

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of )  
 )  
METROPOLITAN EDISON COMPANY ) Docket No. 50-289  
 ) (Restart)  
 )  
(Three Mile Island Nuclear )  
Station, Unit 1) )

TMIA'S EXCEPTIONS  
TO PARTIAL INITIAL DECISION  
(REOPENED PROCEEDING)

1. The Board errs in its legal conclusions concerning the weight to be afforded the factual and legal conclusions reached by the Special Master in his Report. ¶¶ 2035, 2036, 2037, 2038.

2. Exceptions relevant to ¶¶ 2039 and 2040 are analyzed, infra.

3. The Board's conclusion in ¶ 2041 that it is probable that almost all, perhaps all, of the cheating of any important relevance to this proceeding has been identified, is without factual support, is arbitrary and capricious, and is contrary to the evidence.

4. The Board's assertion that the hearing was a form of investigation, is contrary to the evidence.

5. The Board's conclusion that the Licensee sincerely tried to uncover and report every instance of cheating, is irrelevant, and is contrary to the evidence. ¶ 2042.

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6. The Board's conclusion that every suspicious parallelism has been identified, is unsupported by the record, and is contrary to the evidence. ¶ 2042.

7. The Board's conclusion that the testimony of the operators was thorough, and that they have performed well, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2043.

8. The Board errs in relying on the fact that 30-40 operators apparently did not cheat, as this is irrelevant. ¶ 2043.

9. The Board errs in ¶ 2043 in not adopting the Special Master's finding that the "... overall integrity of the operations staff has been found to be inadequate."

10. The Board's conclusion in ¶ 2044 that rational candidates would use the qualification exams as a preliminary test of their ability to pass the NRC operators licensing examinations, is irrelevant, is arbitrary and capricious, and is totally without support.

11. The Board's conclusion that no safety consequences resulted from the cheating episodes, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2044.

12. The Board's reliance on Licensee's reconfirmation of its commitment to abide by License Condition 9, is arbitrary and capricious. ¶ 2045.

13. Exceptions relevant to ¶¶ 2046-2049 are more thoroughly analyzed, infra.

14. The Board errs in relying on Mr. Arnold's disclosure of the VV incident to support a finding that Licensee has tried to make a full disclosure on all matters of possible relevance to the cheating incidents. ¶ 2050.

15. The Board's conclusion in ¶ 2051 is arbitrary and capricious, is contrary to the evidence, and is unsupported by the record.

16. Exceptions relevant to ¶¶ 2052-2060, are more thoroughly analyzed, infra.

17. The Board's conclusion that the Licensee cooperated fully in the reopened proceeding, is contrary to the evidence. ¶ 2060.

18. The Board errs in concluding that the evidence has not brought the adequacy of the course content into question. ¶ 2061.

19. The Board's failure to find bad faith or inherent incompetence in upper-level TMI-1 management from the cheating episodes, based on the evidence recited in ¶¶ 2063-2066, is arbitrary and capricious, and is unsupported by the record.

20. Exceptions relevant to ¶¶ 2067-2086, and 2089, are more thoroughly analyzed, infra.

21. The Board errs in concluding that it is unnecessary to bring every miscreant to justice, to resolve every uncertainty, and to produce a more reliable record. ¶ 2087.

22. The Board errs in ¶ 2088 in concluding that further proceedings would be disruptive based upon concern for

the operators, as opposed to concern the health and safety of the public.

23. The Board errs in not endorsing Judge Milhollin's recommendation that O and W should be referred for criminal prosecution. ¶ 2093.

24. The Board errs in not referring the case against O and W to the Department of Justice. ¶ 2095.

25. The Board arbitrarily fails to discuss Judge Milhollin's evaluations of witness demeanor in its conclusions regarding witness credibility. ¶ 2114.

26. The Board errs in not endorsing Judge Milhollin's recommendation that Licensee be prohibited from using G and H to operate TMI-1. ¶ 2116.

27. The Board's conclusion in ¶ 2119 that the overall results do not demonstrate a poor understanding of the course material is contrary to the record.

28. The Board improperly relies on the fact that G and H have passed their NRC exams to support a finding of their competence at operators. ¶ 2119.

29. The Board's conclusion that its remedy is responsive to the G and H cheating episodes is arbitrary and capricious. ¶¶ 2120, 2121.

30. The Board's conclusion that MM did not cheat on the December 1980 quiz is arbitrary and capricious and not supported by the record. ¶¶ 2132, 2137.

31. The Board's inference in ¶ 2134 that W copied from GG is not supported by the record.

32. The Board's conclusion that it is very understandable why GG would not prevent W from copying, is arbitrary and capricious, and totally unsupported. ¶2134.

33. The Board's conclusion that GG's lack of candor does not make him ethically disqualified is arbitrary and capricious. ¶ 2136.

34. The Board's reliance on MM's statements outside the record violates due process and is severely prejudicial. ¶ 2132, footnote 232.

35. The Board errs in imposing no sanction on MM or GG. ¶ 2138.

36. The Board's finding that Mr. Shipman voluntarily reported the incident is contrary to the evidence. ¶ 2139.

37. The Board's finding that Mr. Shipman convinced Mr. Hukill and Mr. Arnold is contrary to the evidence. ¶ 2141.

38. The Board's conclusion in ¶ 2142 that Mr. Shipman's statement is not incredible is arbitrary and capricious and unsupported by the record.

39. The Board errs in rejecting Judge Milhollin's reasoning regarding Mr. Shipman's testimony concerning his memory of the events. ¶ 2143.

40. The Board's statement that there is a public interest in encouraging such disclosures, in ¶ 2144, is irrelevant, without support, and in any event, inapplicable in this case.

41. The Board's conclusion in ¶ 2145 that Mr. Shipman will never name the unidentified questioner or will never give a credible reason why he cannot name him, is an unrea-

sonable inference, is arbitrary and capricious, and is unsupported.

42. The Board errs in not recommending Mr. Shipman's removal or suspension. ¶¶ 2144, 2145, 2147.

43. The Board's failure to find evidence to support Judge Milhollin's conclusion that Mr. Husted solicited the answer and that P denied it untruthfully, is arbitrary and capricious. ¶ 2149.

44. The Board's legal conclusion regarding the weight to be afforded Judge Milhollin's witness demeanor evaluations is contrary to law. ¶ 2150.

45. The Board fails to attribute proper weight to Judge Milhollin's observation of witness demeanor. ¶ 2150.

46. The Board errs in ¶ 2151 in drawing no inferences unfavorable to P or Mr. Husted because P was angered by the lack of NRC proctoring during the exam.

48. The Board's conclusion that the meaning of P's remarks was disputed is contrary to the evidence. ¶ 2151.

49. The Board's failure to assign evidentiary weight to Mr. Baci's silence is arbitrary and capricious. ¶ 2153.

50. The Board's conclusion that there is no independent corroboration of Mr. Ward's testimony is contrary to the evidence. ¶ 2154.

51. The Board's finding in ¶ 2156 that Mr. Ward's accusations are not sufficiently supported by reliable evidence, is contrary to the evidence.

52. The Board errs in concluding that Mr. Ward's testimony lacks any probative value whatever. ¶ 2157.

53. The Board errs in ¶ 2158 in failing to assess the credibility of either P or Mr. Husted.

54. The Board errs in not adopting Judge Milhollin's conclusion that P untruthfully denied observing cooperation on the weekly quizzes. ¶ 2160.

55. The Board's conclusion in ¶ 2161 that P is not untruthful is arbitrary and capricious.

56. The Board errs in reaching no conclusion unfavorable to P. ¶ 2162.

57. The Board errs in concluding that there is no reliable evidence that Mr. Husted himself cheated. ¶ 2166.

58. The Board's finding that Mr. Husted voluntarily came forward with some information is contrary to the evidence. ¶ 2166.

59. The Board errs in imposing no sanction on Mr. Husted in ¶ 2168, as the Board's reasoning is unsupported by the record and is arbitrary and capricious.

60. The Board's decision to give rumor testimony independent weight only as it relates to Licensee's response to the rumors, and no weight whatever insofar as it would tend to incriminate U, is arbitrary and capricious and contrary to law. ¶ 2173.

61. The Board errs in failing to give rumor testimony the independent weight it said it would in ¶ 2173, in evaluation of the evidence.

62. The Board errs in not adopting Judge Milhollin's credibility evaluation of U. ¶ 2174.

63. The Board's finding in ¶ 2175 that it was a rare occasion that Mr. Husted's office was available for studying is contradicted by the record.

64. The Board's failure to decide the subissue in ¶ 2176 is arbitrary and capricious.

65. The Board errs in failing to adopt Judge Milhollin's conclusion that U approached OO with an offer of help during the April NRC exam, as it is directly contradicted by the record. ¶ 2177.

66. The Board's statement that the principal hard evidence against U is his own testimony ignores the evidence, and the Board errs in hesitating to use his testimony in determining his guilt. ¶ 2184.

67. The Board errs in giving U "the benefit of the doubt" in light of overwhelming evidence to the contrary supporting his guilt. ¶ 2185.

68. The Board's assertion that the allegations against Ross have the most serious implication of the entire inquiry on cheating is unsupported. ¶ 2192.

69. The Board mischaracterizes Judge Milhollin's analysis which led him to the conclusion that YY's charges were substantiated. ¶ 2193.

70. The Board errs in concluding that Licensee's motion to reopen the record had merit. ¶ 2194.

71. The Board's characterization of YY as Ross's sole accuser in ¶ 2198, and its finding that other than YY's testimony there would be no direct evidence against Ross in ¶ 2199 are contrary to the evidence.

72. The Board's disagreement with Judge Milhollin's conclusions is arbitrary and capricious and contrary to law. ¶ 2199.

73. The Board's finding that YY's statement is equivocal is contrary to the record. ¶ 2201.

74. The Board misconstrues YY's testimony. ¶¶ 2201, 2203, 2204, 2205.

75. The Board's conclusion that YY's testimony and perceptions of the meaning of the conversation attributed to Ross is too subjective, internally contradictory, and unreliable, is arbitrary and capricious. ¶ 2205.

76. The Board in ¶ 2206 attributes improper weight to the testimony of GG, KK, and RR, and ignores evidence concerning these individuals.

77. The Board's statement that Ross has not been confronted with all the specifics of YY's accusations ignores the evidence. ¶ 2207.

78. The Board's credibility determinations concerning Ross in ¶ 2208 are arbitrary and capricious and unsupported by the record.

79. The Board errs in ¶ 2209 in concluding that Ross did not know changes were made.

80. The Board's conclusion that neither Ross's testimony on the answer key changes, nor on the proctoring is incredible, is unsupported in the record, and is arbitrary and capricious. ¶ 2209.

81. The Board mischaracterizes Judge Milhollin's analysis in ¶ 2217.

82. The Board's conclusion that the change was not incorrect or improper is contrary to the evidence. ¶ 2220.

83. The Board's conclusion that the attempt to change the answer key was not unconscionable, is contrary to the evidence. ¶ 2222.

84. The Board's conclusion that it is understandable why only lithium hydroxide would come to mind to some is arbitrary and capricious, and without factual support. ¶ 2223.

85. The Board's conclusion that the changes in the answer key to question B.5.a were made in good faith, is contrary to the evidence, and is arbitrary and capricious. ¶ 2224.

86. The Board's conclusion that there is no aspect of Mr. Ross' testimony bringing his candor into question, and that all of the charges made against him are unfounded, is arbitrary and capricious and unsupported by the evidence. ¶ 2225.

87. Since the Board dismisses YY's characterization of Ross' conduct, it errs in failing to at least analyze the evidence and implications regarding the possibility that Ross may have been bragging. ¶ 2225.

88. The Board errs in rejecting Judge Milhollin's findings as to the cheaters at TMI. ¶ 2227.

89. The Board's recitation of the facts in ¶¶ 2229 and 2230 mischaracterizes the evidence on the record.

90. The Board's conclusion in ¶ 2231 that this episode has received more attention than it warrants, that it

seems to be a situation where the regulatory scheme worked as intended, and that after the initial confrontation, the participants acted without friction, is arbitrary and capricious, and unsupported by the record.

91. The Board's implication in ¶ 2232 that it was management's duty to be present at NRC interviews with operators is without justification in law or fact.

92. The Board's conclusion that the incident is without important significance in ¶ 2234 is arbitrary and capricious and contrary to law.

93. The Board errs in not recognizing the seriousness of Licensee's failure to ask O and W why they cheated. ¶ 2236.

94. The Board's finding that the company made clear its attitude that cheating will not be tolerated and that this message was clearly understood, is not supported by evidence in the record. ¶¶ 2237, 2240.

95. The Board's statement that it is not clear what if anything was done about OO's report of rumors, is contrary to the evidence. ¶ 2238.

96. The Board's conclusion that Licensee took appropriate actions to meet with its operators, is arbitrary and capricious. ¶ 2240.

97. The Board errs in not adopting Judge Milhollin's conclusion that "If the Licensee had been trying to find Mr. Shipman's questioner, such a step would have been strange to omit," and in not concluding that Licensee failed to conduct

the interviews because it was deliberately trying to identify cheaters. ¶ 2242.

98. The Board errs in finding that Mr. Arnold's judgment to defer investigation was rational. ¶ 2245.

99. The Board errs in not adopting Judge Milhollin's conclusion that the Licensee selected for investigation only matters unlikely to implicate management. ¶ 2246.

100. The Board errs in concluding that Mr. Wilson's opinions on cheating have little value. ¶ 2250.

101. The Board's finding that the nature of the evidence available in either direction could explain why Mr. Wilson presented no evidence showing the presence of cheating, is unsupported. ¶ 2252.

102. The Board's conclusion that Mr. Wilson did not misrepresent G and H's explanation, is contrary to the evidence. ¶ 2253.

104. The Board's conclusion that Mr. Wilson's investigation in ¶ 2259 was diligent, is contrary to the evidence.

105. The Board's conclusion that the rumors heard by OO merely fell into the cracks during the company investigation, is unsupported by the record and is arbitrary and capricious. ¶ 2261.

106. The Board's finding that the Licensee could not afford to waste time in organizing its investigation, and that turning to Mr. Wilson was understandable, is unsupported by any evidence. ¶ 2266.

107. Attributing anything other than a failing grade to all aspects of Licensee's investigation, is arbitrary and

capricious, and is unsupported by the evidence. ¶¶ 2267, 2268, 2269, 2270, 2271.

108. The Board errs in stating that the events involved in the VV/O incident do not directly relate to the reasons for reopening the evidentiary hearing. ¶¶ 2190, 2272.

109. The Board's conclusion that Mr. Miller did not know that O was deceiving him is arbitrary and capricious, and is unsupported by the record. ¶ 2276.

110. The Board errs in not finding that Mr. Miller knew that O knowingly aided VV to cheat. ¶ 2276.

111. The Board errs in relying on Mr. Arnold's testimony that it was widely recognized in the company that VV's reassignment was an action unfavorable to VV's career. ¶ 2281.

112. The Board errs in not adopting Judge Milhollin's conclusion that Mr. Arnold's handling of the VV episode was deficient. ¶ 2283.

113. The Board errs in concluding that there were no other examples of poor performance by VV identified which at the time could have been the immediate cause of his reassignment. ¶ 2283.

114. The Board's conclusion that it is likely that most of VV's peers in middle management saw his reassignment as a demotion, or at least as an impediment to advancement, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2284.

115. The Board's conclusion that in most success-oriented hierarchies, removing a management person from a direct in-line operations position to a non-supervisory supporting staff position would be regarded as an adverse action, is totally without factual support. ¶ 2284.

116. The Board's inference that Licensee is a success-oriented hierarchy is contrary to the evidence. ¶ 2284.

117. The Board errs in supporting Mr. Arnold's stated approach concerning actions taken against VV. ¶ 2285.

118. The Board errs in finding that VV's reassignment was an adequate remedy. ¶ 2286.

119. The Board mischaracterizes TMIA's arguments and the Special Master's report, and its conclusion that a demotion would have been destructive is arbitrary and capricious, and totally without support. ¶ 2286.

120. The Board's conclusion in ¶ 2287 that there is a need to inquire further whether Mr. Miller has made a false material statement in connection with the recertification of VV, is arbitrary and capricious.

121. The Board errs in concluding that the episode has only indirect relevance to the Board's jurisdiction. ¶ 2310.

122. The remedies proposed by the Board in ¶¶ 2311-2319 are inadequate, contrary to law, and violative of the Commission's August 9, 1979 Order.

123. The Board errs in concluding that there is no evidence of any improper conduct at any level higher than Mr. Herbein's level. ¶ 2320.

124. The Board's conclusion that the course content is in compliance with 10 CFR § 55, is irrelevant, is arbitrary and capricious, and is unsupported by the record. ¶ 2334.

125. The Board's conclusion that there was no failure of instruction is arbitrary and capricious, and is unsupported by the record. ¶¶ 2337, 2341.

126. The remedies proposed by the Board in ¶ 2347 are inadequate, contrary to law, and violative of the Commission's August 9, 1979 Order.

127. The Board's conclusion that, if properly implemented, a formal certification procedure including signed statements, founded on the trainer's evaluation of candidates by means of properly administered and graded examination, will enhance the credibility of Licensee's certification process, is unsupported by the record, and is arbitrary and capricious. ¶ 2350.

128. The Board's conclusion that when implemented, such steps should eliminate the possibility of certifying candidates for the NRC examination who have cheated in internal examinations on one or more occasions, is arbitrary and capricious, and is unsupported by the record. ¶ 2351.

129. The Board's statement that they trust that the VV incident was an anomaly and that the present management of TMI-1 would not condone the procedure involved in that incident, is totally without support, and is arbitrary and capricious. ¶ 2351.

130. The Board's conclusion that the new grading procedure was an improvement over the previous grading procedure

and that it was adequate for the October 1981 examinations is totally without support and is arbitrary and capricious. ¶ 2361.

131. The Board mischaracterizes the Special Master's Report in its definition of the issues examined. ¶ 2363.

132. The Board errs in concluding that the Special Master failed to take into account the oral portion of the exam in his criticism of the content of the examination. ¶ 2364.

133. The Board errs in concluding that the portion of the Special Master's Report on the substantive quality of the NRC exam has gone well beyond the jurisdiction delegated to him and the Board. ¶ 2366.

134. The Board errs in not adopting Judge Milhollin's findings that the information sought on NRC exams is so detailed that no operator could have supplied it without memorization. ¶ 2367.

135. The Board's remedies concerning problems with JRC exams are inadequate, and in violation of the August 9, 1979 Commission Order. ¶ 2372.

136. The Board misconstrues and fails to adequately address the problems identified by TMIA and the Special Master in his report regarding the review process. ¶ 2375.

137. The Board's conclusion that the hearings themselves constituted completion of the investigation, and any inference that the Staff's response reflects favorably on

Staff attitude, is arbitrary and capricious, and is contrary to the evidence. ¶ 2393.

138. The Board's statement that the rumors surrounding U were elusive in nature, is contrary to the evidence. ¶ 2394.

139. The Board's conclusion that the Staff's response was adequate and appropriate, is arbitrary and capricious. ¶ 2394.

140. The Board's conclusion that Mr. Hukill, Mr. John Wilson, and management were merely naive, is irrelevant, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2396.

141. The Board's conclusion that the Licensee's training program was well designed to train qualified operators and that there was a rational plan to implement the program, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2399.

142. The Board's conclusion that the Licensee was understinting in the resources devoted to the training program, is arbitrary and capricious, and is without any factual basis in the record. ¶ 2400.

143. The Board's conclusion that the cheating episodes are not a reflection on upper-level management's competence, good intentions, and efforts is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2400.

144. The Board's conclusion that the integrity of Licensee's training and testing program failed because there

was not a clear appreciation of which personnel or which component of Licensee's management had responsibility for the integrity of the program, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence.

¶ 2401.

145. The Board's failure to conclude that the instructors failed to instruct, or that the students failed to learn, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence. ¶ 2410.

146. The Board's conclusion in ¶ 2410 that the operators have been reexamined by the NRC under suitably controlled circumstances and that Condition 9 for the staffing of Unit 1 has been met, 14 NRC at 580-81, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence.

147. The Board's conclusion that the monetary penalty can provide reasonable assurance that the Unit can be operated without endangering the public health and safety, that the penalty will be long remembered and will emphasize the importance of the corrective administrative procedures to those charged with implementing them and to those charged with obedience to them, and will attract the attention of all interested parties, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence.

¶¶ 2411, 2412.

148. The Board errs in not imposing sanctions against any company personnel except G and H. ¶ 2414, 2415.

149. The Board's conclusions in ¶ 2417 dealing with the unhappiness and demoralization of the operators, are totally irrelevant, arbitrary and capricious, unsupported by the record, and contrary to the evidence.

150. The Board's conclusion in ¶ 2418 that the sanctions are appropriate, is arbitrary and capricious, is unsupported by the record, and is contrary to the evidence.

151. The Board's recommendations, penalty, and conditions in ¶¶ 2419, 2420, 2421, and 2422 are inadequate, contrary to law, and in violation of the Commission's August 9, 1979 Order.

152. The Board's failure to invalidate the conclusions of the Partial Initial Decisions of August 27, 1981, 14 NRC 381, and December 14, 1981, 14 NRC 1211, is arbitrary and capricious, is unsupported by the record, is contrary to the evidence, and is in violation of the Commission's August 9, 1979 Order.

153. The Board errs in totally ignoring the issue of staff attitude, discussed in the Special Master's Report at ¶ 282.

154. The Board errs in ¶ 2072 in concluding that new NRC procedures will insure the integrity of operator licensing exams.

155. The Board errs in distinguishing between ethics and competence. ¶¶ 2119, 2135.

156. The Board errs in making no direct finding against Mr. Miller. ¶ 2318.

157. The Board erred in denying TMIA's Motion to Direct Execution of Affidavits and to Enter Documents into Evidence, dated January 1, 1982.

158. The Board evidenced a strong bias against the intervenors and in favor of the Licensee by continually finding arbitrary excuses for the Licensee's wrongdoing and incompetence.

159. The Board errs in authorizing restart of TMI-1.

Respectfully submitted,

Louise Bradford *LB*

Louise Bradford, TMIA

Dated: August 20, 1982