

1 A Yes.

2 Q Okay. Now --

3 A But he said he didn't want -- there was  
4 information they were going to be discussing and because Mr.  
5 Fiser had tape recorded individuals in the past, they didn't  
6 want that subject to be recorded. Okay? But it was based  
7 on information --

8 JUDGE YOUNG: He said that, about the tape  
9 recording.

10 THE WITNESS: That's right, he said we were going  
11 to discuss information that's personal and we didn't want --  
12 I know he's recorded stuff in the past, so we didn't want  
13 that to get recorded.

14 BY MR. MARQUAND:

15 Q You didn't put that in your statement though, did  
16 you?

17 A In what statement?

18 Q This statement right here, Staff Exhibit 51.

19 A Well, I mean I've given numerous statements,  
20 they're all not worded exactly the same, but that's been  
21 what I've said all along.

22 Q That's not in Exhibit 51, is it?

23 A What, that --

24 Q That McArthur didn't tell you that they asked  
25 Fiser to leave because Fiser had tape recorded in the past.

1 A It's up here, you just read it.

2 Q Is that where you state in the third paragraph on  
3 page 3, you asked McGrath why they asked him to leave and  
4 McArthur's statement back to you does not say that they  
5 asked him to leave because of him tape recording, does it?  
6 You did not include that reason as a reason McArthur gave  
7 you.

8 A Again, I didn't write this, but that statement is  
9 correct. Now if you want to add that as a postscript  
10 because -- going back to what I said before, because he had  
11 taped -- that's the reason why they asked him to leave.

12 Q You gave that statement more than four years ago,  
13 didn't you?

14 A Yes.

15 Q You gave it six years ago.

16 A Yes.

17 Q Six years ago?

18 A Yes, that's the date.

19 Q Let me now direct your attention to the  
20 conversation between Dave Voeller and Sam Harvey that you  
21 testified about.

22 Your testimony was, I believe, that you drew an  
23 inference that Sam Harvey was confident he was going to get  
24 one of the new jobs, correct?

25 A Say what again?

1           Q     You drew the inference that Sam Harvey was  
2 confident that he was going to get one of the new chemistry  
3 program manager jobs.

4           A     I did not draw the inference, I was asked a  
5 question about some notations and plus this was basically  
6 what was communicated to me by Mr. Voeller. Now the exact  
7 wording, you have to go back to what was actually in the  
8 depositions or whatever.

9           Q     You also testified that maybe Sam Harvey knows  
10 something we don't know, is that correct?

11          A     I stated that earlier, yes. I was asked why did  
12 he say that, and I said maybe he knew something we didn't  
13 know.

14          Q     Let me direct your attention to TVA Exhibit 116.

15                JUDGE YOUNG: Is that one of the late ones?

16                MR. MARQUAND: Yes, that is a March 29, 1996 page  
17 from Mr. Fiser's planner.

18                JUDGE YOUNG: Right.

19                MS. EUCHNER: Your Honor, I'm going to object to  
20 this again. Again, he went through this sheet of paper in  
21 detail with Mr. Grover when he did his cross examination on  
22 May 6. And I certainly didn't discuss any of these entries  
23 on redirect and I don't see any testimony we've gotten since  
24 then that makes it any more relevant than it was when he  
25 asked him about it the first time. So I think we're getting

1 into cumulative evidence here if he's going to ask him about  
2 the same document twice.

3 JUDGE YOUNG: Is there a new element of it?

4 MR. MARQUAND: Yes, Your Honor, I'm going to link  
5 it up to this last conversation between Dave Voeller and Sam  
6 Harvey.

7 BY MR. MARQUAND:

8 Q Mr. Grover, directing your attention to paragraph  
9 5 on TVA Exhibit 116, do you see the entry "Ron Grover:"?

10 A Yes.

11 Q It says, "Met with me privately (Chandra came in  
12 later), Ron said that it was planned now that they would  
13 keep two in our group, but it would be him and Chandra." Do  
14 you see that?

15 A Yes.

16 Q Do you think that Mr. Fiser got the impression  
17 from that that you had some inside information that you and  
18 Chandra were being preselected for two -- the two jobs that  
19 were being kept?

20 A Well, first of all, you're interpreting -- first  
21 of all, I can't speak for him -- but secondly, you're  
22 interpreting that wrong. He's saying him and Chandra, he's  
23 talking about himself, not me. You're saying that it's me  
24 and Chandra. That's him, he's referring to himself.

25 Q Do you think Fiser thought that you were telling

1 Fiser that Fiser and Chandra --

2 A That's him himself, not me.

3 Q Okay, so is --

4 A And secondly, I didn't write -- you have to ask  
5 him, I mean we've gone through this before, I don't -- you  
6 know.

7 Q Did you tell Mr. Fiser in March of '96 that the  
8 two people left would be Fiser and Chandra?

9 A No, how am I supposed to know that when we haven't  
10 gone through any process?

11 Q Well, what did you tell Mr. Fiser on March 29,  
12 '96?

13 A I don't recall what we specifically -- I don't  
14 have a tape of that, I can't -- you know, we talked all the  
15 time, I can't specifically say what specifically was said.  
16 And he wrote that based on how writes it, I don't -- you  
17 know.

18 Q Did you ever have a discussion with Mr. Fiser in  
19 which you gave him the impression that Mr. Fiser would be  
20 the one who remained, and not Mr. Harvey?

21 A No.

22 Q Okay. Now if Mr. Harvey had been the one in fact  
23 transferred to Sequoyah, that would leave two individuals in  
24 the corporate organization as chemistry and environmental  
25 program managers, wouldn't it?

1           A     You mean two positions?

2           Q     It would have left Chandra and Fiser downtown if  
3 Harvey was sent to Sequoyah.

4           A     That would have been the two people that are  
5 currently in the positions applying and interviewing for  
6 those two positions, yes.

7           Q     And you were aware of that at the time, at the  
8 time that Harvey was being considered for a transfer to  
9 Sequoyah.

10          A     Well, yes, I was involved with it.

11          Q     Let me lastly refer you to TVA Exhibit 120, the  
12 May 7, 1996 page from Mr. Fiser's planner. Let me direct  
13 your attention to the second paragraph for the entry for Ron  
14 Grover. Counsel asked you about this. I wanted to make  
15 sure I understood your testimony. It says you had visited  
16 with Sam at Sequoyah yesterday, he, meaning you, said Sam's  
17 job was up in the air. They were probably trying to do  
18 something illegal. What do you understand Mr. Fiser  
19 referring to as them trying to do something illegal?

20          A     Well, like I said before, Your Honor and I had a  
21 lengthy discussion about it, it was not known -- I did not  
22 know how they were going to make the transfer. And he  
23 refers to his job is up in the air, he's referring to the  
24 job out at -- he's probably referring to the job -- you'd  
25 have to ask him for clarification, but he's probably

1 referring to the job out at Sequoyah.

2 Q Correct.

3 A And if I come back and say I don't know how  
4 they're going to specifically do it because, they hadn't  
5 expressed to me that they were going to post it and so  
6 forth. If they were going to do that, there was no need for  
7 them to come talk to me about trying to make the transfer.  
8 So he could have interpreted that that it could be done  
9 illegally, it could be based on why they're not following  
10 the standard procedures, so maybe it's an illegal way. I  
11 mean, that's his characterization of it.

12 Q Well, we talked earlier about there being two  
13 processes, one being a transfer of function --

14 A We talked about three processes.

15 Q One being a transfer of function and another being  
16 posting a vacant position.

17 A Well, two variations of the transfer of function  
18 and posting the vacant position, yes.

19 Q And if they weren't going to transfer the  
20 function, another way to do it would have been to post the  
21 vacant position, correct?

22 A That's correct.

23 Q But as you understood it, they couldn't simply  
24 give Mr. Harvey a vacant position without posting it. That  
25 is they could not consistently with their processes have

1 given him a job, a vacant job without posting it.

2 A Like I said, I wasn't expert on that, I wasn't in  
3 HR. That's why I went to HR. I've never handled a transfer  
4 between a site and corporate or corporate and the site. So  
5 I wasn't sure what the procedure was, that's why I went and  
6 told them. I did not know.

7 Q The next sentence --

8 A All I was told was that this was done before,  
9 we've had transfers between corporate and a site before.

10 Q The next sentence says "He also said McGrath was  
11 probably going to use this opportunity to rewrite the PDs  
12 such that he can keep Sam and get rid of me. He wants to do  
13 this because of the NRC charges I raised in the past." Do  
14 you see that?

15 A Yes.

16 Q Did you tell Mr. Fiser that McGrath was probably  
17 going to rewrite the PDs to get rid of Fiser so he could  
18 keep Sam?

19 A No.

20 Q Did you tell him that McGrath would do that  
21 because of the NRC charges Fiser had raised in the past?

22 A No. I mean he could fill that in, if that's how  
23 he fills it in, I don't have -- I didn't write this.

24 Q You didn't tell him anything to give him that  
25 idea.

1           A     No, he probably concluded that himself based on  
2 all he say that was going on, he probably concluded -- I  
3 can't speak for him.

4           Q     Now you spearheaded the rewriting of those  
5 position descriptions, is that right?

6           A     I assisted in helping to coordinate that.

7           Q     Did you get any input or did McGrath rewrite the  
8 position descriptions, the chemistry program manager  
9 position descriptions?

10          A     Did I get any --

11          Q     Did McGrath give you input --

12          A     I don't know whether he provided input or not, I  
13 just tried to coordinate input and I sent them up through  
14 Wilson McArthur and --

15          Q     But McGrath didn't give any input to you.

16          A     He didn't give any to me, no.

17          Q     And as far as you know, he was not involved in  
18 rewriting those position descriptions?

19          A     As far as I know, he could have been; I don't  
20 know.

21                   MR. MARQUAND: Thank you, Mr. Grover.

22                   MS. EUCHNER: I have maybe three questions.

23                                   REREDIRECT EXAMINATION

24 BY MS. EUCHNER:

25           Q     My first question, I want to go back to what you

1 were talking about with Mr. Marquand about what Mr. McGrath  
2 told you was his problem with Mr. Fiser. Was he discussing  
3 -- I know you said he didn't go into any great detail -- was  
4 he discussing some sort of dispute that he had with Mr.  
5 Fiser?

6 A No, he just made it as kind of a one sentence or  
7 two sentence comment that he didn't think highly of him  
8 because of his interactions with him when Mr. Fiser was  
9 chemistry manager at Sequoyah and he was involved with NSRB.  
10 That was the end of it. I mean, it wasn't -- we didn't get  
11 into the specifics on what it was and I didn't ask.

12 Q Now with regard to the transfer or potential  
13 transfer of Mr. Harvey to Sequoyah. When Mr. Kent made this  
14 request of you, Mr. Kent and Mr. Rich, did Mr. Kent ever  
15 tell you that he didn't really want Mr. Harvey because his  
16 people didn't like Mr. Harvey?

17 A Did he say that --

18 Q Did he say that he didn't really want Sam Harvey,  
19 because his people didn't like him?

20 A No.

21 Q And Mr. Marquand just asked you about the  
22 different ways that you could transfer and you said that you  
23 went to HR. Was one of the ways that HR told you that you  
24 could transfer someone was to seek a waiver? Do you recall  
25 Mr. Easley telling you that?

1           A     I don't specifically recall. I mean he mentioned  
2 a couple of different things. All I know is I remember  
3 distinctly the fact that you could -- we talked a lot about  
4 transferring their head count and they'd pick up the budget  
5 or we transferred the head count and the budget out  
6 threatened, or the site may have the position.

7                     We talked about a couple of things but it wasn't  
8 nothing nailed down, like I said before, let's see if  
9 everyone agreed to do it, first, and then you nail down the  
10 specifics on the best way to do it.

11           Q     So Mr. Easley basically explained to you what the  
12 methods were that you could transfer someone consistent with  
13 TVA policy.

14           A     Well, that has been used in the past. Now I  
15 didn't review any policy, I didn't -- I'm going on what was  
16 explained, but I just made the assumption it was based on  
17 TVA policy.

18           MS. EUCHNER: I have nothing further.

19           CHAIRMAN BECHHOEFER: Mr. Marquand, do you have  
20 any --

21           MR. MARQUAND: No further questions.

22           CHAIRMAN BECHHOEFER: Pardon?

23           MR. MARQUAND: No further questions.

24           CHAIRMAN BECHHOEFER: Mr. Grover, I'd like to ask  
25 you questions on a couple of the subjects.

1           The first one arises out of Staff Exhibit 51, page  
2 3, but there perhaps might be other evidence. There are  
3 statements in here that Wilson McArthur did not have a very  
4 high opinion of Gary Fiser from a professional standpoint.  
5 And this is '96 I guess.

6           THE WITNESS: Okay.

7           MS. EUCHNER: Were you talking about Dr. McArthur  
8 or Mr. McGrath?

9           CHAIRMAN BECHHOEFER: No, Dr. McArthur now. There  
10 were some statements on this page and I just wondered  
11 whether Mr. Grover agreed with those. It's on Staff Exhibit  
12 51, page 3.

13          JUDGE YOUNG: Which statements?

14          CHAIRMAN BECHHOEFER: Statements concerning Dr.  
15 McArthur's opinion of Gary Fiser.

16          THE WITNESS: Yes.

17          CHAIRMAN BECHHOEFER: Would you agree that Dr.  
18 McArthur had some reservations about Mr. Fiser's abilities  
19 at that time?

20          THE WITNESS: Yes. I mean, you know, Mr. McArthur  
21 kind of -- he did a lot of flip-flopping, I mean, you know,  
22 he probably -- my take on it was he probably like Gary as a  
23 person, personally maybe, but he didn't trust him, primarily  
24 because of the taping incident, you know, whatever went in  
25 the past. I didn't spend time getting into all that and I

1 wasn't here, I wasn't involved. My focus was on moving  
2 forward and getting the job done and challenging these  
3 individuals to try to get the job done.

4 So that's input I got from him. I mean he stated  
5 that to me.

6 CHAIRMAN BECHHOEFER: Well, what I wanted to do  
7 was compare your statement right now with what you said  
8 earlier on May 6 actually at page 1822. Specifically you  
9 said that Dr. McArthur had a very high opinion and praised  
10 Mr. Fiser at that time, that was '94 I guess.

11 THE WITNESS: Right. When I first came in the  
12 organization, I did not know Mr. Fiser. When they informed  
13 me that he was coming back to the organization, Mr.  
14 McArthur, the person who notified me, was the one who  
15 initially notified me, him and John Maciejewski, I can't  
16 remember -- I think it was Mr. McArthur first initially. But  
17 that's all they had, they -- him and several others, Mr.  
18 Fiser is a good man, he's a good person, he wasn't treated  
19 fairly -- that's what I got initially.

20 CHAIRMAN BECHHOEFER: But what I'm quoting from is  
21 a statement, he, Dr. McArthur, had mentioned that Gary Fiser  
22 was treated unfairly and he was a good individual, this --  
23 it says this, that and the other.

24 THE WITNESS: Right, right, that's correct.

25 CHAIRMAN BECHHOEFER: That's the course of the

1 testimony I'm referring to.

2 THE WITNESS: That's correct.

3 CHAIRMAN BECHHOEFER: Now do you know -- do you  
4 think or do you know whether the filing of the DOL  
5 complaint, the '93 one, was the reason or the only reason  
6 for this change, or was a contributing reason for this  
7 change of opinion?

8 THE WITNESS: No, I mean, he was aware he filed  
9 the DOL complaint, that was a part of the settlement, him  
10 coming back. So Mr. McArthur knew about that before.

11 CHAIRMAN BECHHOEFER: Right.

12 THE WITNESS: So like I said, when he first came  
13 back, maybe it was because I'm new in the organization and  
14 they were all supportive of him coming back and saying that,  
15 you know, he's a good man and this, that and the other.  
16 Okay, well, I don't -- but they knew all this other -- you  
17 know, he knew about the taping and all that other stuff at  
18 the same time. Maybe because he's coming back, we have to  
19 accept him back, so let's try to make this work. Maybe that  
20 was his approach, I don't know.

21 MS. EUCHNER: Your Honor, could I just ask you a  
22 quick question? You were referring to Staff Exhibit 51,  
23 page 3. Can you tell me where on page 3 it says that Dr.  
24 McArthur said anything about Mr. Fiser's performance in the  
25 past? Because I see the discussion about the tape recording

1 but I don't see anything that says Dr. McArthur said  
2 anything about Mr. Fiser's performance. I just wanted to  
3 make sure I was looking on the right page and place.  
4 There's really two references on this same page to what that  
5 -- says he didn't -- Dr. McArthur did not like -- did not  
6 dislike---sorry, that's my mistake---dislike Fiser  
7 personally, but he distrusted him because of what happened  
8 in the past. Now, this is a statement in '96, 1996.

9 MS. EUCHNER: Well, in my...

10 CHAIRMAN BECHHOEFER: Also at the bottom of the --  
11 toward the bottom of the page, it seemed to me that -- well,  
12 it mentions McGrath, that McGrath and McArthur had a  
13 negative...

14 MS. EUCHNER: I think that says "undercurrent."

15 CHAIRMAN BECHHOEFER: ...undercurrent about Fiser.  
16 And it was the relation -- those two basic statements, in  
17 contrast to what Mr. Grover had stated earlier in his  
18 earlier testimony, which I had quoted from.

19 THE WITNESS: Your Honor, let me mention something  
20 that may help -- help kind of pull this together.  
21 Understanding that when -- when someone files a complaint  
22 there's several sequences of things that go on, the DOL does  
23 their investigation, they have their own process; NRC gets  
24 tied to it, if it's safety related, they go through and have  
25 their process. So -- and they don't -- they don't

1 necessarily coincide from a time line standpoint.

2           So, although Mr. Fiser had supposedly settled and  
3 came back to the organization, from a DOL perspective, then  
4 generally what happens is NRC's process continues on. And  
5 so things still continue to come up about the case. And  
6 then Mr. Marquand brought up an article that was published.  
7 I mean, so people could -- you know, well, he's a good guy,  
8 we -- you know, he just wasn't treated right or whatever.  
9 Then something else happens related to the case that comes  
10 out in the paper or something, or some ruling or some  
11 enforcement, you know, that may affect these individuals,  
12 they could change -- you know, then the other -- the  
13 negative side could come out.

14           So it was a lot going on and coming out, you know,  
15 throughout the process. So it doesn't surprise me with when  
16 you start out with, okay, because it wasn't anything against  
17 me, then the ruling comes out, well, you know, I was  
18 implicated so now my -- or TVA was made to look bad. Now  
19 we're mad at Gary Fiser, and he's already back here in the  
20 organization. I mean, a lot of that can -- can transpire.  
21 So it doesn't surprise me that things changed as -- as, you  
22 know -- just like TVA's treatment---and I know this is  
23 getting off the case---toward me when -- when these negative  
24 things happened.

25           CHAIRMAN BECHHOEFER: That's my next question.

1 THE WITNESS: Okay. So, I mean, that's -- that's  
2 what happens. I mean, you know, you start out, well, okay,  
3 we're going to try to work this out. And then negative  
4 things come out that affect adversely against TVA that you  
5 were involved with. Now, okay, well, we're mad at you now,  
6 and we're going to take -- this is the way we're -- we're  
7 going to handle it, and we're going to ostracize you now. I  
8 mean, that's -- you know, I mean, we can sit here and argue  
9 all day. But, I mean, we have to look at the -- the facts  
10 of the case. I mean, that's -- that's what happens.

11 So it could have started out fine with Gary.  
12 Okay, we've got a new beginning. We got fresh, so we're  
13 going to try to work it out. Then things come out, press or  
14 whatever, NRC's ruling come out and it wasn't favorable.  
15 Okay, now we're going to -- we're going to be adversarial.

16 CHAIRMAN BECHHOEFER: I see. Well, as I said, my  
17 next question concerned you, really. And back in May, there  
18 was some testimony about reasons why you were no longer  
19 associated with TVA. And there was mention of some alleged  
20 -- well, I guess misuse of credit cards and misuse of your  
21 time and misuse of travel. And you seem to want to state --  
22 now, I don't want to get into each detail, particularly.

23 THE WITNESS: I understand.

24 CHAIRMAN BECHHOEFER: But you seem to want to  
25 state something about that what you were doing was not

1 inconsistent either with instructions or rules, and I wasn't  
2 sure which, and -- that were in effect at the time. And I  
3 just wanted to let you have a chance to clarify what I think  
4 you were trying to say, but you were either cut off by the  
5 time -- timing and that type of thing. But we did get into  
6 the discussion on the -- I guess the second day you were  
7 here. So do you have any further statement in general?

8 MS. EUCHNER: Your Honor,...

9 MR. MARQUAND: Your Honor,...

10 MS. EUCHNER: ...before the witness makes a  
11 statement, we have a stipulation that directly goes to this  
12 issue. So I'm not sure it would be appropriate to have him  
13 make any further statements.

14 MR. MARQUAND: We had a -- and further, if Your  
15 Honor recalls, there was a lot of discussion about whether  
16 or not the board would get involved in dealing with  
17 collateral issues like that. I'm not sure we want -- any of  
18 the parties or the board wants to open the door to that  
19 issue.

20 MS. EUCHNER: Especially in light of the fact that  
21 the staff has still not made a decision on any potential  
22 enforcement action related to Mr. Grover's case.

23 CHAIRMAN BECHHOEFER: I see. Okay. I guess I'll  
24 drop the issue based on the stipulation. But I still have  
25 questions, and if we're supposed to regard a lot of these

1 things with respect to credibility, I have some problems  
2 with that. But be that as it may, I guess I'll drop the  
3 issue.

4 Does anyone have any follow-up questions?  
5 Otherwise, we'll excuse the witness.

6 MS. EUCHNER: I have no follow-up questions based  
7 on the questions Your Honors asked.

8 MR. MARQUAND: No, Your Honor.

9 CHAIRMAN BECHHOEFER: Well, Mr. Grover, I guess  
10 you're excused, and we thank you very much for being here' on  
11 a number of occasions, and we appreciate your being here.

12 JUDGE YOUNG: Thank you.

13 JUDGE COLE: Thank you.

14 JUDGE YOUNG: I think we can go off the record,  
15 but I do have a couple of just scheduling issues.

16 (Whereupon, a luncheon recess was taken at  
17 1:15 p.m., the hearing to resume at 2:15 p.m., the  
18 same day.)

19

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AFTERNOON SESSION

1  
2 CHAIRMAN BECHHOEFER: Back on the record. At this  
3 point, the board is joined by its panel counsel, Lee Dewey,  
4 who's sitting closer to the licensees than to the staff.

5 MR. MARQUAND: We noticed that, too.

6 MR. DAMBLY: And we know Lee, and we want him over  
7 there.

8 CHAIRMAN BECHHOEFER: Okay. Be that as it may,  
9 Mr. Dambly and Ms. Euchner?

10 MR. DAMBLY: The staff would call Ed Boyles.

11 CHAIRMAN BECHHOEFER: Okay.

12 MR. DAMBLY: Or James Boyles. We'll find out in a  
13 minute.

14 COURT REPORTER: Do you go by Edward or Ed?

15 THE WITNESS: James Edwin Boyles. I go by Ed.

16 COURT REPORTER: James Edwin Boyles. Thank you,  
17 sir.

18 Whereupon,

19 JAMES EDWIN BOYLES

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

22 DIRECT EXAMINATION

23 BY MR. DAMBLY:

24 Q Would you please -- I'm not sure it's on the  
25 record, so please state your name for the record.

1 A James Edwin Boyles. That's B-o-y-l-e-s.

2 Q And where are you presently employed?

3 A I'm employed by TVA here in Chattanooga.

4 Q How long have you worked for TVA?

5 A Just over 22 years.

6 Q What's your post-high school education?

7 A I have a degree -- a B.S. degree in civil  
8 engineering.

9 Q And subsequent to getting your engineering degree,  
10 what's your professional work experience?

11 A Prior to joining TVA in 1980, I had worked for the  
12 State of Alabama in public health. I do have a degree in  
13 biology, also, and worked in environmental health for a few  
14 years before going back to school, getting my civil  
15 engineering degree. And during that process, I interviewed  
16 with TVA and accepted a position here in Chattanooga in the  
17 transmission design organization, the 500 KB transmission  
18 design. And I was a structural engineer for TVA for the  
19 first few years of my employment.

20 Q Okay. When did that change?

21 A About 1983, I accepted a position in the nuclear  
22 organization. I worked in nuclear services, had worked  
23 there for a short period of time when some opportunities  
24 came along with the employee concerns program. It was in  
25 the mid-'80s. TVA had -- had shut down all of their nuclear

1 units. We had hired a vendor, Quality Technology Company,  
2 to interview employees at Watts Bar, and I was sent to Watts  
3 Bar to be a part of that program.

4           Shortly after I had been up there less than a  
5 year, I had an opportunity to go to Sequoyah, to manage the  
6 Sequoyah employee concern program. So I stayed at Sequoyah.

7           Q     When did you go to Sequoyah?

8           A     April '86.

9           Q     '86. Okay. Then...

10          A     So I managed the Sequoyah employee concern  
11 program. TVA had -- had created their own program by then.  
12 I accepted a position at Sequoyah, and stayed there until  
13 the early 1990s, when I accepted a position in TVA's  
14 corporate office on staff.

15          Q     What was the position you accepted in the early  
16 '90s?

17          A     In the early '90s it was a staff position. I  
18 worked for the chief nuclear officer and for the -- and  
19 later for the vice president of human resources.

20          Q     What were your duties and responsibilities?

21          A     It was typical staff work. Anything that came  
22 into the office, I would look at, read NRC reports,  
23 highlight and prepare presentations for the chief nuclear  
24 officer or for the vice president of human resources,  
25 respond to external inquiries, and other duties as assigned.

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Q Okay. And how long were you in that job?

A I stayed in that job until November '94. I moved to the human resource corporate office, and I stayed in the -- in the human resource operations organization until this last June. And last June, during a reorganization, I accepted a position as manager of workforce planning, and that's what I'm currently doing.

JUDGE YOUNG: This past June was a year ago, you mean?

THE WITNESS: Yes, about a year ago right now.

JUDGE YOUNG: Thanks.

BY MR. DAMBLY:

Q Okay. From the November '94 until June of last year, did you have just a single position in human relations, or did you have more than one?

A The -- from November '94, I was -- I was manager of human resources in the corporate TVA nuclear organization.

Q Okay. So when you came in in '94, you were started off as a manager?

A Yes.

Q Had you worked in human resources before then?

A I had worked on the staff for the vice president when I was doing the staff work. But I had not worked in

1 the line HR organizations until November of '94.

2 Q And what -- what were your responsibilities as the  
3 manager for HR on the nuclear side?

4 A We provided general human resource support to our  
5 corporate organizations, which is primarily engineering and  
6 other support organizations, like such as rad con, ops  
7 support, and business services. And that's everything from  
8 -- from recruiting to union issues, grievances, selections,  
9 complaints, disciplinary actions. Just general human  
10 resource services.

11 Q While you've been at TVA, have you taken any  
12 training in personnel matters?

13 A We've -- we've done some training on union  
14 relations through our labor relations organization.

15 Q Okay. Do you have any training, any formal  
16 training on reductions in force?

17 A Only in -- in the context that I just mentioned,  
18 through labor relations, where we would review TVA's  
19 policies and instructions.

20 Q You've never taken any training on the OPM  
21 regulations?

22 A No, I haven't.

23 Q At TVA, how are personnel actions documented?

24 A We have an HRIS, human resource information  
25 system, is where the electronic records are kept. We also

1 have personnel history records that are maintained for all  
2 employees.

3 Q Okay. And if someone gets a change in their  
4 pay...

5 A That's made in this human resource information  
6 system.

7 Q How about a grade change?

8 A Same thing.

9 Q Is there a specific document that's filled out,  
10 that is used to input into that system?

11 A There are. Typically, it may be done through a  
12 memo signed, providing the justification for the grade  
13 change, or it could be a selection memo. So, oftentimes  
14 there is a memo associated with a personnel action.

15 Q So if someone makes a selection, they sign that  
16 thing, send it to HR, that says, "I have selected John Smith  
17 for this position"?

18 A Yes.

19 Q And that would be used to input the data into the  
20 computer?

21 A That's correct. Now, there may be -- there may be  
22 a form that's filled out by the human resource assistant.  
23 I'm not -- I'm not familiar with that part of it.

24 Q Let me ask you to take a look at---let me get it  
25 for you---Staff Exhibit 99.

1 JUDGE YOUNG: 99?

2 CHAIRMAN BECHHOEFER: 99?

3 MR. DAMBLY: 99.

4 Q Have you seen this document before?

5 A It's possible. Probably during preparation.

6 Q Okay. I don't know, when we deposed you, whether  
7 we asked you about this or not.

8 A Probably have.

9 Q Do you know -- could you tell us what this is?

10 A I've referred to our human resource information,  
11 system. This is a printout, employee action reasons. Looks  
12 like a printout from the human resource information system.

13 Q And this is for Wilson McArthur?

14 A That's correct.

15 Q So this -- this would be a printout of the  
16 official entries that were made into the HRS -- HRIS system?

17 A That's correct.

18 Q And in the column that's the third from the last,  
19 "Grade Step" -- I mean, third from the right. I'm sorry.

20 A Yes.

21 Q That would document the grade progression of Mr.  
22 McArthur during his tenure at TVA?

23 A It would document grade changes for -- for any  
24 individual; correct.

25 Q All right. And so if we go like halfway up...

1 JUDGE YOUNG: I'm sorry. For what?

2 THE WITNESS: For anyone, it would document the  
3 grade changes for the individual.

4 JUDGE YOUNG: Did you say -- use the word  
5 "credit"? I missed a word there.

6 THE WITNESS: No, I -- I think I said for any  
7 individual, that this would document grade changes for the  
8 individual.

9 JUDGE YOUNG: Okay.

10 THE WITNESS: Sorry.

11 JUDGE YOUNG: Thank you.

12 CHAIRMAN BECHHOEFER: What about this column --  
13 what about the column that says, "Step"? All of them are  
14 zero. Doesn't steps start with 1?

15 THE WITNESS: The system includes all personnel in  
16 TVA, and some of our classifications, especially for the  
17 represented -- union represented employees, would have  
18 progression steps within a grade. For example, an engineer  
19 might have three or four steps. But in the management ranks  
20 it didn't have this -- the steps.

21 CHAIRMAN BECHHOEFER: So the zero indicates no  
22 steps, not...

23 THE WITNESS: Yeah, it has no real meaning for the  
24 manager.

25 CHAIRMAN BECHHOEFER: Okay.

1 BY MR. DAMBLY:

2 Q All right. And if we would go about halfway up  
3 the page, or halfway down, actually, there's an entry where  
4 there's a change from PG senior, then to grade 11.

5 A That's correct.

6 Q And that would indicate that on the date of the  
7 grade 11, which I guess is 10/17/94, Dr. McArthur went into  
8 a position at a different grade?

9 A Correct. He was placed in a PG pay grade 11.

10 Q Can you tell me---we're done with this---what you  
11 understand the requirements are in a downsizing, reduction  
12 in force situation, for posting a position versus rolling an  
13 incumbent over into a position.

14 A Okay. During a reorganization, typically -- at  
15 least in TVA's case, we're getting smaller. There were  
16 fewer positions, and position descriptions were written for  
17 the new organization, often more responsibilities, that type  
18 thing. What we would do is, human resource, compare the  
19 position descriptions of record to the new position  
20 descriptions, to determine if they were the same competitive  
21 level. Basically, interchangeable positions.

22 If they were not interchangeable, we would -- we  
23 would post the position, we would be required to post the  
24 position. If they were interchangeable, then we would make  
25 a decision that -- that the individual had a right to the

1 position, that it was interchangeable, and we wouldn't  
2 consider the position vacant.

3 In a RIF situation, when -- when individuals  
4 compete, we determine those competitive levels, which  
5 basically establishes the group in which they compete with  
6 similar jobs.

7 Q Okay. And if you're in a reduction -- well, first  
8 let me ask, what's the standard you use to determine whether  
9 or not jobs are interchangeable?

10 A We use our TVA instructions on how to evaluate the  
11 jobs. But the human resource consultant -- and in '96 I had  
12 two human resource consultants that worked for me. And they  
13 basically would sit down and compare the two positions and,  
14 using professional judgement, they would make a decision as:  
15 Is this the same job? Is it interchangeable? Is it  
16 similar? Or is this different? And are we going to have to  
17 post the job.

18 In '96, when we were doing this, we were doing  
19 literally hundreds of these comparisons that year to make  
20 the decision to post or not to post, was the basic decision.

21 Q Well, was -- was the standard that was being  
22 applied -- you said similar. Do you recall using  
23 preponderance of the duties?

24 A I've used that term and I've heard that term; yes.

25

1 CHAIRMAN BECHHOEFER: Mr. Boyles...

2 THE WITNESS: Yes, Your Honor.

3 CHAIRMAN BECHHOEFER: ...let me interrupt you a  
4 minute. Was there any specified guideline or reg or rule  
5 that -- I've heard it referred to as a guideline, where if  
6 positions differed by more than a certain percentage of the  
7 duties, 30, 35 percent, then they would be required to be  
8 posted. But if they were less than that -- does this ring a  
9 bell with you? I've -- we've heard some testimony to this  
10 effect, and was there any formal guidance to this effect?

11 THE WITNESS: I've not seen any guidance or  
12 guideline that -- that specified a percentage. It's -- it's  
13 not -- it is oftentimes as easy as a mathematical equation.  
14 It's -- requires some judgement, some evaluation of the --  
15 of the position description. But I've not seen any  
16 numerical comparison. There's none in our personnel manual.  
17 It talks about interchangeable, going both ways. May use  
18 the term "preponderance," but I've not seen any -- any  
19 numerical criteria. No, I haven't.

20 CHAIRMAN BECHHOEFER: And do you know of any shop  
21 talk, if nothing else, which would establish some percentage  
22 guidelines, but which the people who were doing the  
23 reclassification would follow to -- to determine  
24 interchangeability?

25 THE WITNESS: I'm not aware of any percentage

1 criteria. It would be very difficult to assign, in my  
2 opinion, a percentage to the -- to the position  
3 descriptions.

4 JUDGE COLE: What does "preponderance" mean to  
5 you, sir?

6 THE WITNESS: To me, it's not 51 percent. It is -  
7 - again, I'd go back to the term "professional judgement."  
8 In -- in doing these comparisons, and I didn't do them  
9 personally, by you time helped the staff. As I said, they  
10 did literally hundreds of these comparisons that year.  
11 Often the -- the discussion focuses around the meaning of a  
12 technical word in an engineering job description. And  
13 clarifying does this statement in this job description mean  
14 the same thing as -- as it does in this job description. Is  
15 stress analysis what they're referring to here when they're  
16 -- when they're talking about structural analysis.  
17 Oftentimes those are the kind of questions. Very difficult,  
18 in my view, to put a numerical value on those kinds of  
19 judgement calls.

20 CHAIRMAN BECHHOEFER: Well, just from a  
21 hypothetical, if one position subsumed all of the duties of  
22 another position, but then they added a few, how would you  
23 evaluate something like that?

24 A If -- we would have to look at it again and see.  
25 If those few added -- the term in our instructions -- and

1 let me remember it. It's been a while. The term talks  
2 about not disrupting the production of work. It would  
3 depend on would an individual doing Job A be able to move  
4 right into Job B with no undue loss of productivity, and  
5 pick up that job. That they need to be that similar. If --  
6 if you added a technical specialty that would require some  
7 level of training that the incumbent might not be able to do  
8 in Job A, then they would not be mutually interchangeable.

9 CHAIRMAN BECHHOEFER: I see.

10 JUDGE YOUNG: That the incumbent would not be able  
11 to do in Job A, being the first job, or the second job?

12 THE WITNESS: If we were comparing A to B, and B  
13 had a technical specialty that -- that was not a part of A,  
14 that would require some training or -- either on-the-job or  
15 form training, then it would not be mutually  
16 interchangeable. And that's why it's got to go both ways  
17 when you're adding and -- and taking away.

18 CHAIRMAN BECHHOEFER: So that if B -- if B  
19 included all of the duties of A, but then added a few more,  
20 it would be -- presumably the person filling A could fulfil  
21 at least the initial duties in B, because they would be the  
22 same. But you added some others that were not in the direct  
23 experience of the other person. Would you let the other  
24 person, so-called learn on the job, or would you expect some  
25 background in that additional area of interest?

1 THE WITNESS: I'm not sure if I understand. We  
2 would not look at the qualifications of the individual. We  
3 would only look at the position description to position  
4 description. So even if we were doing comparisons based on  
5 qualifications, and the individual had those qualifications,  
6 that's not what we're comparing. We're only comparing one  
7 position description to the other, and determining are they  
8 -- are they mutually interchangeable. Can any individual  
9 working in A move to B without any undue loss of  
10 productivity.

11 CHAIRMAN BECHHOEFER: So that, from what you're  
12 saying, the way I understand it, the person moving from A to  
13 B would at least have to have some background in the  
14 additional duties that appeared in B?

15 THE WITNESS: Well, again, the qualifications and  
16 background of the incumbent...

17 CHAIRMAN BECHHOEFER: Yes.

18 THE WITNESS: ...wouldn't -- would not be  
19 considered and wouldn't come into play, and the -- we would  
20 simply be looking at the duties outlined in A, and the  
21 duties outlined in B. And if -- if B had all of the pieces  
22 of A, but had additional duties...

23 CHAIRMAN BECHHOEFER: That's what I'm talking  
24 about.

25 THE WITNESS: ...then -- then in -- we would have

1 to look at it, but in many cases we would have to post a job  
2 like that.

3 CHAIRMAN BECHHOEFER: I see.

4 JUDGE COLE: What about if the situation was  
5 reversed and A was the one with -- with some additional  
6 specialities, and you had a new Job B. Would the person in  
7 A have some right to the job B?

8 THE WITNESS: Again, it's got to go both ways.

9 JUDGE COLE: Has to go both ways?

10 THE WITNESS: It has to be mutually  
11 interchangeable. A good example that we're probably going  
12 to get into shortly is the chemistry program manager, the  
13 chemistry environmental jobs. When we made the decision in  
14 I guess '94, when those jobs -- when the chemistry and  
15 environmental were combined, the decision was to post those  
16 jobs. And then, in '96, when chemistry and environmental  
17 were split again, again, the decision was to post the job.  
18 So it's got to go both ways. They have to be mutually  
19 interchangeable.

20 BY MR. DAMBLY:

21 Q Okay. And just so we're clear on that, you talked  
22 about in a reduction of force situation, setting up  
23 competitive levels. And when you're setting up competitive  
24 levels, that's when you're making the interchangeability  
25 determinations?

1           A     That's correct.

2           Q     So if you had three -- we'll just say you had  
3 three chemistry program managers, and the PDs weren't  
4 changed, and you went down to two chemistry program  
5 managers, that would be handled by reduction in force  
6 regulations?

7           A     That's correct.

8           Q     Who decides, in a reduction situation, whether the  
9 jobs will remain the same or be changed in the first  
10 instance?

11          A     Well, the line organization line managers and  
12 staff write the position descriptions. Is that...

13          Q     Yes.

14          A     ...what you mean by...

15          Q     So it's -- it's management that decides what the  
16 new positions are going to be?

17          A     Management writes the position descriptions.  
18 Human resources makes the competitive level call.

19          Q     Okay. And you make that with input from the  
20 management?

21          A     No, not on the competitive level call.

22          Q     So you don't check with management to find out  
23 what percentage of the duties, you know, a given function --  
24 if there's ten functions, you don't check and say, "Is the  
25 first one 50 percent or five percent"?

1           A     If we had a question on a duty, on what it meant  
2 or scope of duties, we might talk to management about that.  
3 Oftentimes, that's one of the things they used me for, since  
4 I had an engineering background. Oftentimes they didn't  
5 understand a term in a duty, and would come and we would  
6 talk about it. If we needed clarification on what this  
7 meant, we would go back to the people who wrote the job  
8 description up.

9           Q     Okay. One of the things you -- you look at is  
10 what the principal duties of the position are; right?

11          A     That's right.

12          Q     And you expect your HR people to know on a given  
13 position what the principal duties are, as opposed to the  
14 more ancillary duties?

15          A     Normally, yes, they do. These are people who  
16 support the organization and understand the business of the  
17 organization pretty well. I won't say it's 100 percent of  
18 the time that they know that; but most of the time they  
19 understand what the people are doing and what the major  
20 focus of the job is.

21          Q     Okay. And when you're making those  
22 determinations, do you look at what you expect from the PD  
23 the breakout of duties should be, or what the actual  
24 breakout on the job of the duties is?

25          A     Could you restate? I'm not sure I follow.

1           Q     Yeah.  Suppose you have a -- if you look at a  
2 given position description and it may look like there's four  
3 functions and they look like they're all equal, is that what  
4 you look at?  You compare that to a new PD?  Or do you ask  
5 the manager, "Are these, in fact, four equal duties?"  In  
6 practice.  In practice, are there, like, you know...

7           A     In practice, most of the time the consultants are  
8 fairly familiar with the major function that an individual  
9 would be doing.  But it's -- it would be acceptable to go  
10 back and ask what's the scope of these four functions, what  
11 are the major functions, that type thing.  So it -- it's  
12 perfectly okay for them to go back and get clarification on  
13 -- on a question or a duty.

14          Q     But what -- what I was really asking, and I didn't  
15 make it clear, under your policies, as you understand them,  
16 is the comparison strictly between what the job was maybe  
17 supposed to be when it was written on paper, or, as it turns  
18 out in practice, what it really is?

19          A     The comparison is the job description of record  
20 versus the new job description.

21          Q     I understand that.  But, I mean, are you applying  
22 the job description of record as at least you would have  
23 thought it was going to be when it was developed, as opposed  
24 to how it's actually turned out?

25          A     We compare it as it is written.

1 Q As written. So you don't look and see what the  
2 on-the-job, the actual duties are?

3 A No, we -- we don't do that, and we don't do any  
4 kind of pre-job audits to determine, you know, what the job  
5 is versus what we thought it would be...

6 Q Well, we'll get to that.

7 A ...when initiated.

8 Q Now, you said HR makes the call on competitive  
9 levels.

10 A That's correct.

11 Q And does management have a say in that?

12 A No, they don't.

13 Q So if line management or, say, Dr. McArthur said,  
14 "Well, those are the same jobs and they shouldn't be  
15 posted," or, "Those are different jobs and they have to be  
16 posted," that has no weight at all?

17 A We make the call independent of line organization.  
18 They can and sometimes might question a position. As I  
19 said, we were doing hundreds in '96. And, again, this was  
20 for the corporate office. We were doing the same thing at  
21 all the sites. So there were hundreds of these efforts  
22 underway. And in that spring there were, I think, three  
23 calls or three issues related to the calls that we made that  
24 -- that came into question. And...

25 Q Okay.

1 A ...and one...

2 Q We're going to get to a couple of those.

3 A Well, one being the chemistry program manager, and  
4 then there were a couple of others.

5 Q All right. Now, if management was to disagree  
6 with your call, can they rewrite the position description?

7 A No. No. Now, are you -- to -- what it sounds  
8 like you're saying is, if -- if we made the competitive  
9 level call, would we let them go back and change it until  
10 they got their desired result. And the answer is we  
11 wouldn't -- we would not allow them to do that. To  
12 manipulate the system.

13 Q Now, back up. If management came and said,  
14 "Here's what the new positions are going to be. We've  
15 developed position descriptions and we think they're  
16 different." And you went back and you said, "No, they're  
17 not." Management would say, "Well, as far as I'm concerned,  
18 I want different skills or whatever. Maybe I didn't write  
19 it right, but -- so I'm going to rewrite it." They're not -  
20 - they don't have the authority to do that, determine what  
21 position is going to be...

22 A Management has the authority to write position  
23 descriptions. In this case, as I said, we had three that we  
24 did have questions on. We didn't rewrite the position  
25 descriptions as a result of that.

1           Q     I wasn't asking if -- I was asking could they.  If  
2 they didn't -- disagreed with your call and you said, "Well,  
3 they're not different enough," could they go back and say,  
4 "Well, then, we're going to change it again, because they  
5 were supposed to be different"?

6           A     I think we would have to probably discuss that  
7 with OGC and maybe our labor relations folks.  Because I  
8 would have a concern as to why we're going back and  
9 rewriting a position description because the competitive  
10 level call didn't turn out like someone thought it would be.

11

12           Q     And, in fact, in the '96 reorg of operations  
13 support, other than Dr. McArthur---and we'll get to that  
14 later---were there any other positions that rolled over?  Or  
15 were they all changed and competed, posted?

16           A     As I said, we had three positions we had questions  
17 related to the competitive level.  There were some in -- in  
18 some of the other organizations that -- that we did not  
19 post.

20           Q     There were?

21           A     Yeah.  In -- in some of the engineering  
22 organizations.

23           Q     I'm talking about operations.

24           A     In operations support, I don't -- I don't think  
25 so.  I think that was the only one.

1 JUDGE YOUNG: Did you ever look back to see  
2 whether the Position Description A, had been updated to  
3 reflect actual activities on the job?

4 THE WITNESS: When we began the process, that --  
5 that's what I was referring to when I said we didn't try to  
6 or attempt to do any kind of audits to determine if -- if A  
7 was current to their current duties. Again, we don't do  
8 that typically. We look at the job description of record.  
9 An employee and a manager should keep their position  
10 descriptions up to date. We would help them do that, but --  
11 but we don't look back and -- and do any kind of interviews  
12 or audit to determine if that's right or not.

13 CHAIRMAN BECHHOEFER: Does HR -- does HR do any  
14 periodic audits? Not necessarily before a PD is  
15 established, but after the fact do you, like, every year or  
16 every two years or every five years have a program to review  
17 PDs to see if they're up to date?

18 THE WITNESS: I don't remember an audit while I  
19 was there. I believe there have been some by the corporate  
20 TVA organization in the past. But during the time frame of  
21 '96 reorganization, I don't remember any audits being  
22 conducted.

23 CHAIRMAN BECHHOEFER: And you also don't have any  
24 periodic audits that you routinely would have?

25 THE WITNESS: No.

1 CHAIRMAN BECHHOEFER: So...

2 THE WITNESS: No.

3 CHAIRMAN BECHHOEFER: Thank you.

4 THE WITNESS: Sure.

5 BY MR. DAMBLY:

6 Q As long as that point's up, if you would look in  
7 the book that says "Joint Exhibits" on it.

8 A I'm not sure I have it.

9 JUDGE COLE: Do you have an exhibit number, Mr.  
10 Dambly?

11 MR. DAMBLY: 65.

12 Q Do you recognize what Joint 65 is?

13 A Yes, I do.

14 Q That's the reduction in force, TVA regulations or  
15 rules that were in effect for the '96 reorg?

16 A That's correct.

17 Q If you go to Page 14.

18 A Let me get my bearings here. Competitive area?

19 Q I'm looking at competitive level on 14.

20 A Okay.

21 Q And that's the -- the rules that you were talking  
22 about just a few minutes ago, and interchangeability, two-  
23 way street?

24 A Yes, that's right.

25 Q Okay. And over on Page 15, at the top, says, "In

1 setting competitive levels, determinations are not based on  
2 the personal qualifications or performance levels of  
3 individual employees. The determination must be based  
4 solely on the content of accurate, up-to-date job  
5 descriptions," is that right?

6 A That's correct.

7 Q And I think, as you just told the judges, you  
8 didn't make sure that the PDs were accurate and up-to-date?

9 A We did not do a pre-RIF audit; that's correct.

10 Q So, basically, you didn't conduct RIF's in -- in  
11 accordance with the regulations that you set out?

12 A No, I -- I believe we conducted RIF's or  
13 surpluses, in this case, to -- to services, in accordance  
14 with the policies. We used the latest position descriptions  
15 to be compared to the new ones.

16 Q Well, "latest" and "accurate and up-to-date" are  
17 two different things, aren't they?

18 A As to whether it's accurate or not, you have to  
19 look at the individual job description.

20 Q Well, I think Mr. Reynolds told us at one point  
21 you had one that was -- your position description of record  
22 was not -- did not reflect your duties and you got RIF'd; is  
23 that right? Surplused. I don't know whether it was --  
24 whichever term you'd like.

25 A Are you referring to my situation?

1 Q Your situation; yes.

2 A That's correct. In my case, I had been doing  
3 workforce planning along with my HR duties for quite a  
4 while. And during the reorganization there were  
5 positions in workforce planning. I was initially told that  
6 it would probably be -- that I would have a right to the  
7 position, but that was not the way it happened. The -- the  
8 process called for the comparison to be made to my official  
9 position description. They did that, and I was given a  
10 surplus notice and had to compete for the workforce planning  
11 manager position.

12 JUDGE COLE: The people that worked for you did  
13 this?

14 THE WITNESS: I did this.

15 MR. DAMBLY: To yourself?

16 THE WITNESS: In some cases -- human resource  
17 folks do a lot of different things. Workforce planning is a  
18 -- is something that HR people do. I did that. I enjoyed  
19 it. I probably got a little more into it than -- than I had  
20 realized. But we've got an aging workforce. It's a very  
21 interesting area. It's a lot of fun. And as it turns out,  
22 I did get the job, though, so it worked out.

23 JUDGE YOUNG: I think -- I think the question was  
24 meant to ask you who made the determination, the people that  
25 worked under you?

1           THE WITNESS: Some of the people that worked for  
2 me were involved in that. They put a team together to do  
3 this, because we were -- we were centralizing HR from all of  
4 the chief operating officer organizations. So some of the  
5 folks that worked for me may have been on that team that did  
6 these comparisons and this evaluation. But it was done in  
7 more of a team approach. And those comparisons turned out  
8 that I -- I did end up competing for the position.

9 BY MR. DAMBLY:

10           Q     Okay. And just so it's clear, what was your  
11 position description of record?

12           A     I was -- well, I'm -- I was manager of -- manager  
13 of corporate human resources for TVAN. TVA.

14           Q     And you had no workforce planning functions?

15           A     It had a blurb of -- regarding workforce planning,  
16 but not the scope of duties that this new position contains.  
17 The new one is -- is much broader in scope, doing workforce  
18 planning for almost 80 percent of TVA. And when they did  
19 the comparison, the blurb was not enough to -- to be  
20 interchangeable with the new position description.

21           Q     Did the new position have the manager of HR  
22 function in it?

23           A     No, it did not.

24           Q     Okay. So you were actually the manager of HR and  
25 doing workforce planning?

1 A Yes, that's right.

2 Q And then they posted a workforce planning only  
3 position?

4 A That's correct.

5 Q Okay. And 80 percent of your duties as manager of  
6 HR weren't workforce planning?

7 A No, what I was referring to is, we're about -- 80  
8 percent of the TVA employees are in the chief operating  
9 officer's organization. And -- and that's what the new job  
10 does, is workforce planning for -- for a much larger group  
11 of people.

12 Q Okay. So the -- the position description that you  
13 had did reflect your responsibilities as the HR manager?

14 A Yes.

15 Q Now, also, when you're making a competitive level  
16 call, is it permissible that you should consider that there  
17 were going to be fewer positions than employees as a result  
18 of the reduction?

19 A The competitive level call is dependent solely on  
20 the comparison of the two position descriptions.

21 JUDGE COLE: Did you mean to say few positions  
22 than employees or -- I thought you said fewer employees than  
23 positions.

24 MR. DAMBLY: Oh. Well, I hope I -- fewer  
25 positions than employees, clearly. I'm sorry. The other

1 way around, we don't have any questions; right? That's  
2 never a problem, when there's more positions than employees.

3 THE WITNESS: That's a rare occurrence, though.

4 Q Okay. You do have in front of you, I'm sure,  
5 Volume 1 -- or Book 1 of 8 of the NRC's staff exhibits.

6 A Yes. Yes, I do.

7 Q And if you would turn to Exhibit 2, please. Do  
8 you recall, Mr. Boyles, being interviewed by Mr. Vanbockern  
9 in July of 1996?

10 A Vaguely; yes.

11 Q Vaguely?

12 A It's been a long time.

13 Q And it was in regard to Mr. Fiser's DOL complaint,  
14 '96 DOL complaint?

15 A Yes, it was.

16 Q Okay. On the -- Page 2, in the second complaint  
17 paragraph that starts with, "Looking at the positions," in  
18 the middle of that paragraph there's a sentence that starts  
19 with -- it says, "One factor we considered here was that  
20 three or four people presently in the positions would be  
21 vying for the two positions being posted, and that everyone  
22 should have an equal change to apply and secure a position."  
23 Do you recall making that statement to him?

24 A I don't, but obviously I did. Now, I go on to say  
25 that Ben Easley of my staff had already made the call on

1 that competitive level.

2 Q Okay. And if you would turn to Staff Exhibit 3,  
3 which is the next document. And that is a transcript,  
4 actually, of what's Staff Exhibit 2. And on Page 9, at the  
5 top of the page there's a statement by you, "Another factor  
6 to be considered is sta there were at least three, possibly  
7 four individuals who would be vying for the smaller number  
8 of positions, and that we needed to give those people a fair  
9 opportunity to apply for the positions." You see that?

10 A Yeah, I'm sure this is my statement at the  
11 deposition.

12 Q Okay. So...

13 A And what I -- we had already made the comparison.  
14 And what we were doing is posting the positions, and all of  
15 those incumbents in those jobs could apply for those. And I  
16 think that that's what I'm telling Mr. Vanbockern.

17 Q So it's not proper to consider that there are few  
18 positions than employees in making interchangeability  
19 determinations?

20 A We used the position descriptions in this case,  
21 and didn't consider the number of employees when we made the  
22 competitive level call. But this did allow all of the  
23 employees to vie for those fewer positions.

24 JUDGE YOUNG: Let me just ask a clarifying  
25 question. I've heard the term "competitive level" also used

1 to apply to the group of positions that would be grouped  
2 together in determining in a RIF which employees had  
3 seniority rights and -- and is it also used in that way in  
4 TVA, as well?

5 THE WITNESS: That's correct. A competitive level  
6 is established to determine the sequence in a reduction in  
7 force. So that's correct.

8 JUDGE YOUNG: So...

9 THE WITNESS: In this case, that group of jobs, in  
10 comparing those to the new one, we were establishing for RIF  
11 purposes, because we recognized reduction in force was a  
12 possibility down the road as we -- as we moved. Now, I  
13 think you probably heard we did have an organization called  
14 services at the time, so we weren't -- we weren't issuing  
15 reduction in force notices to those individuals who didn't  
16 get -- weren't selected on positions. We were placing  
17 employees in services. It was an organization that we had  
18 created to prevent us from sending people home directly. It  
19 allowed them to go to an organization, work there for a year  
20 or more, work on assignments and get a job. But we  
21 recognized that, even with a program like that, that  
22 reduction in force was a possibility down the road. So,  
23 establishing the competitive levels was for RIF purposes.

24 JUDGE YOUNG: Actually, that brings up two more  
25 clarifying questions. First I was going to ask: Is there

1 ever an occasion where the competitive area for RIF  
2 purposes, in the context of seniority determinations, is not  
3 -- does not coincide with the competitive level for posting  
4 a job and competing for it purposes? In other words, would  
5 the same -- if you're deciding...

6 MR. DAMBLY: Judge Young, you're using the term  
7 "competitive area," "competitive level," and they're two  
8 distinct, non-overlapping terms. They have distinct  
9 meanings. You got to be careful.

10 MR. MARQUAND: "Area" is geographical.

11 MR. DAMBLY: Yeah.

12 MR. MARQUAND: And it's by how the agency defines  
13 the geographic area for that position to compete. "Level"  
14 is simply as it implies, the particular level. And also  
15 this may include the scope or discipline, like...

16 JUDGE YOUNG: I think I meant to say "level" in  
17 both -- in both cases.

18 MR. DAMBLY: Okay.

19 JUDGE YOUNG: And if I said "area," I was  
20 mistaken. So what I'm trying to figure out is if there's a  
21 group of people whose -- whose positions prior to the RIF,  
22 slash, reorg are all the same, and depending upon how you  
23 determine whether the job -- the new job needs to be posted  
24 or not, they would either compete for it, or the  
25 determination would be made on who would be most senior and

1 who would be least senior. Is there ever -- are there ever  
2 occasions where competitive level, for purposes of one,  
3 would not coincide with competitive level for purposes of  
4 the other? Or are they always -- do they always coincide?

5 MR. MARQUAND: It's one in the same.

6 MR. DAMBLY: It's one in the same.

7 MR. MARQUAND: It's one in the same.

8 JUDGE YOUNG: Okay. So it's same group of people  
9 in both circumstances?

10 THE WITNESS: Yes.

11 JUDGE YOUNG: Okay. And then the other thing that  
12 you said that -- that raised another clarity issue for me  
13 was the services organization. And this is based on  
14 previous testimony, so if you're going to go into that, I  
15 can wait.

16 MR. DAMBLY: No.

17 JUDGE YOUNG: But were -- were employees ever  
18 given the option of either being reduced and taking  
19 severance pay, or going into services?

20 THE WITNESS: Yes. Part of the -- part of the  
21 option that an employee had, and the employees in '96 had  
22 this option, also, was if -- if they received I'll call it -  
23 - it's a surplus notice that -- that their position had been  
24 eliminated, and they didn't apply or weren't selected on  
25 another position, they would get a transfer to services

1 letter. In the letter, it gave them options of if they did  
2 not choose to accept the transfer to services, they could  
3 leave TVA with -- at that time it was one year's pay and --  
4 severance pay.

5 JUDGE YOUNG: And that would...

6 THE WITNESS: And other benefits that go -- go  
7 with a reduction in force. So at the end they would be  
8 RIF'd, reduction in force, if they chose not to go into  
9 services.

10 JUDGE YOUNG: And that would apply whether there  
11 was a RIF or a posting and competition?

12 THE WITNESS: Any employee -- yes, it would apply.

13 JUDGE YOUNG: Thank you.

14 THE WITNESS: Yes.

15 BY MR. DAMBLY:

16 Q Maybe this would help clear it up. The issue of  
17 posting and competing versus RIF, you're talking a RIF in  
18 both cases; correct?

19 A Yes.

20 Q You're just talking how you are going to fill the  
21 remaining jobs?

22 A That's correct.

23 Q One is down a retention register, if you follow  
24 RIF regs; one is by posting and...

25 A And -- and the competitive level call is for RIF

1 purposes. And the posting and the selection is -- is to  
2 determine what employee gets what job.

3 Q Okay. And if you'd go to Staff Exhibit 6, Page  
4 16. This is the statement you gave to Ms. Benson, the OI  
5 investigator, in October of 1998.

6 A What page?

7 Q Page 16. Okay. And maybe just to put it in  
8 context, back on the -- Page 15, you're talking about Mr.  
9 Easley managing and assisting, and at some point in time Ben  
10 Easley had reviewed what had been turned in for the new  
11 position descriptions, and he had determined that we should  
12 post those chemistry rad con jobs that we're -- we're  
13 talking about. And I had agreed with him. He talked to me  
14 about the environmental function removal. And one of the  
15 issues that we discussed was that they would now focus on  
16 either, " that should be "BWR," not "BRW," but, "BWR, boiling  
17 water reactor, or PWR, pressurized water reactor. And we  
18 talked about -- I don't remember the details. It's been a  
19 while. But we discussed and I agreed. We thought it was  
20 the fair thing to do, since there were more incumbents and  
21 we were going to have employees to post the jobs."

22 A That's correct. Again...

23 Q And why is that the fair thing to do?

24 A Well, again, the first thing I discussed there is  
25 we had already made the call that we were going to post

1 those jobs. We made it and we discussed in this paragraph  
2 the differences, the BWR versus the PWR. So we had already  
3 made the competitive level call. The fact that the  
4 individuals would compete for the job was -- was the  
5 inevitable outcome of that competitive level call.

6 Now, in -- in 1996, I had been in the organization  
7 about a year. And I'm not going to say that in that year I  
8 became an HR expert. I was not an HR specialist. But in  
9 every one of the statements, including the one to Ms.  
10 Benson, I clearly stated that we compared the position  
11 descriptions of record to the new position descriptions, to  
12 make those calls. I did indicate to her the fairness of  
13 letting them all apply. I also talked to her about the fact  
14 that I didn't believe you had to post a senior level  
15 position because of TVA policy. I was wrong. There had  
16 been a memo that did establish posting through a certain  
17 level. There was another memo that I had not seen, that  
18 required posting at a higher level.

19 But that was not the point here. The point was we  
20 had already made the competitive level call. Posting the  
21 position was not -- was not an option, because in the  
22 McArthur case it was a -- it was not a vacant position.  
23 Posting the position in this case, we had already made the  
24 competitive level call based on the differences in the  
25 position descriptions.

1           So over the years I may not be 100 percent. But  
2 what we did comes out in all of these statements, and what  
3 we did is compare those hundreds of position descriptions  
4 with the new ones, and we made the competitive level calls,  
5 the interchangeability calls. It basically came down to are  
6 we going to have to post this job or are we going to -- or  
7 not post.

8           Q     Okay. Now...

9           JUDGE YOUNG: Before you go on, let me just -- on  
10 this one sentence, was there a feeling that it was fairer to  
11 post than -- than to make the determinations based on  
12 seniority?

13          THE WITNESS: In a case like -- in any case, if  
14 you're going to post -- and when we began this  
15 reorganization, I honestly -- we looked at the scope of the  
16 changes, and we thought all the jobs would be posted. And  
17 from our standpoint, it's an easier call. It does allow all  
18 the incumbents to compete for the job. So in some respects  
19 there is a fairness there.

20          But, on the other hand, if you have an incumbent  
21 who has a right to the job, you can't make a call fair or --  
22 or unfair that is -- isn't consistent with the policy. I  
23 hope -- hope that answered...

24          JUDGE YOUNG: I guess you seem to be saying in  
25 this sentence that whenever you have more incumbents than

1 there are employees, that it's more fair to post the jobs  
2 than to decide on seniority.

3 THE WITNESS: That's -- we had that discussion,  
4 that this was -- we had already made the competitive level  
5 call. The jobs were different. And this was going to let  
6 all the employees, all of those incumbents apply on those --  
7 the positions. So the call was correct, and it was the fair  
8 thing to do to go on and post the position and let them  
9 compete for the job.

10 CHAIRMAN BECHHOEFER: It's my understanding,  
11 though, that that didn't happen.

12 THE WITNESS: I'm sorry?

13 CHAIRMAN BECHHOEFER: It's my understanding,  
14 though, that with respect to at least Wilson McArthur, that  
15 didn't happen. And he got placed in one and the other. Did  
16 you review the earlier one and the later one and -- you or  
17 people working for you?

18 MR. DAMBLY: Judge, we're talking here about the  
19 Chandra, Harvey, Fiser situation; not Dr. McArthur.

20 THE WITNESS: But we did follow the same process  
21 with the rad con chemistry position description and the  
22 position description of record. We followed the same  
23 process, which we covered earlier, about doing the  
24 comparison for every one of the positions, including the rad  
25 con chemistry position, and including the chemistry program

1 manager positions, PWR and BWR. I said earlier we did  
2 hundreds of these, and we had been doing this since '94,  
3 actually. TVA nuclear had been going through  
4 reorganizations since the late '80s. And in making those  
5 calls in '94, '95, '96, the human resource consultants  
6 followed the same process, comparing the position  
7 description, the official position description with the new  
8 one in making the call do we post this job or do we not post  
9 this job. So we -- we did the same comparison with the job  
10 that Wilson McArthur was placed in. And -- and the same .  
11 comparison that we did here. The outcome was different. In  
12 this one we posted the job.

13 CHAIRMAN BECHHOEFER: Yeah, but for the one Wilson  
14 McArthur was in, was this the job he was occupying at the --  
15 at -- the last job he was occupying before being placed into  
16 the new job? Because they -- from what I've heard before,  
17 those descriptions weren't very similar at all, and that's  
18 what I...

19 THE WITNESS: He was in a rad con position.  
20 That's where we looked in the HRIS system earlier.

21 CHAIRMAN BECHHOEFER: Yes.

22 THE WITNESS: And we -- we saw his PG-11 level.  
23 He had been placed in -- in that position early, oh, '93  
24 time frame, '94 time frame.

25 CHAIRMAN BECHHOEFER: Yeah. And this was '96.

1 So...

2 THE WITNESS: But his -- the position we used to  
3 do the comparison and make the decision was the one he had  
4 issued to him in the human resource system. That was the  
5 technical program manager job. It was a 1990 PD. Much like  
6 in my case, my position description was not totally accurate  
7 on what I was doing at that time, but it was my position  
8 description of record. Same thing with Dr. McArthur. When  
9 it came time to compare those, we used his position  
10 description of record to do the comparison.

11 CHAIRMAN BECHHOEFER: And was that similar enough  
12 to the position description that he was put into for you to  
13 justify that he had rights to that job?

14 THE WITNESS: We believed it was; yes.

15 CHAIRMAN BECHHOEFER: The one that he was  
16 immediately previously employed in? Not the technical  
17 specialist but...

18 THE WITNESS: The 1990.

19 CHAIRMAN BECHHOEFER: Yeah. Right.

20 THE WITNESS: Yes, sir. If I could, he was a  
21 manager. He -- in comparing a technical specialist position  
22 description, you look at -- you know, they analyze the steam  
23 generator chemistry and all of those things. A manager  
24 manages organizations. Many times we'll have a vice  
25 president that we might move nuclear assurance or we might

1 add licensing to that vice president. We don't consider  
2 that a change in competitive level for that manager. We're  
3 paying that person to manage an organization.

4 In the case of McArthur, he managed many of the  
5 elements of the organization in 1990. And in our view, he -  
6 - he had a right to the '96 job description because we felt,  
7 from that standpoint, they were similar.

8 CHAIRMAN BECHHOEFER: I see. But not all the  
9 duties or -- having looked at the two, the duties didn't, to  
10 me at least, seem that similar. It looked like one  
11 encompassed the duties of the other, but added some.

12 THE WITNESS: There were.

13 JUDGE YOUNG: Are you going to go into this?

14 MR. DAMBLY: Yes.

15 CHAIRMAN BECHHOEFER: Oh. Oh, okay. I'll leave  
16 it for Mr. Dambly to go into it.

17 MR. DAMBLY: I hadn't got to it yet, but you can  
18 rest assured we will go over that in some detail.

19 CHAIRMAN BECHHOEFER: Okay.

20 BY MR. DAMBLY:

21 Q With regard to fairness, supposed to -- so  
22 everybody has a chance to compete. In point of fact, if you  
23 determine competitive levels and there's a reduction in  
24 force, people do compete for positions, don't they?

25 A I'm -- would you restate.

1 Q Yeah. In a reduction in force situation where you  
2 determine competitive levels, I mean, you've got five people  
3 and three positions, they compete for those positions  
4 through the retention register; correct?

5 A That's correct.

6 Q And their -- and their standing on the retention  
7 register is based on progressionally and OPM mandated  
8 factors that seniority, veterans preference, and performance  
9 (sic)?

10 A That's correct.

11 Q So there is a competition that's fair to everybody  
12 under the rules that congress has established, as opposed to  
13 a competition that TVA sets the rules for?

14 A If it's the...

15 Q Either way?

16 A ...if it's the same competitive level.

17 Q Okay, now -- now we'll go to the McArthur  
18 position. What was your involvement in the decision to take  
19 Dr. McArthur from his PG-11 rad con manager position and  
20 non-competitively promote him to a PG senior position in  
21 '96?

22 A As I mentioned, when we first started to see the  
23 scope of the -- of the reorganization in early '96, I met at  
24 some point with Tom McGrath. And in discussing the  
25 reorganization, I told him that it appeared to us that we

1 would post most of the positions. It was a fairly  
2 significant organizational change.

3 He -- he advised his direct reports of our  
4 discussion, and sometime later---maybe a few days---he came  
5 to me and said that Wilson McArthur had approached him with  
6 a concern about the new position description, the rad con  
7 chemistry, and that he didn't think that it was proper or  
8 right for us to post the job, that he believed that it was  
9 his position.

10 If I remember correctly, he believed he had held  
11 the position before, and in addition, he indicated to Mr.  
12 McGrath that he had pretty much done the position over the  
13 last few months.

14 JUDGE YOUNG: Did you just say was this -- at that  
15 point had you already made the decision to post -- or made a  
16 -- you hadn't made any determination like that?

17 THE WITNESS: No, Your Honor. No, we had not.

18 JUDGE YOUNG: Okay.

19 THE WITNESS: I had simply, based on the -- what  
20 we saw as far as the scope of the reorganization, we thought  
21 we would be posting those positions.

22 JUDGE YOUNG: Had you -- had you told that to  
23 anyone? I mean, what I'm trying to get at is, is I didn't  
24 catch what you said, and I didn't know whether it was your  
25 indication that you were planning to post it that prompted

1 him to come to you, or what prompted him to come to you?

2 THE WITNESS: Yes, we -- I told Tom McGrath that  
3 in our view, we would post most of the positions. And he in  
4 turn told his staff, which included Wilson McArthur, that  
5 the jobs would -- that HR had indicated the jobs would be  
6 posted.

7 And then Tom McGrath came to me a few days later  
8 and said that...

9 JUDGE YOUNG: Tom McGrath?

10 THE WITNESS: Tom McGrath, yes. And said that Dr.  
11 McArthur had expressed a concern to him that he didn't think  
12 it was right that we post the job. That he thought it was  
13 his position that he had held and had -- had done.

14 We had actually put the rad con and chemistry  
15 control job back together I guess in '94, and we had an  
16 individual on a rotational assignment prior to his  
17 retirement, who had been up there for a while doing the job.  
18 But as that individual moved toward retirement, Dr. McArthur  
19 did -- was performing the majority of those duties. So that  
20 was his perception, that -- that it was not right for us to  
21 post the job. That he had a concern about that.

22 JUDGE YOUNG: And this was -- "his" is referring  
23 to Mr. McArthur?

24 THE WITNESS: Mister -- yes. After Mr. McGrath  
25 talked with me about that, I told him that I would have to

1 check into it. I had only joined the organization in late  
2 '94, so really '95, and didn't know the history, didn't --  
3 had not done the comparisons of those position descriptions.  
4 So I told him that -- that we would look at that and get  
5 back to him with an answer.

6 So I called Ben Easley, that worked for me, and  
7 asked him to -- what's the history, do a little research and  
8 come back to me and -- and tell me what's the issue here.  
9 He did that. He came back and we sat down and -- and  
10 basically reviewed the -- did the competitive level call at  
11 that point in time. We were doing the managers for the  
12 organization earlier than the other employees anyway,  
13 because we wanted to get those done so that we could post  
14 and select, so that those managers could be involved in the  
15 rest of the reorganization.

16 So we sat down, we did that. At that time we used  
17 the 1990 -- we used the duties of the technical program  
18 manager's position description. We recognized he had been  
19 in the rad con position. We also recognized at that time  
20 that he had been really doing the rad con chemistry  
21 environmental duties since the -- the rotational assignment  
22 of the incumbent. He was not in Chattanooga a lot. His  
23 name was Allen Sorrell, and he actually stayed at Browns  
24 Ferry. We didn't move him to Chattanooga. So Dr. McArthur  
25 had actually picked up a lot of the duties.

1 JUDGE YOUNG: So you looked at what he was  
2 actually doing?

3 THE WITNESS: No. Well, we -- we knew what he had  
4 been doing. But we compared the -- the new job to the 1990  
5 duties. Actually did a little worksheet, and sat there and  
6 talked about it. And -- and in our view, we made the  
7 decision that he had a right to the position, and that's  
8 pretty much when we made the call to not post that position.

9  
10 As a result of that, I went back to Tom McGrath.  
11 And this was probably in April of '96. And I told McGrath  
12 that we had done the review, got back to him and told him  
13 that we would not be posting that position.

14 CHAIRMAN BECHHOEFER: Well, at the time you told -  
15 - at the early time that you told Mr. McGrath that you  
16 thought most of the positions---"most" is your word---would  
17 have to be posted, which ones would be excepted from that?

18 THE WITNESS: At the time I told him that, I  
19 didn't except any. I thought...

20 CHAIRMAN BECHHOEFER: Well, the word "most" means  
21 not all, to me, at least.

22 THE WITNESS: Well, what I was saying to him, we  
23 haven't done the comparison, but based on the scope of this  
24 reorganization, I think that most -- the vast majority of  
25 the position descriptions are going to be different and that

1 we're going to post them. That's really what I was saying  
2 to him, trying to convey to him the scope of -- of  
3 activities that we're going to be involved in for the rest  
4 of the year.

5 CHAIRMAN BECHHOEFER: All right. But you did not  
6 have in mind any particular positions that you thought...

7 THE WITNESS: No.

8 CHAIRMAN BECHHOEFER: ...might not have to be  
9 posted?

10 THE WITNESS: No. At that time, the position  
11 descriptions -- some of them had not even been completed,  
12 and we hadn't done any comparisons. So I didn't have any  
13 specific position in mind.

14 CHAIRMAN BECHHOEFER: I see. Okay.

15 BY MR. DAMBLY:

16 Q All right, now, Mr. Boyles, you indicated a minute  
17 ago, and Judge Young asked you about it. What bearing at  
18 all, and why did you bring up the fact that Dr. McArthur was  
19 doing some duties in this rad con chemistry position?

20 A Dr. McArthur expressed the concern to -- to Tom  
21 McGrath. That was Dr. McArthur's perception, that -- that  
22 he had, in fact, been doing some of those duties.

23 Q And you said you recognized that.

24 A Yeah, we were aware that he had been substituting  
25 for the individual in a rotational assignment.

1 Q And how did that play...

2 A It didn't -- it didn't play any role in doing the  
3 comparison. In doing the comparison, we used the 1990  
4 duties and the -- and the 1996 duties to make the  
5 comparison. But we were aware. We -- we dealt with these  
6 individuals on a day-to-day basis, and we knew what Dr.  
7 McArthur had been doing. We were aware of the -- of the  
8 rotational assignment and what was going on there.

9 Q I understand you're aware of it. But in response  
10 to the question you were asked, you said, "Well, we -- we  
11 looked and we found his 1990 PD, and he had been doing these  
12 duties in the previous job, and we recognized what he was  
13 doing now was part of Sorrell's job."

14 A Okay, but again, in the -- in the call on the  
15 competitive level, what he had been doing in the meantime  
16 didn't play a role in making the competitive level call.

17 Q Then why did you mention it as part of what you  
18 looked at?

19 A I mentioned it to say that that was part of Dr.  
20 McArthur's concern. Dr. McArthur is not the HR expert, and  
21 he was not making the competitive level call. But in his  
22 view, that may have contributed to his concern about it. It  
23 didn't contribute to what we did in making the competitive  
24 level call.

25 Q Okay, now, who's the "we" that made the call?

1           A     When I -- after I talked to Mr. McGrath, I came  
2 back and asked Ben Easley, who had been their human resource  
3 consultant for a period of time. He knew the -- he did the  
4 competitive level calls for the organization. And I asked  
5 him to pull the information together for me.

6           Q     Okay.

7           A     So Ben Easley and I.

8           Q     And did Mr. Easley tell you he thought the job  
9 should be posted?

10          A     When we did the comparison, he -- he told me -- he  
11 agreed with the comparison. At a -- at a later date, this  
12 was...

13                 JUDGE YOUNG: I'm sorry. He agreed with the  
14 comparison. What do you mean by that?

15                 THE WITNESS: Of the two -- he agreed, when we  
16 met, that the -- the comparison of the two position  
17 descriptions, that it was interchangeable.

18                 JUDGE YOUNG: He agreed with whom? You?

19                 THE WITNESS: With us. He brought this to me. It  
20 ~~was~~ a discussion. We sat down...

21                 JUDGE YOUNG: Now, who is "he," now? Mr. Easley?

22                 THE WITNESS: Ben Easley.

23                 JUDGE YOUNG: And he agreed with you that it was  
24 an interchange...

25                 THE WITNESS: We discussed it, and we both -- we

1 agreed that it was interchangeable at that time. This  
2 was...

3 JUDGE YOUNG: Had you already made -- had you  
4 already made a determination that it was?

5 THE WITNESS: No. When Mr. Easley came to me, he  
6 brought the information that we needed to make the  
7 comparison. We did that...

8 JUDGE YOUNG: The reason I'm -- go ahead.

9 THE WITNESS: We sat down in my office and  
10 discussed it. And at that time we thought it was  
11 interchangeable. To make...

12 JUDGE YOUNG: The reason I asked was because you -  
13 - I think you said earlier Mr. Easley came to you and he  
14 agreed that it -- that they were interchangeable, suggesting  
15 that you had told him that you thought they were.

16 THE WITNESS: When -- when I talked to Mr. Easley,  
17 I asked him to go back and do some -- do the research and  
18 come back to me with -- with the information. We sat down  
19 in my office in a meeting and discussed it, and we made the  
20 call at that time.

21 While we made the call, we recognized that it was  
22 not as easy a call as some of the others. So we bounced it  
23 -- our decision off a couple of people, to make sure that --  
24 that we were looking at this comparison correctly. I talked  
25 to -- to my boss at that time, and then we talked to...

1 JUDGE YOUNG: Your boss?

2 THE WITNESS: Her name was Naomi Lindsey at the  
3 time. And in -- we just went over the -- the evaluation to  
4 make sure we were thinking correctly, that we were applying  
5 the policy correctly. And then we met with Phil Reynolds  
6 who was the general manager of HR, to kind of describe what  
7 we were doing and how we were thinking and how we did this  
8 comparison. And he agreed that -- that we were doing it  
9 correctly and that we were doing the right thing. Again,  
10 this was in April. And after we -- after we talked to Naomi  
11 Lindsey and to Phil Reynolds, I informed Tom McGrath of our  
12 decision not to post the job.

13 JUDGE YOUNG: How much of a role did -- did Tom  
14 McGrath's having brought that to you play in your decision  
15 to find that the jobs were interchangeable?

16 THE WITNESS: If -- Tom McGrath's issue was for me  
17 to resolve the concern. Had I told Tom McGrath the results  
18 are that we post the job, he would have -- he would have  
19 posted the -- he would have accepted our decision on that, I  
20 believe. So...

21 JUDGE YOUNG: But what I was asking you was how  
22 much of a role his having brought it to you played in your  
23 decision, say as compared to him not interceding on behalf  
24 of Mr. Fiser?

25 THE WITNESS: It didn't -- it did not affect...

1 MR. MARQUAND: You mean Dr. McArthur?

2 JUDGE YOUNG: Pardon?

3 MR. MARQUAND: You mean Dr. McArthur, not Mr....

4 JUDGE YOUNG: No, in comparison to...

5 MR. MARQUAND: You said -- instead, you said on  
6 behalf of Mr. Fiser.

7 JUDGE YOUNG: Oh, did I say that first? On behalf  
8 of Mr. McArthur, as -- as compared to not having interceded  
9 on behalf of Mr. Fiser. That's what I was trying to say, if  
10 I did not say that before.

11 THE WITNESS: Mr. McGrath, the fact that he  
12 brought the concern to us, didn't affect our decision any.  
13 His -- I believe his total issue at that point in time was  
14 that we just needed to resolve this concern so that we could  
15 move on with this reorganization. It didn't have any impact  
16 on the decision. Had we told him the result is that we need  
17 to post this position...

18 JUDGE YOUNG: I understand.

19 THE WITNESS: ...he would have -- he would not  
20 have objected to that.

21 CHAIRMAN BECHHOEFER: Well, Mr. Boyles, just one  
22 further clarification. The job that Dr. McArthur was in  
23 immediately previous to the 1996 reorganization, in my  
24 understanding, at least, was quite, quite different. And I  
25 wonder, wouldn't it have been unusual to go back as far as

1 1990? The 1990 job I understand Dr. McArthur left. And  
2 then he may have occupied it for beginning of 1990, or it  
3 had a 1990 description. But if he wasn't occupying,  
4 actually doing the duties just prior to the reorganization  
5 in '96, how can one justify going back and essentially  
6 skipping a job? I don't know what capacity Dr. McArthur was  
7 in the job just prior to 1996, probably '94, '95. But isn't  
8 it somewhat unusual to -- to -- when you're looking for  
9 comparisons, to go back and pick a person who had previously  
10 occupied a position, was no longer occupying that position,  
11 and then saying -- bringing them over without competition to  
12 the new job?

13 THE WITNESS: It was some -- he did not have a  
14 position description and had -- for the '93 time frame job.  
15 That was a problem. That was problematic to us. And that's  
16 one of the reasons that, after we did the review of it, that  
17 we wanted to bounce it off a couple of people.

18 But the rule that we followed was comparing it to  
19 the official job description of record at that time. We've  
20 had several MSPB cases, and I guess that's one of the things  
21 drilled into us, that we do compare it to the position  
22 description of record. Not to the actual duties that  
23 they're performing in the interim. Similar to my situation.  
24 I was doing workforce planning for a couple of years. But  
25 when they did the comparison, they had to -- actually had to

1 go back to my 19, I guess, '94 job description to determine  
2 the competitive level, and that they had to post the  
3 position.

4 A similar situation. But it was problematic to us  
5 that he hadn't been given a position description, and that's  
6 why we double-checked at that time to make sure that -- that  
7 the way we were approaching it and the comparison that we  
8 were using was the correct thing to do.

9 CHAIRMAN BECHHOEFER: Even though he was no longer  
10 in the job for which he had a position description? See,  
11 that -- that's what troubles me. The -- you could -- I  
12 would almost assume, even if there were no officially  
13 approved position description for what Dr. McArthur was  
14 doing in '94, '95, presume one existed. This is not for the  
15 duties that he was performing. And then, if you did that,  
16 he would not have been carried over, if you will, to the new  
17 1996 job.

18 THE WITNESS: Yeah.

19 CHAIRMAN BECHHOEFER: That's my understanding, at  
20 least.

21 THE WITNESS: If he had been issued a job  
22 description in 1994, as the rad con manager...

23 CHAIRMAN BECHHOEFER: Right.

24 THE WITNESS: ...that's correct. And as I said,  
25 that was an issue to us. But I think we followed our

1 policy. I think we checked to make sure that we were doing  
2 the right thing. It was not an easy call.

3 CHAIRMAN BECHHOEFER: Well, how would you check on  
4 that?

5 THE WITNESS: Sir?

6 CHAIRMAN BECHHOEFER: How would you check on that?

7 THE WITNESS: Well, we talked to -- to people that  
8 -- in HR, to my supervisor and to the general manager, to  
9 kind of go over the scenario of what our thinking was on  
10 that call. And -- and got agreement that we were doing the  
11 correct thing.

12 If -- you know, had we made the call a different  
13 way, I think technically Dr. McArthur would have probably  
14 had a pretty good case.

15 CHAIRMAN BECHHOEFER: No, I'm not saying that.  
16 But the question is he didn't have to make one. He didn't  
17 have to make a pretty good case, the way it happened.

18 THE WITNESS: Well, we -- we put -- we ended up  
19 placing him in the position; that's correct. But had we  
20 posted the job and he -- and Dr. McArthur had competed and  
21 had not been selected, I think he would have probably had an  
22 opportunity to -- to pursue some type of complaint. So I'm,  
23 I think, following our policy and -- and making the call  
24 that we did was the best decision that we could make at the  
25 time.

1 CHAIRMAN BECHHOEFER: I see. Thank you.

2 BY MR. DAMBLY:

3 Q Okay. Since you brought it up, you said MSPB case  
4 and all, it's been drummed into you is that you use the  
5 position description of record.

6 A That's what our policy says.

7 Q I'm not asking what your policy (sic). You said  
8 MSPB position case law.

9 A My understanding---and I'm not an MSPB expert,  
10 either---but we have had MSPB cases prior. And, as a  
11 precedent, the direction has been use the job description of  
12 record for these comparisons.

13 Q It's use the -- the position description for the  
14 official position in which the employee is placed; is that  
15 correct?

16 A The term that I've heard is position description  
17 of record.

18 Q Have you ever looked at the OPM RIF regs?

19 A I've seen them. I'm not an expert.

20 Q They refer to official position?

21 A I don't know.

22 Q Are you aware of any MSPB case anywhere that said  
23 you would use a position description of record for a job you  
24 know the employee is not in, when he's been appointed to  
25 another position, in determine RIF rights?

1           A     What I'm saying is that I've been told by our  
2 labor relations and attorneys that, based on previous MSPB  
3 decisions, that our policy is to use the official job  
4 description of record.

5           Q     For the position which the employee has been  
6 appointed to?

7           A     I'm not sure of the difference.

8           Q     Well, Dr. McArthur was appointed to, we saw it in  
9 the HRS thing, in 1994 the rad con manager position. That  
10 was his official position. That was his official grade .  
11 level. You've told us previously, because I've asked you  
12 this question, there was no question within TVA that Dr.  
13 McArthur was occupying the position of rad con manager in  
14 1996. Is that correct?

15          A     But his -- his official position description of  
16 record was the 1990 technical programs manager.

17          Q     I'm asking you what his official position was.

18          A     He was in the PG-11 rad con...

19          Q     And he was appointed to that position?

20          A     He was in the position in HRIS. He had not been  
21 given a position description for that position. Nor had he  
22 been selected into the position. He had been placed in it  
23 prior to that. What we did is...

24          Q     You're positive he did not compete for the job  
25 under a vacancy announcement?

1           A       ...what we did is -- I was not present -- I wasn't  
2 in HR when Dr. McArthur...

3           Q       So you don't know how he got on that job?

4           A       So I don't -- but in -- in 1996, when we did the  
5 comparison, his position description of record was the 1990  
6 technical programs manager position. We felt like and feel  
7 like today that under our policy the thing to do was to  
8 compare his official position description of record to the  
9 new one, and that's what we did.

10          Q       Are you aware of any MSPB decision that says -- we  
11 take you, you in your HR manager position, and they look  
12 back in your record and you've been appointed, you've  
13 competed for it, and now you've got it, you're in that  
14 position, that's your pay grade. You've got performance  
15 appraisals, you've got everything. Are you aware of any  
16 MSPB decision that say (sic), "Well, we found the PD. The  
17 only one we could find was back in transmission work, and  
18 therefore that's what you have to use to compare your rights  
19 or determine your rights in a reduction in force"?

20          A       I'm not familiar with any of those specific MSPB  
21 decisions. But our attorneys have told us in the past to  
22 use the official position description of record because of  
23 previous MSPB decisions. But, no, I'm not familiar with any  
24 specific decision.

25          Q       So prior to the McArthur situation, have your

1 attorneys ever told you use a position description for a  
2 position which you knew the employee was not in to determine  
3 RIF rights?

4 A What they've told us is to use the position  
5 description of record to determine competitive level.

6 Q And in the situation we've talked about with  
7 yourself, your position description of record was actually  
8 for the position you were in, the HR manager? It didn't  
9 reflect all your duties that had accreted, but it was your  
10 official job?

11 A I was in the HR manager's position. My duties had  
12 expanded to include much broader workforce planning  
13 functions.

14 Q And that's why it wasn't used official position as  
15 to what -- not what the employee is doing, but what they're  
16 supposed to be doing?

17 A And that's what they did. They went back to my  
18 '94, I guess, '94 position description.

19 Q And you hadn't been appointed to another position  
20 in that time frame, had you?

21 A I don't -- I'd stayed in the human resource  
22 position.

23 Q So it was the PD for the position you were in?

24 A And it was my official position description of  
25 record.

1 Q Now, did Dr. McArthur ever say to you or to Mr.  
2 McGrath that, "I'm entitled to this job because I don't have  
3 a position description for the 1994 rad con manager  
4 position"?

5 A He didn't say -- I didn't talk to him about this  
6 issue.

7 Q Did he ever tell you he wasn't in the rad con  
8 manager position in 1996?

9 A I don't believe I talked to him about...

10 Q Did anybody tell you he wasn't in that job?

11 A No.

12 Q HRS says -- HRIS says he was in that job?

13 A (No response.)

14 MR. DAMBLY: Maybe we could take a five minute  
15 break.

16 MR. MARQUAND: Sounds good.

17 (A short recess was taken.)

18 CHAIRMAN BECHHOEFER: Back on the record. We're  
19 on the record.

20 MR. DAMBLY: Oh, we are?

21 BY MR. DAMBLY:

22 Q Now, we were talking before the break, I think,  
23 about the '94 position that McArthur went into; do you  
24 recall?

25 A Yes.

1 Q And in '94, the technical program manager position  
2 was eliminated, was it not?

3 A I'm sorry?

4 Q In 1994, when McArthur went in the rad con  
5 position, his prior position of technical program manager  
6 was eliminated?

7 A Yes, it had been eliminated.

8 Q He had what?

9 A The technical program manager position, he had  
10 moved from that into the -- to the rad con.

11 Q And the technical program manager position was  
12 eliminated, it was no longer on the books?

13 A On the org chart.

14 Q On the org chart.

15 JUDGE YOUNG: Your answer was yes, that's correct?

16 THE WITNESS: Yes.

17 CHAIRMAN BECHHOEFER: Yeah. And that's in 1994;  
18 right?

19 THE WITNESS: There -- there's a lot of concern, I  
20 think, about using the '90 position description versus what  
21 he was doing in '94. I mentioned earlier, we were doing  
22 literally hundreds and hundreds of these comparisons. I was  
23 on a project team to do the comparisons for engineering. In  
24 many of those competitive levels calls, when we started  
25 doing the comparisons, we found that their position

1 descriptions of record were back into the '80s. Many of  
2 them were when they worked in our centralized engineering  
3 office in Knoxville. But, again, based on the same process,  
4 and at that time our project team talked with our OGC folks  
5 to determine what should we do, you know. Should we use  
6 what they're actually doing today in 1996, or do we go back  
7 to the 1987 or '88 position description of record. And the  
8 answer was that we used the position descriptions of record  
9 for the engineers that were still on those. And there were  
10 several. There were literally hundreds of engineers being -  
11 - going through the same process and the same comparison.

12 JUDGE YOUNG: You said "at this time." You said  
13 "at this time." At which time were you -- were you...

14 THE WITNESS: In 1996, at the same time we were  
15 doing the operations support reorganization, we were doing  
16 the engineering reorganization, and the same issue of  
17 position descriptions of record came up for many of those  
18 engineers. I was in the corporate office, but I did serve  
19 on a project team that did those comparisons. And as a  
20 result, we posted many of the jobs based on their -- their  
21 1980-something position description.

22 JUDGE YOUNG: When did the issue with the  
23 engineers come up as compared to the issue of Mr. McGrath?

24 THE WITNESS: I believe it was later that year.

25 JUDGE YOUNG: So...

1 THE WITNESS: That's -- that's been many years  
2 ago.

3 JUDGE YOUNG: ...so Mr. McArthur's was the first  
4 one for which you went -- you sought advice?

5 THE WITNESS: It's hard to say. I don't remember  
6 if we got into the engineering issue first or -- or the  
7 McArthur. But I think the McArthur came up before the  
8 engineering -- the call. But, again, we actually discussed  
9 with OGC, because some of these position descriptions were  
10 from when they were in a different competitive area in  
11 Knoxville in what we called INDEZ at that time. And we  
12 wanted guidance on how to proceed with this, and the  
13 guidance was consistence that -- consistent that we should  
14 use the position description of record, even though it was a  
15 1980s vintage position description. So many of the  
16 engineers applied on positions because we made the decision  
17 to post based on that comparison.

18 JUDGE YOUNG: Were any of those engineers in -- or  
19 was anyone, for that matter, in a job -- in a situation in  
20 which they had been hired for a particular job and there was  
21 never any job description for the job they were in?

22 THE WITNESS: I don't remember a case like that.

23 JUDGE YOUNG: What would you have done if somebody  
24 had been working in a job, they were hired into that job,  
25 and there never was a position description?

1 THE WITNESS: I would -- I would definitely call  
2 OGC on that one, because I'm -- I'm not certain what my next  
3 step would be.

4 JUDGE YOUNG: Would you make any attempt to find  
5 out the answer before going to OGC?

6 THE WITNESS: No. I think that we would need to -  
7 - I think we would need the legal guidance on a situation  
8 like that. I don't remember one like that. But we did have  
9 several with fairly old job descriptions. And that's the --  
10 that's the big issue that I remember from doing those  
11 comparisons.

12 CHAIRMAN BECHHOEFER: Mr. Boyles, essentially,  
13 with respect to Dr. McArthur, you're saying that the  
14 position description of record can be of a -- not only a  
15 position that the incumbent is not in at the time of the  
16 reorganization, but also a position description that no  
17 longer exists. I mean, it may be technically on paper. But  
18 the position -- if the position no longer exists, and the --  
19 and the incumbent, before the reorganization, isn't in that  
20 position, is in one for which none has been prepared or  
21 officially put into effect, you're saying you still go back  
22 to what may be on the books for a given individual, given  
23 all those circumstances?

24 THE WITNESS: Yes, sir. And this situation is  
25 very similar to the engineering example that I just gave.

1 Many of those engineers had been design engineers in -- in  
2 Knoxville. And as in my case and Dr. McArthur's cases, the  
3 duties that they were doing on site may not have been  
4 exactly the same duties that they were performing, but the  
5 guidance was to use the position description of record.

6 CHAIRMAN BECHHOEFER: Oh, I think I was trying to  
7 draw a distinction between a job where the duties may have  
8 changed, and a job that was a completely different job and  
9 where the original job no longer existed, it was abolished.

10 THE WITNESS: Let me say that in -- in 1996, in  
11 making the engineering calls and in making the call on the  
12 position description that Dr. McArthur was put in, we in HR  
13 had to use our best judgement in many of those cases. We  
14 tried to do that, using the policy, talking to our  
15 attorneys, talking to labor relations. In the end, we had  
16 to make a decision on all of those. And the decision, based  
17 on advice from OGC, was to follow the policy which outlined  
18 using the position description of record. But let me say,  
19 some of these were not...

20 CHAIRMAN BECHHOEFER: Was that written advice?

21 THE WITNESS: No. Typically, a telephone  
22 conversation. I do think we've submitted formally to --  
23 during the enforcement process, because during this we went  
24 through many scenarios of competitive level, competitive  
25 area, interchangeability. So we -- we had submitted a

1 document that laid out how we make those calls and how we do  
2 those comparisons. And in that...

3 JUDGE YOUNG: When you say you'd submitted,  
4 submitted to whom?

5 THE WITNESS: To NRC during the enforcement  
6 process, after the -- the enforcement conference. There was  
7 still a lot of confusion, because it gets fairly complicated  
8 in making these calls. So we -- we had submitted a document  
9 to -- to NRC to help clarify the Dr. McArthur call, the  
10 other competitive level calls, and to give some history in -  
11 - in why TVA does it.

12 MR. MARQUAND: Your Honors,...

13 CHAIRMAN BECHHOEFER: Is that document one of  
14 those...

15 MR. MARQUAND: Yes, Your Honor.

16 CHAIRMAN BECHHOEFER: ...in the books?

17 MR. MARQUAND: In fact, at the enforcement --  
18 predecisional enforcement conference, the staff had  
19 questions about how this surplusings worked, and how TVA  
20 considered the comparison of position descriptions. And TVA  
21 submitted a formal response five days after the  
22 predecisional enforcement conference, explaining that. And  
23 that is TVA Exhibit 111. And I think since the witness  
24 referred to it, I think it would help the record if we would  
25 tender it into the record as TVA's -- however you want to

1 consider it, TVA's position to -- to inform the staff,  
2 following the enforcement conference, after the staff raised  
3 questions about how TVA surplused employees, and how it  
4 considered competitive levels to be established. It's a  
5 December 15<sup>th</sup>, 1999 letter, from Mark Brezinski to Ann T.  
6 Boling, the director of the enforcement investigations  
7 coordination staff. And attached to it is an enclosure or  
8 attachment explaining TVA's practice of how it conducted  
9 surpluses and how it made the determination of competitive  
10 level calls.

11 JUDGE COLE: Did you say you wanted to put this  
12 into evidence, sir?

13 MR. MARQUAND: Yes. I think, just for the  
14 completeness of the record.

15 CHAIRMAN BECHHOEFER: Yes.

16 MR. MARQUAND: I think this witness indicated he  
17 was aware of it, and this was just to respond to the  
18 questions raised at the predecisional enforcement conference  
19 by the staff about how TVA conducts -- its practices with  
20 respect to surplusings of -- surplus positions, employees,  
21 and how it makes competitive level determinations. And I  
22 think it is helpful to explain what TVA's response was back  
23 to the staff.

24 THE WITNESS: One additional thing, and I don't  
25 think that document -- in my view, I don't think this goes

1 into -- that document goes into this. As I said, we had to  
2 use a great deal of judgement both in the engineering and in  
3 the ops support reorganizations. We tried to use  
4 professional judgement and do it as fairly as possible.

5 In looking back on it with -- I won't say 20/20  
6 hindsight, but we've looked back on it many times. I keep  
7 coming back to the fact that if we'd made the other decision  
8 and we had RIF'd Wilson McArthur, down the road we would  
9 have had to have used the 1990 technical programs position  
10 description to RIF him from. So from that standpoint, the  
11 comparison, I believe we were proper, and I think we  
12 followed our policy in using the 1990 technical programs  
13 position description to make the competitive level decision,  
14 too.

15 JUDGE YOUNG: Did I understand you correctly, you  
16 said you would have RIF'd him from the 1990 position, not  
17 the position that he held?

18 THE WITNESS: If -- if we had had to -- if -- if  
19 he had been in a RIF situation in 1994 or 1995...

20 JUDGE YOUNG: 1996?

21 THE WITNESS: ...and up to the reorganization of  
22 1996, we would have used the position description of record  
23 to establish his competitive level for RIF purposes. So he  
24 would have been RIF'd from...

25 MR. MARQUAND: Or for surplusings purposes, if they

1 had...

2 THE WITNESS: Or for surplusage.

3 MR. MARQUAND: ...if they decide to post the job,  
4 you've got to surplus the individual from the job.

5 THE WITNESS: So I wanted to make that point, too,  
6 because either way, we would have gone back to that position  
7 description to make the competitive level call.

8 CHAIRMAN BECHHOEFER: Well, what about going back  
9 to the unwritten description of the job that was actually  
10 occupied and which -- I don't know whether it was in the  
11 process of preparation or drafts or -- how did Dr. McArthur  
12 know what he was supposed to be doing if he didn't have any  
13 indication of what the job description was? If he had  
14 performed the 1990 duties, he probably would have flunked  
15 the other position, not been satisfactory.

16 THE WITNESS: Again, Dr. McArthur...

17 CHAIRMAN BECHHOEFER: I'm being facetious, but  
18 it's important, though.

19 THE WITNESS: I know.

20 CHAIRMAN BECHHOEFER: But the point I'm trying to  
21 make is I would think you'd have to put a pro forma job  
22 description, at least, for the job he was occupying.

23 THE WITNESS: Again, either way, had it been a  
24 surplus or RIF situation or the competitive level call that  
25 -- that he had rights to the job, we would have used the

1 1990, not -- not what he was doing in 1994 or 1995.

2 CHAIRMAN BECHHOEFER: I see. Does the staff have  
3 any objection to putting in the record TVA 111?

4 MR. DAMBLY: I'm not sure how we got to the point  
5 of introducing it, but that being the case...

6 CHAIRMAN BECHHOEFER: Well, I thought Mr. Marquand  
7 suggested that...

8 MR. DAMBLY: I don't object.

9 CHAIRMAN BECHHOEFER: ...put into the -- for  
10 completeness of the record, I guess. Do you object?

11 JUDGE YOUNG: No.

12 CHAIRMAN BECHHOEFER: Okay, without objection, TVA  
13 111 will be admitted.

14 (The documents, heretofore marked  
15 as TVA Exhibit #111, were received  
16 in evidence.)

17 JUDGE YOUNG: And just for -- for purposes of  
18 trying to keep counsel informed of concerns that we might  
19 like to have addressed, I noticed that that document does  
20 make reference to some MSPB decisions. And I know I've  
21 previous -- I know that there is a reporter system for those  
22 decisions. And so, to the degree there's any case law, MSPB  
23 case law on related issues...

24 MR. DAMBLY: We will certainly be addressing that,  
25 and -- and I think we actual have already in some of the

1 responses to the summary disposition. But, now, I was going  
2 to address them right now with Mr. Boyles.

3 BY MR. DAMBLY:

4 Q If you would look at the document that was just  
5 admitted.

6 A Well, where is it?

7 Q TVA 111.

8 A I thought...

9 Q And if you would look at what is at the -- I think  
10 it's the next to the last -- next to the last page. It says  
11 FG0000, and I think it says 6.

12 A Next to the last page?

13 Q Yes, in 111. TVA 111.

14 JUDGE COLE: Yeah, 006.

15 MR. DAMBLY: Okay.

16 Q You see that? And there's a quote indented in the  
17 middle of the page which says, "The board has long held that  
18 it is the official position occupied by an individual which  
19 determines the competitive level in which he is properly  
20 placed," do you see that?

21 A Yes, I do.

22 Q And that's what you sent in as the rules you  
23 followed.

24 A Yes, this is what we submitted.

25 Q And we've already discussed that Dr. McArthur

1 occupied the rad con position, not the tech op position.

2 A I've described several times how we did the  
3 comparisons, both for Dr. McArthur and for the engineers.

4 Q I'm not asking you what you did for comparisons.  
5 I'm asking you -- we've already had testimony from you that  
6 Dr. McArthur official position (sic), the one he occupied,  
7 was rad con manager.

8 A No. We -- we indicated that his official position  
9 description of record was the technical programs manager  
10 position. That's the one that we used...

11 JUDGE YOUNG: What was his official position?

12 Q I'm not asking about his position description of  
13 record. We looked at the HRIS system in Staff Exhibit 99,  
14 and it shows Dr. McArthur going from PG senior to a PG-11  
15 position in 1994; is that correct?

16 A That's correct.

17 Q And you've told us before that there is no dispute  
18 in TVA that the official position in which -- the position  
19 that Dr. McArthur occupied was rad con manager in 1996.

20 A No, I've -- I've indicated that the fact that he  
21 had the technical program manager's position description  
22 required us to use that position description to do the  
23 comparison.

24 JUDGE YOUNG: Mister...

25 MR. MARQUAND: Boyles.

1 JUDGE YOUNG: ...Boyles, thank you. What was his  
2 official position? Prior to 1996 reorganization.  
3 Immediately prior to the 1996 reorganization.

4 THE WITNESS: His official position, for the  
5 purposes of determining competitive level, he...

6 JUDGE YOUNG: For any general purpose. If some...

7 THE WITNESS: He was -- he was...

8 JUDGE YOUNG: Hold on. Hold on.

9 THE WITNESS: Yes, ma'am.

10 JUDGE YOUNG: I want you to understand my  
11 question. If someone were to come to you and ask you about  
12 Wilson McArthur, and they came to you in January of '96,  
13 before the reorganization, and asked what is his official  
14 position, what would you have said?

15 THE WITNESS: I would have said it was the rad con  
16 manager's position. However, had I gone back and looked in  
17 the system and looked in his PHR to determine what his  
18 official position description was, and as I said, I've got  
19 to do that for competitive level comparison for RIF or  
20 rights to the job, I would have found that he hadn't been  
21 given a position description in 1993 or 1994, whenever that  
22 occurred, and I would have used his official position  
23 description of record for the comparison that we did.

24 JUDGE YOUNG: But -- but...

25 THE WITNESS: We...

1 JUDGE YOUNG: ...but in January of 1996 you would  
2 have said that was -- that rad con manager was his official  
3 position, and...

4 THE WITNESS: He was in...

5 JUDGE YOUNG: ...that would have been the end of  
6 the story. And the fact that someone forgot to do a  
7 position description would not have changed your  
8 identification of his official position?

9 THE WITNESS: We have many individuals that  
10 currently are in a position that's not their technical  
11 position that they would be RIF'd from. They may be on a  
12 rotational assignment, they may be somewhere...

13 JUDGE YOUNG: Apart from rotational and loan and  
14 so forth, doesn't everyone in TVA have an official position  
15 that's listed in their personnel records?

16 THE WITNESS: They have a -- well, in Dr.  
17 McArthur's personnel record, in his PHR, the position -- the  
18 last position description was the 1990. Now, in our  
19 computer system he was listed as a PG-11 rad con manager.  
20 That's correct.

21 BY MR. DAMBLY:

22 Q Right. And let me just clarify, if you would look  
23 in the book that's Book 1 of 8, staff exhibits 1 of 8, to  
24 Staff Exhibit 7.

25 CHAIRMAN BECHHOEFER: 7?

1 MR. DAMBLY: 7.

2 Q Which is your deposition in November of 2001. And  
3 on Page 41.

4 JUDGE COLE: What number?

5 MR. DAMBLY: Staff Exhibit 7.

6 CHAIRMAN BECHHOEFER: Page 41?

7 MR. DAMBLY: Page 41.

8 Q Starting on Line 7, I asked you, "Well, is there  
9 any dispute at TVA that, in point of fact, Dr. McArthur  
10 occupied the rad -- what was it, rad control?"

11 Answer: "Rad control."

12 Question: "Manager position, 1995?"

13 Answer: "Not that I'm aware of." Do you remember  
14 that?

15 A No.

16 Q Do you dispute that you said that?

17 A No.

18 Q And, in point of fact, there is no dispute that --  
19 that Dr. McArthur occupied officially the position rad con  
20 manager in 1994 through 1996? I'm not talking position  
21 description of record, I'm talking the position he occupied.

22 A Again, when we did this comparison, right, wrong,  
23 or indifferent, we -- I should not say that. When we did  
24 this comparison, we used our best judgement as to how to  
25 make the competitive level call for Dr. McArthur. We made

1 the decision to use the 1990 PD, the official PD of record.  
2 That was the call that we made. HR made that call  
3 independently.

4 Q We'll get into that later. But, okay, I  
5 understand what you're saying.

6 JUDGE COLE: I thought you made that call because  
7 you had guidance from your legal people that that's the way  
8 you're supposed to do it.

9 THE WITNESS: My reference was from line -- the  
10 line organization. HR's responsibility is to make the  
11 competitive level call. We do often -- very often discuss  
12 issues with OGC or our labor relations people, to make sure  
13 that we're doing the right thing. So I was referring to  
14 independent of the line organization.

15 BY MR. DAMBLY:

16 Q Let me ask you this. If there was a situation at  
17 TVA where there was a vacancy, vacant position announcement,  
18 individuals applied on it. It was a promotion. An  
19 individual was selected for that position, and it involved a  
20 pay raise. And the little selecting memo was cut, it was  
21 entered into your HR computer system, but nobody wrote a  
22 position description, do they not get paid for being in the  
23 promoted position?

24 A They would be paid according to what was put in  
25 HRIS.

1 Q Which is the official record of where they're  
2 actually -- what position they're in and what their pay  
3 grade is and what their salary is and all the rest of it?

4 A Yes.

5 Q And it's not -- absent a position description,  
6 they'd still get the promotion and perform the duties?

7 A Absent the position description, they would --  
8 they would still get their -- their pay. They would be  
9 placed on that level in the HRIS system.

10 Q So the only thing that you're telling us is that  
11 when you go to do a competitive level determination, that's  
12 the only time that you look at a position description to  
13 determine where somebody is?

14 A The only time we -- we need to go back is whenever  
15 we're doing a competitive level call to determine the  
16 competitive -- to determine the actual position description  
17 of record.

18 CHAIRMAN BECHHOEFER: And you...

19 Q And, again, we go over that a moment ago in TVA  
20 111, the document you all submitted to the NRC showing your  
21 official position on the issues we talked about, the quote  
22 from the MSPB is that the position occupied by an  
23 individual. It doesn't say a thing about position  
24 description of record, does it?

25 MR. MARQUAND: Objection. We're asking the

1 witness for his interpretation of a legal document. The  
2 distinction in that case was whether the witness -- whether  
3 the employee was, quote, "actually performing the duties,"  
4 or whether it would be referred to his official position  
5 description. And that's the quote immediately above it.  
6 It's not appropriate to question the witness about a legal  
7 case, but to the extent counsel's doing it, it's -- he's got  
8 it incorrect.

9 MR. DAMBLY: Well, I find it amazing to have an  
10 objection, since counsel said we had to put this in because  
11 that's what he referred to and was relying on, and now he's  
12 complaining if I ask him questions about what he put in as  
13 this person's basis for testimony.

14 MR. MARQUAND: He didn't say he wrote it.

15 JUDGE YOUNG: To the extent that you understand  
16 it.

17 CHAIRMAN BECHHOEFER: Right, to the extent you  
18 understand it and were working with it, you can answer.

19 THE WITNESS: Could you repeat.

20 MR. DAMBLY: Yes.

21 BY MR. DAMBLY:

22 Q The document that you submitted to the NRC after  
23 the enforcement conference to demonstrate how you do things  
24 specifically says, "MSPB case law says it's not the -- the  
25 duties being performed, it's the position to which the

1 officially occupied -- person officially occupied position  
2 (sic)." I can pull it back out again if you want me to read  
3 it to you.

4 MR. MARQUAND: What are you reading from?

5 MR. DAMBLY: 111.

6 Q TVA 111, Page 006, next to the last page. "The  
7 board has long held that it is the official position  
8 occupied by an individual which determines the competitive  
9 level in which he is properly placed." That's the quote,  
10 that's the document you submitted to the staff as to the  
11 basis of the way you do things after the enforcement  
12 conference; is that right?

13 A That's -- I mentioned the document because of the  
14 confusion at the enforcement conference that we attended in  
15 '99.

16 Q And this is what you gave us.

17 A I did not -- I didn't prepare the document.

18 Q This was to...

19 A And I'm not the expert on the document.

20 Q I understand.

21 A But the document does go -- I've read the  
22 document. It goes into a level of detail to explain our  
23 process for making the competitive level calls. And I --  
24 again, I'm not the technical expert.

25 Q But this is what you submitted to the NRC to

1 straighten out our confusion after the enforcement  
2 conference?

3 A This is what TVA submitted to NRC to discuss the  
4 competitive level calls and to provide some clarification  
5 related to that.

6 Q If you would go to, now, Staff Exhibit 126.

7 JUDGE YOUNG: 7 and 8?

8 MR. DAMBLY: Pardon?

9 JUDGE YOUNG: 7 and 8?

10 MR. DAMBLY: 7 of 8. I'm sorry.

11 MR. MARQUAND: 126?

12 MR. DAMBLY: 126.

13 BY MR. DAMBLY:

14 Q Do recognize that document?

15 A It's an organization chart.

16 Q When you went back to prepare for the enforcement  
17 conference and explain to us what Mr. McArthur had done  
18 before in technical programs and what he was doing -- or  
19 what the 1996 rad chem organizations were, did you go back  
20 and check his functions? You all did a mapping for us. Do  
21 you recall?

22 A Yes, I recall.

23 Q And does this accurately represent, for 1993, the  
24 organization under Dr. McArthur?

25 A Yes, it is.

1 MR. DAMBLY: Staff would move in exhibit -- Staff  
2 Exhibit 126.

3 MR. MARQUAND: Just the one-page document; is that  
4 right?

5 MR. DAMBLY: That's right.

6 MR. MARQUAND: No objection.

7 CHAIRMAN BECHHOEFER: Without objection, Staff  
8 Exhibit 126 will be admitted.

9 (The documents, heretofore marked  
10 as Staff Exhibit #126, were  
11 received in evidence.)

12 BY MR. DAMBLY:

13 Q And then if you would turn to Staff Exhibit 130,  
14 please. Do you have that?

15 A Yes, I do.

16 Q And is that the organization chart for the  
17 operations support organization in 1995?

18 A It's a upper level org chart of it; yes, it is.

19 Q And on that chart, 1995, do you see a technical  
20 support manager -- or a technical program manager position?

21 A No, I don't.

22 Q It was eliminated?

23 A Correct.

24 Q And so if Dr. McArthur officially occupied that  
25 position, that was his position description of record, why

1 didn't you reduce -- give him a reduce -- reduction in force  
2 or a surplus notice?

3 A Had we issued him a reduction in force notice, we  
4 would have gone back to his technical program manager's  
5 position description.

6 Q Well, how did he get into the...

7 A The fact that he...

8 Q ...PG-11 position here?

9 A He was -- he was placed in the PG-11 position  
10 prior to my coming into the organization. But he was not  
11 given a position description. We looked in -- in the  
12 personnel files and found that the official PD of record was  
13 the 1990 technical programs manager position.

14 Q All right. Would you please look at Staff Exhibit  
15 124. Do you recognize 124 as the vacant position  
16 announcement for the manager, radiological control position  
17 that Dr. McArthur went into?

18 A Yes, it's a vacant position -- it's a TVA vacant  
19 position announcement.

20 Q With an attached position description for the  
21 position?

22 A Yes.

23 Q The one that doesn't exist?

24 A The one that was not issued.

25 Q You posted a job for a position without a --

1 without a position description?

2 A This is -- this was the position description that  
3 was never issued to anyone.

4 Q And how do you know that?

5 A It's not in the personnel files for Dr. McArthur.

6 Q Well, that doesn't mean it wasn't issued, does it?

7 MR. MARQUAND: It's blank.

8 A We were -- this is a blank position description.  
9 We did not find this in his personnel file.

10 Q Well, Mr. Easley...

11 A We find no record of -- pardon?

12 Q Mr. Easley testified he was issued an official  
13 one, and if it was missing, then somebody destroyed it.

14 MR. MARQUAND: I don't believe that's what Mr.  
15 Easley said, Counsel.

16 A This position description was not issued to Dr.  
17 McArthur. If the insinuation is that someone destroyed it,  
18 I destroyed it or someone else in the organization, that's  
19 wrong.

20 JUDGE YOUNG: Let me ask you something, just to  
21 clarify.

22 THE WITNESS: Okay.

23 JUDGE YOUNG: If you've got a position description  
24 for a particular job, and a person is in that job, but for  
25 whatever reason---I'm not sure what the issuance procedure

1 consists of---but for whatever reason, the position  
2 description was never issued to the person in the job, even  
3 though the position description was there and the person was  
4 in the job, isn't that drawing somewhat of a fine line on it  
5 or what...

6 THE WITNESS: The process that we go through to  
7 issue the position description is both the supervisor and  
8 the employee would review it, sign off on it, and human  
9 resources would sign off on it. And then it would be issued  
10 to the employee and placed in their official record. That's  
11 the process. That should have happened. It didn't happen,  
12 for whatever reason. Based on that not happening, we made  
13 the decision to use the 1990 technical programs position  
14 because it had not been issued.

15 JUDGE YOUNG: Could you have gone back and looked  
16 at the -- at the description of duties for the job when it  
17 was open, the job for which the person applied; in this  
18 case, Mr. McArthur?

19 THE WITNESS: The rad con position?

20 JUDGE YOUNG: Right. The first page of Exhibit  
21 124.

22 THE WITNESS: Okay. Is -- the question is could  
23 we have used this for the comparison?

24 JUDGE YOUNG: As the -- in lieu of a position  
25 description.

1 THE WITNESS: No, not according to our policy.  
2 This is a vacant position announcement. It -- it doesn't  
3 have any official role in the evaluation or the calls we  
4 make on competitive levels.

5 JUDGE YOUNG: Just out of an effort to clarify my  
6 mind about this, where did the policy of using official  
7 position description of record over and above all other  
8 considerations originate?

9 THE WITNESS: It's been our policy for many years.  
10 It's reflected in our policy that -- in the personnel  
11 manual. I don't know where it originated from, what case  
12 law.

13 JUDGE YOUNG: Can you point me to the place...

14 THE WITNESS: That was prior -- that was -- the  
15 document that was submitted---and I haven't read that in  
16 years---may provide some guidance as to how that evolved.  
17 But it was before my time in HR.

18 JUDGE YOUNG: Okay. Okay, thank you.

19 CHAIRMAN BECHHOEFER: Just answer this, if you  
20 know. Does the position which appears on Staff Exhibit  
21 126...

22 MR. DAMBLY: 4, Your Honor.

23 CHAIRMAN BECHHOEFER: Well, it says 6 here.

24 MR. DAMBLY: Okay. We were on 124. I didn't know  
25 if you...

1 CHAIRMAN BECHHOEFER: No.

2 JUDGE COLE: 126.

3 CHAIRMAN BECHHOEFER: No, this is 126.

4 MR. DAMBLY: Okay.

5 CHAIRMAN BECHHOEFER: The position, manager,  
6 technical programs, is that the same -- essentially the same  
7 position as the rad chem manager position, 1996?

8 THE WITNESS: That was our determination. That...

9 CHAIRMAN BECHHOEFER: So those two were the same?

10 THE WITNESS: That it was mutually  
11 interchangeable. That he had -- he -- the comparison of  
12 this one was that they were at the same competitive level.

13 CHAIRMAN BECHHOEFER: Isn't the new one more  
14 comparable to the manager, chemistry, which Mr. Rich held in  
15 the early days?

16 JUDGE YOUNG: Manager...

17 THE WITNESS: I believe that one would have been  
18 more of a technical specialist versus a management position  
19 down in the organization actually providing chemistry  
20 services to the sites.

21 MR. DAMBLY: We'll be covering the  
22 interchangeability issue between those two positions.

23 CHAIRMAN BECHHOEFER: Oh, okay.

24 MR. DAMBLY: In some -- in some great detail, as a  
25 matter of fact.

1 CHAIRMAN BECHHOEFER: Okay. Well, why don't you  
2 proceed. Not necessarily on that at this time, but...

3 BY MR. DAMBLY:

4 Q When we look at Exhibit 124, is there any doubt in  
5 your mind that the position description there accurately  
6 reflects the duties that were in the rad control manager  
7 position?

8 A I haven't read the position description.

9 Q Well do you want to take a second and look at it?

10 A The question is does this accurately reflect the  
11 radcon manager position --

12 Q Manager's duties.

13 A I don't know. He -- this position was a year or  
14 two before I came into the organization.

15 Q Well I'm going to ask it this way then. Would it  
16 be normal to post a vacancy announcement with a position  
17 description where the position description wasn't an  
18 accurate reflection of what you intended for the position?

19 A No, the position description should be an accurate  
20 description of the duties.

21 MR. DAMBLY: And the staff would move in Staff  
22 Exhibit 124.

23 MR. MARQUAND: No objection.

24 CHAIRMAN BECHHOEFER: Without objection, Staff  
25 Exhibit 124 will be admitted.

1 (The document heretofore marked as  
2 Staff Exhibit 124, was received in  
3 evidence.)

4 BY MR. DAMBLY:

5 Q Can you tell me how in 1994 Wilson McArthur could  
6 go from technical program manager, a PG senior to the PG-11  
7 rad control manager without applying for and competing for  
8 the position?

9 A I'm not -- I don't know how he was placed in the  
10 job, or whether he competed for the job. I wasn't present  
11 at that time. I wasn't in HR until the year '95.

12 Q Okay. But you told me earlier today that in  
13 anticipation of a question that you would have gotten, you  
14 testified, I think, in your deposition or your statement to  
15 Ms. Vincent, I don't recall which, that -- I think it was  
16 Ms. Vincent's statement -- that PG senior, you had different  
17 flexibilities than you had one through eleven, but you've  
18 now reviewed the policies and you're aware that in 1994 all  
19 PG 1 through PG seniors had to be -- positions must be  
20 posted.

21 A And that's what I was referring to earlier. I was  
22 wrong when I indicated that the level was up to a pay grade  
23 8. It, in fact, went through PG senior.

24 Q Okay. And you wouldn't contend that the radcon --  
25 as a matter of fact, I think you've already said this. But

1 the radcon manager position is interchangeable with the  
2 technical program support manager or technical program  
3 manager position?

4 A I haven't done that comparison.

5 Q Well you say that one out of the eight functions  
6 that are listed on 126 that we just looked at, that org  
7 chart, the one box down in the bottom left, manager  
8 radiological control, was interchangeable with --

9 A No, that's --

10 Q -- the one up at the top with seven boxes  
11 reporting to?

12 A No, I said I haven't done the comparison.

13 Q Well do you contend that that's even remotely  
14 interchangeable?

15 A I'm not suggesting it is or isn't.

16 Q Well for purposes of how -- he wouldn't have --  
17 wouldn't have rights to a position at a lower grade with  
18 less responsibilities would he?

19 A Grade determinant is a factor in a competitive  
20 level.

21 Q And you only have rights on the level you're in?

22 A Again, this position description is never  
23 compared.

24 Q I'm not asking you if it was compared. In a  
25 competitive level it's across a single grade level, is that

1 correct?

2 A It would not be the same competitive level in a  
3 different grade level.

4 Q And TVA does not have bump and retreat rights, is  
5 that correct?

6 A Not for managers.

7 Q So he would have no right to go down to a PG-11  
8 position if he was -- if his PG senior position was  
9 eliminated?

10 A He could not bump or roll back.

11 Q So clearly he had no rights to that job. They  
12 weren't interchangeable for a competitive level of RIF  
13 purposes?

14 A To the radcon.

15 Q Right.

16 A To this one.

17 Q Is that correct?

18 A I believe that's correct.

19 Q So then he actually had to have applied for that  
20 position and be placed in it under this vacancy?

21 A Again, that occurred before my time.

22 Q Well if he didn't apply for it and get selected  
23 for it, then it was in violation of TVA policy as you  
24 understand it, is that correct?

25 A I'm not aware of how he was placed in the

1 position.

2 Q I didn't ask if you you're aware. I said if he  
3 didn't apply for it and get selected for it under the  
4 competitive vacancy process, that would be a violation of  
5 the --

6 A I don't know the circumstances. I don't want to  
7 speculate on what would or would not have been right or  
8 wrong back in '94, '93 and '92.

9 Q Well you tell me that you know what the  
10 requirements for posting were and what the requirements for  
11 PG senior are even though you misstated them as --

12 A Well that policy has changed over time. At one  
13 point in time it was PG-1 through PG-8. It changed at some  
14 point in time to include PG-1, pay grade 1 through pay grade  
15 senior. I don't know exactly what time that occurred.

16 Q Take a look at Joint Exhibit 63 and let's see if  
17 we can refresh your recollection.

18 A I don't think I have that book.

19 Q You do somewhere over there.

20 (Pause.)

21 CHAIRMAN BECHHOEFER: Hold the line, we're still  
22 trying to find it.

23 MR. DAMBLY: It'll be in the same book we  
24 discussed with Mr. Boyles earlier that had the TVA RIF regs  
25 in it.

1 JUDGE YOUNG: It's a white cover. It's the  
2 staff's joint. We should have had color-coded notebooks.

3 CHAIRMAN BECHHOEFER: Okay, we've got it.

4 BY MR. DAMBLY:

5 Q Do you recognize this document, Mr. Boyles?

6 A Yes, it's business practice 102.

7 Q Did Mr. Reynolds approve the issuance on September  
8 30th, 1993?

9 A That's correct.

10 Q And the radcon manager position was posted in  
11 1994?

12 A I believe that's correct.

13 Q And this business process practice requires that  
14 all vacancies in the PG-1 through senior be posted and the  
15 procedures in this be followed in filling those positions,  
16 does it not?

17 A Yes, under 3.1(a).

18 Q Therefore the only way Dr. McArthur, in accordance  
19 with your policies, could get into the radcon manager  
20 position was to apply on that vacancy announcement we looked  
21 at and be selected. He had no rights to it. Is that  
22 correct? We've already talked about that.

23 A As I've said, I wasn't there and I didn't do the  
24 comparison. Whether he did or did not --

25 JUDGE YOUNG: If it -- if it had been done while

1 you were there?

2 THE WITNESS: Under the requirements we would have  
3 posted the position. I was incorrect in my previous  
4 statement to Ms. Benson on that because there had been a  
5 memo that I had seen that limited the level to a PG-8. I  
6 didn't recognize that it actually applied to PG seniors.  
7 However, we had already made the decision that it was not a  
8 vacant position. This applies for a vacant position. Once  
9 we made the determination that it -- the 1990 PD and --

10 MR. DAMBLY: That's a different --

11 CHAIRMAN BECHHOEFER: Well we're talking about  
12 1994 now. Was it not -- wasn't Dr. McArthur's application  
13 for 1994, whatever the date was --

14 THE WITNESS: In 19 --

15 CHAIRMAN BECHHOEFER: -- was that not vacant also?

16 THE WITNESS: In 1994 -- I'm sorry. I'm not sure  
17 I follow that question.

18 CHAIRMAN BECHHOEFER: Well --

19 MR. DAMBLY: Was the radiological control manager  
20 position that we just looked at the vacancy announcement  
21 for, was that vacant in 1994?

22 THE WITNESS: It was. There was a vacancy posted.  
23 Under the requirements, we're required to post all PG-1  
24 through PG senior.

25 CHAIRMAN BECHHOEFER: Right. So the 1994 position

1 was posted, correct -- as far as you know?

2 THE WITNESS: My -- my point is, I wasn't there.  
3 I wasn't involved in that posting of that position. My --  
4 my point was, he was not issued a position description for  
5 whatever reason in 1994 that was for the radcon manager.

6 CHAIRMAN BECHHOEFER: But in terms of the posting  
7 of that position, presuming it was posted, it would have had  
8 that draft or position description, whatever you want to  
9 call it, non-issued position description attached to it.  
10 The person -- the basis upon which the application for that  
11 job would have been made --

12 THE WITNESS: Yes, Your Honor.

13 CHAIRMAN BECHHOEFER: -- was that particular  
14 position description.

15 THE WITNESS: From this it was posted with that  
16 position description as the basis for the vacancy.

17 MR. MARQUAND: Those documents were found in the  
18 file together.

19 CHAIRMAN BECHHOEFER: Pardon?

20 MR. MARQUAND: I said those documents were found  
21 in the file together. The vacancy announcement and the  
22 blank PD were in the file together. That's what was in the  
23 file.

24 CHAIRMAN BECHHOEFER: I see. Thank you.

25 BY MR. DAMBLY:

1           Q     While we're on it, Mr. Reynolds testified that in  
2 1993 Mr. Fiser was RIFed from a position he didn't actually  
3 occupy because his PD hadn't caught up -- the paperwork  
4 hadn't caught up. He was RIFed from the Sequoyah chemistry  
5 superintendent position when he actually occupied a position  
6 in corporate chemistry. He testified that he settled the  
7 case because he couldn't win going to the MSPB and RIFing  
8 somebody from a position they didn't occupy. Do you agree  
9 with that?

10          A     I'm not familiar with the case.

11          Q     Well can you take a case that MSPB -- where you  
12 reduced somebody from a position they're not actually  
13 occupying, is that your understanding?

14          A     Was he saying that he was RIFed from a position  
15 that he didn't have a position description on?

16          Q     Oh no, he was RIFed from the one he did have a  
17 position description on, and he said -- but he couldn't  
18 support that because that's not the one he was in.

19          A     I don't know the answer to that. I'm not familiar  
20 with the case.

21          Q     Actually he was also reduced from one that  
22 actually was still in existence. Have you ever done that?

23          A     Pardon?

24          Q     Have you ever reduced anybody in a position that  
25 was actually still on the books and available?

1           A     We've conducted many reductions in force with  
2 individuals that have position descriptions. Maybe I'm not  
3 understanding --

4           Q     Have you conducted a reduction -- let me ask it  
5 this way. Have you ever conducted -- we'll just use the  
6 example of a -- you've got one person occupying the position  
7 of program manager for human relations, PG-8, the only one  
8 still on the books, still going to continue. Have you ever  
9 issued a reduction in force notice to the one person who was  
10 in the job that was still there?

11          A     Yes, we've issued reduction in force notices to an  
12 individual on the competitive level by themselves, if that's  
13 your question.

14          Q     No, but you only get to the competitive level if  
15 the position is no longer going to be there. I mean if the  
16 only person on the retention register and there's one job  
17 left, you don't go out the door, do you?

18          A     I'm sorry, I'm --

19          Q     I know it's a difficult situation to talk about  
20 because it's kind of confusing.

21                     Okay, 1993, Mr. Fiser occupied a position of  
22 chemistry superintendent on paper. His position description  
23 of record was for the chemistry superintendent at Sequoyah.  
24 In 1993, he got a RIF notice removing him from the position  
25 of chemistry superintendent at Sequoyah but in point of

1 fact, that position remained.

2 Can you do that, when there's no reduction, can  
3 you use RIF regs to get rid of somebody?

4 A It sounds as though we settled that case because  
5 we felt he had been RIFed from the long position  
6 description. But again, I'm a little hesitant to speculate  
7 without knowing all the facts.

8 Q I was asking it to you just as an example. Can  
9 you reduce somebody -- can you use RIF procedures, retention  
10 registers, competitive levels, to eliminate somebody from a  
11 job that continues in existence?

12 A If there is only one person --

13 Q And one job.

14 A -- and one job, no, you would not, if the job  
15 exists. If there are more incumbents and there are fewer  
16 positions, yes, you can.

17 Q Okay.

18 A Sorry, it took me awhile to figure out where we  
19 were going.

20 Q I apologize for not being clearer about that.

21 MR. DAMBLY: This could be as good a place as any  
22 to stop unless you want to go for awhile.

23 JUDGE YOUNG: I would like to ask one clarifying  
24 question and just say a couple of things before we leave. I  
25 don't have any preference on staying or leaving apart from

1 that, because I've taken care of the business that I needed  
2 to earlier.

3 Okay, well, I'll just ask, hearing no response.

4 CHAIRMAN BECHHOEFER: Ask your question.

5 JUDGE YOUNG: If it's known that a position  
6 description of record is what is relied upon in making  
7 competitive level determinations on whether to post or not  
8 to post a job, and also but not necessarily with this  
9 additional consideration, namely, given any general feeling  
10 that posting is somehow fairer -- with or without that  
11 second consideration, with the general knowledge that  
12 position description of record is what controls over actual  
13 duties performed, do you think this could lead to or allow  
14 any manipulation of the system by managers? In other words,  
15 to draft position descriptions in such a way that it would  
16 require the posting of a job that might be held by a person  
17 that they wanted to get rid of, that they didn't want any  
18 more?

19 THE WITNESS: Let me restate it. Could a manager  
20 manipulate the system by writing a position description that  
21 was so different --

22 JUDGE YOUNG: Right.

23 THE WITNESS: -- that it would require us to -- HR  
24 to make the post call.

25 JUDGE YOUNG: Right.

1 THE WITNESS: It's possible, yes. Managers write  
2 job descriptions. I don't think that's the case here. It  
3 wasn't in the --

4 JUDGE YOUNG: Okay, well, I was just asking in  
5 general.

6 THE WITNESS: Yes, it's possible. I don't believe  
7 it has occurred, anything like that has.

8 JUDGE YOUNG: If you had done auditing of position  
9 descriptions to determine if they actually were the most  
10 accurate, up-to-date description of the actual job, could  
11 that have prevented any such manipulation that might or  
12 might not have occurred?

13 THE WITNESS: Audits that would find position  
14 descriptions that had not been issued or had not been  
15 updated would be of benefit in making those calls,  
16 definitely. We had been going through massive  
17 reorganizations since 1988 and again in '92. There had been  
18 many changes in position descriptions and in the  
19 organizations. In my view, it was a matter of keeping up  
20 with the current organization, it was difficult for HR and  
21 for the managers because there were massive changes  
22 occurring at that time.

23 But yes, periodic audits that would have ensured  
24 that we had up-to-date position descriptions would have been  
25 beneficial to us.

1           JUDGE YOUNG: Do you think you might have had more  
2 position description changes as a result of the fact that it  
3 was known that you relied upon position descriptions of  
4 record to make competitive level determinations of whether  
5 or not to post?

6           THE WITNESS: I'm not sure how widespread that  
7 knowledge is in the general population. HR does that and at  
8 the engineering level and some other management level, I'm  
9 just not sure how widespread that knowledge is.

10          JUDGE YOUNG: Okay. Part of the reason I wanted  
11 to ask that question today was so that if there were any  
12 concerns on either side with regard to it, you could raise  
13 it again tomorrow.

14          And then that leads me to another thing I wanted  
15 to say before we left, that I want to say now so that if  
16 there are any issues related to this particular witness'  
17 proof that you wanted to address my concerns in, you could  
18 do that tomorrow.

19          We mentioned earlier -- I mentioned earlier that  
20 if there were any other MSPB case law besides that in the  
21 document provided by TVA, specifically I would be interested  
22 in any such case law, if there is any, on the issue of  
23 updating position descriptions, on manipulation of the  
24 system by managers and also without indicating my or our  
25 final conclusions on the merits, any general case law with

1 regard to the relevance of violation or alleged violation of  
2 personnel policies and/or regulations in discrimination or  
3 retaliatory discharge cases. Specifically in situations  
4 where evidence may be to the effect that there may have been  
5 some manipulation or violation of personnel regulations but  
6 that this may have been because of reasons different than  
7 those asserted in a complaint to the effect that a personnel  
8 action was in retaliation for the filing of a whistleblower  
9 suit or complaint for discriminatory action based on race,  
10 gender, et cetera. That is, perhaps, because of a  
11 personality conflict or views of who is better technically,  
12 et cetera. This sort of gets back to what I had said  
13 earlier.

14           Anyway, those are areas that it would be helpful  
15 to have addressed. And I'm not raising those to indicate any  
16 final conclusions, we haven't heard all the proof, but to  
17 the extent that this witness, who I think is the last HR  
18 witness --

19           MR. MARQUAND: To be called by the staff --

20           JUDGE YOUNG: -- that either party might want to  
21 bring out any issues with this witness, I thought I'd raise  
22 those tonight rather than tomorrow morning.

23           MR. DAMBLY: They're clearly legal issues and the  
24 staff clearly intends to brief them. One of them I think  
25 has already been included in our -- at least one -- in our

1 prehearing legal statement. But given what we've been  
2 through earlier, Mr. Boyles not knowing anything on the case  
3 law, I'm not sure how asking him those questions is going to  
4 do us --

5 JUDGE YOUNG: I'm not suggesting that you ask him  
6 about the law. I'm just bringing it to your attention now so  
7 that if any issues surface in your mind such that you wanted  
8 to address them factually with this witness, you'd be able  
9 to do that.

10 MR. DAMBLY: Okay, thank you.

11 CHAIRMAN BECHHOEFER: Well, I personally would  
12 like the parties to be prepared to address in their proposed  
13 findings, if not earlier, a very narrow question, whether  
14 when a job is posted or made available where they specified  
15 job description, whether or not that job description would  
16 govern any further actions by way of RIF or perhaps by way  
17 of anything else in terms of promotion possibilities,  
18 whether that particular job description, even though not  
19 formally issued perhaps to the individual, whether when it  
20 is advertised as part of a job for which an individual is  
21 seeking, either through competition or otherwise, whether  
22 that doesn't as a matter of law become part of the  
23 particular position and therefore governing future  
24 activities with respect to that position.

25 So as a matter of law, I'd like to --

1 MR. DAMBLY: We will address that, Your Honors.  
2 The staff's position in going back -- the Supreme Court  
3 spoke, and I don't know how many years ago it is now, in  
4 U.S.B Test Band, that the only rights a federal employee has  
5 is to the position to which they've been appointed. And  
6 that's been a governing law in federal personnel matters for  
7 any number, probably decades now.

8 CHAIRMAN BECHHOEFER: And that I assume applies to  
9 the position for which one is appointed is the position  
10 description for which the person has applied for the  
11 position for. I may have too many "fors" in there, but --

12 MR. DAMBLY: We're not aware of any case law, but  
13 we will address the issue, which would say if you're  
14 appointed to position X, you can use position description  
15 for position Y that you're not in to determine  
16 Congressionally mandated rights in a reduction in force  
17 situation. I think we've asked for that many times and the  
18 cites we've gotten from TVA have never stood for that  
19 proposition.

20 CHAIRMAN BECHHOEFER: Well, what I -- the specific  
21 point I just mention, but whether when a person applies for  
22 a job with a job description identified at least in the  
23 process of application, whether that job description as a  
24 matter of law, must be applied to the individual, whether or  
25 not it is formally issued to that individual.

1           That is a little bit different question and if as  
2 a matter of law that proposed job description has to apply  
3 as a matter of law to the individual, then what result would  
4 follow in a RIF?

5           JUDGE YOUNG: One last thing I'd like to ask, just  
6 in case I forget to ask it at the end. You mentioned that  
7 you had briefed certain issues prior. Please, in your  
8 proposed findings of fact and conclusions of law, do not  
9 refer to other things. Include all your arguments in what  
10 you're filing before us at that time because it's much  
11 easier to read it in one document than to go back and read  
12 several past ones and try to search those out.

13           CHAIRMAN BECHHOEFER: And by the way, when we set  
14 times for filing proposed findings, conclusions of law, just  
15 remember that you'll want enough time to do that type of  
16 thing.

17           MR. MARQUAND: So there's not going to be a page -  
18 - significant page limitation on this either, I assume?

19           JUDGE YOUNG: I prefer to have it myself in hand  
20 than limit the page numbers. We can talk about that later,  
21 but in any event --

22           MR. DAMBLY: That's not a problem given the advent  
23 of PCs and word processors, we can cut and paste.

24           JUDGE YOUNG: And I don't know whether you've done  
25 this before or whether it was in another case that I noticed

1 it, but sometimes it's difficult given the mounds of  
2 documents that you have, to locate the precise one easily at  
3 hand.

4 CHAIRMAN BECHHOEFER: But just remember, the  
5 preset times for filing proposed findings are rarely  
6 governing.

7 MR. MARQUAND: Negotiable?

8 CHAIRMAN BECHHOEFER: They're considered the last  
9 day before we close the record and we will certainly do so.  
10 But whatever the 30 days from the close of the record or  
11 whatever it is, they have been changed, I think more often  
12 than they have not been changed. I may be wrong, I'm not a  
13 statistician, but --

14 MR. DAMBLY: Let me ask one question. Would the  
15 Board at all be disposed -- normally -- and I'm sure Mr.  
16 Marquand would agree with this -- in DOL cases and MSPB  
17 cases and EEOC cases where you're dealing with these kind of  
18 issues and credibility and who said what to who, there's  
19 normally a post-hearing brief as opposed to proposed issues  
20 and findings of fact, which I find to be, quite frankly, not  
21 that well-suited to deal with the kind of issues that we  
22 deal with here. I think it's much better suited when you're  
23 talking about technical issues.

24 JUDGE YOUNG: You need to incorporate it within  
25 proposed findings of fact and conclusions of law under the

1 proposed conclusions of law, or as a separate brief. It  
2 doesn't matter to me.

3 CHAIRMAN BECHHOEFER: No, it doesn't matter to me  
4 either.

5 MR. DAMBLY: Okay.

6 CHAIRMAN BECHHOEFER: But I want you to have the  
7 opportunity to address these questions.

8 JUDGE COLE: Glad to hear this kind of talk. It  
9 sounds like we're getting close to the end.

10 (Laughter.)

11 JUDGE YOUNG: You can dream.

12 CHAIRMAN BECHHOEFER: Okay, anything further  
13 before we adjourn for the day?

14 MR. DAMBLY: Not from the staff, Your Honor.

15 JUDGE YOUNG: See you in the morning.

16 CHAIRMAN BECHHOEFER: We'll be back at 9:00 a.m.  
17 tomorrow.

18 (Whereupon, the hearing was adjourned at 5:39  
19 p.m., the hearing to resume at 9:00 a.m., on  
20 Tuesday, June 18, 2002.)  
21  
22  
23  
24

**CERTIFICATE**

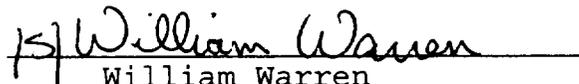
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: 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

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

  
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