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Date: MAY 10 1993

CASE NO.: 92-ERA-30

IN THE MATTER OF:

THOMAS J. SAPORITO, JR.,  
Complainant,

v.

ARIZONA PUBLIC SERVICE COMPANY (APS)

and

THE ATLANTIC GROUP (TAG),  
Respondents.

APPEARANCES:

Thomas J. Saporito, Jr., Pro Se  
For the Complainant

George H. Lyons, Esq. Steve C. Thornton, Esq. Brian J. Campbell, Esq.,  
For the Respondent APS

William W. Nexsen, Esq.  
For the Respondent TAG

BEFORE: MICHAEL P. LESNIAK  
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This is a proceeding brought under the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C. §5851 and the regulations promulgated thereunder at 20 C.F.R. Part 24. These provisions protect employees against discrimination for attempting to carry

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out the purposes of the ERA or of the Atomic Energy Act of 1954, as amended, 42 U.S.C.A. §2011, et seq. The Secretary of Labor is empowered to investigate and determine "whistleblower" complaints filed by employees at facilities licensed by the Nuclear Regulatory Commission ("NRC") who are discharged or otherwise discriminated

against with regard to their terms and conditions of employment for taking any action relating to the fulfillment of safety or other requirements established by the NRC.

The findings and conclusions which follow are based upon a complete review of the entire record, applicable statutory provisions, regulations and pertinent precedent.<sup>1</sup> Having fully considered the evidence and arguments, presented, I find as follows:

#### PROCEDURAL HISTORY AND STIPULATIONS AT TRIAL

On or about January 27, 1992, Complainant, pro se, filed a Complaint against APS alleging that he had been denied a position as an Instrument Control Technician at the Palo Verde Nuclear Generating Station (PVNGS) Unit 1 in violation of the ERA (ALJX 1). Complainant filed an Amended Complaint on April 8, 1992, adding TAG as a party defendant (ALJX 2). Complainant filed a Second Amended Complaint on or about June 29, 1992, setting out with specificity his ERA allegations against TAG (ALJX 3) (see also TR 664-668).

Respondent, APS, admitted:

- (1) That APS is an employer and that Complainant is an employee within the meaning of the ERA;
- (2) That Complainant was qualified to work at Palo Verde Units 1 and 2 as a contract instrument and control (I&C) technician;
- (3) Complainant possessed field experience in the nuclear industry as an I&C technician;
- (4) APS' Labor Contract with The Atlantic Group (PV-00-21192) for Palo Verde Unit 2 is similar, if not the very same agreement, obtained for contract I&C technicians for Palo Verde Unit 1.

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APS denied Complainant was discharged or otherwise discriminated against with respect to his compensation, terms, conditions or privileges of employment; that Complainant engaged in protected activity or that APS had knowledge of the same; that Complainant suffered retaliation and was, in fact, denied a contract I&C technician position at Palo Verde Unit 1 and that the

retaliation and job denial was motivated by the Complainant's engaging in protected activity. (See APS' Response to Complainant's Request for Admissions.)

Respondent, TAG, admitted that Complainant was employed by it as an I&C technician through December 31, 1991, at APS, PVNGS, however, denied that Complainant was promised continued employment after the Unit 2 refueling outage, that Complainant was engaged in protected activity, or that TAG and/or its representatives threatened or intimidated Complainant or that it played a role in denying Complainant a contract I&C technician position at PVNGS Unit 1. (See TAG's Answer to Complainant's Amended Complaint dated June 29, 1992).

TAG also moved for dismissal based upon the statute of limitations and for summary judgment alleging that TAG did not select I&C technicians to work at PVNGS Unit 1. These motions were taken under advisement, at trial, however, I granted TAG's motion for a directed verdict at the conclusion of Complainant's case, finding that Complainant had failed to make a prima facie case that TAG was involved in the personnel selection process for the Unit 1 outage. Secondly, I held that Complainant filed his complaint against TAG outside the 30 day statute of limitations and failed to make a prima facie case entitling him to equitable relief.

On July 21, 1992, I Ordered that trial would be bifurcated. The liability portion of the trial was to be held September 28, 1992. Therefore, this Recommended Decision and Order will deal with liability only.

### SUMMARY OF THE TESTIMONY AT TRIAL

#### DOUGLAS CARL DOTY

1. Douglas Doty testified that he is an I&C<sup>2</sup> Maintenance Training Supervisor and has worked at Palo Verde since '980. He provides training for I&C technicians on the site (TR 108). There are three reactors at Palo Verde, and his duties as an I&C Maintenance Training Supervisor relate to all three reactors.

2. In October of 1991, Doty provided what he called mediated review sessions for contract techs. The contract I&C technicians do not have time to complete mandatory training sessions, so Doty's section provided an examination and several evening sessions where objectives were reviewed (TR 111). The exam provided the I&C supervisors an idea of the knowledge level of the contract I&C technician (TR 112). The supervisor then decided whether the contract worker could enter the classification of independent worker (TR 115).

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3. Doty recalled that in a meeting with Mr. Grove, the I&C supervisor for Unit 2, and Mr. Freitas, a Senior I&C training instructor, in October of 1991, Grove wanted contract techs to be independent workers (TR 118). Mr. Grove, along with Doty, made the decision to provide instruction to contract I&C technicians. Mr. Grove wanted contract I&C technicians to be independently qualified and Doty was trying to support him (TR 124, 125). Mr. Grove or Mr.

Warriner, I&C supervisor for Unit 1, could waive the instruction requirements and qualify someone as an independent worker by just reviewing their resume, but there were procedural requirements that they had to follow (TR 138). The supervisor copied Doty on a memo listing various individuals who would be waived from the training process and determined to be independent workers (TR 155).

4. APS memorandum dated October 23, 28, and November 8 of 1991 and then February 11th of 1992 (CX 1) indicated that Mr. Grove considered Mr. Saporito to be qualified to work independently. This exhibit also listed names of other individuals who took a longer period of time to be independently qualified (TR 157). Doty testified that if Mr. Grove determined Saporito to be able to work independently, and if Saporito worked well and didn't make "large mistakes," Mr. Warriner would also consider Saporito to be a worker who could work independently (TR 160, 161). Doty also reviewed CX 2 which showed Saporito's grades before and after testing: he received a grade of 65 percent before and 88 percent after the mediated review session (TR 168).

#### STEVEN GROENEVELD

5. Steven Groeneveld testified that he was hired in May of 1984 by Arizona Public Service (APS) Company at Palo Verde Nuclear Generating Station as an I&C technician (TR 212, 213). His duties and responsibilities involved working on plant equipment, performing maintenance tests, and troubleshooting repair jobs (TR working at APS, Groeneveld was employed by Florida Power and Light at the Turkey Point Nuclear Power Station, where he worked from April 1, 1987, for approximately two years (TR 215). Groeneveld has been certified by INPO (Integrated Nuclear Power Authority) (TR 215) INPO's purpose is to self-regulate the nuclear power industry. The committee is made up of individuals from nuclear power plants to regulate themselves (TR 216).

6. Groeneveld has mostly worked at Unit 2 at Palo Verde, but he has also worked at the other two units between September of 1991 and December of 1991. His immediate supervisor was Izadore Chavez (TR 218). The chain of authority at the plant was as follows: Chavez reports to Steve Grove, the I&C department head; Mr. Grove reported to the Maintenance Superintendent, Bill Simko; Simko reported to the Unit 2 Plant Manager, Ron Flood. Mr. Flood reported to Mr. Levine, the Site Vice President (TR 219); Mr. Levine reported to Bill Conway, the Vice-President in charge of nuclear power. Bill Conway was Vice-President of Nuclear Power from on or about September through December of 1991.

7. During Groeneveld's employment at the Turkey Point Power Plant, south of Miami, Florida, Mr. Conway was also employed with Florida Power and Light Company. He held the same

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position at Florida Power as he did for APS; Vice-President in charge of nuclear power (TR 221). In 1988, Saporito was a co-worker of Groeneveld at the Turkey Point Nuclear Plant. He held the same position as Groeneveld, that of journeyman I&C technician. Groeneveld worked

on the same job crew with Saporito at Turkey Point. Groeneveld knew that Saporito was released from Florida Power and Light for what the Company called insubordination (TR 227). Groeneveld witnessed Saporito disobeying a direct order from a superior at Florida Power (TR 230). Groeneveld was questioned by an attorney about Saporito's concerns Power (TR 231) and Groeneveld felt at the time he was that a law suit had been filed against Florida Power (TR 232). During the time Groeneveld worked with Saporito, he knew people that knew Saporito, and he stated Saporito's reputation was that of a troublemaker (TR 237-240). Saporito was not cooperative; he was always complaining, he was a troublemaker, and he was a thorn in the side (TR 240, 241). All of the comments Groeneveld heard pertained to the job.

8. During the period from September to December of 1991 while working at APS, Groeneveld may have mentioned at APS that he knew Saporito from previous work (TR 242). Rex Smith also previously worked at Turkey Point and worked at APS from September through December, 1991. Groeneveld may have had conversations with Rex Smith concerning Mr. Saporito (TR 245), and may have told Rex Smith that Saporito was involved in legal proceedings with a former employer (TR 245). Groeneveld had several conversations with coworkers at APS, Unit 2, about Saporito. These conversations were generally about Groeneveld's past experience with Saporito and that he had worked with him in Florida. Groeneveld believed that he may have discussed the fact that Saporito was fired from Turkey Point Nuclear Power Plant for insubordination and that Saporito had a law suit against Florida Power (TR 247). Groeneveld estimated that he told 10-15 people about Saporito. These were all I&C technicians supervised by Mr. Grove (TR 254).

9. During this period, September through December of 1991, Unit 2 was in a refueling outage beginning in October. The Unit I&C Department was supported by technicians and supervisors from Units 1 and 3 throughout the outage; however, Mr. Groeneveld did not recall talking to anyone from Units 1 or 3 about Mr. Saporito (TR 255). Groeneveld may have made a statement in the middle of the shop, "Is that the same Tom Saporito that is from Florida?" It is very possible that Unit 1 and Unit 3 managers and technicians heard that statement (TR 256).

10. Groeneveld had one conversation with Mr. Reeves and Mr. McCullough, both contract I&C technicians, who told him that working with Saporito was very tedious, that Saporito was arrogant, bossy, and not a pleasant person to work with (TR 278). This conversation was based upon jobs between September and December of 1991 at APS at the Palo Verde site (TR 279, 280).

11. As the outage progressed from approximately October 1991 through the end of December 1991, Groeneveld did not feel that there was an atmosphere of hostility towards Saporito in the I&C Unit 2 shop (TR 281). Groeneveld never saw open hostility expressed towards Mr. Saporito. He had no personal difficulties working with Saporito (TR 295). When Groeneveld said that Saporito had the reputation of being a troublemaker, he meant because Saporito was uncooperative--not because he was raising safety concerns (TR 298). Mr. Groeneveld had

personal knowledge that Saporito took issues to the Nuclear Regulatory Commission (NRC) concerning a Mr. Karan at Turkey Point (TR 307).

### REX WADE SMITH

12. Rex Smith testified that he was presently a Quality Control Inspector, Level 3, at the Palo Verde Nuclear Station, APS, and during the time period from September through December of 1991, he was a Quality Assurance Technical Specialist 3, Quality Monitor. He has worked at Palo Verde for 8-1/2 years. His job is to monitor personnel to make certain they comply with procedures and work orders (TR 309). During the relevant time frame, Smith reported to Ron Fountain who was supervisor of Quality Monitoring. From November of 1984 to February of 1986, Smith was employed at Florida Power and Light at the Turkey Point Nuclear Power Plant (TR 310) and knew Saporito (TR 313). On occasion, Smith and Saporito worked together at Florida Power. While Smith was employed at APS, he learned that Saporito was fired from Turkey Point (TR 314). Smith worked with Saporito for about a year and one-half at Turkey Point (TR 315), and he knew approximately 20 other technicians that knew Mr. Saporito (TR 316). Saporito had a reputation as being a good technician but possibly a little difficult to get along with (TR 317).

13. After Smith began working at APS Palo Verde, he saw Saporito on CNN news, but only caught the tail end of the story. He saw Saporito's face on the screen while Saporito was being interviewed, but did not catch the "gist" of the news report (TR 318, 319). Smith did not learn from the broadcast that Saporito was fired; however, his father who lives in Daytona Beach, Florida, sent him a newspaper article from the Daytona Beach News Journal (TR 319). Smith remembered the article said Saporito had been fired from Florida Power. Smith thought that he learned of this information about December of 1988 (TR 320, 321).

14. Smith had conversations with Steve Grove, Warren Jones, and Izadore Chavez about Saporito with reference to Saporito being a previous employee of Florida Power (TR 321, 322). Smith had conversations with Steve Grove about Saporito prior to the Unit 2 outage and prior to Saporito's arrival at APS. The conversation came up because Smith learned that Saporito was coming to APS. He saw the memo the same day that he spoke to Grove. Smith initiated the conversation with Grove (TR 324) after seeing, a memo on Warren Jones' desk with Saporito's name on it.

15. Smith saw a pink memo, like a phone call memo, taped on Warren Jones' credenza, with Saporito's name on it about September of 1991 (TR 329) and asked Mr. Jones whether that was Tom Saporito. After looking into Saporito's personnel file, Jones responded that it was Tom Saporito (TR 330). Smith told Warren Jones that he worked with Saporito and that he was a good technician (TR 331). Smith told Grove that he knew Saporito from Florida Power and Light, that he was a good technician, and there was similar equipment at Turkey Point and Palo Verde, and that Saporito also worked at St. Lucie Nuclear Power Plant and he thought also at a combustion engineering plant (TR 325). Smith knew that Saporito had worked at the St. Lucie Power Plant because he has friends who work there. One of the friends, Russell Holdren, mentioned that

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Saporito had been discharged, but he did not go into details (TR 326). Smith has seen Holdren several times and has had 10-15 telephone conversations in the past few years. They went on vacation together in August of 1991. Smith also told Grove about the CNN story, the newspaper article he read, Saporito's termination, and action suit against Florida Power and Light. Steve Grove thanked Smith for the information and indicated it would not sway his decision to hire Saporito for Unit 2 outage (TR 328). Smith initiated the conversations with Steve Grove because Grove was a supervisor (TR 332). After talking to Steve Grove, he saw Izadore Chavez and Smith told Chavez the same thing that he told Grove (TR 341).

### JAMES RIDER

16. James Rider testified that he is a senior nuclear instrumentation and control technician at the Palo Verde Plant and has been employed there since about November of 1984. Rider is primarily assigned to work Unit 2 and during the period from September 1991 through December 1991, he worked as an I&C technician (TR 357, 358). When there were turnovers in shifts, sometimes there was conflict of personalities between Saporito and other employees (TR 366). It was a busy shop and there was a certain amount of stress and tension. When a unit is down, there is a reason to get it back up because of the loss of revenue (TR 367).

17. Rider witnessed three unpleasant exchanges between Saporito and others. One was between Saporito and Jenkins. Their voices were escalated (TR 370). Rider remembered hearing something about cold solder joints (TR 372). However, it is not unusual in the I&C shop to have discussions about technical issues on a periodic basis during an outage (TR 373). It is a daily practice to raise technical questions. This occurs about ten times per day. Rider has never known management not to encourage bringing up technical issues (TR 374).

### DENNIS REBER

18. Dennis Reber is employed by APS at the Palo Verde Station as a Senior Utility Worker. He has held this position for four years. Reber works primarily on Unit 2. Reber recalled the Unit 2 outage from September to December of 1991. He noticed that I&C technicians and supervisors from Unit 1 and Unit 3 helped support the Unit 2 outage (TR 379).

19. Reber assisted Saporito on one occasion during the Unit 2 outage. On this occasion, there was a requirement to enter a confined space entry. A confined space entry is a written permit for anyone whose name is on the permit to enter into a confined space which is deemed to contain a hazardous atmosphere or having an opening which is difficult to get in or out of. The area could also have a potential to have either a deficient amount of oxygen or a dangerous gas level.

20. The job which he and Saporito were assigned involved accelerometers or loose part sensors on reactors in a confined space entry (TR 380). This was a radiologically controlled area. There came a time when Saporito used an explosive monitor to egress into the confined space (TR 381). The monitor was defective, so it was replaced. Normal procedure is to allow the monitor to go into the area prior to anybody assessing the area (TR 382). However, the health physics

technician took the explosive monitor away from Saporito (TR 383). The explosive monitor was attached to a rope and descended down into the pit before the health physics persons and that was the correct procedure (TR 384).

#### MICHAEL SCHUUR

21. Michael Schuur is an I&C technician employed by APS at the Palo Verde Nuclear Station and is currently assigned to Unit 2. He has worked at Palo Verde for about six years (TR 390). Schuur remembered working three jobs with Saporito during the Unit 2 outage. These jobs involved the ICI cables on top of the stanchion, the ICI stanchion; removal of CEDMCS power supplies; and moving the accelerometer adapters to a different stud (TR 393). About the middle of the outage, he heard the term whistleblower in connection with Saporito. Through hearsay, he knew that Saporito was employed previously at Florida Power and Light. A co-worker, Mr. Groeneveld, made comments in his presence about Saporito working at Florida Power and Light Company (TR 396).

22. Schuur was aware that during Unit 2 outage, I&C technicians from Units 1 and 3 supported the Unit 2 outage. Also, Units 1 and 3 foremen supported the Unit 2 outage (TR 399).

#### LARRY DAVID BURCH

23. Larry Burch testified that he is employed by Arizona Public Service Company at the Palo Verde Nuclear Station as a Senior I&C Technician for Unit 2 (TR 408). Burch has worked for APS for 7-1/2 years. He maintains and calibrates instrumentation (TR 409). During the Unit 2 refueling outage in the fall of 1991, Mr. Burch talked with Mr. Groeneveld about Mr. Saporito's problems at Florida Power, but was not told that Saporito was fired. However, later on during the outage, Burch learned that Saporito was fired from Florida Power (TR 420).

24. Burch remembered being assigned to work with Saporito in December of 1991 on a job at Palo Verde concerning the installation of accelerometers on reactor head studs (TR 430). Burch's only recollection was that it involved a torque valve, and Saporito had refused to sign a specific second witness verification. In the nuclear industry, many times a second individual must independently verify the job for safety concerns.

25. In December of 1991, Saporito and he were assigned the task of installing an accelerometer on a reactor head stud and Burch was required to torque it specifically to a certain amount of inch pounds. It is critical not to have loose parts in the reactor (TR 432) and the purpose of an accelerometer is to detect loose parts. In Burch's opinion, loose parts would cause damage to the core and the accelerometer is a safety-related piece of equipment (TR 435).

26. The procedure required that another technician independently verify Burch's work (TR 439). He did not secure the independent verification in writing at the site because the paperwork was put in a plastic bag so it would not come into contact with hot particles (TR 440).

27. When Burch and Saporito were down at the reactor head, Burch had the impression that Saporito was happy with the job. However, that same day, Burch learned that Saporito was, in fact, not happy about the way accelerometer was installed (TR 443). When they returned to the shop to fill out the paperwork in the log, Burch said Saporito became concerned. Saporito signed the document regarding the large nut torque, but he refused sign the second one for the smaller stud that holds the accelerometer. Saporito claimed that he didn't witness it (TR 444).

28. While installing the accelerometer, Saporito was standing about three to four feet from Burch, and it was his job to monitor and make certain that Burch torqued correctly. He could either hear the "click" or he could see the slip of a torque wrench. When you get to a certain poundage with a torque wrench, it won't completely free fall (TR 462). Everything that Burch was doing was visible to Saporito. Saporito could see the torque wrench reach the appropriate torque (TR 464). Burch was present when Saporito signed the first and the third steps on APS X-1 (TR 465), but Saporito refused to sign the second step, 4.6.2 (TR 466).

29. Burch went to see his supervisor, Chavez, and Chavez told Burch to leave the document with him (TR 467). The next thing he knew, Saporito signed the document for the second stage. In Burch's opinion, the reactor would not be started up unless the accelerometer was installed (TR 453).

30. Burch remembered that during the Unit 2 outage, people were having a difficult time working with Saporito but he didn't recall any specific events (TR 455)

#### TERRANCE EMBURY

31. Terrance Embury testified that he is an I&C technician for Unit 2 at the Palo Verde Plant and that he has had this position for about 2-1/2 years (TR 473). Embury worked on Unit 2 during its refueling outage. During the outage, Embury learned that Saporito was a former employee of Florida Power and Light Company. He overheard this information in a conversation between a few of the techs (TR 475). He also heard that Saporito filed a law suit against Florida Power (TR 476). After a couple of weeks working at Unit 2, Embury went back to work at Unit 1 (TR 477). He never heard conversations at Unit 1 regarding Saporito working at Florida Power (TR 478). He never repeated the information he learned about Saporito to anyone (TR 479).

#### TODD TIDYMAN

32. Todd Tidyman testified that he is a Senior I&C tech for APS at the Palo Verde Nuclear Station, and he works for Unit 3. He has worked at Palo Verde for two years (TR 480). During the Unit 2 outage, Tidyman did not know Tom Saporito.

#### STEVEN GROVE

33. Steven Grove testified that he is the I&C Supervisor for Unit 2 at Palo Verde Nuclear Power Plant and has worked at Palo Verde since March 1979. His job duties are to oversee the

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calibration and maintenance work performed on instruments and controls at Unit 2. He supervises a total of 29 employees which includes four foremen (TR 491). The foremen at the time of the Unit 2 outage in the fall of 1991 were Izadore Chavez, Ken Meyer, Warren Jones, and Phil Mudrick (TR 492).

34. Grove has weekly meetings with his counterparts in the other units to make certain there is consistency across the units (TR 493). Informal meetings, including telephone conversations, occur daily. These meetings took place during the Unit 2 refueling outage. Telephone conversations took place during the Unit 2 outage probably on a daily basis.

35. Grove reported to the Maintenance Manager for Unit 2, Bill Simko. Bill Simko reported to the Plant Manger for Unit 2, Ron Flood. Ron Flood reported to John Levine, who is Vice-President (TR 494). Levine reported to Bill Conway, the Executive Vice-President. Conway has authority and responsibility over all three units at Palo Verde.

36. During the Unit 2 outage, I&C technicians and managers normally working at the Unit 1 and Unit 3 reactors supported the Unit 2 outage (TR 495). The majority of the workers for Unit 1 and Unit 3 would have spent some time at Unit 2 (TR 496).

37. Grove testified that it was most likely that he knew Saporito worked for Florida Power and Light from Saporito's resume. There was also a brief conversation with Mr. Groeneveld about Saporito (TR 497). In September 1991, Groeneveld told him that he worked at the same utility as Mr. Saporito and there had been some problem that ended in Saporito's termination. Groeneveld may have told Grove that Saporito was fired from Turkey Point Nuclear Plant (TR 499). Grove was not certain when he became aware of Saporito's lawsuit against Florida Power (TR 498). Rex Smith also approached Grove during September and October 1991. Smith told Grove that he had worked with Saporito and later saw Saporito on CNN cable news network. Grove believed that Saporito was already at the Palo Verde site when Groeneveld and Smith told him about Saporito (TR 501). Steven Grove and Izadore Chavez agreed to disregard negative comments about Saporito (TR 504).

38. Grove testified that it was advantageous to APS to hire independently qualified technicians, because they can be assigned a greater depth of work and allow greater job flexibility (TR 505). Grove also felt that this would expedite the completion of the outage (TR 506). When a person is qualified to work independently through APS training program, they would be considered independently qualified throughout the entire site (TR 513).

39. Saporito was considered by Grove to be independently qualified (CX 1) and by the conclusion of the Unit 2 outage, late December of 1991, in Mr. Grove's view, Saporito was still independently qualified (TR 512).

40. Grove identified CX 3 as the procedure to be used in requesting contract labor and instructions on how to exit a contract labor person (TR 519). This is the same procedure that Frank Warriner would have to use in Unit 1. The procedure is silent about whether contract labor should be required to work independently (TR 520).

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41. During the Unit 2 refueling outage, Grove got together with Frank Warriner and Jimmy Reynolds his counterparts for Units 1 and 3, (TR 522). The three of them eventually had the same superior up the chain of command. Grove meets on a weekly basis with Warriner and Reynolds, and this was the practice during the fall of 1991 (TR 522). The three shared information, often learning from each other and discussed having contract workers qualified to work independently (TR 524).

42. The Unit 1 outage immediately followed the Unit 2 outage. Although Grove did not know how Warriner was going to staff the outage, it wouldn't surprise him that Warriner would want his ISC technicians to be able to work independently.

43. Towards the later part of the outage, Grove met with Frank Warriner and offered his opinion on individuals who were working during the Unit 2 outage (TR 525). Grove had a list of all employees sent over by The Atlantic Group, and Grove gave opinions on each person. He said nothing negative about Saporito and believed he said that Saporito was a good worker and did a good job. Grove believed that he said that Saporito raised some good concerns (TR 526).

44. Grove identified CX-6 and testified that an I&C technician who was qualified to work independently would have been trained in pneumatic skills and would be qualified to work on some pneumatic instrumentation (TR 542). Page 27 of CX-6 refers to pneumatic skills (TR 543). When Grove made a decision to hire independently qualified technicians, his intent was to use these contractors primarily for less important, less complex components and to free up his in-house technicians (TR 54S).

45. While working at the Unit 2 outage, Saporito brought up a lot of good issues. One example was the CEDMCS system which actuates the control rod drive movement (TR 546, 548). One of the functions of the CEDMCS system is to drop rods into the reactor vessel and shut it down in an emergency situation. The actual function of the CEDMCS system is to position the rods during a normal operation (TR 547, 548). During normal operation, the control rods specifically are raised completely out of the core of the reactor and only enter into the reactor core for the purpose of shutting the reactor down.

46. Saporito's concern about the CEDMCS system involved the method of handling the circuit cards. Saporito prepared a written document setting out his concerns about the system and this document was given to Izadore Chavez, who brought it to Grove's attention (TR 549). Saporito's concern, in Grove's opinion, was not a safety issue (TR 551) but had to do with insertion and withdrawal of printed circuit boards (TR 552). If the printed circuit boards in the CEDMCS

system were damaged in some way and caused the system not to operate properly, this would affect the proper operation of the nuclear plant.

47. In reviewing CX-7, pages 15-18, the CEDMCS concern is documented (TR 571, 572). If the CEDMCS system was not operating properly! the NRC would not allow Palo Verde Nuclear Plant to operate (TR 576). During the Unit 2 outage, Saporito raised concerns which are included in CX-7 (TR 577). After Grove became aware of Saporito's concern, Grove felt that he took appropriate actions (TR 579).

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48. Saporito also raised a concern involving installation of accelerometers, which is part of a monitor on a reactor vessel head stud (TR 553). Accelerometers are acoustical devices that monitor vibrations which they translate into a signal, and allow the operators to determine if there is a loose part in the reactor (TR 555). A loose part in the primary system could damage fuel rod assemblies, causing a release of Uranium product into the reactor vessel, and may result in a loss of control of the reactor (TR 556). Two accelerometers 180 degrees apart from each other had to be set before sections of insulation could be placed embracing the head of the reactor.

49. During the Unit 2 outage, the job had to be stopped. The B&W Contractors, while attempting to place the mirror shielding or insulation on the reactor head, found that the accelerometers did not line up with the groove cut in the insulation. The reactor head stud on which the accelerometers were mounted were mounted on the incorrect head stud hole. The studs were in the wrong hole (TR 557) and had to be moved one location (TR 555). While 50 plus studs were in the wrong hole, the discovery of the problem had nothing to do with Saporito's complaint (TR 559). Saporito's concerns about the torquing of the accelerometers and the CEDMCS occurred in the latter part of December 1991 (TR 560).

50. Grove met with Frank Warriner in December of 1991 and discussed Grove's contract technicians (TR 561, 562, and 565). Warriner could either use Grove's opinion on his selection of contractors or he could just disregard Grove's input. It was apparent that Warriner was going to need contract I&C technicians and that was why Grove was offering his opinion (TR 562). By this time, because of conversations with Groeneveld, Rex Smith, Izadore Chavez, Grove knew that Saporito had been employed by Florida Power and knew that he was fired. Grove also knew that he had raised issues during the Unit 2 outage, i.e., the accelerometers, etc. Grove identified APSX-2 as the list he used during his conversation with Frank Warriner concerning contract I&C technicians (TR 565).

51. To the best of Grove's knowledge, there was a one or two word statement about each person on his list (TR 563). For Saporito, Grove's notes indicate: "does work that is assigned and raises good questions." During the Unit 2 outage, Saporito's name never came up before in any of the weekly supervisors meetings (TR 566).

52. Mr. Grove sent a handwritten note, identified as CX-8, to Bill Simko, his manager, indicating that Saporito's attached concern required immediate attention. Grove wanted an answer for Mr. Saporito prior to the end of his contract with The Atlantic Group, December 31, 1991. Grove received the concern at 8:45 in the morning, on December 24, 1991 (TR 583). The reason Grove took it to Simko rather than handling it internally was that it involved engineering and was an issue outside the I&C shop (TR 585).

53. With regard to Saporito's attendance during the Unit 2 outage, Grove testified that he had no reason to believe that it wasn't very good attendance. There were some I&C technicians whose attendance was worse (TR 605).

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### WILLIAM ENGLEKING

54. William Edwin Engleking testified that he is employed by The Atlantic Group (TAG) as the project coordinator, and he is currently based in Norfolk, Virginia. During the Unit 2 outage, from September 1991 until December 1991, he was employed by The Atlantic Group as the Site Administrative Coordinator at Palo Verde Generating Station. His job duties were quite extensive. He dealt with the processing in and out of Atlantic Group employees at the Palo Verde site and all of the associated paperwork and keeping in touch with the site managers and their needs (TR 620). During the Unit 2 outage at Palo Verde, he placed I&C technicians for Unit 2 (TR 622). Engleking did not recruit people for work at Palo Verde, but was responsible for bringing people to the site and the processing associated with bringing them in and out (TR 624).

55. Shortly before the start of the Unit 1 outage, the pool of I&C technicians who could be contacted was very limited. There were less than a dozen people he could contact to find out if they were available for work, to get their resumes to the Unit 1 manager and to see if the technicians were acceptable (TR 641). APS already had Saporito's resume, so it was not resubmitted (TR 642).<sup>3</sup>

56. A meeting occurred between Engleking and Saporito on January 2, 1992, in Engleking's office at Palo Verde (TR 677). Saporito asked Engleking if his name was included on the list of name of contractors that were hired for the Unit 1 outage and Engleking told Saporito it was not. Saporito asked why his name was not on the list, and he told him he had no answer. Saporito made some very vague comments about his not being happy with the way certain people did things at APS (TR 678). Going into the Unit 2 outage, Engleking was unaware of concerns that Saporito identified to APS management (TR 682).

57. Shortly after the January 2, 1992, meeting, Engleking ran into Saporito in the parking lot of the apartment complex where they both lived. Saporito was packing his car. There was a short, friendly exchange of conversation (TR 685). Engleking denied that Saporito told him that he was going to the NRC with concerns. He also denied telling Saporito that as a contractor with TAG, it would not be a good career move for him to cause more trouble. He denied making comments to the effect that Saporito was finished and that if he expected continuance of his employment

with TAG as a contractor, he should not pursue the matter further, because TAG could not afford to jeopardize a big employment contract like APS (TR 687). Engleking denied that he ever indicated that Saporito was going to cause The Atlantic Group trouble by going to the NRC with safety concerns. He further denied that Saporito informed him that he was going to contact the Department of Labor and file a complaint against Palo Verde because he should have gotten a job for the Unit 1 outage (TR 688).

58. Engleking sent 18 resumes to Frank Warriner for the Unit 1 outage (CX-24, TR 697). Of these, some of the individuals canceled themselves out of the job in some fashion. Engleking believed that Mr. Dessormeau and Billy Reeves did not show up. CX-25 was identified as a document listing the technicians whose resumes were sent to Frank Warriner for review (TR 699).

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59. CX-26 consists of change of status forms for Drake, Dixon, Teske, Thornberg, Waszak, Zimmerman, and Putnam, are individuals who worked at the Unit 2 outage and were rehired for the Unit 1 outage (TR 712, 713). These individuals were furloughed after the completion of Unit 2 outage until the beginning of the Unit 1 outage (TR 720). CX-27 lists individuals who worked with the Unit 2 outage and were offered work at Unit 1 but voluntarily declined. They are Dessormeau, Abarr, and Reeves (TR 713, 714). The change of status forms have evaluations, 1-5, 1 being the worst, 5 being the highest, and 3 being average (TR 711). Saporito's change of status form was admitted as CX-28 (TR 715). The top 11 names on APSX-3 was generated on December 23, 1991, by Tina Biebl (TR 723, 724).

60. Any time Engleking happened to be in the area when Mr. Grove was in his office, he would ask how things were going and whether he had any problems. Grove never indicated any problems to Engleking. In a meeting at the end of the Unit 2 outage with Grove, Grove told Engleking that all of his employees were fine and that he would recommend everyone of them for the Unit 1 outage. He did not go through a detailed name-by-name; he just said that he would recommend everyone (TR 732, 733). When Engleking met with Frank Warriner, Warriner did not indicate a preference for any of the individuals which were currently working at the Unit 2 outage.

61. When Engleking met with Saporito in January of 1992, Engleking said Saporito's concern was that Saporito didn't like how other people performed their work, but Saporito was not specific (TR 735). No one at APS ever told Engleking that they did not want Saporito because he was a troublemaker or words to that effect (TR 737, 738)

#### WILLIAM SIMKO

62. William Simko testified that he is the Maintenance Support Manager for APS and has worked there since 1979. During the Unit 2 outage, he was the Unit 2 Maintenance Manager and was responsible for approximately 100 maintenance personnel and 50 extra contract personnel (TR 739). Simko reported to Ron Flood, who reported to Jim Levine, Vice-President of

Production. Simko had conversations about Saporito being previously employed by Florida Power and Light Company. He had discussions or meetings with Jim Levine and Steve Grove (TR 740).

63. In approximately September of 1991, he received a telephone call from Mr. Levine who wanted to know if they had hired Saporito. Simko checked with Steven Grove and determined that Saporito had been hired. After advising Levine of Saporito's employment, Levine then asked if Saporito had worked at Florida Power and Light. Simko did not know so he went back to Steve Grove and found out and then told Simko that Saporito did work at Florida Power and Light. Levine said, "ok, I'll call you back." Several days later, Levine advised Simko that there had been problems at Florida Power and Light with Mr. Saporito, and he wanted to make sure that Saporito did a good job for them at Palo Verde. Simko said "ok" (TR 741, 742)

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64. There were no special instructions. So, Simko passed on this information to Grove and Chavez. Simko did not provide extraordinary guidance or instructions to Grove or Chavez on how to monitor Saporito. Simko questioned Grove about Saporito's performance about half-way through outage. Grove told him there were no problems, and that Saporito was doing a good job. So Simko felt he had nothing to say, and he didn't call anybody back. Simko didn't recall calling Levine back.

65. During Simko's career at Palo Verde, he did not remember Mr. Levine ever calling before and asking him to check on someone's background (TR 743). It was not normal for Mr. Levine to directly call since there was a person in between, Mr. Flood (TR 756, 757).

66. During the Unit 2 outage, Simko did not hear comments about Saporito, nor did not know anything about Saporito being a whistleblower at Florida Power and Light. He was not aware of the CNN broadcast or the newspaper article about Saporito and Florida Power and Light. During the 78 days that the Unit 2 outage, there was normally a production meeting every morning during the week to go over the status of the various jobs that were going on and to determine whether there were any critical problems. The two people running these meetings were the outage manager and Mr. Flood. Managers and supervisors and departmental coordinators attended. Mr. Grove was in attendance, and Frank Warriner would appear if he wanted to see how things were going, but Simko didn't recall seeing him there (TR 745, 746, and 747). Simko never had a conversation with Frank Warriner during the Unit 2 outage (TR 747).

67. At the end of the outage, Simko learned that Saporito had a safety concern about the proper grounding of C-MOS type boards on the CEDMCS (TR 751). In Simko's opinion, Saporito raised the issue to Palo Verde management in good faith. Mr. Grove brought it to Simko after Izzy Chavez brought it to Grove. The reason it was brought to Simko was two-fold. First, it concerned an individual in the engineering department on his work practice when he was working with maintenance personnel and he was not in Steve Grove's chain-of-command; secondly, it came up in the last week of December and all of the contract personnel, including Saporito, were scheduled to leave on December 31. Since another organization was involved and

the short time factor, it was raised to Simko to evaluate the situation and determine what to do (TR 752, 753).

### IZADORE CHAVEZ

68. Izadore Chavez testified that he has worked for APS approximately nine years and is currently an I&C foreman in the Unit 2 Instrument Shop at the Palo Verde Nuclear Station. He oversees work in the I&C shop both on-line and in outages. Routinely, he assigns work for up to 30 people, observes that work and makes sure it is correctly done. He has administrative responsibilities in terms of qualifications for jobs, eta (TR 763).

69. During the Unit 2 outage, Chavez learned from Groeneveld some time in early October, 1991, that Saporito was a former employee of Florida Power and Light. He knew that Saporito left employment at Florida Power, but he didn't know that he was terminated (TR 765).

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He also overheard Rick Smith tell Warren Jones that Saporito worked at Florida Power and Light. Chavez learned about the CNN news broadcast from Groeneveld and was told that the dispute between Saporito and Florida Power related to Saporito's employment at Turkey Point Nuclear Plant. In a meeting he had with Grove shortly after the conversation, they agreed that Saporito should be judged based upon his work at APS (TR 767). There came a time during the Unit 2 refueling outage, around December 27 or December 28, 1991, that Chavez met with Grove and Simko regarding Saporito (TR 768).

70. On December 13, 1991, Chavez asked Saporito to go, watch, and help BW&S guide the mirror shielding into place on the accelerometers. Chavez learned from Saporito through a phone call, that when they got to the point of installing the mirror shielding, the mirror shield would not line up where the accelerometers were sitting on the studs (TR 769). Chavez told Saporito not to make the correction alone to wait and that he would send a crew in. Crews were sent in but mistakes were made. First crew counted the studs wrong and reinstalled the accelerometer on different studs. Later on in the night, it was discovered again that the accelerometers were in the wrong position, so they were again moved. The moving of the accelerometers was holding up the critical path job which was putting the reactor back together. It was Chavez' understanding that the cost differential would be somewhere about a million dollars a day in lost revenue (TR 771).

71. It is standard procedure to get written statements from everyone involved in situations that may warrant investigation (TR 772). In Saporito's statement, he raised the concern either with the studs or with their holes not being numbered, and he learned this from the B&W contractors. Unit 1 and Unit 3 reactors have stamped numbers. Unit 2's reactor does not have stamped numbers on the holes, but the studs are numbered (TR 773).

72. Chavez identified CX-30 which involved Saporito's statement on the accelerometer problem. On the bottom of page 3, Saporito made three statements that involved asking for protection; Saporito requested that the information he gave be handled in a very confidential manner and

reminded Chavez that APS's policies and procedures provided that employees who provided concerns at PVNGS should not be harassed or discriminated against for providing the concerns (TR 776). Chavez didn't believe that Saporito's statement needed to be there because he assumed he and Saporito had a certain trust between them (TR 777).

73. Mr. Chavez identified APSX-1 as the work order relating to the removal and reinstallation of the accelerometers in the reactor. Chavez testified that this job was safety related (TR 781).

74. On approximately December 14, 1991, Saporito was called into a meeting with Chavez and Kenneth Meyer at Unit 2 to discuss his statement about the accelerometer installation and his refusal to

sign Step 4, Step 6, and Step 2 of APSX 1, page 5 verifying the work of Dave Burch (TR 782). When Chavez asked Saporito why he didn't want to sign the steps, Saporito said that the screw and the screwdriver, torque wrench, would not work, that torque was not necessary, and that he felt that it was meaningless because after you torque to 25 inch pounds, then you take the accelerometer, put in the bolt that goes on the stud head and you torque that to 18 inch pounds (TR 783). He never said that he could not hear the torque wrench click. After the job, he said that he didn't have the paperwork, and he didn't realize he was suppose to watch the torque wrench.

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He said the technicians didn't take the paperwork, and Chavez felt that was a secondary issue. The real issue was that the torque was not required (TR 784).

75. Chavez never had conversations about Saporito with any of his counterparts at Unit 1 (TR 791).

#### WILLIAM ENGLEKING - RECALLED

76. Engleking provided a list of I&C technicians who worked the Unit 2 outage but were not selected for the Unit 1 outage (ALJX-4, TR 795). Abarr was selected by Frank Warriner but when offered the job, he turned it down (TR 798). Mr. Dessormeau was offered the job and initially accepted the position, but then did not show up on the start date of February 10. Mr. Fowler did not work the Unit 1 job, and he was not selected by Warriner. Hughes was not selected by Warriner (TR 799). Mr. Moe was not selected by Warriner. Reeves was selected but turned it down at the last moment. Saporito was not selected by Warriner (TR 800). So the people like Saporito who worked Unit 2 but were not selected by Warriner were Fowler, Hughes, McColough, and Moe.

#### DAVID LARSON

77. David Larson testified that he is an I&C foreman for APS at the Palo Verde Nuclear Station, and has been employed at Palo Verde for 12 years. He has been a foreman for seven years. He is responsible for assigning the I&C technicians job assignments and following the jobs to make

sure they get completed. He has worked at other units besides Unit 1 and during the time frame of September 1991 to December 1991, he worked other units (TR 808). During the Unit 2 outage, he did not know Tom Saporito, nor did he hear his name mentioned.

78. Larson identified CX-31 as a memo he wrote responding to Dan Robertson that explained the selection process of contract technicians. The procedure began with the receipt of resumes from his supervisor through the contracting company, review of each resume and ended by returning the resume to his supervisor. Each resume is examined to verify that they meet ANSI requirements and make certain there are no large gaps in their previous employment.

79. Frank Warriner was his supervisor. In reviewing CX-24, Saporito's resume appears to be one of the resumes sent to him for review. He recognized some of the names because they came to work for the Unit 1 outage, but he didn't recognize all of them. Saporito's resume may have been one of the ones he reviewed. In reviewing Saporito's resume on the stand, Larson testified that Saporito met some of the requirements, and that Saporito would have been qualified as I&C technician to work the Palo Verde Unit 1 (TR 812, 813). He also would have been qualified under the ANSI requirements. There are no long, unexplained gaps in his employment. His experience could have been used to their advantage. He had the type of experience they were looking for for the Unit 1 outage (TR 813).

80. All of the individuals that were eventually selected had experience similar to Saporito's.

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Larson looked at the resumes and gave Warriner back a stack of resumes and said these are the people we'll take. Larson did not keep track of who he selected, but he thought he selected Saporito (TR 814). Larson, in reviewing Saporito's resume, felt that he would have selected Saporito and then turned his name over to Frank Warriner (TR 815).

#### ROBERT WAGNER

81. Robert Wagner testified that he is employed by APS as an I&C foreman for Unit 1 at the Palo Verde Nuclear Station. He has been employed at Palo Verde since June of 1985 (TR 817, 818). Wagner worked at Unit 2 during its outage in the fall of 1991, supervising a crew of four from Unit 1. During the Unit 2 outage, he did not hear Saporito's name mentioned (TR 818). Wagner identified CX-32 as a document that he signed.

82. Wagner stated he had no involvement in the actual selection of technicians for the Unit 1 outage although he had discussions with The Atlantic Group concerning those employees that were selected. He reviewed only the resumes of Edward Thornburg and Dave Hatch which were submitted by TAG (TR 820). After the selections were made, he reviewed resumes but before the selections were made, he only reviewed the two resumes mentioned. Around December 26, 1992, he was given resumes by Frank Warriner in two bundles: one with instructions to tell TAG that those people were selected and another bundle with instructions of those individuals who were not selected (TR 821). Then he put the resumes in his drawer for storage.

83. Employee Concerns advised Wagner that David Larson initially selected Saporito. On the top right-hand corner of each resume there were yes's and no's that indicated an individual met the requirements for instrumentation for the outage. Those yes's and no's had nothing to do with selection for the outage.

84. In reviewing CX-24, Wagner said that there were no yes's and no's (TR 825) which indicated that CX-24 was not the original resumes that David Larson reviewed. Wagner was informed that the yes's and no's were written by David Larson.

85. Wagner had no knowledge why Saporito wasn't chosen by Warriner for the Unit 1 job. Wagner gave those resumes (with the yes's and no's) from his desk to Employee Concerns. He believes he gave them to a man named Mike Mann (TR 826).<sup>4</sup>

#### NOLAN DANIEL ROBERTSON

86. Nolan Robertson testified that he is employed by APS at the Palo Verde Nuclear Station as a Quality Investigator the Employee Concerns Program. He has worked for Palo Verde for two and one-half years (TR 829). When employees or managers have issues that they bring to the program, it is his responsibility to open a file, conduct an investigation, sometimes assigns issues to management for investigation, and essentially looks into the issues or concerns.

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87. In his official capacity, he met with Mr. Saporito and Mr. Stewart, the manager of Employee Concerns Program on December 30, 1991, after Mr. Simko identified an employee concern and Mr. Saporito as an individual who possibly could provide some additional information. Based upon that, Robertson requested a meeting to talk to Mr. Saporito to see if, in fact, he could give additional information concerning Simko's concern (TR 830, 831).

88. Saporito thought he was being discriminated against and that he didn't think he was going to be selected to work the Unit 1 outage as an I&C technician.

89. Saporito also brought up situations which arose at Florida Power and Light Company (TR 831). Robertson recalled that Saporito was concerned about his past with Florida Power and Light and how that situation developed into litigation, that he eventually left Florida Power and Light and didn't want to be involved in something like that again. Robertson's recollection was that Saporito said, as a result of the Florida Power and Light situation, family problems developed and it was a very traumatic experience (TR 832).

90. Robertson assured Saporito that the concern was Mr. Simko's and not his in any way. During the meeting, Mr. Saporito indicated that he raised safety issues and that his supervisor, in particular Izadore Chavez, was handling those issues, and Saporito was very complimentary in the manner in which they were being addressed. He

wanted confidentiality, and he felt the issues were being taken care of (TR 834).

91. Robertson conducted an investigation, however, he was unaware that Larson selected Saporito and gave Saporito's name to Frank Warriner for selection and wrote on Saporito's resume words to the effect that he was being selected.

92. Robertson had no idea why Warriner did not select Saporito (TR 840). Robertson's meeting with Saporito was December 30, 1991, and his interview of Frank Warriner occurred later. Robertson did not ask Warriner whether Warriner knew that Saporito had been fired at Florida Power and had a lawsuit against Florida Power (TR 842). It was one of Robertson's concerns whether Warriner made a decision not to hire Saporito based on Saporito's past whistleblowing activities.

93. David Larson's testimony that he selected Saporito was news to Robertson (TR 843).

94. In reviewing CX-33, Robertson testified that on January 3, 1992, he notified Saporito that no selections had been made regarding the Unit 1 outage.<sup>5</sup> Saporito received the wrong information, but it wasn't intentional (TR 845).

95. Robertson identified CX-34 as Warriner's statement of the process on how he made selections for the Unit 1 job (TR 846). In Frank Warriner's statements he indicates that he reviewed the resumes, gave them to Dave Larson for review, that he met briefly with Steve Grove, discussed the work, safety, productivity, and interfacing utilities of the contractors who had worked for him. Then he took Dave Larson's input and made a selection.

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96. Referring to APSX-4, page 3, paragraph 4, Mr. Saporito indicated that on January 2, 1992, he met with Bill Engleking, TAG's site administrator. During the meeting, he asked Engleking if a list of I&C contractors selected by APS/PVNGS for the Unit 1 outage had been given to The Atlantic Group. Engleking stated that a list did exist. He reached for the list which was on his desk, and then Engleking told Saporito that his name did not appear on the list provided by the APS. Engleking then offered his business card and provided Saporito with a phone number for The Atlantic Group based in Norfolk, Virginia. Engleking recommended that Saporito contact The Atlantic Group for another job assignment since he was not selected by APS to support the Unit 1 outage. Saporito asked Engleking what the criteria was for the Unit 1 outage in selecting I&C contract technicians. Engleking stated that he did not know the criteria utilized (TR 864, 86S). In Saporito's statement, there is no mention by Saporito that Engleking threatened Saporito (TR 866).

#### WILLIAM CONWAY

97. William F. Conway testified that he has been employed by APS since May of 1989 as the Executive Vice President for Nuclear Operations (TR 890, 891). He is responsible for the safe operation of the Palo Verde Nuclear Generating Station. There are three units at Palo Verde, and he has authority and responsibility for the entire facility (TR 891).

98. Although not a college graduate, Mr. Conway has nuclear related training and is a qualified senior reactor operator and an instrument and control technician (TR 896). He was employed in the New England Electric System from 1953 until 1968. He was the initial instrument and control supervisor at the Vermont Yankee Nuclear Power Plant in August of 1968. Conway was employed by the Florida Power and Light Company as a Senior Vice President Nuclear in early February of 1988, and terminated in early May of 1989 (TR 899). In this position, Mr. Conway was responsible for the safe operation of the St. Lucie Nuclear Station and the Turkey Point Nuclear Station (TR 900).

99. While Conway was employed at Florida Power and Light, Conway learned that Saporito's employment was terminated at the Turkey Point Nuclear Station. Conway also knew that Saporito identified safety concerns to the NRC (TR 902). Mr. Conway recalled a radio broadcast in March or April of 1989 on the West Palm Beach radio station wherein Saporito was interviewed and identified various concerns relative to Turkey Point (TR 905). In the interview, Saporito may have said that he was terminated from Turkey Point because he raised these concerns. Saporito's termination from Turkey Point Nuclear Plant and his raising safety issues at Turkey Point Nuclear Plant were high visibility issues with the news media (TR 907).

100. During Conway's employment at Florida Power and Light, Conway overheard conversations among other employees regarding Mr. Saporito at the Turkey Point Plant. These conversations indicated that Saporito was a capable I&C technician who occasionally raised concerns to his supervisor about technical issues. The foreman or supervisor contacted by Saporito attempted to resolve these issues (TR 909, 910). Conway overheard these conversations from John Odum, Vice President, who is directly responsible over Turkey Point outage in selecting I&C contract technicians. Engleking stated that he did not know the criteria utilized

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(TR 864, 865). In Saporito's statement, there is no mention by Saporito that Engleking threatened Saporito (TR 866).

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101. Sometime in August or September of 1991, Mr. Conway discussed Saporito with Mr. James Levine, Vice President of Nuclear Production, who reports to Conway. Mr. Levine informed Mr. Conway that Mr. Saporito was working as an I&C technician for the Unit 2 refueling outage and that Saporito previously worked at Florida Power and Light. Since Levine knew of Conway's previous employment at Florida Power and Light, he wanted to know if Conway knew Saporito. Conway acknowledged to Levine that he was aware of Saporito's past employment and may have discussed Saporito's firing from Florida Power (TR 892, 927).

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102. Conway's instruction to Mr. Levine was that Saporito should be treated as anyone else. Conway was not aware that Levine contacted Mr. Simko during this time period about Saporito, nor was he aware that Simko learned about Mr. Saporito's past employment at Florida Power (TR 928). Conway was not certain how Levine found out about Saporito (TR 929).

103. On or about December of 1991, Conway became aware through Palo Verde Concerns Program that Saporito was raising concerns at Palo Verde (TR 924, 925). Conway took no action causing Saporito's non-employment at the Palo Verde Unit 1 as an I&C technician (TR 941, 942).

104. Saporito was already physically at the Palo Verde site when Conway received Levine's inquiry about him (TR 943). Conway was uncertain how Levine knew of Saporito's presence. There were no subsequent conversations with Mr. Levine (TR 944). When Conway told Levine

to treat Saporito like everyone else, he meant that he should not be looked upon as being a different type of employee because of his history.

105. It was widely known in the industry that Mr. Saporito had some situations with Florida Power and Light Company. Conway wanted the message to go out because of that, there was no indifference associated with the treatment of Saporito. Conway expected his wishes to more or less trickle down to all employees and believed that Levine would tell other people to treat Saporito the same as everybody else. Conway did not tell Mr. Levine to report back to him nor did he tell him specifically who to contact (TR 945).

106. Mr. Conway expects any individual who has an issue at the Palo Verde Nuclear Station to bring it to the attention of his immediate supervisor for resolution. He believes that those kinds of things should be resolved within the line organization. Employees have been advised many times that there is no room to proceed in the face of uncertainty, and the job stops until resolution of that uncertainty is gained through that individual's management line organization (TR 950). Mr. Conway identified APSX12 as a memorandum dated April 13, 1991, which he signed to directors and managers at the station relating to procedural adherence and maintenance of commitments. It pertains to proceeding in the face of uncertainty (TR 951).

107. Mr. Conway recognized the name of Frank Warriner and stated that he is in management chain in Unit 1. Mr. Conway expected Mr. Warriner to receive the (TR 954, 955) communication that Mr. Saporito was to be treated no different from anyone else. Mr. Conway wanted this communicated to the lowest level of management, the foreman level (TR 957). There was a part two to the message to Levine which was to go down to the foreman level, the statement, "he is to be treated like everyone else" is putting the cart before the horse meaning the message was "he had problems at Florida Power and Light, he was terminated, and now he's here and I want him to be treated like anyone else." That really was the entire message.

108. Mr. Conway could not say that the message was to go to the Units 1 and 3 managers because Saporito was working for Unit 2, but he certainly wanted the message to be conveyed to

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the Unit 2 individuals. Conway took no specific action to ensure that the message go to only the Unit 2 personnel.<sup>7</sup>

#### DAVID LARSON - RECALLED<sup>8</sup>

109. As Larson stated in previous testimony, Frank Warriner gave him a stack of resumes to review (TR 965). This was December 17, 1991. His exact words were, "review the resumes to select the people that we wanted to work in the Unit 1 outage." Larson reviewed ALJX-S for identification and identified the exhibit as the exact resumes which Frank Warriner gave him to review. Larson made notes on the resumes and recreated in court what he did with the resumes for Frank Warriner.

110. Larson created a "yes" pile, which consisted of the resumes of individuals Larson recommended to Frank Warriner to hire for the Unit 1 refueling outage (TR 971). The "yes" pile was admitted into evidence as ALJX-S (TR 984). The resumes included in the "yes" pile were: Dwight Brown, Richard Abarr, Dennis Dessomeau, Stanley Dixon, Robin F. Drake, Robert Wasaak, Marvin Zimmerman, John Putnam, Robert Teske, Billy Reeves, Lawrence Enders, and Thomas Saporito. All of the individuals Larson recommended for hire were selected by Warriner except Saporito (TR 972-978). Larson noted a "yes" in the right-hand corner of Saporito's resume, and had no idea who placed a "no" on the resume (TR 978).

111. Of all of the individuals Larson recommended to Warriner for selection for the Unit 1 refueling outage, the following individuals did not work the Unit 1 outage: Richard Abarr, Dennis Dessomeau, Bill Reeves, and Tom Saporito (TR 980).<sup>9</sup>

112. Larson also had a "no" pile which consisted of the resumes of four individuals. This was admitted into evidence as ALJX-6 (TR 981, 984). Larson testified that the "no" pile included the resumes of Larry Fowler, William McCullough, and Arthur Hughes. None of these individuals were selected by Warriner for the Unit 1 refueling outage (TR 981-982). The final resume is that of Kevin Moe, and he "rolled" which means there was an opening for a Unit 2 plant technician, and Moe got the job.<sup>10</sup>

113. Larson put the "yes" pile and the "no" pile of resumes on Warriner's desk and, subsequent thereto, Larson did not discuss with Warriner his recommendations (TR 984). It was Larson's belief that Warriner always accepted his recommendations, although he could not say that for certain. Warriner has never come back to Larson and said, "I looked at yours but decided differently." That conversation has never taken place (TR 986).

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#### JAMES MICHAEL LEVINE

114. James Levine testified that he is Vice-President of Nuclear Production at the Palo Verde Nuclear Generating Station, and he has held this position for three years (TR 988, 989). Levine reports directly to Bill Conway, Executive Vice President for Nuclear Operations. The Units 1, 2, and 3 plant managers report directly to Mr. Levine (TR 989). The Unit 2 maintenance manager is Bill Simko. Below the maintenance managers are the I&C department heads. During the time period, August through December of 1991, Steve Grove was the I&C Department Head and Bill Simko was the Unit 2 Maintenance Manager (TR 990). Bill Conway hired Mr. Levine in September of 1989 (TR 991).

115. Mr. Levine testified that the CX-35 addresses procedures and the need to follow them. If a person cannot follow them, then he should stop work and address the issue and get it fixed before he proceeded (TR 995). Levine stated that APSX-12 was a document signed by Mr. Conway dated October 24, 1991, and its subject is adherence to procedural requirements to ensure continuation of regulatory commitments (TR 997). Levine identified APSX-11 as the standards and expectations published for all employees (TR 998), dated April 9, 1991 (TR 999) and stated

that it was distributed to all Palo Verde employees, contract employees, and visitors. In addressing concerns about procedure compliance, Mr. Levine interprets the memos to be a statement that they had to do a better job of following procedures (TR 999, 1000). The memos try to communicate that message.

116. Prior to the Unit 2 outage in the fall of 1991, Levine had a discussion with Mr. Conway about Mr. Saporito and his employment at Florida Power and Light Company (TR 1002). A call had come in for Mr. Conway who was out of town. When the person calling found out that Conway was not there, he asked to speak to Levine. The individual stated he was with Florida Power and Light (TR 1004) and told Levine that he wanted to inform Conway he understood Mr. Tom Saporito was working at Palo Verde. Levine did not recall the name of this individual (TR 1003). Levine was aware that Conway was a former employee of Florida Power and Light (TR 1007). When Mr. Conway came back to town, Levine gave him the message. Levine did not recognize the name Saporito. At one point, Levine asked through the maintenance organization if they had an employee named Tom Saporito. He believed he called Bill Simko who was the maintenance manager at the time (TR 1006).

117. At the time he received the call, Levine made no ties concerning the name Saporito (TR 1009). Conway may have sent the message that he did not want Saporito treated any differently from anyone else, but Levine had no recollection of a conversation telling Levine to disseminate that information throughout the organization.

118. Levine asked Mr. Simko to find out if Tom Saporito was working at APS. Mr. Simko informed Levine that there was someone under contract with that name (TR 1010, 1011). Somewhere along the line, Levine was informed that Saporito had raised concerns at Florida Power and Light. Mr. Simko's obvious question was why Levine asking questions about Saporito since he doesn't typically ask him everyday about people working there. Levine's direction to him was to treat Saporito like every other employee and that if he did voice concerns, make sure those concerns were dealt with (TR 1011).

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119. Levine did not recall being aware concerns raised by Saporito until it was identified that he was going to Employee Concerns (TR 1014, 1015). From August, 1991, 1992, Levine talked to Mr. Frank Warriner in routine meetings. (TR 1015). The managers and supervisors met each morning at 9:00 to discuss the activities during the outage. Other people from other units could very well have been in those meetings. These were meetings conducted by the Outage Manager and the Plant Manager, and Levine would typically try to make it to those meetings. Primarily, Unit 2 was involved. Managers from Units 1 and 3 may have been there (TR 1016).

120. When Levine talked to Conway about Saporito, Levine probably asked the significance of the call from the individual that Levine did not know. Levine believed they had a short discussion that Mr. Saporito had voiced some concerns at Florida Power and Light (TR 1018). Levine had about two or three conversations with Conway about Saporito (TR 1021). The only person Levine could remember talking to about Saporito other than Mr. Conway was Mr. Simko.

Levine recalled one other very brief conversation with Mr. Grove (TR 1023). Levine could not recall whether the caller said anything specifically about where Saporito was working, but he called Bill Simko because that was the primary place they were bringing in people (TR 1024).<sup>11</sup>

#### JAN GILLARD

121. Jan Gillard testified that she is currently employed with The Atlantic Group as a Site Administrator at the Palo Verde Nuclear Power Plant. She was so employed during the period, September through December of 1991 (TR 1035). In the middle of December of 1991, she received a verbal request from APS requesting I&C technicians for the Unit 1 outage. She didn't take the call, and Gillard believed that Bill Engleking told her that they needed I&C techs for the next outage (TR 1036). On about December 15, 1991, she submitted about 18 resumes to APS, including 14 or 15 resumes of I&C technicians that were employed at Unit 2. This was about the 15th of December. Saporito was one of the technicians working at Unit 2 (TR 1037). Gillard believed they wanted 13 individuals (TR 1038). At the time she submitted the resumes, Gillard did not have contract labor requests in her hand (TR 1039). She had them just before the Unit 1 outage began in January of 1992 (TR 1040).

122. Gillard identified CX-36 as an accurate statement that she gave over the telephone to somebody with the Department of Labor (TR 1041, TR 1042).

123. Gillard testified that she gave the resumes to Bob Wagner (TR 1042). Wagner called Tina Biebl on December 23, 1991. Gillard had no personal knowledge of what Wagner told Biebl (TR 1043). Gillard said that APSX-3 was written by Tina Biebl (TR 1044). Bill Engleking completes the contract labor requests (TR 1046). Engleking received the contract labor request from The Atlantic Group's Contract Department at Palo Verde.

124. Gillard contacted I&C technicians and gave them a tentative date to report for work for the Unit 1 outage February 1, 1992 (TR 1051). She couldn't testify that she contacted all 14 people. The Atlantic Group recruiters had previously contacted them (TR 1052). Saporito's resume was

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one of the resumes that she gave to Mr. Wagner. It was up to APS to determine who they were going to select for Unit 1. She had no input (TR 1056).

#### THOMAS J. SAPORITO

125. Thomas Saporito testified that he is divorced and the father of three children, ages 10 through 16. His family resides in Palm Beach, Florida, and he is presently unemployed (TR 1100, 1101).

126. In reviewing Saporito's employment history, from May 15, 1992, to June 25, 1992, he worked as a contract I&C technician for General Technical Services on assignment with the Florida Power Corporation's Crystal River Nuclear Station. Prior to that he was employed with

the Sun Technical Services, a company based in Mission Viejo, California. He was hired as an I&C technician by them to work at the Houston Lighting and Power Company South Texas Project in Wadsworth, Texas. He was employed there from January 13, 1992 to February 21, 1992 (TR 1101). Prior to that, Saporito was employed by The Atlantic Group based in Norfolk, Virginia, as an I&C Technician to work at the APS Company's Palo Verde Nuclear Station. Saporito's employment period was from September 29, 1991, through December 31, 1991. His supervisor was Steve Grove.

127. Prior to working at APS, Saporito was employed by the Jupiter Hilton, a hotel in Jupiter, Florida, as a maintenance engineer from April 23, 1991, until June 7, 1991. His supervisor was James Adair (TR 1102). Prior thereto, Saporito was in business for himself. He had a company called Air Service Corporation. It was an air conditioning service related company based out of Jupiter, Florida. He was the owner-operator. Saporito began that company in 1989, and it's existence terminated when Saporito accepted employment with The Atlantic Group. Saporito maintained his private business while at the Hilton.

128. Saporito's employment with Florida Power and Light began March 12, 1982, through December 22, 1988. His last supervisor there in 1988 was Greg Verhoven. His work locations were the Saint Lucie Nuclear Station and the Turkey Point Nuclear Station. He was an I&C technician for Florida Power (TR 1105).

129. Saporito testified that while with 'Florida Power and Light Company, he was involved in Department of Labor litigation against Florida Power and Light; namely, 89-ERA-7 and 89-ERA-17 and 90-ERA27 and 90-ERA-47. The first case was filed on or about December 1988 or January 1989. The second case was filed in 1990, and the case before me is Saporito's third case. There is a consolidated fourth consolidated case, Saporito vs. Houston Lighting and Power and Georgia Power Company. That's identified as 92-ERA-38 and 92-ERA-45 (TR 1106, 1107).

130. Concerning the cases against Florida Power, they are before the Secretary of Labor. The fourth case against Houston Lighting and Power Company, et. al. was filed in January 1992. It should be heard sometime in 1993 (TR 1109).

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131. Saporito caused an NRC investigation at Florida Power (TR 1110). Shortly after Saporito's departure from Florida Power and Light, he organized a non-profit organization called the Nuclear Energy Accountability Project. It's purpose was to monitor NRC and utility actions relevant to nuclear power generation (TR 1113).

132. Saporito has an associate degree in specialized technology and electronics technology from Penn Technical Institute. He received his degree in September of 1973. He has a high school diploma which he received in Pennsylvania in May of 1971. Saporito was certified by APS as an independent worker and I&C technician. The first certificate is dated September 11, 1991. A second certificate is for the conduct of maintenance frames, and it is dated October 13, 1991. The third document he has from Palo Verde Nuclear Generating Station is a certificate for technical

skills dated October 12, 1991. He also has a certificate of achievement for training he received at the Saint Lucie Nuclear Station approximately in 1986 or 1987 issued by the Combustion Engineering Company (TR 1114).

133. As previously stated, Saporito was employed by Florida Power and Light from March 22, 1982, until December 22, 1988, when he was discharged for refusing to disclose information to management that he had released to the NRC (TR 1115). Saporito testified that his termination and trial in 1988 were highly publicized, and he has frequently been in contact with the media through press releases, interviews, and television appearances addressing issues of safety concerns at Turkey Point (TR 1117).

134. Saporito served as an instructor at Digital Electronics at ATI Career Training Center on December 14, 1989. Acting as a conduit for information between workers at Turkey Point and the NRC, Saporito made allegations of safety concerns to the NRC and released the allegations to all media sources. In addition, Saporito petitioned to intervene on December 27, 1990, on behalf of himself and the Nuclear Energy Accountability Project (N W ) in an atomic safety and licensing board proceeding in which Florida Power and Light tried to obtain modifications on the technical specifications for their license to operate the new nuclear units at Turkey Point (TR 1120).

135. Approximately mid-September of 1991, Saporito spoke to Ellen Simmons, a recruiter for The Atlantic Group, regarding assignment as a contract I&C technician at the APS Palo Verde Nuclear Station. Simmons told Saporito that his assignment was for back-to-back refueling outages at Palo Verde, and that he would be required to attend technical training classes and pass exams to become an independently qualified technician (TR 1124). Simmons told Saporito that his employment with The Atlantic Group was dependent on his successful completion of required training. Saporito expressed his concern that Palo Verde was 2600 miles away from his residence in Florida, and he needed assurance that his employment would be continued at Palo Verde Unit 1 outage if he was going to travel such a great distance (TR 1126). Simmons told Saporito that it was important to be independently qualified because that's what APS preferred. Also, attendance and performance during the course of the Palo Verde Unit 2 outage would be monitored and considered by APS and TAG management in selecting I&C technicians for the Palo Verde Unit 1 outage (TR 1128, 1129).

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136. TAG site manager, Vance Peddis, Bill Engleking's boss, addressed Saporito's group (of I&C technicians) and stressed the importance becoming independently qualified technicians because TAG's labor contract with APS required independently qualified I&C technicians not only for the Palo Verde Unit 2 but for the Palo Verde Unit 1 outage (TR 1130).

137. One of the APS instructors at the Training Facility, Jeffrey Freitas, addressed his entire class and also stressed the importance of becoming an independently qualified I&C technician. Freitas said that he suggested that a pay increase of .00 per hour be given to the technicians for becoming independently qualified to serve as an incentive to the contractors (TR 1133).

138. Saporito testified that he made an aggressive effort to become independently qualified as an I&C technician because he wanted to work the Palo Verde Unit 1 outage (TR 1131).

139. In early October of 1991, during one of the contractor training classes, Saporito challenged APS instructor, Doug Doty, about the accuracy of Doty's stated answer to a test question concerning the proper calibration hook-up for a Rosemont Transmitter used at Palo Verde (TR 1134). Saporito's answer was marked wrong and two points were deducted from Saporito's test. A lengthy debate ensued, and Doty became excited telling Saporito that he passed the exam and not to worry about the two points. However, Saporito persisted in challenging Doty about the accuracy of Doty's instructions concerning the Rosemont Transmitter. Doty became angry, charging him with using up valuable class time over nothing. The discussion took place over a 30-minute period before the entire class (TR 1135).

140. Approximately the middle of October of 1991, Saporito arrived at the Palo Verde I&C Shop, and he immediately realized that his reputation of a being a whistleblower preceded him to the Palo Verde site. It was openly announced at Palo Verde by APS' employee, Steve Groeneveld, and Rex Smith, his previous co-workers at Florida Power and Light's Turkey Point Nuclear Station in Florida. Saporito heard Groeneveld shout across the shop, "Hello, Saporito." "I heard you were coming here." "Is that the same Tom Saporito from Florida?" Groeneveld made that statement directly to Saporito (TR 1136). Rex Smith made the comment to Saporito, "I even saw you on CNN Cable TV News Network." Approximately 40 people were within earshot of Smith's and Groeneveld's statements (TR 1137).

141. Saporito testified that his embarrassment and humiliation continued almost on a daily basis. Other APS and TAG employees questioned him about his whistleblowing activities and the Florida Power and Light's Turkey Point Nuclear Station (TR 1141). Saporito said that he felt helpless and unable to control these conversations about his previous whistleblowing activities. He sensed an attitude change among his co-workers at Palo Verde. They were less friendly towards him, and they tended to stay away from him (TR 1142).

142. Saporito believed that he was among the first group of contractors to become independently qualified as I&C technicians at Palo Verde, approximately October 23, 1991. Izadore Chavez conducted his oral examination and after he passed, Chavez congratulated him telling him how

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important it was to APS that contractors qualify as technicians qualified to work independently. Chavez stated that independently qualified technicians would be preferred in the selection process for the Unit 1 outage.

143. In late October of 1991, Saporito received his first job assignment as an independently qualified technician to calibrate pressure switches. Two other contractors, Bill McCullough and Billy Reeves, were assigned to work with him. Neither Reeves nor McCullough were independently qualified technicians, and so Saporito was given control of the work package for the job by their supervisor, Ken Meyer. McCullough and Saporito had their security badges and

could freely access Palo Verde site. Reeves had not received his security badge and was required to be escorted by a badged individual, and McCullough was assigned as his escort (TR 1143, 1144). During this particular job, Saporito and McCullough came to disagree about the calibration accuracy of the pressure switches and a heated discussion ensued. McCullough began to leave the work area without Reeves. Saporito told McCullough that he had to maintain a direct line of sight with Reeves as his escort. McCullough made a derogatory comment and gesture to Saporito and left without taking Reeves. After McCullough returned, Saporito informed McCullough that he was taking responsibility as Reeves escort and demanded that McCullough give Saporito Reeves' escort badge. McCullough threw the escort badge at him and made another derogatory comment. As the job continued, Saporito testified that the pressure switch calibration could not be achieved within the tolerances permitted by the work documents. Saporito told Reeves and McCullough that he stopping the job to consult Meyer (TR 1144). McCullough wanted to continue the job inferring that Saporito should just falsify the work document (TR 1145). Saporito raised both the security and work control issue to Meyer, and Meyer appeared excited and reacted that the matter appeared to be a personality clash between Saporito and McCullough and that McCullough would be reassigned to another crew. The next day, Saporito was confronted at the Unit 2 I&C shop by Bill McCullough about his whistleblowing activities at Turkey Point, and McCullough challenged Saporito about raising concerns to APS managers regarding his performance. This was done in the I&C shop with other workers present (TR 1147). After Saporito's shift ended, McCullough followed him to the APS parking lot and threatened him not to raise any more concerns about him to APS managers. A heated discussion ensued resulting in McCullough forcibly pushing Saporito into a security fence. This event was witnessed by Robert Waszak, Joe Marlow, and several other TAG contractor and APS employees. McCullough continued to challenge Saporito with physical violence, but Saporito did not participate for fear of losing his job (TR 1147).

144. In late October of 1991, Saporito was assigned to work with TAG contractor, Joe Marlow, in the calibration of Magnatrol lever controller associated with the station heater. Saporito and Marlow got into a heated discussion about the proper calibration method and Marlow walked off the job. At the end of Saporito's shift, Saporito raised the concern to Ken Meyer concerning the proper method in calibrating the heater lever. Meyer appeared to Saporito to be frustrated with him (TR 1149). It appeared to Saporito that every time he submitted an instruction change request (ICR) to Meyer, he became more and more upset and frustrated with Saporito (TR 1151).

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145. Saporito's work environment seemed to have worsened. Workers went out of their way to avoid him, and APS managers seemed colder to him, especially Meyer. He would greet Warren Jones, APS manager, at shift changes, but Meyer would just ignore him.

146. Approximately November of 1991, Saporito was assigned to work with Randy Weldon, an APS I&C technician. His direct supervisor was Izadore Chavez. They were assigned a job involving the installation of speed probes on a reactor coolant pump. During this calibration, Saporito heard loud banging sounds over the telephone while concurrently monitoring changes to the signal strengths of speed probe. When Saporito asked Weldon what the banging noise was,

and told him it was affecting the signal strength of the speed probe, Weldon told him that they were hammering on the mounted brackets securing the speed probe to the reactor coolant pump shaft housing to achieve to required calibration tolerance of the procedure. The reactor coolant pump is a safety related piece of equipment. Saporito was concerned that the sensitive speed probes may have been damaged from the shock of the hammering, and that Weldon had blatantly violated a safety-related Palo Verde procedure. Saporito raised his concerns to Chavez verbally and in writing on November 26, 1991. Chavez appeared tense and stated that he would look into the matter. Several days later, Chavez approached him and said that his suggestion about using additional slugs on the reactor coolant pump speed probe calibration was a good idea (TR 1151, 1152). When Saporito asked him what was done about the safety-related procedure violation, Chavez became tense and said that he had talked to Weldon about it. When Saporito asked Chavez if he had generated a non-compliance report to the NRC, Chavez became noticeably upset and walked away (TR 1153).

147. Approximately early December of 1991, Ken Meyer assigned Saporito to work with James Rider on the loose parts monitoring systems. This system is designed to detect a loose part fragment in the reactor coolant system, therefore, the equipment is safety-related. Their job was to install reactor sensors called accelerometers at various locations on the reactor coolant system piping and equipment and to calibrate the loose parts monitoring systems electronics and alarms and finally to functionally test the system for operational readiness. This was a large job transpiring over the course of several days and several crews (TR 1153). While waiting for Rider to arrive at work one day, Saporito reviewed the work package in greater detail and discovered an error with the printed circuit card, discreet parts location print concerning the test point location for signal sampling in the calibration procedures. When Saporito raised his concern about the loose parts monitoring system to Meyer, he was at his desk in the supervisors' office area, Meyer became very excited and angry. He said that he was tired of Saporito raising concerns, that the jobs had to get done so the unit could be brought back up. When Saporito continued in raising his concern to Meyer, Meyer stood up from his desk and began shouting at him to get on with the job. Saporito left his office and went to his work bench in the shop and began to write up an ICR when Meyer came out of his office to his work area in the shop. In the presence of co-workers, Meyer yelled at him to get back to work and accused him of unnecessarily stopping the job (TR 1154).

148. Approximately early December of 1991, Saporito testified that he raised a concern to Ken Meyer concerning the power supply associated with the loose parts monitoring system. After workers Cruz and VanGemert reinstalled the power supply in the loose parts monitor mainframe

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and after co-worker and Saporito resumed their work in calibrating and functional testing the system, Saporito noticed several soldering joint to be cold soldering joints. Saporito raised his concerns to two APS systems engineers who were at the job site (TR 1155). Then he told Ken Meyer about the cold soldering joints and that the two engineers agreed that there was a problem. Meyer didn't want to hear anymore. He said, "don't worry about it, the job's going to be turned over anyway to another shift."

149. On or about December 13, 1991, Chavez assigned Burch and Saporito to work a job of installing two accelerometers on the reactor head studs (TR 1156, 1157). The reactor is a safety-related system; therefore, the loose parts monitor is a safety-related system (TR 1159). Chavez instructed Saporito to remain after completion of this job and support B&W contractors who were to lay down insulation (TR 1160).

150. While monitoring the installation of the insulations, Saporito noticed that the insulation did not line up to the studs, and he believed that the sensors were on the wrong studs (TR 1161). They stopped the job at this point, which seemed to upset the workers because everyone was in a critical path and there was a sense of urgency to get the job done (TR 1162). On examination, the studs were in the wrong holes and the accelerometers were physically on the wrong stud (TR 1164). There was an attempt to correct the situation, but it still wasn't done right and at one point Saporito told Chavez that he considered it to be a non-conformance issue (TR 116S). Saporito believed that an NCR should have been generated not just because the studs were mounted in the wrong holes, but because they weren't numbered.

151. The day after the assignment, co-worker Burch, asked Saporito to sign off on appropriate paperwork, and Saporito refused (TR 1166). Saporito felt that he should have signed off while they were performing the job. Secondly, since he was 10 feet away from Burch and wearing ear protection, he could not hear the tool clicking to determine if Burch had achieved the correct torque. At this time, Saporito did not believe that the issue of the studs being in the wrong holes and the accelerometer being on the wrong studs was resolved (TR 1167).

152. After Saporito refused to sign the paperwork, Burch went into Chavez' office and Saporito heard a loud discussion. Chavez told Saporito that he and Ken Meyer wanted to talk to him. Both supervisors confronted him about not signing the paperwork (TR 1168). Saporito explained to them that his refusal to sign the documents was based on the fact that he did not independently verify the work, and the work documents were not taken on the job (TR 1169). Chavez and Meyer were very upset because Saporito's stance on this particular issue would delay the outage (TR 1173).

153. At one point, Saporito and Chavez were alone in the room together and Chavez told him, "Tom, I know what your capable of." Saporito said, "You're referring to Florida Power and Light, aren't you?" Chavez said, "Yes, I am." (TR 117S). Saporito identified CX-30 as a document that he prepared on December 14, 1991, concerning the incident of the studs being in the wrong holes and the accelerometer being on the incorrect head studs (TR 1176).

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154. On January 2, 1992, Saporito went to Engleking for his check, and he said to Engleking that he understood that there was a list for contractors hired on Unit 1. Engleking had the list and corroborated the fact that Saporito's name was not on it (TR 1191). When Saporito asked why he wasn't on the list, Engleking said that he didn't know (TR 1192). Saporito told Engleking that he was going to report to the NRC the problems at APS and Engleking became excited and said that this would not be a good career move for Saporito. Engleking gave Saporito his business card

and told Saporito to call The Atlantic Group's home office in Norfolk for another assignment. Saporito picked up his check and left (TR 1197)

155. On or about January 12, 1992, Saporito received a call from Kathleen of Sun Technical Services out of California who told him that Houston Lighting and Power had a position and asked if he was interested (TR 1201). This was for \$18.00 per hour, and he had been making \$23.00-\$24.00 per hour at Palo Verde. The job was for one year in length. Saporito accepted the job, and the next day he received a package from her with a signed contract (TR 1202).

156. When Saporito was leaving for his new job, he saw Engleking in the parking lot of his apartment complex (TR 1203). After Saporito told Engleking about his new job and that he had gotten no response from TAG, Engleking told him "well, what did you expect?" or words to that fact. Engleking said that Saporito had a reputation from Florida Power and Light and TAG had a big contract with APS and they did not want to compromise their contract (TR 1204).

157. Saporito testified that after raising a safety concern, he does not necessarily think it's his obligation to cooperate with whomever is going to resolve the concern. He felt it was his duty to cooperate with the NRC but not necessarily the Employee Concerns Program. Saporito testified that a serious concern exists at Palo Verde that the Employee Concerns Program has no confidentiality (TR 1217).

158. Saporito said that it was not routine to discuss technical issues with management. He would approach management only if he felt the violation of procedure was occurring. They did not have daily meetings; they had daily job assignments (TR 1221). If someone had a concern about something, they could raise it, but this did not happen on a routine basis (TR 1222).

159. Saporito was involved in an interview/debate on television by Florida Power and Light, that had been set up with a local public television station in Miami, Florida. The NRC was invited and the NRC Region II personnel showed up (TR 1228). Saporito had been on television more than once (TR 1229) and on radio three or four times. He has been interviewed by the print media about 20 times. Saporito has never shunned publicity. Saporito has written to President Bush asking him to give direction to the NRC and copied that letter to the media (TR 1231).

160. Saporito wrote to Gorbachev and compared the Turkey Point Plant to the Chernobyl accident. He felt that there was such a loss of control at Turkey Point, there could be a chain of events happen where the reactor would overheat and it could not be controlled just like Chernobyl (TR 1231). When Saporito wrote to Gorbachev, he sent copies of the letter to the media (TR 1232).

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161. Saporito filed about SO labor grievances while employed at Florida Power and Light at their Turkey Point facility (TR 1236). These grievances included among other things, meal tickets (TR 1237) and voting for presidential holiday with time off (TR 1246, 1247).

162. Saporito worked with Groeneveld, Rex Smith, W. F. Conway, Mike Van Gemert, Glenn Smith, and Rich Abarr prior to all of them working at APS (TR 12SO-12S4).

163. Saporito testified that Palo Verde, Unit 1, is about a five-minute walk from Unit 2 (TR 1255).

164. Saporito did not know Frank Warriner while he was employed at APS. He thought he met Dave Larson at the Unit 2 outage but did not know him personally (TR 1259). Saporito's resume which was sent to Frank Warriner was incomplete (TR 1260). Saporito didn't list the hotels that he worked at but listed the nuclear experience (TR 1261). Saporito identified APSX-14 as a resume which was sent to Steve Grove on December 22, 1991 (TR 1265). The resume was sent to Grove so he would be to consider Saporito for employment during that period between the end of the Unit 1 outage and the beginning of the Unit 3 outage (TR 1266). As compared to the resume at APSX-13, the resume sent to Grove eliminated the hotel work and unemployment periods (TR 1267). Saporito testified that he did not intentionally omit information from his resume in order to convince people that he had worked for places for periods of time which were not accurate. However, the ATI employment from December 11, 1989, to May 10, 1990, which is listed on APSX-13 is not listed on APSX-14 (TR 1271).

165. APSX-15 was identified by Saporito as part of security documents for The Atlantic Group which he filled out when he applied for the Palo Verde job (TR 1271, 1272). Saporito testified that the ATI employment was also omitted on APSX-15 (TR 1278). Saporito was not concerned that if a background check included contact with ATI, that derogatory information would be discovered (TR 1265).<sup>12</sup>

166. Saporito admitted that the resume seen by Frank Warriner which is contained in ALJX-5, does not have reference to the ATI employment nor the Hilton employment nor the Double Tree Hotel employment (TR 1300). Nor does Saporito's resume show any period of unemployment (TR 1300, 1301).

167. Saporito testified that APSX-15 was the employment security background that he filled out for APS (TR 1302, 1303). Looking at the bottom of page 6, with regard to the RCA Corporation employment, Saporito testified that he worked for two different sections of RCA; he resigned from one branch and he was fired from another (TR 1303). On the security application for Palo Verde, in the questionnaire, Saporito indicated that he left for a better job (TR 1307).

168. Saporito felt that his employment included both outages for Units 2 and 1. The contract that he signed (CX-23) had a start date but no expiration date (TR 1317, 1318).

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169. Saporito testified that he did not believe he stressed his procedural writing background over other experience such as pneumatic and valve experiences. He had no particular reason for mentioning his procedure writing background on his resume (TR 1348).

170. Saporito told Chavez on December 14, about the incident involving McCullough shoving him into the security fence. Chavez said had he known about the McCullough incident, he would have had him run off the property or words to that effect. Saporito took it to mean that he was being discriminated against because nothing was done about McCullough except that McCullough was changed to another shift or crew (TR 1352, 1357). Saporito reported the incident to Ken Meyer in October and expected Meyer to do something about it (TR 1357).

171. Regarding APSX-5, Saporito was not able to provide the names of the security guards that he found sleeping (TR 1362, 1363).

172. Regarding the torquing of the accelerometer bolt, Saporito finally verified the torquing by means of accepting Ken Meyer and Izadore Chavez' indication that they were going to take Burch's word that the bolt was torqued (TR 1370). In Saporito's opinion, none of the torques could properly be independently verified by the procedures at Palo Verde. The only way to properly independently verify something by the procedures at Palo Verde is to independently do it yourself. During the meeting with Chavez and Meyer concerning verification of Burch's work, Saporito said that he would sign off with the understanding that Burch said he did it. Also, he could see the wrench move. But with regard to the inch-pound torque, it was technically impossible to independently verify that (TR 1372). Saporito eventually decided to sign off because Meyer and Chavez said that it would be okay to do so. This occurred on December 14, 1991 (TR 1373).

173. CX-39, page 13, was identified by Mr. Saporito as explicit directions regarding taking work documents into contaminated areas and how to bring them out (TR 1391). This document is relevant regarding the prior testimony concerning the day that Saporito worked with Larry Burch.

174. With regard to the safety-related concerns raised by Saporito, Saporito testified that Mr. Grove knew about the reactor head studs not being in the proper holes and not being numbered. He knew about the accelerometers and the loose parts monitoring or CEDMCS (TR 1424).

175. Saporito testified that he sent a letter to Mr. Gorbachev of the Soviet Union because he didn't think the NRC was adequately investigating his concerns. This was in March of 1989. In the letter he compared Turkey Point Power Plant in south Florida with Chernobyl (TR 1425). A copy of the letter was sent to the media, and Saporito felt that the letter would get the attention of the White House who would then have to take some kind of action and influence the NRC commissioners, who the President appoints, to pay more attention to his concerns about Turkey Point (TR 1426). This was Saporito's idea. Saporito said that he wasn't after publicity, he was after accountability through the media (TR 1427).

176. Ellen Taylor testified that she has been employed with The Atlantic Group since March of 1981 and her title is that of Personnel Manager. She is responsible for the overall recruiting of The Atlantic Group's contract personnel and for the normal human services functions that go on with being a personnel manager (TR 1439).

177. Taylor remembered that Saporito applied for line-C technician for the Palo Verde Plant. He was verbally offered the position over the telephone (TR 1440).

178. Taylor identified CX-23 as Saporito's employment agreement. The agreement covered Mr. Saporito's employment at Palo Verde and showed a starting date of September 21, 1991, but did not indicate a termination date. Taylor explained that employees were recruited and hired for the Unit II outage, but no guarantees were made concerning the Unit 1 outage (TR 1445, 1446).

179. Taylor identified CX-46 as an affidavit she executed wherein she indicated that she investigated the allegations that Saporito made about Mr. Engleking and concluded they were false. Taylor's conclusion was based on a conversation with Mr. Engleking as well as her personal knowledge about him. She has known him for about 10 years and knows him as a honest and well respected company employee. She's never known Mr. Engleking to loose his temper with others (TR 1454).

180. Ms. Taylor's department receives about 200 resumes a month. Taylor testified that she received about four resumes from Saporito: two in January of 1991 and maybe one in April, and another in May, and another in June of 1991. She didn't remember exactly but there were no openings for I&C technicians since Saporito's layoff from APS (TR 1455, 1456).

181. Taylor, in talking about the Unit 1 outage, submitted resumes for the Unit 1 outage sometime in the middle of December 1991. Saporito's resume was among the resumes submitted to APS (TR 1466). Taylor did not personally send the resumes to APS in mid-December 1991 for the Unit 1 outage; it was either Bill Engleking or Jan Gillard. When these resumes went out, Taylor had no personal knowledge that the format of Saporito's resume was different (TR 1474)

182. Taylor testified that Saporito was told that there was a possibility on the conclusion of the Unit 2 outage that The Atlantic Group would need I&C technicians for the Unit 1 outage and that they hoped to offer Saporito employment for Unit 1. But it would not be in Atlantic Group's best interest to guarantee employment for two outages then terminate Saporito half-way through because they would get a very bad reputation (TR 1479, 1480).

183. Taylor is aware that some of the contract I&C technicians who worked the Unit 1 outage but not the Unit 2 outage were not qualified to work independently. Taylor was not aware that Palo Verde Unit 1 were requesting independent qualified workers (TR 1481).

184. Taylor testified that Saporito's resume was sent off to Energy Operations; however, Energy Operations rejected TAG's bid (TR 1483).

## FRANK WARRINER

185. Frank Warriner testified that during the period of August 1991 through February 1992, he was Unit 1 I&C supervisor employed at the Palo Verde Nuclear Generating Station (TR 1488). As an I&C supervisor, Warriner has approximately 29 people working for him which breaks down to 23 technicians, 4 foremen, a helper and a clerk. During the period, August of 1991 through January of 1992, he reported to Dan Phillips, the Maintenance Manager for Unit 1. During that time frame, Warriner attended regularly scheduled management meetings at Palo Verde (TR 1489). They averaged one meeting per week. Bill Simko and Steve Grove would be in attendance at some of these meetings (TR 1490). During the time that Simko and Grove were in attendance, the name Saporito was never mentioned (TR 1490, 1491). Saporito's name was mentioned when he was reviewing resumes to select contract technicians for his upcoming refueling outage. This was in December of 1991 (TR 1491).

186. Warriner discussed with Mr. Grove the contractors who had worked for him during his refueling outage (TR 1493, 1494). He did not recall Grove mentioning that Saporito had previously been employed by Florida Power and Light, nor did he ever hear Mr. Saporito being referred to as a whistleblower (TR 1494).

187. Warriner believed that he called Bill Engleking and told him he would be needing I&C technicians for his upcoming outage. Warriner would have given him a specific number (TR 1497). After reviewing CX-50, Warriner testified that he was looking for 13 technicians (TR 1499).

188. Warriner testified that he received a number of resumes. He took a brief look at them, and then gave them to Dave Larson (TR 1500). Warriner told Larson to verify that the individuals met the minimum requirements and to see if there was anything he especially liked or disliked. Larson reviewed the resumes and set them on Warriner's desk (TR 1501). Warriner believed that Larson made a notation on the resumes either a "yes" or a "no." The resumes with the "yes" were individuals that Larson believed were good candidates. Warriner examined each resume again spending about two minutes per resume and then selected the individuals who he wanted to bring into his outage and then gave those resumes to another foreman, Bob Wagner. Warriner told Wagner which ones he wanted to bring in and which ones he didn't (TR 1502).

189. Larson and Warriner go back 17 years, and Warriner respects his feelings and good judgment (TR 1503). The fact that Larson put a "yes" on a resume, Warriner would take that positively but he would not base his decision only on that fact.

190. As far as telling Larson to look for the "minimum requirements," Warriner testified that the contract technicians must have 3 years of experience in the field in instrument and control work (TR 1504). In reviewing CX-51, page 15, section 4.5.2, according to Warriner, that sets out the minimum requirements (TR 1506).

191. Warriner identified ALJX-5 and ALJX-6 as representing the resumes that Warriner reviewed for the selection of contract I&C technicians for the Unit 1 outage (TR 1510). Checking ALJX-5, Saporito's resume is among the resumes, and Larson put a "yes" on the document and Warriner put the "no" on the document (TR 1511). After Warriner's review of Saporito's resume, he decided he didn't want Saporito as a contract technician for his outage. Warriner rejected Saporito based on Saporito's previous work experience and how the order of his work experience was listed on the resume. Warriner did not see much experience in the areas in which Warriner was interested. Going to the last job on the resume, the first item Saporito put down was that he was responsible for procedure writing. Warriner did not prefer using procedure writers as technicians (TR 1512). Warriner did not hire Saporito because the first item he put down on the resume was "responsible for procedure writing." Warriner felt that if a person put something down at the very beginning, that was something that they were trying to promote. He did not need procedure writers. He had an organization that did that for him (TR 1515).

192. Warriner agreed that Saporito's resume indicated that he worked as an instrument and control technician for Florida Power and Light, and worked at the St Lucie Nuclear Plant. The resume listed "calibration and troubleshooting of instrumentation" and Saporito's experience with other equipment (TR 1513). Saporito's resume indicated that he had pneumatic valve experience and Mr. Warriner was looking for technicians that had pneumatic valve experience (TR 1515). In reviewing Saporito's resume, Saporito probably had some computer interface. Warriner wanted individuals with experience in the type of work areas that he could use during the outage. Warriner agreed that Saporito's resume indicated "field experience" (TR 1516).

193. On Dwight Brown's resume, ALJX-5, there was a notation in the right-hand corner "mostly computer" and no indication of pneumatic or valve work experience (TR 1518). Dwight Brown was selected as an I&C technician even though Warriner testified that he was not looking for computer experience (TR 1515, 1516, and 1517).

Warriner testified that he hired Brown because it appeared that he lived in the Phoenix area. Warriner was not aware that Saporito lived in Phoenix himself, less than 50 miles from the plant (TR 1517).

194. Warriner testified that his criteria when looking at the resumes was: (1) field experience in calibration of instrumentation, (2) experience with pneumatics, especially valves, (3) outage experience, and (4) experience in other than the nuclear field. His priority was experience in outage work and contractor field work (TR 1581). Saporito's resume showed seven years of experience with Florida Power and Light (TR 1519). From Saporito's resume, Warriner could assume that Saporito had experience in at least one and possibly more fueling outages while working at Florida Power and Light (TR 1522).

195. Warriner selected Waszak. Waszak had no pneumatic experience, according to his resume (TR 1525). Waszak was in the nuclear Navy but then Warriner did not necessarily prefer nuclear Navy people over others (TR 1526).

196. Mr. Enders was hired and his resume did not indicate valve work (TR 1533, 1534). Enders' resume indicated "experienced in planning, coordinating, and technical writing of calibration procedures with a supervisory background in these areas" (TR 1534). Warriner did not select Saporito because he put procedures in his work experience on his resume and so did Enders (TR 1535). Warriner said that he had a difficult time comparing Saporito's resume directly with Enders' (TR 1536).

197. Warriner testified that Saporito was probably still on site working the Unit 2 outage when Warriner went through the resumes. Since Saporito worked the Unit 2 outage, he would have gone through a general employee training (TR 1538), respirator qualification training (TR 1539), and was independently qualified as an I&C technician (TR 1539). Each of these represented an expense to the company. If Warriner had to train someone else, he would lose the benefit of having that person work on equipment for the outage (TR 1540) and the company would have the added cost of training someone new (TR 1541).

198. Warriner identified CX-10 through CX-21 as contract labor requests which he filled out. He wrote in Section E that the technician would be responsible to become "independently qualified" (TR 1541-1549). Saporito was an independently qualified technician, but Mr. Brown (TR 1549), Mr. Reeves, Mr. Wasrak, Mr. Enders, Mr. Brown, and Mr. Hatch were not independently qualified. Mr. Enders, Mr. Brown, and Mr. Hatch needed their respirator training and their SAP training (TR 1551).

199. Prior to making his contractor selection on December 16, 1991, Warriner discussed the I&C contract workers working the Unit 2 outage with Steve Grove (TR 1552-1554). The sole purpose of the meeting was to ask Mr. Grove about the contract workers in some specific areas in which Warriner was interested, including interaction (TR 1553-1554). Present were only Grove and Warriner. Grove had no negative comments. Warriner wanted to know if Grove had problems with any of his contractors in being able to interface with either the people in his shop, especially the foreman, or with outside groups. What would be significant to Warriner would be if he had any individuals who didn't follow instructions and after counseling them, they continued not following instructions (TR 1555). Warriner did not recall whether Grove had problems with his contractors. Mr. Warriner felt that Grove had a positive opinion regarding all of the contractors (TR 1557).

200. In reviewing APSX-2, Mr. Grove indicated that Mr. Saporito, "he does his work assigned, raises good questions." Mr. Warriner took a copy of APSX-2 with him after the meeting with Grove, but he did not use it when he was selecting I&C technicians. By the time Warriner looked at the resumes on or about December 17, 1991, Warriner had no independent recollection of anything Grove told him about the contractors (TR 1559). The two areas which Warriner was interested were: personal safety and interfacing and possibly productivity (TR 1560). Warriner felt the meeting with Grove was helpful in the event Grove made negative comments. Warriner would have made a notation of negative comments in reviewing the resumes but not positive comments (TR 1561).

201. In comparing ALJX-4 with ALJX-5, ALJX-4 indicates which I&C technicians were selected for the Unit 1 job and which were not. Everyone's resume who appears in ALJX-5 was recommended by Larson.

202. Larson recommended that each and every I&C technician whose resume is part of ALJX-5 be hired and Warriner followed Larson's recommendations with the exception of Saporito (TR 1568). In reviewing ALJX-6, Warriner testified that these resumes are for individuals which Larson recommended not to hire for the Unit 1 outage. Once again, Warriner followed Larson's recommendation and did not hire these individuals. Mr. Larson recommended that Warriner hire Saporito. This was the only recommendation that Warriner did not follow (TR 1568, 1569).

203. Warriner wanted contract technicians with field experience in calibration of instruments, experience in pneumatics and valve pressure, and outage experience. Warriner did not look at it as negatively if the person did not have experience in the nuclear field. In reviewing Saporito's resume, Warriner agreed that Saporito's resume reflected experience in those four areas (TR 1569-1571).<sup>13</sup>

204. Warriner testified that in the nuclear industry, a gap of employment was not that unusual. People in the contract profession work outages that normally ran 70-90 days then they were out of work for a period waiting for another outage. On the other hand, a gap for as long as six months to a year would catch his eyes (TR 1580, 1581). Also, it would not be of interest to him if the person moved in and out of the industry on a frequent basis (TR 1581).

205. Warriner's priority in reviewing resumes was "outage work" and he also liked field work (TR 1581).

206. In reviewing Saporito's resume, the fact that he had some experience in the medical field and manufacturing industry did not impress Warriner since he personally had no experience in either of those fields (TR 1581, 1582).

207. Warriner felt that Saporito was promoting his procedure writing because he mentioned it first on his resume. Warriner disliked the term "procedure writing." He hired people in the past for contract work who had a lot of procedure writing experience, and he wasn't always satisfied with their performance (TR 1583). Generally, they were not as productive as he wanted. Some liked to spend their time critiquing his procedure (TR 1584).

208. If someone used the term "laborer" on their resume, Warriner understood this to mean that they actually worked in the field. In Warriner's opinion, these were better workers (TR 1584).

209. Warriner was not impressed with Saporito's mention of: "calibration and troubleshooting of instrumentation and equipment, such as ... control room enunciator system." A control room enunciator system which is put into place to inform and alert the operator of plant conditions. These are not complicated systems, nor are they difficult to troubleshoot and problem solve (TR 1585).

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210. Saporito mentioned experience with the Bentley-Nevada Vibration Monitoring System. This system is used to alert the operator if there is a loose part within the primary system or perhaps a system that is monitoring vibration on large pumps. Warriner testified that he has plenty of qualified people to do this type of surveillance testing (TR 1585, 1586).

211. The next system mentioned by Saporito was generator condition monitor used to monitor electrical generators. Warriner had no scheduled work to be done on the generator conditioning monitor (TR 1586).

212. The next area Saporito listed was the control rod drive mechanism. This is a system that is used to lower and lift the control rods which go into the core of the reactor. During the outage, Warriner was going to do quite a bit of work on control rod drive system but he already had qualified people to do the work (TR 1586).

213. The next area which Saporito mentioned was loose parts monitor. This monitors for parts which may come loose and damage the core (TR 1587).

214. Next, Saporito mentioned thermal couple calibration. That is a normal, non-complicated task, and is something that Warriner would have some use for in his outage. This is pretty common activity (TR 1587).

215. Saporito also listed experience with Bailey instrumentation, which is a large company. Warriner could not think of any place where he used Bailey *instruments*. He might use one or two but it was very seldom used at Palo Verde (TR 1587).

216. Next Saporito mentioned pneumatic valves, but did not list his level of experience. Warriner had a lot of work to do with pneumatic valves and stated it was not a complicated task, but was very time consuming. Warriner had the potential of possibly having to tear a lot of valves apart (TR 1589).

217. Saporito's mentioning of Air Flow Service Corporation and his work with RCA Corporation had no relevance to anything Warriner was interested in (TR 1592).

218. During the outage, Mr. Larson had more contact with contract I&C technicians as a group than Warriner. Once the outage started, Warriner was not involved with the day-to-day activities of the shop. His job was to interface with management; to take care of scheduling problems (TR 1593, 1594).

219. In comparing Saporito's resume with Mr. Enders' resume, Enders indicates instrumentation technician with "over 15 years in trouble-shooting, calibration, repair and modifications of instrumentation in the areas of electronic circuitry, process control, flow, pressure, and temperature." The first line of Saporito's resume reads, "responsible for procedure

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writing, the last line of Ender's summary indicates that, "experience in planning, coordinating, and technical writing of calibration procedures with a supervisory background in these areas" (TR 1597). Saporito had no supervisory experience in those areas (TR 1597, 1598). Ender had experience in calibration of instruments but he did not state that he had valve experience (TR 1617).

220. It was not Warriner's intention during his outage to use contract laborers as independent workers (TR 1598). All of his APS employees are independently qualified. Also, he was bringing down APS technicians to Unit 2 and Unit 3 to supplement his outage, so he didn't see the need for more independently qualified technicians. He needed a person to be a second person of a two-people team (TR 1599). When Warriner wrote the words "independently qualified worker" on his contract labor request, he was doing so from an administrative standpoint, that if sometime during the outage he had to change and start using contract people as independent workers, he had the paperwork in place. Warriner hired people for the Unit 1 outage that were not independent workers, so it was not priority that contract workers be independently qualified (TR 1600).

221. Mr. Warriner agreed that Saporito just came off of an outage and had four months of experience working Unit 2, and what he did at Unit 2, Warriner would have to assume by and large would be much what he needed for Unit 1 (TR 1605).

222. Prior to Warriner's selection of the I&C technicians to assist in the Unit 1 outage, he had no information that anyone involved in the Unit 2 outage was raising safety concerns of any particular nature or frequency (TR 1606, 1607). The first time he ever heard of Mr. Saporito was when he talked to Mr. Grove and when he reviewed the resumes. Warriner testified that he did not discriminate against Mr. Saporito (TR 1607).

223. In comparing Saporito's resume with Dwight Brown's, he acknowledged that Dwight Brown did not have the amount of nuclear experience, pneumatic and valve pressure experience, outage experience, nor field experience in calibration of instruments as Saporito (TR 1609). Dwight Brown's resume indicates "solves problems," but that doesn't mean anything specific to Warriner. The experience Brown indicates as-"analyzed construction," and "determined operating characteristics using layout drawings," would not be experience needed by an I&C technician at refueling outage. "Schematics and pictorial diagrams" would be used, but not "fixtures for three production systems" (TR 1620, 1621). Brown's "performed alignment and calibration of strategic reconnaissance equipment to prescribed specifications" also could not be used because Warriner did not have strategic reconnaissance equipment (TR 1621). Also where Brown stated he had prepared written instructions and performed modifications of multi-layered wired board using engineering sketches and verbal instructions," would not be needed on the Unit 1 outage (TR 1622). Warriner would not need someone to fabricate a computer system or test and repair weapons control systems (TR 1623).

224. Warriner hired Dwight Brown because he was a local person. Most importantly, he was

good worker; they liked him; and he liked APS and Warriner felt they would have a good relationship in the future from the standpoint they would be doing two outages every year for 30 more years (TR 1631).

225. Warriner admitted that in comparing Brown's resume with Saporito's resume, if you lay the two resumes side by side and you ask which person is more qualified by the resume, Mr. Saporito would be more qualified (TR 1627).

226. In comparing Richard Abarr's resume with Saporito's, Abarr had more experience than Saporito (TR 1610). The same is true with Dessormeau's resume (TR 1611). He had six to a dozen different assignments within the nuclear industry (TR 1632, 1633).

227. In comparing Stanley Dixon's resume, Dixon has the same field experience in calibration and instrumentation as Saporito, but he does not mention experience with pneumatics and valve pressure (TR 1611). Dixon's experience in the petro chemical industry is something that greatly impresses Warriner.

228. Robin Drake had much more field experience and calibration in instrumentation than Saporito, and she had pneumatic valve experience (TR 1612, 1613). Additionally, Warriner knew Drake personally from previous employment.

229. Mr. Robert Waszak was just coming out of the nuclear Navy and he did not have as much field experience in calibration as Saporito (TR 1613). Waszak did not have valve pressure experience nor outage experience (TR 1614). Warriner had good experiences with people who had been in the military nuclear program (TR 1634).

230. Robert Zimmerman had field experience, outage experience, and calibration of instruments; he did not mention valve experience (TR 1614). Zimmerman had worked in four nuclear power plants (TR 1634).

231. John Putnam had experience in calibration of instrumentation but did not indicate valve pressure experience. He did have outage experience (TR 1615). He had worked in 6-10 different experience periods (TR 1634).

232. Teske had field experience in calibration of instruments and outage experience, but he did not list valve experience (TR 1615). Teske had approximately six periods at nuclear power plants (TR 1634).

233. Billy Reeves had field experience in calibration of instruments and some outage experience, but he did not indicate valve experience (TR 1616, 1617). Reeves listed two or three experience periods at nuclear plants (TR 1634).

234. With regard to all the resumes in ALJX-5, Warriner knew that all of them had just come off of the Unit 2 outage, and Grove had positive comments to say about all of the individuals (TR 1617, 1618).

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235. Except for Saporito, Warriner did not recall anyone else promoting their procedure writing (TR 1615). It was Warriner's experience on two outages that these type of people, procedure writers, were not productive but that is not what Grove told Warriner about Saporito because Grove indicated that Saporito did his work assigned (TR 1616).

236. Warriner acknowledged that St. Lucie Plant and the Turkey Point Plant in Florida are both PWR reactors. Additionally, the St. Lucie Plant is a "CE plant" and was built by combustion engineers. The Palo Verde plants are also "CE plants" and have PWR reactors, so Saporito's background at St. Lucie Plant and Turkey Point Plant would be experience in plants that have similar design systems to Palo Verde (TR 1619, 1620).

237. When Warriner met with Mr. Grove, Warriner believed that he discussed that Saporito was qualified to work independently (TR 1626). So, when he reviewed Saporito's resume, Warriner was aware that Saporito was qualified to work independently (TR 1626, 1627).

238. When Warriner was through reviewing the resumes, he gave them to Bob Wagner to contact Atlantic Group and tell them which contract I&C technicians Warriner wanted for the outage. Warriner did not know what Wagner did with the resumes (TR 1629).<sup>14</sup>

#### WILLIAM ENGLEKING - RECALLED

239. Engleking identified APSX-20 as a document Mr. Saporito provided Engleking as part of his exiting APS. It is an Employee Concerns Program Disclosure Statement. The form is attached to another form entitled "Nuclear Administrative and Technical Manual Palo Verde Nuclear Generating Station Contract Personnel Request and Exiting Procedure Form" (CX-3, page 23). Saporito signed this form in Engleking's presence (TR 1665-1668).

240. In the January 2, 1992, meeting, Saporito spoke to him about some concerns he had about how he felt other people were doing their work procedure wise (TR 1679), but Saporito was not specific. He didn't give any names or talk about particular jobs. Engleking could not answer why Saporito didn't identify his concerns on APS 20 (TR 1681).

#### JAMES REYNOLDS

241. Reynolds testified that he has been an I&C supervisor for Unit 3 since October of 1984 (TR 1687). There were three units at Palo Verde, and they are separated by about 2,000 feet each (TR 1688). Reynolds has a Navy background and on his last assignment, he was assigned to a nuclear powered submarine (TR 1689).

242. The supervisors for the three units at APS tried to get together every other week; that would be Frank Warriner in Unit 1 and Steve Grove in Unit 2. Occasionally an engineering supervisor

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attended. There were a wide variety of topics discussed. Normally, they discussed current problems from a technical basis, procedural problems, philosophy problems, where and how they wanted to test certain components (TR 1690, 1691). From September 1991 through December 1991, in all of his meetings with Frank Warriner and Steve Grove, he never heard the name Tom Saporito mentioned. He scans nuclear industry trade journals and periodicals and did not recall seeing the name Tom Saporito (TR 1692, 1693). Reynolds never requested contract technicians to be independently qualified. He placed more value on the in-house resources and the units sharing in-house employees.

243. Reynolds testified that I&C technicians report to his foremen daily with technical discussions. Questions come up daily about specific pieces of equipment and calling or checking with engineering as normal business (TR 1704). These types of conversations are not routinely considered to be part of the Employee Concerns Program.

244. Reynolds formerly worked as an I&C technician for Unit 1 and actually reported to Frank Warriner and Archie Porter who were foremen. Reynolds has known Frank Warriner since February of 1981 (TR 1705). For the Unit 3 outage, Reynolds has five contract I&C technicians working for him (TR 1711). These individuals are Marvin Zimmerman, Mr. Teske, Robin Drake, Dwight Brown, and Mr. Cook (TR 1715 ).

245. Prior to any of Reynolds' outages, he never sat down with either Mr. Warriner or Mr. Grove to review contractors that worked for them for recommendations (TR 1724).

#### THOMAS CARRAWAY

246. Thomas Carraway testified that he is a Unit 1 I&C foreman and has been employed by APS for a little over ten years and prior to that, he spent six years with the nuclear Navy. He was a reactor operator, maintenance technician (TR 1725). He occupied this position during the Unit 2 outage and worked in support of the Unit 2 refueling outage. During the time period, he supervised four Unit 1 I&C technicians assigned to Unit 2 outage. He never heard of Saporito until late January or early February 1992 (TR 1726).

247. Frank Warriner has been Carraway's supervisor for about nine years. He did not participate in the selection of I&C contractors for the unit 1 outage in 1992 (TR 1727). Dave Larson and Bob Wagner reviewed the resumes. Carraway has not been involved in the actual selection in the past.

248. Each individual is assigned a job to work and if he has any problems associated with performing the work, he is expected to notify Carraway or one of the other foreman to resolve the problem. If he is not satisfied, then the individual has the option of going to another foreman

or other supervisor or other member of the management staff at Palo Verde. He also has the option of going to the Employee Concerns Program or to the NRC (TR 1729). He expects a technician to report his concern as soon as he decides he has a problem. He would not be pleased if a person waited for a couple of days; Carraway would expect to be notified as soon as the problem arose (TR 1730).

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249. Carraway said that some of the I&C technicians who worked the Unit 2 outage and hired for the Unit 1 outage, were qualified to work independently. As Carraway recalled, about five or six of them, roughly half, were so qualified. In Carraway's opinion, these employees were being more useful (TR 1735).

250. Carraway has never experienced a situation that an employee had a concern but brought it to his attention one or two days after it has occurred. Employees raise concerns to Carraway on a daily basis (TR 1742). No one has ever brought to Carraway's attention a nuclear safety concern (TR 1743). Carraway does not consider typographical errors in safety-related procedures as a nuclear safety concern. Nor does he consider problems adjusting the speed probes on the reactor coolant pumps a safety nuclear concern (TR 1745). Nor does he consider a technician having difficulty with an accelerometer on a loose parts monitor somewhere on the reactor coolant system a nuclear safety concern (TR 1746). However, Carraway had no specific training nor know of specific individuals who defined what constituted a nuclear safety concern (TR 1747). Carraway agreed that if there is a problem with the reactor coolant pump, the plant had to be shut down for safety. The plant would shut itself down. You cannot safely operate the Palo Verde Nuclear Station with a reactor coolant pump that is not working properly (TR 1751).

#### KEVIN CONWAY

251. Kevin Conway testified that he is an I&C technician at Palo Verde, for Unit 1. From September to December 1991, he supported the Unit 2 refueling outage for about two weeks in the middle of December. During this time, he never heard of a person named Tom Saporito (TR 1755). The first time he ever heard of Saporito was about three weeks prior to trial.

252. If a contractor was qualified to work independently, then he would be as qualified as in-house technicians with the exception for certain systems which required the technician to have special training (TR 1757).

253. Conway has had occasions where working in the plant caused him some concern, and he has taken the problem to his foreman. His foreman would come out and take a look at it (TR 1758).

#### DON BEAN

254. Don Bean testified that he is an I&C technician for Unit 1 at APS (TR 1759). His foreman is Bob Wagner. In December 1991 and January of 1992, his supervisor was Frank Warriner.

Bean helped support the Unit 2 refueling outage in the fall of 1991 for about two days (TR 1760). He didn't do any work for the Unit 2 outage because he was called back to Unit 1 both days. During his time at Unit 2, he did not hear of Tom Saporito. Before January of 1992, he never heard of the name, Tom Saporito (TR 1761).

255. If a contractor is qualified to work independently, he may still not be able to do all the tasks that an in-house independently qualified technician can do.

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256. Bean felt that if he saw a security guard asleep, he would notify security right away because it was a serious security violation (TR 1762).

257. Bean is not certified to work on every piece of equipment at Palo Verde (TR 1765).

#### CHRIS MAHR

258. Chris Mahr testified that he is a planner at Unit 1 at Palo Verde. During the time frame, September 1991 through January 1992, Mahr was a senior I&C technician at Unit 1, Palo Verde. His foreman was Tom Carraway and his supervisor was Frank Warriner (TR 1766). Prior to January, 1992, he never heard of the name, Tom Saporito. He only heard the name a couple of weeks before trial.

259. There had been occasions where Mahr found something broke in the plant, and he would write up a work request. If there was a problem with procedure, he would write up an instruction change request (TR 1768). If he couldn't get the problem solved in any other way, then he would have to call Employee Concerns Hotline. The usual reaction from his foreman would be to work together to fix the problem (TR 1769).

#### WILLIAM THRELKEL

260. William Threlkel testified that he is a senior instrument technician assigned to Unit 1 instrumentation control and maintenance at APS and has worked for APS for approximately eight years. In September 1991 through December 1991, he helped support the Unit 2 refueling outage. He worked there about two weeks. Prior to working the outage, he never heard of Tom Saporito (TR 1775). He first heard of Tom Saporito in the spring of 1992. Some people from Unit 2 said that Tom Saporito sued them (TR 1776).

#### MURRAY GARBARSKY

261. Murray Garbarsky testified that he is an I&C technician at the Palo Verde Plant assigned to Unit 1, and he has been in that position for six years. Garbarsky helped support the Unit 2 refueling outage (TR 1777). While he was working at Unit 2, he never heard of Tom Saporito. He first heard of Tom Saporito about three weeks before trial.

## CHARLES BALOGH

262. Charles Balogh testified that he is a senior I&C technician assigned to Unit 1 at the Palo Verde Nuclear Generating Station. He has held this position for five years. Balogh helped support the Unit 2 outage. During that time, he never heard of Tom Saporito. He first heard of Saporito about a month prior to trial (TR 1784). Balogh testified that on occasion when he has a concern about equipment, he reports it to his foreman and he always receives a positive response (TR 1785). Balogh said that during the Unit 1 outage, I&C contractors worked independently on some of the equipment (TR 1789).

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## KENNETH CHARLES MEYER

263. Kenneth Meyer testified that he is a senior outage coordinator for APS assigned to the Palo Verde Nuclear Station. He has been with APS since March 15, 1982, and before that was in the nuclear Navy for six years (TR 1792). In September of 1991, Meyer was an I&C foreman assigned to Unit 2 at Palo Verde and Steven Grove was his supervisor. He worked for Grove for about seven years (TR 1793). The other I&C foremen for Unit 2 were Izadore Chavez, Philip Mudrick, and Warren Jones.

264. Meyer became Thomas Saporito's supervisor on or about October 17, 1991. Prior to December 14, 1991, Saporito's performance was not unusual. He did not stand out in any way from other I&C contract technicians.

265. Before December of 1991, Saporito never told him that he had been in some type of altercation at Palo Verde (TR 1794). Had he done so, Meyer would have taken appropriate action because fighting on the premises is considered a disciplinary problem. The first time he heard of such an altercation was in a meeting on December 14, 1991. Izadore Chavez was present. Saporito did not indicate the date of the altercation, and he didn't specify who was involved in the fight (TR 1795). Meyer asked him for the information, but Saporito said that he didn't want to get anybody in trouble.

266. Meyer described the I&C shop at Unit 2 as busy and productive. He has been involved in approximately five outages, and the Unit 2 outage in September of 1991 was much smoother than any other (TR 1797). Several times during the outage, all of the I&C technicians got together for a community type of lunch where everyone brought a dish. Tom Saporito attended these potlucks and he mixed with other people (TR 1798).

267. Meyer said that he never yelled at Tom Saporito. There was nothing unusual in Saporito's job performance (TR 1799).

268. Saporito never brought to Meyer's attention a cold solder joint which would have been of significance. Had Saporito brought this to his attention, Meyer would have investigated right away (TR 1800).

269. Meyer identified APSX-21 as a Condition Report Disposition Request (CRDR) (TR 1802), concerning an event which occurred on or about December 14, 1991. During the outage, when accelerometers were being installed back onto the reactor studs, they were placed on the wrong reactor studs. The circumstances of this CRDR were not unusual. Meyer expects technicians to be management's eyes and ears in the field and if they see problems exist, their job is to stop and get the management's attention and bring them into the situation (TR 1808-1817).

270. Meyer was not certain if he could characterize accelerometers as a nuclear safety piece of equipment. They are to monitor equipment for the possibility of problems, but are not required to be in-service to run the reactor. It is a support system; not a primary system (TR 1818).

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271. There was nothing unusual about an employee finding broken equipment during an outage, but there was something unusual in Saporito's participation in the resolution of this problem. When Mr. Nearing and Mr. Burch made statements concerning the problem, they discussed the problem and signed their name at the bottom. Mr. Saporito's statement not only discusses his actions and what he saw, but also includes three disclaimers before his signature (TR 1819). Meyer has never seen anybody attach a statement like that to a CRDR before (TR 1820).

272. Meyer reviewed APSX-22 and identified the exhibit of a drawing depicting the piece of equipment and the bolt that was the subject matter of the torquing verification conversation between Meyer and Mr. Saporito (TR 1821, 1822). Verification of the torquing takes place by watching the person who is performing the work. You would have to physically be there and in line of sight and watch the job being performed (TR 1827).

273. As foreman of the crew, Meyer would expect that the person verifying the work would watch the work to be performed and verify that it had actually been performed and then sign off that stud. It would not be necessary that they hear clicks on the torque screw driver. There is nothing on APSX-1 that required someone to hear clicks. However, the worker should know why he is accompanying the other employee (TR 1828). Saporito should have known in advance what he was verifying. If he saw something that was being done and didn't know what he was suppose to verify, it should be a cause of concern for him.

274. At the beginning of the shift, there is a meeting and the foreman running the shop that day would brief everyone on the work that was to be performed (TR 1829). Workers are suppose to review the paperwork before engaging in their activity (TR 1830).

275. There came a time when Meyer received information that Saporito had a question about the independent verification of one of the steps identified in APSX-1. Izadore Chavez asked Meyer to attend the meeting with Saporito (TR 1832). Meyer and Chavez discussed the situation before meeting with Saporito because there was a concern as to how much confidence they could place in Saporito because he had performed the work all the way through before bringing up the concern (TR 1833).

276. The meeting lasted a couple of hours (TR 1834). Saporito's concern involved signing off independent verification at 4.6.2; the requirement of a independent verification of the accelerometer stud into the J-box mounting bolt. He wasn't sure he should sign off on it. Saporito said he had no advanced knowledge of what was going to happen on the job because he hadn't seen APSX-1 before. Yet, he had no reservations on signing 4.6.1 or 4.6.3 or 4.5.1 (TR 1836, 1837).

277. Meyer thought that Saporito didn't see the big picture and thought they could just sit down with Saporito and talk it through. Saporito started to sign the document, then he would raise another question. Meyer would tell him he shouldn't sign it if he wasn't comfortable (TR 1837). To repeat the job would have taken a long time because they would have had to repeat other jobs that followed. It was explained to Saporito that it didn't matter about the schedule as long as it was done right (TR 1838, 1839).

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278. This job had to be redone anyway because it turned out that the studs were not placed in the correct holes (TR 1842).

279. There was no pressure put on Saporito to sign the document (TR 1843, 1844). Before he signed the document, he did not express reluctance in doing so.

280. During this same December 14, 1991, meeting, Saporito brought up a security violation and a threat of physical violence against himself (TR 1844). The security violation involved a site badge but it was in generalities. This was the first time, Saporito had ever brought up security procedures (TR 1845, 1846). Saporito didn't want anyone to lose their job, so he refused to give details (TR 1846). Meyer did not raise his voice and since Saporito would not give details, Meyer could not pursue the concern (TR 1847).

281. Saporito also wouldn't give him specific information about threats against him. Before December 14, 1991, Meyer knew nothing about it. Saporito would not give Meyer the information he needed to pursue further action.

282. After the December 14, 1991, meeting, everything was just as it had been before. They were in a working environment and they still socialized at lunch. Meyer still assigned Saporito work and still answered his questions when he had questions (TR 1848, 1849).

283. Meyer denied that Saporito brought a concern that McCullough tried to get Saporito to falsify procedures on a job. Meyer did not separate Saporito and McCullough into different groups (TR 1855). Saporito did not complain to Meyer that McCullough pushed him into a security fence (TR 1855-1856).

284. Meyer did remember Saporito coming to him about a particular procedure concerning a printed circuit board, but there was no argument in connection with this concern (TR 1857). He

did not follow Mr. Saporito into the instrumentation shop yelling at him to get the job done (TR 1857, 1858).

285. Meyer did not remember Saporito drawing his attention to cold soldering joints on the power supply for the loose parts monitor that Mr. Cruz was working on (TR 1858).

286. Meyer identified CX-53 as a memo that he generated to Dan Robertson dated January 21, 1992 (TR 1871). Meyer referred to Saporito as a troubled employee in this memo (TR 1873). This expression was a phrase that Meyer heard during a training course. He was given a checklist of symptoms or characteristics of a "troubled employee." One was a laundry list of problems (TR 187S). In other words, the meeting occurred December 14, 1991, and Saporito came up with a laundry list of complaints that spanned from the very beginning of his employment. That is why he used the phrase "troubled employee." Prior to December 14, 1991, Meyer did not consider Saporito a troubled employee (TR 1876). So a person would fit the profile of being a "troubled employee" if he presents a laundry

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list of problems instead of dealing with things day to day and resolving issues as they come up. A "troubled employee" would harbor these issues until all of sudden one day, he comes up with a list of problems (TR 1877).

287. Meyer, after reviewing CX-30 and APSX-1, agreed that Saporito worked the second shift on December 13, 1991, and he could have been the first technician who initiated the inquiry which led to an investigation discovering that the accelerometer was mounted on studs in the wrong holes (TR 1884-1886).

288. Meyer denied that he and Chavez put pressure on Saporito to sign off inspection points on YE-1 and YE-2 procedures (TR 1887). They were just trying to give him time to recollect his thoughts and ask him specific questions that would help him realize that he had actually performed the work (TR 1887). To do the work, Meyer felt that the second man had to watch the first man turning a torque wrench. Meyer was not sure if there was a requirement for the second man to know when the first man (in this case Burch) had reached the torque value required in the procedure (TR 1890). Meyer felt that the second man did not have to hear the clicks of the torque wrench in order to independently verify the job (TR 1892).

289. Meyer agreed that Palo Verde teaches strict adherence to procedure (TR 1896, 1897). Going back to the tonguing requirement, Meyer agreed that for Saporito to independently verify what Burch had accomplished, he would go to the torque wrench, make sure it was set to whatever torque value that the procedure required, and then go ahead and torque it himself (TR 1897). With regard to the heavy torque wrench, some of them click and others have a needle and just stop at the needle (TR 1898). Meyer did not agree Saporito would have to actually take a torque screwdriver and verify its setting and torque himself in order to independently verify that the job had been done (TR 1898, 1899).

290. Saporito never said that he was going to take Chavez and Meyer to the NRC on the December 14, 1991, meeting, and the subject of Saporito suing Florida Power and Light never came up. Meyer did remember Chavez saying "I know what your capable of" (referring to Mr. Saporito) (TR 1901). That statement was made in the context that they knew what Saporito was capable of as I&C technician and not in terms of litigation (TR 1904). Meyer wrote a memo to the Employee Concerns Program that discussed the statement "I know what your capable of" because he was asked to do so by Dan Robertson of Employee Concerns. Saporito had taken that statement out of context (TR 1905).

#### HARRY BAILEY

291. Harry Bailey testified that he is a senior I&C tech assigned to Unit 1 at Palo Verde. His foreman is Pat Magreevy and his supervisor is Bill Brown. In December of 1991, his supervisor was Frank Warriner (TR 1914, 1915). He worked with Mr. Warriner for about 10 years. He recalled the Unit 2 outage in the fall of 1991; he helped support the outage. During that time, he never heard of Tom Saporito (TR 1915). He first heard of Saporito somewhere around the beginning of Unit 1 refueling outage.

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292. From time to time, as an instrument and control technician, he has occasion to find problems in the plant which causes him concern. He takes corrective action. He writes up ICRs and informs the foreman (TR 1916). This is just a normal job routine which occurs about once a week. He feels comfortable bringing these issues up to his foreman. He never used the Employee Concerns Program (TR 1917).

#### JOHN COLE

293. John Cole testified that he is presently employed at the Palo Verde Generating Station as a technician assigned to Unit 1 (TR 1918). He has been in this position for two years. He is aware that in the fall of 1991, Unit 2 was undergoing a refueling outage. He helped support this outage. When he was working there, he never heard of Tom Saporito. The first time he heard of Saporito's name was a month prior to the hearing.

#### TONY CRUZ

294. Tony Cruz testified that he is employed as an I&C technician at the Palo Verde Nuclear Generating Station assigned to Unit 3. He started as a contractor in September of 1985, and became a permanent employee with APS in 1988 (TR 1929). In the fall of 1991, Cruz supported the Unit 2 outage. He did soldering for the Unit 2 outage. Prior to being interviewed by Mr. Saporito about a month prior to trial, no one ever told him that there was question about the soldering that he performed during the Unit 2 outage (TR 1930) -

#### IZADORE CHAVEZ - RECALLED

295. Chavez worked in close proximity to Ken Meyer during the Unit 2 outage (TR 1931). The four foremen share an office which is separated by glass windows from the I&C shop. Tom Saporito reported directly to him. Before December 14, 1991, there was no reason to believe that Saporito was any different than the other contract I&C technicians working for him. He worked in the ordinary fashion. Chavez did not recall an incident whereby Ken Meyer yelled at Saporito (TR 1932).

296. Before December 14, 1991, Chavez had no knowledge that Saporito was physically threatened. During December 14, 1991, meeting, Saporito said he was physically threatened but he wouldn't give Chavez any details (TR 1934). Saporito was afraid that his peers would think he was ratting on them. Saporito also gave vague information about the security violation (TR 1935).

297. Chavez felt it was unusual that Saporito would add disclaimers at the end of his statements to Employee Concerns in APXS-21 (TR 1937). Chavez never experienced that before (TR 1936).

298. One of the purposes of the December 14, 1991, meeting had to do with Saporito's refusal to independently verify work that his co-worker Burch had performed (TR 1938, 1939). Chavez met with Saporito right after lunch and asked him why he didn't want to sign the document.

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Saporito started to talk about how bolts ought to be torqued (TR 1940). During the conversation, Saporito never said that he did not observe the torquing (TR 1941).

299. Chavez explained to Saporito that regardless of whether he felt the torque was applicable was not their judgment, the individuals from engineering made appropriate recommendations. The engineers were adamant about keeping the 25-inch pound torque maneuver. Chavez was perplexed when Saporito brought up that he did not have the paperwork with him and was not aware that he was suppose to independently verify Burch's work. Chavez felt that he did the same thing (verified torque) on December 10th and 11th with Jim Rider (TR 1942). Also, Chavez could not understand why Saporito just didn't stop the job to find out what he was suppose to be doing (TR 1943).

300. It was Chavez' feeling that Saporito didn't want to sign the independent verification documents (APXS-1) because he didn't agree with the procedure, and not because he did not observe Burch perform the job. Saporito did eventually sign the documents, but there was no pressure for him to sign the documents (TR 1944). Saporito suggested that he did not want anyone to get "dosed up", meaning an unnecessary dose of radiation, and so he agreed to sign the documents (TR 1945).<sup>15</sup> At the conclusion of the December 14, 1991, meeting Chavez felt confident in Saporito, that he knew the expectations of the job, and if he were given another job, Chavez would know what to expect in terms of performance from Saporito.

301. Chavez agreed that Saporito was qualified to work independently at the time of the December 14, 1991, meeting.

302. At the meeting, Saporito made references to security escort violations. Chavez did not find out the details (TR 1952).

303. Chavez agreed that while the accelerometer issue was going on around December 14, 1991, they were in critical path work. If the accelerometer job was not finished by instrument control, then B&W could not install the insulation on top of the reactor (TR 1953). Every day the outage was delayed cost APS one million dollars. It was important for Chavez to keep the outage on schedule (TR 1954).

304. Mr. Saporito's concern on the torquing was that the tool and the bit would allow for slippage, and he didn't feel that the torque was valid. He was so convinced of this that he made a tool that would work in the torque wrench that would not allow for slippage and delivered it to Chavez. Before the job was given to Saporito and Burch, Chavez gave the morning briefing for crew expectations for the day. On this job, Chavez wanted to be sure that it was known that this was critical path and time was of the essence (TR 1958, 1959).

305. During the course of the December 14, 1991, meeting, after talking about whether the torque was valid, Saporito brought up that he did not have the paperwork and that he didn't know what he was supposed to be verifying (TR 1959). Meyer and Chavez did not tell Saporito that

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they were concerned that the outage was going to be considerably delayed (TR 1960). Also mentioned by Saporito during the meeting was that the reactor head studs were physically in the wrong holes of the reactor, and B&W could not align their insulation because the accelerometers were in the way (TR 1969).

306. On January 7, 1992, Chavez was pulled off his normal assignments by Employee Concerns. Chavez was told that the concerns he was investigating were Clyde Stewart's (CX-56), but he suspected they were Saporito's (TR 1970, 1971). Chavez identified a personal safety concern on CX-56 as a concern that Saporito had brought to his attention on December 14, 1991 (TR 1972). Chavez couldn't afford to have anyone walking around without documentation and not knowing what he is supposed to do (TR 1973). Of all the comments and concerns raised by Mr. Saporito, during the December 14, 1991 meeting, it was Chavez' belief that Saporito brought the concerns to his attention in good faith (TR 1983).

#### CLYDE STEWART

307. Clyde Stewart testified that he is the manager of Employee Concerns Program for APS, Palo Verde Nuclear Generating Station. He first heard of Thomas Saporito on December 30, 1991 (TR 1984). One of his staff members, Dan Robertson, informed Stewart that he had a meeting scheduled with Saporito to gather some details on some issues referred by Bill Simko

(TR 1985). Simko had the matter brought up to him, and he wanted Employee Concerns to assist (TR 1986). Stewart, Robertson, and Saporito met for a number of hours and went over particular issues (TR 1988). Stewart identified APSX-23 as a summary of the meeting (TR 1989).

308. During the December 30, 1991, meeting, Mr. Saporito was complimentary of his immediate supervision; his foreman and supervisor (TR 1945). It was explained to Saporito that the issues were those of Mr. Simko and Saporito seemed happy on how the supervision had reacted to the issues which had been brought up during his tenure (TR 1997).

309. Once Mr. Simko's issues were discussed, other issues were brought up. Stewart explained to Saporito that he would personally open a file and that he would track the issues. Saporito indicated he did not want his name associated with the issues (TR 1998).

310. Stewart found somewhat frustrating that Saporito refused to supply specifics and details related to some of the incidents he brought to their attention (TR 1999).

311. Concerning the Simko issues, Stewart recruited an engineering manager to work with him (TR 2000).

312. Stewart reviewed APSX-4, page 4, and stated that the letter left Stewart confused because Saporito felt that he was in some way discriminated against for future employment because of events taking place on December 30, 1991. Stewart wondered how this could be possible since the issues that they were looking at were unfolding in early to mid-December of 1991 (TR 2003, 2004, and 2005).

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313. Stewart began looking at the selection process for the next outage. He interviewed Mr. Frank Warriner as part of this process (TR 2007). Stewart reached the conclusion that Saporito's concern that he had not been selected for Unit 1 because of his participation in Employee Concerns was not substantiated (TR 2010).

314. Mr. Stewart recounted the way Warriner made his selection for the Unit 1 outage. He received resumes of contractors from The Atlantic Group and he gave those to his foreman. It was Stewart's recollection that the foremen did not select Saporito (TR 2017/2020). Mr. Stewart was unaware that Frank Warriner had 16 recommendations from his foremen and the only recommendation that he didn't follow was for Mr. Saporito; that the foremen selected Saporito and Warriner did not follow that recommendation (TR 2021, 2022).

315. During the December 30, 1991, meeting with Saporito, Saporito indicated that he did not want ownership of the concerns (TR 2036). Referring APSX-23, Mr. Saporito indicated that he previously worked for Florida Power and Light and that he was a whistleblower there and that was why he didn't want to identify names of people at the meeting and get into the same situation with Palo Verde that he had with Florida Power (TR 2037).

316. Mr. Chavez was assigned by Stewart's department, Employee Concerns Department, to investigate some of Mr. Saporito's concerns (TR 2038). In CX-56, page 5, Chavez' name is referenced as an investigator (TR 2041). Assuming Chavez was the foreman of the very job he was investigating, Stewart testified that there would be the potential for conflict of interest (TR 2042, 2043). During the course of Stewart's investigation, Stewart attempted to maintain confidentiality of Saporito's concerns (TR 2050).

#### Findings of Fact and Conclusions of Law

The findings and conclusion which follow are based upon a review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

Whenever I reference the evidence as summarized above, paragraphs 1 through 316, or the transcript, I am predicating my finding and/or conclusion of said evidence. Therefore, I hold the referenced testimony and/or exhibit to be true and accurate and a finding of fact herein. If there is a conflict in the evidence, I will present all sides, resolve the conflict, and state my rationale.

317. Complainant filed his original complaint against APS on January 27, 1992. TAG was added as a party defendant on June 29, 1992 (ALJX 1-3).

318. APS operates PVNGS consisting of three separate and independent reactor units; each is a separate entity unto itself (TR 1688). The three separate reactor units, their attendant structures, and operating staffs are each uniquely identified by designation of Unit 1, Unit 2 or Unit 3 (APSX 9, 10).

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319. Each Unit has its operating personnel and support staff. Each Unit has a separate I&C organization with its own assigned technicians (TR 1688, 1793).

320. TAG is a contract labor supply company (TR 623, 624). In 1991 and 1992, TAG had a contract with APS to provide skilled laborers and technicians to work at PVNGS (TR 507, 622).

321. Complainant worked as a TAG employee/APS contractor I&C technician at PVNGS Unit 2 from September 29, 1991, to December 31, 1991 (TR 668, 1443).

322. In his complaint against APS, Complainant alleged that he was discriminated against in violation of Section 210 of the ERA. (Complaint dated January 27, 1992.) On or about June 29, 1992, Complainant alleged that TAG played a role in denying Complainant a contract I&C technician position at PVNGS Unit 1 or an equal position at another nuclear station, that he felt intimidated by certain statements made by TAG representative, William Engleking, and that he did not name TAG in his original complaint because he was afraid that TAG would not offer him another job assignment as a contractor I&C technician. (See ALJX 3, pages 1-9).

323. I find that APS and TAG are subject to the ERA and that at all relevant times, Complainant worked as a TAG employee/APS contractor I&C technician at PVNGS Unit 2. (See APS' Response to Complainant's Request for Admission and TAG's Answer to Complainant's Amended Complaint dated June 29, 1992).

324. 42 U.S.C. §5851 (a) states in pertinent part:

No employer . . . may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions or privileges of employment because the employee ...

(1) commenced, caused to be commenced or is about to commence or cause to be commenced a proceeding under this Chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C.A. §2011 et seq.], or a proceeding for the administration or enforcement of any requirement posed under this Chapter or the Atomic Energy Act of 1954 as amended...

325. The issues for me to determine are as follows:

- (a) Whether Respondent, APS', decision not to hire Complainant for the Unit 1 refueling outage was in retaliation for Complainant's engaging in protected activity;
- (b) Whether Respondent, TAG, played a role and/or conspired with APS in the decision not to hire Complainant for the Unit 1 refueling outage;
- (c) Whether Respondent, TAG, intimidated and/or threatened Complainant entitling Complainant to equitable relief in filing his Complaint against TAG after the statute of limitations had tolled.

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326. In interpreting and applying Section 210, the Secretary of Labor and the Courts have utilized the burden of proof scheme developed by the Courts in cases arising under Title VII of the Civil Rights Act of 1964, and the Age Discrimination of Employment Act. Dartey v. Zack Co., 82-ERA-2 (SOL 1983) (burden of proof scheme utilized in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) is to be followed in ERA cases). In order to establish a viable case of retaliation under the ERA, the Complainant must prove (1) that he engaged in activity protected by Section 210; (2) that the Respondents were aware of such protected activity; (3) that Complainant was the subject of an adverse employment action; and (4) that Complainant's protected activity was the likely reason for the adverse action. Id. at 7-8.

327. Assuming Complainant is able to produce evidence sufficient to meet this prima facie burden, the burden of production shifts to the Respondents. This burden is not one of proof, but simply production, and Respondent can meet this burden by articulating a legitimate, nondiscriminatory reason for the adverse employment action. Where the Respondent articulates legitimate, nondiscriminatory reasons for the actions taken, any inference of discrimination raised by the prima facie case is dispelled. Complainant can then prevail only by establishing that the Respondents' articulated reasons were pretext for the discrimination based on conduct protected by the ERA. Burdine, 450 U.S. at 252-253. The ultimate burden of proof or persuasion

that intentional discrimination has occurred always rests with the Complainant. Dartey, 82-ERA-2, p. 8.

328. Reporting safety and quality problems internally to one's employer is a protected activity under the Energy Reorganization Act and other environmental statutes enumerated in 29 C.F.R. §24.1. See Makowiak v. University Nuclear Systems, Inc., 735 F.2d 1159 (9th Cir. 1984); Kansas Gas & Electric Co. v. Brock, 780 F.2d 1505 (10th Cir. 1985), cert. denied 478 U.S. 1011, 92 L.Ed.2d 724, 106 S. Ct. 3311 (1986).

### **Whether Complainant Engaged in Protected Activity and Whether Respondents Were Aware of Said Activity**

329. Since the evidence shows that Frank Warriner, the Unit 1 I&C supervisor, selected the contract I&C technicians for his outage<sup>16</sup>, the issue becomes, "what did Frank Warriner know about Saporito, and when did he know it?" There is no direct evidence linking Saporito's protected activity and Frank Warriner. On the contrary, Warriner testified that he did not discriminate against Saporito (See para 222 above). So if Saporito is to prove his case, it will be a circumstantial case at best. If Warriner learned that Saporito raised safety concerns, it would have been from individuals such as Steven Grove, Izadore Chavez, and Kenneth Meyer. I will concentrate on their testimony concerning the matter of Saporito's protected activity.

330. During the Unit 2 outage, Saporito worked for Steven Grove, the Unit 2 I&C Supervisor, and Grove's foremen, who included Chavez and Meyer. I find that at or near the time Saporito

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arrived at APS, Grove and Chavez learned that Saporito was a "whistleblower"<sup>17</sup> (paras 13-15, 37, 69).

331. Grove testified that Saporito brought up a lot of good issues. One example was the CEDMCS systems which involved the method of handling the circuit cards (paras 45, 46). Although in Grove's opinion, it was not a safety issue, Grove admitted that if the CEDMCS system was not operating properly, the NRC would not allow PVNGS to operate (para 46, 47).

332. Grove said Saporito raised a concern involving installation of accelerometers which allow the operators to determine if there is a loose part in the reactor. A loose part in the primary system may result in a loss of control of the reactor (para 48). Chavez identified CX-30, Saporito's statement on the accelerometer problem. On the bottom of page 3, Saporito made three statements that involved asking for protection; Saporito requested that the information he gave be handled in a very confidential manner and reminded Chavez that APS' policies and procedures provided that employees who provided concerns at PVNGS should not be harassed or discriminated against for providing the concerns (TR 776). Chavez didn't believe that Saporito's statement needed to be there because he assumed he and Saporito had a certain trust between them (TR 777). (See paras 172, 270, 271, 287, 303).

333. Concerning Saporito's relationship with his supervisors, the date December 14, 1991, seems to be a watershed. On this date, Saporito was called into a meeting with Chavez and Meyer to discuss his refusal to sign a document verifying the work of Dave Burch (paras 74, 275, 276, 298, 300, 304, 305). The length of the meeting is in dispute (see footnote 15). Meyer and Chavez felt that prior to this meeting, Saporito's performance was not unusual. Prior thereto, Meyer did not consider Saporito a "troubled employee" (paras 264, 286, 295). Meyer and Chavez discussed the situation before meeting with Saporito because there was a concern as to how much confidence they could place in Saporito (para 275). Meyer thought Saporito didn't see the big picture and that Chavez and he could sit down with Saporito and talk it through (para 277). While the accelerometer issue was going on, around December 14, 1991, they were in critical path. Every day the outage was delayed cost APS one million dollars (para 303). However, "talking it through" was difficult; Saporito brought up a "laundry list" of complaints that spanned from the very beginning of his employment (para 286). During a training course, Meyer learned of the phrase, "troubled employee." Meyer was given a checklist of characteristics of a "troubled employee." One was an employee presenting a laundry list of problems. Now, on December 14, 1991, Saporito fit the profile of a "troubled employee" (para 286).

334. Saporito's "laundry list" included not only his problems with verifying Burch's work, but also, a security violation and someone threatening him (paras 280, 296, 302).

335. Based upon the above, paras 330-334, I find Thomas Saporito did engage in protected activity consistent with the cases cited at para 328 and Steve Grove, Izador Chavez, and Kenneth Meyer were very much aware of said activity. If nothing else, Saporito's meeting with Chavez and Meyer on December 14, 1991, wherein Saporito refused to verify Dave Burch's work

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because he did not agree with the procedure, that it was physically impossible to verify the work and because he did not have the paperwork and did not know in advance what he was supposed to do (paras 74, 305) constituted protected activity.<sup>18</sup>

### **What Did Frank Warriner Know About Saporito and When Did He Know It?**

336. As I said earlier, aside from Warriner's own statements, there is no direct evidence as to Warriner's knowledge. Thus, Saporito's case must be circumstantial at best. Along that line, the evidence shows that Warriner had opportunity to know all about Saporito. Warriner made his selection of I&C contract technicians on December 19, 1991 (see footnote 5). Therefore, I will examine whether Warriner had opportunity to receive information about Saporito prior to December 19th.

337. Unfortunately for Saporito, news of his arrival at APS traveled from the bottom up and from top to bottom at APS. Steven Groeneveld, another I&C technician, Unit 2, had previously worked with Saporito at Florida Power and Light's Turkey Point Power Plant south of Miami, Florida. Groeneveld not only worked with Saporito there, but he knew people that knew Saporito

reputation was that of a troublemaker (para 7). Groeneveld had several conversations with co-workers at APS, Unit 2, about Saporito. He told 10-15 people about Saporito, all I&C technicians supervised by Grove (paras 8, 69). Groeneveld may have made a statement in the middle of the I&C shop, "Is that the same Tom Saporito that is from Florida?" It is very possible that Unit 1 and Unit-3 managers and technicians heard that statement (para 9).

338. Rex Smith, a quality assurance specialist during the Unit 2 outage, also worked with Saporito at Florida Power and knew that Saporito was fired from Turkey Point. Smith knew Saporito's reputation as a good technician but a little difficult to get along with (para 12). For some reason, Smith's father sent him a news article about Saporito being fired from Florida Power about December, 1988 (para 13).

339. James Levine, Vice President of Nuclear Production at PVNGS, who answers only to Bill Conway, Executive Vice President for Nuclear Operations, received a telephone call which had come in for Mr. Conway prior to the Unit 2 outage in the fall of 1991. Apparently when the person calling found out that Conway was not there, he asked to speak to Levine. The individual stated that he was with Florida Power and Light and told Levine he wanted to inform Conway that he understood Mr. Tom Saporito was working at Palo Verde. Levine was aware that Mr. Conway was a former employee of Florida Power and Light (as Executive Vice President for Nuclear Operations) and when Mr. Conway came back to town, Levine gave him the message. At one point, Levine asked through the maintenance organization if they had an employee named Tom Saporito. He believed he called Bill Simko who was the maintenance manager for Unit 2 (paras 114, 116). After Levine asked Simko to find out if Tom Saporito was working at APS, Simko told Levine that there was someone under contract with that name. Levine's direction to Simko was to treat Saporito like every other employee (para 118). When Levine talked to

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Conway about Saporito, he probably asked the significance of the call from the individual. Levine believed that they had a short discussion that Saporito had voiced concerns at Florida Power. Levine had about two or three conversations with Conway about Saporito (para 120).

340. William Simko actually reported to Ron Flood who reported to Jim Levine. Simko had conversations about Saporito being previously employed by Florida Power and Light with Jim Levine and Steve Grove (para 62). In approximately September 1991, Simko received a telephone call from Levine who wanted to know if they had hired Saporito. Simko checked with Steven Grove and determined that Saporito had been hired. After advising Levine of Saporito's employment, Levine then asked if Saporito had worked at Florida Power and Light. Simko did not know, so he went back to Steve Grove and found out that Saporito had worked at Florida Power and relayed the information to Levine. Levine said, "Okay, I'll call you back." Several days later, Levine advised Simko that there had been problems at Florida Power with Saporito and that he wanted to make sure that Saporito did a good job for them at Palo Verde. Simko said, "okay" (para 63). During Simko's career at Palo Verde, (over ten years) he did not remember Mr. Levine ever calling before and asking him to check on someone's background. It was not normal for Levine to directly call Simko since there was a person in between, Mr. Flood (para 65).

341. William Conway, Executive Vice President for Nuclear Operations at APS, was also employed by Florida Power and Light Company as Senior Vice President Nuclear in early February of 1988 and terminated there in early May of 1989 (para 98). While Conway was employed at Florida Power and Light, he learned that Saporito's employment was terminated at their Turkey Point Nuclear Station. Conway also knew that Saporito identified safety concerns to the NRC and recalled a radio broadcast in March or April of 1989 on the West Palm Beach, Florida, radio station wherein Saporito was interviewed and identified various concerns relative to Turkey Point. Saporito's termination and his safety concerns at Turkey Point were high visibility issues with the news media (para 99). Sometime in August or September of 1991, Conway discussed Saporito with James Levine. Levine informed Conway that Saporito was working as an I&C technician for the Unit 2 refueling outage and that Saporito previously worked at Florida Power. Conway acknowledged to Levine that he was aware of Saporito's past employment and may have discussed Saporito's firing from Florida Power (para 101). Conway's instructions to Levine were that Saporito was to be treated like anyone else (para 102). Conway expected his wishes to more or less trickle down to all employees and believed that Levine would tell other people to treat Saporito the same as everyone else (para 105). Conway expected Frank Warriner to receive the communication that Mr. Saporito was to be treated no different from anyone else. Conway wanted this communicated to the lowest level of management, the foreman level. The message was that Saporito had problems at Florida Power and he was terminated and now he's here and Conway wanted him to be treated like everyone else (para 107).

342. Steve Grove had weekly meetings with his counterparts in the other units (Units 1 and 3) to make sure there was consistency across the units. Informal meetings, including telephone conversations, occurred daily. These meetings took place during the Unit 2 refueling outage (paras 34, 41). Frank Warriner corroborated Grove's testimony. During the period August 1991

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through January 1992, Warriner attended regularly scheduled management meetings at Palo Verde. They averaged one meeting per week. Bill Simko and Steve Grove would be in attendance at some of these meetings (para 185). Towards the latter part of the Unit 2 outage, Grove met with Frank Warriner and offered his opinion on individuals who were working during the Unit 2 outage. Grove had a list of all employees sent over by TAG and Grove gave Warriner his opinion on each person. Grove told Warriner that Saporito was a good worker and did a good job. Grove believed that he told Warriner that Saporito raised some good concerns (para 43). By this time, through conversations with Groeneveld, Rex Smith, and Izadore Chavez, Grove knew Saporito had been employed by Florida Power and knew he was fired. Grove also knew that he had raised issues during the Unit 2 outage, i.e., the accelerometers, etc. (para 50-). Grove's notes indicate that he told Warriner Saporito did his work, assigned and raised good questions. Grove said that Saporito's name never came up before in any of the supervisor's meetings (para 51). Warriner did not recall Grove mentioning that Saporito had been previously employed by Florida Power nor did he ever recall Mr. Saporito being referred to as a "whistleblower" (para 186). From August 1991 to January 1992, Jim Levine talked to Frank Warriner in routine meetings. The managers and supervisors met each morning at 9:00 a.m. to discuss the activities during the

outage, primarily Unit 2 was involved although the managers from Units 1 and 3 may have been there (para 119).

343. The above considered, paras 337-342, I find that word on Saporito was out. Information about Saporito's past was spread from the Unit 2, I&C shop and from the executives down the chain of command. As Saporito so appropriately described his situation, he was a marked man (TR 1140). There were weekly meetings during the Unit 2 outage, some of which Frank Warriner was in attendance. Finally, toward the latter part of the Unit 2 outage, sometime after Grove knew about Saporito's past and the accelerometer issue, and before Warriner made his selection of contract I&C technicians for the Unit 1 outage, Grove reviewed all of his contract I&C technicians with Warriner. My only finding at this point is that the opportunity existed for Frank Warriner to have received information that Saporito engaged in protected activity prior to his selection of contract I&C technicians.

**Whether Complainant Was Subject to Adverse Employment Action and, If So, Whether Complainant's Protected Activity Was the Likely Reason for the Adverse Action**

344. I find that David Larson was an I&C foreman for APS at the PVNGS for 12 years and has been a foreman for 7 years (para 77). At all relevant times, Frank Warriner was his supervisor (para 79). I find that on December 17, 1991, Frank Warriner gave Larson resumes and asked him to select individuals to work the Unit 1 outage (para 109). Larson identified in court the exact resumes which Frank Warriner gave him to review. Larson made notes on the resumes and recreated in court what he did with the resumes for Frank Warriner (para 109).

345. Larson created a "yes" pile which was admitted into evidence as ALJX 5. This exhibit represents the resumes of individuals Larson recommended for hire to Frank Warriner. Thomas Saporito's resume is one of the individuals that Larson recommended be hired. All of the individuals Larson recommended for hire were selected by Warriner except Saporito (para 110).

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346. I find that Larson created a "no" pile which consisted of the resumes of four individuals. This was admitted into evidence as ALJX 6. None of these individuals were selected by Warriner for the Unit 1 refueling outage (para 112).

347. Larson put the "yes" pile and the "no" pile resumes on Warriner's desk and did not discuss his recommendations with Warriner. It was Larson's belief that Warriner always accepted his recommendations although he could not say that for certain (para 113).

348. I find that Warriner admitted that of the 16 recommendations made by Larson, Warriner followed Larson's recommendation 15 times and failed to follow Larson's recommendation only once. Larson recommended that Warriner hire Saporito, and this was the only recommendation that Warriner did not follow (para 202).

349. The above considered, para 343-348, and ALJX 5 and 6, I find that Complainant, Thomas Saporito, has made a prima facie showing that he was subject to adverse employment action and that his protected activity was the likely reason for the adverse action.

**Whether TAG Had Knowledge of Complainant's Protected Activity, and, If So, Whether Tag Played A Role and/Or Conspired With APS in the Decision Not to Hire Complainant for the Unit 1 Refueling Outage**

350. I have reviewed the testimony of William Engleking, paras 5461, 76, 239, 240; the testimony of Jan Gillard, paras 121-124; the testimony of Thomas Saporito, paras 125-175; the testimony of Ellen Taylor, paras 176-184, and based upon said testimony and upon the record as a whole, I find that there is no evidence that TAG had knowledge that Saporito engaged in protected activity prior to December 19, 1991, and no evidence that TAG played a role and/or conspired with APS in the decision not to hire him for the Unit 1 refueling outage. I affirm my ruling in Court granting TAG a directed verdict. Complainant should be mindful that TAG was instrumental in his being hired by APS in the first place.

**Whether Respondent, APS Articulated A Legitimate NonDiscriminatory Reason for the Adverse Employment Action**

351. If the employee establishes a prima facie case, the employer has the burden of producing evidence to rebut the presumption of disparate treatment by presenting evidence that the alleged disparate treatment was motivated by legitimate, nondiscriminatory reasons. Significantly, the employer bears only a burden of producing evidence at this point; the ultimate burden of persuasion of the existence of intentional discrimination rests with the employee. Texas Dept. of Community Affairs v. Burdine, Supra., 450 U.S., at 254-55.

352. Frank Warriner testified he did not hire Saporito because the first item he put down on his resume was "responsible for procedure writing." Warriner felt Saporito was promoting "procedure writing" which he did not need (para 191). Warriner hired

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people in the past for contract work who had a lot of procedure writing experience, and he wasn't always satisfied with their performance. Generally, they were not as productive as he wanted. Some liked to spend their time critiquing his procedure (para 207).

353. I find that Respondent articulated a legitimate, nondiscriminatory reason for not hiring Saporito for the Unit 1 outage, thus rebutting Complainant's prima facie case.

**Whether Respondent's Reason for Not Hiring Saporito Was A Pretext and Whether Complainant Has Proved Actionable Retaliation for Protected Activity**

354. After carefully reviewing the evidence, I find Warriner's stated reason was a pretext and untrue. I believe the case for discrimination is overwhelming.

355. Many of the contract I&C technicians selected by Warriner mentioned, "procedure writing." Among the contract I&C technicians selected for the Unit 1 outage by Frank Warriner were:

Dwight Brown - Larson felt that Brown was only a "fair" selection because his background was mostly computer (ALJX 5, page 1). Brown listed in the first sentence of his work experience summary that he had 30 years of experience in, among other things, technical writing (ALJX 5, page 2).

Dennis Dessormeau - In the first paragraph of Dessormeau's work summary, that is, his most recent employment from February 1991 to May 1991, Dessormeau indicated he "developed instrument calibration procedures ..." (ALJX 5, page 6).

Stanley Dixon - Dixon listed his work experience chronologically from the most recent, backwards. When he worked for River Bend Electrical Generating Station from May 1986-July 1986, the first experience he listed was that he was a procedure writer (I&C), that he rewrote plant procedures (ALJX 5, page 10).

Robin Drake - The first paragraph of Drake's resume which is headed, "summary" indicates that she had seven years experience which included surveillance procedures (ALJX 5, page 12).

Marvin Zimmerman - Zimmerman indicated just prior to arriving at Palo Verde that he performed surveillance procedures during the time frame of October 1990 to November 1990 (ALJX 5, page 14).

John D. Putnam - The first paragraph of Putnam's resume is entitled, "summary." The third item mentioned by Putnam was 11 years procedure writer (ALJX 5, page 16).

Laurence Enders - The first full paragraph of Enders' resume is entitled, "summary." In this paragraph, Enders indicates he was experienced in planning, coordinating, and technical writing of calibration procedures (ALJX 5, page 24).

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356. Warriner's criteria for selection of contract I&C technicians was: 1) field experience in calibration of instrumentation, 2) experience with pneumatics, especially valves, 3) outage experience, and 4) experience in non-nuclear fields. His priority was experience in outage work and contractor field work. Saporito's resume showed seven years of experience with Florida Power and Light and from Saporito's resume, Warriner could assume that Saporito had experience in at least one and possibly more fueling outages while working at Florida Power and Light (para 194). Saporito's resume indicated that he had pneumatic valve experience, and Warriner was looking for technicians who had pneumatic valve experience (para 192). Warriner admitted that Saporito just came off an outage at PVNGS Unit 2 and had four months of experience working at Unit 2 and what Saporito did at Unit 2, Warriner would have to assume by and large would be much of what he needed for Unit 1 (para 221). Warriner agreed that since Saporito worked the Unit 2 outage, he would have gone through a general employee training, respirator qualifier training, and was independently qualified as and I&C technician. Each of these periods of training represented an expense to the company. If Warriner had to train someone else, he would lose the benefit of that person's work on equipment for the outage and the company would have the added cost of training someone else new (para 197).

357. Warriner's stated reason for not hiring Saporito, that he was procedure writer and that his experience and his experience with procedure writers showed that they were not productive, was totally inconsistent with what Steve Grove presumably told Warriner about Saporito. Grove said nothing negative about Saporito and believed that he said that Saporito was a good worker and did a good job (para 43). Grove's notes indicate that he told Warriner that Saporito did his work which was assigned and raised good questions (para 51). Warriner testified that before he made his contractor selection, on December 16, 1991, he discussed the I&C contract workers working the Unit 2 outage with Steve Grove. Grove had no negative comments. Warriner felt Grove had a positive opinion regarding all of the contractors (para 199).

358. If all of the above, paragraphs 355-357, is not enough, what I consider to be the most convincing evidence of discrimination, of the 16 recommendations made by Larson, Warriner followed 15 of them and the only recommendation Warriner did not follow was to hire Saporito (para 202). This was information that APS did not volunteer. It was only after Robert Wagner testified that it became known that David Larson initially selected Saporito and that on the top right-hand corner of each resume, Larson made notations.<sup>19</sup> After reviewing CX 24, Wagner realized that they were not the original resumes reviewed Larson because there were no notations (para 84). I then asked counsel for APS for the original resumes reviewed by Dave Larson, and he agreed to produce them (see footnote 4). David Larson was recalled at my request (TR 965) and after reviewing the original resumes and his notes, Larson testified that all of the individuals he recommended for hire were selected by Warriner except Saporito. Warriner followed all of Larson's recommendations on who not to hire (para 112)<sup>20</sup>. As far as I am concerned, this evidence, the fact that Warriner followed Larson's recommendations 15 out of 16 times, and the one time he did not follow Larson's recommendations, that is, Larson's

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recommendation to hire Saporito, represents the "smoking gun." Sometimes circumstantial evidence can be stronger than direct evidence, and I believe that in this case we have classic example.

### **Whether Complainant Is Barred From Recovery As A Matter of Law Because of Omissions On His Resume and Security Forms to Gain Access to PVNGS**

359. APS argues that Complainant ought to be barred from recovery based upon the "clean hands doctrine" and the "after acquired evidence rule" because he omitted a period of unemployment (from 6/8/91 --9/22/91) on APS' security questionnaire and the resume reviewed by Warriner<sup>21</sup> (TR 1295, 1296, 1300, APSX 15, APSX 13). Complainant also omitted on APS security questionnaire his employment with Jupiter Hilton from 4/23/91 - 6/7/91, also omitting that he was released from this employment (TR 1297-1298, 1300; compara APSX 15 with APSX 13). The Jupiter Hilton employment was also omitted from the resume that Warriner reviewed (TR 1300). Complainant omitted his employment with Doubletree Hotel from 1/14/91 - 3/18/91 from the PVNGS security questionnaire, also omitting that he was released from this employment (TR 1299-1300; compara APSX 15 with APSX 13). It was also omitted from the resume that Warriner reviewed (TR 1300). Complainant's completed PVNGS security questionnaire also

omitted his unemployment period from 12/13/90 to 1/31/91 (TR 1296; compara APSX 15 with APSX 13). On the completed PVNGS security questionnaire, Complainant omitted his employment with Sea Air Towers from 12/3/90 - 12/12/90. (Compara APSX 15 with APSX 13) The resume Frank Warriner reviewed had the same omission (TR 1300). Also omitted from the PVNGS security questionnaire was Complainant's employment with ATI from 12/11/89 - 5/10/90, and that he was fired from this employment (TR 1278, 1286; compara APSX 15 with APSX 13). The ATI employment was also missing from the resume that Frank Warriner reviewed (TR 1300). On the completed PVNGS security questionnaire, Complainant said he worked for RCA and that his reason for leaving was "better job" (APSX 15, page 6). However, Complainant admitted on cross examination that he actually worked for two divisions or subsidiaries of RCA, he was fired from one and resigned from the other (TR 1302-1304).

360. APS argues that Saporito's conduct relative to the "clean hands doctrine" must be viewed in light of his past activities, i.e., his numerous prior lawsuits; that the omissions on Saporito's resume and PVNGS security violations in light of his past activities add up to reprehensible conduct barring his claim for relief.

361. With regard to Complainant's past, I agree he is no ordinary employee. However, can I penalize Complainant for exercising his rights under the ERA and the 1st Amendment to the Constitution? I have not examined the merits of Complainant's past litigation nor have I examined the merits of APS' past litigation. To be fair, wouldn't I have to do both? It is obvious that I have concluded an APS representative lied when he said he rejected Saporito because he listed "procedure writing" first on his resume. What obligation does APS have to come to court with clean hands?

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362. In summary, I find that I cannot determine whether Saporito is a professional victim and a charlatan based upon the evidence presented in this case. There is no question in my mind that Thomas Saporito is contentious.<sup>22</sup> I base this opinion on the many good men that testified on APS' behalf such as Izadore Chavez and Kenneth Meyer; men who knew Saporito well and worked with him. I also base this belief on my own observations in the way Saporito presented himself in court. But APS never said they did not hire Saporito for the Unit 1 outage because experience with him showed he was contentious. Had they done so, the results of this Recommended Decision and Order would probably be different.

363. APS further argues that Complainant's "falsehoods" on APS security forms violate industry standards and NRC regulations, citing 10 C.F.R. §10.11 (1992).

364. As I read 10 C.F.R. §10.11, it seems to me that the harm the regulation attempts to prevent relates to acts of espionage. For example, §10.11(a)(1) indicates that determining eligibility for access and/or employment clearance relates to an individual who committed any act of sabotage, espionage, treason, sedition, or terrorism. Subpart (a)(2) restricts access to individuals who publicly or privately advocated actions inimical to the interests of the United States or advocated the use of force or violence to overthrow the government of the United States. Subpart (a)(3)

restricts access to individuals who establish an association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or a secret agent of a foreign nation or with any person that advocates the use of force or violence to overthrow the government of the United States. Subpart (a)(4) restricts access to those who either joined or engaged in any activity knowingly in sympathy with a foreign or domestic organization which unlawfully advocates the commission of acts or force or violence to prevent others from exercising their rights under the Constitution.

365. I find that Claimant's falsehoods on the security forms do not violate this section of the Code of Federal Regulations because there has been no proof that Complainant deliberately misrepresented, falsified, or omitted relevant and material facts from his personnel security questionnaire which relate to the harm that the regulation attempts to prevent, i.e., acts of espionage or the other activity mentioned in subparts §10.11(a)(1)-(4). I find that if Saporito deliberately misrepresented or falsified his personnel security questionnaire, it was to hide other types of derogatory information such as his filing of frivolous law suits or his being fired for one reason or another.

366. I find Saporito's omissions on his resume even less serious for several reasons. Frank Warriner did not select Saporito for the Unit 1 outage, so omissions on Saporito's resume were irrelevant and did no damage to APS. There was no evidence that anyone working for APS investigated the resumes submitted by TAG, so omissions on Saporito's resume did no damage. Warriner testified that in the nuclear industry, gaps of employment were not unusual (para 204). APS presented no evidence that Saporito "tailoring" his resume by including only nuclear experience was something unusual.

367. As far as Complainant's own misconduct (the omissions) triggering the "clean hands

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doctrine," this maxim has been interpreted as a, "self-imposed ordinance that closes the doors of a court of equity to one tainted with an inequity or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." EEOC v. Recruit U.S.A., Inc., 939 F.2d 746, 752 (9th Cir. 1991). See also, CIBA-Geigy Corp. v. Bolar Pharmaceutical Co., Inc., 747 F.2d 844, 855 (3d Cir. 1984).

368. There is no connection between the omissions on Saporito's resume and APS' security forms and his cause of action, i.e., that he did not get the Unit 1 outage job because he engaged in protected activity. Had APS proved that Complainant manufactured an element of his cause of action, they would have had a case for the "clean hands doctrine."<sup>23</sup>

369. APS argues that the "after-acquired evidence rule" bars Complainant's recovery. I agree with APS that if there is convincing evidence in the damage portion of this case<sup>24</sup> that had APS known about Complainant's omissions on his security form or resume, that he would never have been hired by APS, the "after-acquired evidence rule" affects Complainant's remedy. For example, in Summers v. State Farm Mutual Auto Ins. Co., 864 F.2d 700, 708 (10th Cir. 1988),

the Court held that after-acquired evidence precluded recovery of any remedy in that particular case.<sup>25</sup>

370. I do not believe Saporito "banked" issues and so find. There is evidence that Saporito was being Saporito practically from the beginning of his arrival at APS (see TR 146-149, paras 139, 144). If Saporito held back until December 14, 1991, to raise, "an array of vague questions about PVNGS security, personnel safety..." etc. (see APS' brief, page 42), it was because Saporito, whatever else his motives, sincerely wanted to keep and continue his employment at APS. It appears to me that Saporito was pressured into verifying Burch's work (paras 149-152) and as a result of this pressure and Saporito's low threshold for anger, he brought up everything that had bothered him in the past. He was not intentionally "spending banked issues" for some ulterior motive. Saporito's letter to Steve Grove wherein he "lauded" his treatment by Unit 2 personnel (APSX 14) is more evidence that Saporito wanted to continue his employment at APS.

### CONCLUSION

The above considered, on the issue of liability only, I find for the Complainant, Thomas J. Saporito, Jr. and against the Respondent, APS. In the case of Thomas J. Saporito, Jr. v. TAG, I find for the Respondent, TAG, and against the Complainant.

### ORDER

1. The damage portion of this case involving Complainant and Respondent, APS, will commence within 60 days at a time and place to be announced. The parties will consult

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on the location of the trial and advise me on whether they have reached an agreement within 10 days.

2. Any and all outstanding motions will be renewed within 30 days and the parties will be prepared to argue and document said motions at trial.

3. Due to the transfer of this Administrative Law Judge, effective May 24, 1993, all future correspondence will be mailed to the following address:

U.S. Department of Labor-OALJ  
7 Parkway Center, Suite 290  
Pittsburgh, PA 15220  
Telephone Number (412) 644-5754

### **IT IS SO ORDERED**

MICHAEL P. LESNIAK  
Administrative Law Judge

MPL/dlh

Newport News, Virginia

**[ENDNOTES]**

<sup>1</sup>The following citations to the record are used herein:

ALJX - Administrative Law Judge Exhibit;  
CX - Complainant Exhibit;  
RX - Respondent Exhibit; and  
TR - Transcript of the hearing held September 28-October 7, 1992, in Phoenix, Arizona

<sup>2</sup>I&C is an abbreviation for Instrumentation and Control (TR 28).

<sup>3</sup>During Engleking's testimony, the parties stipulated that Mr. Saporito filed his complaint against APS on January 27, 1992 (TR 664, 665). (See ALJX-1) The parties also agreed that Saporito filed an amended complaint on April 9, 1992 (ALJX-2). Saporito filed another amended complaint on June 29, 1992, and that was admitted as ALJX-3 (TR 666, 667).

<sup>4</sup>At trial, I asked Mr. Lyons for the original resumes reviewed by Dave Larson and he agreed to produce them (see TR 827).

<sup>5</sup>Attorneys for APS represented to me in open court that the selection for Unit 1 was made December 19, 1991, and, therefore, Mr. Robertson's understanding as to when the selections were made for the Unit 1 outage was incorrect (TR 839).

<sup>6</sup>At this point, the parties stipulated that Mr. Saporito worked for Florida Power and Light from March of 1982 until December 22, 1988, at which time he was terminated, and that he resided during this period in Jupiter, Florida (TR 913, 914).

<sup>7</sup>At the conclusion of Mr. Conway's testimony, the parties stipulated that Mr. Kevin Moe who was an I&C technician, one of TAG's people who worked the Unit 2 outage, was hired as a permanent employee by APS on December 30, 1991 (TR 962, 963).

<sup>8</sup>Larson was recalled at my request (TR 965).

<sup>9</sup>It is to be noted that the attorneys represented to me that Frank Warriner did in fact select Abarr, Dessomeau, and Reeves for the Unit 1 refueling outage (See ALJX-4 and TR 979, 980).

<sup>10</sup>ALJX-4 given to me by Attorneys for APS indicates that the four individuals in Larson's "no" pile were not selected by Frank Warriner (see TR 795-807).

<sup>11</sup>After observing this witness, listening to his testimony, examining him myself, and reading the transcript, I conclude that Mr. Levine was intentionally evasive during his testimony. Levine

never seemed to have a clear recollection of events, and his answers were usually preceded with words such as "maybe" and "I believe."

<sup>12</sup>Attorney for APS conceded that Frank Warriner, at the time that he made his selection for I&C contract technicians for the Unit 1 outage, did not know about the variances and omissions in Saporito's resume. (See TR 1290 & 1298). However, Counsel wanted to establish a record for APS' theory that Saporito gained employment at Palo Verde through fraudulent means. Section 210 of the Energy Reorganization Act specifically adopted the principles of common law which provide that a person should not benefit from his own wrong. Also, had Saporito submitted an accurate resume, it would have resulted in an automatic rejection because he eliminated certain employments as well as several period of no employment. Attorney for APS also suggested that Mr. Saporito would have been denied protected standing (See TR 1287-1290).

<sup>13</sup>Prior to Mr. Warriner's cross-examination, the parties stipulated that Florida Power Corporation and Florida Power and Light Company are two separate and distinct companies. Saporito's litigation was against Florida Power and Light Company, and the letter Saporito received dated September 24, 1992 (CX-41) from Percy Beard, Senior Vice President, Nuclear Operations, was from Florida Power Corporation at Crystal River, Florida (TR 1571-1573).

<sup>14</sup>At the close of Complainant's case, I entertained various motions and granted TAG's motion for a directed verdict. I held that TAG did not discriminate against Complainant since they were not involved in the selection process for the Unit 1 outage. Secondly, I held that Complainant filed his complaint against TAG outside the 30-day statute of limitations and failed to make a prima facie case entitling him to equitable relief.

<sup>15</sup>It is to be noted that APS initially conceded that the December 14, 1991, meeting between Thomas Saporito and two of APS' supervisors which lasted for several hours, constituted protected activity on Saporito's part (see TR 1947). The length of the meeting is in question. Chavez testified that the meeting lasted about 30-45 minutes, and Ken Meyer testified that it lasted two hours and then testified he didn't know how long it lasted (TR 1949). Subsequently, attorney for APS felt that perhaps the meeting did not constitute protected activity and he wanted to leave the record open on the subject for briefing (TR 1951).

<sup>16</sup>This will be discussed more fully below.

<sup>17</sup>I use this term in a very broad sense not intending to connote any legitimacy whatsoever to Saporito's past or present activities.

<sup>18</sup>I do not have to decide who was right or wrong, how long the meeting lasted, whether there were heated exchanges, or whether Saporito was pressured into signing off on the documentation.

<sup>19</sup>Larson initially testified that he did not keep track of who he selected but he thought that he did select Saporito (para 80).

<sup>20</sup>Did someone xerox out Larson's notes?

<sup>21</sup>The "after acquired evidence rule" would not apply to Warriner's review since Warriner rejected Saporito anyway.

<sup>22</sup>Or "troubled" as Kenneth Meyer so aptly stated (para 286).

<sup>23</sup>Assuming for the sake of argument that APS successfully raised the "clean hands doctrine," some courts have held that only the plaintiff's remedy was affected, i.e., the remedy of reinstatement. St. John v. Employment Development Dept., 642 F.2d 273, 275 (9th Cir. 1981).

<sup>24</sup>See Wallace v. Dunn Const. Co., Inc., 968 F.2d 1174, 1181 n.11 (11th Cir. 1992)

<sup>25</sup>In Summers, there was evidence of 150 falsifications by Summers four years after he was discharged. APS would have a difficult time showing the Saporito case rises to the level of Summers to preclude the granting of any remedy.