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WITNESS

EXAMINATION

THOMAS J. McGRATH

BY MS. BENSON

4

E X H I B I T S

NUMBER

IDENTIFIED

[NONE.]

P R O C E E D I N G S

1:16 p.m.

MS. BENSON: On the record. Today's date is April 20, 1999. The time now is approximately 1:16 p.m..

I'm Special Agent Diana Benson of the NRC Office of Investigations, Atlanta, Georgia and I'll be conducting this interview.

During this proceeding which is being recorded for transcription the NRC Office of Investigations will conduct an interview of Mr. Thomas J. McGrath spelling M-c-G-r-a-t-h. This interview pertains to OI Investigation No. 2-1998-013.

The location of this interview is TVA Lookout Place Building, Chattanooga, Tennessee. Others in attendance at this interview are Court Reporter and Mr. Brent Marquand who is the TVA Office of General Counsel attorney representing both TVA and Mr. McGrath.

Mr. McGrath, do you understand that Mr. Marquand is acting in a dual capacity?

THE INTERVIEWEE: Yes.

MS. BENSON: Okay, and have you asked him to be present with you today?

THE INTERVIEWEE: Yes, I have.

MS. BENSON: Okay.

Whereupon,

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1 THOMAS JOSEPH McGRATH,
2 the Interviewee, was called for examinatin and, having been
3 first duly sworn was examined and testified as follows.

4 DIRECT EXAMINATION

5 BY MS. BENSON:

6 Q If you can would you please state your full name?

7 A Thomas J. McGrath.

8 Q And what does J stand for?

9 A Joseph.

10 Q And your date of birth?

11 A [REDACTED].

12 Q And your Social Security number?

13 A [REDACTED].

14 Q Prior to going on record I asked you if you would
15 read over Section 1001 of Title 18 of the U.S. Criminal
16 Code. Have you read over that and do you understand it?

17 A Yes, I've read it and I understand it.

18 Q Okay, thank you. Also, I displayed my credentials
19 for you identifying myself. Can you acknowledge that I did
20 this?

21 A Yes, you did.

22 Q Okay, thank you. Can you please provide me with
23 your background employment history here at TVA?

24 A I came to TVA in May of 1987. Since then I have
25 had various jobs in Nuclear Power Program including - I've

1 probably had about ten or twelve so I might miss some but
2 basically I started off with the Watts Bar Plant Project
3 Management and maintenance. Moved to Corporate in 1989.

4 Had jobs in Corporate maintenance. I was the
5 Corporate Maintenance Manager. I moved to becoming the
6 Staff Manager for the head of Nuclear Power at that time.
7 Also, about 1989 I picked up being Chairman of the Nuclear
8 Safety Review Boards. I continued in that position for
9 about eight years.

10 Since then I've done some - I've continued to be
11 on the Boards. I'm no longer the Chairman. For a while I
12 was the Vice Chairman. In addition and parallel to that I
13 went through several other jobs all here in Corporate while
14 maintaining the NSRB job.

15 I was Manager - General Manager over various
16 support areas. First, I had materials and contracts and
17 then I had a -- job that added to that Nuclear Fuels
18 Information Services.

19 In '95 I was given acting assignment to be General
20 Manager of Operations Support because the incumbent in the
21 job had gotten cancer and was quite ill. I continued in
22 that job. He died a few months after that. I continued in
23 that job until after we did a function review in I think it
24 was 1997. That function review essentially it wasn't a --
25 position.

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1 Q Un-hum.

2 A Since then I spent a little over a year on a
3 special project I related to terridium* production at
4 Belafont and Watts Bar. Since last summer I have been
5 working with Corporate Business Transformation project where
6 I am now the Project Manager for one of the projects under
7 that.

8 Q Okay, and prior to coming at TVA what were you
9 doing then?

10 A When I got out of college I was in the Navy for
11 five years and then actually switched over to a civilian for
12 a while. Worked for the Navy and for a while the Department
13 of Energy. All of those jobs were in the Naval Reactor's
14 Program starting off with engineer. Finishing off as the
15 Manager of the Field Office at Puget Sound Naval Shipyard
16 for like the last six years I was there.

17 In 1984 I left there and went to work for Lockheed
18 Ship Building in Seattle. While I was at Lockheed Ship
19 Building I was Director of Quality Assurance, and then I was
20 Director of Program Management. From Lockheed I came to
21 TVA.

22 Q Okay. Prior to going on the record I indicated
23 that what we would be discussing here today was the 1996 DOL
24 discrimination complaint filed by Mr. Fiser against TVA
25 concerning the posting of his Corporate Chemistry position

1 here in Chattanooga, Tennessee. Are you familiar with that
2 particular complaint?

3 A Yes, I am.

4 Q Can you indicate to me your knowledge of Mr. Gary
5 Fiser? When you first met him, in what capacity you two
6 were working, and what may have occurred like during 1993
7 time frame involving his first DOL complaint. Basically
8 just a history.

9 A The first time I had met him was through Nuclear
10 Safety Review Board Operation activities.

11 Q And what position were you holding at the time?

12 A I was the Chairman.

13 Q Okay.

14 A And as the Chairman with any specific person at
15 the time at the level I was I very limited to dealings. I
16 made a practice from time to time sitting in on meetings
17 with my sub-committees so I would occasionally see him in
18 that.

19 I probably in going to site meetings occasionally
20 saw him in a room full of thirty people there. I don't
21 remember when. He was replaced to Sequoyah a Chemistry
22 Manager I think sometime around 1992. I'm not sure when.

23 From then until 1996 I had no dealings with him
24 except one. There was one case when I was running
25 Operational Readiness Review for Watts Bar. Start up

1 probably about 1995. My team had asked Corporate Chemistry
2 for some assistance. Ron Grover and Gary Fiser came and
3 provided that assistance. I really didn't personally deal
4 with them. They dealt with a member of the team who was
5 weeding out Chemistry.

6 Subsequent to that then when I took over Operation
7 Support he was in a position in Corporate Chemistry at the
8 time. I was the General Manager of the whole group. I
9 rarely had any dealings with him. My personal way of doing
10 business was to deal with my direct reports so throughout
11 the whole organization I had very little dealings with the
12 individuals lower down in the organization.

13 Q Un-hum.

14 A Probably only talked to him for a few times in the
15 time period that he was under my management.

16 Q Back when you were the Chairman of the NSRB at the
17 Nuclear Safety Review Board during the '92 time frame, early
18 '92 time frame, did the NSRB conduct a review of the --
19 Program at Sequoyah?

20 MR. MARQUAND: NSRB.

21 BY MS. BENSON:

22 Q NSRB.

23 A The NSRB had a RADCON and Chemistry sub-committee.
24 As part of our periodic meetings which would be in that time
25 frame would be three or four a year that particular sub-

1 committee routinely looked at the RADCON and Chemistry
2 programs.

3 I do not recall - while we occasionally would do
4 special reviews I do not recall any special review of RADCON
5 and Chemistry in that time frame.

6 Q Do you recall a list of items that were placed in
7 the Troy by Mr. Fiser concerning the problems in the
8 Chemistry Program at Sequoyah?

9 A I have no knowledge of anything he placed in Troy.

10 Q Would the NSRB have - wouldn't it be -- that they
11 would be made aware of items that had been listed in Troy?
12 Wasn't that kindly done organization wise?

13 A Troy probably had tens of thousands of items in
14 it. NSRB did not routinely review Troy.

15 Q Un-hum.

16 A The matter in which individual sub-committees
17 would pursue items were - it was really at the discretion of
18 the individual sub-committee. The topics they would
19 normally pick would be based upon review of various
20 documents available to NSRB which the Troy -- were not
21 routinely provided. We could have them if we wanted them.

22 Types of things that were available for NRC
23 inspection reports, audits, and other reports at our Nuclear
24 Assurance Organization. Empo reports and nuclear industry
25 experience which frequently gave us topics that we would go

1 look into.

2 Q Do you remember having a consultant by the name of
3 Tom Peterson conducting a review at Sequoyah Chemistry
4 Program?

5 A Tom Peterson was a member of the NSRB and was a
6 member of the RADCON and Chemistry sub-committee in that
7 time frame.

8 Q And did he conduct any kind of review at Sequoyah
9 regarding any kind of matter during the '92 time frame?

10 A He would have been involved in the routine sub-
11 committee activities. I do not recall any special review on
12 his part in that time frame.

13 Q During - as far as any house investigations
14 involving Mr. Fiser during the 1996 Department of Labor
15 complaint were you interviewed by Department of Labor?

16 A In 1996?

17 Q For the 1996?

18 A Yes, the Department of Labor interviewed me.

19 Q Were you interviewed by TVIG?

20 A Yes, I believe so.

21 Q Do you remember discussing a meeting that you had
22 involving Tom Peterson, Mr. McArthur, and Mr. Fiser when you
23 all were discussing the PASS system or the post -- sample
24 system and other items?

25 A Yes.

1 Q Can you discuss - tell me about that meeting?

2 A At our November, 1991 meeting - as I mentioned to
3 you I routinely would stop in at various sub-committees from
4 time to time. I happened to have stopped in on the RADCON
5 Chemistry sub-committee. Then there was a discussion.
6 There had been open action items that NSRB had raised I
7 believe approximately six months previously having to do
8 with the PASS system.

9 I think the issue had to do with the training and
10 the ability to take samples which required time. Also, an
11 issue on potentially on monitored release PASS. The topic
12 of this subject - of discussion when I was in the meeting
13 that I recall was despite this having been an open issue for
14 some time that Sequoyah and Corporate Chemistry had not come
15 to agreement on an answer and we were concerned that this
16 being an open item which had potentially regulatory concerns
17 to it that they were not taking timely action to resolve it.

18 Q Do you ever recall a meeting with the Plant
19 Manager after subsequent to this meeting you had with Gary
20 Fiser concerning the PASS and whatever else was discussed
21 there?

22 A No, I do not.

23 Q Do you ever remember making a comment to Mr.
24 Deacon about he needed to get rid of Mr. Fiser?

25 A No, I do not.

1 Q Do you recall indicating at anytime that you felt
2 Mr. Fiser was a weak Manager?

3 A I do not recall specifically discussing Mr. Fiser.
4 I know we had discussions - that there were discussions
5 relevant to the performance of the Chemistry Department
6 which NSRB and Nuclear Assurance and Empo were all
7 indicating problems with it. That was discussed at that
8 particular NSRB meeting in November of '91. I don't recall
9 what the specific discussion that went on during that
10 meeting was. It's been a long time ago.

11 Q Did you meet with Mr. Deacon following that
12 meeting concerning that meeting or any of these issues?

13 A I do not recall any specific meeting with Deacon.

14 Q And do you recall at any time stating to Bob - Rob
15 Deacon that Fiser was uncooperative and that he needed to be
16 fired?

17 A Absolutely not and I have never in my time at TVA
18 told any Manager that any individual needed to be fired.

19 Q Okay. And I know you indicated this earlier but
20 can you indicate for me the date that you became the Acting
21 Manager of Operation Support?

22 A I think it was October, 1995.

23 Q And what --

24 A Approximately that time.

25 Q Okay, and you were -- Acting Manager at that time,

1 and when did you become the permanent or the Manager of
2 Operation Support?

3 A I remained in an acting capacity to a separate
4 subsequent reorganization eliminated position.

5 Q Which was?

6 A About I think it was May of '97.

7 Q And in your -- or acting role what -- or
8 responsibilities were you given? Were you given those as if
9 you were the Manager?

10 A I had all the responsibilities as though I was the
11 Manager. During the first few months when the prior manager
12 was quite ill but still alive and came to work ever so often
13 I coordinated all the activities with him.

14 Q Okay. Prior to the reorganization in 1996 do you
15 recall and when I'm saying reorganization I'm saying prior
16 to the actual posting of the positions in the Chemistry
17 Department at Corporate do you recall being contacted by
18 anyone or being talked to by anybody regarding transferred
19 Sam Harvey to Sequoyah during this time frame?

20 A No one from Sequoyah ever contacted me. Two
21 individuals had mentioned to me that they understood that
22 there was some desire to move Sam Harvey to Sequoyah. I
23 then had inquired of Ron Grover as to whether anything was
24 going on.

25 He had mentioned to me a desire to transfer him to

1 Sequoyah. As my understanding of the personnel rules that
2 that could not be done. You could not take a Corporate
3 position and just move a Corporate position to Sequoyah.

4 That would be a change in the job and would
5 require a new job be posted and so it was not possible
6 within the rules to do that.

7 The other concern that I had given that the
8 organization that was coming up and this come up in a time
9 period when they knew that the reorganization was coming was
10 that even if we were to attempt to do that it would have
11 constituted a pre-selection because there were actually
12 three people holding identical positions.

13 If you would have picked one of those three and
14 moved them out of the area you would have been requiring the
15 other two to compete for the new positions. In fact pre-
16 selecting that one individual to have a permanent job so I
17 explained it could not be done, and my concerns as I stated
18 No. 1, it would have been a violation of personnel rules.
19 2, it would have really constituted pre-selection to protect
20 one individual from possible impact of the reorganization.

21 Q Was there any consideration given to advertise
22 that position?

23 A That would have been a decision by Sequoyah. I
24 don't know what they did or didn't do.

25 Q Did - well when you were talking - discussing -

1 who at Human Resources was advising you of these rules? Was
2 it Sequoyah Human Resources?

3 A No.

4 Q Or Corporate?

5 A My initial answer that came up was based on my own
6 knowledge but after which I confirmed that with Ed Boyles in
7 the Corporate --.

8 Q And you indicated that two people told you that
9 there was this rumor that there were attempts. Who were
10 these two people that told you this - about the transfer of
11 Sam Harvey?

12 A One was David Gatches and I think the second one
13 was Wilson McArthur but I'm not positive of that.

14 Q And did Mr. Boyles also when you contacted him
15 about this - did you contact him to ask him about it?

16 A Yes, I did.

17 Q And did he indicate the ways that that position
18 could have been filled?

19 A I'll try to understand your question.

20 Q Okay, you indicated that he said that he couldn't
21 - he couldn't just be transferred down there. Did he tell
22 you how you could have placed him down there if you had so
23 wanted?

24 A I don't recall asking him that.

25 Q Was anybody else - was there interest indicated by

1 anybody else regarding their own transfer down there like
2 anybody else in Corporate Chemistry? Chandrasekaren or
3 Fiser was any consideration of possibly moving one of them
4 down there or seeing if you could get a position down there
5 for any of them so they wouldn't be bumped out by this
6 reorganization?

7 A (No response.)

8 Q The elimination of one of positions in Corporate?

9 A There was no consideration of that, but you seem
10 to be asking a question like this was part of some plan. It
11 was just a simple request of moving somebody there and I
12 just addressed it as by the rules you cannot just move a
13 Corporate position and take it to the site.

14 I told you my second concern was even if we could
15 have concocted a way to do it it would have constituted pre-
16 selection of an individual to avoid them being impacted by
17 the reorganization.

18 Q Un-hum.

19 A Which were two reasons why we didn't think it was
20 something we should do. It just ended at that. There
21 wasn't any more.

22 Q I understand what you're saying but you know I
23 guess what I'm indicating is perhaps another Management
24 approach when you know you're having cut backs and you're
25 looking at you know people you know another Manager's

1 approach was that you know if we can find jobs for other
2 people let's do that so we've got two different approaches
3 here from Management.

4 I'm asking you if that was a consideration to -
5 knowing that there is going to be an elimination there were
6 you making any attempts at helping anybody trying to get
7 another job anywhere else?

8 A I personally did not do that for any position in
9 Operation Support at any time.

10 Q That's fine. Thank you. Involved in this issue
11 about the transfer, possible transfer of Sam Harvey, did you
12 ever indicate to anyone that you wanted Harvey's expertise
13 left at Corporate?

14 A I do not recall any such statement.

15 Q Is it possible? Are you saying you don't
16 remember? That you could have said it, or you did not say
17 it?

18 A I just don't recall any such conversation.

19 Q Okay. Going into the screening panel that was put
20 together for conducting interviews for the Corporate
21 Chemistry positions or RADCON Chemistry, Environmental,
22 whatever positions in '96 who was responsible for selecting
23 the individuals that were going to be on that screening
24 panel?

25 A When we set up the screening panel it was

1 initially recommended by Wilson McArthur. It was done in
2 consultation with Human Resources, Ed Boyles, and he also
3 talked to me.

4 At the time we were making the selection panel we
5 were aware at the time that by then Mr. Fiser had come to
6 Human Resources and had told them that if we proceeded with
7 the selection he would file the DOL complaint, and we were
8 trying to be very careful on everything we did to make sure
9 that we stayed fully in compliance with all the rules so we
10 fully involved Human Resources in everything we did.

11 Q Okay, so who were the first individuals that was
12 selected to be on the screening panel?

13 A The original screening panel would have been the
14 three RADCON Managers from the three sites. There would
15 have been John Cory from Brown's Ferry. Charles Kent from
16 Sequoyah, and Jack Cox from Watts Bar.

17 Q And whose recommendation was it that these there
18 individuals be the panel members?

19 A I believe that was originally Wilson McArthur's
20 recommendation.

21 Q Do you recall Mr. McArthur asking you or letting
22 you know that Cox had some problems with time constraints
23 for the date that this panel was scheduled for, and that he
24 had also indicated that if he was there he would have
25 selected Fiser, Mr. Fiser? Do you recall this coming up?

1 A Yes.

2 Q Can you tell me about that, please?

3 A Cox had originally committed to be on the panel.
4 He had then subsequently brought up that he would not be
5 able to attend. My recollection is that that was on
6 relatively short notice. A few days to a week time frame
7 from when we were going to have the panel.

8 Wilson had also told me when he brought it up that
9 Cox had made a remark to the effect that it didn't matter if
10 he was there because he had already decided one was Mr.
11 Fiser's position. He also mentioned another position at the
12 time. I don't recall what that was.

13 This Board was going to review I think it was five
14 positions in both RADCON and Chemistry positions. It was at
15 least one other position that he had indicated that he had
16 already made up his mind prior to doing it.

17 We were then faced with what do we do. We could
18 have tried to reschedule but it didn't seem appropriate to
19 reschedule. To put on an individual who had already
20 indicated that he really was not going to follow the process
21 he had already made up his mind who ought to be on it.

22 We had - so in order - and we were talking with
23 Human Resources on this and felt that we should keep the
24 panel with three technical members on it, and we first then
25 attempted to replace him with the Assistant Plant Manager

1 from Watts Bar but he was not available.

2 We subsequently decided that we could handle
3 someone from Corporate and we selected Rick Rogers. He was
4 the replacement person.

5 Q So when you were discussing - because I know you
6 used the word we several times if you can be a little more
7 specific for me. When you said that we attempted to get the
8 Assistant Plant Manager did you call the Assistant Plant
9 Manager, or who called the Assistant Plant Manager?

10 A I don't specifically remember who made the phone
11 call. The individuals involved in these discussions were
12 myself, Wilson McArthur, and Ed Boyles. I don't remember
13 who made the call to see if the Plant - Assistant Plant
14 Manager was available.

15 Q Was there any attempt to getting Mr. Voeller to
16 stand in for Mr. Cox?

17 A No, Mr. Voeller was the Chemistry Manager. This
18 was a Board to review both Chemistry and RADCON positions.

19 Q So I mean - explain to me your reasoning there
20 because I mean it sounds like you're trying to say something
21 to me but try to be more direct.

22 A Given the spectrum of people who we wanted the
23 Board made up of people with wider Plant knowledge than just
24 a Chemistry Manager so we did not consider going down to a
25 specific Chemistry Manager. We rather looked at going up at

1 the Plant.

2 When we could not do that we decided to use a
3 Corporate individual who had broad knowledge of Plant
4 Operations and technical issues.

5 Q Un-hum, okay. Did you ever indicate to Mr.
6 McArthur that Mr. Cox should remove himself from the
7 selection panel, or that Mr. Cox should not be on the
8 selection panel because of his previous bias towards Mr.
9 Fiser?

10 A I'm not sure I understand your question because
11 Cox had removed himself from the panel by saying he wasn't
12 available.

13 Q Un-hum.

14 A It was not a question in my mind of asking Cox to
15 remove himself. He had already removed himself.

16 Q Do you - why did he remove himself? Because of
17 the time constraint or because of this statement that he had
18 made that he would be in support of Fiser?

19 A I would have to assume it was the time schedule
20 why he was unable to attend.

21 Q Did you make a statement following that that he
22 shouldn't be on the panel anyway because of his bias towards
23 Mr. Fiser?

24 A As I mentioned answering another question at the
25 time we were to - the alternatives we would place on the

1 Board one would have been reschedule in order to meet Mr.
2 Cox's schedule which I don't know logistically if it would
3 have met those other members and the interviewees, but I
4 felt it would be inappropriate to put someone on a panel who
5 has already expressed that they have made up their mind.

6 Being on one of my panels the expectation is that
7 you will make an objective decision based upon the
8 individual's application and their interview results, and in
9 doing that you have to be able to put aside you know
10 personal knowledge or dealings with the individual because
11 you - most of our panel people know each other, whatever but
12 at that time Cox's statement indicated that he was not
13 willing to do that.

14 Q Did you ask him if he could be unbiased?

15 A I had no discussions with Mr. Cox.

16 Q Did anyone like Mr. McArthur ask him if he could
17 be unbiased?

18 A I don't know.

19 Q Do you - considering Mr. Kent's past attempts to
20 get Harvey transferred to Sequoyah doesn't this appear to
21 you that he might have been biased towards Mr. Harvey?

22 A I don't know that Mr. Kent made any attempts to
23 have him out there. When it was mentioned to me that
24 Sequoyah wanted him I don't even recall Mr. Kent's name
25 being mentioned. I really don't recall if any names got

1 mentioned.

2 I think my assumption was that it was the Sequoyah
3 Chemistry Manager, but I don't recall Ken's name being
4 specifically mentioned as being the individual trying to do
5 that.

6 Q Were Mr. Cory and Mr. Kent asked whether they
7 could be unbiased towards the two other individuals that
8 were providing them support?

9 A I did not ask them.

10 Q Do you know whether Mr. McArthur asked them?

11 A I don't know.

12 Q Can you please let me know what Mr. Rogers'
13 Chemistry background is?

14 A Mr. Rogers was selected to be on the Board because
15 of his broad general knowledge across the Plant. He had
16 among other jobs the Technical Support Manager at Sequoyah
17 for a number of years which would have involved - included
18 involvement in Chemistry and RADCON issues as they relate to
19 the rest of the -- (cannot hear. Voice drops off.)

20 Q Were you involved in Mr. Fiser's 1993 Department
21 of Labor complaint?

22 A No, I wasn't.

23 Q Were you interviewed in connection with it by the
24 TVA, OIG, anything?

25 A No.

1 Q Another - during one of your statements either
2 with Department of Labor in this investigation or TVA, OIG,
3 or possibly an Affidavit that you gave you indicated that
4 you and Mr. McArthur were trying to make sure that there was
5 no bias against Mr. Fiser based on his previous Department
6 of Labor complaints or settlements, and that you all were
7 going to check with HR to insure the people that were going
8 to be on that Board were not involved in any of those
9 settlements. Do you remember making any of that statement?

10 A I don't specifically remember the statement but I
11 do recall that we asked - the intention was to ask Human
12 Resources as part of this to look at - to insure that we did
13 not have anyone involved in that thing he was intimately
14 involved with the prior complaint.

15 Q Okay.

16 A I was not familiar with the prior complaint. I've
17 never seen any of the documentation or anything on it so I
18 personally have no knowledge of who had or had not been
19 involved.

20 Q And who was supposed to do this check for the
21 Human Resources for you?

22 A My contacts with Human Resources were with Ed
23 Boyles.

24 Q Do you know whether anybody checked with Human
25 Resources to see whether either Mr. Cory, Mr. Rogers, or Mr.

1 Kent had been involved in any of Fiser's past deals or
2 complaints or the current one?

3 A It's my recollection that I asked Human Resources
4 to insure that the people we had involved in this had not
5 been involved. I remember Ed Boyles coming back and saying
6 even though the Human Resource person is only a support to
7 the review - I forgot the individual's name - he changed the
8 Human Resource person because he had been involved in the
9 previous thing.

10 I believe the reviews of the prior issue with the
11 Human Resources were done by other people who were normally
12 involved with DOL type issues. Like I said my recollection
13 is I asked him to check on that.

14 Q Mr. Boyles, you asked him to check on that?

15 A That's my recollection.

16 Q Do you know that Mr. Kent and Mr. Cory were
17 involved in the past '93 Department of Labor complaint?

18 A No, I had no knowledge.

19 Q Pardon.

20 A No, I do not know that they were involved.

21 Q Okay. What I'd like to do now is discuss with you
22 concerning the rolling over of Mr. McArthur from his RADCON
23 position to the new RADCON Chem position during this 1996
24 reorganization. Can you give me background information
25 concerning that?

1 A When I took over the organization there was an
2 overall RADCHEM Manager. It was an individual in that
3 position I believe in an Acting capacity that I really did
4 not get involved in exactly his status because when I got
5 involved with the organization he was in the process of
6 retiring and leaving.

7 That was a position previously held by Wilson
8 McArthur who at the time was the RADCON Manager. When we
9 proceeded towards the reorganization of Operations Support
10 all of the positions that were being changed were reviewed
11 by HR for their decision as to which ones needed to be
12 posted. Which ones the incumbent could just roll over and
13 stay in.

14 The answer they provided back on that particular
15 position is that Wilson McArthur should actually be placed
16 in that position having previously held that position.

17 Q Who specifically told you that?

18 A Ed Boyles.

19 Q Was there any discussion regarding a possible
20 advertising of that position?

21 A Only in the same context of all the positions. We
22 discussed all of the possible positions in which they had
23 come back and I really only remember one and it really was
24 not McArthur's in which I questioned their decision but I
25 went along with their decision on the others.

1 Q The question I really have for you is based upon
2 my interviews with Mr. Boyles and Mr. Easley when the issue
3 came up regarding the advertising or non-advertising of Mr.
4 McArthur's position Mr. Easley has indicated that he advised
5 that that position in fact should be advertised.

6 Mr. Boyles is indicating that you asked him for
7 his opinion on this and he told you something different.
8 That you could roll him over into that position or something
9 to that effect but where the ultimate responsibility lies is
10 with the Manager to decide on how he wants to handle that.

11 According to Mr. Boyles he relied heavily on Mr.
12 Easley to give him advice because Mr. Easley was considered
13 the expert among Human Resources in advertising and posting
14 and waivers. You know all the organizational matters and
15 Mr. Easley is telling me that he advised against it. Just
16 rolling Mr. McArthur over into this, so what we've got right
17 now is this huge conflict between Mr. - what Mr. Easley is
18 saying and what you and Mr. Boyles are saying and you know
19 and other individuals.

20 This can be a very critical question and I asked
21 Mr. McArthur earlier if he would be willing to take a
22 polygraph on this and I'll ask you also if in fact you would
23 take a polygraph regarding this issue in how this decision
24 was made to post or advertise this position.

25 MR. MARQUAND: With respect to that item?

1 MS. BENSON: Well and possible other items that we
2 would go through --

3 MR. MARQUAND: Have you asked Ben Easley if he
4 would be willing to take a polygraph?

5 MS. BENSON: We usually don't do --

6 MR. MARQUAND: I mean it seems the conflict is
7 between Ben Easley and Ed Boyles not between anything Mr.
8 McGrath has said and Ben Easley. He didn't say that Ben
9 Easley told him that.

10 MS. BENSON: First of all we would you know
11 discuss Mr. Easley after other people --. You know if it
12 was shown that other people were being truthful then we
13 would ask Mr. Easley. There is also basically what Mr.
14 Boyles has indicated is - and there are conflicts in
15 testimony but what he has indicated is ultimately you're the
16 one responsible to make the decision based on his advice.

17 Now what his advice was is you know what he is
18 telling me is that you know one thing but maybe what he told
19 other people is something else. Okay, about what was told
20 to you. Okay.

21 If the position wasn't advertised because people
22 were afraid of some kind of action by other people that
23 might be interested in posting for that position it's not to
24 say that Mr. McArthur wasn't qualified for the position nor
25 would he have been selected for it, but according to even

1 the policy I've read and there are some real issues on the
2 position descriptions and everything else here this is going
3 to be a major area of concern and some investigation.

4 It's basically a decision that is made by you as
5 the Manager. You can be advised but you have made the
6 ultimate decision not to advertise that position.

7 A My understanding at the time was that was Human
8 Resources' decision.

9 Q That's not what Human Resources has told me.

10 A My understanding was that it was their decision
11 when they said this is how it should be done. If I had an
12 option to do something different I didn't understand I had
13 an option to do something different.

14 Q Okay, so you were not told about a way to request
15 a waiver - to have that position not be advertised and
16 request a waiver so Mr. McArthur could be rolled over into
17 that position?

18 A I don't recall any discussion of a waiver.

19 Q Okay, Mr. Boyles never told you that that was a
20 possibility and one possible way of not advertising the
21 position?

22 A As I said I don't recall any discussion of a
23 waiver. I discussed - I recall that the answer back was
24 that the proper action to take on that position would be to
25 place Mr. McArthur in it because he was previously in the

1 position.

2 Q Well what I've gotten so far is that that's not
3 the answer that was given to Mr. Boyles and after Mr. Boyles
4 discussed this with you he came back and said well this is
5 the way we're going to do it?

6 A First, Mr. Boyles never came to me and said I had
7 to advertise the thing. Very early we started off the
8 entire thing from the assumption that would have to
9 advertise all positions.

10 Q And that is the policy?

11 A Okay, and we then went back and looked at all of
12 them throughout all of Operation Support and -- and looking
13 at which positions we needed to advertise or not advertise
14 was a review of all of the various positions.

15 I think I may have asked Mr. Boyles when we
16 started looking at them all did in fact McArthur was in that
17 position previously whether that had any bearing on it or
18 not. That was asked as a question not a desire to get a
19 waiver or change that. I had asked him that because Mr.
20 McArthur had asked me that. I passed that on as a question.
21 Not a request for a waiver.

22 When Human Resources came back with their answer
23 to me the only position I questioned happened to be with one
24 of Steam Generator Manager which was one - that was one
25 where the individual who had previously been in the job had

1 moved on to another job which included that but had added
2 responsibilities.

3 Even though the work he was doing predominantly
4 still the same -- as explained to me that since his new
5 position had additional duties and we were going essentially
6 back to another position with a different set of duties that
7 was in the PD that we needed to advertise it.

8 That particular one I had questioned because I
9 knew we only had one person in the Company who was actually
10 qualified for the job and it appeared to be an
11 administrative waste of time and effort but they told me
12 that those were the rules and that's how I had to do it.

13 Again, there was no mention of you can go get a
14 waiver so we went ahead and advertised that position but we
15 went through selection process. Only one person applied so
16 the selection process became easy on that one, but that
17 particular one was the only one that I recall any
18 disagreement in what they came back to me with.

19 Q Un-hum.

20 A If Mr. Boyles and Mr. Easley were not in agreement
21 I was not aware of that and Mr. Easley never came and talked
22 to me about that. (Cannot hear this part because of
23 shuffling of papers.)

24 Q So Mr. Easley never indicated to you at anytime
25 that you needed to - that he would recommend advertising

1 that position?

2 A I do not recall him ever saying that to me.

3 Q And the rationale now that you're saying that --
4 meaning Mr. Boyles was that the position didn't need to be
5 advertised because Mr. McArthur had held a position similar
6 to this previously. Not he was in a current position, that
7 current position, but previously to that position. That was
8 the rationale you're saying he made to you?

9 A I think that's what he told me. I don't remember
10 all of it. I didn't go back and get into all of the details
11 of exactly what they -- come to that conclusion. You need
12 to know that we were looking at a large number of position
13 descriptions at the time. A large number of positions. I
14 wasn't personally reviewing the position descriptions. I
15 was relying on them to review them.

16 Q Only when there was questions involved in it like
17 Mr. Gatches, Mr. McArthur's?

18 A Yeah, even then I'm not exactly sure to the degree
19 which I - on those particular ones is -- that would have the
20 position descriptions. (Hard to understand witness with
21 some words.)

22 Q What about the position that Mr. Fiser was having
23 to bid for or that was being advertised his particular
24 position did anyone discuss with you that Mr. Fiser had also
25 previously held a similar position?

1 A In the case of the position that Mr. Fiser had
2 when the new position descriptions were prepared which I
3 personally was not involved in Mr. Fiser had come to HR and
4 indicated that he would submit a DOL complaint if we
5 advertised it. As I understood the concern was the
6 similarity to the position that was involved in his prior
7 settlement. At that time what I asked Human Resources to do
8 --

9 Q And who in Human Resources?

10 A Ed Boyles.

11 Q Okay.

12 A My dealings with Human Resources in this time
13 frame went through Ed Boyles which was my normal way of
14 dealing with Human Resources.

15 Q Did you ever discuss any of this with Mr. Easley?

16 A As to what did or did not have to be advertised I
17 don't recall that. Easley would come by to see me on
18 miscellaneous HR things once in a while. I don't recall
19 discussions with him on what did or did not require
20 advertising.

21 On this particular one and the Fiser one we asked
22 despite the previous reviews we were coming up with because
23 Mr. Fiser raising this concern a possible conflict with his
24 prior deal on settlement. I know that Ed Boyles got other
25 people in Human Resources involved. Those were involved

1 with the DOL. I believe they consulted with OGC where they
2 felt it was appropriate to do that.

3 I was told how this was being handled. It even
4 went to our DOL Task Force to look it and relied on them to
5 review all of the rules that existed relative to posting DOL
6 settlements. All of the necessary requirements to make sure
7 that we were fully in compliance with all of the
8 requirements.

9 My own personal experience is that Human Resources
10 approached to advertising positions and they tended to be
11 very concerned and very much wanted to stick to exactly what
12 their rules were.

13 In doing the entire Operation Support area I did
14 not even consider asking for any waivers to the rules for
15 any positions.

16 Q Un-hum, okay, so basically the opinion of Human
17 Resources and all the other people that were involved in
18 reviewing this complaint by Mr. Fiser the ruling was that
19 the position should be advertised?

20 A That's correct.

21 Q I don't think that that's an argument you know by
22 anybody. I think that was a fair ruling. The argument
23 comes in in that you know the argument you used for rolling
24 McArthur over was the same argument that you didn't roll
25 Fiser over into it according to the advice that Mr. Easley

1 was giving you. That there was no difference --

2 A Mr. Easley - excuse me - Mr. Easley was not giving
3 me any advice. He did not discuss this with me.

4 Q Okay, he never stated that to you?

5 A No, he did not.

6 Q Okay. Did Mr. Grover ever discuss with you or
7 indicate to you or tell you that he was interested in
8 applying for the position that Mr. McArthur or the newly
9 created position of RADCON Chem Manager in 1996?

10 A He may have said something to me but I believe it
11 was well after McArthur had been put in the position.

12 Q You don't recall him coming to you and briefly
13 stating that he would be interested in bidding for that
14 position before your announcement at the Staff meeting that
15 Mr. McArthur was taking that position?

16 A No, I do not recall him coming and telling me
17 that.

18 Q Okay.

19 A I believe that sometime later he indicated he
20 would have been but it was not prior to it.

21 Q And you don't recall that, or are you saying he
22 never came to you?

23 A I believe I can say that he never came to me.
24 Let's go back - I do not recall anytime that he came to me.
25 I do recall that sometime subsequent to that he told me

1 that.

2 Q And after Mr. McArthur was rolled over into that
3 position or transferred into that position what did Mr.
4 Grover say to you at that point?

5 A I don't remember.

6 Q Did Mr. Boyles ever have a discussion with you
7 regarding any conversations he had with Grover concerning
8 this?

9 A I don't remember.

10 Q Do you know what position the RADCON CHEM position
11 was? Was it PG 11 or PG Senior. Was it promotion for Mr.
12 McArthur to go in there?

13 A I'm not sure. I thought he was already one was a
14 Senior. My recollection was a Senior Manager but I thought
15 he already was a Senior Manager.

16 Q Okay, I think that he and Mr. Grover were both in
17 PG 11 positions if I'm not mistaken.

18 A I don't know. I don't know the answer to that. I
19 really did not go and look at --

20 Q Were you involved in the agreement that was
21 negotiated for Mr. Grover following Mr. McArthur's selection
22 for that position?

23 A That agreement was primarily handled by Phil
24 Reynolds. Phil Reynolds kept me informed of what was going
25 on. I don't remember how I came to know that Grover had an

1 interest in going to Empo. I don't remember the specifics
2 of how I got to know that.

3 When I did get to know that I think I checked into
4 that and had let Reynolds know about that but as to the
5 specifics of the agreement with him I was not involved in
6 working it out. I was basically told what it was.

7 Q What else were you told about the agreement they
8 had with Mr. Grover?

9 A The only thing I recall is that what precipitated
10 the agreement it was that Mr. Grover had threatened to file
11 an EEO complaint.

12 Q Concerning what?

13 A I'm not sure I ever asked. I recall being told it
14 was an EEO complaint but I'm not sure I specifically asked -
15 ever asked what it was about.

16 Q And what else were you told about the agreement?

17 A With respect to what?

18 Q What was the agreement? I mean what were you told
19 that the agreement was with Mr. Grover?

20 A It seems to me I saw a memo that had to do with it
21 which I may have had to concur with. I knew that he was
22 going to Empo on --. I believe that he was being promoted
23 to a Senior Manager while at Empo.

24 I believe there was some agreement to pay certain
25 expenses related to his going down to Empo but I'm not sure.

1 That might not be common for people to go down to Empo.

2 I think it involved signing a -- at some point but
3 I don't remember at what point that was supposed to occur.
4 That's the only parts that I - that's my recollection of
5 what was in the agreement.

6 MS. BENSON: Do you understand this, Mr. Marquand?

7 MR. MARQUAND: No.

8 Q Do you recall ever making any derogatory or
9 negative statements regarding Mr. Fiser after you became the
10 Acting Operations Support Manager, or while you were
11 fulfilling that role in any capacity?

12 A The only issue I had at all with Mr. Fiser's
13 performance was one small item. I don't remember
14 specifically what was going on at Watts Bar at the time in
15 which I had asked him to report back to me in a couple of
16 days as to how it was working out. He did not do that.

17 I subsequently discussed with Grover that I would
18 have expected him to report back to me like I had asked him
19 to. That's the only thing that I had any problems at all
20 with his job while he was in Operations Support and the only
21 thing that I can think of where I had any sort of a negative
22 comment.

23 Q Did you ever indicate to anyone that you wanted or
24 desired to have Mr. Harvey be the one who was ultimately
25 selected for the remaining Power Chemistry position, a PWR -

1 -?

2 A No, I did not, and I think we even really went out
3 of our way in this one to try to do our best to make sure
4 that the selection and competition was unbiased and that we
5 selected the best candidates in accordance with all rules.

6 MS. BENSON: I think you've basically covered
7 everything for me. Do you have anything?

8 MR. MARQUAND: No.

9 MS. BENSON: Okay, this will conclude the
10 interview. I appreciate your time today. Is there anything
11 more that you would like to ask me, or any other statements
12 that you would like to make?

13 THE INTERVIEWEE: I'd like to go off the record so
14 I can go get a drink of water. Give me a minute to collect
15 my thoughts.

16 MS. BENSON: Okay, the time right now is 2:18
17 p.m..

18 [Discussion off the record.]

19 MS. BENSON: Be going back on the record and the
20 time now is 2:26 p.m.. Okay, go ahead.

21 THE INTERVIEWEE: I really just wanted to wrap up
22 by emphasizing to you that we tried very conscientiously in
23 this thing to insure that we were fair to all the people
24 involved and that we were in compliance with all of the
25 rules that were involved.

1 Until Mr. Fiser had - I mean we started off
2 towards being fair towards everyone. When Mr. Fiser came to
3 HR and raised the question - I mean while he was stating he
4 would submit a DOL complaint he was saying he was as I
5 understood his concern was that we would be violating the
6 terms of his prior DOL settlement.

7 When he brought up this new one was the first that
8 I knew that there was a prior DOL settlement with him so
9 from that time -- said if it involves a prior settlement
10 here we need to make sure that we are totally in compliance
11 with all the rules whatever we agreed to before.

12 I discussed that with Ed Boyles. He got the Human
13 Resources, HR people involved. We got OGC involved as
14 appropriate. As I mentioned there was a DOL Task Force
15 which involves the concerns, resolutions staff and we had
16 them involved through all of it watching everything that was
17 being done here to insure that we were fair and that we also
18 did not do anything that in any way deviated from the prior
19 agreement with Mr. Fiser.

20 MS. BENSON: Okay.

21 THE INTERVIEWEE: And I think we stuck to that and
22 came out with what was a fair selection at the end of the
23 process.

24 MS. BENSON: Okay.

25 MR. MARQUAND: Did you know prior to Mr. Fiser

1 raising that issue with HR that he would file a Department
2 of Labor complaint regarding an alleged breach of his
3 previous DOL case? Before that were you aware that he even
4 had a previous DOL case?

5 THE INTERVIEWEE: I was not aware that he had a
6 previous DOL case until he brought it up as part of coming
7 to HR and telling that his concern was that we were
8 breaching the agreement from his prior case.

9 MS. BENSON: Can I ask him something to clarify
10 that?

11 MR. MARQUAND: Sure.

12 MS. BENSON: Okay. You're saying you weren't
13 aware but I'm going to go back to those interviews
14 previously and yours and Mr. McArthur's attempts were to
15 have a Board of members that were not aware of his past
16 complaints so it seems you know just by stating that in your
17 interview you're acknowledging right there that you had
18 knowledge of his prior complaints or his prior settlement.

19 THE INTERVIEWEE: He made - he brought the concern
20 and indicated that he would submit another one for breach of
21 his agreement on his first one long before we ever got
22 putting together the Board. He made that statement prior to
23 us ever posting the positions.

24 We delayed posting the positions I believe a
25 couple of weeks to allow time for further review to insure

1 that by posting those positions we were not doing anything
2 in violation of the prior agreement.

3 MR. MARQUAND: The complaint was filed before the
4 Selection Review Board met and they conferred with me prior
5 to us even receiving the Department of Labor complaint.

6 MS. BENSON: Right, I know but there is other
7 issues that were brought up in his DOL complaint besides
8 just the question of the position.

9 MR. MARQUAND: Yeah, the point that I think Tom
10 was addressing was in your earlier questions. One of your
11 earlier questions you asked about an OIG interview referring
12 to his knowledge of complaint of complaints.

13 At the time that the SRB met he had been briefed
14 because of Gary's threat to file a Department of Labor
15 complaint and was told about that threat so at that point
16 and time is when he learned and that was prior to both the
17 posting and the Selection Review Board.

18 MS. BENSON: Okay.

19 MR. MARQUAND: But that's the point and time in
20 which he learned.

21 MS. BENSON: Okay, that's fine.

22 MR. MARQUAND: And having been apprised of Gary's
23 threat Mr. McGrath and everyone else was very careful to
24 elicit advice from all the people who were involved or could
25 offer advice as to the appropriate way to go.

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1 MS. BENSON: I don't think that's an argument as
2 far as - you know I don't think we're arguing that it --.
3 (Cannot understand these words.) I mean that the rules
4 appear that it really was making an effort to do that fairly
5 I don't know that that's necessarily the argument.

6 MR. MARQUAND: The other thing - something else I
7 think may be that - that may be I've seen emphasis on is the
8 question about should there have been a proponent of each of
9 the candidates on the Selection Review Board.

10 I think if you will look at the way Selection
11 Review Boards are constituted throughout TVA Nuclear that
12 that's not ever a consideration. The consideration is how
13 do we post it. How do we put together a fair Selection
14 Review Board and the fact in this case it would have three
15 RADCON Chemistry Managers.

16 Although that looks very symmetrical I think that
17 is probably the exception rather than the rule. The norm is
18 that you will have a primary customer or a peer and a
19 technical -- rule.

20 I don't think you ever see - I think it's very
21 infrequent that you see that sentry that they initially
22 sought to obtain in this case. I think it would have been -
23 I'm not aware of that ever happening. Normally, it's very
24 much a different situation.

25 MS. BENSON: And I understand that also. The

1 point I think that needs to be reviewed is that knowing that
2 he did file a complaint and to insure that it's handled
3 fairly you've got two customers you know that are present on
4 the panel that are kind of almost before or against the
5 person that services them and he you know in his capacity
6 his customer was not present so I mean this is an argument
7 not really for us to decide today.

8 Unless you have any other comments that you would
9 like to add regarding any of your testimony today or
10 anything further you would like to add?

11 THE INTERVIEWEE: I've nothing else to add.

12 MS. BENSON: Any other questions of him?

13 MR. MARQUAND: I do not.

14 MS. BENSON: Was all the information you provided
15 today provided voluntarily and without threat or coercion
16 from the NRC?

17 THE INTERVIEWEE: Yes.

18 MS. BENSON: And we'll conclude the interview.

19 The time now is 2:34 p.m.

20 [Whereupon, at 2:34 p.m., the interview was
21 concluded.]

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COMMISSION

REPORTER'S CERTIFICATE

I, J.B. SHELTON, reporter, hereby certify that the foregoing transcript consisting of pages is a complete, true, and accurate transcript of the testimony indicated, held on April 20, 1999 in Chattanooga, Tennessee in the Matter of the interview of THOMAS J. McGRATH.

I further certify that this proceeding was recorded by me, and the foregoing transcript has been prepared under my direction.

Date: APRIL 23, 1999

J. B. Shelton

Official Reporter

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