a position he didn't occupy, and  
11 that was a loser at the MSPB.

12 A Right. But I think also Mr. Fiser -- you know, we  
13 weren't actually going to reduce the chemistry  
14 superintendent position.

15 Q Well, how can you give a RIF notice to somebody  
16 whose in a position that's not being reduced?

17 A Made an administrative error.

18 Q Well, so if you made an administrative error, and  
19 you made an administrative error with Dr. McArthur when  
20 somebody didn't put a PD in there or took one out, I don't  
21 know which---Mr. Easley said it was there---why didn't you  
22 correct the administrative error instead of determining  
23 other people's rights because there was an error made?

24 A Because I -- I went -- as I understand it, when we  
25 -- you look at the position description of record of Mr.

1 McGrath, Mr. Easley and Mr. Boyles felt that he had rights  
2 to the new position or to the position of rad con chemistry  
3 manager in the organization based on his position  
4 description of record contained in his permanent history  
5 record, his permanent personnel file.

6 JUDGE YOUNG: Had Mr. McArthur basically been in  
7 the other positions since he was originally in that position  
8 for which the position description of record applied, and  
9 the positions that he had been in since that time, were they  
10 temporary or rotational or -- or what -- what was the nature  
11 of the...

12 THE WITNESS: I believe they had been a  
13 combination of temporary and rotational. He had always been  
14 involved into the -- in the rad con and chemistry area at  
15 some point in time from that '90 -- 1990 through the '96,  
16 '97 time frame.

17 JUDGE YOUNG: What was -- what was the -- just to  
18 clarify, looking back at the Exhibit 99, there was a time at  
19 which he went from senior down to 11. Do you know what the  
20 -- how that fit into the picture? I'm just trying to get a  
21 clear idea.

22 THE WITNESS: No. I'd -- I mean, I'd have to go  
23 back and look at the -- the PHR.

24 JUDGE YOUNG: Okay.

25 THE WITNESS: The microfilm, to take a look to see



1 what happened at that point in time.

2 JUDGE YOUNG: Okay.

3 THE WITNESS: I don't remember the circumstances  
4 around that.

5 BY MR. DAMBLY:

6 Q Well, do you recall that the rad con manager  
7 position came into being in '94, that Mr. -- or Dr. McArthur  
8 went in? The one that's on the org chart is a PG-11  
9 position that we looked at this morning.

10 A Yeah, I remember looking at the org chart, and  
11 that Mr. McArthur was in a rad con manager's position.

12 Q And you saw his appraisal that he got for being in  
13 that position?

14 A Yes, I did.

15 Q And, again, if you go back and find out that a  
16 person, according to the way you interpret official  
17 positions as position description of record, is occupying a  
18 position that's been eliminated, why don't you just surplus  
19 that individual because they don't have a job?

20 A Why didn't I just eliminate Mr. McArthur's  
21 position because he didn't have a position description? Is  
22 that what you're telling me?

23 Q You said he was in -- his official position was  
24 his PD of record, which had been eliminated in 1994. So if  
25 he's occupying a position that had been eliminated,

1 according to you, at the position he was in, why wasn't he  
2 just given a surplus notice. Your job's not here.

3 MR. MARQUAND: Objection. Can I ask for  
4 clarification as to who said that that job had ever been  
5 eliminated? I don't recall seeing a RIF document for it.

6 MR. DAMBLY: Dr. McArthur said it'd been  
7 eliminated. It's not on any org chart. It doesn't exist.

8 BY MR. DAMBLY:

9 Q Was there a technical program manager in 1994 and  
10 '95? Are you aware of that?

11 A Not that I'm aware of.

12 Q No, because there wasn't one. It was eliminated  
13 in 1994. There's been plenty of testimony in this  
14 proceeding. So you've got a position that's been  
15 eliminated, and you've got a person occupying one that's  
16 been eliminated. Why didn't you just give them a surplus  
17 note, "Sorry, you don't have a job"?

18 A Because we had to go back and -- and take a look  
19 to see if, in the new position that was being created, if  
20 anyone had a position description of record that was  
21 performing those type of functions, and if they did, they  
22 would have rights to that position.

23 Q And why did the position description of record  
24 control in '96 and not in '93?

25 A What happened in '93?

1           Q     Mr. Fiser had a position description of record for  
2 the superintendent of chemistry at Sequoyah, a position  
3 which you just said wasn't eliminated, that he got a RIF  
4 notice from. And you said because the paperwork hadn't  
5 caught up with it, you had to give him -- settle the case  
6 because you couldn't win the case because he was RIF'd from  
7 a position he didn't occupy. But if the PD of record is the  
8 position you occupy, then he was RIF'd from the position he  
9 occupied. So why in '93 wasn't that the correct thing to  
10 do, when in '96 you're bound by the PD of record?

11           A     You mean why, in '93, did we not issue Mr.  
12 McArthur a...

13           Q     Not Mr. McArthur. In '93, why didn't you just  
14 say, "Sorry, Gary, you're going out the door. Your PD of  
15 record is Sequoyah, and that's the one we RIF'd you from, so  
16 you don't have any rights." Instead of saying, "That's not  
17 the one you were in, so we'll fix it."

18           A     Well, I think for two reasons. One is that when  
19 we gave Gary a reduction in force notice for the chemistry  
20 superintendent or chemistry manager position at Sequoyah, we  
21 actually were not eliminating that position. And, as I have  
22 said earlier, I don't feel like Mr. Fiser was treated  
23 fairly. Okay?

24           Q     I'm not going to disagree with that.

25           A     So I thought I did the right thing by trying to

1 fix it, in trying to resolve the complaint when I looked at  
2 the issues around it.

3 Q And in your DOL declaration in 1996, did you make  
4 any reference at all to the fact that the Sequoyah position  
5 was not eliminated?

6 A I don't know. I don't remember.

7 Q We looked at it this morning. Do you remember  
8 seeing anything in it?

9 A What exhibit is it?

10 Q Let's see. 110, I believe.

11 A 110?

12 Q 110.

13 A I don't have -- yeah, here it is. Hold on.

14 Q If you look at Page 2, Paragraph 3.

15 A I'd like to make sure I read the whole thing  
16 before I respond to you.

17 Q Okay.

18 (The witness reviews certain material.)

19 Q Do you see anything in there that says the reason  
20 you settled with Mr. Fiser was because the Sequoyah  
21 chemistry superintendent position was not eliminated?

22 A No.

23 Q No. It says because he was reduced in force from  
24 a position he did not occupy. That's what you told DOL; is  
25 that correct?

1           A     That's correct.

2           Q     And under the theory of PD of record, that's not a  
3 true statement, then. Because he did occupy the -- the  
4 chemistry superintendent position, if you're going to go  
5 with the PD of record.

6           JUDGE YOUNG: What do you understand the word  
7 "occupy" to mean in terms of whether an employee occupies a  
8 position?

9           THE WITNESS: My understanding of it is when I  
10 feel like an employee occupies a position, that is a  
11 position description that they have -- they have a position  
12 description for that position that they are in. Make sense?

13          CHAIRMAN BECHHOEFER: And they are actually...

14          JUDGE YOUNG: In other words,...

15          CHAIRMAN BECHHOEFER: ...performing the activities  
16 of that position?

17          THE WITNESS: Yes.

18          JUDGE YOUNG: So that when they have a position  
19 description and are actually performing the activities, is  
20 that...

21          THE WITNESS: I would consider them to be  
22 occupying that position.

23          JUDGE YOUNG: So what if they have one but not the  
24 other? If they have the position description but they're  
25 not performing the functions, or if they're performing the

1 functions...

2 THE WITNESS: I still go back to my statement that  
3 if -- you know, if I had to go through a reduction in force,  
4 that would be the position that the employee occupied.

5 JUDGE YOUNG: And what if the person had a  
6 position description of record, but they were not performing  
7 those functions, they were performing the functions of  
8 another job?

9 THE WITNESS: I -- you know, you'd have to look at  
10 -- for RIF purposes, in my mind, it would be the position  
11 that they held the official position description for.

12 JUDGE YOUNG: So the position description of  
13 record would rule over actual performance of functions, if  
14 there was a difference?

15 THE WITNESS: Yes.

16 JUDGE YOUNG: Is there -- does anyone have the  
17 rest of this declaration of Mr. Reynolds?

18 MR. MARQUAND: Well, this copy appears to have  
19 been obtained from the Department of Labor. I'm sure that  
20 we produced a complete copy, and we also have a complete  
21 copy in our files.

22 JUDGE YOUNG: You do?

23 MR. DAMBLY: I believe we've asked several times  
24 for a complete copy and never got one.

25 MR. MARQUAND: Well, I...

1 MR. DAMBLY: This is all we've gotten at this  
2 point.

3 JUDGE YOUNG: Can we -- can we get the rest of it  
4 to -- to stop and let this...

5 MR. MARQUAND: I don't have it with me today, but  
6 we'll make an effort to find it.

7 JUDGE YOUNG: Okay. I'd like to clarify something  
8 else in this. While you were reading it, I took the  
9 opportunity to read all of it, too. And I notice at the  
10 last part of Paragraph 5 on Page 3, you say that,  
11 "Regardless of the fact that Mr. Fiser had not been chosen  
12 for one of the new positions," and I'm assuming by that you  
13 meant the positions that Mr. Harvey and Mr. Chandra were  
14 chosen for.

15 THE WITNESS: That's correct.

16 JUDGE YOUNG: And then you say, "...and had  
17 volunteered to resign," referring to Mr. Fiser, "I was -- I  
18 was authorized to and did make an unconditional offer to him  
19 on September 27<sup>th</sup>, 1996, of the PWR chemistry program  
20 manager position."

21 What I'd like to get clarified is the -- the  
22 reference to him volunteering to resign, and your making an  
23 unconditional offer to him of the PWR chemistry program  
24 manager position. And I think you said that he refused to  
25 accept the job offer. Could you clarify what all that's

1 about? I...

2 MR. DAMBLY: I was going to address that later on.

3 JUDGE YOUNG: Oh, okay.

4 THE WITNESS: If I...

5 JUDGE YOUNG: If you want to, go ahead.

6 THE WITNESS: Yeah, that's fine.

7 JUDGE YOUNG: Sure. I mean, I just happened to  
8 read it as you were reading it, and I was puzzled by that.

9 THE WITNESS: That's fine. During -- during the  
10 reorganization of the chemistry organization, in Mr. Fiser's  
11 subsequent non-selection for one of the chemistry program  
12 managers, he came to see me a couple of times. And --  
13 because I'd known him at Sequoyah and had worked with him  
14 out there. And, you know, had talked to me about his  
15 concerns, and how he didn't feel like he'd been treated  
16 fairly, and those kind of things.

17 And at that time we had an option of where an  
18 employee could go into -- I believe at that time it was  
19 called -- it was either services or employee transition  
20 program. It was where employees whose positions were  
21 eliminated could go into another unit of TVA. They may be  
22 working on assignments outside of TVA or inside of TVA, but  
23 it was a way for them to continue their employment.

24 JUDGE YOUNG: And try to find another job; right?

25 THE WITNESS: And try to -- right. Exactly. Try



1 to be able to find another job. And, or they had an option  
2 that they could leave and take one year's -- I believe it  
3 was one year's severance pay, or severance equal to one  
4 year's pay, I should say.

5 Mr. Fiser told me that, you know, he was going to  
6 leave TVA. He was going to resign. I went to my boss.

7 JUDGE YOUNG: Was that before he filed his DOL  
8 complaint?

9 THE WITNESS: I don't remember.

10 MR. MARQUAND: He had already filed his DOL  
11 complaint in July.

12 JUDGE YOUNG: Okay.

13 MR. MARQUAND: I'm sorry, in June.

14 JUDGE YOUNG: And so this was after that?

15 MR. MARQUAND: Yes.

16 THE WITNESS: Yeah.

17 JUDGE YOUNG: Okay. Go ahead.

18 MR. DAMBLY: Well, it would have to have been,  
19 because it was before the Department of Labor. It wouldn't  
20 be before the Department of Labor if they hadn't filed.

21 THE WITNESS: So Mr. Fiser, like I said, he came  
22 to me and we talked about it. I went to my boss, Mr.  
23 Kingsley, and said, "Look, let's offer Mr. Fiser a  
24 position." And not to settle the case, but my intent was,  
25 is to try to limit my liability on -- you know, if he -- he

1 had filed a case or was going to file a case. I don't  
2 remember the timing of the issues.

3 So I went and offered him a position not attached  
4 to settling any complaint or anything like that, as a -- at  
5 the same level and at the same salary within the  
6 organization. I got approval to do that. So I went and did  
7 it.

8 JUDGE YOUNG: And would it -- I mean, you say he  
9 refused?

10 THE WITNESS: Yeah, he told me no, he was not  
11 interested in it. He was taking his -- the severance pay  
12 and he was leaving the organization. We had some  
13 discussions about, you know, some -- and I think it's during  
14 this time we'd had some discussions that, you know, he  
15 wanted me to give him some enhanced retirement benefits and,  
16 you know, keep him employed during some period of time and,  
17 you know, some conditions that I just was not going to -- I  
18 didn't think I needed to do and I didn't think were fair.  
19 And so I went and just offered him the position and...

20 JUDGE YOUNG: So he could have come back and --  
21 and basically continued to work with Mr. Harvey and Mr.  
22 Chandra doing essentially the same kind of support functions  
23 to the sites?

24 THE WITNESS: Yes. Without having to settle his  
25 complaint.

1 BY MR. DAMBLY:

2 Q Just to follow up on that, then, since we're at  
3 that point now, what were you going to do with Mr. Harvey,  
4 who had been selected for the PWR position, if Mr. Fiser  
5 took it?

6 A I was essentially going to go and -- I had talked  
7 to Mr. Kingsley, that we were just going to let them be one  
8 over the head count and keep Mr. Fiser employed, also.

9 Q All right. And you were aware at the time that  
10 this was a ongoing (sic) five-year reduction, was the  
11 schedule, the plan. And there was planned to be two  
12 positions in corporate chemistry; one for PWR and one for  
13 BWR?

14 A I think when the organization was essentially set  
15 up, they had set it up for a PWR and a BWR.

16 Q And the...

17 A Two positions.

18 Q ...the reduction that was scheduled, I guess  
19 Kingsley's the one who started, said he was, over the next -  
20 - I guess it was '96 to 2000, he wanted everybody reduced by  
21 -- the target was 40 percent. And that's how -- what was  
22 the genesis for the reorganization in '96?

23 A That was part of it; yeah. But I got Mr. Kingsley  
24 to agree that we'd just go ahead and carry an extra one in  
25 the head count.

1 JUDGE YOUNG: Was there a time limitation on it?

2 Q For that year?

3 THE WITNESS: I'm sorry?

4 JUDGE YOUNG: Was there a time limitation on it?

5 THE WITNESS: No. I mean, in terms of the -- the  
6 -- how long Mr. Fiser was going to be in this position?

7 JUDGE YOUNG: Right.

8 THE WITNESS: No.

9 BY MR. DAMBLY:

10 Q And at that time, Mr. Fiser had just -- before he  
11 filed his complaint, had come and you'd been involved in  
12 checking out, because he had a settlement in 1994 for a  
13 position, and you checked with the lawyers, and the lawyers  
14 came back, Mr. Marquand and -- and Cathy Welch, maybe---  
15 who's not a lawyer, I appreciate---but anyway, came back and  
16 said, "No, it only is good for the day it was signed, and if  
17 you reorganize the next day, it had no longevity"?

18 A It was not a guarantee of lifetime employment, no.

19 Q And so if you're Mr. Fiser and you've just learned  
20 that lesson and you're in a reduction mode and you've been  
21 the one not selected, do you think that might have  
22 influenced your decision on whether this was a legitimate  
23 offer?

24 A Well, I think that -- yes, I think it could. But  
25 I also believe that he had two opportunities to continue his

1 employment. He could have gone into the services  
2 organization and continued his employment with TVA, or he  
3 could have taken the chemistry program manager and continued  
4 his employment. So he had two opportunities to continue his  
5 employment with TVA.

6 JUDGE YOUNG: I'm sorry, what was -- what was the  
7 other one besides being the chemistry program manager?

8 THE WITNESS: An employee who was -- received a  
9 reduction in force notice could go into our services  
10 organization.

11 JUDGE YOUNG: Okay, the ETP.

12 THE WITNESS: The ETP.

13 JUDGE YOUNG: Okay.

14 THE WITNESS: They could either go in there or  
15 take the salary, one year salary.

16 JUDGE YOUNG: Okay.

17 CHAIRMAN BECHHOEFER: Well, would a job there have  
18 automatically -- or could it be terminated at will, without  
19 going through RIF procedures, for instance, so that a person  
20 would have to elect between a year of severance pay,  
21 whatever he would get, and a uncertain (sic) tenure, perhaps  
22 as short as a matter of weeks, in the ETP organization? I'm  
23 just trying to create what the options would be for an  
24 employee in that situation.

25 THE WITNESS: Okay. An employee who would, for

1 example, take the assignment into the ETP program or  
2 services, they were -- services organization was involved  
3 in, you know, outside activities, outside of TVA. They were  
4 involved in essentially being an in-house contractor for  
5 some activities in TVA. So they could have worked one, you  
6 know, either inside or outside of TVA. They also would have  
7 had the opportunity to apply on and potentially be selected  
8 for a permanent position within the organization.

9           If there would have been a -- so in terms of how  
10 long could you be in there, it was indefinite at that point  
11 in time. I mean, there wasn't a -- as I remember, there  
12 wasn't, you know, you're here for one year and then you --  
13 you leave. You were in there for an indefinite period of  
14 time. If they would have reduced the services organization,  
15 which we ultimately did, and we did that in terms of  
16 employees again had an option of being able to leave with a  
17 severance package or just -- we placed people in the  
18 organizations. So they would have gone through a reduction  
19 in force process in the services organization, also.

20           CHAIRMAN BECHHOEFER: But would the severance have  
21 started -- the one year severance have started at that  
22 point, or at the point when you're RIF'd from your earlier  
23 job?

24           THE WITNESS: The one year severance, at that --  
25 the severance -- if you would have gone into services, if

1 you'd have said, "I want to go to services, and I don't want  
2 the one year severance..."

3 CHAIRMAN BECHHOEFER: Well, at the time you go  
4 into services.

5 THE WITNESS: Okay, it starts at the point that  
6 you were reduced from services, not from the point that you  
7 were reduced from your other position.

8 CHAIRMAN BECHHOEFER: I see.

9 JUDGE YOUNG: The severance -- when you're reduced  
10 from services, you would then be offered the option of a  
11 severance package. And what would be the alternative to  
12 that?

13 THE WITNESS: And I don't think there would be  
14 one.

15 JUDGE YOUNG: Okay. And there was no time --  
16 there was no stated time limit on the services tenure?

17 THE WITNESS: Not that I am aware of; no.

18 CHAIRMAN BECHHOEFER: Well, could the situation --  
19 can you envision a situation where someone thought he might  
20 go into services and be cut from services say two or three  
21 weeks later, and then having to forego the earlier  
22 severance? Is that a reasonable description or...

23 THE WITNESS: No.

24 CHAIRMAN BECHHOEFER: ...hypothesis, should we  
25 say?

1 THE WITNESS: No. If you would have refused the  
2 offer of a year's severance pay and gone into the services  
3 organization, and then in a month, say, they would have  
4 decided to do away with the services organization, you would  
5 have received a severance package at that point.

6 CHAIRMAN BECHHOEFER: Oh, starting from that point  
7 in time? So...

8 THE WITNESS: Right.

9 JUDGE YOUNG: Would it be equivalent to the  
10 severance package you had previously been offered?

11 THE WITNESS: I don't -- you know, it would just -  
12 - it would have depended -- you know, at that point in time,  
13 an employee who was separated from TVA and chose to resign  
14 was eligible for one year's pay. If that policy would have  
15 still been in effect, yes. I mean, that's a policy decision  
16 that the organization made. It isn't a -- you know, as it's  
17 current today, if you're reduced from your organization, you  
18 get equivalent of five days' pay for every week you have  
19 worked at TVA.

20 MR. MARQUAND: Year. Year.

21 THE WITNESS: Or, yeah, every year. I'm sorry.  
22 Boy, that'd be a good deal, wouldn't it?

23 MR. MARQUAND: I'm going to volunteer. I'm gone.

24 THE WITNESS: Yeah, sign me up. I take it.

25 JUDGE YOUNG: So the severance from the ETP,



1 you're not sure exactly what that included?

2 THE WITNESS: Well, at that policy time, what the  
3 policy was at that time, if you'd have gone into ETP and  
4 then been severed from ETP...

5 JUDGE YOUNG: Right.

6 THE WITNESS: ...the policy at that time was a  
7 year's pay.

8 JUDGE YOUNG: A year's pay, and you would have  
9 maintained your salary level from your previous job that  
10 you'd previously been separated from?

11 THE WITNESS: Yes.

12 JUDGE YOUNG: Okay. There's another thing that's  
13 not clear in my mind. If -- if Mr. Fiser had taken this  
14 job, Mr. Dambly was asking, well, he could have been  
15 terminated from that within a month or something. If he had  
16 taken that job and then there was a RIF of that job a month  
17 later, what would have happened? He -- I think he had  
18 seniority over Mr. Harvey. Would Mr. Harvey then have been  
19 RIF'd?

20 THE WITNESS: Without looking at the -- I mean, it  
21 would have been -- the two employees would have been placed  
22 on a retention register, and whoever had the most seniority  
23 or the most time would have been the employee who would have  
24 stayed, if you would have just had a straight RIF from that  
25 organization. And I don't know where they stood in terms of

1 who had more time and didn't have more time.

2 JUDGE YOUNG: Well, if -- if Mr. Fiser had more  
3 time, and -- and a RIF -- a straight RIF were to occur, and  
4 Mr. Harvey would be -- would be the odd man out because he  
5 had less retention, less seniority, if they came to you --  
6 the management came to you and said, "Well, instead of a  
7 RIF, we want to do a reorganization and we want to change  
8 the job description and -- and post it for competition,"  
9 would you or your staff have looked at that with any  
10 heightened scrutiny because of what had happened previously  
11 or...

12 THE WITNESS: Yes.

13 JUDGE YOUNG: So when you offered -- you were the  
14 one who offered him that job. Were -- in your mind, did you  
15 go over these potential actions in the future? Was there  
16 any understanding in your mind as to what would occur in the  
17 future or what could occur or how you would handle various  
18 scenarios?

19 THE WITNESS: No. I mean, I just basically was  
20 offering Mr. Fiser the position. Like I said, you know, one  
21 of my intents was to try to limit our liability in this  
22 case.

23 JUDGE YOUNG: In terms of the complaint?

24 THE WITNESS: In terms of the complaint. I mean,  
25 I didn't play out scenarios in the future in my mind about

1 what-ifs and what could happen. I was just kind of living  
2 in the moment.

3 JUDGE YOUNG: And whatever happened to that -- the  
4 '96 complaint?

5 THE WITNESS: We ultimately settled it. I don't  
6 remember the specifics of it, but we've settled that  
7 complaint. I think a cash settlement with Mr. Fiser on that  
8 issue.

9 MR. DAMBLY: And Mr. Fiser's testified to all  
10 that, and his reasons, actually, for turning this down  
11 earlier.

12 JUDGE YOUNG: Okay.

13 BY MR. DAMBLY:

14 Q I've got one follow-up question, which is: What  
15 was to stop, in 1997, Mr. McGrath from deciding that taking  
16 the environmental out of that position was a mistake, and  
17 now we're going to put it back in and reduce from three to  
18 two again, and posting the jobs?

19 A I mean -- I mean, that could happen. I -- that's  
20 possible. I have seen organizations put together and then -  
21 - you know, engineering, at one time we separated design  
22 engineering and systems engineering, and then we brought  
23 design and systems engineering back together and then we've  
24 taken it back apart. So, I mean, that's -- you know, it's -  
25 - this is a -- you know, at this point in time, a 4,000

1 person organization that has yet to find its way in terms of  
2 moving from a construction organization to an operating  
3 organization and what works best for us. So we have a lot  
4 of dynamic changes.

5 MR. DAMBLY: If I might just, Your Honor -- and  
6 it's probably a good time for lunch. But, beyond that, just  
7 so it's clear, at least from the staff's position, whatever  
8 Mr. Fiser did in terms of settlement has absolutely no  
9 bearing on this case. If he was discriminated against,  
10 doesn't matter how they settled the case, what offer he took  
11 or didn't take, what personal remedy he had coming or didn't  
12 have coming has nothing to do with this case. If  
13 discrimination occurred, it occurred.

14 JUDGE YOUNG: Yeah. We're not foreclosing any  
15 arguments by trying to clarify what actually happened. I  
16 mean, obviously, some of these facts are a little bit  
17 confusing and -- and...

18 MR. DAMBLY: Well, it wasn't an argument, it was  
19 more in a -- which obviously the staff's reluctant to do.  
20 But a statement that it's irrelevant and -- and we probably  
21 shouldn't spend more time on an issue that has no relevance  
22 to this case.

23 MR. MARQUAND: Well, I mean, the staff opened it  
24 up. They asked Mr. Fiser about all this. I certainly think  
25 they opened the door on it.