

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 OFFICE OF INVESTIGATIONS

5 INTERVIEW

6 -----X

7 IN THE MATTER OF: :  
8 INTERVIEW OF : Case No. 4-95-016  
9 JIM FISICARO :  
10 :  
11 -----X

12 Thursday, October 26, 1995

13  
14 Video Conference Room  
15 River Bend Station  
16 St. Francisville, Louisiana  
17  
18

19 The above-entitled interview was conducted at  
20 12:40 a.m.

21 BEFORE:

22 DENNIS BOAL, Investigator  
23 JONATHAN ARMENTA, Investigator

24 CASE NO. 4-95-016

EXHIBIT 85  
Page 1 of 17 pages

25  
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1 APPEARANCES:

2 On behalf of the Witness:

3 DOUGLAS E. LEVANWAY, ESQ.

4 of: Wise Carter Child & Caraway

5 P.O. Box 651

6 Jackson, Mississippi 39205

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1 PROCEEDINGS

2 MR. BOAL: We are back on the record now, and  
3 this is in -- in order to clarify, this is in reference to  
4 OI case number 4-95-016, a discrimination -- an alleged  
5 discrimination violation of 10 CFR 50.7 by Mr. Roger  
6 Backen.

7 And we were -- before we went off the record  
8 in order to clarify this, we were laying out the  
9 preliminaries of how -- what kind of information I wanted  
10 to ask you. And what we are saying is that what we  
11 received was a flip chart that showed a breakout of exempt  
12 employees, and then there was NSD supervisors, and then it  
13 went up a little bit higher management and some other  
14 titles that I am not real sure of.

15 But what I am trying to understand for our  
16 record and for our investigation was: To your recall, was  
17 this memory -- was this meeting conducted that way, so  
18 that at first the only people that you considered or had  
19 on the board was the exempt employees, which would have  
20 been the greater amount in perhaps 70 or so? Is that your  
21 recall of the meeting?

22 A Yes. I think that is right.

23 Q Specifically, my question revolves around Mr.  
24 Backen at that time. He was a supervisor, and in our  
25 interviews, we had determined that Mr. Backen said that

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1 when he went into that meeting, none of his employees were  
2 ranked a category 9.

3 A I think that is true.

4 Q But during that meeting, (b) of his  
5 employees --

6 A Let me think here. I am trying to think of  
7 who -- I think that is true.

8 Q And then during that meeting, (b) of his  
9 employees, a (b) and a (b) were moved into  
10 category (b) Do you recall that movement by any chance?

11 A I don't remember for sure, but that sounds  
12 like that -- I think that did happen, because I remember  
13 he had, I believe it was, (b) employees, and (b)  
14 and I want to say -- I can't remember exactly what his  
15 rating was, but he was rated very high. And I think you  
16 are right. I don't know for sure if they were moved, but  
17 I do believe they ended up in (b) I don't remember if they  
18 were something before, something else. But you could very  
19 well be right.

20 Q Would you be able to recall any of the  
21 conversations involved with Mr. -- about (b) or (b)

22 (b)

23 A No. No, other than it would be a similar  
24 process that we used with the supervisors of going down  
25 through all the employees and seeing who is in those

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1 blocks and trying to match up the people in the blocks, to  
2 make sure that it is appropriate.

3 So if I am not mistaken, we -- if you look at,  
4 say, block 8, we reviewed who was in block 8, and compared  
5 all those people and said, Do they fit there, and -- from  
6 the standpoint of performance, potential, et cetera.

7 And based on that, some people did get moved,  
8 and these [REDACTED] that you are talking about could have got  
9 moved. But I don't remember anything specific. The only  
10 thing I remember is these [REDACTED] individuals were individuals  
11 that do receipt inspection. 70

12 And I don't know that this all came out in the  
13 meeting, but I am just giving you my understanding of what  
14 the guys did. We also look at potentials. Can they move  
15 from other departments back and forth within, say, the QA  
16 group and do other things. These [REDACTED] were not able to be  
17 fit into other areas of the QA organization.

18 I don't remember saying anything about these  
19 [REDACTED] in specific. But I would guess we probably did have a  
20 conversation if, in fact, they were moved from some other  
21 block to a [REDACTED].

22 Are you saying that Mr. Backen did not agree  
23 with -- assuming these people were moved, are you saying  
24 he did not agree with that?

25 Q No, sir. I am not saying that. What I am

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1 saying -- well, it might be an inference you could draw,  
2 but what I was told was that Mr. Backen said when he went  
3 into that meeting, he did not have them ranked [REDACTED] 7C

4 A Okay.

5 Q And that when he left, they were ranked [REDACTED] so  
6 that is what I heard. I have tried to --

7 A Bottom line, that is the purpose of the  
8 meeting is to collectively look and make adjustments,  
9 however the group saw fit. And I think we -- and I can  
10 remember specifically asking the group: Is this the right  
11 thing? Is this right? Is this what we need to do? Does  
12 everybody agree?

13 So it is -- you know, obviously it is not a  
14 popular thing if [REDACTED] your employees are going to be  
15 moved from some category to a block [REDACTED] That is just not  
16 going to be a popular thing; it is not going to be -- but  
17 most -- I think the guys did it themselves. It didn't  
18 take much coaxing from their peers, so they pretty much  
19 did it themselves.

20 And the direction was, if they don't agree,  
21 they need to do something about it or say something, so --

22 Q Then just to make sure I understand: After  
23 those exempt employees were ranked and their supervisors  
24 were asked to leave the room and then the supervisors were  
25 ranked, does that mean then that the flip chart was

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1 flipped, so that the people that you were then ranking as  
2 NSD supervisors only had nine names?

3 A I think that is true. We was real careful to  
4 make sure the supervisors didn't see their own ranking,  
5 and they wouldn't be influenced by others, so I can't  
6 remember exactly how we did it, but, I mean, we didn't  
7 pass out documents and that kind of thing. It was -- if I  
8 remember right, it was done on a flip chart.

9 MR. LEVANWAY: Do you understand his question,  
10 though? His question is: Rather than adding the  
11 supervisors to a list, to a big chart with everybody  
12 already on it below them, did you then add the supervisors  
13 to that same chart, or did you create a new one?

14 THE WITNESS: I think it was a new one. I  
15 don't think it was the same one. I don't remember that.

16 BY MR. BOAL:

17 Q One of the concerns that came up during the  
18 investigation as to whether or not this ranking process --  
19 you have explained it to us many times about the  
20 performance and the potential, but from someone not with  
21 the same education about it as we have had, if somebody  
22 would look at these rankings and guess whether there  
23 were -- or there were other reasons people were placed in  
24 the different categories or tiers --

25 At one point today, you were telling Jonathan

1 that one of the directives besides the 10 percent was to  
2 maintain like a 33 percent in each of the tiers.

3 A Correct. And that was an approximately. I  
4 mean, that was just a goal set out. If it was -- I think  
5 some people ended up with like 35 percent in tier 1 and 34  
6 percent here, so it was just kind of a generalized target  
7 that we were looking at.

8 Q Part of -- you know, also one of the questions  
9 we have is that from what Mr. Backen told me and what we  
10 have just discussed here is he had ( ) employees, and  
11 ( ) of them were ranked ( ) And I am kind of puzzled  
12 then. As I understand it, he should have had, you know,  
13 one in each tier.

14 A Well, I see what you are saying. Yes. The  
15 only problem is he has only got a few numbers, so, I mean,  
16 it is -- I guess what you would say is ( ) should be in  
17 the top tier, ( ) should be in the middle tier, and ( )  
18 should be in the bottom tier.

19 Q Right.

20 A And bottom line: He ended up putting ( ) in  
21 the top -- I believe he was in the top tier and ( ) in the  
22 bottom tier, and then when he came to this ranking  
23 meeting, he was -- these ( ) apparently were moved from ( )  
24 if that is the right number --

25 Q I believe it is. I am not positive.

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1           A       -- which is the bottom tier, to a which is  
2 still in the bottom tier. Some people came with  
3 different -- I mean, it is really what they thought.  
4 Where does a person belong? I mean, that was -- the goal  
5 was to end up with 10 percent in the bottom, but some  
6 departments had more; some had less. But as we were to  
7 collectively come out of our departments was that was the  
8 overall goal.

9                       So everybody did not end up with -- when they  
10 came to this meeting with 33 percent in tier one, 33  
11 percent in tier two, 33 percent in tier three, one, two,  
12 and three, and 10 percent in 9. They did not do that,  
13 because partly the department wasn't big enough.

14                      But as we rolled it together -- and that was  
15 why we had these roll-up meetings, was to do that very  
16 thing, is match up against peers and then look at the  
17 collective number.

18           Q       Okay. But then there was not someone taking a  
19 statistical reading of the charts as the names were  
20 placed, to see whether or not the goals were met or --

21           A       No. I do know we looked at it at the end.  
22 Okay. What have we got here, in terms of what our goals  
23 originally were? And we did look at it at the end, but I  
24 don't remember, you know, keeping numbers, and that  
25 wasn't -- I don't think -- what we really had to do was

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1 feel good about where the people were placed in terms of  
2 performance and potential.

3           If the numbers worked out in terms of this 10  
4 percent, fine. If not, then we would have to rethink what  
5 we did. That is what we would have done in that meeting.  
6 As it turned out, I think all the targets that we needed  
7 to meet, we met, so -- but I don't know that anybody was  
8 keeping stats. I don't remember that. Maybe mentally  
9 they were doing it, but I don't remember keeping a tally.

10           BY MR. ARMENTA:

11           Q       Mr. Fisicaro, it has been discussed today that  
12 if you are a 7, 8, 9, you are in the bottom tier, the low  
13 performing level.

14           MR. LEVANWAY: Wait just a minute, Jonathan.  
15 That is not true. See, an eight would be a middle  
16 performer, but a -- middle tier performance but the lowest  
17 tier in potential. Do you see what I am saying? So --

18           THE WITNESS: He is right. Let me show you.

19           MR. LEVANWAY: Anyway, I --

20           THE WITNESS: I just need to help him here, I  
21 think. When we talk about tier one, this is tier one.  
22 When we talk about two, tier two, this is tier two, and  
23 this is tier three.

24           MR. LEVANWAY: I understand. I think what he  
25 is saying was they would all be in the lower one in

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1 performance.

2 THE WITNESS: Oh, okay. I am with you. Maybe  
3 we should try it again.

4 MR. LEVANWAY: Maybe I misunderstood you, but  
5 I understand that what you are saying is 7, 8, and 9 are  
6 all in the bottom third or the bottom tier, but that  
7 doesn't mean the bottom third, bottom tier on performance  
8 necessarily. 7s and 9s are the bottom performers; 8s  
9 would be middle performers, bottom potential. So that  
10 bottom tier would be 7, 8, and 9, but not for the same  
11 reasons. Does that make sense?

12 Okay. And if I misunderstood your question, I  
13 just --

14 MR. ARMENTA: I think that you may have  
15 misunderstood me.

16 MR. LEVANWAY: Okay. I may have.

17 MR. ARMENTA: And perhaps I am just thinking  
18 in general, that if you are 7, 8, and 9, you are in the --  
19 you are not in the upper tier; you are in the middle  
20 tier -- not in the middle, but you are in the lower tier.

21 MR. LEVANWAY: That is true.

22 BY MR. ARMENTA:

23 Q But is it true that if you are an 8, are you  
24 one step from being a 9? If you are a 7, you are one step  
25 from being an 8, and then your next step would be a 9?

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1 And if we go in the other direction, if you are a 9, you  
2 are one step from being terminated? At least that is the  
3 impression that we got when we first heard about the  
4 ranking process. Is this correct?

5 A Yes. I would say that is probably not exactly  
6 right. One step, to me --

7 Q Mathematically from a 7 to an 8, there is a  
8 two-point difference.

9 A Yes. But it is hard -- you are implying that  
10 because of the sequential number, that 8 is worse than 9,  
11 and 7 -- no, excuse me -- 9 is worse than 8, and that if  
12 you are a 7, you are actually moving up on the scale.

13 And I am not sure that is exactly right. I  
14 would look at it -- anybody in these three categories, not  
15 good, because it is the bottom third of the organization.  
16 That is capturing everything, potential and performance.  
17 It is not good.

18 I was going to share with you what we are  
19 doing now with ranking, but it is probably not appropriate  
20 to do that, at least at this point until we get everything  
21 finalized. But today's time frame, it is worse to be a 7  
22 than it is an 8.

23 So that is why I couldn't make the discussion,  
24 in fact, because what we are trying to do is focus on  
25 performance, and that is what this has all been about is

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1 performance. What is the person's performance? Where do  
2 they fit? And in my opinion, anybody that is in this  
3 bottom tier has to seriously look at their -- what they  
4 are doing with the company here and make their own choice,  
5 whatever that is.

6 So, I mean, that is about the best I can do, I  
7 think. But to say sequentially numbered, no. That is  
8 probably --

9 Q I think that that was the consensus of the  
10 information that we got from your staff and the majority  
11 of the working force here at River Bend.

12 A I think if I was to make my own choice, if I  
13 was looking at my own performance, where would I want to  
14 be? If I was to choose one of these three blocks, I would  
15 choose an 8. I would rather be an 8 than be a 7 or a 9.  
16 That is what I would personally do.

17 Q When the initial rankings went out, was it  
18 true that people were one step from being terminated if  
19 they did not meet their corrective action plan or their  
20 action plan?

21 A One step --

22 MR. LEVANWAY: Talking about the 9s, Jonathan?

23 MR. ARMENTA: Yes.

24 BY MR. ARMENTA:

25 Q I am talking about rank 9 persons.

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1           A       I don't think there was a threat of  
2 termination exactly the way you said it. The way -- the  
3 first time we published the information, we told people:  
4 Should they be in block 9 two times in a row, that we  
5 would terminate them. That was just a company decision;  
6 that is what the company wanted to do.

7                       In terms of somebody being in block 9 first  
8 time, choosing to go on a performance improvement plan and  
9 not take the severance package offer, I don't think that  
10 we ever said that you would be terminated necessarily  
11 related to that improvement plan, because what we told  
12 people is: If you are a low performer, theoretically what  
13 you have to do is you have got to move out of that block  
14 9, so you are competing with your peers; you are competing  
15 with yourself and with your peers.

16                      We used these action plans to show people some  
17 ways to improve. We also told people that even if you, in  
18 fact, do that, you still may not be able to displace  
19 people. You had to perform better than somebody else.  
20 That is what the issue was.

21                      So I think what we told people was, First  
22 time, you had a choice of being on an improvement plan or  
23 here is a severance package. Some -- and it is almost 50-  
24 50. Fifty people -- 50 percent chose severance package;  
25 50 percent says, No, I want to be on this improvement

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1 plan. Those that were on the improvement plan -- I think  
2 those were the numbers.

3 Those that are on the improvement plan, I  
4 believe, were told that there was no positive guarantee,  
5 even, in fact, if you do well on the improvement plan.  
6 You had to displace people. I mean, somehow you had to  
7 move out of block 9. That meant somebody else had to be  
8 in block 9, so it is almost -- there is a certain number  
9 there that we would be looking for.

10 So I don't know that there was any threats of  
11 fire or that kind of thing. I don't know that. I don't  
12 think -- I know I didn't make those kinds of statements.  
13 I don't know anybody -- and I sat through most of the  
14 discussions where the supervisors and/or managers gave the  
15 employees the information on ranking, the block 9s, and  
16 don't remember that being said at all.

17 So that is my memory.

18 MR. BOAL: Well, we appreciate you answering  
19 our questions. That is the only questions we had in  
20 reference to this investigation.

21 Is there anything that you might want to add  
22 that we didn't cover at this time?

23 THE WITNESS: I don't believe so.

24 MR. BOAL: Mr. Levanway?

25 MR. LEVANWAY: No, thank you.

1 MR. BOAL: Well, we have three standard things  
2 we would like to close us out with. And one is: Has Mr.  
3 Armenta or Mr. Boal or any other NRC employee threatened  
4 you in any manner or offered you a reward in return for  
5 this statement?

6 THE WITNESS: No, sir.

7 MR. BOAL: Have you provided this statement  
8 freely and voluntarily?

9 THE WITNESS: Yes, sir.

10 MR. BOAL: And is there anything further you  
11 would care to add at this time?

12 THE WITNESS: Not at this time.

13 MR. BOAL: It is now approximately 1:00 p.m.,  
14 and this interview is concluded.)

15 (Whereupon, at 1:00 p.m., the interview in the  
16 above-entitled matter was concluded.)

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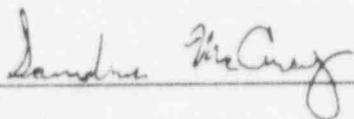
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: JIM FISICARO

Docket Number(s): 4-95-016

Place of Proceeding: St. Francisville, LA

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



Sandra McCray

Official Reporter

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