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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 50-390-CivP et al.

Location: Rockville, Maryland

Date: Thursday, September 12, 2002

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SECY-02

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

4 _____
 5) Docket Nos. 50-390-CivP
 6 TENNESSEE VALLEY AUTHORITY) 50-327-CivP 50-328-CivP
 7) 50-259-CivP 50-260-Civ.P
 8 (Watts Bar Nuclear Plant,) 50-296-Civ.P
 9 Unit 1, Sequoyah Nuclear)
 10 Plant, Units 1&2, Browns) ASLBP No. 01-791-01-CivP
 11 Ferry Nuclear Plant, Units) EA 99-234
 12 1, 2, & 3)
 13 _____)

14 Nuclear Regulatory Commission
 15 Two White Flint North
 16 11545 Rockville Pike
 17 Rockville, Maryland

18
 19 Thursday, September 12, 2002

20 The above-entitled matter came on for
 21 hearing, pursuant to notice, at 9:00 a.m.

22 BEFORE:

23 CHARLES BECHHOEFER, Chairman

24 ANN MARSHALL YOUNG, Administrative Judge

25 RICHARD F. COLE, Administrative Judge

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I-N-D-E-X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
H. Keith Fogleman	5391	5577	5643	

E-X-H-I-B-I-T-S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>IDENT</u>	<u>REC'D</u>
<u>TVA</u>			
83-96	Retention Registers	5475	5540
109	Notice of Assignment	5475	5540
	Services Sequoyah Plant		
110	Notice of Assignment	5475	5540
	Services Sequoyah Plant		
149	Vacancy Announcement 66-21	5568	5577

1 P-R-O-C-E-E-D-I-N-G-S

2 9:16 a.m.

3 CHAIRMAN BECHHOEFER: Good morning, ladies
4 and gentlemen.

5 I hope you had an enjoyable evening in
6 Rockville or surroundings.

7 Are there any preliminary matters the
8 parties wish to raise before we proceed?

9 MR. DAMBLY: None for the staff.

10 MR. MARQUAND: No, Your Honor.

11 CHAIRMAN BECHHOEFER: Okay. Mr. Fogleman,
12 I see you're here --

13 MR. FOGLEMAN: Yes, sir.

14 CHAIRMAN BECHHOEFER: -- and you're still
15 under oath. Examination may continue.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. MARQUAND:

18 Q I may have already asked this question,
19 but this is where I made a note that we left off. Mr.
20 Fogleman, could you explain how a reorganization
21 causes a reduction in force to occur?

22 A Reorganization could cause a RIF to occur
23 in specifically two different areas. No. 1, the
24 reorganization could affect jobs, could reduce the
25 number of jobs. So that would be a lack of work for

1 some classifications.

2 The reorganization could also change the
3 function of the organization or the specific
4 department, which could change the functions of the
5 people involved, which would require new job
6 descriptions, new position descriptions. That would
7 be another way that a reorganization could cause a
8 RIF.

9 Q Is it a valid reason to conduct a
10 reduction in force simply to eliminate poor
11 performers?

12 A No, it is not. Reduction in force should
13 be for some of the reasons stated in our personnel
14 practice that we looked at yesterday.

15 Q Speaking of personnel practice, that's
16 Joint Exhibit 65 in the book to your left. Could you
17 give us an overview, using Joint Exhibit 65, on how
18 TVA Nuclear conducts reductions in force?

19 A Well, the first thing we're going to do is
20 determine what competitive levels -- excuse me --
21 competitive areas are impacted. For our bargaining
22 units, those are defined in the Collective Bargaining
23 Agreements. For management, they usually are
24 reflective of our bargaining agreements with our
25 white-collar unions.

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1 So we would determine what our competitive
2 areas are and who, if in that competitive area, could
3 be affected.

4 Q What's a competitive area?

5 A It could be an organizational,
6 geographical area that we would have people located
7 in, and it's on page 13 that kind of outlines what a
8 competitive area could be. But it's typically an
9 organizational unit.

10 Q Could it also be limited to a particular
11 location as well?

12 A Some of our organizational units -- for
13 example, our nuclear plants -- in some situations are
14 competitive areas.

15 Q Is the corporate TVAN office a competitive
16 area?

17 A Yes, as I recall, it is.

18 Q Okay. With respect to some organizations?

19 A With some organizations, yes.

20 Q All right. What's the next step, thing
21 you look at in conducting a RIF?

22 A Once we establish what competitive area
23 we're dealing with, we look at our competitive level,
24 and within the competitive level we're looking for
25 jobs that may be within the same classification, have

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1 the same -- maybe the same position description. We
2 would be looking for jobs that are interchangeable.

3 We establish the competitive levels. Then
4 within the competitive levels, we place people on a
5 retention register based on their retention standing.
6 Highest retention standing would be our compensable
7 disabled vets. The next, and within that, we would
8 have them based on their federal service date. Then
9 we would establish -- our next group would be veterans
10 within their federal service date, and then we would
11 have our non-veterans, and then they would be listed
12 by their federal service date.

13 Q Let's talk some more about competitive
14 levels. You talked about the fact of same
15 classification. What does that mean?

16 A I use an example of electrical engineers.
17 Say within a plant site we may have electrical
18 engineers working in several departments, and what
19 we're going to be looking at, to see if those
20 electrical engineers are interchangeable. Do they
21 have the same type of qualifications? So we would be
22 looking for that particular classification of
23 electrical engineer.

24 Q Does the matter of pay grade enter into
25 the equation?

1 A It could, yes, sir.

2 Q How is it considered?

3 A Well, we're going to be looking for -- as
4 a matter of fact, I think if you look on page 14, it
5 talks about the classification series, it talks about
6 duties, working conditions. One of the factors in
7 this is also pay grades or the people of the same pay
8 grade.

9 For example, I'll go back to our
10 engineers. We have senior engineers, and they have
11 the same pay band. So we would have those senior
12 engineers, senior electrical engineers would be on the
13 same retention register.

14 Q Okay, you mentioned page 14 of Joint
15 Exhibit 65. Does that page and the top of 15 tell you
16 how --

17 A Top of 15 --

18 Q -- to determine competitive level?

19 A It talks about how we use competitive
20 levels, yes.

21 Q And the first page of that, the first
22 sentence of that talks about various factors -- or the
23 second sentence talks about various factors: all
24 jobs, same salary, title, grade, and classification,
25 "similar enough in duties, qualifications, working

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1 conditions," and then it says, "to allow interchange
2 of employees without loss of productivity." What does
3 that mean there? What are you looking for?

4 A We're looking for the person, the two
5 groups, that the people within that competitive level
6 could move -- you know, we have electrical engineers
7 working in two departments at a plant, and can they
8 move and do one another's job with a minimal amount of
9 lost productivity?

10 For example, can an electrical engineer in
11 systems engineering move over into BOP systems
12 engineering, balance of plant systems engineering?
13 Can that person step over and be an electrical
14 engineer in components engineering?

15 So what we're looking at is the two jobs
16 being mutually interchangeable, can they both do that,
17 and can we do it without a loss of productivity?
18 Typically, what we're looking at is a person going
19 into a job new, you know, there is some learning curve
20 there. So can they do it without a significant loss
21 of productivity, similar to a person going in and
22 learning the new job?

23 Q That's what the last sentence of the first
24 paragraph, of paragraph 4, says, isn't it, where it
25 says, "There should be no loss of productivity beyond

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1 that normally expected in the orientation of any new,
2 but fully qualified, employee."?

3 A Correct.

4 Q And immediately above that it defines
5 interchangeability as being a two-way street? That's
6 what you're talking about, mutually interchangeable?

7 A Mutually interchangeable.

8 Q Does the standard here provide any
9 numerical or black line, white line, test for
10 determining competitive level or interchangeability?

11 A No, there's no -- no, this practice does
12 not establish any test other than the jobs being
13 mutually interchangeable.

14 Q We've heard testimony variously by
15 different people -- for example, one person said 35
16 percent, as long as they are 65 percent the same,
17 then, in his opinion, he said he thought that was the
18 test. Is that the case? Is that provided anywhere in
19 this --

20 A It's not provided in this, and that's not
21 the approach I've used in looking at this.

22 Q In determining competitive level, in
23 determining whose jobs are similar and whose grades
24 and classifications are similar, what do you look at?
25 Do you look at individuals? Do you look at position

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1 descriptions? Do you look at a combination of both?

2 A Turn to page 15; the next page over, it
3 says, "Determinations are not based on personal
4 qualifications or performance levels, but based on the
5 content of the accurate, up-to-date job description."
6 So what we're looking for is their job description of
7 record.

8 Q And does it also say that in the very
9 bottom paragraph on page 14, where it says, "The
10 determination is made by comparing for each position
11 the qualifications as stated in the official job
12 description."?

13 A Yes, it's on the first sentence of the
14 second paragraph.

15 Q And then it's again at the top of page 15?

16 A Yes.

17 Q If you would look at Joint Exhibit -- I
18 believe it's 125, this Supervisor's Handbook that
19 we've talked about yesterday.

20 A I think that's TVA Exhibit --

21 Q What did I say? You're right, TVA 125.
22 Is there any guidance in the Supervisor's Handbook
23 under reductions in force about how competitive levels
24 are determined?

25 (Pause.)

1 A Okay. Specifically, look on page, it
2 looks like it's marked "FG000048."

3 Q All right. Would that be paragraph B.1?
4 B.2?

5 A B.1 talks about the interchangeability of
6 the job. B.1 talks about the interchangeability of
7 the job, that the incumbent must be able to
8 satisfactorily perform the duties of the
9 interchangeable job, and vice versa.

10 Then the second one, B.2, the second
11 paragraph talks about determination of competitive
12 level, and interchangeability is made by comparing job
13 descriptions, not the individuals occupying the
14 positions.

15 Q Are you allowed to consider an
16 individual's qualifications that are peculiar to that
17 individual or the particular job assignments that
18 individual might be doing at a particular point in
19 time?

20 A Well, the next sentence says you're not
21 allowed by law to consider an individual's
22 qualifications, and we would be looking at job
23 descriptions.

24 Q And this may be obvious, but how do you
25 determine if incumbents in an existing job have a

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1 right to a new job in a new reorganized organization?

2 A You look at the -- you compare the job
3 description in the old organization to the job
4 description in the new organization, and to see if
5 those jobs are -- there's some interchangeability
6 between those jobs.

7 Q Tell us what's the determination needed to
8 be made in order to determine that that an individual
9 has a right to the new job?

10 A Well, you take the two position
11 descriptions and look at the duties listed in the job
12 descriptions or position descriptions and make a
13 determination whether or not that there's clearly
14 enough work in the old job description that moves to
15 the new one that makes these jobs interchangeable.

16 Q Essentially, are you looking to see if the
17 new job description would be on the same competitive
18 level as the old jobs?

19 A You're looking for a competitive level
20 call.

21 Q Okay. We've had discussion in this
22 proceeding about the possibility that position
23 descriptions might be outdated or inaccurate. What do
24 you do in RIF situations where there is such an issue?

25 A You look for your last PD in your

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1 personnel record, in your PHR, and there is situations
2 that we've run into in the past where we've had job
3 descriptions that were outdated.

4 Q What do you do in those cases?

5 A We use the outdated job descriptions.

6 Q Do you do pre-RIF audits or make an
7 attempt before the RIF to make sure that job
8 descriptions are accurate and up-to-date or anything
9 like that?

10 A No.

11 Q Why not?

12 A Well, what we're trying to do is -- first
13 of all, consistently, what we've done is used the PD
14 of record. So by going and trying to adjust PDs and
15 anything like that, that would be against, first of
16 all, our practice and we think what our policy tells
17 us.

18 It also would provide an opportunity for
19 people to adjust their job descriptions to maybe
20 reflect and move into the new organization. So we've
21 been pretty strict about using PD of record, have been
22 strict about using PD of record.

23 Q In other words, you don't let people
24 manipulate their job descriptions to avoid a RIF?

25 A Right.

1 Q Do employees have, outside of an impending
2 RIF situation, do employees have an opportunity to
3 request updated or what they view to be as more
4 accurate position descriptions?

5 A Yes, in our Collective Bargaining
6 Agreements, it specifies real clearly that people who
7 have issues with their classification, they have a
8 process that they can challenge it, and then our
9 management specialist folks have that ability. I
10 don't exactly know where it's spelled out, but I know
11 we've had issues where we've had people question their
12 job descriptions.

13 Q What is that process called? Is there a
14 process for people to request a review or an audit of
15 their position?

16 A Well, in the Collective Bargaining
17 Agreements it's -- I don't exactly remember what we
18 call it, but it's a classification review that they
19 can request.

20 Q Okay. This is essentially a
21 classification review that management and specialist
22 employees can request as well?

23 A Yes, if they think there's a problem.

24 CHAIRMAN BECHHOEFER: Pardon me. Is there
25 any method or, indeed, any precedent for management

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1 stating that these job descriptions are not accurate
2 and should be modified, from above? Not the employee
3 now, but the management who is assigning the employee
4 to the particular job, can they say that the duties
5 have been changed, and, indeed, must they say that to
6 make the job descriptions accurate, the descriptions
7 of the jobs that individuals are occupying?

8 MR. FOGLEMAN: A manager could make, you
9 know, if they think that the person has -- that their
10 job description is not accurate, management could
11 request that the job description be updated.

12 CHAIRMAN BECHHOEFER: Has that happened?

13 MR. FOGLEMAN: I don't know. I don't
14 remember specifically whether it has or it hasn't.

15 JUDGE COLE: And request to whom that the
16 PD be updated?

17 MR. FOGLEMAN: They would approach their
18 Human Resource, the person providing them Human
19 Resource support, and indicate that they feel like
20 that the job description is not accurate and make the
21 changes, make the appropriate changes.

22 JUDGE COLE: And then the Human Resource
23 person would then follow through with that or agree or
24 disagree, or what?

25 MR. FOGLEMAN: Well, if the job's changed,

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1 you know, they go through a questioning process with
2 the manager about the change, understand what changes
3 have occurred, why they occurred, and then work with
4 the manager to record the changes into the
5 description. Then both the manager and the employee
6 would ultimately have to sign off on the job
7 description.

8 As a matter of fact, in my organization --
9 I said I didn't remember, recall if we had had one,
10 but just recently the five people who report to me, we
11 had a mistake in their job description about some of
12 the way we had it structured, and we went back in and
13 changed those job descriptions. I just recently
14 reissued them.

15 CHAIRMAN BECHHOEFER: Is there any duty
16 for either management or HR to initiate corrective
17 action -- or I shouldn't say, "corrective action";
18 that's a word of art -- but corrections to the job
19 descriptions?

20 MR. FOGLEMAN: I'm not quite sure I
21 understand the question.

22 CHAIRMAN BECHHOEFER: Well, does HR have
23 a duty, possibly imposed by OPM but maybe not, to
24 survey, review the various job descriptions and on a
25 periodic basis make sure they're accurate?

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1 MR. FOGLEMAN: No, we do not do that.
2 We're relying on the manager and the employee to be
3 sure that their position description is accurate.

4 JUDGE YOUNG: Would this be governed by
5 the section of the Supervisor's Handbook relating to
6 classification?

7 (Pause.)

8 And specifically, at Section II.B on page
9 31, "Supervisors should continually analyze, review,
10 and evaluate the work assigned to each position. Job
11 descriptions should be kept accurate and up-to-date."

12 Is that who --

13 MR. FOGLEMAN: Yes, Ma'am,

14 JUDGE YOUNG: Would that be the managers,
15 the sort of line managers?

16 MR. FOGLEMAN: Yes, Ma'am.

17 JUDGE YOUNG: So if the line manager in
18 any given office in this process of analyzing and
19 reviewing and evaluating and keeping job descriptions
20 accurate came up with new job descriptions, would they
21 have -- what would be their responsibility, if any, to
22 consult with the employees who would be affected and
23 with senior-level management?

24 MR. FOGLEMAN: Well, first of all, the
25 employee, let me talk about the employee. We wouldn't

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1 just change the job description. On our job
2 description forms there's a place for the employee to
3 sign off on. So they would know that the change had
4 been made.

5 If we were doing minor tweaks to the
6 position, probably depending on the level of
7 supervisor, they may or may not consult with senior
8 management about it. The other thing you would be
9 looking at, that if they were making significant
10 changes to the job description, then you would have to
11 be making a determination: Do we really kind of like
12 have a reorganization going on, and does that person
13 that's in the present job -- are the changes
14 significant enough that it's really a new job or are
15 we just tweaking a job description?

16 JUDGE YOUNG: And would the supervisors be
17 consulting with the HR people, whichever ones were in
18 their -- what do you call --

19 MR. FOGLEMAN: Service?

20 JUDGE YOUNG: -- service area or --

21 MR. FOGLEMAN: Yes, Ma'am, they would --

22 JUDGE YOUNG: Operations is one of the
23 service areas, and then the other ones I think you
24 mentioned yesterday.

25 MR. FOGLEMAN: Well, what the Human

1 Resource consultant or Human Resource Officer would be
2 the manager -- we've assigned Human Resource Officers
3 to provide service to the different departments,
4 and --

5 JUDGE YOUNG: When you say "the manager,"
6 you're talking not the supervisor? You're talking
7 about a senior-level manager or not?

8 MR. FOGLEMAN: Well, I'm talking about the
9 person that would be making the change, the
10 supervisor.

11 JUDGE YOUNG: Oh, okay.

12 MR. FOGLEMAN: They would consult with
13 their Human Resource person that's assigned to their
14 group and discuss the changes. Typically, if those
15 changes are, especially if they are just minor tweaks
16 to the position description, then we're going to
17 facilitate making that change happen from an HR
18 perspective.

19 Now HR would step in, that if it's a
20 significant enough change, to say we're really
21 changing the job, then we might actually be going
22 through a reorganization process at that point, and
23 maybe having to post jobs and go through all that.

24 JUDGE YOUNG: Is there any approval
25 process for initiating a reorganization through senior

1 management? Or what, if any, is the approval process
2 for initiating a reorganization with respect to senior
3 management, HR, and employees or collective bargaining
4 units or --

5 MR. FOGLEMAN: If we're making a
6 reorganization or change in an organization, adding
7 new departments, taking away departments, we've got an
8 organizational change process that we use, and it
9 requires the signatures of senior HR people and senior
10 line management. For example, maybe the Senior VP of
11 Nuclear Operations who would be responsible for the
12 three sites would see the changes.

13 JUDGE YOUNG: You've mentioned several
14 times that you have Collective Bargaining Agreements.
15 Would they be affected at all or not?

16 And part of the reason I ask is I think
17 you testified that, even though managers are not part
18 of collective bargaining units, you apply the same
19 processes to everyone, right?

20 MR. FOGLEMAN: They're similar processes.
21 They may not be exactly alike, because we would be
22 following what we've negotiated in the contract. For
23 example, with our engineering folks we have a contract
24 with that union that represents them. So we would be
25 following very specifically that process in the

1 contract. Our managers would be working under similar
2 processes as we have in the collective bargaining. It
3 may not be exactly alike, but they would be very
4 similar.

5 And I'm not sure, did I answer your
6 question?

7 JUDGE YOUNG: When a reorganization is
8 initiated, does the union or Collective Bargaining
9 Agreement, do they provide for any participation on
10 the part of the union or employees?

11 MR. FOGLEMAN: No, Ma'am, that's a
12 management determination. Our approach is that when
13 we're getting ready to go through a significant
14 reorganization or even a small reorganization, we
15 discuss it in advance with the affected unions, so
16 that they understand what's going on.

17 Because once we announce it to our
18 employees and the people that they represent, of
19 course, they're going to be bombarded with questions.
20 So what we try to do is keep them informed as we go
21 through the process, so that they understand what
22 we're doing.

23 CHAIRMAN BECHHOEFER: Could you elaborate
24 a little bit on what you meant by a minor tweak? Is
25 5 percent of the duties, a change in 5 percent of the

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1 duties of a job a minor tweak?

2 MR. FOGLEMAN: I'm not sure I could put a
3 number on it. I can give you an example, if that
4 would be okay.

5 When I was a labor relations manager, we
6 had a sick leave recognition program, and that job was
7 changed from me to one of my peers, which was a safety
8 manager, a health and safety manager. That was a
9 small function of my job, and it was a small function
10 of his job, but we just moved the responsibility of
11 that function over underneath him. That would be
12 something I would call a minor tweak.

13 It wasn't a significant program. The
14 program required a person to spend, a person on our
15 staff, not necessarily us, to spend a small amount of
16 time each year pulling together some records and
17 setting up some receptions and things like that. So
18 that program, that would be a minor tweak, an example
19 of a minor tweak.

20 CHAIRMAN BECHHOEFER: What about, say,
21 dropping 5 percent of the duties of a position,
22 transferring those duties outside the general
23 organization to another group, but not in the same
24 chain of command?

25 MR. FOGLEMAN: There's probably not -- you

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1 know, 5 percent, I guess I'm struggling with a number,
2 but moving a small percent of the work or 5 percent
3 probably is not a significant issue. That would be
4 something we could change a job description without
5 moving, making reorganization plans.

6 CHAIRMAN BECHHOEFER: Thank you.

7 BY MR. MARQUAND:

8 Q Mr. Fogleman, the last thing I had asked
9 you about was inaccurate or outdated job descriptions.
10 What if an employee has been assigned to do other
11 functions besides those in an assigned position
12 description? Do you take that into account,
13 determining competitive level?

14 A No, we're looking at the job description.
15 We have people that typically perform some -- are
16 given special assignments, and they still are assigned
17 to their permanent job description.

18 Q Let me take Judge Bechhoefer's question
19 and follow up on that. What if you have an employee
20 who has a position description, but over time they may
21 not be performing all of the functions in that job or
22 they may, with respect to a significant, what appears
23 on paper as a significant portion, they only perform
24 maybe 5 percent of the time, and you rewrite the job
25 description to eliminate what on paper looks like

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1 half, but in fact the employee is performing 5 percent
2 of the time? How does that affect the competitive
3 level determination?

4 What I'm saying is, the position
5 descriptions say one thing, but in reality the
6 employee is not doing what is stated in the job
7 description. What do you do? How do you determine
8 competitive level there?

9 A You use the job description.

10 Q Do you not take into account the fact that
11 the employee is only doing these significant, what
12 appears to be significant functions of the position
13 description, but the employee is actually only doing
14 that 5 percent of the time? You don't take that into
15 account? You don't take into account what is actually
16 occurring in the field and what the employee's
17 actually assigned to do? You look at a PD instead?

18 A We're looking at the PD.

19 Q And, similarly, what if you have an
20 organization, you have a number of people with
21 identical PDs, and Employee A is doing certain
22 functions and not doing others that are in the PD.
23 Employee B may be picking up those functions and not
24 doing what Employee A is doing. How do you treat the
25 fact that those employees are doing different work,

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1 even though they have the same PD?

2 A In establishing competitive level, we look
3 at the PD.

4 Q You don't look at what the employees are
5 doing?

6 A We don't look at what the employees are
7 doing. We look at the position description.

8 Q All right. Now we talked about
9 reorganizations and the possibility the reorganization
10 may be driven by the fact that the mission of the
11 organization changes.

12 A Yes.

13 Q Who's responsible in the first instance
14 for determining the mission of the organization? Is
15 it HR or is line management?

16 A Line management determines the mission of
17 the organization.

18 Q All right. Once line management
19 determines the mission of the organization, whose
20 responsibility is it to write PDs to accomplish that
21 mission? Is it HR or line management?

22 A Line management would write the PDs, and
23 HR would provide oversight to that effort.

24 Q And if at some point in time, as you said,
25 there's a minor tweak with respect to the function,

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1 the mission of the organization, or a minor tweak with
2 respect to the need to rewrite a PD to accomplish the
3 mission of the organization, whose responsibility is
4 it to write that PD?

5 A Line management.

6 Q Who is responsible for making the
7 competitive level determination and determining if
8 position descriptions are interchangeable?

9 A The Human Resources would make that
10 decision.

11 Q Why?

12 A First of all, that's the way we do it.
13 That's been assigned as one of our accountabilities in
14 the processes.

15 The second reason is that we don't want
16 line managers making that call. We don't want to have
17 to go through the process of getting them up-to-speed
18 in understanding what it is going to take to get that
19 done or doing that analysis.

20 But, ultimately, that provides some -- I
21 guess line management, then, is not able to manipulate
22 the RIF, and our HR people are accountable to ensure
23 that the RIF is conducted according to TVA policies
24 and procedures.

25 Q You mentioned yesterday ownership of

1 procedures and policies. Is that one process or
2 policy that you all, HR has ownership of?

3 A Once the decision is made to do the
4 reduction, then HR has responsibility to at that
5 point, pick it up and implement the RIF process.

6 Q About how many managers are at TVA? Or
7 just limit it to TVA Nuclear, if that's easier.

8 A There's about a little -- there's right
9 around 3,000 employees in TVA Nuclear, and there's a
10 almost about 800 managers.

11 Q All right. Let me, just from a practical
12 standpoint, if line management was responsible for
13 determining interchangeability and competitive level,
14 is it possible that you might have up to 800 people
15 responsible for making those individual
16 determinations?

17 A You would have 800 people wanting to make
18 those determinations. And, yes, I think we would have
19 a fair amount of those managers trying to interject
20 themselves into the process.

21 Q Is there an issue of consistency as well
22 in having HR make that competitive level
23 determination?

24 A When you've got HR doing it, first of all,
25 a lot of the folks have done it throughout the years.

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1 They've been through this process several times. So
2 they've done it, and they've gone through the appeal
3 process, very similar to some of the things I
4 testified about yesterday.

5 So they're going to be making consistent
6 decisions on the policies and practices of TVA.
7 They've got some experience. They've seen the
8 appeals. They've handled appeals. They've handled
9 reductions.

10 Q All right. We talked about the
11 possibility of managers or employees requesting a
12 review of position descriptions or the possibility to
13 request that the position description be rewritten to
14 be more accurate. Can management or an individual
15 request that their position description be rewritten
16 in order to be more accurate during a RIF or while a
17 RIF is pending?

18 A Well, they can always request it; it's
19 just not going to occur. When we start into the RIF
20 process, we pretty much lock down any type of changes
21 in job descriptions, position descriptions,
22 organization changes, department changes. We lock it
23 down.

24 Q To avoid manipulation of the system?

25 A To avoid manipulation.

1 Q All right. Now when you've got a new
2 position description that is being written and you
3 have to go through a competitive level call, what
4 happens if the existing positions are determined not
5 to be on the same competitive level as the new
6 position descriptions? What happens to the old jobs?

7 A Would you ask the question again, please?

8 Q All right. You've got incumbents in
9 existing jobs, and you've got a reorganization in
10 which management says, well, we don't really need
11 these old position descriptions; we're going to write
12 new position descriptions.

13 Then you, HR, makes a competitive level
14 call and you determine that those existing or the
15 previous jobs which are no longer necessary, that the
16 position descriptions are not in the same competitive
17 level as the new job description. What happens?

18 A Okay. Well, we go through -- we would be
19 in a reorganization mode at that point, and we would
20 be telling the employees, be telling them what's going
21 on with the old organization, that their job
22 description or the jobs they're doing are not going to
23 continue to exist, and that these are going to be the
24 new jobs in the future. Then we would be posting jobs
25 and making selections.

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1 Q Now we talked about Joint Exhibit -- I'm
2 sorry -- TVA Exhibit 125, the Supervisor's Handbook.
3 That provides a lot of information for supervisors
4 about various personnel and HR processes.

5 Is it possible for someone in management
6 who reads through that book and learns how to write
7 position descriptions and what the issues are with
8 respect to competitive level, is it possible for such
9 an individual to rewrite a position description to
10 compel a selection and to also compel a reduction in
11 force of existing employees, if that is what their
12 intent is?

13 A First of all, we're not in the habit of
14 just rewriting job descriptions to create
15 reorganizations. Through the years, we've had enough
16 downsizing and enough reorgs. that we had to have
17 without people going out and creating new job
18 descriptions that cause reorganizations.

19 I talked about yesterday how we've gone
20 through a significant reduction through the years at
21 TVA. We had a reduction back in 1988 that was
22 significant, and we have employees, even in the year
23 2002, still talk about that reduction in force like it
24 was yesterday.

25 So management is very careful and mindful

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1 of the fact that reorganizations and reductions are a
2 difficult situation. It is difficult for employees;
3 it is difficult for managers.

4 So just to have a manager out rewriting a
5 job description to create a reorganization, that's
6 something that the organization puts a lot of scrutiny
7 on and tries to ensure that we don't have that type of
8 thing happening.

9 If they're going to reorganize, they've
10 got to get senior management approval to make the
11 changes in an organization. They've got to convince
12 HR that there is a need for a reorganization.

13 If they've written new job descriptions
14 and they've gone through the hoops of convincing
15 senior management that there is a change, they're
16 going to have to back that up with benchmarking data
17 or showing that we have improved the processes, become
18 more efficient, or whatever. Then they are going to
19 show HR how those changes are made.

20 So to answer your question, I say all that
21 to say that a person, I guess if they wanted to go in
22 and write a job description to try to manipulate it,
23 they might be able to do that, but we think we've got
24 enough barriers in place that we can prevent that from
25 happening.

1 Q You mentioned that you look at position
2 descriptions to make a competitive level call, and I
3 think some of the terms you used was position
4 descriptions of record and the Supervisor's Handbook
5 and TVA process, or the Personnel Manual instruction
6 talks about official position descriptions?

7 A Correct.

8 Q Where are those position descriptions
9 maintained?

10 A In their Personal History Record.

11 Q What is the Personal History Record?

12 A It is just the official personnel file for
13 a TVA employee. It is maintained in our Knoxville
14 corporate office, either on microfiche or we're in the
15 process of automating that.

16 Q What is the acronym "HRIS"?

17 A Human Resource Information System.

18 Q What does that mean?

19 A Its primary function is to interact with
20 our payroll system. When we are doing something in
21 HRIS, we are typically telling the payroll system to
22 make a change in someone's pay, you know, whether it's
23 a promotion, things like that.

24 But it is a record of personnel actions,
25 and it's typically -- I forget exactly what type of

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1 historical period of time that it tracks now, but it
2 just tracks the different actions that occur with a
3 person.

4 It also keeps up with attendance and their
5 address and their home phone number. Information
6 about their benefits is contained in the Human
7 Resource Information System.

8 Q Is the Human Resource Information System,
9 or HRIS, a record of the individual's official
10 position description or their position description of
11 record?

12 A No, we would go to the PHR to get their
13 position description. HRIS does not have a position
14 description in it. It is only, like I said, it is
15 just a record of actions that have occurred. There's
16 not a position description or a job description
17 recorded in the HRIS system.

18 Q I'm going to show you Staff Exhibit 99.
19 It's what's entitled, "An Employee Action Sequence
20 (sic) for Wilson McArthur."

21 (Pause.)

22 Have you got Staff Exhibit 99 in front of
23 you?

24 A Yes.

25 Q Am I correct that that is what's entitled,

1 "Employee Action Reasons for Wilson McArthur"?

2 A Yes, but this is just a printout out of
3 our HR warehouse, it looks like. You go into the
4 system and get a printout like this for any employee.

5 Q Does it show Wilson McArthur's position
6 description at any point in time?

7 A No, it doesn't even reflect his job title.
8 It shows, it looks like, well, it shows his pay grade.

9 Q And that pay grade is in the column about
10 three-quarters of the way over where it says, the
11 column is entitled, "Schedule," and then under that is
12 "M" throughout, and then the next column is grade and
13 step. Do you see that?

14 A Yes.

15 Q Those are the pay grades?

16 A The pay grades.

17 Q Now if you will look down on the first
18 page of that exhibit, you will see the first three
19 entries have "M-Sr."?

20 A Yes.

21 Q And below, the next couple of entries, the
22 next four entries, he's at an M-11, and then the
23 entries below that, again, are "M-Sr."

24 A Yes.

25 Q Does that reflect that at some point in

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1 time, in '94 I guess, up to '94, he was an "M-Senior,"
2 and at some point in time he went to pay grade 11 and
3 then back, again in '96 he went back to an M-Senior?

4 A That's correct.

5 Q Does that reflect or show that he had a
6 change in his position description?

7 A It doesn't show that he had a position --
8 this doesn't reflect that he had a -- well, I mean --
9 (pause) -- if you look at, on the second page of it,
10 it shows that we hired him and we made a lot of data
11 changes and what all those were. I don't go back and
12 research that.

13 When he moved from, the date looks like
14 10/31/94 is the effective date, well, he was an
15 M-Senior, and then on --

16 Q 10/17 --

17 A -- 10/17/94, it looks like he goes to
18 M-11. So I'm not sure exactly what --

19 Q It shows a data change there, doesn't it?

20 A That's a data change.

21 Q It doesn't a show a promotion or demotion
22 or anything like that?

23 A Not a promotion or demotion. I'm not sure
24 exactly what occurred there that caused that data
25 change.

1 Then if you go up and look from 6/17/1996,
2 it shows promotion. So he got a base comp. adjustment
3 on 10/2/95 at 115, and then he moved up to M-Senior,
4 but there was no increase in pay for the promotion.
5 So he changed jobs at that point.

6 Q And if you want to --

7 JUDGE YOUNG: Where did that 10/2/95 date,
8 where is that?

9 MR. FOGLEMAN: Actually, 10/2/95?

10 MR. MARQUAND: Base compensation --

11 MR. FOGLEMAN: Yes, on the base
12 compensation plan, it's pay -- if you look over on the
13 far lefthand corner, it reflects pay, and that
14 typically reflects that he got -- well, he did get a
15 raise from '96, \$98,000 to \$115,000.

16 BY MR. MARQUAND:

17 Q That is an annual change, though? That's
18 the date of the annual change, is that right?

19 A Our base compensation plan, yes.

20 CHAIRMAN BECHHOEFER: Is that the basic
21 percentage raise that most government employees get,
22 unless they're capped, comparable to that or --

23 MR. FOGLEMAN: You know, I don't know if
24 he got a -- I don't know the details of this, whether
25 or not he got a standard increase or not. That looks

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1 like he got a little more than a standard increase
2 because that's a substantial increase from \$98,000 to
3 \$115,000. So it looks like probably there was a
4 change in his market rate for the position, and I'm
5 speculating now without looking at the record.

6 But this would not have been a normal just
7 change in pay rate. It was part of the base
8 compensation plan, but typically those amounts are in
9 the 3, 4, or 5 percent range. So it had to be tied to
10 performance plus possibly a movement in his market
11 rate.

12 BY MR. MARQUAND:

13 Q Typically, base compensation plan goes
14 into effect --

15 A In October.

16 Q -- the first Monday in October?

17 A Yes.

18 Q So there is a change in the base
19 compensation plan October 4, '93; October 3, '94;
20 October 2, '95; September 30, '96, and September 29,
21 '97?

22 A They're usually attached to the fiscal
23 year.

24 Q The new fiscal year, the beginning of the
25 new fiscal year?

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1 A The beginning of the new fiscal year.

2 CHAIRMAN BECHHOEFER: By the way, what
3 does the number that appears in all -- I say, what
4 does the number "2186" mean? It's in all of the
5 levels.

6 MR. FOGLEMAN: It's in the job code field,
7 but I don't know what it means. I mean, I don't know
8 what "2186" signifies.

9 CHAIRMAN BECHHOEFER: Is that a
10 classification entry or something else?

11 MR. FOGLEMAN: I just don't -- I'm not
12 sure.

13 CHAIRMAN BECHHOEFER: All right.

14 JUDGE YOUNG: You used the term -- I
15 didn't understand before, if you could clarify for me
16 -- "market rate." Is that a -- well, why don't you
17 just tell me what it is?

18 MR. FOGLEMAN: Okay. What we do with all
19 of our jobs in TVA, at this point our management were
20 on the pay system. But what we do is try to establish
21 the worth of that job in comparison with the rest of
22 the industry. So that's what we call our market rate.

23 JUDGE YOUNG: It would set the salary
24 for --

25 MR. FOGLEMAN: Set the salary --

1 JUDGE YOUNG: -- a particular job
2 classification?

3 MR. FOGLEMAN: Yes.

4 JUDGE YOUNG: Okay.

5 MR. FOGLEMAN: And, typically, market is
6 the median of the range or the middle of the range.

7 JUDGE YOUNG: While there's a pause here,
8 let me clarify something else. You said something a
9 few minutes ago about always using a position
10 description of record to avoid manipulation.

11 If a job changes over time just bit by
12 bit, such that at any given time there could be a
13 minor tweak, and there are several of those that occur
14 over a period of time, such that the actual job duties
15 have changed bit by bit over time, but the position
16 description is never changed to reflect those changes,
17 and a manager decided, well, I'm going to change the
18 job description to reflect what the employees actually
19 do, it sounds like from what you were saying that that
20 would constitute a reorganization and then there would
21 have to be a job posting?

22 MR. FOGLEMAN: The job change bit would be
23 over the years, and then the manager would -- I mean
24 no RIF or no reorganization being established or that
25 we were making any plans to do that, and he brings the

1 position description down to us and said, "Here's the
2 new one," we're going to go look at the old one and
3 see if that employee has, so to speak, rights to the
4 new job.

5 The employee, looking at the new PD,
6 looking at the old PD and looking at the new PD, if it
7 has changed substantially, that employee may not have
8 rights to that job because the job has changed. If
9 that is the case, we may need to post that job.

10 JUDGE YOUNG: Even if the changes have
11 occurred bit by bit and the only reason for changing
12 the job description is just to bring it up-to-date,
13 and the manager has not fulfilled the duty to keep the
14 job descriptions accurate and up-to-date as those
15 minor changes have occurred over the years?

16 MR. FOGLEMAN: Yes, Ma'am. If it's bit by
17 bit changed that substantially -- I mean, the thing we
18 are trying to focus on is being sure that, first of
19 all, we want our managers to keep our job descriptions
20 up-to-date. That does not always happen.

21 Then, secondly, we want to be sure that
22 when a person -- you know, if we're changing a job, we
23 want to be sure that the person has the rights to the
24 job, that their old job description and the new job
25 description, is it interchangeable? And if it's not,

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1 then we are probably going to post that job.

2 JUDGE YOUNG: Wouldn't that allow for a
3 manipulation also, if the manager knew the system?

4 MR. FOGLEMAN: Do you mean -- I'm not sure
5 I'm following that exactly. Do you mean that if the
6 manager just changed his job a bit so that they could
7 post it?

8 JUDGE YOUNG: Or decided to take advantage
9 of the fact that the job had changed over time and the
10 manager hadn't fulfilled the responsibility to keep
11 the job descriptions up-to-date, and decided to take
12 advantage of that and changed the job descriptions so
13 that everybody would now have to compete for the jobs
14 that they had been doing?

15 MR. FOGLEMAN: Well, as I said earlier,
16 you know, we try to put barriers in place to keep that
17 from happening, but -- so I guess it's possible that
18 a manager could do that. But, like I said, what we
19 are trying to do is put the barriers in place so that
20 that won't happen, so that we won't be changing to
21 manipulate.

22 It gets a fair amount of scrutiny to
23 ensure that, from our senior managers as well as from
24 HR, to ensure that they are not manipulating. We are
25 trying to understand what the managers are doing with

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1 their reorganization.

2 If we felt like a manager was trying to
3 manipulate the organization, we would raise the red
4 flag and start talking to the leadership team to make
5 sure that they're aware of what is going on in the
6 organization.

7 But if those were bit-by-bit changes and
8 we didn't see anything that looked like manipulation
9 or looked like that there was issues where managers
10 were trying to do something to harm employees, we
11 would probably post that job.

12 JUDGE YOUNG: There's also been some
13 testimony about some frequent changes in job
14 descriptions. Earlier you said that reorganizations
15 don't occur all that frequently or that changes in job
16 descriptions don't occur that frequently. I think you
17 said something to that effect.

18 That made me think back to some earlier
19 testimony -- and if I'm characterizing it correctly,
20 or if I'm characterizing it incorrectly, please feel
21 free to correct me, Counsel -- that there were some
22 changes in job descriptions over the course of a few
23 years, such that the environmental duties were added
24 to the Chemistry Program Manager position for a couple
25 of years, and then they were separated out a couple of

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1 years later.

2 Since you indicated that they don't happen
3 that frequently, would changes in job descriptions
4 that happen fairly close together and add something in
5 and then take it out a couple of years later, would
6 that be an indication to look at, to scrutinize a
7 particular change?

8 MR. FOGLEMAN: It could be. I mean,
9 you've got to look at what's going on in the
10 organization. I know that I'm more familiar with what
11 occurred from the '94-to-'96 timeframe than I am prior
12 to '94.

13 But when you look at what was going on in
14 TVA from '94 to '96, we were recovering Browns Ferry;
15 we had just brought, let's see, Sequoyah, we went
16 through the erosion/corrosion problem there, and it
17 came back, those plants came back in the, let's see,
18 it was late '93 or early '94, '93-'94 timeframe.
19 Browns Ferry was coming back online, those plants, and
20 we were in the process of starting up Watts Bar.

21 We were moving from, about the '96
22 timeframe, we were still in the midst of doing some of
23 the Watts Bar recovery and we were moving from an
24 organization that had been a maintenance -- or, excuse
25 me -- modifications construction-type organization to

1 a maintenance and operations organization.

2 The decision was made, instead of
3 prolonging that effort over a course of several years,
4 we had a plan to get there, just go ahead and do that
5 kind of at one move. So to change the job from what
6 it was in '94 to '96, we were doing reorganizations
7 and reductions throughout the TVA Nuclear organization
8 at that time.

9 So there wouldn't have been anything to
10 raise -- I mean, we did that in HR. We did it in our
11 entire engineering organizations at the three sites
12 and in our corporate TVA organization. We were doing
13 it in the Operations Support organization and it seems
14 to me like a couple of other organizations that I
15 don't recall right off of my head.

16 I was really involved primarily in the
17 engineering because I was a labor relations manager at
18 the time. We had a lot of people that we were
19 changing the way that organization was structured.

20 JUDGE YOUNG: I can't remember if it was
21 your testimony or somebody else's, but I think there
22 was some testimony yesterday that in the '96
23 reorganization that all but one position was changed,
24 that the position descriptions for all but one --

25 MR. MARQUAND: No. The thing was that the

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1 position -- all but one -- all of the new positions
2 were advertised except that Wilson McArthur's and some
3 others, I believe, maybe like secretarial, were
4 determined essentially to be on the same competitive
5 level.

6 But a large number of them -- I believe it
7 was TVA Exhibit 95 -- those were the numbers that were
8 all changed, and they were changed sufficiently that
9 they were on a different competitive level and they
10 had to be advertised.

11 JUDGE YOUNG: Right, and I thought I
12 recalled testimony that that happened with all but one
13 job in TVA Nuclear.

14 MR. MARQUAND: No. I think it was
15 Operations Support. We haven't gotten to -- that's
16 why Mr. Fogleman is here. He's going to talk about
17 all of TVA Nuclear.

18 JUDGE YOUNG: Okay, well, clarify for me
19 what the testimony was.

20 MR. MARQUAND: Mr. McGrath's testimony had
21 to do with Operations Support, because that's the only
22 organization he was in.

23 JUDGE YOUNG: So he said all the jobs in
24 Operations Support except one, was that what it was?

25 MR. MARQUAND: I believe that --

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1 MR. DAMBLY: I believe his original
2 testimony, when he was first brought in in
3 Chattanooga, was that, with the exception of Dr.
4 McArthur, all the jobs were posted as part of the
5 reorg., and nobody rolled over except Dr. McArthur.
6 I believe Mr. Boyles and Mr. Easley said the same
7 thing.

8 I believe yesterday he indicated there
9 might have been one or two others in the Maintenance
10 Group that he hadn't talked about before. As I
11 recall, the first time around it was either Judge
12 Young or Judge Bechhoefer asked specifically, "You
13 mean to tell me nobody was doing the same work before
14 and after the reorganization?" And we got an answer,
15 "Yes."

16 JUDGE YOUNG: Okay. In any event, if
17 virtually, if most jobs in a particular unit were
18 changed and posted, would that indicate to you
19 anything that might warrant scrutiny to see whether
20 the jobs had actually changed or whether they were
21 being changed to maybe manipulate the system?

22 MR. FOGLEMAN: I guess, from my
23 perspective, I have always -- when we're making
24 significant reorganization that occurred in '96, I
25 have always been more suspect of when we're only

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1 changing one or two jobs than when we're changing a
2 whole organization. Because a RIF or a reduction or
3 a reorganization is a painful process, and we've gone
4 through -- I talked a little earlier about the 1998
5 RIF. That was a painful process.

6 JUDGE YOUNG: But what I am trying to get
7 you to answer is, if, as testimony indicated, the
8 great majority of the jobs in a particular
9 organization were changed and posted, would that cause
10 the HR people to give any special scrutiny to that
11 means of reorganizing?

12 MR. FOGLEMAN: I would expect our HR
13 people to ask the questions: What's going on with the
14 organization? Why are you changing it? Are you
15 changing on account of your function, your mission of
16 your organization?

17 And if they get the answers, then, no, I
18 wouldn't expect that to create any more scrutiny.
19 Like I said, actually, I typically worry about an
20 organization when we're going through a significant
21 change like we were going through in '96 if they were
22 only changing one or two positions, that were the ones
23 that I would be more worried about that they were
24 trying to manipulate.

25 But when a whole organization is changing,

1 we know that the function or approach in our
2 organization is changing from kind of being a
3 construction modifications-type startup/restart group
4 to moving toward more of an operation and maintaining
5 functions in an organization, then I don't think from
6 an HR perspective I would be surprised that we were
7 having significant change within the support
8 organizations. HR, for example, went through that.

9 JUDGE YOUNG: Why would you be suspicious
10 when it was only one or two that are being changed?

11 MR. FOGLEMAN: Well, if we had an
12 organization that was set up to support a
13 modifications construction restart, and then we were
14 moving to an organization or moving toward a mission
15 of trying to operate and maintain, typically, the
16 functions look a little different for those jobs,
17 and --

18 JUDGE YOUNG: For all the jobs?

19 MR. FOGLEMAN: Maybe not all the jobs, but
20 the function of the organization is changing. We are
21 moving from a startup to more operating and
22 maintaining the plants. So we are looking at, we're
23 focusing on operational excellence and maintaining the
24 plant in an efficient manner.

25 JUDGE YOUNG: Would that also apply to the

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1 people in the corporate office?

2 MR. FOGLEMAN: The corporate office, their
3 main function is to support the plants, provide
4 support to the plant organizations, programmatic. So
5 where we maybe would have programmatic support for
6 restart efforts, we would be changing our programmatic
7 support to operating and maintaining those plants, and
8 it could look a little different.

9 JUDGE YOUNG: Thank you.

10 CHAIRMAN BECHHOEFER: I have one slightly
11 different -- or a question coming from a slightly
12 different perspective. May an employee who is in a
13 position with a job description of record be either
14 directed or expected to perform functions outside that
15 particular description? Is it permissible to tell an
16 employee to perform a function or a task, maybe the
17 word should be, that does not fall within the purview
18 of the job description of record?

19 MR. FOGLEMAN: Yes, it is permissible, if
20 they can safely perform the job, it doesn't affect the
21 quality of our work. So, yes, they can.

22 CHAIRMAN BECHHOEFER: And does any special
23 record have to be made of that?

24 MR. FOGLEMAN: No, sir.

25 BY MR. MARQUAND:

1 Q Typically, Mr. Fogleman, management
2 specialist descriptions state "and other duties as
3 assigned," don't they?

4 A Yes. As a matter of fact, we have a lot
5 of job descriptions that have one sentence in them,
6 "other duties as assigned."

7 Q I would like to follow up on a question
8 that Judge Young asked you about --

9 MR. DAMBLY: Excuse me. Could we get a
10 five-minute break? Would that be possible?

11 CHAIRMAN BECHHOEFER: Five might have to
12 be ten because of the escorts.

13 JUDGE YOUNG: Yes, we are going to have to
14 keep up the same escort process as yesterday, we
15 understand.

16 CHAIRMAN BECHHOEFER: Yes. So let's take
17 a 10-minute break.

18 JUDGE YOUNG: We're assuming a need since
19 you interrupted a question.

20 CHAIRMAN BECHHOEFER: Yes.

21 MR. DAMBLY: Thank you.

22 JUDGE YOUNG: Okay.

23 MR. DAMBLY: I was trying to find a break,
24 but there was not a pause long enough to ask.

25 (Whereupon, the foregoing matter went off

1 the record at 10:29 a.m. and went back on the record
2 at 10:44 a.m.)

3 CHAIRMAN BECHHOEFER: Back on the record.

4 BY MR. MARQUAND:

5 Q Mr. Fogleman, I want to follow up on one
6 of Judge Young's questions having to do with an
7 employee who over time may assume additional
8 responsibilities. I can only relate that to
9 situations I'm familiar with such as in our General
10 Counsel's office where we hire employees and referring
11 to 1996 timeframe the classification schedule we might
12 hire a new attorney at a PG-3 or 4 level and over time
13 they may assume more responsibilities and become more
14 experienced. In that situation can you explain how
15 that individual would be then promoted to the next
16 level without going through a reclassification or
17 without going through a RIF and a selection process?
18 Or relate it if you can to something that is in your
19 area in nuclear for example?

20 JUDGE YOUNG: Actually since you are
21 basing this on my question, what I was actually
22 wanting you to look at is not so much a promotion but
23 a change in duties at the same level.

24 MR. MARQUAND: Well, let him answer this
25 question and then we'll follow that, Your Honor.

1 THE WITNESS: We hire engineers, some of
2 entry level management positions, and we have
3 progression paths set out for them. That progression
4 path as they go through they acquire more skills,
5 knowledge, etc. Those set positions, human resource
6 officer, we hire entry level positions or we hire
7 entry level attorney. We hire entry level engineers.
8 We hire trainees in our craft and operations training
9 programs. They have progressions that they move
10 through based on their obtaining additional skills and
11 knowledge about the work. But those are set up and
12 they understand that when they come in. We don't post
13 jobs for that.

14 BY MR. MARQUAND:

15 Q Now let's follow on where Judge Young was
16 going. What happens in a situation say in the
17 chemistry environmental organization and you have a
18 chemistry and environmental program manager and over
19 time the chemistry manager assigns this guy and say
20 I'm giving you chemistry duties and giving you
21 chemistry duties and giving you chemistry duties and
22 not giving you environmental duties? Does that
23 require a change in the position description at some
24 point in time and if it does what happens?

25 A First of all let me talk about that

1 concept in two different areas. In our collective
2 bargaining agreements, we have very specific
3 guidelines. If people believe they are performing a
4 job outside their position description, then they have
5 a process that they can go through. A manager in a
6 process is if they felt like they were performing a
7 job outside their scope, they could raise that
8 question to us and it may be appropriate that we go in
9 and make some changes. When we are looking at a long
10 term change and no questions have been raised and we
11 come in with an entirely new job description, then my
12 recommendation or I'm going to insist that we post
13 that job.

14 CHAIRMAN BECHHOEFER: No adverse
15 possession?

16 THE WITNESS: I'm not sure I understand
17 what you are saying.

18 JUDGE YOUNG: That's a legal joke.

19 THE WITNESS: Good.

20 BY MR. MARQUAND:

21 Q Let me now show you Staff Exhibit No. 102.
22 I believe that's a service review also for Dr.
23 McArthur. I'll called it a service review. I guess
24 it's really title performance.

25 A PR&D. Performance Review.

1 Q Performance Review and Development Plan.
2 Okay. Essentially it's an employee performance
3 appraisal and service review, right?

4 A Yes.

5 Q Does that service review -- Is that Dr.
6 McArthur's position description?

7 A Yes, it's just a recording of his
8 performance on various performance objectives for the
9 year.

10 Q The first page that it reflects position
11 it says "Manager of Radiological Control." But the
12 fact it says that that is his position, does that mean
13 he has to have that position (Coughing.) position?

14 A That's his job title. What you would hope
15 is that the records would have a position description
16 that would reflect that he was a manager of
17 radiological control and that is not always the case.
18 I don't think it was the case in this situation.

19 Q So there might be situations where an
20 individual is performing duties with another title but
21 still has a different position description.

22 A That's correct.

23 Q Now if you will turn to page two, there
24 are a number of performance objectives stated there.
25 Do those performance objectives come from the position

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1 description?

2 A Our performance objectives, it's not like
3 we're going in -- Let me answer your question this
4 way. When you look at our performance appraisals,
5 they're going to reflect assignment specific
6 objectives that that individual is supposed to
7 accomplish in the particular year. Particular
8 objectives is not necessarily a reflection of every
9 duty that's listed on that position description.

10 Q It's the duties that were assigned for
11 that year?

12 A Yes, and it's often times assignments,
13 projects that we want the person to accomplish.
14 Business decides on a routine basis that's probably
15 not included in a position description.

16 Q So he may have a number of things on here
17 under the topic of "Other Duties As Assigned" that
18 don't even fall within his position description.

19 A Yes because what this is really reflective
20 of a performance review and development plan, the
21 PR&D, is reflective of how we measure that person on
22 objectives, projects, assignments that we've decided
23 that they are going to be responsible for during the
24 year. We're also going to measure them on behaviors
25 and that's going to determine their overall

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1 performance evaluation.

2 Q We've been talking about the RIF process
3 at competitive levels and we've talked about how you
4 go about making competitive level calls and we've
5 talked a lot about position descriptions. Let's
6 return back to the subject of competitive levels.
7 Once HR has established an retention register, what
8 happens next in the RIF process?

9 A Once we have the retention register
10 prepared then we know at that point how many people
11 are going to be affected by the reduction. We provide
12 the RIF notices or surplus notices.

13 JUDGE YOUNG: Are those two things the
14 same thing?

15 THE WITNESS: No, madam, they are not. If
16 we are actually conducting a RIF then we would issue
17 a RIF notice. If we are moving people in to services,
18 ETP, reinvestment, then we would be giving them a
19 letter that tells them based on their retention
20 standing they are moving into one of those particular
21 programs.

22 JUDGE YOUNG: So I'll understand before
23 you go on. A RIF would not result in people going to
24 the services organization.

25 THE WITNESS: A reduction in force would

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1 result in them leaving employment from TVA. We would
2 move them in the services organization using the
3 retention register, the RIF process, and at some point
4 in time, they may move out of the services
5 organization, out of the employee transition program
6 or out of our current reinvestment program through the
7 RIF process where we would actually issue the RIF
8 notice. But to go into that program, we did not issue
9 them a RIF notice. We issued them a surplus notice.

10 JUDGE YOUNG: But the difference between
11 the two has nothing to do with whether they are out of
12 their current job because the position description has
13 changed or because the position description is the
14 same and they are the lowest on the seniority list.
15 It has nothing to do with that.

16 THE WITNESS: Yes, it does. I mean we are
17 moving them in based on the RIF process because when
18 they ultimately leave TVA, we're going to do a
19 reduction in force.

20 JUDGE YOUNG: Hold on a second. What I'm
21 trying to understand is does the acronym "RIF" is not
22 limited to either of the two situations I described,
23 namely a person's losing a job because they are lowest
24 on the seniority list and you're having a downsizing
25 or they are losing the job because of a reorganization

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1 that's resulted in a change in their position
2 description. RIF applies to both. Surplus applies to
3 both. Correct or not?

4 MR. MARQUAND: The process does.

5 THE WITNESS: Yes, madam. The process
6 would apply to both.

7 JUDGE YOUNG: Okay, that's all I wanted to
8 make sure I understood.

9 MR. MARQUAND: Let's clarify that, Mr.
10 Fogleman. We've heard testimony about ETP, Employee
11 Transition Program and TVAS, Tennessee Valley
12 Authority Services organization. You've also
13 mentioned reinvestment. Can you explain what those
14 organizations were and what they were intended for?

15 THE WITNESS: I've mentioned a little
16 earlier about the 1998 RIFs and that was a pretty
17 traumatic event for TVA. As we knew that our
18 organization was going to be needing to downsize in
19 the future and when our new chairman of the board came
20 on in the early '90s knowing that our organization
21 would be shrinking, he wanted to be sure that we had
22 a program or plan in place to mitigate some of the
23 harshness so to speak of the RIF.

24 The programs were set up in various
25 different timeframes and called different things but

1 it was essentially an opportunity to give people an
2 opportunity to find other jobs. In some cases we
3 offered outplacement services. We offered training on
4 the résumé writing and things like that. They had
5 options to apply on other jobs within TVA. We had
6 employment fairs so to speak where people would come
7 in. We tried to work with other companies who had
8 vacancies. It was essentially set up to mitigate some
9 of the harshness and provide a transitional move from
10 their job in TVA into a potential of them being
11 unemployed from TVA and moving into the work force
12 outside of TVA and having to hunt another job. I also
13 allowed them focus on looking for opportunities in
14 TVA. It gave them a longer period of time other than
15 a 30 or 60 day RIF notice.

16 JUDGE YOUNG: For whatever reason they
17 were leaving their current job as long as that was
18 available to them, it was called a surplus.

19 THE WITNESS: Yes, madam.

20 JUDGE YOUNG: Thank you.

21 MR. MARQUAND: Typically when an employee
22 gets a RIF notice, how long of a notice period is
23 required to be given to that employee before their
24 termination is effective?

25 THE WITNESS: At one time it was 30 days.

1 I think the regulation changed to 60 days now.

2 BY MR. MARQUAND:

3 Q So under the regulations and under TVA
4 instructions, if TVA hands somebody a RIF notice they
5 have 60 days before their employment is terminated.

6 A Right.

7 Q Now with the interposition of ETP and
8 services, is that period after an employee's job is
9 determined to be surplus lengthened?

10 A Yes, through the course of the years there
11 were various periods of time that people were in those
12 programs but it essentially gave them more time than
13 the time limits that would have been given them if
14 they had been given a reduction in force notice.

15 Q Just so we make it clear, how does TVA
16 decide who to assign to services or ETP?

17 A We go through and utilize our RIF process,
18 set up the retention registers based on competitive
19 level, based on their seniority within the federal
20 service dates, disabled vet, vet and non vet.

21 Q So instead of receiving a RIF notice, an
22 employee received a notice that they are assigned to
23 services, right?

24 A Correct.

25 Q Are there different points in time they've

1 been allowed to stay in services for different
2 tenures, correct?

3 A Yes, depends on what you --

4 JUDGE YOUNG: That's based on what TVA has
5 available. It's not based on anything individual to
6 the person.

7 THE WITNESS: No, madam, it would be based
8 on the overall program at the time. We've had several
9 variations of those programs.

10 CHAIRMAN BECHHOEFER: Would it depend
11 however on the employee's retained rights under a RIF?
12 In other words, if he was way down the line, not
13 likely to be retained under a RIF? Would that be
14 determinate of whether an employee was assigned to
15 services or whether he would immediately receive a RIF
16 notice?

17 THE WITNESS: No, the retention register
18 while we use that to assign them services -- Let me
19 give you an example if that's okay. If we were going
20 to move four electrical engineers into ETP, employee
21 transitional program, or into services and we had four
22 less positions, we would move those four people into
23 services. Then at some point in time when that period
24 of time was over for them to be in services, we would
25 reduce the four employees at that point. So that

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1 meant that the bottom person had an opportunity to be
2 in services typically as long as the senior person of
3 those four engineers. They left services based on the
4 retention register.

5 CHAIRMAN BECHHOEFER: Are services
6 assignments time limited and are they the same for
7 each employee assigned to services or are they
8 considered permanent assignments?

9 THE WITNESS: Each of the programs had
10 specific guidelines that we were using. Typically
11 they were time limited. I don't remember the details
12 on employee transition for services.

13 CHAIRMAN BECHHOEFER: Well, the particular
14 time wouldn't matter.

15 THE WITNESS: An individual was not -- We
16 wouldn't have different times for different
17 individuals other than they might be going in at a
18 different time. That could have some impact.

19 CHAIRMAN BECHHOEFER: Of course.

20 THE WITNESS: The program was the same for
21 everybody.

22 CHAIRMAN BECHHOEFER: Thank you.

23 MR. MARQUAND: And the surplus notice
24 tells somebody you're going to services and here's the
25 date you're going, correct?

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1 THE WITNESS: Yes.

2 BY MR. MARQUAND:

3 Q We've also heard testimony about a
4 different kind of notice called an at-risk notice.
5 What's the distinction?

6 A One of the things as going through this
7 whole entire downsizing effort that we went through,
8 we wanted to be sure that employees knew their status
9 ahead of time. So as part of one of the programs, we
10 developed what we called an at-risk notice and it
11 essentially told the employee ahead of time that their
12 position was potentially at risk.

13 We were projecting reductions in their
14 classification in their particular organization. We
15 were giving them forewarning that there was a good
16 chance, that the potential existed that they might not
17 have a job in the future in that particular
18 classification in that particular organization. That
19 way they could know ahead of time and if they felt
20 like they wanted to look for other opportunities in
21 TVA, they could do that and could apply on other
22 positions. They might want to actually start looking
23 for opportunities outside of TVA. Our senior
24 management team felt like it was important to give
25 them notice ahead of time so that they weren't

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1 suddenly shocked with a surplus notice. They knew the
2 potential was there.

3 Q I have two more questions in that area and
4 then I think it will be time for a break.

5 CHAIRMAN BECHHOEFER: I have one follow-up
6 though. If a person receives an at-risk notice, may
7 he use paid time to search for another job either
8 within TVA or TVA Nuclear as the case may be or
9 outside? Is that considered paid time when he or she
10 is doing that?

11 THE WITNESS: I don't recall all the
12 specifics on that but I know in the employee
13 transition program not only did they use paid time to
14 look for jobs internal to TVA, they also did external
15 to TVA. In some cases where it was feasible to do so,
16 we actually provided some training to individuals to
17 actually enhance their résumés. So when they were
18 looking for jobs external to TVA they could show they
19 had some more computer training or things like that.
20 Not only paid them to look for jobs external to TVA,
21 we also helped some of them get some training.

22 Now when we moved them into the TVA
23 services, we tried to find them work in TVA that they
24 could showcase their skills. We also used them with
25 external businesses that we were developing external

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1 business opportunities. We would actually those folks
2 on those external business opportunities to help them
3 showcase their skills. Then if they had opportunities
4 for interviews and things like that, to the best of
5 memory we provided paid time for them to go do that.

6 BY MR. MARQUAND:

7 Q In 1996, in that timeframe when the
8 reorganization was occurring and employees who
9 received surplus notices, were their severance
10 packages available as an alternative for employees who
11 didn't want to go to services?

12 A Yes, if they elected not to go into the
13 services organization, they could get if I recall this
14 right a year of pay if it was at the beginning of the
15 year and also their severance pay which would be five
16 days per every year of TVA service.

17 Q All right and when you say a year of pay
18 that would be their salary through fiscal year 1997.

19 A Through the fiscal year. We had some
20 people that entered TVA services right at the
21 beginning of the fiscal year and unless they found
22 something else to do stayed through the entire fiscal
23 year. Then we had other employees that went into TVA
24 services during the year. They had an option of
25 getting a prorated amount of pay.

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1 CHAIRMAN BECHHOEFER: Could you not carry
2 over to the next fiscal year I take it? The employee?

3 MR. MARQUAND: Not the fiscal to 1998.

4 THE WITNESS: So what we were doing was
5 trying to --

6 CHAIRMAN BECHHOEFER: Rollover funds or
7 whatever?

8 MR. MARQUAND: As an example, let's look
9 at Joint Exhibit No. 28. That's a memorandum from Mr.
10 McGrath to Mr. Fiser assigning him to services. It's
11 dated August 30, 1996. That lays out his options that
12 he's going to be surplus. It assigns him to services
13 and gives him his options. Correct.

14 THE WITNESS: Let me just take a minute.

15 MR. MARQUAND: Okay.

16 THE WITNESS: Okay.

17 BY MR. MARQUAND:

18 Q First of all, is this a form letter?

19 A Yes.

20 Q And what two options did Mr. Fiser have?

21 A He could resign his employment and in this
22 situation he was going in at the beginning of the
23 fiscal year.

24 Q Beginning of fiscal 1997.

25 A 1997 and he had a option at that point to

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1 take his severance pay. If I recall he was eligible
2 for it. He was able to get a lump sum if he left
3 prior to the end of the fiscal year and then his
4 fiscal year 1997 salary and a lump sum for any unused
5 annual leave. That's standard for anybody leaving TVA
6 employment and immediate retirement benefit. That's
7 important because if you left before retirement age
8 then you wouldn't always be eligible for that
9 retirement immediate benefits. So that was an
10 additional benefit provided.

11 Then if he elected to stay and be assigned
12 to services, he would go into TVA services and would
13 stay there through the end of the fiscal year barring
14 any emergency in the power system. But if we could
15 find him a position and we made a reasonable offer and
16 it defines what a reasonable offer is then he would be
17 reduced at the end of the year. Or if he refused the
18 reasonable offer we could make a job offer to him that
19 was considered a reasonable offer and if he turned
20 that down he could be reduced in force at that point.

21 Q Now Mr. Fiser testified that he saw this
22 and he elected option one which was to take the
23 immediate resignation which he received the entire
24 year pay up front and the severance pay and his lump
25 sum and that was a considerable amount of money. He

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1 said the reason he elected not to stay in services was
2 because he said hey I could go to services and I could
3 be RIF next week. Was the situation to your
4 knowledge?

5 A That wasn't the way the program was set
6 up. The program was set up to allow people to stay in
7 the program. Now the only way he could have been
8 RIFed was if we found him and offered him a job that
9 would have been within the reasonable offer
10 guidelines. Then he would have been RIFed.

11 MR. DAMBLY: Just to correct the record,
12 that's what Mr. Fiser said. He referred to the part
13 down here about if they gave him an offer someplace
14 else at less pay.

15 MR. MARQUAND: I'm going to object of
16 testimony by Counsel.

17 MR. DAMBLY: Well, he just testified and
18 I think I want to correct the record because he
19 misstated the testimony.

20 JUDGE YOUNG: All right. Calm down. I
21 think we need to move on. It's clear what both
22 parties's positions are and it's clear what the
23 document says.

24 MR. MARQUAND: I'm not asking the
25 document. I'm asking what the program was. The next

1 question I have is was that information available to
2 all employees.

3 THE WITNESS: Yes, it was. This was a big
4 deal because it was a change and there was a lot of
5 information put out like this to the employees through
6 our internal communications processes. We have a
7 daily thing that comes out on our e-mail so it was
8 communicated there. It was communicated in the
9 company newspaper. We had some meetings throughout
10 the valley where the chairman was telling about the
11 programs.

12 So it was a pretty big deal because we
13 were changing the way we were doing things. We did a
14 big communication. There were places where people
15 could get frequently asked questions with the answers
16 to them. So there was a lot of information about this
17 program out there.

18 BY MR. MARQUAND:

19 Q You mentioned a presentation by the
20 chairman. Was that a simulcast in which he answered
21 the questions from all employees?

22 A It was a simulcast and I think he answered
23 questions at the particular location that they had the
24 simulcast for. Then we had questions that we knew
25 people wanted to know and he tried to answer those

1 questions too.

2 Q Let me direct your attention to the option
3 two second sentence. It says "this assignment will
4 end no later than the end of fiscal year 1997." You
5 said this was a form letter. Was that in all of the
6 letters?

7 A This was the same letter that everybody
8 got.

9 Q What was the intention of that?

10 A The intention was unless they got a
11 reasonable offer they would be in this TVA services
12 through the end of the fiscal year.

13 Q Was that clear to all employees through
14 the other information that was provided in the FAQs,
15 the frequency asked questions, in the chairman's
16 presentation, in the TVA newspapers and the e-mails
17 that were sent out?

18 A I think it was.

19 MR. MARQUAND: At this point, Your Honor,
20 we'd like to tender Joint Exhibit No. 28. Our records
21 show that Your Honor has already admitted it but the
22 list you provided us didn't show that. We looked at
23 the transcript. I apologize I don't have the page
24 number.

25 MS. EUCHNER: Your Honors, that was

1 admitted on May 8th. It's page 2369.

2 MR. MARQUAND: Thank you. Would this be
3 an appropriate time for a break?

4 JUDGE YOUNG: I think so.

5 CHAIRMAN BECHHOEFER: Yes, it would be.

6 JUDGE YOUNG: Fifteen minutes.

7 CHAIRMAN BECHHOEFER: Off the record.

8 (Whereupon, the foregoing matter went off
9 the record at 11:15 a.m. and went back on
10 the record at 11:32 a.m.)

11 CHAIRMAN BECHHOEFER: Back on the record.

12 DIRECT EXAMINATION (con't)

13 BY MR. MARQUAND:

14 Q Mr. Fogleman, we've heard testimony about
15 VPAs or vacant position announcements. When is a VPA
16 posted?

17 A When we have a vacant position.

18 Q In the context of a reorganization, when
19 is a VPA posted?

20 A In a reorganization, what's happening is
21 we are moving from one set of jobs or function of the
22 organization to another new organization, new jobs.
23 If there are new jobs and we determine that the person
24 doesn't move with the job and that it is a new job, a
25 different competitive level, then we would post the

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1 jobs.

2 Q When you say "person moves with the job"
3 you mean as you talked about it before that that
4 person's job isn't on the same competitive level as
5 the new job?

6 A Correct, yes. The competitive level
7 hasn't changed as a result of the reorganization.

8 Q If it hasn't changed, does the person have
9 a right to that job?

10 A That's right. They would move to the new
11 organization with it.

12 Q So if you have a new job that's on a
13 different competitive level then you have a vacancy
14 and you have to post the job essentially.

15 A Correct.

16 Q In the 1996 timeframe.

17 A Yes.

18 Q Is there a process for selecting employees
19 for vacant positions?

20 A Yes, there is. We use especially for
21 management positions but we typically use it for all
22 positions a selection review board that we use to fill
23 the positions. But before you get to the selection
24 review board which conducts the interview, what would
25 happen is the vacant position the employee would see

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1 the vacant position announced throughout TVA.

2 I think in 1996 at that time we had both
3 paper copies as well as the automated system. They
4 would see the position. They would apply for it.
5 Those applications for the position would come into
6 the human resource office. They would put together
7 information, the list of applications or copies of the
8 applications, selection worksheet, some pertinent
9 information about educational backgrounds, things like
10 that and provide it to the line manager to start the
11 selection process.

12 At that time, they would work on their
13 spreadsheet, determine who met minimum qualifications.
14 They would decide what they felt like the key
15 functions of the job that they had posted were, things
16 they were interested in for the selection process so
17 that they could make a difference between the
18 candidates. Then the top group of candidates would be
19 sent to the interview panel or the interview board for
20 the interview process. The manager in consultation
21 with the human resource people will work through
22 establishing interview questions and select the people
23 to serve on the board.

24 Typically human resources people
25 facilitate that. The line manager, the selecting

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1 manager may or may not be part of that board. Then
2 once the interview is conducted, then the board
3 recommends a decision to the selecting manager. The
4 manager then makes his decision about the selection
5 and who is going to be selected for the position.

6 Q You have before you a book. Would you
7 turn to Joint Exhibit No. 63? Does that Business
8 Practice 102 define the process for selecting
9 management and specialist employees in the 1996
10 timeframe?

11 A Yes.

12 Q Is that process in Joint Exhibit No. 63
13 the process that you just outlined for us?

14 A Yes.

15 Q In this process, are performance
16 appraisals used or considered?

17 A Yes.

18 Q At what point and by whom?

19 A The selecting manager to get to the -- As
20 I mentioned what you're trying to do is find out who
21 the best candidates are to get to the interview
22 process. So they are looking at key work experiences
23 and how people performed against that work experience.
24 The selecting manager would be using those performance
25 reviews, PR&Ds, as part of the selection process to

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1 determine who get to the interview process.

2 Q You mentioned interview board. Is that
3 the same thing as is sometimes referred to the
4 selection review board?

5 A Yes.

6 Q How is the selection review board formed?

7 A The selecting manager will pick people to
8 be on the board based on -- They may be a customer.
9 For example, a corporate organization may use a plant
10 personnel on the board. A plant organization may use
11 for example if it was maintenance it may have an
12 operations person sitting on the interview board,
13 somebody that will be interacting with the position
14 that we're making the selection for.

15 Like I said the selecting manager may be
16 on that interview board. But looking at customers and
17 in our organizations like a manager from an
18 organization that will have interaction with this
19 group or understands what we are trying to accomplish
20 with the selection.

21 Q Where you have a job that is of a
22 technical nature in like a complex engineering job or
23 a chemistry job, are there technical requirements for
24 members of that SRB or selection review board?

25 A We don't specify that they have to have

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1 B.S. degrees in whatever the technical field is. What
2 we're looking for is somebody that can make a
3 judgement based on the interview process. At that
4 point when you get to the interview process, those are
5 your top candidates that you are looking at. When you
6 get to that process, what you are looking for is
7 somebody who can make an assessment based on the
8 interview process who has the best potential to fill
9 this position. So you are looking for people who have
10 some knowledge and maybe actually become a customer or
11 an enduser of the services that this position would
12 provide.

13 Q Where do the questions come from that the
14 SRB uses?

15 A The manager would develop the questions
16 and also would solicit the screening review board for
17 questions.

18 Q How the SRB use those questions? What
19 does it do with those questions?

20 A They use them during the interview process
21 and using those questions make an assessment of how
22 well the interviewees perform during that interview
23 process.

24 Q Do you expect the SRB to consider past
25 performance or matters that are in the employee's

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1 personnel history record?

2 A That should already have been handled by
3 selecting manager before it gets to the selection
4 review board. Those factors should have been taken
5 into account prior to the person being selected for
6 the interview.

7 Q So the selection review board --

8 A The selection review board is basically to
9 go through the interview process.

10 Q With the questions?

11 A Pardon?

12 Q Do they consider anything other than the
13 questions that are posed by the selecting manager in
14 the interview process? Do they bring anything
15 extraneous to the process?

16 A No, their responsibility is to go through
17 the interview process and make a recommendation on who
18 the best candidate is from that interview process.

19 Q Is it necessary for the SRB to ask only
20 questions that are of a technical nature?

21 A Only ask questions --No, depending on what
22 type of job, you may be looking for as much behavior
23 type issues as you are technical qualifications. If
24 interaction with a customer and having good customer
25 skills are key functions of the job you obviously are

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1 going to probe on those types of questions about
2 interactions with the customers. If the key function
3 is a technical function then you are going to probe on
4 technical capabilities.

5 Q So with a job like a corporate chemistry
6 program manager, he or she has to interface with the
7 chemistry managers at the sites. Is that a job that
8 includes both technical and interfacing with other
9 managerial positions?

10 A Yes, I think that would be a job where you
11 would be probed on both technical and behavioral
12 issues.

13 Q Where you have a job that has some
14 technical nature to it and maybe not entirely, but is
15 it necessary for the SRB to ask questions that cover
16 all technical aspects of the job or can they limit
17 themselves to simply what they consider to be
18 pertinent technical aspects?

19 A Especially if you are doing it during a
20 reorganization, you probably are going to probe your
21 technical questions towards the areas that you are
22 trying to address during the reorganization or the
23 areas that the organization may be weak in or that we
24 think there are opportunities to develop our skills
25 and our services that are being provided to the

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1 particular customers. So those would be the areas
2 that you would be probing in.

3 Q So the SRB interviews the candidates,
4 evaluates the candidates and makes a recommendation.
5 Does the selecting manager have to follow the SRB's
6 recommendation?

7 A The selecting manager doesn't have to
8 follow the SRB's recommendation. I'm not sure I'm
9 aware of a situation that they haven't followed but
10 they wouldn't necessarily have to do that.

11 Q When selecting people to serve on the SRB,
12 is it necessary to find members who are unaware of any
13 previous complaints filed by any of the candidates?

14 A That's not spelled out in our process. As
15 a matter of fact, that can be hard to do because we
16 use the selection process in our union processes too.
17 So we have people by the very fact we have 75 percent
18 of our workforce that are unionized. They have a
19 grievance process they can use which is pretty similar
20 to complaints. We're not asking our selecting
21 managers to try to get people who are unaware of
22 complaints, grievances that have been filed through
23 the past years.

24 Q What's your expectation of individuals who
25 are on the SRB who had a knowledge of previous

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1 complaints?

2 A They are not expected to be use their
3 previous knowledge to taint their selection or their
4 understanding. I think from my involvement in the
5 process is that that's very clearly understood which
6 is they are not to allow their knowledge of previous
7 issues to impact their decision.

8 What they are responsible to do is at that
9 point the selection manager said these are the three,
10 four, five, how many ever primary candidates for the
11 position. What we are expecting that selection review
12 board to do is go through those interview questions
13 and give a fair assessment of that individual
14 regardless of previous complaints or maybe even issues
15 they've had with the individual. That's their
16 responsibility.

17 Q Could you return to 1996 in the
18 reorganization of operation support? Who is Kathy
19 Welch?

20 A Kathy Welch at that time was a Labor
21 Relations person working for me. She was in our human
22 resource organization.

23 Q Did she have some responsibility with
24 respect to Department of Labor issues?

25 A Yes, she did along with some other

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1 responsibilities.

2 Q Did she discuss with you whether Mr. Fiser
3 had raised an issue about a 1993 Department of Labor
4 complaint?

5 A Yes, she did. There was a question. Let
6 me see if I can get this right. There was a question
7 about in the settlement agreement about whether he had
8 rights to certain jobs and was this reorganization
9 that we were going through going to impact that
10 settlement agreement or how did that settlement
11 agreement fit in with the reorganization and did he
12 have a right to the new jobs.

13 What we did is I looked at the settlement
14 agreement with her but I hadn't been that involved in
15 the actual negotiations of that settlement agreement.
16 In fact I wasn't involved in the negotiations of that
17 settlement. So we contacted actually contacted you
18 and talked through that settlement agreement and made
19 a determination based on her experience and your
20 experience with the negotiation that the settlement
21 agreement did not have bearing on this reorganization
22 and moved on from there.

23 CHAIRMAN BECHHOEFER: What was the scope
24 of Ms. Welch's responsibilities? Was she a lawyer or
25 was she working for HR?

1 THE WITNESS: She worked for HR. I think
2 her job title was -- I don't recall the specific job
3 title at the time but she was a labor relations person
4 that worked for me. One of her primary focuses was
5 Department of Labor complaints. She also worked in
6 some of other complaint processes and was responsible
7 for the negotiations with the Teamsters.

8 MR. MARQUAND: In 1996, was there a
9 reorganization of TVA Nuclear?

10 THE WITNESS: Yes.

11 BY MR. MARQUAND:

12 Q Was there also a reorganization of
13 Corporate TVA Nuclear in 1996?

14 A Yes, as I talked about earlier, we were
15 moving the Nuclear organization from the construction
16 start-up restart mode to an operating and maintaining
17 organization. In 1996 we made a decision instead of
18 doing that over a longer period of time there was a
19 plan laid out that we were going to do this over a
20 five year timeframe at that time. Instead of doing it
21 over the protracted period of time, let's go in and do
22 it and get it over with so that we wouldn't be going
23 through this process over the next few years.

24 Q In addition to changing the function of
25 the organization from a construction modifications

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1 organization to a maintenance operations organization,
2 was there also some consideration of budget reductions
3 in this reorganization in 1996?

4 A One of the things that we also used to
5 look at our staffing and our headcount, we go out and
6 looked into the industry and found out how people are
7 staffing their jobs and understanding how they were
8 getting work done, benchmarked to find out how they
9 get work done. That was a factor in this. Our
10 headcount over those years would be reducing also.
11 There would be less people when this was over.

12 Q You said that the idea was to get it done
13 as soon as possible as opposed to stretching it out.

14 A Instead of stretching it out over several
15 years, let's go in and make our decisions, get our
16 organizations in place and get ready to move forward
17 so that we're not every year creating a situation
18 where we are going to be reorganizing this group or
19 reducing this group. But let's see if we can't lock
20 our organization down, lock our numbers down and move
21 forward.

22 Q In light of the change of the mission of
23 the organization in 1996 and reorganization, was it
24 appropriate to rewrite position descriptions at that
25 time to accomplish the new missions of the

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1 organization?

2 A Well, anytime you do a reorganization you
3 have to look at what the functions of the new
4 organization is going to look like and it generally
5 does change people's jobs so it would be appropriate
6 to reroute PDs.

7 CHAIRMAN BECHHOEFER: Do you remember who
8 if you could put a name on that person directed that
9 the modifications or reductions take place over one
10 year rather than four or five as I understand some
11 organization did and had the extended one? Do you
12 know who if anybody was responsible for that?

13 THE WITNESS: Our Chief Nuclear Officer I
14 guess with consultation with the Board of Directors
15 probably ultimately made that decision.

16 CHAIRMAN BECHHOEFER: Namely, to use one
17 year rather than four or five or whatever?

18 THE WITNESS: Yes, sir.

19 CHAIRMAN BECHHOEFER: For your
20 organization as distinguished from other TVA
21 organizations.

22 THE WITNESS: I started to say probably
23 the other organizations weren't experiencing the
24 amount of change that the TVA Nuclear organization had
25 but I'm not sure that I know that exactly to be able

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1 to say that because really my focus was the TVA
2 Nuclear organization.

3 CHAIRMAN BECHHOEFER: Right, you're not
4 saying the greater the change the faster we better get
5 done.

6 THE WITNESS: No, sir.

7 MR. MARQUAND: At this time, I'm going to
8 have a number of documents marked for identification.
9 I'm going to have TVA Exhibits 83 through 96.

10 CHAIRMAN BECHHOEFER: Eighty-three
11 through?

12 MR. MARQUAND: Through 96, 109 and 110.

13 MR. DAMBLY: And at this time before we
14 even get into that, the Staff is going to object to
15 all of these. These have to do with retention
16 registers for organizations that are not at issue in
17 this case. It's a burden on the record. We've
18 already said they did a big reorganization.

19 We will stipulate that they did a big
20 reorganization. We don't need two, three, four
21 hundred pages of Watts Bar retention registers and
22 Browns Ferry and whatever else we have here which has
23 absolutely nothing to do with the operation support
24 group which is the only thing at issue in this case.

25 JUDGE YOUNG: You want to bring these in

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1 through this witness?

2 MR. MARQUAND: Yes.

3 MR. DAMBLY: We'll start with document 83,
4 retention register Watts Bar Nuclear TVAS employees.
5 This case has nothing to do with Watts Bar. This case
6 has to do with the operation support in TVA Nuclear
7 headquarters, Mr. McGrath's organization, and that's
8 all that's at issue.

9 JUDGE YOUNG: We may as well -- There are
10 a lot that need to be marked for identification so
11 maybe now would be a good time to break. Then when we
12 come back be prepared to argue and tell us what each
13 of them is and argue on why they should or should not
14 be admitted.

15 CHAIRMAN BECHHOEFER: Well, can't an
16 argument be made collectively? I haven't looked at
17 them all now.

18 MR. MARQUAND: Yes, collectively.

19 CHAIRMAN BECHHOEFER: So let's break and
20 come back at 1:00 p.m. or 1:15 p.m. What do you need?

21 MR. MARQUAND: (Off the microphone.)

22 CHAIRMAN BECHHOEFER: It's okay with us.
23 Off the record for a lunch break. We'll be back at
24 1:00 p.m.

25 (Whereupon, at 11:57 a.m., the above-

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1 entitled matter recessed to reconvene at
2 1:09 p.m. the same day.)

3 CHAIRMAN BECHHOEFER: Back on the record.
4 Mr. Marquand, before we broke, we were considering
5 your offer I guess of TVA 83 through 96 for the
6 moment.

7 MR. MARQUAND: I hadn't offered them yet.
8 All I did was ask to have them marked.

9 (Whereupon, the above-referred
10 to documents were marked as TVA
11 Exhibit Nos. 83-96, 109, and
12 110 for identification.)

13 CHAIRMAN BECHHOEFER: Okay. So you just
14 had them identified.

15 JUDGE COLE: But we do have the numbers.

16 MR. MARQUAND: We had them all numbered.

17 JUDGE YOUNG: We had an anticipatory
18 objection.

19 CHAIRMAN BECHHOEFER: Yes.

20 MR. MARQUAND: Do you want to deal with
21 the objection now or later? I'll tell you what my
22 position is with respect to documents, so we don't
23 have to argue for 35 more minutes. These documents
24 are retention registers. They are surplus notices.
25 They are RIF notices with respect to TVA Nuclear

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1 employees in 1996. I believe there may be some for
2 fiscal '97. They are all part of this reorganization
3 that was going on.

4 Our position on this is that this case is
5 about discrimination. The allegation is that Mr.
6 Fiser was discriminated against. As you know,
7 discrimination requires a comparison against some
8 other comparator, some other pool. We understand the
9 Staff's position. The Staff's position is they think
10 Fiser was treated differently than Dr. McArthur.

11 However, our position in this case, our
12 theory of this case which I think we're entitled to
13 put on evidence with respect to is that we were
14 dealing with TVA Nuclear. We were dealing with TVA
15 Nuclear processes. We intend to show that in 1996
16 there was this massive reorganization going on in TVA
17 Nuclear that many, many employees were put onto
18 retention registers, received surplus notices,
19 received RIF notices, and that Dr. McArthur is the
20 exception that proves the rule that his job was
21 determined to be in the same competitive level as the
22 new job.

23 Whereas, the vast majority of employees
24 just like Fiser, their existing jobs were determined
25 not to be on the same competitive level as new jobs

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1 that were created in the reorganization. Just like
2 Fiser, they received surplus notices or they were
3 RIFed, et cetera. I think we're entitled to show here
4 are the comparitors with respect to the pool of people
5 that we think he should be compared with that is TVA
6 Nuclear. That is what these documents are intended to
7 show.

8 CHAIRMAN BECHHOEFER: Well, do the
9 documents with respect to other TVA reactors show
10 persons who were assigned jobs outright without going
11 through the register process?

12 MR. MARQUAND: What we have here are the
13 people who were determined not to be on the same
14 competitive levels. There are the retention
15 registers, the surplus notices, the service notices,
16 the RIF notices. I don't think that we have here
17 documents that show that people were assigned to a new
18 job without competition or without that process.
19 These are people who were put at risk who's jobs were
20 surplusd and just like Fiser determined that their
21 existing job was not similar enough to their old jobs
22 that they had to receive a surplus notice or a RIF
23 notice as the case may be.

24 CHAIRMAN BECHHOEFER: Well, I believe that
25 if Mr. Fiser received the same treatment as Dr.

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1 McArthur and perhaps visa versa as well, I don't know,
2 Mr. Fiser would not have his complaint.

3 MR. MARQUAND: That's exactly correct. If
4 Fiser had been determined that his existing job was on
5 the same competitive level as the new jobs, no, he
6 would not have been RIFed. He would have been the
7 person with rights to the new job. However, as Mr.
8 Boyles who has been here earlier and Mr. Easley who
9 was here earlier determined that they were not on the
10 same competitive level. Therefore, he went on a
11 retention register.

12 He's probably on one of these retention
13 registers and one of these documents. In fact, I'm
14 sure he is. That's why he was ultimately sent a
15 surplus notice and assigned to go to services as of
16 August 30, 1996.

17 CHAIRMAN BECHHOEFER: I see. Well, let's
18 wait until you offer them.

19 MR. MARQUAND: Okay.

20 CHAIRMAN BECHHOEFER: I'd like to hear
21 objections if any.

22 MR. DAMBLY: Before we question the
23 witness, I made it clear. The only relative
24 comparitors for this kind of a case is the way people
25 under Mr. McGrath and Dr. McArthur would treat is.

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1 However, some manager at Browns Ferry or Watts Bar
2 treated anybody is irrelevant. The fact that TVA can
3 put in a lot of documents to show that they tweak
4 everybody's PDs to avoid the RIF rags doesn't have
5 anything to do with this particular case except as
6 they did it under Dr. McArthur and Mr. McGrath.

7 MR. MARQUAND: But as Your Honors have
8 already asked this witness, the question was how wide
9 was this reorganization. It wasn't operation support
10 wide. It wasn't driven by Mr. McGrath. As you recall
11 you asked him who made the determination to conduct
12 this RIF and achieve this 40 percent reduction in one
13 year. He said it was the Chief Nuclear Officer in
14 consultation with the TVA Board of Directors.

15 It wasn't Mr. McGrath making the decision
16 I'm going to reorganize OPs Support. It was the Chief
17 Nuclear Officer in consultation with the Board of
18 Directors saying we're going to reorganize TVA
19 Nuclear. What was done at TVA Nuclear? Was OPs
20 Support treated differently? Did McGrath go off on a
21 tangent and treat his people differently than anybody
22 else?

23 Did McGrath apply some different
24 procedures as Counsel would have you believe? He
25 suggests that he applied some different procedures.

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1 He did this differently in order to get rid of Fiser.
2 No. It was done exactly the same way throughout all
3 of TVA Nuclear. It was done not pursuant to McGrath's
4 direction. McGrath was following the direction from
5 the CNO to reorganize his organization to more closely
6 align it with the functions necessary to operate and
7 maintain the operating plants at Watts Bar, Sequoyah
8 and Browns Ferry.

9 MR. DAMBLY: Again, my only point, I mean,
10 he's already testified and others have testified that
11 this was a corporate wide thing. I think McGrath
12 testified he was the one who decided to do it in one
13 year. He didn't know. Somebody else had told him
14 that apparently.

15 But putting that to the side, I have no
16 idea what 500 pages or whatever this is of documents
17 is supposed to add to that. He can tell us that they
18 followed the same procedures. He already has. Other
19 people said this is the way we do things at TVA. If
20 you want to carry another three volumes around for
21 some reason that have no relevance in and of
22 themselves, six volumes, whatever, for documents that
23 nobody is ever going to look at just so he can say see
24 there were a lot of these, well, he can say see
25 there's a lot of them.

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1 I don't know why we need to waste our time
2 going through them. They did a whole lot. They did
3 it at Browns Ferry. The did at Watts Bar. I don't
4 know that we have any from Sequoyah in here. Why we
5 need this many pages for him to say this is the
6 procedures that we used, that's what he spent all
7 morning telling us what the procedures were.

8 CHAIRMAN BECHHOEFER: Were the same RIF
9 guidelines, maybe that's the wrong terminology, used
10 for all of these reductions in force in so far as you
11 know?

12 THE WITNESS: Yes, sir.

13 MR. MARQUAND: Well, if I can proceed with
14 the exhibits. Then we can discuss the relevance or
15 the need for the documents in the record at the time
16 that we admit them. That may be the best approach.

17 CHAIRMAN BECHHOEFER: Yes. Proceed.

18 JUDGE YOUNG: I guess my only comment
19 would be to the degree that we may be getting into a
20 lot of cumulative and repetitive testimony if you can
21 do this in a manner that minimizes that, I think it
22 would be appropriate.

23 MR. MARQUAND: Yes, Your Honor. I
24 understand that. I don't want to prolong this.

25 BY MR. MARQUAND:

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1 Q Mr. Fogleman, have you had a chance to
2 review Exhibits 83 through 96?

3 A Yes.

4 Q Also Exhibits 109 and 110.

5 A Yes.

6 Q Before we discuss any of them, can you
7 characterize what you reviewed?

8 A It's retention registers. It's reduction
9 in force notices for people who had been in a
10 transition program. It's surplus notices assigning
11 people to TVA services. It's in some cases some
12 cancellation notices for people who got jobs during
13 the process. It's the retention register and back-up
14 documentation for some of the retention registers.

15 Q We haven't actually seen retention
16 registers yet. So just so that everybody knows what
17 some representative documents look like, TVA Exhibit
18 83 is labeled "Retention Registers, Watts Bar, TVAS,
19 that would be TVA Services employees, posed effective
20 date 9/30/96." Do you see that?

21 A Yes.

22 JUDGE YOUNG: Could you help me out with
23 something as we go forward? What is the exhibit
24 number of the reduction enforce rule?

25 MR. DAMBLY: Joint 65.

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1 JUDGE YOUNG: Joint 65. Thank you very
2 much.

3 BY MR. MARQUAND:

4 Q The second page of TVA Exhibit 83, Mr.
5 Fogleman, has a base number EA-1. On that second
6 page, the header says "Retention Register." Is that
7 what a typical retention register looks like?

8 A Yes.

9 Q That particular retention register just
10 has one individual on it.

11 A That's correct. Watts Bar Nuclear Plant
12 was the competitive area. The competitive level was
13 a civil engineer. It has a modifier or a descriptor
14 of HVAC. That just indicates that the particular
15 engineering person's predominant job activities
16 focused in the HVAC area.

17 Q The next page, EA-2, is also labeled
18 "Retention Register" but it looks like it's computer
19 generated.

20 A That was essentially the HR working
21 document that they went through and got a listing of
22 the people of that preference, whether they were
23 permanent, tenure codes, things like that. That was
24 the working document to start from to identify who all
25 the civil engineers were.

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1 Q That's a different retention register than
2 the previous page.

3 A That is just the working document for the
4 HR organization to start from.

5 JUDGE YOUNG: Let me clarify one more
6 thing. This is very basic but I want to make sure I
7 understand it. A retention register is only used when
8 a new job description has not come into play.
9 Correct? It's when the job description stays the same
10 and any RIF or surplusings will be based on the order
11 of seniority and priority on the retention register.
12 Am I understanding that right?

13 THE WITNESS: Yes, ma'am. The retention
14 register is used obviously when we're in the reduction
15 RIF process. The people on here we would be looking
16 at their position description to determine who should
17 be included on the particular retention registers.

18 JUDGE YOUNG: And so if these people, for
19 example on the second page --

20 MR. MARQUAND: EA-2?

21 CHAIRMAN BECHHOEFER: Yes.

22 JUDGE YOUNG: Yes. And the name of that
23 job is civil engineer, job code 1080. If it was
24 determined that you needed a different job description
25 and the job description for this 1080 civil engineer

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1 was something you no longer needed for business
2 reasons, you would not do a retention register in that
3 case. Am I understanding that right or not?

4 THE WITNESS: No, ma'am. We'd still do
5 it. If we were going to eliminate the position, we
6 would still do the retention register so that we could
7 go through the process.

8 JUDGE YOUNG: So if you eliminate the
9 position, what's the retention register used for in
10 that event?

11 THE WITNESS: We establish the retention
12 register so that we can tell within a particular
13 competitive level the seniority status of the
14 individual employees that are within that competitive
15 level. Then we start at the bottom of the retention
16 register which would be the person with the least
17 seniority and non-vet status and work our way through
18 the retention register to reduce the number of
19 positions that we need to have reduced.

20 MR. MARQUAND: I think I understand where
21 you are coming from, Judge. You're question had to do
22 with suppose you had an existing position and then you
23 wanted to create a new position and you determine that
24 the existing position and the new position were on the
25 same competitive level. You might still as I

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1 understand it go through a retention register and a
2 RIF process if you decided that you needed fewer
3 positions and people to fill this new position. You
4 had ten engineers --

5 MR. DAMBLY: Let me object to Counsel
6 testifying. We supposedly have an expert in here
7 who's supposed to be able to tell us what --

8 MR. MARQUAND: I was just trying to
9 clarify.

10 JUDGE YOUNG: Let me clarify my question
11 so I can get clarification from you and know where
12 we're starting from. In a situation where you have
13 five people who were civil engineers, job code 1080,
14 they all have the same job description. For business
15 reasons, the company decides we're going to change.
16 We're going to reorganize, and we're going to create
17 two new job descriptions and do away with the job
18 description for civil engineer 1080.

19 We're going to post the new jobs because
20 they're not interchangeable with the old one, the
21 1080. In that event, (1) would you still do a
22 retention register for job 1080, and (2) what would
23 you use it for if it no longer existed and everybody
24 in that previous job would no longer have any right to
25 that job?

1 THE WITNESS: If all the employees had
2 moved to new jobs, then we would not do a retention
3 register for that position. If there was nobody in
4 the competitive level because they had moved to the
5 new job --

6 JUDGE YOUNG: Okay. You do away with the
7 job. For example, let's just look at the one we're
8 talking about in this case. The program manager job
9 that Mr. Fiser, Mr. Chandra, Mr. Harvey and maybe some
10 others were in. It was determined that the existing
11 job description would no longer be relevant because in
12 the future there was going to be a division of the
13 previous job into PWR Chemistry Program Manager, BWR
14 Chemistry Program Manager, and the environmental part
15 would go somewhere else.

16 Now, the people who were previously in the
17 Chemistry/Environmental Program Manager job, if I'm
18 paraphrasing, you know what I'm talking about. Right?
19 They are no longer in that job. That job is not going
20 to exist. They're going to have to compete for any
21 new jobs that are created and posted. In that event,
22 would you still create a retention register for the
23 job that's no longer to exist in the future? If so,
24 what would be its purpose?

25 THE WITNESS: The only reason that we

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1 would do a retention register would be if one the
2 employees in the Program Manager
3 Chemistry/Environmental did not get selected for one
4 of the new positions.

5 JUDGE YOUNG: So then in other words, you
6 don't do the retention register at the outset. You
7 wait to see where everybody settles out. Then if
8 there's any people left over, you'll do a retention
9 register of those left over people. Is that what
10 you're saying? That's what I understood you to say.

11 THE WITNESS: Well, if we have the jobs
12 posted and know that in advance of doing the
13 reduction, yes, we could do it that way. Yes, ma'am,
14 we sure could. It kind of boils down to the timing of
15 the situation. If we know that there's no one left or
16 there's only one person left, we may not do that
17 retention register in advance.

18 JUDGE YOUNG: It seems like a real basic
19 issue here, but I'm trying to understand what the
20 purpose of the retention register is. Obviously if
21 you're not going to do away with the job but you're
22 going to downsize and so some people are going to lose
23 their jobs, you do a retention register to see who's
24 on top and who's going to be dropped because they have
25 the least seniority and the least of whatever else

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1 determines their place on the seniority list, veterans
2 preference and so forth. Right?

3 THE WITNESS: Yes, ma'am.

4 JUDGE YOUNG: Now, if instead through
5 consultation with HR people the manager or the
6 supervisor decides to be more efficient we need to
7 divide these functions up in a different way to make
8 the best use of our resources, we're going to create
9 in this case PWR and BWR Chemistry Program Manager in
10 each position and a separate environmental. I can't
11 recall where that goes. You know that. In the course
12 of consulting with the HR people, they say the job is
13 different enough, they're not interchangeable so
14 you're going to have to post those jobs. Right?
15 You're nodding your head.

16 THE WITNESS: Yes, ma'am.

17 JUDGE YOUNG: Okay. Now, the people who
18 were previously in the Chemistry/Environmental Program
19 Manager jobs then would have to if they wanted to
20 compete for the BWR and PWR Program Manager job,
21 Chemistry Program Manager job, or any others
22 presumably. What I understood you to say before was
23 the only time a retention register would be done in
24 that circumstance would be if at the end there were
25 people who were previously in the

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1 Chemistry/Environmental Program Manager job who did
2 not get selected for a newly created position. In
3 that circumstance, you would do a retention register
4 for those leftover people who did not get placed in
5 new jobs. Correct?

6 THE WITNESS: That could happen. Yes,
7 ma'am. Maybe I can explain.

8 JUDGE YOUNG: Well, let's just hold on
9 because I want to see if I can understand.

10 THE WITNESS: Okay.

11 JUDGE YOUNG: If that happens, you'd have
12 a retention register. Let's say there were three
13 people who didn't get any of the new jobs. You do
14 that retention register. What would that retention
15 register in that circumstance be used for?

16 THE WITNESS: If we had three people who
17 did not get the jobs, we would be assigning those
18 people in that situation to TVA Services. We would
19 use that retention register to assign those people to
20 establish their federal service dates and assign all
21 three of them to TVA Services.

22 JUDGE YOUNG: Would there be any
23 distinction among those three people in how they were
24 treated?

25 THE WITNESS: No, ma'am. All three would

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1 go to Services.

2 JUDGE YOUNG: Then what I'm not
3 understanding is what's the purpose of the retention
4 register in that circumstance. Isn't a retention
5 register generally to distinguish among the people on
6 it to show who has more lengths of service and
7 veterans preference and so forth and so on?

8 THE WITNESS: Yes, ma'am.

9 JUDGE YOUNG: So what would be the purpose
10 of the retention register in terms of the distinctions
11 made among those on it in that circumstance?

12 THE WITNESS: For establishing
13 distinctions between the three individuals, there
14 would be no purpose. It would just be our process to
15 show that there was a retention register, that we did
16 that, and that we put these three individuals on that
17 retention register, that they were of the same
18 competitive level. So that if there were appeals or
19 complaints in the future, we could show the
20 documentation of exactly what we had done to move
21 those individuals into Services.

22 JUDGE YOUNG: Would it have something to
23 do on their rehire rights if a job came open in the
24 future?

25 THE WITNESS: No, ma'am.

1 JUDGE YOUNG: Okay. So it's just to have
2 them on a list.

3 THE WITNESS: Given that situation, it
4 would be just a document of the process that had
5 occurred.

6 JUDGE YOUNG: You said that would be one
7 circumstance in which you might use a retention
8 register when a job was completely done away with and
9 everybody in that previous job would have to either
10 compete for new jobs or quit or go into the Services
11 or be RIFed.

12 THE WITNESS: Yes, ma'am.

13 JUDGE YOUNG: What would be other
14 circumstances that you might use that in that
15 situation? The one I described, you said that would
16 be one circumstance in which you might use a retention
17 register. What other circumstances in that same
18 situation would be the circumstances in which you
19 might use a retention register?

20 THE WITNESS: Given that set of
21 circumstances, I don't know any other -- There would
22 be no other situation you would use that retention
23 register for.

24 JUDGE YOUNG: So basically retention
25 registers to the degree they are used to distinguish

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1 among the employees on them are only used when you
2 have a downsizing, you keep a job, and you have to let
3 some people go from that same job. The ones on the
4 bottom of the list or the top, whichever, the ones
5 with the least seniority, the least veterans benefits,
6 et cetera are the ones that go first.

7 THE WITNESS: Yes. That's correct.

8 JUDGE YOUNG: The only way they are used
9 when you post new jobs and do away with old jobs is
10 just to show that the people who didn't get the new
11 jobs are on a list who are then sent to Services or
12 RIF depending upon what programs are in place at the
13 time.

14 THE WITNESS: Correct.

15 JUDGE YOUNG: Okay. Thanks.

16 CHAIRMAN BECHHOEFER: Just to supplement
17 again and you may have said this earlier. Is there
18 any necessity or reason for applying the retention
19 register standards to those who are hired away from
20 Services to another TVA position? In other words,
21 should the position be offered in light of the
22 standing on the retention register?

23 THE WITNESS: No, sir. It should not.

24 CHAIRMAN BECHHOEFER: Should not or would
25 not?

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1 THE WITNESS: Would not. We have had
2 circumstances where the low person on the retention
3 register once they moved him to Services where the
4 people offered a job they would not on any sort of
5 application process or in any part of the selection
6 process, there's no indicator. They don't provide any
7 information. HR doesn't provide any information to
8 the selecting manager about that person's status on
9 the retention register.

10 CHAIRMAN BECHHOEFER: So technically that
11 process could be subject to some manipulation. We,
12 being some division or office, wants X employee rather
13 than people with similar qualifications who are on the
14 retention register. That's subject to a considerable
15 amount of manipulation.

16 JUDGE YOUNG: They'd still have to post
17 the jobs. Right?

18 THE WITNESS: They would have to go
19 through the selection process, the interview process
20 and determine who the best applicant or applicants for
21 the position was.

22 CHAIRMAN BECHHOEFER: I see. Okay.

23 BY MR. MARQUAND:

24 Q To follow up on Judge Young's questions,
25 the sequence isn't always that people get surplus

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1 notices and then go out and seek jobs or that they
2 don't always seek jobs before determining who's going
3 to be surplus. The sequence varies depending on what
4 kind of jobs applicants seek. Doesn't it? Where they
5 seek them and when they apply.

6 A Well, for example, we gave people at-risk
7 notices so they would know that their position would
8 be at-risk. Those folks would already be looking at
9 and applying for jobs in advance of getting any notice
10 about going to Services or even moving into Services
11 and actually may have gotten selected for jobs in
12 advance.

13 Q If they're selected in advance, they move
14 off of their previous competitive level.

15 A They go to their competitive level that
16 the new job is within.

17 Q Let's look at EA --

18 CHAIRMAN BECHHOEFER: If a person is in a
19 whatever the competitive level and is selected for a
20 new job, do all of those on the retention register
21 necessarily have to fulfill the minimum qualifications
22 at least for the new job since presumably their
23 qualifications are equal?

24 THE WITNESS: Would you ask the question
25 again? I'm not sure I understand the question.

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1 JUDGE YOUNG: I think the retention
2 register is based on their previous job, not on any
3 future jobs.

4 CHAIRMAN BECHHOEFER: Well, that's
5 irrelevant. That's true but it's irrelevant. Would
6 presumably people with similar past experience who are
7 on the retention register, it may not be identical but
8 it's likely to be somewhat similar, fulfill the
9 minimum qualifications for any new job for which they
10 were selected? Would all of them necessarily fulfill
11 the minimum qualifications?

12 THE WITNESS: Part of the selection
13 process for the new job would be determining whether
14 or not people meet the minimum qualifications. If
15 they don't meet the minimum qualifications, they stop
16 in the selection process at that point.

17 CHAIRMAN BECHHOEFER: Well, I understand
18 that. But do all the people who are being RIFed from
19 a given position competitive level have enough similar
20 qualifications to meet the minimum standards for any
21 new job for which they would be selected?

22 THE WITNESS: They may not depending upon
23 what the standards for the new job would happen to be.
24 I don't really have a good example to give. Their new
25 job may require qualifications that some of the people

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1 on the retention register would not have.

2 CHAIRMAN BECHHOEFER: I see. Okay.

3 BY MR. MARQUAND:

4 Q They could all have varied backgrounds
5 before the last job. Couldn't they, Mr. Fogleman?

6 A They have varied backgrounds, varied
7 educational backgrounds. For example, the old job
8 required a Bachelor's Degree and the new job requires
9 a Master's Degree or something like that.

10 CHAIRMAN BECHHOEFER: I see. Okay.

11 BY MR. MARQUAND:

12 Q You mentioned at page EA-2 of TVA Exhibit
13 83 was a working document. It has a number of
14 people's names. As Judge Young noted at the top it
15 says job code 1080, civil engineer. But in
16 handwriting out by the side of all these people's
17 names are some other words including "concrete
18 specialists, component and qualification specialists,
19 procurement, structural containment, civil engineer,
20 HVAC facilities." What do those mean?

21 A If you go back to EA-1, that is a civil
22 engineer. When they looked at the job description for
23 the civil engineers they had, their job descriptions
24 were different. This person on EA-1 is a civil
25 engineer who focuses on HVAC work.

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1 Q Okay. His name actually is on page EA-2.
2 It shows in handwriting next to his name that he was
3 an HVAC civil engineer. Even though on the working
4 document he shows up with the same job code as about
5 six or seven other individuals when they got to the
6 final retention register, he's on the stand alone
7 retention register. Isn't he?

8 A That's correct.

9 Q Let's look at some other documents here.
10 Page EA-5.

11 JUDGE YOUNG: What's the final one that
12 you were looking at?

13 MR. MARQUAND: EA-1 is the final it's on.
14 EA-2 was the working document that was spit out by the
15 computer.

16 JUDGE YOUNG: EA-1 was the final what?

17 MR. MARQUAND: It's the final retention
18 register. As you can see, it has a date in the upper
19 right hand corner of 9/30/96 as its effective date.
20 On the computer generated documents which is EA-2, it
21 has a date that looks like it was generated on 6/3/96.

22 JUDGE YOUNG: What was the process that
23 you got from the original one through various other
24 ones to the final one?

25 BY MR. MARQUAND:

1 Q Do you want to explain how you got from
2 EA-2 to EA-1?

3 A The Human Resource Officer generated the
4 listing out of the information systems that listed the
5 job title of civil engineer. In our job descriptions,
6 prior to '96, we had civil engineers but their job
7 descriptions were different. For example, this
8 particular gentleman on EA-1, Mr. Stevens, would have
9 had a job description that focused on HVAC.

10 Then at the top of the page we have Rex
11 Rowell who was a concrete specialists on EA-2. His
12 job description would have reflected the concrete.
13 The next one down was component quality specialist.
14 That person would have had a different job
15 description. Our negotiated classification system at
16 that time we had civil engineer, electrical engineer
17 and mechanical engineer. Then we went into the job
18 description and explained what those people did.

19 JUDGE YOUNG: So there would be different
20 competitive levels based on noninterchangeability.

21 THE WITNESS: Yes, ma'am.

22 JUDGE YOUNG: Within --

23 THE WITNESS: Civil engineer.

24 JUDGE YOUNG: So this is not just one
25 competitive level. This is a number of competitive

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1 levels.

2 THE WITNESS: A number of competitive
3 levels. But we had to identify all civil engineers
4 and then go look at the position description or the
5 job description to determine what their job was.

6 JUDGE YOUNG: So when you do the original
7 one, what's the category? It's not competitive level.
8 What's the category here? I mean, more generic than
9 civil engineer.

10 THE WITNESS: It was civil engineer. It
11 was just the classification of civil engineers.

12 JUDGE YOUNG: But classification is the
13 next higher category, the next more broad category
14 than competitive level.

15 THE WITNESS: Yes, ma'am. That's where we
16 would start. It would be with that classification.
17 Our RIF --

18 JUDGE YOUNG: Is that competitive area?

19 THE WITNESS: No, ma'am. A competitive
20 area would be the organizational unit. Competitive
21 area would be Watts Bar Nuclear Plant.

22 JUDGE YOUNG: So competitive area is a lot
23 bigger. Competitive level is smaller. And this is
24 somewhere in between the two it sounds like.

25 MR. MARQUAND: They're not in the same

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1 tree.

2 THE WITNESS: The civil engineer was the
3 classification. That's the way we pay people by the
4 civil engineering classification. To break what they
5 did to the competitive level, we first of all pulled
6 a string, pulled a listing of all the civil engineers
7 at Watts Bar Nuclear Plant. Then we went in and
8 looked at their position description so that we could
9 establish a competitive level and from establishing
10 the competitive level determine who should be on the
11 same retention register.

12 JUDGE COLE: Sir, what's the significance
13 of there being only one name on EA-1?

14 THE WITNESS: There was only one civil
15 engineer who was designated to work or who's job
16 description reflected that they had a HVAC specialty
17 at Watts Bar Nuclear Plant.

18 JUDGE YOUNG: Is there a definition of
19 "classification" anywhere? Maybe you told us already.

20 THE WITNESS: Yes, ma'am. I just had the
21 Supervisor's Handbook open here. We had talked a
22 little bit earlier about classification. We were
23 talking about classifications and supervisors having
24 the responsibility to keep the job descriptions up to
25 date. It describes "Classification involves analyzing

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1 the duties of the job comparing it to the job
2 standards and other jobs in TVA and assigning it to a
3 grade level." What I said a little earlier was our
4 classification system --

5 JUDGE YOUNG: Well, that's a process.

6 THE WITNESS: Yes, ma'am.

7 JUDGE YOUNG: But you're using it here as
8 a noun to describe all these people are in the same
9 classification.

10 THE WITNESS: Let me see if I can do it
11 this way. They're in the same general job title of
12 civil engineer. But within that civil engineering job
13 title, we have people who have different job
14 descriptions of HVAC and the others. While they are
15 all civil engineers, their job description focuses
16 them on specific areas within the civil engineering
17 fields. The HVAC person and the concrete person could
18 not be interchangeable without a huge learning curve
19 though we applied the interchangeability rules.

20 CHAIRMAN BECHHOEFER: Would that be true
21 as well of an HVAC engineer at Sequoyah and one at
22 Watts Bar?

23 THE WITNESS: Do you mean could they be
24 interchangeable between the two sites?

25 CHAIRMAN BECHHOEFER: Yes.

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1 THE WITNESS: They could. But the
2 competitive area would prevent us from doing that
3 because our competitive area which is what we start
4 with would be Watts Bar Nuclear Plant, Sequoyah
5 Nuclear Plant, Browns Ferry Nuclear Plant.

6 BY MR. MARQUAND:

7 Q So you would only compare people within
8 the same competitive areas.

9 A Yes.

10 Q You wouldn't compare somebody at Sequoyah
11 with somebody at Watts Bar to be on the same retention
12 register.

13 A That's correct.

14 Q If you'll look at TVA Exhibit 84, the
15 first page says those are retention registers for
16 Watts Bar Nuclear Plant engineering technical support
17 for July '96.

18 A That's correct.

19 JUDGE YOUNG: I'm assuming that you're
20 saying that all the ones in 83 are the same.

21 MR. MARQUAND: This is organizationally
22 the same. That is I believe he said it was Watts Bar,
23 TVA Services. As an explanation, I'll tell the Court
24 my understanding is that those were people who had
25 been previously surplusd at Watts Bar. Technically

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1 their job description said they were Watts Bar
2 employees but they were already in TVA Services at
3 some point prior to that.

4 BY MR. MARQUAND:

5 Q On page B-1 is the retention register.
6 There's a single individual on it. Do you see that?

7 A Yes.

8 Q Right behind that is the working document
9 that supported that.

10 A Yes, sir.

11 Q Now I'd like to move to another document
12 that's a little different. Throughout this I see a
13 lot of retention registers. If you go to EB-13, what
14 is that?

15 A That is an Assignment to TVA Services to
16 Douglas McNeill.

17 Q All right. Did he receive the same
18 options that Mr. Fiser did? That is he was given the
19 option to resign with a year's pay plus severance or
20 he could go Services on the same effective date that
21 Mr. Fiser did of October 1, 1996.

22 A That's the standard letter that everybody
23 was issued.

24 Q We have previously talked about George
25 Stevens, the HVAC civil engineer. EB-18 is again a

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1 working document that shows civil engineers. It has
2 Mr. Stevens down toward the sixth entry on that page.
3 Right?

4 A That's correct.

5 JUDGE YOUNG: Are you back on 83?

6 MR. MARQUAND: We're on TVA Exhibit 84.

7 JUDGE YOUNG: On page EB --

8 MR. MARQUAND: 18. It's the same as EA-2
9 on Exhibit 83.

10 BY MR. MARQUAND:

11 Q If you look at EB-17, you see a retention
12 register that has a Mr. Perkins and Mr. Cusick on it.
13 Right?

14 A That's correct.

15 Q They are on a retention register with two
16 people. I believe those two individuals are also
17 shown on EB-18 which is the same computerized
18 retention register that Mr. Stevens shows up on.

19 MR. DAMBLY: I guess I'm going to object
20 again. Not only is this cumulative, it's totally
21 irrelevant. I mean, if he wants to go through and
22 show retention registers, he could at least pick the
23 ones for the operation support which happens to be one
24 of these.

25 MR. MARQUAND: We'll get there. I think

1 the Judges were interested in how the process works.

2 MR. DAMBLY: Well, we could do that with
3 the process that was at issue in this case instead of
4 going through 500 pages of irrelevant material.

5 MR. MARQUAND: It's not going to take that
6 long. I think we're going to try to answer the
7 Board's questions while we go.

8 JUDGE YOUNG: I had my questions answered
9 earlier.

10 MR. MARQUAND: Okay. I'm just trying to
11 point out that these other individuals who were on
12 this same computerized page as Mr. Stevens show up on
13 different retention registers because they were judged
14 to be in different competitive levels.

15 MR. DAMBLY: While fascinating, I don't
16 see the relevance.

17 JUDGE YOUNG: It strikes me that there's
18 a good possibility that we could be getting into a lot
19 of somewhat cumulative and repetitive evidence on what
20 appears to be a somewhat complex classification
21 system. I think you've explained the basics of what
22 the process is. I'm not myself ready to say that it's
23 not relevant, but I guess I also wonder whether we're
24 going to be going through all of these several inch
25 thick exhibits to explain each --

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1 MR. MARQUAND: No. We're not.

2 JUDGE YOUNG: What do you want to do at
3 this point, Mr. Marquand?

4 MR. MARQUAND: I asked him a question
5 whether or not other individuals who showed up on this
6 one computerized listing of civil engineers show up on
7 various other retention registers, whether or not they
8 had to go through and make an individualized
9 determination looking at specific position
10 descriptions to see if whether or not these
11 individuals would be on the same competitive levels or
12 not.

13 MR. DAMBLY: And I objected. I will renew
14 my objection to the relevance of any of this. I said
15 I personally am scintillated but I don't see why
16 discussing why some HVAC versus a concrete engineer
17 at, I forget which plant we're at, Watts Bar has
18 anything whatsoever to do with this? If you want to
19 discuss how something has worked in this thing, we do
20 have one exhibit in here which happens to be with the
21 organization at issue. I don't know why we have to go
22 through hundreds of papers or do what we did with the
23 file cabinet and talk about two pages and then move
24 hundreds of pages in when we have at least something
25 that would have some relevance to an issue here.

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