Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

May 20, 1994

Mr. James Lieberman, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint, North
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Lieberman:

This letter is in response to your April 7, 1994, request for TVA's response to the issues raised by George M. Gillilan in his February 25, 1994, letter which petitions for relief pursuant to 10 C.F.R. § 2.206. The enclosure sets forth TVA's position on each of the complaints Mr. Gillilan has filed with the Secretary of Labor alleging discrimination by TVA under the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 (ERA). For the reasons discussed in this letter and in the enclosure, the petition should be denied.

At the outset, and as indicated in TVA's February 1, 1994, letter to Stewart Ebneter regarding Mr. Gillilan's June 10 and August 23, 1993, ERA complaints, TVA is committed to ensuring that its workers, and those of its contractors, do not suffer adverse consequences as a result of raising safety and quality issues. To that end, we have made substantial efforts to encourage a work environment where workers feel comfortable raising safety and quality issues and supervisors and managers are responsive in dealing with those issues. The success of TVA's program can be seen in the high percentage of persons at TVA nuclear facilities who are willing to raise safety or quality concerns to their supervision, and in the decreasing numbers of ERA cases that are being filed against TVA and its contractors.

The fact that a particular individual may file numerous complaints alleging discrimination does not indicate that our program is not working properly. Likewise, the number of unadjudicated allegations that may have been filed by an individual employee provides no valid indication that management has harassed or intimidated them. To the contrary, the filing of numerous unsubstantiated allegations of discrimination by the same individual may indicate that the individual lacks judgment or is not proceeding with the public's health and safety in mind.

Mr. Gillilan has filed 13 ERA complaints against TVA over the years, charging more than 25 named individuals, plus others, with wrongdoing in a number of routine personnel actions involving him. He has also filed other claims under other procedures over many of the same incidents. A final decision of the Secretary has been issued on two of his ERA complaints ruling that TVA did not discriminate against Mr. Gillilan. Administrative Law Judges (ALJs) have recommended to the Secretary that five additional complaints by Mr. Gillilan be dismissed. Moreover, TVA's Office of Inspector General (OIG) investigated all of Mr. Gillilan's allegations of discrimination except for his first two complaints, and found that not a single allegation could be substantiated. Mr. Gillilan's first two complaints were investigated by the Wage and Hour Division (W&HD) of the Department of Labor, which could not verify that discrimination was a factor in any of the actions of which he had complained at the time.

Mr. Gillilan's February 25, 1994, letter claims that he has "been subjected to continuous Intimidation, Harassment, Reprisal Actions, and Discrimination Acts since Jan[uary] of 1987, by TVA Management due to reporting safety concerns to NRC." The record of his complaints discussed in this letter and summarized in the enclosure leads to the opposite conclusion. Mr. Gillilan's letter further complains that he has "not gotten satisfactory results through the Dept. of Labor" for his "several" ERA complaints. His dissatisfaction with the Secretary of Labor's final decisions, or the recommendations from ALJs, does not provide a basis to award him the relief he is seeking under 10 C.F.R. § 2.206. Congress has entrusted the Secretary of Labor with the authority to adjudicate ERA claims. If Mr. Gillilan is dissatisfied with the Secretary's decisions, his express remedy under the ERA is to seek relief from the appropriate United States Court of Appeals as provided by Congress (42 U.S.C. § 5851(c)).

The bases for Mr. Gillilan's claims of dissatisfaction with the "results" are also not well founded. His letter asserts his "ignorance of the law" as a partial excuse. In fact, he was represented by counsel of his choice in the majority of his ERA proceedings. (We do not understand his reference to three attorneys--only two attorneys entered appearance on his behalf in his ERA cases against TVA.) These attorneys have had substantial general experience and had previously represented ERA complainants. TVA is not aware of the actual reasons why Mr. Gillilan discharged them, and we are aware of no adjudications of "misrepresentation" or wrongdoing by them entered with respect to him.

Mr. Gillilan's letter also asserts that "TVA would rather appeal the Dept. Of Labor Investigators rulings and go to court, where settling the complaint and taking corrective action within management would be much more suitable and less expensive on all parties." (Mr. Gillilan's purported quotation of TVA counsel to support this claim is simply a fabrication. No such statement has ever been made by TVA counsel.) TVA has previously discussed with the NRC a number of factors which TVA considers in deciding whether to settle an ERA complaint, including the need for corrective action, the fairness or perception of fairness of the personnel matter in question, avoidance of litigation with employees, the cost of litigation, and the effectiveness of settlement in contributing to a healthy and open work environment. For a licensee to settle all complaints, as Mr. Gillilan suggests, simply to avoid expense, would encourage the filing of frivolous complaints. Contrary to Mr. Gillilan's claim, the record shows that TVA has made an effort to resolve Mr. Gillilan's complaints. As shown by the enclosure, TVA agreed to settle Mr. Gillilan's first two ERA complaints, along with several other non-ERA proceedings he had initiated, based on the costs of litigation and to avoid further litigation with an employee, although TVA fully believed it had no liability for discriminating against him. After TVA proceeded to confer substantial direct and indirect monetary benefits on Mr. Gillilan under this proposed agreement, he sought to renege on the agreement while continuing to retain all of those benefits. As noted above, he has now filed 11 additional ERA complaints (13 in all) and is further demanding that the NRC grant him additional relief "until all previous . . . [ERA] actions are settled to the plaintiff's satisfaction" (Feb. 25, 1994, letter). As mentioned earlier, the ERA does not require the Secretary of Labor to decide those proceedings to Mr. Gillilan's "satisfaction."

Mr. Gillilan's letter also asserts that TVA's OIG has not conducted a "fully independent investigation." The petition provides no basis for this accusation. The Inspector General Act of 1978, as amended, ensures the OIG's independence, among other ways, by prohibiting interference with OIG activities and operations. TVA's Inspector General reports to the TVA Board of Directors and to Congress. TVA management cannot control or direct the OIG, which has the authority to pursue its investigations as it sees fit. The OIG's reports themselves show that OIG's investigations of Mr. Gillilan's allegations have been firm, in-depth, and independent. In addition, the NRC Office of Investigations periodically reviews the investigative files of TVA's OIG, and we believe the results of those reviews further support the conclusion that TVA's OIG is completely independent and unbiased. Mr. Gillilan offers only his dissatisfaction with the OIG's investigative results to support his claimed lack of independence. We believe the OIG's conclusions regarding those complaints are fully supported by the facts.

Mr. Gillilan's letter also claims that OIG did not obtain pertinent information from him because it would not allow a union representative to attend his interview. The issues raised in the OIG investigation were not labor relations matters in which union representation would be appropriate, but claims of wrongdoing by TVA managers or other employees in violation of TVA policies or internal regulations. TVA has other procedures available for Mr. Gillilan to raise labor relations issues, which he has pursued, and in which his union representation is both appropriate and ensured. OIG's policy against representation during the investigative process is based on the potential detrimental impact on the quality and timeliness of OIG investigations which could result from having third parties present during OIG investigative interviews. The OIG assures us that OIG investigators would be willing at any time to listen to Mr. Gillilan fully explain his version of the facts underlying his charges, but they do not believe he needs to have a union representative present in order to do so.

As to the alleged effects of TVA's claimed discrimination, Mr. Gillilan's February 25 letter claims that he has "been under so much TVA related mental stress; that it has affected [his] mental and physical health." We are convinced that any medical problems Mr. Gillilan may now claim are not the result of any improper actions by TVA. Indeed, Mr. Gillilan complained of mental health problems for several years before he filed his first ERA complaint.

As the enclosure and the above discussion make clear, none of Mr. Gillilan's numerous ERA complaints against TVA has been substantiated by TVA's OIG or adjudicated as a valid claim of discrimination by an ALJ or the Secretary of Labor. The record shows that TVA has expended considerable time and resources to address Mr. Gillilan's concerns over the years. We believe this manifests the serious manner in which TVA views its obligation to protect the health and safety of the public in carrying out its nuclear program responsibilities. We will continue to pursue each valid expression of concern or criticism with regard to our nuclear program. Likewise, we continually strive to maintain a working environment free of intimidation and harassment and are convinced that the overall environment at TVA is quite positive in this regard. However, insofar as Mr. Gillilan's February 25, 1994, letter/petition under 10 C.F.R. § 2.206 is concerned, after carefully examining the claims and criticisms he has raised, TVA sees no basis presented by the petition upon which to grant him the relief he asks. Accordingly, the petition should be denied.

Sincerely,

Mark O. Medford
Vice President
Engineering & Technical Services

Enclosure

ENCLOSURE

TVA'S POSITION WITH RESPECT TO MR. GILLILAN'S ERA COMPLAINTS

Mr. Gillilan has filed 13 separate complaints with the Wage and Hour Division under the ERA alleging discrimination by TVA. Several of the complaints have been consolidated, and they now comprise seven proceedings. The complaints allege numerous unrelated acts of discrimination from 1982 to 1993, which allegedly took place at four TVA nuclear plants--Bellefonte (BLN), Watts Bar (WBN), Sequoyah (SQN), and Browns Ferry (BFN)--and at TVA's offices in Chattanooga, Tennessee. The alleged acts of discrimination involve a wide range of personnel actions including: a 1982 disciplinary termination, nonselection for positions, failure to provide training, denial of overtime, forced working of overtime, nonpayment of or untimely payment of various monetary benefits, and transfers or denial of transfers of work locations. More than 25 named individuals, plus unnamed persons, are charged with participating in alleged discriminatory acts against Mr. Gillilan. As shown below, it is TVA's position that there has been no discrimination in violation of the ERA.

Case No. 89-ERA-40

Mr. Gillilan filed two complaints, dated February 15 and May 16, 1989, which were consolidated as Case No. 89-ERA-40. The issues began with his termination as a construction electrician at BLN on September 3, 1982. Between August 1981 and June 1982 he had received four separate written warnings for violating work rules by quitting work too early, losing material and not reporting the loss, and loafing and wasting time during work hours. In late July 1982, his foreman and the Assistant Instrumentation Superintendent both observed him loafing. The rules made this a termination offense since it was his second infraction within six months of the rule against loafing. Accordingly, after being given 30 days notice, his TVA employment was terminated on September 3, 1982.

The February 15, 1989, complaint alleged that this termination occurred because he "had noticed several N.R.C. violations." However, that complaint expressly stated (at 1) that he had not engaged in protected activity until after he received notice of his termination--he "requested assistance through N.R.C.," but "they [the NRC] said they could not help [him] for [he] had received [his] notice of termination before coming to the N.R.C." This claim of discrimination was thus chronologically impossible (at 1).

Moreover, Mr. Gillilan filed an EEO complaint on October 20, 1982, about this August 1982 termination. During the processing of this complaint, he asserted that his crew had suffered "reprisal on the part of his supervisor" because someone in the crew had "smear[ed] the interior of the Instrumentation Superintendent's pickup with human excrement" (Gillilan v. TVA, EEOC Case No. 042-84-X0018, Mar. 29, 1984, Analysis, Findings, and Recommended Decision at 2). Thus, by his own admissions, it is clear that his February 15, 1989, ERA claim of reprisal lacks any factual merit.

Mr. Gillilan was rehired on December 19, 1983, at WBN and laid off due to lack of work on April 27, 1984. He was rehired at WBN on June 16, 1984. Since then he has been continuously employed by TVA. Mr. Gillilan also alleged in 1989 that while at WBN (1) his van was improperly searched in January 1984; (2) a nonmanagement employee in a different organization had stated in January 1987 that Mr. Gillilan "is reporting on a daily basis to the [NRC] and the FBI"; and (3) he was "passed over in the first selection of electricians to be loaned" to SQN, in violation of his seniority standing at WBN (Feb. 15 compl. at 2).

Mr. Gillilan's van was searched on the WBN plant site in his presence and in accordance with routine procedure, as a result of a call received by the WBN security office. Ammunition was discovered in his van resulting in his receipt of a written warning for having explosives on a nuclear plant site. As to the coemployee's comments about Mr. Gillilan's reporting to the NRC and FBI, one of Mr. Gillilan's supervisors took corrective action and informed the coemployee's supervisors that they should counsel him against making such comments. Mr. Gillilan's supervisor also conducted meetings to assure all of his subordinates, including Mr. Gillilan, that they had a right to raise safety concerns and to contact the NRC.

The issue of the loan to SQN was based on a mistake by the WBN personnel office which was corrected as soon as it was pointed out. On July 11, 1986, two of the TVA managers he charged with discrimination in his ERA complaints had selected him for an annual electrician position. The personnel office listed Mr. Gillilan in the wrong place on a January 21, 1987, WBN site-seniority list, which it provided to his supervisors. Upon being notified of the mistake, Mr. Gillilan was placed in the proper order on the WBN site-seniority list and was loaned to SQN at the end of March 1987, the date of the next request for loaned WBN employees.

Mr. Gillilan remained on loan to SQN as an electrician until May 2, 1988. He alleges that his SQN shop seniority for purposes of job assignment rights was improperly calculated; he was not selected for various positions relating to communications and fire protection; he was not paid for overtime which was left out of his paycheck; and he was improperly transferred back to WBN in May 1988 (Feb. 15 compl. at 3-6).

Again, Mr. Gillilan's claims are mistaken. (1) TVA employees who are transferred or loaned between nuclear plants must adhere to plant site-seniority rules for matters relating to the site where they work, such as job assignments and work schedules. No one, including Mr. Gillilan, receives any benefit or detriment for such matters at the SQN site, based on service at another site, such as WBN. (2) Rather than being nonselected, Mr. Gillilan was actually offered three different fire protection positions, all of which he refused. (3) The delay in payment of overtime was due to the fact that all loaned WBN employees, including Mr. Gillilan, were paid on the WBN payroll. Delays occurred due to the time required for sending the required overtime records between the two plants in order that the calculations could be performed. At his request, TVA conducted an audit and he was paid in full for all overtime due. This also resulted in his return to WBN on May 2, 1988, which ended the payment delay and his disputes with his supervisors over that matter. Mr. Gillilan's informal loan to SQN was cancelled and he was returned to WBN when it was perceived that he was not truthful with the plant manager about the dispute in handling the overtime pay.

Mr. Gillilan remained at WBN until he accepted a directed transfer to BFN on August 1, 1988. He alleges that, as a result of his return to WBN from SQN, he was forced to undergo a psychological examination in late May, which led to the revocation of his security clearance; that one of his supervisors requested him to leave the WBN site; that he was denied training which would enable him to obtain a nuclear accreditation bonus (NAB); and that he was forced to transfer to BFN in August 1988 (Feb. 15 compl. at 6-7).

The facts differ from Mr. Gillilan's allegations. In accordance with TVA procedures, Mr. Gillilan reported to the WBN medical offices in May 1988 that he was taking medication for anxiety and depression. Based on this self-reporting, he was referred to a TVA psychologist for a "fitness for duty" evaluation, which included a psychological examination. Based on the psychologist's evaluation and his medical history, Mr. Gillilan's medical clearance for unescorted nuclear plant access was suspended, and he was held off work pursuant to TVA's fitness for duty requirements. Mr. Gillilan was also referred for an independent psychological evaluation. On June 6, 1988, approximately two weeks later, it appeared that his anxiety was no longer a problem; his access clearance was restored, and he was allowed to return to work. His claim that he should have been paid during these two weeks without having to use annual or sick leave (Feb. 15 compl. at 7) has no basis given applicable leave regulations (TVA employees accrue and take leave in accordance with federal leave statutes and regulations. He was provided the opportunity to take annual or sick leave or leave without pay pursuant thereto). Furthermore, TVA regulations did not entitle him to be paid for the three hours of travel time "to and from [WBN to] the medical office" in Chattanooga, Tennessee, which he claims (Feb. 15 compl. at 7).

During the short period that Mr. Gillilan had no access clearance, he returned to the work site without authorization. One of his supervisors saw him and immediately instructed him to leave (Feb. 15 compl. at 7) to help him avoid disciplinary problems or difficulties with the restoration of his access clearance. Mr. Gillilan's allegation that he was denied training by his supervisors is equally flawed (Feb. 15 compl. at 6). He requested that he be given special training sessions so that he could qualify for an NAB. He was informed that he would be trained but not on a special or preferential basis.

His allegation about a forced transfer to BFN (Feb. 15 compl. at 7-8) involves the substantial reduction in force (RIF) which TVA performed in 1988. In accordance with applicable federal laws and regulations (see 5 U.S.C. ch. 33 (1988); 5 C.F.R. pt. 351 (1988)), and TVA's agreement with his union, Mr. Gillilan was placed on retention and transfer lists for TVA's nuclear power maintenance electricians. Based on his position on the lists, and the applicable law, Mr. Gillilan was informed on July 5, 1988, that his position at WBN was being abolished and that if he did not transfer to BFN, he would be terminated. He agreed to transfer to BFN on August 1, 1988, and he remained there until he became eligible and volunteered for a transfer back to WBN on March 6, 1989.

He alleges that while at BFN he did not receive a travel advance; that he was denied expenses for a house-hunting trip; that his request for a second 30 days of living expenses was not processed promptly; that his request for a third 30 days of living expenses was denied; that he was denied opportunities to work overtime; that he was required to work overtime; that he received a RIF notice in January 1989; that he was not allowed to bring a tape recorder on the BFN site in late February 1989; that, in violation of claimed seniority rights, he was not selected to fill several electrician-type positions in other organizations; and that he was denied a travel advance when he voluntarily transferred from BFN back to WBN (Feb. 15 compl. at 7-10; May 16, 1989, compl. at 1-3).

Mr. Gillilan received all benefits concerning travel advances, house-hunting expenses, and living expenses, to which he was entitled under TVA's travel and relocation regulations. The management and responsible travel personnel at BFN went out of their way to assist him in these matters. He also received all overtime assignments in full accordance with TVA procedures, and he was not singled out for any unfair or special treatment.

As a part of TVA's continuing reorganization and "rightsizing" in 1989, Mr. Gillilan received a January 1989 RIF notice. In accordance with the regulation standards discussed above, the staffing levels to meet TVA's personnel goals were determined without reference to or knowledge of where any employee, including Mr. Gillilan, was located on the retention lists. This notice was cancelled in late February 1989, when a higher-ranked employee volunteered for separation.

In late February 1989, a security officer did not allow Mr. Gillilan to bring a tape recorder on site (May 16 comp. at 2). (The officer thought that possession of the recorder was a violation of site procedures, and was later informed that this was erroneous.) Mr. Gillilan immediately went home without notifying his supervisors, and refused to return to work when a supervisor contacted him and asked him to return. Mr. Gillilan was later informed that he should not have refused to come to work. The purported improper transfer of several employees who were lower on the seniority list than Mr. Gillilan (Feb. 15 compl. at 9-10) was in reality a case of selections by TVA's Fossil and Hydro organization--a wholly separate organization from Nuclear Power where Mr. Gillilan worked. No transfers from the seniority list were involved. Rather, these selections focused on surplus employees who would otherwise have been RIFed, and were intended to prevent RIFs. Mr. Gillilan was not subject to a RIF at the time.

Mr. Gillilan alleged that he had been improperly denied a 3-day house-hunting trip after his return to WBN in March 1989, and that he did not receive qualifying training for a NAB (May 16 compl. at 2-3). Applicable regulations and TVA policy preclude payment of such house-hunting expenses after the employee arrives on the transferee site. He had been offered such a 3-day trip before he left BFN for WBN, but he stated that he was familiar with the area and did not need it. His later request after his arrival and reporting for work at WBN was improper. Mr. Gillilan's allegations about NAB training (id.) again involved a request for special training sessions. He was told that training would be provided but not on a special or preferential basis. This was consistent with the manner in which other employees were treated. He has received extensive training since returning to WBN.

After investigating all of these allegations, W&HD found in its June 28, 1989, decision that "TVA followed their procedures in all of your employment except in the transfer to Sequoyah where there was a mistake in [Mr. Gillilan's] seniority" and that they "could find no evidence that this adverse action was related to [his] protected activities." W&HD's decision concluded that it could "not verify that discrimination was a factor in the actions comprising [his] complaint." It is TVA's position that W&HD correctly found no discrimination. However, because of the litigation costs attendant to this proceeding and several non-ERA cases Mr. Gillilan had initiated, and to avoid further polarizing the employment relationship, TVA agreed to a January 31, 1990, settlement, subject to approval by the Secretary of Labor. After TVA had paid the money called for in the agreement and had given him 200 hours of restored sick leave, Mr. Gillilan, through his attorney, requested the Secretary of Labor to disapprove the agreement, but made no offer to repay the money or return the leave benefits. Later TVA became convinced, based on decisions by the Secretary in other cases, that the Secretary might not approve a confidentiality provision in the agreement, which the parties were also in danger of breaching. Accordingly, on November 19, 1992, TVA sent Mr. Gillilan's attorney a letter which proposed that the parties delete the confidentiality provision. Mr. Gillilan never responded. The Secretary's April 12, 1994, order disapproved the agreement based on the

confidentiality provision, and remanded the case to the ALJ for further proceedings. Contrary to the assertion in Mr. Gillilan's February 25, 1994, letter that TVA refuses to consider settlement, on April 25, 1994, TVA sent Mr. Gillilan's attorney another letter offering to proceed with the settlement by deleting the confidentiality provision. TVA also informed Mr. Gillilan's attorney that if Mr. Gillilan did not agree to the settlement, TVA would demand repayment of the money benefits Mr. Gillilan still retains. No response has been received.

August 24, 1989 Complaint

By letter dated August 24, 1989, an attorney filed a complaint on behalf of eight individuals, including Mr. Gillilan, alleging that they had been blacklisted by the May 25, 1989, memorandum and attachment from TVA's General Counsel. This allegation has been the subject of considerable litigation as well as investigation by TVA's OIG (Report of Administrative Inquiry, Nov. 22, 1989) and the NRC's Office of Investigations (NRC Investigation Report OI-Q2-89-017). Both TVA's OIG and the NRC concluded that there was no evidence that the list was developed or distributed with the intent to blacklist individuals. Mr. Gillilan's attorney expressly withdrew this complaint by letter to W&HD dated February 1, 1990, and it has never been refiled. Nevertheless, Mr. Gillilan persists in claiming that he has been blackballed. It remains TVA's position that the memorandum and attachment were appropriate though it received broader distribution than was intended. The claims of at least eight other individuals who raised the same blacklisting claim as did Mr. Gillilan have been rejected by the Department of Labor (DOL).

Case No. 91-ERA-31

By letter of November 16, 1990, Mr. Gillilan's attorney filed Mr. Gillilan's fourth DOL complaint. It is docketed as Case No. 91-ERA-31, and claims discrimination with respect to six incidents.

(1) An October 15, 1990, assignment from the day shift to the evening shift;
(2) Handling of service reviews;
(3) Failure to reinstate seniority and overtime;
(4) Failure to provide certain training;
(5) Failure to pay him an NAB; and
(6) Harassment and intimidation by a supervisor during a training class.

During 1990, due to an increase in electrical work at WBN, it became necessary to staff an evening shift of electricians. In accordance with the applicable collective bargaining agreement, assignments to this evening shift were made on the basis of seniority. Mr. Gillilan's assignment to the evening shift, like that of all other employees, was made on the basis of seniority.

Claims (2), (3), and (4) involve the now-disapproved settlement agreement in Case No. 89-ERA-40. Under that settlement TVA had agreed to reissue a service review with a higher rating and to use that rating to compute Mr. Gillilan's federal service date. That date is used only to calculate retention standing in the event of a RIF. That portion of the agreement had not taken effect at the time of Mr. Gillilan's complaint, and it has since been disapproved by the Secretary as discussed above. In addition, there have been no RIFs in Mr. Gillilan's organization since that time, and no occasion to recalculate his federal service date. Also since that time, Mr. Gillilan's union and TVA have agreed that ratings in service reviews will no longer affect the computation of federal service date. Similarly, the now-disapproved agreement did not provide for reinstatement of either seniority or overtime, and the seniority list used by TVA had been agreed to by Mr. Gillilan's union, which was not a party to the settlement.

Mr. Gillilan has been treated like other employees and received all necessary training. Like other employees, he could not receive training in two subject areas when the decision was made to discontinue training in those areas. Moreover, as a result of his dispute over his assignment to the evening shift, he missed his scheduled training in another area when he went on sick leave rather than begin work on the evening shift.

The NAB which Mr. Gillilan seeks to dispute is a bonus payment to craftsmen who meet prescribed eligibility requirements. Mr. Gillilan received payment as required by TVA procedures, from the time he met all of the NAB requirements which made him eligible to receive it.

Finally, Mr. Gillilan and one of his supervisors, against whom Mr. Gillilan had hard feelings, were assigned to attend the same training class. Because of the presence of that other person, Mr. Gillilan claimed that that assignment was harassing and intimidating. Such a claim is patently without merit.

W&HD (Feb. 28, 1991, decision) and TVA's OIG (Report of Administrative Inquiry, Feb. 14, 1991) both investigated the matters in the complaint and each found no evidence of discrimination. The ALJ consolidated Mr. Gillilan's appeal of this case with Case No. 91-ERA-34, discussed below. The ALJ found that there was no need for an evidentiary hearing and issued a decision recommending that the case be dismissed because the first, third, fifth, and sixth claims, as well as a portion of the fourth claim, were untimely, and that there was no discrimination with respect to the timely second and fourth claims (Recommended Order Granting Partial Summary Judgment, Nov. 26, 1991). This case is presently pending a final decision by the Secretary of Labor. It is TVA's position that the ALJ's decision and TVA's OIG were correct.

Case No. 91-ERA-34

By letter of March 8, 1991, Mr. Gillilan's attorney filed a fifth ERA complaint, docketed as Case No. 91-ERA-34. Rather than report to the evening shift on October 15, 1990, as he had been directed, Mr. Gillilan had reported that he was sick. He was held off work by his private physician with a "nerve problem" until he returned to WBN on December 11, 1990. Because he had been off work for psychological problems, the medical approval for his clearance for unescorted nuclear plant access was removed until he could be evaluated as provided in TVA's fitness for duty program. Mr. Gillilan claims that a TVA psychologist threatened to remove the special medical approval for his clearance unless Mr. Gillilan agreed to have his medication regimen evaluated by an outside psychiatrist (Mar. 8, 1991, compl. at 2). In fact, the TVA psychologist sent Mr. Gillilan a letter concerning the appropriateness of his treatment regimen and recommending that it be evaluated by a psychiatrist (Feb. 11, 1991, letter from Dr. Dyer to Mr. Gillilan). The letter further informed Mr. Gillilan that deterioration in his condition coupled with a failure to receive appropriate treatment could result in a need to reevaluate his clearance. Such recommendations and opinions concerning a psychologically troubled employee's medical fitness for unescorted access to a nuclear plant are clearly proper. Both W&HD (Apr. 8, 1991, decision) and TVA's OIG (Report of Administrative Inquiry, Apr. 29, 1991) investigated these allegations and did not find that the actions complained of were discriminatory. Mr. Gillilan appealed W&HD's rejection of his claims to an ALJ but later voluntarily dismissed the case (Recommended Order of Dismissal, Dec. 30, 1991). It is TVA's position that W&HD and TVA's OIG correctly found that there was no discrimination or harassment.

Case Nos. 92-ERA-46 and -50

By letter of October 10, 1991, Mr. Gillilan's attorney filed a sixth DOL complaint which W&HD consolidated with three later letter complaints filed by Mr. Gillilan, dated November 17 and 26, 1991, and January 10, 1992. The October 10 complaint concerned his nonselection for a position as an electrical trainer, for which TVA had solicited applicants and conducted interviews during December 1990 and January 1991. Mr. Gillilan had submitted an application, but did not return phone calls or respond to a registered letter inviting him to schedule an interview. Since he was unavailable for an interview, his nonselection was clearly not discriminatory.

The November 17 complaint challenged TVA's failure to call him at home to come to work overtime on the Saturday of a week during which he had been on leave. It was his organization's policy not to telephone anyone who was on leave to schedule them to work weekend overtime. All employees in Mr. Gillilan's organization were treated the same under that policy.

The November 26 filing complained that he was not allowed to volunteer for a temporary assignment at SQN because he did not have the training required for work at that site. On November 14, 1991, SQN had made an

emergency request that WBN maintenance electricians with up-to-date training to work in a contaminated environment be sent that same afternoon to assist in an ongoing outage. Mr. Gillilan's certification of training to work in a contaminated environment had expired so he was not considered for that temporary assignment to SQN.

The January 10, 1992, complaint claimed that he was required to return to the evening shift in derogation of seniority rights after that shift was suspended during the holidays. In late December 1991, employees in Mr. Gillilan's organization, not just the electricians, were directed to temporarily report to work on the day shift, regardless of regular assignments, and notified that following the holidays, evening shift personnel would return to their normal evening shift work hours. We do not understand the basis for Mr. Gillilan's claim of discrimination in this matter.

TVA's OIG investigated the matters raised by these sixth through ninth complaints and was unable to substantiate any of the allegations (Report of Administrative Inquiry, Jan. 15, 1992; Feb. 20, 1992, memorandum from Zigrossi to Nauman; May 18, 1992, memorandum from Zigrossi to Kingsley). W&HD, however, determined (July 17, 1992, decision) that Mr. Gillilan had been discriminated against with respect to the January 10, 1992, complaint (calculation of his seniority as it related to his return to the evening shift). Both TVA and Mr. Gillilan appealed, and the two cases (No. 92-ERA-46 and No. 92-ERA-50) were treated by the ALJ as a single consolidated proceeding. The ALJ issued a recommended decision dismissing all claims against TVA because the October 10, 1991, and January 10, 1992, complaints were untimely filed and Mr. Gillilan could not prove even a prima facie case of discrimination with respect to the November 17 and 26, 1991, and January 10, 1992, complaints (Recommended Order Granting Summary Judgment, Dec. 18, 1992). This case is presently pending a final decision by the Secretary of Labor. It is TVA's position that the ALJ was correct in his recommendation and that TVA's OIG correctly found no discrimination with respect to any of these four complaints.

Case No. 94-ERA-5

By letters dated June 10 and August 23, 1993, Mr. Gillilan filed his tenth and eleventh ERA complaints. The June 10 complaint alleged that he had been harassed for reporting to a union representative that a coemployee had been instructed to violate a procedure in order to complete a work order. The August 23 complaint alleged that he had been harassed in a meeting to discuss his concern over the work order, and when he met with the TVA OIG agent who was investigating the incident raised in his June 10 complaint.

This claim arises out of an incident which occurred during the installation of a circuit breaker. A trainee questioned how to complete the work. A dual-rate foreman indicated that there were two acceptable ways. (A dual-rate foreman is a nonmanagement union-represented employee who is authorized to be paid at foreman's rates in the foreman's absence while performing some foreman's duties.) Mr. Gillilan disagreed,

insisting that there was only one way to do the work, and reported to a union representative that the dual-rated coemployee had told the trainee to violate procedures. Mr. Gillilan and the dual-rate discussed the matter later. The dual-rate has apologized to Mr. Gillilan for raising his voice during that discussion. Mr. Gillilan later met with management and was properly asked to explain the basis of his concern over the work order. Similarly, the TVA OIG agent who was investigating the matters in the June 10 complaint did not harass Mr. Gillilan. There was no basis for union representation in that interview, as previously explained, nor any basis to claim that his confidentiality was breached when he was contacted by the OIG agent at WBN. The filing of ERA proceedings is a public matter, so Mr. Gillilan's identity as a complainant is public, not confidential. As to Mr. Gillilan's claim that he was "lectured" about his "vocabulary" (at 2) we think it is proper for an OIG agent to ask an interviewee to refrain from using profanity and to keep his voice down. Such a request does not infringe on any activity protected by the ERA.

TVA's OIG investigated these matters and found insufficient evidence to support the allegations concerning Mr. Gillilan's reporting what he perceived to be a procedural error, or the conduct of the July 8 meeting with management, and further, the OIG found no evidence of wrongdoing in his meeting with the OIG agent (Report of Administrative Inquiry, Dec. 3, 1993). On the other hand, W&HD's December 3, 1993, decision found that Mr. Gillilan was discriminated against in meetings on April 12 and July 8, 1993. As you know, that decision was the subject of Stewart D. Ebneter's December 17, 1993, letter to Mark O. Medford and Mr. Medford's February 1, 1994, letter to Mr. Ebneter. TVA appealed the W&HD determination and requested a hearing before an ALJ, and that appeal has been docketed as Case No. 94-ERA-5. It is TVA's position that the OIG's report was correct and that Mr. Gillilan was not subjected to discrimination.

December 21 and 29, 1993, Complaints

On December 21 and 29, 1993, Mr. Gillilan filed two more complaints. The December 21 complaint claims that he was discriminated against and that TVA violated Section 5 of the TVA Act in exercising its legal right to appeal W&HD's July 17, 1992, and December 3, 1993, decisions. We believe that this accusation is illustrative of Mr. Gillilan's tendency to find fault with everything done by TVA, even when it involves a statutorily and regulatorily guaranteed right of appeal. A final decision by the Secretary has not been rendered in either of those cases (Case No. 92-ERA-46 and Case No. 94-ERA-5), which are discussed above.

The December 29 complaint alleges that he was discriminated against when he was not allowed to work overtime on December 5, 11, and 12. Overtime is generally distributed in accordance with an overtime list showing who has worked the least overtime, or to provide job continuity. On the dates in question, those who were selected according to the list to work overtime had less overtime than Mr. Gillilan, with the exception of two employees who were selected to provide job continuity.

W&HD's February 2, 1994, decision and TVA's OIG March 30, 1994, Report of Administrative Inquiry both concluded that there was no evidence of discrimination in TVA's failing to allow Mr. Gillilan to work overtime. Based on a finding of no discrimination, W&HD dismissed Mr. Gillilan's twelfth and thirteenth complaints. Since Mr. Gillilan did not appeal for a hearing, that decision has become the final decision of the Secretary. It is TVA's position that W&HD correctly dismissed the proceeding and, as TVA's OIG found, there was no discrimination as alleged in the complaints.