

Fluor Daniel, Inc. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO. Case 26-CA-13842-S

August 13, 2007

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On May 28, 1993, the National Labor Relations Board issued a Decision and Order in this case, adopting the administrative law judge's conclusion that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by discriminatorily refusing to hire 53 voluntary union organizers ("salts"), and by effectively discharging employee David Scott Bolen for refusing to cross a picket line. *Fluor Daniel, Inc.*, 311 NLRB 498 (1993). The Board reversed the judge's finding that the Respondent discriminated against salt-applicant Edward DeWitt, finding that he had failed to submit an adequate job application. The Board petitioned the United States Court of Appeals for the Sixth Circuit to enforce its Order.

On November 16, 1998, the court issued its decision enforcing the Board's Order in part and remanding to the Board. *NLRB v. Fluor Daniel, Inc.*, 161 F.3d 953 (6th Cir. 1998). The court enforced the Board's finding of 8(a)(3) and (1) violations as to the effective discharge of Bolen, as well as the failure to hire salts John and Steven Coons.¹ However, the court found that, as to the remaining salts, the Board had failed to address whether the General Counsel sufficiently matched each salt with a vacant position for which the salt was qualified. Accordingly, the court remanded the case to the Board for appropriate action consistent with its opinion. In doing so, the court stated that the Board "may also want to reconsider" the finding that salt Richard Bowlds wrote "voluntary union organizer" on his application, as well as the "logically subsequent finding" that the Respondent had a discriminatory motivation in refusing to hire him.² *Id.* at 971.

By unpublished Order dated January 18, 2000, the Board remanded this proceeding to Administrative Law Judge Martin J. Linsky for consideration of the issues raised by the court's remand.

On May 11, 2001, the judge issued the attached supplemental decision. The Respondent filed exceptions

¹ On July 7, 2004, Administrative Law Judge Jane Vandeventer issued a supplemental decision resolving compliance issues concerning Bolen and John and Steven Coons. Exceptions to Judge Vandeventer's supplemental decision are currently pending before the Board.

² All references herein to "Bowlds" are to Richard Bowlds, not Herschel L. Bowlds Jr., also an alleged discriminatee herein.

and a supporting brief, the Charging Party filed an opposition, and the Respondent filed a reply to the Charging Party's opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's supplemental decision, the parties' briefs, and the record in light of the court's opinion, which we accept as the law of the case.³ For the reasons that follow, we reverse the judge and dismiss the complaint as to salts Bowlds and George Saltsman, and find, contrary to the judge, that the General Counsel failed to match the following salt-applicants with positions that were available in the spring of 1990: Thomas Turner, Russell Bell, Hubert Crabtree, Anthony Taylor, Bobby Crabtree, Willis Beasley, Ricky Brown, and George Hayes.⁴ We affirm the judge's remaining rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order.⁵

I. THE JUDGE'S SUPPLEMENTAL DECISION

The judge found that Bowlds did not write "voluntary union organizer" or similar wording on his application. However, the judge determined that his application sufficiently reflected his union affiliation because he listed the business agent and assistant business agent of Iron Workers Local 103 as personal references. The judge also noted that Bowlds had submitted his application

³ Having accepted the court's decision as the law of the case, we do not here consider or address how this case would be resolved under the analysis set forth in *FES*, 331 NLRB 9 (2000), *enfd.* 301 F.3d 83 (3d Cir. 2002), which issued after the Sixth Circuit's decision in this case.

⁴ This case involves the failure to hire salts in both the spring and the fall of 1990. As discussed further below, we find that the General Counsel sufficiently matched these named individuals with positions that were available in the fall of 1990. All dates in this decision are 1990, unless otherwise noted.

⁵ Inasmuch as the court has already enforced the provisions of our original Order that concerned Bolen and John and Steven Coons, we shall not repeat them here. In addition, we note that the judge found that applicant Greg Parks has died, applicants Larry Elliott and Don Gower have retired, and applicants Ricky Brown and Jimmy Gentry have left the ironworker trade. Accordingly, we do not include their names in the list of individuals to be given offers of employment, and we direct that any backpay due Greg Parks shall be paid to the legal administrator of his estate or to any person authorized to receive such payment under applicable State law.

The refusals to hire at issue here occurred when the Respondent was hiring to perform a contract with Big Rivers Electric Company. In his original decision, the judge stated that the salt-applicants' entitlement to reinstatement and backpay should extend beyond the termination of the Respondent's contract with Big Rivers in the fall of 1990, citing *Dean General Contractors*, 285 NLRB 573 (1987). In *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007), the Board recently modified the evidentiary requirements to be applied in determining reinstatement and backpay-period-duration issues where, as here, the discriminatees are union salts. In litigating these issues at compliance, the General Counsel will bear the burden of proof as set forth in *Oil Capitol*.

along with other applicants who had “voluntary union organizer” or similar wording on their applications.

The judge determined that the General Counsel matched the applicants with available positions for which they were qualified. The judge noted that at the original hearing, the Respondent’s superintendent, Andrew Warner, testified that, in selecting applicants for hire, the Respondent relied primarily on the information contained in job applications.

The judge rejected the Respondent’s assertion that some selectees may have appeared at the gate just when people with their skills were needed, and that they were hired on the spot. In this connection, the judge found that there was no testimony that any specific hirings actually occurred under those circumstances. The judge also found that the Respondent’s own staffing plan called for retaining applications filed in the spring to be used for hiring in the fall, and that the Respondent easily could have contacted the salts who applied in the spring of 1990 and offered them employment in the fall, but that it did not do so because they had expressed a desire to organize. The judge also rejected the Respondent’s claim that union picketing made it impractical to hire the salt applicants, pointing out that it was the Respondent’s failure to hire the salts that prompted the picketing in the first place.

The judge again concluded that the Respondent violated Section 8(a)(3) and (1) by failing to hire the salt applicants.

II. RESPONDENT’S EXCEPTIONS

The Respondent argues that the judge erred by finding a violation as to Bowlds because Bowlds’ application did not contain the words “voluntary union organizer” or similar wording. The Respondent acknowledges that Bowlds’ application indicated that he was affiliated with a union, but argues that the application is indistinguishable from applications of other union-affiliated individuals who were hired.

The Respondent also argues that the judge erred in finding that positions were available for certain salts because the judge matched those salts to positions that already had been offered to, or vacated by, other employees by the time the salts applied. The Respondent also claims that the judge’s comparison of applicants by education and experience as listed on their respective job applications is of little relevance as the Respondent did not hire based on careful comparisons of individual résumés, and that the judge erred in certain assessments he made of the selectees’ qualifications relative to those of the salts. Further, the Respondent contends that, in the construction industry, all journeymen are considered equally qualified, and the judge therefore erred by find-

ing some journeymen more qualified than others. The Respondent additionally claims that some of the employees hired did not perform the traditional duties assigned to their respective crafts, and thus that the judge erred in comparing them to salts who had skills in those crafts. Moreover, according to the Respondent, the judge erred by comparing some journeyman salts to employees who were hired into lower-level positions because the Respondent would not have considered them for, and the salts would not have accepted, those positions.

The Respondent also raises several affirmative defenses. First, the Respondent asserts that it was justified in not hiring the salts in the fall because their applications, which were filed in the spring, were “stale” by the time the Respondent began its fall hiring. Second, with respect to salt applicant Saltsman, the Respondent contends that its failure to hire him was justified because he failed to submit an adequate application. Third, the Respondent argues that it had several hiring preferences that justified its hiring decisions, specifically preferences for hiring (1) former employees; (2) applicants who applied at the gate where work was to be performed; and (3) people who had connections to employees already on the job. Finally, the Respondent argues that it reasonably declined to hire the salts while picketing was occurring in the spring as it reasonably believed that the salts would not be willing to cross the picket lines to come to work.

III. ANALYSIS

To prove a violation of Section 8(a)(3) of the Act, the General Counsel must prove, by a preponderance of the evidence, that an individual’s protected activity was a motivating factor in the employer’s adverse employment action. *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). To sustain this burden, the General Counsel must show that the individual engaged in protected activity, that the employer was aware of that activity, and that the activity was a substantial or motivating reason for the employer’s action. *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999). Once the General Counsel makes this showing, the burden of persuasion then “shift[s] to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct.” *Wright Line*, *supra*.⁶

⁶ Again, this decision is governed by the Sixth Circuit’s decision as the law of the case. Elsewhere, the standards set forth in *FES*, *supra*, continue to govern our analysis of discriminatory refusal-to-hire allegations.

A. *The General Counsel's Case*

There are two elements of the General Counsel's case at issue here. First, there is an issue as to whether the General Counsel showed that the Respondent knew that Bowlds was a salt. Second, there is an issue as to whether antisalt animus motivated the Respondent's failure to hire the salts. We address these issues separately below.

1. Knowledge

It is undisputed that the Respondent hired individuals whose applications showed general union affiliation. The issue here, however, is whether the Respondent discriminatorily refused to hire individuals whose applications indicated that they were salts.

Bowlds' application did not state that he was a "voluntary union organizer" or contain similar wording. Rather, as the judge found, his application listed the business agent and assistant business agent of Iron Workers Local 103 as his references. Thus, the application shows at most Bowlds' general union affiliation. Although his application was submitted along with 11 other Iron Workers' applications, all of which displayed the phrase "voluntary union organizer" or similar wording, the applications were not submitted directly to the Respondent. Rather, they were submitted to a job service in Owensboro, Kentucky, which later provided them to Respondent representative Jim Boyd. Boyd's undisputed testimony from the original hearing indicates that, when he picked up applications from the job service, he was given hundreds of applications that appeared to have been lumped together. In these circumstances, the mere fact that Bowlds' application was initially submitted to the job service along with those of other salts who did declare an organizational intention does not provide a basis for finding that the Respondent knew that Bowlds was a salt. Accordingly, we find that the General Counsel failed to satisfy his burden of proving knowledge of Bowlds' status as a union salt, and we dismiss the allegation of the complaint pertaining to Bowlds.⁷

⁷ Contrary to her colleagues, Member Liebman would find that the Respondent had knowledge that Richard Bowlds was linked to the union salting campaign and, therefore, that the Respondent unlawfully failed to hire him. Bowlds was similarly situated to those applicant salts who indicated on their applications that they were volunteer union organizers. As the judge found, the salting operation here was undertaken by four unions. One of those unions was Iron Workers Local No. 3 and we find today that the Respondent violated the Act by failing to hire several Local No. 3, applicants. Bowlds specifically listed on his application, as references, the business manager and the assistant business manager of Local No. 3 and identified these agents by their titles. In these circumstances, the Respondent more likely than not would have identified Bowlds as linked to the salting activities and union membership of his fellow Local No. 3 members overseen by these same

2. Animus and job matching

In its original decision in this case, the Board found that the General Counsel demonstrated the Respondent's antiunion animus by, inter alia, the Respondent's discharge of Bolen and its treatment of Steven and John Coons. The court affirmed the Board's findings regarding Bolen and Steven and John Coons, and left undisturbed the finding that the Respondent possessed antiunion animus.⁷ However, the court found that, with respect to the alleged discriminatory failure to hire the remaining salts, the General Counsel was required to match up the remaining salts with "available jobs" and to show a link between the Respondent's animus and "identifiable employment decisions." *Fluor Daniels*, supra, 161 F.3d at 968, 969.

The Respondent argues that the judge erred by matching some of the salts with employees who had received offers, and others with employees who had vacated positions (absent evidence that those positions were subsequently filled), before the Respondent received the salts' applications from the Owensboro job service on March 26. If an offer already has been made to someone to fill a position before a union applicant applies, then the job is not truly "available," and no "identifiable employment decision" is made by the employer when the offeree later accepts the offer and begins the job. That is, the hiring of the offeree results from the offeree accepting the position, rather than from a separate, post-March 26 hiring decision. With respect to positions that have been vacated before the union applicants applied, the fact that a position has been vacated does not establish that the employer subsequently filled the vacancy. Again, in those circumstances, there is no evidence of an "identifiable employment decision" having been made after the union applicants applied.

Applying these principles to the facts here, the record supports the Respondent's claim that it offered positions to certain selectees before March 26. Specifically, Boyd maintained a job log that he authenticated at the original hearing, and that was admitted into evidence without

union agents. Because she would find that the Respondent had knowledge of Bowlds' affiliation with one of the salting unions based on the foregoing, Member Liebman would find it unnecessary to pass on whether the Respondent also had knowledge of Bowlds' affiliation based on the circumstances of his application's tender to the Respondent, along with other Local No. 3 salts.

Member Liebman also emphasizes that the law of the case in this salting proceeding is drawn from the Six Circuit's remand and, on that basis, she joins in the decision's discussion of vacancies and identifiable employment decisions pertinent to those vacancies.

⁷ Thus, although the Respondent claims that the court's decision called into doubt the Board's finding of the Respondent's general antiunion animus, or that the finding otherwise is no longer valid, we reject that claim.

objection. As Boyd testified, the job log includes the dates on which offers were made to the listed individuals. The judge did not discredit this evidence, which shows that the following employees were offered positions before March 26: Thomas Eubanks, Douglas Hammond, Kyle Johnson, Robert Owen, Christopher Ratliff, Doyle Matthew Hust,⁸ J.D. Everman, David McDonald, Ronnie Glen Fulkerson,⁹ James Eaton, Larry Hardison, Michael Little, and Billy Archer. There is no claim and no evidence that any of these employees turned down these offers and were given additional offers on or after March 26. In these circumstances, we find that the positions filled by these individuals were not “available” to the salts when they applied. Thus, we find that the General Counsel failed to match up the following salts with positions that were available in the spring: Thomas Turner, who was compared only with Fulkerson; Russell Bell, who was compared only with Hust; Hubert Crabtree, who was compared only with Johnson; Anthony Taylor, who was compared only with Little; Bobby Crabtree, who was compared only with Eubanks; Willis Beasley, who was compared only with Owen; and Ricky Brown, who was compared only with Ratliff.

By contrast, although the judge compared salt applicant G. Dennis Kulmer with two employees (Eubanks and Hammond) who had received offers before March 26, the judge also compared Kulmer with selectees who had not received pre-March 26 offers. At least one of those selectees (e.g., Johnny Beasley) was not compared with any other salts, and thus has not already been counted in determining available jobs for other salts. In these circumstances, the General Counsel has satisfied his burden of matching Kulmer with at least one available job for which he was qualified. With one exception, discussed below, there is no record evidence that any additional employees involved in the judge’s comparisons received offers prior to March 26, and we reject the Respondent’s claims to the contrary.¹⁰

⁸ The job log includes the name “Matthew Hust.” Matthew Hust’s job application lists his full name as “Doyle Matthew Hust,” and there is no separate application from a “Matthew Hust.” Thus, the Doyle Hust referred to in the Respondent’s exceptions appears to be the same individual as the “Matthew Hust” in the job log.

⁹ The job log lists a “Glen Fulkerson,” and the record contains job applications on different dates for “Ronnie Glen Fulkerson” and “Ronnie G. Fulkerson,” but no application from a “Glen Fulkerson.” Thus, the Ronnie Glen Fulkerson referenced in the Respondent’s exceptions appears to be the same individual as the “Glen Fulkerson” in the job log.

¹⁰ One additional salt applicant, George Saltsman, was compared only with a selectee (Eaton) who received an offer before March 26. For the reasons discussed below, we dismiss the complaint as to Saltsman on the ground that his application was inadequate.

With respect to selectees who already had vacated their positions before the salts applied on March 26, the evidence shows that selectee Patrick Lumb was terminated on March 23, and there is no claim or evidence that this vacancy was later filled. Accordingly, there is no evidence that the Respondent made an identifiable employment decision with respect to this vacancy after the salts applied, and we thus find that the judge erred by considering Lumb’s position in identifying available positions in the spring. As salt George Hayes was compared only with Lumb for the spring, we find that the General Counsel has failed to establish that there was a position available for Hayes in the spring.¹¹

For the foregoing reasons, we find that the General Counsel failed to establish that there were positions available in the spring for Thomas Turner, Russell Bell, Hubert Crabtree, Anthony Taylor, Bobby Crabtree, Willis Beasley, Ricky Brown, and George Hayes. Thus, the General Counsel has failed to establish that the Respondent discriminatorily failed to hire these individuals in the spring. However, the General Counsel did match up these individuals with positions that were available in the fall. Consequently, the Respondent unlawfully failed to hire them in the fall, and any remedy for that unlawful conduct will be determined accordingly.

As summarized above, the Respondent challenges the judge’s job-matching findings on several additional grounds. For the reasons that follow, we reject the Respondent’s contentions.

With respect to the Respondent’s claim that the judge erred in comparing applicants’ education and experience listed on their job applications, the judge relied on Warner’s testimony from the original hearing that the Respondent relied primarily on the information contained in job applications when making its selections. The Respondent provides no basis for reversing the judge on this point.¹² In addition, the record supports the judge’s

¹¹ The judge compared salts to three selectees (Phillip Small, Bruce Kennedy, and Paul Darnell) who were hired on or after March 26 but later vacated their positions. As they were hired on or after March 26, the Respondent made an “identifiable employment decision” by hiring them after the salts applied, and the fact that they later vacated their positions is irrelevant. To the extent that the judge implied that any of their positions were appropriately considered *after* they had been vacated, however, we disavow any such implication, as there is no evidence that those vacancies were later filled.

¹² In affirming the judge on this point, we do not rely on the judge’s discussion of the salts’ additional qualifications that were not reflected on their applications. Similarly, for the reasons stated by the judge, we reject the Respondent’s attempt to rely on selectees’ alleged qualifications that were not reflected on their applications. Further, we do not rely on the judge’s findings regarding the alleged poor performance of some selectees after they were hired. We note, in this connection, that the record supports the Respondent’s claim that selectee Joe Poehlin was terminated under a reduction in force, rather than (as the judge

findings that, based on their applications, the salts were more qualified than the selectees.¹³

With respect to the Respondent's claim that all journeymen are considered equally qualified, the Respondent's witnesses testified that individuals with more experience, particularly in construction, are generally preferred over those who lack such experience. Accordingly, we reject the Respondent's claim.

With respect to the Respondent's argument that some of the selectees did not ultimately perform the usual duties of their respective crafts, there is no evidence that, at the time of hiring, the Respondent knew that any of the selectees would not be performing the duties of the positions for which they were hired. Thus, what duties a selectee ultimately performed is irrelevant to determining whether the Respondent, because of antiunion animus, failed to hire the more qualified individual for that position at the time it made the hiring decision. Accordingly, we reject the Respondent's argument.

Finally, we reject the Respondent's claim that the judge erred by comparing some journeymen salts to selectees hired into lower-level positions. In this regard, the record evidence cited by the Respondent is neutral, at best, with respect to whether the Respondent would not consider journeyman applicants for lower-level posi-

found) for unsatisfactory performance. Nevertheless, even given the judge's error in this regard, there is no basis for finding that Poehlin was more qualified than Wallace Cook Jr., the salt to whom he was compared.

¹³ In adopting the judge's findings, we do not rely on his statement that selectee Randall Renfrow's previous experience was as a "cow-hand."

The Respondent correctly argues that the judge made inconsistent findings regarding selectee Eubanks. Specifically, when comparing Eubanks to salt Kulmer, the judge found that Eubanks had 3 years of construction welding experience, but when comparing Eubanks to salt Bobby Crabtree, the judge found that Eubanks had only 1 year of such experience. Eubanks' application indicates that he had, at most, 1 year of such experience. Thus, the judge's inconsistency provides no basis for reversing his assessment that Eubanks was less qualified than Kulmer (6 years' experience) and Crabtree ("life-long" experience).

The Respondent also argues that the judge wrongly relied on selectee Troy Hilburn's poor tube-welding skills in comparing him to salt Richard Wall. Even assuming that the judge wrongly relied on a discussion of tube-welding skills, we find that the record supports the judge's finding that Hilburn was more qualified than Wall for a pipefitter position.

The Respondent further claims that the judge erred by finding that selectee Steven Wilhelm was in a pipefitter position, when he was actually hired as an ironworker. The Respondent's hiring records set forth Wilhelm's craft code as the pipefitter code, but then list "ironworker" as his title. This document indicates that Wilhelm could have been classified as either an ironworker or a pipefitter, and the Respondent cites no other evidence indicating that Wilhelm was an ironworker. Accordingly, we find that the Respondent has not demonstrated that the judge erred in finding Wilhelm to be a pipefitter.

tions.¹⁴ Further, other record evidence indicates that the Respondent does not automatically decline to consider higher-level applicants for lower-level positions,¹⁵ and still other evidence indicates that the journeymen salts would have been willing to accept such positions.¹⁶ In these circumstances, the Respondent provides no basis for finding that the judge erred by comparing journeymen salt applicants with selectees who were hired into lower-level positions.

For the foregoing reasons, we find that the General Counsel has established an initial case of discrimination, except as to Bowlds, with respect to whom we dismiss the relevant portion of the complaint.

B. Respondent's Affirmative Defenses

The Respondent claims that it had several legitimate justifications for its hiring decisions.

With regard to the Respondent's claim that the salts' applications were "stale" by the time the Respondent began its hiring for the fall, the Board rejected this argument in its original decision, and the court did not disagree. The Respondent advances no reason for the Board to revisit this issue. Thus, we reject the Respondent's argument. We do, however, agree with the Respondent that salt applicant Saltsman failed to submit an adequate application. Saltsman's application lists training in the pipefitter apprentice program but does not list any work experience. Thus, his application is not materially different from that of applicant DeWitt, which the Board previously found to be inadequate because it did not list his previous work experience. Accordingly, for the same reasons discussed in the Board's original decision with respect to DeWitt, we dismiss the complaint as to Saltsman.

With respect to the Respondent's (undisputed) preference for hiring former employees, there is no record evidence that the Respondent has a practice of hiring a less qualified over a more qualified applicant merely because he or she was a prior employee. On the contrary, the record demonstrates that, even for prior employees, the

¹⁴ Specifically, the Respondent cites the testimony of Director of Human Resources Jack West that he "personally never offered a journeyman a laborer's job[.]" But West also acknowledged that employee Daniel Wood "evidently . . . took [such a job]."

¹⁵ At the original hearing, Boyd acknowledged that it is "not a policy[]" that someone applying for a supervisory position will not be hired into a lower-level position.

¹⁶ There was extensive testimony that journeymen salts would have been willing to accept lower-level jobs on the Respondent's Big Rivers project for a variety of reasons, including the fact that "[w]ork was rather slow" for many of the salts, the work projects at issue were close to where some people lived, and the Respondent had a "three year maintenance contract" for the project that would provide the "opportunity to work steadier and longer," which "would have outweighed the larger amount of money on short term" working elsewhere.

Respondent considers the individual's application, interview, prior termination codes and skill levels, and references.¹⁷ This evidence indicates that an individual with poor work skills or a prior disciplinary record would not necessarily be hired simply because he or she previously had been employed by the Respondent. Accordingly, we find that the Respondent failed to show that it would have hired any of the selectees over the salt-applicants based on its preference for hiring former employees and even in the absence of the salts' protected activity.

With respect to the Respondent's claim of having a gate-hiring preference, there was general testimony that the Respondent will hire people who apply at the plant gate. However, as with the former-employee preference, there is no evidence that the Respondent will hire a less qualified over a more qualified applicant because the former applied at the gate.¹⁸ To support its claimed gate-

¹⁷ In this connection, Linscome testified that, in hiring for the fall, he would go back through the list of former employees and decide not to send letters to people who were "discharged . . . for cause" or "because of their work performance." In addition, the Respondent's project manager, Robert Woollard, testified that for employees coming off other projects, "[i]f they've been working for me for a while, I don't generally pull their resume up[.]" but when other individuals apply, Boyd looks in the Respondent's computer "and sees if they have experience with us, proper termination codes[.]" and "talks to their references." Although Woollard testified that his "first preference is a known quantity, someone who has worked with me before," West acknowledged that "if you knew something bad about a person, that would not necessarily mean that that known quantity would be better than the unknown quantity." In addition, the Respondent's vice president of field human resources, John Schroeder, stated that for former employees, the Respondent can "go into the data base, we can call their name up, we can see what kind of work record they've got, what their skill level is, why they were terminated off the last job." In addition, certain circumstances could cause an individual to lose his or her Fluor Daniel craft certification. In this regard, the Respondent's craft training and staffing employee, Richard Jones, acknowledged that "you can also lose your craft certification if you fail a chemical screening test[.]" although you can get it back later, and that "they can lose their certification[]" for severe, willful, flagrant safety violations.

We note the Respondent's claim that, in comparing selectee Steven Hilburn to Willis Beasley for an ironworker position in the fall, the judge based his decision on an incorrect finding that Hilburn had been fired for cause during the spring. The Respondent's records show that Hilburn was terminated in a reduction of force. Nevertheless, the Respondent rated Hilburn as marginal for attendance, punctuality, and dependability, and Hill testified that dependability is important in this work. Further, the record supports the judge's assessment that Beasley was more qualified than Hilburn for an ironworker position. Accordingly, even if the judge erred in finding that Hilburn had been fired for cause, we affirm his ultimate finding that Beasley would not have been passed over in favor of Hilburn absent Beasley's union activity.

¹⁸ The judge found that there was no evidence that any selectees were hired at the gate. However, Linscome testified that he recalled hiring Jim Glick and Ricky Pollard when they showed up at the gate and applied, sometime in early April. Thus, the judge's finding in this regard was mistaken. But the mere fact that Glick and Pollard appeared at the gate and were hired fails to establish that they were hired because of a gate-hiring preference. In sum, there is evidence that the Respon-

dent hired some gate applicants, but there is no evidence that the Respondent hired gate applicants over better-qualified applicants *because* the former applied at the gate. To the contrary, the evidence is that, in making hiring decisions, the Respondent relied primarily on job applications, not on where an applicant tendered his application. Thus, the fact that, in April, after better-qualified salts had applied, the Respondent hired Glick and Pollard at the gate does not demonstrate that the Respondent would have hired those two even in the absence of the salts' protected activity.

With regard to the Respondent's claimed preference for hiring people with connections to incumbent employees, there was testimony that the Respondent will hire individuals who are referred by other employees, and that some of the selectees were contacted or came to the job because they knew people already working for the Company. However, there is no record evidence that the Respondent will hire a less qualified over a more qualified applicant merely because the former knows or receives a referral from an incumbent employee. Accordingly, the Respondent has not established that, absent antiunion animus, it would have hired any of the selectees because of their connections to incumbent employees.

Finally, with regard to the Respondent's claim that the spring picketing justified its failure to hire the salt-applicants, the judge found that the purpose of the picket-

dent hired some gate applicants, but there is no evidence that the Respondent hired gate applicants over better-qualified applicants *because* the former applied at the gate. To the contrary, the evidence is that, in making hiring decisions, the Respondent relied primarily on job applications, not on where an applicant tendered his application. Thus, the fact that, in April, after better-qualified salts had applied, the Respondent hired Glick and Pollard at the gate does not demonstrate that the Respondent would have hired those two even in the absence of the salts' protected activity.

¹⁹ In this regard, Boyd testified that people to whom offers already had been made "would have filled [the application] out the day they reported to the job[.]" and acknowledged that "the fact that . . . an application may be dated April 9th, the same date . . . the individual was hired, does not reflect whether or not [the Respondent] had previously made a commitment to this person." In addition, Warner testified that people coming from other Fluor Daniel jobs would fill out applications "[w]hen they got to the job site." Further, Schroeder testified that the Respondent would call previous applicants and have them "come back in and update that resume or that application . . . before they could be hired, but not necessarily before you would contact them." In light of the foregoing testimony, we reject the Respondent's contention that documents showing little or no time gap between selectees' application and hire dates demonstrate a gate-hiring preference.

²⁰ For example, West affirmed that "you try to anticipate the needs of the projects . . . and do the recruiting ahead of time[.]" and "that's what Boyd's staffing plan apparently did[.]"

ing was to protest that very failure to hire, and that some picketers informed the Respondent that they were looking for jobs. Thus, it would have been reasonable for the Respondent to conclude that, had it offered jobs to the salts, the picketing would end. In these circumstances, we find that the picketing did not provide a legitimate justification for the Respondent to refuse to hire the salts.²¹

ORDER

The National Labor Relations Board orders that the Respondent, Fluor Daniel, Inc., Greenville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging employees from engaging in activities on behalf of a labor organization by refusing to hire job applicants because they are members or supporters of unions, or because they indicate on their employment applications that they are voluntary union organizers.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer to the following individuals reinstatement in the positions for which they applied or, if those positions no longer exist, in substantially equivalent positions, without prejudice to their seniority and any other rights and privileges they would have enjoyed.

Pipefitters Local 633

Russell W. Bell
 Jeffrey Campbell
 Ernest Carter, Jr.
 Donald S. Cole
 Wallace H. Cook Jr.
 Bobby D. Crabtree
 Hubert L. Crabtree
 George E. Hayes
 Jerry L. Hurm
 Joseph B. Hobbs
 Patrick R. O'Bryan
 James G. Phillips
 Roger D. Sims
 Anthony O. Taylor
 James L. Trainer
 Thomas G. Turner
 Mark Wagner

Richard A. Wall
 Charles H. Yeiser
 John C. Zaremba

Iron Workers Local 103

Ralph S. Angel
 Herschel L. Bowlds Jr.
 Willis G. Beasley
 Willis C. Dean Jr.
 Mark A. Farmer
 Donald L. Hurst

Laborers Local 1392

Thomas R. Ball
 Ronnie E. Burk Sr.
 James M. Jones

Boilermakers Local 40

Thomas Armstrong
 Jimmy D. Blandford
 Steve Boggess
 James Cauley
 Ernest T. Coons
 Martin W. Drake
 Jeffrey Everly
 Russell Gregory
 Michael Hardin
 David K. James
 G. Dennis Kulmer
 Brett A. Maupin
 James D. Pierce
 Todd Robinson
 Frank Trovato

(b) Make the individuals named in paragraph 2(a), as well as Larry Elliot, Don Gower, Ricky Brown, Jimmy Gentry, and the estate of Greg Parks, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire the individuals named above, and within 3 days thereafter notify them in writing that this has been done and that the unlawful refusal to hire them will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an

²¹ Accordingly, we find it unnecessary to address the Respondent's request that we consider certain documents demonstrating the effect that the picketing had on employee attendance.

electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at all of its jobsites within a 75-mile radius of Owensboro, Kentucky, copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 26, 1990.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discourage employees from engaging in activities on behalf of a labor organization by refusing to

²² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

hire job applicants because they are members or supporters of unions, or because they indicate on their employment applications that they are voluntary union organizers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer to the following individuals employment in the positions for which they applied or, if those positions no longer exist, in substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed:

Pipefitters Local 633

Russell W. Bell
 Jeffrey Campbell
 Ernest Carter Jr.
 Donald S. Cole
 Wallace H. Cook Jr.
 Bobby D. Crabtree
 Hubert L. Crabtree
 George E. Hayes
 Jerry L. Hurm
 Joseph B. Hobbs
 Patrick R. O'Bryan
 James G. Phillips
 Roger D. Sims
 Anthony O. Taylor
 James L. Trainer
 Thomas G. Turner
 Mark Wagner
 Richard A. Wall
 Charles H. Yeiser
 John C. Zaremba

Iron Workers Local 103

Ralph S. Angel
 Herschel L. Bowlds Jr.
 Willis G. Beasley
 Willis C. Dean Jr.
 Mark A. Farmer
 Donald L. Hurst

Laborers Local 1392

Thomas R. Ball
 Ronnie E. Burk Sr.
 James M. Jones

Boilermakers Local 40

Thomas Armstrong
 Jimmy D. Blandford
 Steve Boggess

James Cauley
 Ernest T. Coons
 Martin W. Drake
 Jeffrey Everly
 Russell Gregory
 Michael Hardin
 David K. James
 G. Dennis Kulmer
 Brett A. Maupin
 James D. Pierce
 Todd Robinson
 Frank Trovato

WE WILL make the above-named individuals, as well as Larry Elliot, Don Gower, Ricky Brown, Jimmy Gentry, and the estate of Greg Parks, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire the individuals named above, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful refusal to hire them will not be used against them in any way.

FLUOR DANIEL, INC.

Susan B. Greenberg, Esq. for the General Counsel.
Melvin Hutson and Lynn R. Hudson, Esqs., of Greenleaf, South Carolina, for the Respondent.
Michael J. Stapp, Esq., of Kansas City, Kansas, for the Charging Party.

SUPPLEMENTAL DECISION

I. STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On November 29, 1991, following a 12-day hearing in May and June 1991 and the receipt of briefs, I issued my decision in the instant case.

The Board on May 28, 1993, affirmed for the most part my decision of November 29, 1991. The Board's decision and my decision are reported at *Fluor Daniel, Inc.*, 311 NLRB 498 (1993).

Thereafter, the Board petitioned for enforcement and litigation before the U.S. Court of Appeals for the 6th Circuit commenced. On November 16, 1998, the court issued its decision which superseded its earlier decision in the case reported at 102 F.3d 818 (6th Cir. 1996), and granted the Board's enforcement petition in part and remanded in part. The court's decision is reported at *NLRB v. Fluor Daniel, Inc.*, 161 F.3d 953 (6th Cir. 1998).

The court held, in pertinent part, as follows:

We GRANT the NLRB's petition for enforcement with respect to Bolen's discharge and Fluor Daniel's re-

fusal to hire the Coons brothers.¹ We REMAND to the NLRB the issue of Fluor's Daniel's refusal to hire the remaining voluntary union organizer applicants for a determination of whether the job openings that were available can be matched with qualified applicants consonant with the elements of a prima facie case as we have defined them. 161 F.3d at 975.

The Board on January 18, 2000, issued an order remanding the case to me. In its Order the Board stated:

On November 16, 1998 . . . the court enforced in part and denied in part the Board's petition for enforcement. The court found that the Board had erred in ordering the Respondent to offer employment to 52 of the named alleged discriminatees, with backpay. The court remanded the case to the Board on the issue of whether the General Counsel can prove the elements, as the court defined them, of a prima facie case of unfair labor practices against the voluntary union organizers. The court held that, in order to show a discriminatory refusal to hire job applicants because of their union activity, the General Counsel must show, as part of its prima facie case, not only that the Respondent harbored antiunion animus toward the applicants, but that it failed to offer the individual applicants available job openings for which the applicants were qualified.

The Board has accepted the remand as the law of the case. We have reviewed the statements of position of the Charging Party and the Respondent. We find that it is appropriate to remand the proceeding to the administrative law judge for him to reopen the hearing and to accept evidence on the issues as defined by the court's remand. Thus, the General Counsel will be allowed to present any relevant evidence to show that the Respondent, at relevant times, had job openings in particular job classifications for which the applicants were qualified, and failed to offer such jobs to individual applicants in those classifications. The Respondent will, likewise, be allowed to adduce any relevant rebuttal evidence. We therefore will remand this proceeding to the administrative law judge for the purpose of conducting such hearing and admitting this evidence, consistent with the court's remand.

Thereafter 11 days of hearings were held before me between July 10 and November 8, 2000. The first 8 days of the hearing were held in Memphis, Tennessee, and the last 3 days of hearings were held in Evansville, Indiana.

II. ISSUES

This case was a "salting" case. Indeed one of three "salting" cases in which Respondent was found guilty of unfair labor practices in failing and refusing to hire union affiliated applicants for employment.² "Salting" occurs when a union sends union affiliated applicants for employment to a nonunion em-

¹ The court affirmed the findings regarding Daniel Scott Bolen, John Coons, and Steve Coons.

² The other two are *Fluor Daniel I*, 304 NLRB 970 (1991), enf'd. 976 F.2d 744 (11th Cir. 1992), and *Fluor Daniel III*, 333 NLRB 427 (2001). The instant case is referred to as *Fluor Daniel II*.

ployer in the hope that the union affiliated applicants for employment will be hired and can organize the employer.

The law is crystal clear that union affiliated applicants for employment can not lawfully be discriminated against in employment.

In the instant, case we have 51 and not 52, as the Board's remand order stated, union affiliated applicants for employment who were denied employment by Respondent when they applied in 1990.

Fifty of the 51 applicants wrote on their application for employment with Respondent that they were "voluntary union organizers" or words to that effect. One of the 51, i.e., Iron Worker Richard B. Bowlds did not write that he was a "voluntary union organizer" or words to that effect on his application but did list Iron Workers Local 103 Business Agent William Curtis and Assistant Business Agent Bill Garrett as personal references. He listed them in such a way that it was obvious he was union affiliated, i.e., "Billy Curtis" "BA" and "Billy Garrett" "ASS BA" [sic]. In addition, his application was submitted along with the other ironworker applications which contained the language "voluntary union organizer" or words to that effect.

The alleged discriminatees in this case came from four different unions, i.e., Boilermakers Local 40, Pipefitters Local 633, Iron Workers Local 103, and Laborers Local 1392.

For purposes of background the following portion from my November 29, 1991 decision, which was left undisturbed by the Board and court, reads as follows:

"Respondent is a California corporation engaged in the engineering, construction, and maintenance business throughout the United States. It is an "open shop contractor."

In 1990 Respondent entered into a 3-year contract with Big Rivers Electric Company to do service and maintenance work on various power generating facilities operated by Big Rivers. The service and maintenance work would be done during what the parties to this litigation referred to as "outages." An outage refers to the complete shutting down of a power generating facility so that the service and maintenance work can be done. It is generally done in the spring and fall of the year when the need for power is somewhat less.

Big Rivers had power generating facilities in and around Sebree, Hawesville, and Centertown, Kentucky. The facilities located near Sebree were known as the Henderson and Green power plants. The facility near Hawesville was known as the Coleman power plant. The facility in Centertown was known as the Wilson facility. A facility in Centertown was known as the Wilson facility. A facility might have more than one power plant, e.g., Coleman had three and the work was referred to as Coleman I, II, and III. The number reflects not the first or second outage but the number of the plant.

In spring of 1990, Respondent worked on six separate outages between February and June 1990. They were as follows:

<i>Plant</i>	<i>Location</i>	<i>Dates</i>
Henderson	Sebree	2/22-3/10
Coleman I	Hawesville	3/11-3/31
Wilson	Centertown	4/09-4/21
Green II	Sebree	4/23-5/19
Coleman III	Hawesville	5/20-6/02
Coleman II	Hawesville	6/02-6/30

In the fall of 1990, Respondent worked on two outages. They were as follows:

<i>Plant</i>	<i>Location</i>	<i>Dates</i>
Green II	Sebree	3 weeks in 9/90
Wilson	Centertown	6 weeks in 10-11/90

In the fall of 1990, Big Rivers terminated its contract with Respondent after less than 1 year allegedly because of poor job performance by Respondent." *Fluor Daniel, Inc.*, 311 NLRB at 501.

They were eight separate outages during the Big Rivers project and in the litigation they were referred to as the spring outages (six outages) and the fall outages (two outages). The record is clear that individuals who worked in the spring outages were offered employment in the fall outages.

Forty discriminatees were denied employment during the spring outages. They fall into four separate crafts and are as follows:

21 Pipefitters from Pipefitters Local 633

1. Russell W. Bell
2. Jeffrey Campbell
3. Ernest Carter Jr.
4. Donald S. Cole
5. Wallace H. Cook Jr.
6. Bobby Crabtree
7. Hubert Crabtree
8. George Hayes
9. Jerry L. Hum
10. Joseph B. Hobbs
11. Patrick R. O'Bryan
12. James G. Phillips
13. George T. Saltzman
14. Roger D. Sims
15. Anthony O. Taylor
16. James L. Trainer
17. Thomas G. Turner
18. Mark G. Wagner
19. Richard A. Wall
20. Chester H. Yeiser
21. John C. Zaremba

Four Boilermakers from Boilermaker Local 40

1. James Cauley
2. Ernest T. Coons

3. G. Dennis Kulmer
4. James D. Pierce

12 Ironworkers from Ironworkers Local 103

1. Ralph Angel
2. Herchel L. Bowlds Jr.
3. Richard B. Bowlds
4. Willis G. Beasley
5. Ricky Brown
6. Willis C. Dean Jr.
7. Larry Elliott
8. Mark A. Farmer
9. James C. Gentry
10. Ronald K. Gower
11. Donald L. Hurst
12. Gregory Parks

Three Laborers from Laborers Local 1392

1. Thomas R. Ball
2. Ronnie E. Burk Sr.
3. James M. Jones

Eleven discriminatees applied for positions with Respondent only during the fall outages. They are as follows:

Eleven Boilermakers from Boilermaker Local 40

1. Thomas Armstrong
2. Jimmy Blandford
3. Steve Boggess
4. Martin W. Drake
5. Russell Gregory
6. Frank Trovato
7. David K. James
8. Brett A. Maupin
9. Todd Robinson
10. Jeffrey Everly
11. Michael Hardin

The issues in the remand I believe are two in number. Number one is were there jobs available for those union affiliated applicants for which these union affiliated applicants were qualified and the General Counsel, if it can, should match up each discriminatee with a specific job. And number two even if the union affiliated applicants were qualified for available jobs did Respondent hire others in their place for legitimate nondiscriminatory reasons.

Two witnesses testified as to job qualifications and job availability for Boilermakers Local 40 members. They were Pat Smith and Joseph Meredith. I found both Smith and Meredith to be exceedingly competent and credible. One witness testified to job qualifications and job availability for Ironworkers Local 103 members. The witness was Vince Hill. I found Hill also to be exceedingly competent and credible. One witness testified as to job qualifications and job availability for the Pipefitter Local 633 members. The witness was Charles Ash-

ley. Again, I found Ashley to be exceedingly competent and credible.

A comparison was made between the discriminatees and persons actually hired by Respondent into jobs for which the witnesses testified the discriminatees were qualified. It became apparent that each of the discriminatees was qualified and should have been hired over the people who were hired.

No witness testified as to a comparison between the Laborers Local 1392 member discriminatees and those hired but documentary evidence proves that they were at least as qualified for available jobs into which other persons were hired.

I will address each group of craftsmen separately.

III. BOILERMAKER MEMBERS OF LOCAL 40

Boilermakers are trained in fitting material together for bolting or welding. Boilermakers are trained in rigging materials into place. Boilermakers are trained in laying out material for cutting and fitting items together. Boilermakers are trained in a variety of welding skills including tube welding. Boilermakers are also trained to perform sand blasting and painting in the boiler. The Boilermakers' apprenticeship program requires 4 years of classroom and on-the-job training.

The materials boilermakers rig, fit, and weld can weigh tons. Many of these materials must be lifted hundreds of feet in the air for the boilermaker to fit and weld the material in place. This work is performed in a variety of industries, including coal fired power generation plants, such as those on the various Big Rivers projects.

Respondent challenges the expert testimony offered pursuant to Federal Rule of Evidence 702, of Joseph Meredith, concerning the relative qualifications of the discriminatees versus that of certain people hired in their stead. Meredith is a 1968 graduate of the Boilermakers apprenticeship program. Meredith was chosen as the outstanding Boilermaker apprentice in the southeast area. Meredith worked as a field construction boilermaker and earned a Bachelor of Science Degree in mechanical engineering.

Meredith spent the next 27 years working for the International Brotherhood of Boilermakers at its headquarters in Kansas City, Kansas. Since that time, Meredith has served on the International Brotherhood of Boilermakers laborers/management referral committee, establishing and administering rules for the referral of Boilermakers to various construction employers. The purpose of these rules is to establish fair criteria for the referral of qualified Boilermakers to these various construction employers. The development and administration of these rules require the union and company committee representatives to make decisions on what skills are necessary for a journeyman construction boilermaker. Making such decisions has been part of Meredith's job duties since 1973.

Meredith has also served on the labor/management welding committee, which develops welding testing procedures to test Boilermaker welders who work for various construction employers. He also serves on the National Boiler Board of Pressure and Vessel Inspectors. This is a nationwide industrial committee, whose purpose is to establish safe practices for the operation, repair, and alteration of industrial boilers. All boiler repairs in the State of Kentucky, including those at the Big

Rivers sites in question, would be governed by the rules established by this National Labor Boiler Board, which Meredith serves on.

During the past 7 years parts of Meredith's duties have included teaching first and second year apprentices in the Boilermakers apprenticeship program. Meredith is intimately familiar with the training Boilermakers receive through that apprenticeship program.

Federal Rule of Evidence 702 provides an expert witness may testify, as to his or her opinion on any issue, which will aid the trier of fact to determine a fact at issue. *Arlington Hotel Co.*, 287 NLRB 851 (1987); *Indeck*, 325 NLRB 1684, 1987 (1998); *Meijer, Inc.*, 329 NLRB 730 (1999). A witness may be qualified as an expert based on knowledge, skill, experience, training, or education. Federal Rule of Evidence 702.

Meredith has offered his expert opinion on the relative qualifications of individuals, based on their applications, to fill boilermaker and welder positions. Through his experience in the Boilermaker apprenticeship program and the various labor management committees, Meredith is fully qualified to render such an opinion. Based on his training and experience as a Boilermaker, Meredith is qualified to render such an opinion. Based on his education as a boilermaker and as a mechanical engineer, Meredith is qualified to give his expert testimony on this issue.

Andrew Warner testified during the original trial in 1991 that Respondent's primary criteria for selecting an applicant was what information was contained in his or her application. Warner testified that most of the time they can tell from the application whether or not an individual is qualified for a particular position. Warner went on to testify that when selecting an applicant they look at the applicant's previous experience and evaluate whether one individual is better qualified than another. This is contradicted to some extent by the testimony of Jack West, a witness for Respondent in the hearing on remand, where he claims that he would interview certain applicants if their applications show that they *might* be qualified for a position.

Respondent considers it important to hire qualified employees. Jan Linscome, who was primarily responsible for hiring for the fall outages, testified that someone with more experience in a craft is generally preferred over someone with less experience. This was confirmed by Robert Wollard, the project manager for the Big Rivers projects. Wollard and Andy Warner, who was primarily responsible for hiring during the Spring outages, both testified to a preference for employees with a construction background. Respondent would prefer seasoned welders over those fresh out of school.

Applying these criteria to the discriminatees and those hired, I find more than a sufficient number of jobs for each Boilermaker discriminatee. Moreover, I find a significant number of jobs where the discriminatees were clearly superior applicants to those hired. Lastly, the boilermaker discriminatees were compared with people hired as boilermakers who had not previously been certified as craftsmen by Respondent or had even worked for Respondent.

A. Boilermaker Jobs

1. Based on his application, James A. Pierce was clearly more qualified than several of the people hired in his stead

Pierce had apprenticeship training and approximately 11 years, experience as a journeyman boilermaker. Pierce also has journeyman boilermaker experience in power plants such as Big Rivers.

Respondent hired Tony D. Campbell after Pierce applied. Joseph Meredith testified there was no training listed on Campbell's resume, but approximately 5 years of journeyman boilermaker experience. In Meredith's expert opinion Pierce was more qualified. Company representatives concluded that Campbell only had approximately 4 years of boilermaker experience.

Respondent hired James M. Glick after Pierce applied. Joseph Meredith found that Glick listed no training on this application, some related experience on his application and approximately 3 years of boilermaker experience. Respondent concluded that Glick has approximately 2 years of journeyman boilermaker experience. In his expert opinion, Meredith rated Pierce a better potential employee than Glick.

Respondent hired Steven S. Hillburn after Pierce applied. Although Steven Hillburn had approximately 5 years of journeyman boilermaker experience he had no training or related experience. Respondent's own witness concluded that Hillburn had approximately 4 years of boilermaker journeyman experience. In Joseph Meredith's expert opinion Pierce was more qualified than Hillburn.

Respondent hired Bruce Kennedy after Pierce applied. Although Kennedy has some related experience, he had no journeyman boilermaker experience. Meredith concluded in his expert opinion that Pierce was much more qualified than Kennedy. Respondent's own witnesses conceded that they would prefer someone with some boilermaker experience over Kennedy.

The Respondent hired Ricky Pollard after Pierce applied. Although Pollard has no training as a boilermaker he does have approximately 2 years of boilermaker experience some of which was in a power plant. In Meredith's expert opinion, Pierce is much more qualified as a journeyman boilermaker than Pollard.

Respondent hired John M. Shrodt after Pierce applied. Shrodt has no training as a boilermaker and less than a year's experience as a boilermaker apprentice. In Meredith's expert opinion, Pierce is much more qualified than Shrodt. Jack West, who was a Fluor Daniel senior manager of recruitment in Greenville during the Big Rivers projects, testified that he would not hire Shrodt as a boilermaker based on his application.

The Respondent hired Mark A. Smith after Pierce applied. Although Smith has no training, he does have some experience related to boilermaking and approximately 4 years of journeyman boilermaker experience. In Meredith's expert opinion, Pierce is much more qualified than Smith as a journeyman boilermaker.

2. Based on his application, Ernest Coons was clearly more qualified than several of the people hired in his stead

Coons had approximately 6 years of experience as a boiler-maker, most of which occurred in power houses. Coons had even worked on the Big Rivers projects.

Tony Campbell was hired after Coons. In Meredith's expert opinion, Coons was more qualified as a journeyman boiler-maker than Campbell.

James Glick was hired after Pierce applied. Once again, in Meredith's expert opinion, Coons was more qualified than Glick as a journeyman boiler-maker.

Bruce Kennedy was hired after Coons applied. Meredith found that Kennedy had no boiler-maker experience and that Coons was more qualified as a journeyman boiler-maker. Jack West testified that he would prefer someone with boiler-maker experience over Kennedy for a journeyman boiler-maker position.

Respondent hired Ricky Pollard after Coons applied. With less years of experience than Coons, Meredith found Pollard not to be as qualified as Coons to be a boiler-maker journeyman.

Respondent hired John Shrodt after Coons applied. Once again, Jack West testified that he would not hire Shrodt as a boiler-maker based on Shrodt's application. Meredith expressed his expert opinion that Shrodt was not as qualified as a journeyman boiler-maker as Coons.

Respondent hired Mark Smith after Pierce applied. Although Smith has some journeyman boiler-maker experience, it was Meredith's expert opinion that because of his greater years of service, including work on the Big Rivers project, that Coons was more qualified than Smith.

B. There were Welder Jobs in the Spring.

Two of the union applicants in the spring primarily had listed welding skills on their applications.

1. Based on his application, James Cauley was clearly more qualified than several of the people hired in his stead

Cauley had 2 years of welding training and approximately 1 year of journeyman welding experience, including experience in power houses.

Danny Brack was hired after Cauley applied. Brack has no welding training. Brack does have 3 years of welding experience, but that experience was 20 years before his application. Accordingly, Meredith concluded that Cauley was the better candidate based on his application.

Randall Lewis was hired as a welder after James Cauley applied. Lewis had 1 year of welding training. Lewis also had 3 years of related welding experience, but no construction experience. Based on his construction experience, including power houses, Meredith concluded that James Cauley was the better qualified candidate.

Howard Settle was hired as a welder after Cauley applied. Settle's application reveals no welding training. Settle's application shows that he worked as a welder at a power plant, but does not indicate the length of time he spent working there. Accordingly, Meredith's expert opinion was that based on his application, Cauley was the better qualified candidate for a welder's position.

2. Based on his application, G. Dennis Kulmer was clearly more qualified than several of the people hired in his stead

Kulmer's application reveals that he has approximately 6 years of journeyman construction welding experience, including experience in power houses similar to Big Rivers.

Johnny Beasley was hired as a welder after Kulmer applied. Beasley had no training as a welder but 7 years of related welding experience. Respondent agrees that Beasley shows no construction related experience. Based on their applications, Meredith concluded Dennis Kulmer was the better welder applicant. Based on Respondent's stated preference for somebody with construction experience over individuals without construction experience, one would have to conclude that Respondent's representatives would agree with Meredith's conclusion.

Dennis Kulmer applied before Danny Brack was hired as a welder. Brack has no welding training in approximately 3 years of construction welding experience. Based on his longer experience as a welder and his experience in power houses, Meredith concluded that Kulmer was the better candidate for this position.

Thomas Eubanks was hired after Dennis Kulmer applied as a welder. Eubanks had no training as a welder and approximately 3 years of construction welding experience, including some work in power houses. Based on his greater number of years of experience, Meredith concluded that Kulmer was the better candidate for this position.

Steven Fulkerson was hired as a welder after Kulmer applied. Fulkerson had 2 years of welding training and 10 years of related welding experience. However, Fulkerson had no construction welding experience. Company representatives agree that Fulkerson's application revealed no construction experience whatsoever. Meredith concluded that based on his construction welding experience, particularly that in power houses, that Dennis Kulmer was a better candidate than Steven Fulkerson. Given Respondent's preference for individuals with construction experience, it would appear that they would have to agree with Meredith's conclusion.

Jesse W. Griffin was hired as a welder after Kulmer applied. Griffin's application reveals no training as a welder and approximately 3 years of construction welding experience. Based on the fact that Kulmer has approximately twice as many years of experience in construction welding as Griffin, Meredith concluded that Kulmer was the better candidate.

Douglas Hammond was hired as a welder after Kulmer applied. Hammond's application reveals 3 years of welding school and 2 years as a construction welder. Based on his greater years of experience as a construction welder, Meredith concluded that Kulmer is the better candidate for the position.

Randall Lewis was hired after Kulmer applied as a welder. Lewis' application reveals 1 year of welding training and 3 years of related welding experience. Based on the fact that Lewis has no construction welding experience and Kulmer has extensive construction welding experience, including that in power houses, Meredith concluded that Kulmer was the more qualified candidate. This would comport with Respondent's preference for individuals with construction experience over those without construction experience.

Joy Payton was hired as a welder after Kulmer applied. Although Payton has no welding training, he did have 4 years of construction welding experience. In Meredith's expert opinion, Kulmer's 6 years of construction welding experience, including power houses, makes him a better candidate than Payton.

Howard Settle was hired as a welder after Kulmer applied. Settle's application reveals no welding training and some work as a welder in power plants, but the amount of time spent working is not indicated on Settle's application. Knowing Kulmer has 6 years of construction welding experience including power houses, Meredith concluded that it was his expert opinion that Kulmer was more qualified than Settle.

Ricky Waters was hired as a welder after Kulmer applied. Although Waters had no welding training on his application, his application does reveal 14 years of related welding experience. Based on the fact that Kulmer had direct experience in construction welding including power houses, Meredith reached the conclusion that Kulmer was more qualified than Waters. This would comport with Respondent's preference for someone with construction experience as opposed to those without.

C. There were Boilermaker Jobs in the Fall

Eleven of the union applicants in the fall show substantial skills on their applications as boilermakers.

1. Based on his application, Michael Hardin was clearly more qualified than several of the people hired in his stead

Hardin's application reveals that he had 4 years of boilermaker experience, some of which was in power houses. Perhaps more importantly, Hardin's application reveals that he is a prior Fluor Daniel employee. As a prior Fluor Daniel employee Hardin should receive preference under Respondent's hiring preference over all of the individuals he is compared to below, since none of them are prior Fluor Daniel employees. Respondent's hiring preference was first to hire Fluor Daniel certified craftsmen, then Fluor Daniel experienced craftsmen, and then other qualified craftsmen.

John K. Adams was hired after Hardin applied as a boilermaker. Adams had 3 years of welding training and 3 years of experience related to boilermaking, but no boilermaker experience. Based on Hardin's 4 years of journeyman boilermaker experience, including power houses, it was Meredith's expert opinion that Hardin was more qualified than Adams as a boilermaker.

Henry Anderson was hired as a boilermaker after Hardin applied. Anderson's application shows 1 year of welding training and some experience related to the boilermaker craft, but shows no amounts of time that he spent on those jobs. Based on their applications, Meredith's expert opinion was that Hardin was more qualified than Anderson.

Philip Hedge was hired as a boilermaker after Hardin applied. Although Hedge had no training as a boilermaker, he did have 2 years of boilermaker experience, although his application does not indicate that that was in a power plant. Based on the fact that Hardin had more years of experience as a boilermaker, including power house work, Meredith concluded that Hardin was more qualified than Hedge.

Steven Hedge II, was hired as a boilermaker after Hardin applied. Steven Hedge II's application shows he has no training and no experience as a boilermaker. Although the application does reveal some experience related to boilermaking, it is not clear from the application how much of that experience he had. In Meredith's expert opinion, Hardin was clearly more qualified as a boilermaker. Although Respondent hired Steven Hedge II, as a boilermaker, their own Human Resources Representative Jack West testified that he would not consider Hedge as a boilermaker based on his application.

Ronnie Hutchinson was hired as a boilermaker after Hardin applied. Hutchinson had no related training and no boilermaker or boilermaker related experience. Based on his application, Meredith's expert opinion was that Hutchinson was unqualified to perform boilermaker work. Jack West, the Company's human resources representative, reached the same conclusion that the company should not have hired Hutchinson as a boilermaker based on his application.

Roland Moore was hired as a boilermaker after Hardin applied. The application Meredith reviewed showed no training and no employment record and, therefore, Meredith concluded that Moore was not qualified to be a boilermaker. Respondent had another application which reveals that Moore had approximately 2 years of experience as a boilermaker. Based on the previously discussed testimony by Respondent's representatives that they prefer people with more experience in a particular craft over those with lesser experience, it should still be concluded that Moore is less qualified than Hardin even having viewed the application that Meredith did not review.

Ray Pointer was hired as a boilermaker after Hardin applied. Pointer's application reveals no training and no boilermaker experience. Pointer's application does show 2 years of experience related to the craft of boilermaking. Based on Hardin's years of boilermaker experience, including power houses, Meredith's expert opinion was that Hardin was more qualified than Pointer. In fact, Respondent's representative, West, testified that the Company should not have hired Pointer as a boilermaker.

James Simmons was hired as boilermaker after Hardin applied. Simmons had no training and no experience as a boilermaker. Simmons' application reveals approximately 3 years of experience related to the boilermaker trade. Based on Hardin's extensive experience as a journeyman boilermaker, it was Meredith's expert opinion that Hardin was more qualified than Simmons. In fact, Respondent's representative, West, testified that the Company would prefer someone with boilermaker experience (such as Hardin) over Simmons.

David L. Thomas was hired as a boilermaker prior to Hardin applying. Thomas had no training and no boilermaker related experience. Accordingly, Meredith testified that Thomas is unqualified to work as a boilermaker. West agreed with Meredith's conclusion that Thomas was not qualified as a boilermaker. Despite his job classification as a boilermaker, Jan Linscome testified that Thomas was actually performing sand-blasting work. Respondent's classification of Thomas as a boilermaker is at least in part recognition that this is work traditionally performed by the boilermakers. As discussed above, boilermakers are trained and experienced in performing sand-

blasting work related to boilers on power house construction projects. In this instance, Thomas' application reveals that he had worked approximately 2 years as a sandblaster between 1985 and 1987 for the U.S. Army. There is nothing in Thomas' application to indicate that he would be qualified to perform the same type of sandblasting work necessary for a boilermaker to perform on a power house job. In keeping with Respondent's preference for someone with construction experience, it would seem that the boilermakers with training and experience as construction boilermakers would be more qualified than Thomas.

Johnny Wilson was hired as a boilermaker after Hardin applied. Meredith concluded that Wilson's application showed that he possibly had related training of approximately 2 years, but no related or boilermaker experience. Meredith's expert opinion was that Wilson was not qualified as a boilermaker and Hardin was much more qualified as a journeyman boilermaker. Once again, West agrees with Meredith's expert opinion and testified the Company should not have hired Wilson as a boilermaker.

Timothy Wilson was hired as a boilermaker after Hardin applied. Wilson's application shows no related training or experience as a boilermaker and Meredith concluded that he was not qualified as a boilermaker. Likewise, West testified the company should not have hired him as boilermaker, unless he was performing sandblasting work. Unlike Thomas, there was no testimony from Linscome that Timothy Wilson was hired as a sandblaster. Wilson's application does show some years of experience as a sandblaster, however none of this experience appears to be sandblasting on boilers in power houses. Based on Respondent's preference for employees with construction experience and the fact that boilermakers are trained in and perform sandblasting on boilers, it should be concluded that Hardin is more qualified than Wilson to perform sandblasting.

Tony Wood was hired as a boilermaker after Hardin applied. Wood's application reveals that he has no boilermaker training and no boilermaker experience. Wood's application does show some experience related to the boilermaker trade but does not indicate how much time Wood had in those related fields. Based on his application, Meredith's expert opinion was Wood was not qualified as a boilermaker. West once again agrees with Meredith's expert opinion and testified that the Company should not have hired Wood as a boilermaker.

2. Based on his application, Martin Drake was clearly more qualified as a boilermaker than several of the people hired in his stead

Drake was a graduate of the Boilermaker apprenticeship program. Drake holds welding certifications and worked for approximately 8 years as a journeyman boilermaker, most of which was in power houses. Drake even worked in some of the projects that were in question in the case at bar.

John K. Adams was hired as a boilermaker after Drake applied. Both Meredith and Respondent's representative West concluded that Adams had approximately 3 years of welding training and 3 years of experience related to boilermaking, but no boilermaker experience. Accordingly, Meredith's expert opinion was Drake was more qualified than Adams.

Henry A. Anderson was hired after Drake applied. Meredith testified that Anderson's application revealed 1 year of welding training and some experience related to boilermaking, but that his application did not reveal how much time was spent on these jobs. Accordingly, Meredith's expert opinion was that Drake was more qualified as a boilermaker than Anderson.

James G. Cobb was hired after Drake applied as a boilermaker. Cobb's application reveals no training as a boilermaker but approximately 5 years experience as a journeyman boilermaker. Based on the fact that Drake had more years of experience as a journeyman boilermaker, most of which was in power plants such as the Big Rivers projects, it was Meredith's expert opinion that Drake was more qualified than Cobb.

Philip Hedge's application reveals no training as a boilermaker and approximately 2 years of experience as a boilermaker. Based on the fact that he had more years of experience as a boilermaker, including power house experience, Meredith concluded that Drake was more qualified than Philip Hedge.

Steven Hedge, II, was hired after Drake applied as a boilermaker. Once again, Hedge's application shows no training or experience as a boilermaker, and, in fact, the company representative testified that they would not consider him as a boilermaker. Consequently, Meredith's expert opinion, which in this instance was verified by the company representative, was that Drake was much more qualified than Hedge.

Ronnie Hutchinson was hired as a boilermaker after Drake applied. Hutchinson has no related training and no boilermaker or related experience, making him unqualified as a boilermaker in both the eyes of Meredith and Respondent's representatives. Accordingly, Meredith's expert opinion was that Drake was overwhelmingly more qualified than Hutchinson.

David Keiffer was hired as a boilermaker after Drake applied. Although Keiffer has no training as a boilermaker, he has approximately 4 to 5 years of boilermaker experience. Based on the fact that Drake has more years of experience, including experience in power plants, it was Meredith's expert opinion that Drake was a more qualified applicant than Keiffer.

Roland Moore was hired as a boilermaker after Drake applied. As previously discussed, Meredith concluded that Moore was unqualified based on an application that showed no training and no employment record. Respondent produced a second application, which showed approximately 2 years of boilermaker experience for Moore. Under the employer's preference for someone with more experience over someone with less experience, Drake with 8 years of boilermaker experience, including most of it in power plants, would surely be more qualified than Moore.

Ray Pointer was hired as a boilermaker after Drake applied. Based on the fact that Pointer had no boilermaker training or boilermaker experience, but 3 years of related experience, Meredith concluded that Drake was much more qualified than Pointer. Respondent's human resources representative even testified that he would not hire Pointer as a boilermaker.

Larry Saltgaver was hired as a boilermaker after Drake applied. Saltgaver has 3 years of boilermaker experience and 2 years of experience related to the boilermaker trade. Based on Drake's 8 years of experience, most of which was in power

plants, Meredith concluded that Drake was much more qualified than Saltsgaver.

James Simmons was hired a boilermaker after Drake applied. Based on the fact that Simmons had no boilermaker training and experience and only 3 years of related experience, Meredith concluded that Drake was much more qualified than Simmons. Respondent's human resources representative testified that they would in fact prefer someone with boilermaker experience over Simmons.

David Thomas was hired as a boilermaker after Drake applied. Based on the fact that Thomas has no training or experience as a boilermaker, both Meredith and Respondent concluded that Thomas was not qualified as a boilermaker. For the same reasons as discussed above in connection with Hardin, Drake would also be more qualified to perform the work as a sandblaster in the boiler. Accordingly, regardless of which position Thomas held that of boilermaker or sandblaster, Drake is more qualified.

Johnny Wilson was hired as a boilermaker after Drake applied. Both the Respondent's representative and Meredith testified that Wilson was not qualified as a boilermaker. Accordingly, it was Meredith's expert opinion that Drake was much more qualified for the position of boilermaker than Johnny Wilson.

Timothy Wilson was hired as a boilermaker after Drake applied. Without any related training or experience, both Respondent's representative and Meredith concluded Timothy Wilson was not qualified as a boilermaker. Accordingly, Meredith found Drake more qualified than Wilson. Assuming, for argument sake, that Wilson did in fact perform sandblasting work, he is no more qualified for the position than Drake for the same reasons set forth in the discussion above concerning Hardin.

Tony Wood was hired as a boilermaker after Drake applied. Both Meredith and Respondent's human resources representative testified that without any related training or experience that Wood was unqualified as a boilermaker. Accordingly, Meredith's expert testimony was that Drake was more qualified as a boilermaker than Wood.

3. Based on his application, Jeffery Everly was clearly more qualified than several of the people hired in his stead

Everly's application indicates he completed the Boilermaker apprenticeship program. Everly's application also indicates that he has 6 year of journeyman boilermaker experience, including experience in power plants.

John K. Adams was hired after Everly applied. Meredith's expert opinion was that Everly, without almost twice as much experience as Adams, was the better qualified boilermaker applicant.

Henry Anderson was hired after Everly applied. Since Anderson had no boilermaker experience, it was Meredith's expert opinion that Everly was more qualified than Anderson to fill the boilermaker position.

James Cobb was hired after Everly applied. Although Cobb had five years of boilermaker experience, he did not have the same training as Everly, and Everly specifically had experience in power plants. Accordingly, Meredith expressed his expert

opinion that Everly was more qualified for the boilermaker position than Cobb.

Philip Hedge was hired after Everly applied for a boilermaker position. Philip Hedge has no training and only 2 years of boilermaker experience, none of which is in power plants. With formal training and several years more experience as a boilermaker in power plants, it was Meredith's conclusion that Everly is the more qualified boilermaker.

Steven Hedge II, was hired as a boilermaker after Everly applied. Since Steven Hedge II, had no boilermaker training or experience and only some related experience, it was Meredith's conclusion that Everly was much more qualified than Steven Hedge II. In fact, Respondent's human resources representative testified that the Company should not even have considered Steven Hedge II, as a boilermaker.

Ronnie Hutchinson was hired as a boilermaker after Everly applied. Since Ronnie Hutchinson had no related training and no boilermaker or related experience, it was Meredith's conclusion that he was not qualified and that Everly was more qualified as a boilermaker applicant. Once again, Respondent's human resources representative supported Meredith's expert opinion and testified that Hutchinson should not have been hired as a boilermaker.

David Keiffer was hired after Everly applied. Although David Keiffer has no training, he does not have 4 to 5 years of boilermaker experience and one year of related experience. Having more boilermaker journeyman experience, particularly in power plants, it was Meredith's conclusion that Everly is more qualified than Keiffer for the job in question.

Roland Moore was hired after Jeff Everly applied as a boilermaker. Comparing the application that was submitted into evidence in the original trial in 1991, Meredith concluded Roland Moore was not qualified as a boilermaker. However, on remand the employer submitted an additional application for Roland Moore, which reveals he had 2 years experience as a boilermaker. Even with 2 years of experience as a boilermaker, this does not make Moore under Respondent's standards, as qualified as Jeffrey Everly, who had 6 years of boilermaker experience and was a graduate apprentice.

Ray Pointer was hired as boilermaker after Everly applied. With no boilermaker training and no boilermaker experience Meredith concluded that Pointer was not nearly as qualified for a boilermaker position as Everly. Once again, Respondent's human resources representative confirmed Meredith's expert opinion when he testified that the Company should not have hired Pointer as a boilermaker.

Larry Saltsgaver was hired as a boilermaker after Everly applied. Although Saltsgaver had no training as boilermaker, he did have approximately 3 years of boilermaker experience. However, since Saltsgaver had approximately half the boilermaker experience as Everly, Meredith expressed the expert opinion that Everly was more qualified as a boilermaker.

James Simmons was hired as a boilermaker after Everly applied. Simmons had no training and no experience as a journeyman boilermaker and Meredith expressed the expert opinion that Everly was much more qualified than Simmons. Meredith's expert opinion was confirmed by Respondent's human

resource representative who testified that he would prefer someone with boilermaker experience over Simmons.

David Thomas was hired as a boilermaker after Jeffery Everly applied. Since Thomas has no training and experience as a boilermaker, Meredith expressed the expert opinion that Everly was much more qualified as a boilermaker. Meredith's expert opinion was confirmed by Respondent when Jack West testified that Thomas was not qualified as a boilermaker based on his application. If, as discussed above, Thomas was hired as a sandblaster, there is no reason to believe that Everly was not just as or more qualified to perform sandblasting, which falls within the boilermaker's justification. Everly who had completed the Boilermaker apprenticeship program and had 6 years of boilermaker experience was even more qualified than Thomas to perform sandblasting work in boilers.

Johnny Wilson was hired as a boilermaker after Everly applied. Without any boilermaker experience, Meredith concluded that Johnny Wilson was not qualified as a boilermaker and that Everly was much more qualified for the boilermaker position. Meredith's expert opinion was confirmed by Respondent's human resources representative who testified that Respondent should not have hired Wilson as a boilermaker.

Timothy Wilson was hired after Everly applied as a boilermaker. Timothy Wilson has no related training or experience as a boilermaker and is not qualified to perform boilermaker work both according to Meredith and the Company. Even if Timothy Wilson was hired as a sandblaster for the same reason set forth above. Everly is just as or more qualified to perform sandblasting work in the boiler as Timothy Wilson.

Tony Wood was hired as a boilermaker after Everly applied. Tony Wood has no boilermaker training or experience and Meredith expressed the expert opinion that he was unqualified to perform boilermaker work. Meredith's expert opinion is supported by the testimony of Respondent's human resources representative who testified that Fluor Daniel should not have hired Wood as a boilermaker.

4. Based on his application, Todd Robinson was clearly more qualified than several of the people hired in his stead

Robinson had approximately a year of welding school experience and 8 years of boilermaker journeyman experience, most of which was in power plants.

John K. Adams was hired after Robinson applied. Adams had approximately 3 years of welding training and 3 years of related experience. Since Adams has no boilermaker experience, Robinson is clearly more qualified since he has 8 years of journeyman boilermaker experience, most of which is in power plants.

Henry Anderson was hired as a boilermaker after Todd Robinson applied as a boilermaker. With 1 year of welding training and some related experience on Anderson's part, Meredith concluded that Robinson was much more qualified than Anderson for the boilermaker job.

James Cobb was hired as a boilermaker after Robinson applied. Although Cobb has no training as a boilermaker he did have 5 years of experience as a boilermaker. Still, with 8 years of experience on Robinson's part, it was Meredith's expert opinion that Robinson was much more qualified than Cobb.

Philip Hedge was hired after Robinson applied as a boilermaker. Since Philip Hedge only has 2 years of boilermaker experience, it was Meredith's expert opinion that Robinson was much more qualified than Hedge.

Steven Hedge II, was hired as a boilermaker after Robinson applied. Since Steven Hedge II, had no training or experience as a boilermaker, it was Meredith's expert opinion that Robinson was much more qualified to be a boilermaker. Respondent's human resources representative confirms Meredith's expert opinion when he states that the Company should not have considered Steven Hodge II, as a boilermaker.

Ronnie Hutchinson was hired as a boilermaker after Robinson applied. Since Hutchinson had no training and no boilermaker experience, Meredith concluded that he would not even interview him and that Robinson was overwhelmingly more qualified than Hutchinson. Likewise, Respondent's human resources representative, Jack West, testified that Respondent should not have hired Hutchinson as a boilermaker.

David Keiffer was hired after Robinson applied as a boilermaker. Keiffer has 4 to 5 years of boilermaker experience and one year of related experience. However, since Robinson has 8 years of journeyman boilermaker experience, most of which was in power plants, it was Meredith's expert opinion that Robinson was much more qualified for the boilermaker position than Keiffer.

Roland Moore was hired as a boilermaker after Robinson applied. Meredith concluded Moore was not qualified, based on the fact that the application Meredith reviewed showed no training or experience in the boilermaker trade. Respondent produced a second application indicating that Moore has 2 years experience as a boilermaker. Still Robinson clearly is more qualified since he has four times as much experience as a journeyman boilermaker compared to Moore.

Roy Pointer was hired as a boilermaker after Robinson applied. Since Pointer has no training and no experience as a boilermaker, Meredith concluded that Robinson is much more qualified for the boilermaker position. Meredith's expert opinion is once again supported by the company representative's testimony that the Company should not have hired Pointer as a boilermaker.

Larry Saltsgaver was hired as a boilermaker after Robinson. Saltsgaver would appear to be qualified as a journeyman boilermaker, since he has 3 years of boilermaker experience. However, as Meredith testified, Robinson has nearly 3 years the experience as Saltsgaver as a boilermaker and most of Robinson's experience is in a power house. Therefore, Meredith concluded that Robinson was more qualified than Saltsgaver.

James Simmons was hired as a boilermaker after Robinson applied. Without any boilermaker training or boilermaker experience Meredith concluded that Simmons was not nearly as qualified as Robinson. Meredith's expert opinion is supported by Respondent's human resources director who testified that the company would prefer someone with boilermaker experience over Simmons for a boilermaker position.

David Thomas was hired as a boilermaker after Robinson applied. With no training or experience as a boilermaker, it was easy for Meredith to conclude that Thomas was overwhelmingly under qualified compared to Robinson. I agree

with Meredith even if Thomas was hired as sandblaster. As more fully discussed, above, boilermakers are trained and regularly perform sandblasting work in boilers, and as such Robinson with 8 years of boilermaker experience was more qualified than Thomas.

Johnny Wilson was hired as a boilermaker after Robinson applied. Since Wilson only had possibly 2 years of related training and no experience related to the boilermaker craft, it was Meredith's expert opinion that Wilson was not qualified for a boilermaker position and that Robinson was overwhelmingly more qualified than Wilson. Meredith's testimony is once again corroborated by Respondent's own witness who testified that the Company should not have hired Wilson as a boilermaker.

Timothy Wilson was hired as a boilermaker after Robinson applied. Once again, Wilson was not qualified as a boilermaker unless he was performing sandblasting work as a boilermaker. However, in Wilson's case there was no testimony from any witness indicating that was in fact what Wilson was doing for Respondent on the Big Rivers projects. In any event, as more fully discussed above, even if Wilson was performing sandblasting work, Robinson is more qualified than Wilson.

Respondent hired Tony Wood after Robinson applied. Wood has no boilermaker training or experience and both Meredith and Respondent's representative found him to be unqualified for a boilermaker position. Accordingly, Meredith's expert opinion was that Robinson was much more qualified for the boilermaker position than Wood.

5. Based on his application, Brett Maupin was clearly more qualified than several of the people hired in his stead

Brett Maupin's application reveals that he has completed the Boilermaker apprenticeship program and has approximately 8 years of journeyman boilermaker experience.

John K. Adams was hired as a boilermaker after Brett Maupin applied. Adams has approximately 3 years of welding training and 3 years of experience related to boilermaking, but no boilermaking experience. With no boilermaker experience or training, it was Meredith's expert opinion that Adams was not as qualified for a boilermaker position as Maupin.

Henry Anderson was hired as a boilermaker after Maupin applied. Anderson has 1 year of welding training and some unspecified amount of related experience, but no boilermaker training or experience. Since Maupin is a graduate boilermaker apprentice and has approximately 8 years of boilermaker experience, it was Meredith's expert opinion that Maupin was much more qualified as a boilermaker than Anderson.

James Cobb was hired as a boilermaker after Brett Maupin applied. Although Cobb has no training, he does have 5 years of boilermaker experience. Since Maupin has significantly more experience and has been through the Boilermaker apprenticeship program, it was Meredith's expert opinion that Maupin was much more qualified as a boilermaker than Cobb.

Philip Hedge was hired as a boilermaker after Brett Maupin applied. Although Hedge does have 2 years of boilermaker experience, he has no formal training and has no power plant experience listed on his application. Since Maupin has 4 times the experience and has formal training through the Boilermaker

apprenticeship program, it was Meredith's expert opinion that Maupin was more qualified than Hedge for a boilermaker position.

Steven Hedge II, was hired after Maupin applied as boilermaker. Steven Hedge II, has no training and no boilermaker experience. Hedge does have some related experience but it is not clear from his application how much. Respondent's own witness testified that he would not consider Steven Hedge II, for a boilermaker position. In Meredith's expert opinion Maupin was much more qualified than Steven Hedge II, for a boilermaker position.

Ronnie Hutchinson was hired as a boilermaker after Brett Maupin applied. Hutchinson has no training, no boilermaker experience and no related experience. Consequently, it was Meredith's expert opinion that Hutchinson was not qualified as a boilermaker. Jack West concurred with Meredith's expert opinion and testified that Respondent should not have hired Hutchinson as a boilermaker.

Respondent hired David Keiffer as a boilermaker after Brett Maupin applied. Keiffer has no formal training, approximately 1 year of related experience, and approximately 4 to 5 years of boilermaker experience. Although Keiffer is qualified as a boilermaker, it was Meredith's expert opinion that since Maupin had more experience and formal training that he was more qualified than Keiffer to hold a boilermaker position.

Roland Moore was hired as a boilermaker by Respondent after Maupin applied. Meredith rendered the expert opinion that Moore was not qualified based on an application, which showed no training and no boilermaker experience. Respondent produced a second application, which showed that Moore had approximately 2 years of experience as a boilermaker. Based on Respondent's preference for someone with more qualifications, it would appear that Maupin with four times the experience and formal training would be more qualified than Moore.

Respondent hired Ray Pointer as a boilermaker after Maupin applied. Pointer has no training or experience as a boilermaker, although he does have 3 years of experience related to the boilermaker craft. Accordingly, it was Meredith's expert opinion that Maupin was much more qualified as a boilermaker. Meredith's expert opinion was once again supported by

Respondent's witness who testified that Respondent should not have hired Pointer as a boilermaker based on his application.

Larry Saltsgaver was hired as a boilermaker after Maupin applied. Although Saltsgaver has no formal training, he does have 3 years of boilermaker experience and 2 years of experience related to the boilermaker craft. It was Meredith's expert opinion that Maupin with several more years of experience and formal training was much more qualified than Saltsgaver.

James Simmons was hired as a boilermaker after Maupin applied. Although Simmons has some related experience, he has no training and no experience as a boilermaker. Accordingly, Meredith rendered the expert opinion that Maupin was much more qualified than Simmons to hold a boilermaker position.

David Thomas was hired after Maupin applied. Respondent and Meredith agree that Thomas is not qualified as a boilermaker. If Thomas in fact was hired as a sandblaster, then for

the reasons stated above, Maupin with 4 years of boilermaker experience would be more qualified to perform sandblasting in the boiler than Thomas.

Respondent hired Johnny Wilson after Maupin applied as a boilermaker. Johnny Wilson has no boilermaker experience or training. Wilson does possibly have some related training. In Meredith's expert opinion Johnny Wilson was not qualified as a boilermaker, making Maupin much more qualified.

Timothy Wilson was hired as a boilermaker after Maupin applied. Timothy Wilson had no related training or boilermaker experience, making him unqualified to be a boilermaker. Meredith's expert opinion was Timothy Wilson should not be hired as a boilermaker. Meredith's expert opinion is confirmed by Jack West who testified that Respondent should not have hired Wilson as a boilermaker unless he was doing sandblasting. Although there is no evidence to indicate Wilson was actually performing sandblasting, even if he were, Maupin would still be more qualified to perform sandblasting in the boiler than Wilson.

Tony Wood was hired as a boilermaker after Maupin applied. Wood has no training or boilermaker experience. Although Wood does have some related experience, no time frames are shown on his application to indicate how much related experience he might have. Accordingly, Meredith concluded that Wood was not qualified as a boilermaker making Maupin more qualified. Once again, Meredith's expert opinion is confirmed by Respondent's witness who testified that Respondent should not have hired Wood as a boilermaker.

6. Based on his application Thomas K. Armstrong was clearly more qualified than several of the people hired in his stead

Armstrong completed the Boilermakers apprenticeship program and had approximately 6 years of boilermaker experience.

John Adams was hired as a boilermaker after Armstrong applied. Adams has 3 years of welding training and 3 years of experience related to that of a boilermaker, but no boilermaker experience. Since Armstrong is a graduate boilermaker apprentice with 6 years of journeyman boilermaker experience, it was Meredith's expert opinion that Armstrong was more qualified than Adams to fill a boilermaker position.

Henry Anderson was hired by Respondent after Armstrong applied. Henry Anderson had 1 year of welding training and some unspecified amount of related experience, but no boilermaker experience. Accordingly, Meredith found that Armstrong was much more qualified for a boilermaker position than Anderson.

James Cobb was hired by Respondent as a boilermaker after Armstrong applied. Cobb has 5 years of boilermaker experience, but no formal training. Since Armstrong has more boilermaker experience and has completed the Boilermaker apprenticeship program, it was Meredith's expert opinion that Armstrong is more qualified as a boilermaker than Cobb.

Respondent hired Philip Hedge after Armstrong applied. Philip Hedge has no boilermaker training and only 2 years of journeyman boilermaker experience. Since Armstrong has three times the experience of Hedge, and has completed the Boilermaker apprenticeship program, it was Meredith's expert

opinion that Armstrong was a more qualified boilermaker than Hedge.

Respondent hired Steven Hedge II, after Armstrong applied. Steven Hedge II, has no boilermaker training or experience. Accordingly, Meredith's expert opinion was Armstrong was more capable of filling the boilermaker position than Steven Hedge II. In fact, Respondent's representative, Jack West, testified that Respondent should not even have considered Steven Hedge II, for a boilermaker position.

Respondent hired Ronnie Hutchinson after Armstrong applied. Ronnie Hutchinson had no related training or experience and no boilermaker training or experience. Both Respondent's human resources representative and Meredith concluded that Hutchinson was not qualified as a boilermaker. Since Hutchinson was not qualified as a boilermaker, Armstrong was more qualified to fill that position.

David Keiffer was hired as a boilermaker after Armstrong applied. Keiffer had 5 years of experience as a boilermaker and approximately 1 year of experience related to the boilermaking trade. Although Keiffer and Armstrong have nearly the same amount of years of experience, Armstrong completed the four year Boilermaker apprenticeship program, which combined with this experience makes him more qualified than Keiffer.

Respondent hired Roland Moore after Armstrong applied as a boilermaker. Based on the application Meredith reviewed, it was his expert opinion that Moore was not qualified as a boilermaker. However, Respondent produced a second application that shows Moore had 2 years of experience as a boilermaker. Although Moore may in fact be qualified as a boilermaker based on this second application, Armstrong is still obviously more qualified based on his greater experience and his formal training.

Ray Pointer was hired by Respondent after Armstrong applied. Pointer does have 3 years of experience related to boilermaking, but no actual boilermaking experience or training. In fact, Respondent's own witness testified that he would not hire Pointer as a boilermaker. It was Meredith's expert opinion that Armstrong was much more qualified for a boilermaker position than Pointer.

Respondent hired Larry Saltgaver for a boilermaker position after Armstrong applied. Saltgaver has approximately 3 years of journeyman boilermaker experience. With twice as much experience, and formal boilermaking training, Armstrong is obviously the better candidate, as Meredith testified.

David Thomas was hired as a boilermaker after Armstrong applied. With no related training or experience and no boilermaker training and experience, both Meredith and Respondent's representative found Thomas unqualified for a boilermaker position. Although classified as a boilermaker, Respondent maintains that Thomas was performing sandblasting work. However, based on the fact that Armstrong has completed the Boilermaker apprenticeship program and has 6 years of boilermaking experience, he should be more qualified (than Thomas) to perform sandblasting in the boiler.

Respondent hired Johnny Wilson instead of Armstrong. Johnny Wilson had no boilermaker experience and no related experience. Both Meredith and Jack West, Respondent's human resources representative, testified that Wilson was not

qualified as a boilermaker. Accordingly, it was Meredith's conclusion that Armstrong was more qualified for a boilermaker position than Wilson.

Timothy Wilson was hired as a boilermaker after Armstrong applied. With no training or experience relevant to the boilermaker position, it was Meredith's opinion that Wilson was unqualified to hold a boilermaker position. Likewise, Respondent's representative testified he would not hire Timothy Wilson as a boilermaker, unless he was performing sandblasting. In Meredith's expert opinion Armstrong was more qualified than Timothy Wilson to hold a boilermaker position.

Tony Wood was hired by Fluor Daniel as a boilermaker after Armstrong applied. With no training and no boilermaker experience, Meredith concluded that Wood was unqualified as a boilermaker. Respondent's representative, Jack West, concluded that Respondent should not have hired Wood as a boilermaker. Accordingly, it was Meredith's expert opinion that Armstrong was more qualified as a boilermaker than Wood.

7. Based on his application, Steve Boggess was clearly more qualified than several of the people hired in his stead

Steve Boggess has two years of Vo-Tech training and 3 years of Boilermaker apprenticeship training at the time he applied. Boggess also had approximately 4 years of boilermaker experience.

John K. Adams was hired as a boilermaker after Boggess applied. Although Adams had 3 years of welding training, and 3 years of related experience, Adams had no boilermaker training or experience. Accordingly, Meredith's expert opinion was that Boggess was more qualified to be a boilermaker than Adams.

Henry Anderson was hired by Respondent as a boilermaker after Boggess applied. Although Anderson had 1 year of welding training and some unspecified period of related experience, he had no boilermaker training or experience. Meredith expressed the expert opinion that Boggess was much more qualified to perform boilermaker work than Anderson.

Philip Hedge was hired as a boilermaker by Respondent after Boggess applied. Hedge did have 2 years of boilermaker experience but no experience in power plants. Since Boggess had more experience and more training than Hedge, it was Meredith's expert opinion that Boggess was the more qualified of the two.

Steven Hedge II, was hired by Fluor Daniel after Boggess applied. With no training, no boilermaker experience, and only limited related experience, it was Meredith's conclusion that Hedge was the less qualified of the two applicants. In fact, Respondent's own witness conceded that it should not have hired Steven Hedge II as a boilermaker.

Ronnie Hutchinson was hired instead of Boggess. With no relevant training or experience, it was Meredith's expert opinion that Hutchinson was not qualified as a boilermaker. This expert opinion was confirmed by Respondent's representative who testified that Hutchinson should not have been considered as a boilermaker. This supports Meredith's expert opinion that Boggess was more qualified as a boilermaker than Hutchinson.

Roland Moore was hired instead of Boggess. Respondent had the application in its possession demonstrating that Moore

had 2 years of experience as a boilermaker, Boggess is still more qualified. Since Boggess has formal training and more experience as a boilermaker than Moore and under the Company's preference system, Boggess would be preferred over Moore.

Ray Pointer was hired instead of Boggess. With no boilermaker training and experience, Meredith concluded that Pointer was much less qualified than Boggess for a boilermaker position. Meredith's expert opinion is supported by Respondent's own witness who testified that the company should not have hired Pointer as a boilermaker.

Larry Saltgaver was hired as a boilermaker instead of Boggess. Saltgaver does have 3 years of boilermaker experience and some 2 years of related experience. It was Meredith's expert opinion that since Boggess had extensive formal training and more years of experience as a boilermaker, that Boggess was more qualified as a boilermaker.

James Simmons was hired after Boggess applied. Although Simmons had some related experience, he had no training and no experience as a boilermaker. Meredith's expert opinion was that Boggess was the more qualified applicant than Simmons. This was consistent with the Respondent witness' testimony that Respondent would prefer somebody with boilermaker experience over Simmons.

Respondent hired David Thomas as a boilermaker instead of Boggess. It was Meredith's expert opinion that Boggess was more qualified as a boilermaker than Thomas. Even if Thomas was hired as a sandblaster, the evidence that boilermakers are trained and perform work as sandblasters suggests that Armstrong was more qualified to perform sandblasting in a boiler than Thomas who was trained to do sandblasting in the Army.

Johnny Wilson was hired as a boilermaker instead of Boggess. Without any boilermaking training or experience, it was Meredith's conclusion that Johnny Wilson was not qualified as a boilermaker. This comports with Respondent's own conclusion that it should not have hired Wilson as a boilermaker. Accordingly, as Meredith concluded, Boggess is more qualified as a boilermaker than Wilson.

Timothy Wilson was hired instead of Boggess. Company witnesses testified that they would not have hired Wilson as a boilermaker, unless he was performing sandblasting. This would comport with Meredith's conclusion that Wilson was not a qualified boilermaker.

Tony Wood was hired as a boilermaker instead of Boggess. With only limited related experience, Wood is an unqualified to perform boilermaker work. Accordingly, Meredith's expert opinion was Tony Wood was less qualified to be a boilermaker than Boggess. Meredith's expert opinion is supported by Respondent's own witness who testified that Respondent should not have hired Wood as a boilermaker.

8. Based on his application, Russell Gregory was clearly more qualified than several of the people hired in his stead

Gregory has approximately 6 years of boilermaker experience, including work in power houses.

John K. Adams was hired instead of Russell Gregory. John Adams has no boilermaker experience, although he does not some related training and related experience. It was Meredith's

expert opinion that Gregory was more qualified for the boiler-maker position than Adams.

Henry Anderson was hired instead of Russell Gregory. Anderson has even less related training and experience than Adams. Russell Gregory having 6 years of boilermaker journeyman experience, including power house work, is much more qualified than Henry Anderson.

Philip Hedge was hired as a boilermaker instead of Russell Gregory. Although Hedge has no formal training, he does have two years of boilermaker experience. With three times as much experience as Hedge, Russell Gregory is clearly more qualified as a boilermaker.

Steven Hedge II, was hired after Russell Gregory. Steven Hedge II has no training or experience as a boilermaker. Even Respondent's representative, Jack West, would not consider him as a boilermaker. It was Meredith's expert opinion that Gregory was more qualified as a boilermaker than Steven Hedge II.

Ronnie Hutchinson was hired as a boilermaker after Gregory applied. Hutchinson had no training or experience as a boilermaker. In the view of Respondent and Meredith, Hutchinson is unqualified to be a boilermaker. Since Hutchinson is unqualified to be a boilermaker, Gregory with 6 years of boilermaker experience is, in Meredith's opinion, much more qualified.

Respondent hired Roland Moore instead of Russell Gregory. Moore's second application reveals that he had 2 years of experience as a boilermaker. With three times the experience of Moore, Russell Gregory is clearly more qualified to be a boilermaker.

Ray Pointer was hired as a boilermaker by Respondent instead of Russell Gregory. Since Pointer has no boilermaker training or experience and only 3 years of related experience, it was Meredith's conclusion that Gregory was much more qualified as a boilermaker. Meredith's expert opinion was supported by the testimony of Respondent's Human resources representative, Jack West, who testified the Company should not have hired Pointer as a boilermaker.

Larry Saltgaver was hired after Gregory applied as a boilermaker. Saltgaver did have 3 years of boilermaker experience and 2 years of experience related to boilermaking. However, since Gregory has twice as much boilermaker experience, Meredith's expert opinion was that Gregory was more qualified than Saltgaver.

James Simmons was hired as a boilermaker instead of Gregory. Since Simmons had no training and no experience as a boilermaker, it was Meredith's expert opinion that Gregory was much more qualified than Simmons. In fact, Jack West testified that Respondent would prefer someone with boilermaker experience over Simmons, confirming Meredith's expert opinion.

David Thomas was hired after Gregory applied. Since Thomas has no training or experience as a boilermaker, it was Meredith's expert opinion that Thomas was unqualified as a boilermaker and Gregory was much more qualified. Even if Thomas was performing work as a sandblaster Gregory was still more qualified. Both Boilermaker union organizer Barry Edwards and Meredith testified concerning boilermaker training to perform sandblasting and the fact that sandblasting in the

boiler falls within the traditional jurisdiction of the boilermakers. With 6 years of boilermaker experience, Gregory is more qualified to be a sandblaster in the boiler than Thomas, who was trained to be a sandblaster by the United States Army.

Johnny Wilson was hired as a boilermaker instead of Gregory. With no boilermaker training or experience, Meredith concluded Johnny Wilson was unqualified as a boilermaker. Respondent's witness Jack West also testified that Wilson was not qualified as a boilermaker. Accordingly, it was Meredith's expert opinion that Gregory was more qualified as a boilermaker than Wilson.

Timothy Wilson was hired after Gregory applied. With no related training or experience, Wilson was unqualified to be a boilermaker. Accordingly, Meredith's expert opinion was that Gregory was more qualified than Wilson as a boilermaker. Jack West testified that he would consider Wilson as a sandblaster. However, there is no record evidence that Timothy Wilson actually performed sandblasting work on the Big Rivers projects. But even if he did Gregory's training as a boilermaker makes him better equipped to perform sandblasting in the boiler than Wilson.

Tony Wood was hired as a boilermaker after Gregory applied. With no boilermaker training or experience, it was Meredith's expert opinion that Tony Wood was unqualified. Jack West concurred with Meredith's expert opinion when he testified that Respondent should not have hired Wood as a boilermaker. Once again Meredith testified that Gregory is the more qualified of the applicants.

9. Based on his application, Frank Trovato was clearly more qualified than several of the people hired in his stead

Trovato has some welding training, Boilermaker apprenticeship training and 13 years experience, i.e., "1977 to present construction exp. and repair boilermaking."

John K. Adams was hired as a boilermaker instead of Trovato. Since Adams has no boilermaker training or experience and limited related training and experience, it was Meredith's conclusion that Trovato was more qualified than Adams as a boilermaker.

Henry Anderson was hired as a boilermaker instead of Frank Trovato. With no boilermaker experience and only some related experience, it was Meredith's conclusion that Henry Anderson was less qualified than Frank Trovato as a boilermaker.

James Cobb was hired as a boilermaker instead of Trovato. Although Cobb has no training as a boilermaker, he does have 5 years experience as a boilermaker. However, since Trovato has up to 13 years of experience as a journeyman boilermaker, it was Meredith's conclusion that Trovato was the better boilermaker candidate.

Philip Hedge was hired as a boilermaker instead of Frank Trovato. Since Hedge only had 2 years experience as a boilermaker, Meredith concluded that Trovato was much more qualified as a boilermaker than Hedge.

Steven Hedge II was hired as a boilermaker instead of Trovato. Since Steven Hedge II had no boilermaker training or experience, it was Meredith's expert opinion that Frank Trovato was more qualified as a boilermaker than Hedge. Meredith's

expert opinion was bolstered by the testimony of Jack West that Respondent should not have considered Steven Hedge II as a boilermaker.

Ronnie Hutchinson was hired instead of Trovato as a boilermaker. With no boilermaker training or experience, Ronnie Hutchinson was not qualified as a boilermaker. In fact, Jack West testified that Respondent should not have hired him as a boilermaker. Accordingly, it was Meredith's expert opinion that Trovato was more qualified for the boilermaker position than Ronnie Hutchinson.

David Keiffer was hired instead of Trovato. Keiffer had 4 to 5 years of boilermaker experience listed on his application. Since Keiffer has substantially less experience as a boilermaker than Trovato, Meredith concluded that Trovato was more qualified as a boilermaker.

Respondent hired Roland Moore as a boilermaker instead of Trovato. The application that Meredith examined for Moore shows no training or experience as a boilermaker. Accordingly, Meredith's opinion that Moore was not as qualified as Trovato. Respondent argues that the decision to hire Moore was based on a separate application, which shows 2 years of boilermaker experience. Even so Moore is still substantially less experienced than Trovato and Trovato is obviously the better candidate.

Ray Pointer was hired by Respondent as a boilermaker after Trovato applied. Pointer has no training and no experience as a boilermaker. In Meredith's expert opinion, Trovato was more qualified for the boilermaker position than Pointer. Meredith's expert opinion is confirmed by Respondent's testimony that it should not have hired Pointer as a boilermaker.

Respondent hired Larry Saltsgaver as a boilermaker after Trovato applied. Saltsgaver has 3 years of boilermaker experience and two years of experience related to the boilermaking trade. However, since Trovato has substantially more experience than Saltsgaver, it was Meredith's expert opinion that Trovato was a more qualified candidate for the boilermaker position.

Respondent hired James Simmons instead of Trovato. Simmons has no training and no experience as a boilermaker. In Meredith's expert opinion Trovato is preferable over Simmons. Jack West confirmed Meredith's expert testimony by testifying that the company would prefer someone with boilermaker experience over Simmons.

Respondent hired David Thomas instead of Trovato. Meredith concluded Thomas was not qualified to perform boilermaker work. Respondent confirmed that Thomas was not qualified as a boilermaker. Respondent argues that Thomas may have worked as a sandblaster. For the reasons discussed, above, Trovato is even more qualified than Thomas to perform sandblasting work in the boiler.

Respondent hired Johnny Wilson instead of Trovato to perform boilermaker work. Both Meredith and the company concluded that Johnny Wilson was not qualified as a boilermaker. Accordingly, it was Meredith's expert opinion that Trovato was a more qualified candidate for boilermaker than Wilson.

Timothy Wilson was hired after Trovato applied. With no related training or experience, it was both Meredith's opinion and Respondent's opinion that Wilson was not qualified as a

boilermaker. If Wilson was hired to perform sandblasting, boilermakers as more fully discussed above are qualified to perform sandblasting work in the boiler and there is no reason to believe that Trovato was not more qualified than Wilson given Trovato's years of experience as a boilermaker.

Tony Wood was hired to work as a boilermaker by Respondent instead of Trovato. Wood had no boilermaker training or experience and, in fact, Meredith concluded that Wood was not qualified to be a boilermaker. Meredith's opinion was confirmed by Jack West who testified that Respondent should not have hired Wood as a boilermaker. Accordingly, it was Meredith's expert opinion that Trovato was more qualified as a boilermaker than Wood.

10. Based on his application, David James was clearly more qualified than several of the people hired in his stead

David James had 2 years of training as a boilermaker and four years of experience as a boilermaker.

Respondent hired John K. Adams instead of James. Since Adams had no training or experience as a boilermaker, Meredith concluded that James was more qualified for the boilermaker position.

Respondent hired Henry Anderson as a boilermaker instead of James. Since Anderson had no boilermaker training or experience, Meredith concluded James was more qualified for the boilermaker position.

Philip Hedge was hired as a boilermaker after David James applied. Since Philip Hedge had half the experience as a boilermaker as David James, it was Meredith's expert opinion that David James was the more qualified boilermaker applicant.

Respondent hired Steven Hedge II instead David James. Since Steven Hedge II had no boilermaker training or experience, Meredith concluded David James was the better candidate. Respondent's human resources representative testified that Respondent should not have considered Steven Hedge II for a boilermaker position.

Respondent hired Ronnie Hutchinson instead of James. Since Ronnie Hutchinson had no training as a boilermaker and no experience as a boilermaker, it was Meredith's conclusion that not only was David James more qualified but that Hutchinson was not qualified as a boilermaker. Jack West agreed with Meredith's expert opinion that the Company should not have hired Hutchinson as a boilermaker.

Roland Moore was hired after David James applied. With no training and experience as a boilermaker, it was Meredith's conclusion Roland Moore was not qualified as a boilermaker and David James was more qualified. Respondent, however, produced a second application that showed that Moore had 2 years of experience as a boilermaker. Even so David James still has twice as many years of experience as a boilermaker and would be better qualified than Moore to hold that position.

Ray Pointer was hired by Respondent after James applied. With no training and no experience as a boilermaker, it was easy for Meredith to conclude that Pointer was less qualified than James for the boilermaker position. In fact, Meredith's expert opinion was confirmed by Respondent's witness Jack West when he testified the company should not have hired Pointer as a boilermaker.

Respondent hired James Simmons instead of James. Respondent's witnesses testified that they would prefer someone with boilermaker experience over Simmons. It was Meredith's expert opinion that James, who does have boilermaker experience, was preferable to Simmons.

David Thomas was hired by Respondent after James applied. Since Thomas had no training as a boilermaker and no experience as a boilermaker, James was certainly more qualified for that position. With 2 years of boilermaker training and 4 years of experience as a boilermaker, James also is better equipped to perform sandblasting work in the boiler than Thomas who was trained by the United States Army.

Respondent hired Johnny Wilson as a boilermaker instead of James. With possibly two years of related training, and no boilermaker training or experience, Johnny Wilson was not qualified to be a boilermaker. Accordingly, it was Meredith's expert opinion that James was more qualified than Johnny Wilson.

The Respondent hired Timothy Wilson as a boilermaker instead of James. Since Wilson had no related training or experience, it was Meredith's opinion that he was unqualified and that James was much more qualified as a boilermaker. Likewise, Jack West confirmed that Respondent would not hire Wilson as a boilermaker.

Respondent hired Tony Wood as a boilermaker instead of James. Both Meredith and Jack West concluded that Tony Wood was unqualified to be hired as a boilermaker. Accordingly, I agree with Meredith's expert opinion that James is more qualified than Wood.

11. Based on his application, Jimmy Blandford was clearly more qualified than several of the people hired in his stead

Jimmy Blandford had 2 years of Vo-Tech training and 2 years of boilermaker welding experience listed on his application.

John Adams was hired instead of Blandford. Although Adams has 3 years of welding training and 3 years of related experience, he does not have any boilermaker training or experience. Without any boilermaker training or experience, it was Meredith's opinion that Adams was less qualified than Blandford for the boilermakers position.

Henry Anderson was hired as a boilermaker instead of Blandford. With only 1 year of welding training and a limited amount of related experience, Anderson was clearly not as qualified as Jimmy Blandford for a boilermaker position.

Steven Hedge II was hired as a boilermaker instead of Blandford. With a limited amount of related training and experience but no boilermaker training or experience, Steven Hedge II is not nearly as qualified as Jimmy Blandford. In fact, the company witness testified that the company should not even have considered Steven Hedge II for a boilermaker position.

Ronnie Hutchinson was hired as a boilermaker instead of Blandford. Without any related training or experience it was the opinion of Meredith and Respondent that Hutchinson was not qualified to be a boilermaker. Accordingly, it was Meredith's expert opinion that Blandford was more qualified for the boilermaker position than Hutchinson.

Roland Moore was hired instead of Jimmy Blandford. If Moore was hired from the application in evidence at the first trial, it would appear that he was less qualified than Jimmy Blandford. But even if hired based on a second application showing 2 years of boilermaker experience, then it would appear that Blandford and Moore are nearly identical in qualifications.

Respondent hired Ray Pointer as a boilermaker instead of Jimmy Blandford. Pointer has no training or experience as a boilermaker, but he does have 3 years of related experience. Jack West testified that Respondent should not have hired Pointer as a boilermaker. In Meredith's expert opinion, Jimmy Blandford is more qualified for the boilermaker position than Pointer.

Respondent hired James Simmons as a boilermaker instead of Jimmy Blandford. Simmons has no training or experience as a boilermaker, but he does have 3 years of related experience. Jack West testified that Respondent would prefer someone with boilermaker experience over Simmons. Meredith expressed the expert opinion that Blandford was more qualified for the boilermaker position than Simmons.

David Thomas was hired instead of Blandford. Both Respondent and Meredith agreed that Thomas is not qualified to hold a boilermaker position. Even if Thomas was hired as a sandblaster. Blandford would have received more experience working as a journeyman boilermaker performing sandblasting in the boiler than Thomas would have received serving in the Army. Accordingly, even if Thomas was hired as a sandblaster, Blandford is more qualified than Thomas.

Johnny Wilson was hired as a boilermaker instead of Blandford. Both Jack West and Meredith agree that Wilson is not qualified as a boilermaker. Accordingly, it was Meredith's expert opinion that Blandford was more qualified for the boilermaker position than Wilson.

Timothy Wilson was hired after Blandford applied. Both Respondent and Meredith agree that Timothy Wilson is unqualified as a boilermaker. Again, Respondent's testimony supports Meredith's expert opinion that Timothy Wilson is less qualified than Blandford to hold the boilermaker position.

Tony Wood was hired as a boilermaker after Blandford applied. Wood has no training or experience as a boilermaker, and thus is unqualified as a boilermaker. Since West would not hire Tony Wood as a boilermaker, Meredith's expert opinion that Blandford is more qualified is correct.

d. There were Welder Jobs in the Fall

Eleven of the Fall boilermaker applicants show skills, which qualify them to perform work as welders.

1. Based on his application, Michael Hardin was clearly more qualified than several of the people hired in his stead

Michael Hardin had approximately 3 years of construction welding experience, including experience on power houses. Hardin is also a prior Fluor Daniel employee entitled to preference over all those listed below.

William Barnett was hired as a welder after Hardin applied. Barnett has 2 years of welding school and 1 year of related welding experience. Respondent's Jack West concluded that Barnett had less than 1 year of welding experience. In Mere-

dith's expert opinion Hardin was more qualified than Barnett as a construction welder on power houses.

Respondent hired Waco Davis as a welder after Hardin applied. Davis has 1 year of welding school and 5 years of related welding experience. However, the welding experience Davis has was over 10 years before his application. Accordingly, it was Meredith's expert opinion that Hardin was more qualified as a construction welder than Davis. Meredith's expert opinion was confirmed by Respondent's witness who testified that Respondent would prefer a journeyman construction welder over Davis.

David Elzer was hired by Respondent after Hardin applied. Elzer did attend welding school but it is not clear from his application whether or not he had any construction welding experience. Respondent testified they would prefer a journeyman construction welder over Elzer. Accordingly, Meredith's expert opinion was that Hardin would be preferable over Elzer for a journeyman construction welder position.

Wesley Harris was hired as a welder after Hardin applied. Although Harris had some welding training he had no experience as a welder. Moreover, Respondent's witness noted that Harris' application does not indicate he has welded anytime in the last 11 years. Accordingly, Respondent would seem to be in accord with Meredith's expert opinion that Hardin is more qualified than Harris as a construction welder.

Michael Hoover was hired as a welder after Hardin applied. Hoover's application reveals no construction welding experience, but 3 to 4 years of related welding experience. Having experience in the construction industry in welding, Meredith's expert opinion was Hardin was more qualified as a construction welder than Hoover, who had no construction experience.

Jeffery Howard was hired as a welder after Hardin applied. Howard has no construction welding experience, but does have three years of welding training and 3 years of related welding. It was Meredith's expert opinion that Hardin was more qualified to be a construction welder than Howard.

Roy Lyons was hired as a welder after Hardin applied. Lyons does have 4 to 5 years of related welding experience but no construction experience. Accordingly, it was Meredith's expert opinion that Hardin was more qualified as a construction welder than Lyons.

Perry Nannie was hired as a construction welder by Respondent after Hardin applied. Nannie has one year of welding training and 2 years of construction welding experience. Respondent did produce at the second trial an application. That application reveals Nannie had 4 years of welding experience in the Navy. Even considering this application it would appear that Nannie would still be less qualified than Hardin, who has 3 years of construction experience.

Randall Renfrow was hired as a construction welder by Respondent after Hardin applied. Renfrow has no training or experience and is unqualified as a welder. Respondent did produce a second application that shows that Renfrow has very limited welding experience. Even so Hardin is still more qualified as a construction welder since he has more years of construction welding experience than Renfrow.

Although Meredith compared the 11 discriminatees to Debra Sorter I will not count Sorter as being less qualified than any of

the discriminatees. Although her application reflects that she did not work for Respondent in the past by checking the "no" box her application also reflects that she was craft certified by Respondent.

Paul Taylor was hired as a construction welder after Hardin applied. Taylor has no welding training and less than a year of related welding experience. Accordingly, Meredith's expert opinion was Hardin was more qualified than Taylor.

Troy Waters was hired as a construction welder after Hardin applied. With no training or welding experience, Meredith found Waters totally unqualified and Hardin the preferable candidate for a construction welder's position. Respondent recruiter Jim Boyd even testified in the first trial in 1991 that he would not have hired Troy Waters based on his application for a welder position.

Joe Wilson was hired as a construction welder by Respondent after Hardin applied. Wilson's application reveals no training or welding experience and Meredith concluded he was not qualified as a construction welder. Meredith's expert opinion was confirmed by Respondent's witness who testified that he would not have hired Wilson as a construction welder. Accordingly, Meredith's expert opinion concerning Hardin's superior qualifications is credited.

2. Based on his application, Martin Drake was clearly more qualified than several of the people hired in his stead

Martin Drake's application reveals he had welding training in a Vo-Tech school and through the Boilermaker apprenticeship program. Drake's application also reveals approximately 1 year of construction welding experience.

William Barnett was hired as a construction welder after Drake applied. Barnett does have 2 years of welding experience and approximately 1 year of related welding experience. However, since Drake has construction welding experience and Barnett does not, Meredith concluded that Drake was the better qualified construction welder candidate.

Waco David was hired as a construction welder by Fluor Daniel after Drake applied. Davis did have 1 year of welding school and 5 years of related welding. However, the related welding Davis performed occurred more than 10 years before his application. Accordingly, it was Meredith's expert opinion that Drake was more qualified as a construction welder than Davis. Meredith's expert opinion was confirmed by Respondent's testimony that it would prefer a journeyman construction welder over Davis.

David Elzer was hired as a construction welder after Drake applied. Elzer does have some welding school experience, but does not appear to have construction welding experience. Meredith's opinion was that Drake, with construction welding experience, was a more qualified candidate than Elzer. Meredith's opinion is confirmed by Respondent's testimony that Respondent prefers seasoned welders over those fresh out of school. Meredith's testimony is also confirmed by Respondent's testimony that it would prefer a journeyman construction welder over Elzer.

Wesley Harris was hired by Respondent after Drake applied. Although Harris has some welding training he does not have

any welding experience and Meredith concluded he was unqualified as a construction welder.

Respondent hired Michael Hoover for a construction welder position after Drake applied. Hoover has 4 years of related welding experience on his application. Since Drake has construction welding experience and Hoover does not, it was Meredith's expert opinion that Drake was more qualified as a construction welder than Hoover.

Jeffery Howard was hired by Respondent as a construction welder after Drake applied. Howard did have 3 years of welding training and approximately 2 to 3 years of related welding experience. Since Drake had construction welding experience and Howard did not, Meredith expressed the expert opinion that Drake was more qualified to perform construction welding work than Howard.

Roy Lyons was hired as a construction welder by Respondent after Drake applied. Although Lyons has 4 to 5 years of related welding experience, he has no construction welding experience. Accordingly, it was Meredith's expert opinion that Drake was more qualified as a construction welder than Lyons.

Perry Nannie was hired by Respondent after Drake applied. Although Nannie has one year of welding training and 2 years of construction welding experience, it was Meredith's expert opinion that Drake was more qualified. As Meredith testified, Drake's welding experience demonstrates he is a welder of the highest order in terms of his welding skills. Meredith further testified that Drake's application shows he is a certified tube welder and high pressure welder. Meredith testified that Drake's application also reveals significant experience welding in power houses and even being a welding foreman in power houses. Accordingly, it was Meredith's expert opinion that Drake was more qualified than Nannie.

Randall Renfrow, Paul Taylor, Troy Waters, and Joe Wilson were all hired as construction welders after Drake. It was Meredith's expert opinion that Drake was better qualified than all of these applicants, since none of these applicants were even qualified as construction welders. Jim Boyd had previously testified in the first trial in 1991 that Waters should not have been hired by Respondent. Jack West testified in the trial on remand that the company should not have hired Wilson as a welder.

3. Based on his application, Jeffery Everly was clearly more qualified than several of the people hired in his stead.

Jeffery Everly's application reveals that he went through Vo-Tech training and the Boilermaker apprenticeship program. Everly's application shows he has approximately 2 years of construction welding experience, including welding in power houses.

William Barnett was hired instead of Jeffery Everly. Barnett had 2 years of welding school and 1 year of related welding experience. Based on the fact that he had construction welding experience and training beyond that of Barnett, it was Meredith's opinion that Jeffery Everly was the better qualified candidate for a construction welding position.

David Elzer was hired by Respondent as a welder after Everly applied. Although Elzer did go to welding school he does not appear to have any construction welding experience.

Accordingly, Meredith concluded that Everly was the better candidate for the construction welding position. This would comport with Respondent's preference for seasoned welders over those fresh out of school. This would also comport with the Respondent's testimony that it would prefer a journeyman construction welder over Elzer.

Wesley Harris was hired by Respondent after Everly applied. Although Harris has some welding training he has no experience welding whatsoever and is not qualified to be a construction welder. Respondent's own witnesses conceded that Harris has no construction welding experience and appears not to have welded in 11 years. Respondent's testimony supports Meredith's conclusion that Everly is the better qualified candidate over Harris.

Jeffery Howard was hired after Everly applied. Howard has approximately 3 years of welding training and approximately 2 to 3 years of related welding experience. Since Howard has no construction welding experience, Meredith concluded that Everly was the preferable candidate. This would comport with Respondent's preference for employees with a construction background.

Respondent hired Perry Nannie after Everly applied. The application Meredith compared for Perry Nannie revealed 1 year of welding and 2 years of construction welding. Based on that application, Meredith concluded that Everly was the preferable candidate. Respondent produced a second application, which shows 4 years of welding experience in the United States Navy. Even so Everly should be preferred over Nannie based on the employer's preference for employees with a construction background.

Respondent hired Randall Renfrow, Paul Taylor, Troy Waters, and Joe Wilson as construction welders after Jeffery Everly applied. Since none of the applicants were qualified to hold construction welding positions, it was Meredith's expert opinion that Everly is more qualified than all of them.

4. Based on his application, Todd Robinson was clearly more qualified than several of the people hired in his stead

Robinson's application reveals approximately 7 years of welding experience, all of which is in power houses and one of which is one of the projects in question, i.e., Big Rivers.

Respondent hired Walter B. Anderson after Robinson applied. Anderson had approximately 2 to 3 years of construction welding experience when he applied. Since Robinson has over twice as much experience, Meredith concluded he was the better candidate for the construction welding position.

Respondent hired William Barnett as a welder after Robinson applied. Barnett had 2 years of welding school and approximately 1 year of related welding experience. Accordingly, Meredith expressed the expert opinion that Robinson who had construction welding experience, was more qualified for that position than Barnett.

Waco Davis was hired instead of Todd Robinson. Davis had 1 year of welding school and 5 years of related welding experience. However, that experience was more than ten years before his application was filed. Respondent testified that it would prefer a journeyman construction welder over Waco Davis. Respondent's testimony supports Meredith's expert conclusion

that Robinson, a journeyman construction boilermaker, was more qualified than Davis.

David Elzer was hired instead of Todd Robinson. Elzer's application indicates he attended welding school but it is not clear whether or not he has any welding experience. Respondent testified it would prefer a journeyman construction boilermaker over Elzer. Once again, this comports with Meredith's conclusion that Robinson is the more qualified candidate over Elzer.

Leonard Harris was hired instead of Robinson. Leonard Harris has no training or construction experience. However, Leonard Harris has 13 years of related welding experience. Based on Robinson's extensive construction welding experience, it was Meredith's expert opinion that he was the better candidate for a construction position than Leonard Harris.

Wesley Harris was hired instead of Robinson. Although Wesley Harris has some welding training he has no experience and is not qualified in Meredith's opinion. Respondent agrees that Wesley Harris has no construction welding experience and has not welded in at least 11 years. This supports Meredith's conclusion that Todd Robinson is more qualified than Wesley Harris to fill the construction welding position.

Respondent hired Michael Hoover after Robinson applied. Michael Hoover has 3 to 4 years of related welding experience. With no construction experience, it was Meredith's opinion that Hoover was not as good a candidate as Robinson.

Jeffery Howard has 3 years of welding training and approximately 2 to 3 years of related welding experience. Since Howard had no construction experience, it was Meredith's expert opinion that Robinson was more qualified for the construction welding position.

Roy Lyons was hired instead of Robinson. Although Lyons has approximately 4 to 5 years of related welding experience, he has no construction welding experience. Accordingly, it was Meredith's expert opinion that Robinson was more qualified as a construction welder than Lyons.

Clint Merritt was hired after Robinson applied. Clint Merritt's application reveals he has Vo-Tech training, approximately 2 years of construction welding experience, and approximately 2 years of related welding experience. Since Robinson has substantially more construction welding experience and it is all in power houses, it was Meredith's expert opinion that Robinson was more qualified as a construction welder.

Perry Nannie was hired instead of Robinson. Meredith compared Perry Nannie's application revealing 2 years of construction welding experience and concluded that Robinson was more qualified. Nannie's second application reveals that Nannie had 4 years of welding experience. Even so Robinson is still more qualified. The second application indicates Nannie has approximately 4 years of welding experience while Robinson has approximately 7 years of welding experience, all of which occurs in power houses. Given Respondent's preference for someone with greater experience, Robinson is still the preferable candidate.

Randall Renfrow was hired instead of Robinson. In Meredith's view, Renfrow was unqualified as a boilermaker making Robinson more qualified. Respondent did produce a second application that showed Renfrow had some limited welding

experience. Crediting Renfrow with limited welding experience, Robinson is clearly the superior candidate since he has 7 years of construction welding experience in power houses.

Steven Small was hired by Fluor Daniel instead of Robinson. Small has approximately 1 year of welding school, 2 to 3 years of construction welding experience, and three to 4 years of related welding experience. Even with these credentials, Robinson is clearly superior to Small in terms of construction welding experience. Accordingly, Meredith correctly concluded that Robinson was the better candidate for the power house job at Big Rivers.

Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of Robinson. Each of these candidates was unqualified to hold a construction boilermaker job making Robinson more qualified.

5. Based on his application, Brett Maupin was Clearly More Qualified than several of the people hired in his stead.

Brett Maupin's application reveals that he has completed the Boilermaker apprenticeship program and has approximately 3 years of boilermaker welding experience, including experience in power houses.

Walter Anderson was hired instead of Brett Maupin. Although Anderson has welding schooling, welding certificates and three years of construction welding experience, he does not have power house welding experience. Based on the fact that Maupin has power house welding experience, it was Meredith's expert opinion that Maupin was more qualified for the Big Rivers projects than Anderson.

Respondent hired William Barnett as a welder instead of Maupin. Barnett has 2 years of welding school and approximately 1 year of related welding experience. Based on the fact that he had construction welding experience in power plants, Meredith concluded that Maupin was the better candidate.

Waco Davis was hired instead of Maupin. Davis has 1 year of welding school and 5 years of related welding experience. However, Davis' welding experience was more than 10 years before he applied. Respondent testified that it would prefer a journeyman construction welder over Davis. Respondent's testimony would support Meredith's conclusion that Maupin was the more qualified of the candidates.

Respondent hired David Elzer instead of Maupin. Elzer's application reveals he has attended welding school, but does not make it clear whether he had any construction welding experience. Respondent testified that it would prefer a journeyman construction welder over Elzer. Accordingly, it was Meredith's opinion that Maupin was more qualified for the construction welding position than Elzer.

Respondent hired Wesley Harris after Maupin applied. Although Harris has some welding training he had no experience and is unqualified as a construction welder. Respondent agrees that Harris has no construction welding experience and his application indicates he has not welded in 11 years. Respondent's testimony would support Meredith's conclusion that Maupin is more qualified than Harris.

Michael Hoover was hired after Brett Maupin applied. Hoover has approximately 3 to 4 years of related welding experience. Since Maupin has three years of construction welding

experience, it was Meredith's expert opinion that Maupin was more qualified than Hoover for the position at Big Rivers.

Jeffery Howard was hired after Brett Maupin applied. Howard has three years of welding training and approximately 2 to 3 years of related welding experience. Since Maupin has approximately 3 years of boilermaker welding experience, including power houses, it was Meredith's conclusion that Maupin was the better candidate.

Respondent hired Roy Lyons instead of Maupin. Lyons has approximately 4 to 5 years of related welding experience and no construction experience. Since Maupin has construction experience and Lyons does not, it was Meredith's expert opinion that Maupin was the more qualified candidate for the Big Rivers position.

Respondent hired Clint Merritt instead of Maupin. Merritt has Vo-Tech training, 2 years of construction welding experience and 2 years of related welding experience. Since Maupin has construction welding experience in power houses, it was Meredith's expert opinion that Maupin was more qualified for the position in question.

Perry Nannie was hired instead Maupin. Nannie had approximately one years welding training and approximately 2 years of construction welding experience. Since Maupin has more construction welding experience, some of which is in power plants, it was Meredith's expert opinion that Maupin was more qualified than Nannie.

Randall Renfrow was hired by Respondent instead of Maupin. Meredith found Randall Renfrow unqualified for a construction welding position and thus Maupin was more qualified.

Steve Small was hired instead of Maupin. Although Small has one year of welding school, 3 years of construction welding and 3 years of related welding, his application does not reveal any experience in power houses. Based on Maupin's three years of construction welding experience, including power houses, it was Meredith's expert opinion that Maupin was more qualified than Small.

Paul Taylor, Troy Waters, and Joe Wilson all were hired as construction boilermakers by Respondent after Maupin applied. Meredith found all of these Respondent employees to be unqualified as construction boilermakers making Maupin more qualified.

6. Based on his application, Thomas Armstrong was clearly more qualified than several of the people hired in his stead

Armstrong completed the Boilermaker apprenticeship program and had served 2 years of construction welding experience, including power house work.

William Barnett was hired by Respondent instead of Armstrong. Barnett had 2 years of welding school and approximately 1 year of related welding experience. Since Armstrong has 2 years of construction welding experience, including power houses, Meredith concluded that Armstrong was more qualified than Barnett.

Respondent hired David Elzer after Armstrong applied. Elzer had some welding school and possibly some welding experience, but it is not clear how much. With his 2 years of

construction welding experience, Armstrong was deemed by Meredith to be the more qualified candidate.

Wesley Harris was hired after Armstrong applied. Meredith found Harris unqualified and, therefore, Armstrong was clearly the more qualified candidate for the construction welding position at Big Rivers.

Respondent hired Perry Nannie after Armstrong applied. Nannie has 1 year of welding training and approximately 2 years of construction welding experience. Although Armstrong and Nannie have the same number of years of construction welders, Armstrong has experience in power houses while Nannie did not. In Meredith's expert opinion, Armstrong was more qualified for than Nannie for the power job at Big Rivers.

Randall Renfrow, Paul Taylor, Troy Waters, Steven Wilhelm, and Joe Wilson all were hired instead of Armstrong. None of these applicants were even qualified as construction welders. Accordingly, Meredith found that Armstrong was more qualified as a construction welder than each of these Respondent employees.

7. Based on his application, Steve Boggess was clearly more qualified than several of the people hired in his stead

Boggess' application reveals Vo-Tech training, training through the Boilermaker apprenticeship program and approximately 2 years of construction welding experience.

William Barnett was hired instead of Boggess. Barnett has no construction welding experience, although he does have 2 years of welding school and 1 year of related welding experience. In Meredith's expert opinion, Boggess is more qualified than Barnett to be a construction welder.

Respondent hired David Elzer instead of Boggess. Elzer did attend welding school, but it is not clear if Elzer has any construction welding experience. Respondent's witness, Jack West, testified Respondent would prefer an applicant with construction welding experience over one without that experience. This is the same conclusion Meredith came to when he opined that Boggess was more qualified than Elzer as a construction boilermaker.

Wesley Harris was hired as a welder instead of Boggess. Harris is unqualified as a construction welder. Respondent indicated that Harris showed no construction experience and appeared not to have welded in 11 years. It was Meredith's expert opinion that Boggess was more qualified than Harris.

Michael Hoover was hired after Boggess applied. Hoover's application reveals that he had approximately 3 to 4 years of related welding experience. Since Hoover has no construction welding experience and Boggess does not have construction welding experience, Meredith testified that Boggess was the more competent candidate.

Jeffery Howard was hired as a construction welder instead of Boggess. Although Howard has no construction welding experience, he does have 3 years of welding training and 3 years of related welding experience. However, since Boggess does have construction welding experience, it was Meredith's expert opinion that Boggess was more qualified than Howard for the construction project at Big Rivers.

Roy Lyons was hired as a construction welder instead of Boggess. Lyons has 5 years of related welding experience, but

no construction welding experience. In keeping with the company's preference for people with construction experience, it was Meredith's expert opinion that Boggess was more qualified for the Big Rivers projects than Lyons.

The Respondent hired Perry Nannie instead of Steve Boggess as a construction welder. Based on an application that showed Nannie had only 1 year of welding training and 2 years of construction welding, Meredith concluded that Boggess was the better candidate. Respondent produced a second application that showed that Nannie had 4 years of welding experience in the Navy. Even with this additional experience it would appear that Boggess' construction experience and training would outweigh Nannie's experience, making Boggess the better candidate for the Big Rivers projects.

Randall Renfrow, Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of Boggess. Meredith found each of these employees to be unqualified as a construction welder and Boggess more qualified to perform the work at the Big Rivers Projects.

8. Based on his application, Russell Gregory was clearly more qualified than several of the people hired in his stead

Gregory has approximately 6 years of construction welding experience, including experience in power houses.

Walter Anderson was hired instead of Russell Gregory. Anderson has approximately 3 years of construction welding experience. Since Gregory has approximately twice as much construction experience and power house experience, it was Meredith's opinion that he was more qualified than Anderson.

Respondent hired William Barnett as a construction welder instead of Gregory. Barnett has 2 years of welding and 1 year of related welding, but no construction welding experience. Since Barnett has no construction welding experience and Gregory has an extensive history of construction welding experience, it is Meredith's expert opinion that Gregory is more qualified.

Respondent hired Waco Davis as a construction welder instead of Gregory. Davis has no construction welding experience and what related welding experience he has occurred 10 years before his application for the Big Rivers projects. Respondent indicated that they would prefer a journeyman construction welding over Davis. This comports with Meredith's conclusion that Waco Davis was less qualified for the construction welder position than Gregory.

David Elzer was hired instead of Gregory. Elzer did attend welding school, but it is not clear whether he has any construction welding experience whatsoever. Respondent testified they would prefer someone with journeyman construction welding experience over Elzer. This is consistent with the testimony of Meredith that he considered Gregory to be more qualified for the construction welding position than Elzer.

Raymond Geary was hired instead of Gregory. Geary has 2 years of welding school, 1 to 2 years of construction welding experience and several years of related welding experience. Meredith's opinion, based on one application, is that Geary was not as qualified as Gregory. A second application adds little to contradict Meredith's opinion, since Gregory would appear to

have three times as much construction welding, including power house welding experience, as Geary.

Wesley Harris was hired instead of Gregory. Although Harris has some welding training he has no experience and Meredith views him as unqualified as a construction welder. Respondent concedes that Harris has no construction experience and does not appear to have welded in 11 years. All of which leads to the inescapable conclusion reached by Meredith that Gregory is more qualified as a construction welder than Harris.

Michael Hoover was hired instead of Gregory. Michael Hoover has no construction welding experience, but he does have 4 years of related welding experience. Based on Gregory's extensive history of construction welding experience, including power houses, Meredith concluded that Gregory was more qualified than Hoover.

Jeffery Howard was hired by Respondent after Gregory applied. Howard has 3 years of welding training and approximately 2 to 3 years of related welding experience. Since Gregory has extensive construction welding experience and Howard does not, it was Meredith's expert opinion that Gregory was more qualified for the Big Rivers projects than Howard.

Roy Lyons was hired after Gregory applied to Respondent. Lyons has 4 to 5 years of related welding experience, but no construction welding experience. Without any construction experience, it was Meredith's conclusion that Lyons was not as qualified for the Big Rivers projects as Gregory.

Clint Merritt was hired after Gregory applied to Respondent. Merritt has Vo-Tech training, 2 years of related welding experience, and 2 years of construction welding experience. Since Gregory has three times as much construction welding experience, including power house experience, it was Meredith's expert opinion that Gregory was more qualified than Merritt for the Big Rivers projects.

Perry Nannie was hired instead of Gregory. Nannie has welding training and 4 years of welding experience but no indication of power house work. Since Gregory has construction welding experience, including power houses, this makes him more qualified than Nannie.

Randall Renfrow was hired instead of Gregory. Meredith concluded that Renfrow was unqualified as a construction boilermaker making Gregory more qualified. Renfrow has only limited welding experience. Renfrow's limited welding experience does not match up to Gregory's 6 years of construction welding experience, making Gregory the better candidate for the Big Rivers projects.

Steve Small was hired instead of Gregory. Small has 1 year of welding school, 3 years of related welding experience, and 3 years of construction welding experience. Since Gregory has substantially more construction welding experience than Small, it was Meredith's expert opinion that Gregory is the more qualified of the two candidates.

Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of Gregory. Meredith concluded each of these employees was unqualified to perform construction welding work and, therefore, Gregory was more qualified for the Big Rivers projects.

9. Based on his application, Frank Trovato was clearly more qualified than several of the people hired in his stead

Trovato attended the Boilermaker apprenticeship school and welding school. Trovato had 3 years of construction welding experience, including experience as a tube welder and in power houses.

Walter Anderson was hired instead of Trovato. Anderson does have 3 years of construction welding experience. Since Trovato's application reveals experience in power houses, it was Meredith's expert opinion that he was more qualified for the Big Rivers projects than Anderson.

Respondent hired William Barnett instead of Trovato. Barnett has no construction welding experience and less than a year in related welding experience. With 3 years of construction welding experience, Trovato is superior in qualifications to Barnett for the Big Rivers projects. It was Meredith's expert opinion that Trovato is more qualified for the Big Rivers projects than Barnett.

Waco Davis was hired instead of Trovato. Davis has 1 year of welding school and 5 years of related welding. However, Davis has not welded for 10 years according to his application. Respondent would prefer a journeyman construction welder over Davis. This supports Meredith's expert opinion that Trovato is more qualified for the Big Rivers projects than Davis.

David Elzer was hired instead of Trovato. Elzer has some welding school experience and possibly some related welding experience. Once again, the company would prefer a journeyman construction welder over Elzer. Once again, Respondent's testimony supports Meredith's expert opinion that Trovato is more qualified for the Big Rivers projects than Elzer.

Wesley Harris was hired instead of Trovato. In Meredith's opinion, Wesley Harris is not qualified and Trovato is more qualified for the construction welding position. Respondent admits that Harris has no construction welding experience and appears not to have welded in the last 11 years.

Respondent hired Michael Hoover instead of Trovato. Hoover has 3 to 4 years of related welding experience. Without any construction experience, Hoover is not as qualified as Trovato for the Big Rivers projects in Meredith's opinion.

Respondent hired Jeffery Howard after Trovato applied. Although Howard has 3 years of welding training and 2 to 3 years of related welding experience, he has no construction welding experience. Since Trovato has extensive construction welding experience, he is clearly more qualified as a construction welder than Howard.

Roy Lyons was hired instead of Trovato. Lyons has 4 to 5 years of related welding experience but no construction welding experience. Without construction welding experience, Lyons is not as qualified as Trovato for the Big Rivers projects in Meredith's expert opinion.

Clint Merritt was hired after Trovato applied. Merritt has Vo-Tech training, 2 years of construction welding and approximately 2 years of related welding experience. Since Trovato has more construction welding experience, including power houses and tube welding, it is Meredith's expert opinion that Trovato is more qualified than Merritt for the Big Rivers projects.

Perry Nannie was hired as a construction welder instead of Frank Trovato. Meredith's opinion was Trovato was more qualified than Nannie, based on an application that showed 2 years of construction welding experience for Nannie. Respondent produced a second application that showed Nannie had 4 years of welding experience in the Navy. However, Trovato's construction welding experience, including power house welding, would make him more qualified for the Big Rivers projects than Nannie.

Randall Renfrow, Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of Trovato. Meredith found each of these applicants to be unqualified as a construction welder and Trovato to be more qualified to work on the Big Rivers projects.

10. Based on his application, David James was clearly more qualified than several of the people hired in his stead

James had attended welding school. James had 4 years of welding experience, including welding at power houses. James had even worked in the Big Rivers systems power houses.

Walter Anderson was hired by Respondent after James applied. Anderson does have 3 years of construction welding experience. Since James has more construction welding experience, particularly in the Big Rivers system, it was Meredith's expert opinion that James is the more qualified of the two applicants.

William Barnett was hired instead of James. Barnett has 2 years of welding school and approximately 1 year of related welding experience. It was Meredith's expert opinion that James was more qualified than Barnett.

Waco Davis was hired instead of James. Davis has 1 year of welding school and 5 years of related welding experience. However, that experience was more than 10 years before the date of Davis' application. Meredith's opinion was that David James was better qualified than Davis for the position at Big Rivers.

David Elzer was hired instead of David James. Because of Elzer's lack of experience, Respondent testified that they would prefer a journeyman construction welder over Elzer. This supports the expert opinion offered by Meredith that he believed James was more qualified as a construction welder than Elzer.

Wesley Harris was hired instead of James. Both Respondent and the union appear to agree that Wesley Harris was not qualified as a construction welder. Thus, Meredith opined that James was more qualified as a construction welder than Harris.

Respondent hired Michael Hoover instead of James. Hoover appears to have between 3 and 4 years of related welding experience, but no construction welding experience. Consequently, Meredith reached the conclusion that James was more qualified as a construction welder than Hoover.

Jeffery Howard was hired after James applied. Howard has approximately 3 years of welding training and between 2 and 3 years of related welding experience. Since Howard has no construction welding experience, Meredith concluded James was more qualified as a power house welder at the Big Rivers projects than Howard.

Roy Lyons was hired after James applied. Lyons had no construction welding experience, but between 4 and 5 years of

related welding experience. Without construction welding experience, Lyons is not as qualified as James.

Clint Merritt was hired instead of James. Merritt has Vo-Tech training, 2 years of related welding experience. Since James has twice as much of construction experience as Merritt and experience working on the power houses in question, Meredith concluded that James was the more qualified candidate.

Perry Nannie was hired instead of James. Based on the application Meredith reviewed, he concluded that Perry Nannie was less qualified than James as a construction welder. Respondent produced another application for Nannie revealing four years of welding experience in the Navy. As Respondent's witness testified, Respondent prefers people with construction welding experience over those with those with welding experience outside the construction industry. James is still more qualified than Nannie.

Randall Renfrow was hired instead of James. Meredith concludes that Renfrow was unqualified as a construction welder and that James is more qualified. Respondent produced another application, which shows that Renfrow does have some limited welding experience. Regardless of which application is considered, it is obvious that James has considerably more construction welding experience than Renfrow and should be preferred over Renfrow.

Steve Small was hired instead of James. Small has 1 year of welding school, 3 years of related welding experience, and 3 years of construction welding experience. However, since James has more construction welding experience, particularly in the power plants in question, it was Meredith's expert opinion that James was more qualified than Small.

Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of James. It was Meredith's conclusion that each of these applicants was unqualified to be a construction welder and that James was more qualified than any of these five applicants.

11. Based on his application, Jimmy Blandford is clearly more qualified than several of the people hired in his stead

Blandford has approximately 2 years of construction welding experience, including work on power houses. Blandford even worked on the Hawesville Project, which was part of the Big Rivers shut downs.

William Barnett was hired instead of Blandford. With no construction welding experience, it was easy for Meredith to conclude that Blandford was more qualified than Barnett.

David Elzer was hired instead of Blandford. Respondent testified that it would prefer a journeyman construction welder over Elzer. This is in accord with Meredith's expert opinion that Blandford is a better candidate than Elzer.

Wesley Harris was hired as a welder instead of Blandford. Since Meredith found Harris was not qualified as a construction welder, it was easy for him to reach the conclusion that Blandford was more qualified.

Roy Lyons was hired instead of Blandford. Since Lyons had no construction welding experience, it was Meredith's opinion that Blandford was a better candidate for a construction welding position at the Big Rivers projects.

Perry Nannie was hired instead of Blandford. Regardless of which application you consider, Nannie has no more construction welding experience than Blandford, and Blandford has experience specifically on the projects in question. Accordingly, it was Meredith's expert opinion that Blandford was more qualified than Nannie.

Paul Taylor, Troy Waters, and Joe Wilson were all hired instead of Blandford. Since Meredith found all these applicants unqualified as construction welders, he concluded that Blandford was the better candidate for the construction welder position on the Big Rivers projects.

e. The Boilermaker Applicants were even more Qualified than their Applications Revealed

Throughout his testimony Respondent's witness, Jack West, speculated that he would interview individuals based on their applications. Despite West's speculation, there is little or no testimony that any of the people hired, referenced above, and were hired based on what was learned through an interview of the applicant. Consequently, this testimony is not deemed to have rebutted Meredith's expert opinion concerning the candidate's relative qualifications. And, of course, Respondent did not interview the boilermaker discriminatees.

Interestingly enough, if you accept Respondent's premise that they would want to interview people showing minimum skills as a boilermaker, they should have interviewed the discriminatees also. Had the Respondent interviewed the boilermaker applicants they would have found out that they are even more qualified than what their applications show.

Pat Smith, the business manager of Boilermakers Local 40, testified concerning the welding certifications and skills of the boilermaker discriminatees. Smith testified that he personally worked on the Big Rivers projects in Centertown, Sebree, and Hawesville, and is familiar with the type of skills needed to repair and maintain those boilers. Smith also testified, based on the welding certifications kept in the regular course of Local 40's business and his personal experience from working with the discriminatees, what skills the discriminatees possess.

1. Thomas Armstrong

Smith testified that he worked with Armstrong on probably 25 different occasions in the Kentucky utility systems, the Big Rivers electric system and at various chemical plants. Between the early 1980s and 1987 Smith testified that he worked with Armstrong in the Big Rivers power plants. Smith testified that based on his observation, Armstrong is a very good boilermaker and tube welder. Smith testified Armstrong was in high demand by employers.

2. Jimmy D. Blandford

Smith testified from the mid 1970s through 1987 he worked with Blandford on multiple jobs, including the Big Rivers projects. Smith testified that Blandford was a top notch, highly in demand, journeyman boilermaker and tube welder.

3. Steve Boggess

Smith testified that General Counsel, Exhibit 24 demonstrates Boggess became a journeyman boilermaker in 1982. General Counsel, Exhibit 24 also demonstrates that Boggess

had passed multiple tube tests for numerous employers prior to 1990. Based on his personal experience, Smith knew Boggess to be a graduate of the apprenticeship program. Smith had worked with Boggess in the early 1980s in a variety of settings, including the Big Rivers electrical power plants. Smith testified that Boggess was a very good boilermaker and a certified welder.

4. Ernest T. Coons

Smith testified that General Counsel Exhibit 25 demonstrates that Coons had passed a series of boiler tube welding tests for a number of employers. Smith testified that he worked with Ernest Coons from 1974 through 1987. Smith worked with Coons in a number of different settings, including the Big Rivers power plants. Smith testified that Coons was a good welder with excellent work habits.

5. Martin W. Drake

Smith testified that Drake became a journeyman boilermaker in 1976. Smith testified that General Counsel, Exhibit 26 also demonstrates that Drake had passed numerous welding certifications, including tube welding tests, for multiple employers prior to 1990. Smith testified that he worked on numerous occasions with Drake between the mid 1970s through 1987, including the Big Rivers power stations. Smith testified that he even worked at Sebree and Hawesville, two of the locations in question, with Drake. Based on his work in the Big Rivers projects, Smith testified that Drake was a very skilled boilermaker with excellent work habits.

6. Jeffery Everly

Smith testified that General Counsel, Exhibit 27 demonstrates that Everly graduated from the Boilermakers apprenticeship Program in 1985 and that he had passed numerous boiler tube tests prior to 1990. Smith testified that he had worked with Everly on several occasions, including some occasions on the Big Rivers projects. Smith testified that Everly was a very good boilermaker and, in fact, was a certified apprentice's instructor at the Boilermaker apprenticeship school. Smith also testified that Everly was a certified welder.

7. Russell Gregory

Smith testified that General Counsel, Exhibit 28 demonstrates that Russell Gregory had passed numerous boiler tube welding tests for multiple contractors prior to 1990. Smith testified that he worked with Gregory many times over the years. In Smith's opinion, Gregory may be one of the best welders among the boilermaker applicants.

8. Michael Hardin

Smith testified that General Counsel, Exhibit 29 demonstrates that Michael Hardin was a graduate of the Boilermakers apprenticeship program and had passed numerous tube tests for a variety of contractors prior to 1990. Smith testified that he worked with Michael Hardin on a variety of projects, including projects in the Big Rivers system. Smith testified that Hardin had been a certified welder for many years and was a very good welder and boilermaker.

9. David K. James

Smith testified that General Counsel, Exhibit 30 demonstrates that James had passed multiple tube tests for a number of employers prior to 1990. Smith testified that he worked with James in the Big Rivers system and that James was a very good welder and very good boilermaker.

10. G. Dennis Kulmer

Smith testified that General Counsel, Exhibit 31 contains documents showing Kulmer passed boiler tube tests prior to 1990. Smith testified that he worked with Kulmer all over the country, including in the Big Rivers system. Smith testified that Kulmer was one of the best welders he had ever worked with.

11. Brett A. Maupin

Smith testified that General Counsel, Exhibit 32 shows that Maupin graduated from the Boilermaker apprenticeship program in 1986 and had passed multiple tube welding certifications with several employers prior to 1990. Smith testified that while he had not worked with Maupin much as a journeyman, he knew that Maupin was a very good welder.

12. James D. Pierce

Smith testified he worked with James D. Pierce and that Pierce was a very good boilermaker. Smith testified that Pierce could pass a plate welding test and perform the duties of a boilermaker mechanic.

13. Todd Robinson

Smith testified that General Counsel, Exhibit 33 demonstrates that Robinson graduated from the Apprenticeship Program in 1986. Smith testified he worked with Robinson quite a bit, however, he had not seen him weld frequently.

14. Frank Trovato

Smith testified that General Counsel, Exhibit 34 shows that Trovato graduated from the Boilermakers apprenticeship program and obtained multiple tube welding test certifications prior to 1990. Smith testified he had worked with Trovato in a number of locations, including all of the Big Rivers locations in question in this case. Smith testified that Trovato was a very good boilermaker and a very good welder.

IV. PIPEFITTERS

Charles Ashley, International representative of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL-CIO, CLC, credibly testified with respect to the qualifications of the applicants who applied for work with Respondent, by submitting applications through the Kentucky State Job Service, in March 1990, as voluntary union organizers for Pipefitters Local 633. Ashley has held the position of International representative for 15 years, overseeing 15 local unions in Tennessee and Kentucky, and any other local union which provides employees for the Tennessee Valley Authority. In fact, Ashley actually created the training program at TVA for many of its employees.

At the relevant time, and continuing to the time of the hearings herein, the Pipefitters Union had a 5-year apprenticeship

training program, which included 276 hours of classroom instruction in the evening, as well as 5 years of on-the-job training during the day. The classroom work included the four basic welding skills, blueprint reading, and advanced mathematics, such as trigonometry. The on-the-job training allowed apprentices to work under the supervision of journeymen union members, who observed the apprentices as they worked on rigging, pipe fabrication, and welding. The apprentices were also instructed on how to perform their jobs safely.

All 21 discriminatees from Pipefitter Local 633 were journeymen. Several had worked for the Tennessee Valley Authority (TVA), a U.S. Government corporation set up in 1933 to construct and operate dams, hydroelectric plants, and flood-control works throughout the Tennessee Valley and which performs background checks to verify an applicant's skills and employment history. Ashley reviewed the Union's files on the discriminatees, and determined that Russell Bell became a journeyman in 1971, and became a pipefitter in 1973 and was referred to jobs out of the union hall as a pipefitter since then. Anthony O. Taylor became an apprentice in 1978, and a pipefitter journeyman in 1982, and continued to be referred out of the union hall thereafter.

James L. Trainer became a union member as a journeyman after 10 years' of experience as a journeyman and 4 years' experience as an apprentice. Although Trainer did not go through the Union's apprenticeship program, he demonstrated to the Union's examining board that he possessed the skills of the pipefitting trade and had experience as a pipefitter. He had been employed as a pipefitter since 1976.

Thomas G. Turner became an apprentice in 1980 and a journeyman pipefitter in 1983. He had been an active member since that time. Mark A. Wagner became a pipefitter apprentice in 1980 and a pipefitter journeyman in 1983. The Union referred him to jobs as a pipefitter journeyman from that time forward. Richard A. Wall became a pipefitter apprentice in 1978 and a pipefitter journeyman in 1982, and continued to work as a pipefitter journeyman based on referrals through the Union after that time.

Charles H. Yeiser became a pipefitter apprentice in 1978 and a pipefitter journeyman in 1982. He was actively referred to jobs by the Union as a pipefitter journeyman after 1982. Roger D. Sims became a pipefitter apprentice in 1980 and a pipefitter journeyman in 1984. Upon achieving pipefitter journeyman status, Sims worked as a pipefitter journeyman on construction jobs based on referrals from the Union. George T. Saltsman became a pipefitter apprentice in 1978, and a journeyman pipefitter in 1982. He was steadily referred by the Union hall for pipefitting work as a journeyman after 1982.

James G. Phillips became a steamfitter apprentice in 1967, and a steamfitter journeyman in 1970. A steamfitter is the same as a pipefitter, but is an older term used in the earlier days of the trade. The training was nearly the same for achieving journeyman status as a steamfitter as it was for becoming a journeyman pipefitter. However, as technology progresses, new skills are incorporated into the Union's apprenticeship program. Phillips has encountered many changes in his craft since 1970, but adapted to those changes, and continued to be referred to union jobs as a pipefitter journeyman.

Patrick O'Bryan became an apprentice pipefitter in 1979, and a journeyman pipefitter in 1983. He was referred to journeyman pipefitter jobs out of the union hall since then. Jerry L. Hurm began working as a plumber in 1957, and became a journeyman plumber in 1963. Later, he enhanced his skills in welding and became a pipefitter journeyman in 1970. The Union referred him to jobs as a pipefitter journeyman from that time forward. Joseph Hobbs became an apprentice pipefitter in 1978, and a journeyman pipefitter in 1982. Hobbs worked as a pipefitter welder for TVA, performing work similar to the work performed at the Big Rivers power plants. In addition, Hobbs worked at several other power plants, including Sterling Boiler and B&W.

George E. Hayes became an apprentice pipefitter in 1972, and became a journeyman pipefitter in 1976. He continued to be referred out of the union hall as a journeyman pipefitter thereafter. Hubert L. Crabtree became a member of the Union in 1981, with 6 years' experience as a journeyman and 2 years' experience as an apprentice. Like Trainer, his skills and experience were evaluated by the Union's examining board, which determined he was qualified to be referred to jobs as a journeyman pipefitter.

Wallace H. Cook Jr. became a pipefitter apprentice in 1968, and a journeyman pipefitter in 1971. He was actively referred to jobs by the Union as a pipefitter journeyman after 1971. Donald S. Cole became a steamfitter apprentice, like James G. Phillips, in 1968, and became a journeyman steamfitter in 1970. He was continued to update his skills, and had worked as a pipefitter journeyman based on referrals through the Union for 30 years.

John C. Zaremba became an apprentice pipefitter in 1972, and became a journeyman pipefitter in 1976. He continued to be referred out of the union hall as a journeyman pipefitter thereafter. Ernest C. Carter Jr. became a pipefitter journeyman in 1981 with 3 years' experience as a journeyman and 3 years experience as an apprentice. He was referred to journeyman pipefitter jobs out of the union hall since then.

Jeffrey L. Campbell became an apprentice in 1980 and a journeyman pipefitter in 1984. Campbell had experience as a pipefitter in coal-fired steam power plants, including Sterling Boiler. He also worked as a plumber in Chicago, which required a plumbing license. Bobby Crabtree became an apprentice pipefitter in 1978, and a journeyman pipefitter in 1982. He was steadily referred by the Union hall for pipefitting work as a journeyman after 1982.

The record on remand showed convincingly that the voluntary union organizer applicants from the Pipefitters Local 633 were more qualified than the applicants Respondent hired for pipefitter and pipe welder positions. Charles Ashley compared for both the spring and fall outages the 21 Pipefitter Local 633 discriminatees with persons actually hired and Ashley convincingly established that there were available jobs for pipefitter discriminatees for which they were qualified.

A. Spring Outages

(1) *Joseph Hobbs vs. Steven Wilhelm*: While Hobbs had years of experience as a pipefitter in power plants like the ones Respondent was repairing for Big Rivers, Wilhelm worked

previously as an ironworker and had no pipefitting experience at all. In fact, Steven Wilhelm was unqualified as a pipefitter. Therefore, Hobbs should have been hired instead of Wilhelm absent Respondent's discrimination against the voluntary union organizer applicants.

(2) *Jeffrey Campbell vs. Glenn Titzer*: Campbell had previously performed pipefitting work in coal-fired steam power plants. Titzer listed seven prior employers on his application, but his employment with each contractor had lasted short periods of time, frequently 1 month or less. According to Ashley, Titzer appeared to be the type of person who was hired just as a "fill-in" for brief periods of time. The pattern of employment on Titzer's application indicated he was not a good worker and that he was not qualified to work as a pipefitter in a power plant. Campbell was much more qualified than Titzer for the work available at the Big Rivers projects.

(3) *Ernest Carter vs. Benjamin Allen*: Carter's application reflected previous employment by TVA. Allen's application indicated some college education, as well as vocational training and some union apprenticeship training. However, Allen would not have had sufficient time to receive the appropriate training in welding during the brief time periods he listed on his application. He had no work experience in power plants. His work experience was in light industry for around two months and as a plumber. He was self-employed as a plumber at the time of his application. Plumbing work requires very little welding. In contrast to Carter's application which showed he was well-qualified for a job as a pipefitter in a power plant, Allen's application evidenced he was not qualified for the position.

(4) *Wallace H. Cook Jr. vs. David Cates*: Wallace Cook showed on his application that he had been trained in the trade by the Union's extensive program, and had worked as a pipefitter at TVA and other power plants. When David Cates completed his application, he showed he had previously been employed by a propane company. Therefore, Cates had different skills than Cook, and Cook's specific experience as a journeyman pipefitter in power plants made him far more qualified than Cates.

(5) *Roger Sims vs. Paul T. Darnell*: Roger Sims' application indicated that he had been a journeyman pipefitter since 1984, after completing 5 years of training in the craft. Paul Darnell's application showed he only had 4 months' experience as an ironworker. Moreover, he quit on April 14, 1990. Certainly, Sims was more qualified for the position for which Darnell was hired than Darnell was, and he was surely qualified to fill the position after Darnell quit.

(6) *Charles Yeiser vs. William W. Taylor*: Charles Yeiser indicated on his job application years of experience as a pipefitter, as a journeyman since 1982. William H. Taylor was hired as pipefitter helper with 6 months experience. Yeiser was far more qualified than Taylor for a helper job, and pursuant to Respondent's then-current published hiring policy that "Fluor Daniel's commitment to providing equal opportunity requires that employees in utility classifications be given consideration for entry-level craft helper positions." Yeiser could have been offered a helper position. Consistent with Respondent's policy to include helpers in craft hiring Recruiter Jim Boyd did not

designate the helper position separately, but instead included within the number of craft recruits needed by Boyd. Clearly, there was no legitimate, nondiscriminatory reason for Respondent's failure to hire Yeiser.

(7) *James Trainer vs. James C. Collins*: James Trainer demonstrated his experience and knowledge of the trade to the Union's board, and became a journeyman in 1976. He worked in the craft thereafter, as well. On the other hand, James Collins had 3 years' experience in pipefitting. A comparison of their relative experience and qualifications shows that Trainer was far more qualified as a pipefitter than Collins.

(8) *George Hayes vs. Patrick Lumb*: George Hayes was a qualified pipefitter who had been referred as a journeyman pipefitter by the Union to jobs since 1976, as he indicated on his application. In fact, Respondent received his application on Monday, March 26, 1990, after Patrick Lumb was fired by Respondent for the offense of "entering or leaving the work area without proper authorization" on the previous Friday, March 23, 1990. Obviously Lumb's job was available for Hayes, who was far more qualified to perform the work.

(9) *Richard Wall vs. Troy Hilburn*: Richard Wall was a long-time pipefitter, with extensive work experience, as shown on his application. In contrast, even though Troy Hilburn was hired because he was a former Fluor Daniel employee, he was far less qualified to perform the work of a journeyman pipefitter. Troy Hilburn worked on the Wilson outage and subsequent outages for Respondent, from April 6 to May 14, 1990, when he was terminated for excessive "absenteeism or tardiness." Although he was classified as Welder A for both the spring and fall outages, Troy Hilburn failed two tube welding tests, and should have been classified as a noncode welder. Despite his earlier discharge and failure to become certified as a welder, Troy Hilburn was rehired for the fall outage on August 27, 1990, as a welder A, and quit on September 4, 1990. On the whole, Troy Hilburn was an unsatisfactory employee, whereas Richard Wall would have been an exemplary employee.

(10) *James Phillips vs. Billy Kennedy*: Phillips' application showed a lifetime of employment as a steamfitter or pipefitter. On the other hand, Billy Kennedy, while categorized as "Welder A" on Respondent's Exhibit 22, failed his welding test on April 6, 1990, and again on April 19, 1990, and should not have performed "code" welding. He was fired on May 14, 1990, for excessive "absenteeism or tardiness." After a comprehensive comparison of the work records and job applications of James Phillips and Billy Kennedy, it can fairly be concluded that Phillips was far more qualified than Billy Kennedy.

(11) *John Zarembo vs. Gary W. Harper*: John Zarembo has been a journeyman pipefitter, who worked regularly in the craft since 1976, as he showed on his application. Conversely, Harper's application indicated he was deficient in the pipefitting and welding skills needed to perform the job for which he was hired. On his first try, on April 6, 1990, Harper failed a tube welding test that was evaluated using an X-ray. Respondent tested him again on April 17, 1990, evaluating the results with the less-intrusive and easier bend test, which he passed. Nevertheless Harper was far less qualified for the job than Zarembo.

(12) *Donald Cole vs. James D. Bratcher*: Donald Cole became a steamfitter and had worked in the steamfitter/pipefitter craft for 30 years at the time he applied for work with Respondent. Instead of hiring Cole, however, Respondent hired James Bratcher, a former employee who had been fired four times by Respondent for cause before being hired for spring outages at Big Rivers.

(13) *Thomas Turner vs. Ronnie Glen Fulkerson*: Thomas Turner's application showed that he had worked actively as a journeyman pipefitter since 1983, and had completed the exhaustive union apprenticeship program. In contrast, Ronnie Glen Fulkerson was not even considered to be a pipefitter journeyman when he was hired. Initially, he was hired as a plate welder. Turner was far more qualified than Fulkerson for a journeyman pipefitter position.

(14) *Russell Bell vs. Doyle M. Hust*: On his application, Bell listed his extensive and varied work experience as well as completion of the Union's rigorous training program. He had been steadily referred as a journeyman pipefitter by the Union since 1973. In comparison, Hust's application lacked training and experience in the craft, and it should not have been a surprise when he failed his tube welding test on April 6, 1990, and received a negative performance evaluation from Respondent during his employment at Big Rivers. In comparing their qualifications, Bell was far more qualified than Hust.

(15) *Hubert Crabtree vs. Kyle Johnson*: While Hubert Crabtree demonstrated to the Union's board that he was a qualified pipefitter in 1981, Kyle Johnson failed the tube welding test on April 10, 1990. Crabtree showed on his application that he had been referred by the Union as a journeyman pipefitter since 1981. Kyle Johnson listed no training and little experience in the craft. When he failed the tube welding test, Johnson was not permitted, pursuant to industry code, to perform the kind of work Crabtree had performed most of his life. Accordingly, Johnson was far less qualified than Crabtree.

(16) *Anthony Taylor vs. Michael Little*: On his application, Anthony Taylor advised Respondent that he had completed the Union's demanding apprenticeship training, and had been a journeyman pipefitter since 1982. Even recruiter Jim Boyd agreed that Little was unqualified to work for Respondent at the Big Rivers projects, since he had no prior construction experience. Perhaps Little concurred, since he quit on March 23, 1990. At that point, his job was available for Taylor when Respondent received his application on March 26, 1990.

(17) *George Saltsman vs. James D. Eaton*: George Saltsman's application listed that he completed the Union's rigorous training program, and offered a resume of his extensive job experience. In contrast, even Respondent initially did not consider Eaton to be qualified for a journeyman pipefitter job, based on his application, and he was hired as a plate welder. Only when Respondent became "desperate" for other crafts was he classified as a journeyman pipefitter. There is no evidence in the record that Eaton was a certified welder, as Saltsman was. Indeed, there is no evidence that Eaton ever took a welding test. Eaton's failure to attain the skills and certification that Saltsman possessed show that Saltsman was more qualified to be a journeyman pipefitter than Eaton.

(18) *Jerry Hurm vs. Sheldon D. Matthews*: On his application, Jerry Hurm showed he had attended business college and had extensive experience as a journeyman pipefitter in power plants such as TVA, Sterling Boiler, and others. With his specific experience at the precise job for which Matthews was hired, Hurm was far more qualified than Matthews, whose application indicated he had some intermittent pipefitting experience for several employers in several states, and failed to list any time frames for his work experience. Contrasting Matthews' vague work history with Hurm's specific work experience in the job for which Matthews was hired, the evidence established that Hurm was far more qualified than Matthews.

(19) *Patrick O'Bryan vs. Gary W. Burton*: Patrick O'Bryan listed on his application his work experience as a journeyman pipefitter for 5 years at TVA, after completing the Union's demanding training program. Gary Burton's application, in contrast, showed only 4 years' work experience, and that was as an ironworker welder. A comparison of the two applications conclusively shows that O'Bryan was more qualified than Burton for a job as a pipefitter journeyman in a power plant.

(20) *Mark Wagner vs. James Hillburn*: Mark Wagner listed on his application that he completed the Union's apprenticeship training, and had been a journeyman pipefitter at TVA and other power plants. Conversely, on James Hillburn's job application, he listed 2 years of vocational school, and 8 years of construction welding. Not only was Wagner more qualified than Hillburn based on his specific work experience but Hillburn was an unsatisfactory employee. Respondent later fired Hillburn for excessive "absenteeism or tardiness."

(21) *Bobby Crabtree vs. Thomas Eubanks*: Eubanks listed no related training or certifications, and showed construction welding experience of around 1 year, with various employers. Some of the welding was powerhouse welding, but he did not work at any job long enough to acquire the necessary skills of a journeyman pipefitter, particularly the skills needed to perform pipe welding for power plants, such as those in the Big Rivers system. Moreover, a review of Eubanks' work history with Respondent would have shown that he had been fired for failing a welding test on an earlier Fluor Daniel project. In contrast, Bobby Crabtree's life-long experience as a pipefitter and welder in power plants made him far more qualified than Eubanks.

B. Fall Outages

(1) *Donald Cole vs. Ernie Lee Bratcher*: Donald Cole's experience was discussed above. In contrast, Ernie Lee Bratcher's application showed around 3 years of intermittent work as a pipefitter. Compared with Cole's extensive experience, Bratcher was less qualified than Cole to be a journeyman pipefitter.

(2) *Ernest Carter Jr. vs. David S. Brodt*: Ernest Carter Jr. showed extensive training and experience on his job application. On the other hand, when he applied to work at the Big Rivers job, Brodt already had been fired by Respondent from two previous jobs that year. He was first fired for refusing to submit to a search, and second, fired for "disregard of safety rules and/or other acts that could endanger [the employee] and/or others." Pursuant to Respondent's policy, the safety

violation would have served to revoke any craft certification he had received. Clearly, Carter was far more qualified to work as a journeyman pipefitter than Brodt.

(3) *Charles Yeiser vs. J. Todd Gardner*: As discussed above, Yeiser was vastly qualified for the job of journeyman pipefitter. Even Respondent's witness Jack West said he probably would not have hired Todd Gardner as a journeyman pipefitter, although he might have "given him a shot" as a plate welder. West's conclusion was verified when Gardner failed the tube welding bend test on September 21, 1990. As West would agree, Yeiser was more qualified for the job than Gardner.

(4) *Jeffrey Campbell vs. Wesley Harris*. Campbell's application was discussed above. In contrast to Campbell's training and experience as a journeyman pipefitter, even Recruiter Jim Boyd who testified at the first trial in 1991 agreed that Wesley Harris was not qualified to work on the Big Rivers job, since he had no prior construction experience. Ultimately, Harris was fired by Respondent.

(5) *Richard Wall vs. Troy Hilburn*: Wall and Hilburn were compared with regard to the spring outages. Hilburn's May 14, 1990 discharge only served to make him even less qualified for the job than he was in March 1990.

(6) *Bobby Crabtree vs. Michael D. Hoover*: Hoover had 3 years welding experience in a fabrication shop, as compared to Crabtree's extensive knowledge and experience as a journeyman pipefitter in power plants. Crabtree's experience would appear to make him a better applicant for employment than Hoover and this was borne out when Respondent fired Hoover on October 26, 1990.

(7) *James Trainer vs. Anthony D. Howard*: As noted above, James Trainer was more than qualified as a journeyman pipefitter. On the other hand, Anthony Howard's application showed experience as a fabrication welder, similar to the work experience of Hoover, above. For the same reasons discussed with regard to Hoover, Trainer was more qualified than Howard as a journeyman pipefitter in a power plant.

(8) *George Hayes vs. Amos Joe Vaughn*: George Hayes' long experience as a journeyman pipefitter contrasts with the plate welding experience shown on Amos Joe Vaughn's application. The record established that plate welding requires only that a straight weld be made, whereas pipefitting or pipe welding occurs both inside and outside a cylindrical vessel. Experience as a plate welder would be insufficient to qualify an applicant to perform journeyman pipe welding in a power plant, so Hayes was more qualified than Vaughn for the position for which Respondent hired Vaughn.

(9) *Jerry Hurm vs. Troy Waters*: Hurm's application showed he was a qualified craft person that is skilled in various facets of the trade. Boilermaker expert witness Joseph Meredith whom I credit found Waters unqualified for a welding job at Big Rivers. Accordingly, Hurm's qualifications far exceeded Waters' for the job for which Waters was hired.

(10) *Joseph Hobbs vs. Joe N. Wilson*: Joseph Hobbs' application shows that he received specialized training as a pipefitter apprentice, and worked as a journeyman pipefitter. In contrast, Joe N. Wilson was unqualified to be a construction welder for Respondent, inasmuch as he had no prior construction experi-

ence as Joseph Meredith concluded. It appeared conclusive, then, that Hobbs was more qualified than Wilson.

(11) *Wallace H. Cook Jr. vs. Joe Poehlin*. Wallace Cook's application was discussed earlier. With regard to Joe Poehlin's qualifications, Respondent's supervisor, Terry Griffin, testified at the first trial in 1991 that Poehlin was only qualified to work as a plate welder, not as a pipe or tube welder. In fact, Griffin administered a tube welding test to Poehlin, but Poehlin did not pass the test. Subsequently, Griffin gave Poehlin a plate welding test, which Poehlin was able to pass. According to Griffin, Poehlin worked as a plate welder, and performed plate welder tasks, such as welding nuts down in the air heaters. He said that at the time, Respondent desperately needed tube welders, but Poehlin could not qualify for that position. In view of his experience and certification as a pipe welder, Cook was much more qualified than Poehlin. Respondent apparently agreed, since on September 8, 1990, Respondent fired Poehlin for "unsatisfactory job performance."

(12) *Thomas Turner vs. Randal Renfrow*: Thomas Turner had training in welding and pipefitting as an apprentice in the Union's apprenticeship program. He also had work experience as a pipefitter. In contrast, a review of Renfrow's two applications show he was unqualified to work as a journeyman pipefitter. One of the applications listed no previous employment and the second listed his immediate previous employment as a "cowhand." Ultimately, Renfrow was fired for "excessive absenteeism or tardiness" by Respondent. In comparing their applications and work experience, Turner was much more qualified than Renfrow as a journeyman pipefitter.

(13) *John Zaremba vs. Roger D. Stephens*: John Zaremba had been a working journeyman pipefitter since 1976. On the other hand, Stephens had previously been employed by Respondent, and had failed two drug screen tests while employed and yet was hired over John Zaremba. Therefore, absent discriminatory intent, it would have been far more advantageous for Respondent to hire Zaremba rather than Stephens.

(14) *Roger Sims vs. William Barnett*: As discussed above, Roger Sims was well qualified for the job of journeyman pipefitter. On the other hand, William M. Barnett had no experience as a pipefitter. His previous employment consisted of work as a carpenter, a laborer, and a missile crew member in the U.S. Army. Considering that Barnett listed no previous experience in the pipefitter craft, Sims was far more qualified than Barnett.

(15) *James Phillips vs. James D. Bratcher*: Phillips showed at least 7 years' experience as a journeyman pipefitter, working for TVA. Bratcher's work record was well known to Respondent, having discharged him for cause five times, most recently during the spring outages and yet he was hired over Phillips. Comparing the two individuals, Phillips was more qualified than Bratcher.

(16) *Patrick O'Bryan vs. Michael E. Schwartz*: O'Bryan also showed he had worked for TVA as a journeyman, and had completed the Union's apprenticeship training. Michael Schwartz submitted two applications for employment. Schwartz had 2 years of high school, some vocational training, and 5 months experience as a pipefitter. He also indicated he spent 2 years as a structural welder. However, on September

21, 1990, Schwartz failed a tube welding test and was hired anyway over O'Bryan. O'Bryan's demonstrated skill in the craft, compared to the lack of skill shown by Schwartz merits the conclusion that O'Bryan was more qualified than Schwartz.

(17) *George Saltsman vs. Steven D. Small*: Saltsman showed he had completed a rigorous 5-year apprenticeship in the pipefitter craft. On the other hand, Small listed 1 year of vocational training, and vaguely showed welding experience. Small listed the years he worked as a welder, but not the specific dates. As other applications have shown, some applicants worked only a month or two in a craft somewhat related to the pipefitter craft. Small's employment before the ambiguous welding experience was work as a field mechanic for a construction company. Comparing Saltsman's 5 years of training in the craft to Small's experience in a similar craft, Saltsman appears more qualified than Small.

(18) *Russell Bell vs. Ricky Waters*: Russell Bell had been a journeyman pipefitter since 1971. On the other hand, Ricky Waters listed no related training or certification on his job application. His previous work experience had been 14 years of coal mine welding experience. Since Bell showed nearly 20 years as a journeyman pipefitter, Waters was far less qualified than Bell.

(19) *Anthony Taylor vs. Jeffrey W. Howard*: In contrast to Anthony Taylor's vast experience as a journeyman pipefitter, Jeffrey Howard had worked for Respondent a mere 2 weeks before receiving a verbal reprimand for unsatisfactory work. On his application, Howard showed his previous work experience was as a gas station attendant. Not surprisingly, Howard was fired on September 8, 1990, for his "unsatisfactory job performance." The record conclusively established that Taylor was more qualified than Howard.

(20) *Mark Wagner vs. Bruce A. Kennedy*: As compared to Mark Wagner's extensive training and experience, Bruce Kennedy had no related training or certifications listed on his job application. He showed that he had some experience as a pipefitter and ironworker but Bruce Kennedy was fired by Respondent on August 29, 1990, for a "severe, willful/flagrant safety violation." Respondent chose not to hire Wagner to replace Kennedy nor any other pipefitter discriminatee.

(21) *Hubert Crabtree vs. David L. Elzer*: In stark contrast to Hubert Crabtree's life-long work experience as a journeyman pipefitter, David Elzer's application showed he had few qualifications for the job. Shortly after he was hired, Respondent fired Elzer for "incapacitation due to alcohol, drugs or other substance." Obviously, Crabtree was much more qualified than Elzer.

V. IRONWORKERS

Vince Hill, business manager for Ironworkers Local 103, affiliated with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO, testified with respect to the training and qualifications of the 12 applicant discriminatees from Local 103 who applied to work with Respondent in March 1990. Hill has been an ironworker since 1963, and a business manager for the Union since 1993. As business manager, Hill has referred members to jobs in Kentucky, including jobs at the Big Rivers facilities.

Hill was chairman of the Union's apprenticeship program, and worked with the local Union's apprentices. He also had worked as an ironworker in the Big Rivers system. In the 1980's, apprentices were taught skills in welding, rigging, structural steel, siding work, reinforcing, blueprint reading, lead abatement, asbestos removal, as well as OSHA training, safety and first aid training. During the 3-year apprenticeship program, they also learned about the various tools used on construction jobs, and went through exercises to simulate working at heights of hundreds of feet. Both classroom and on-the-job training was provided.

Hill also described the work performed by ironworkers, who frequently carry 60 pounds of tools to various heights. The top elevation for work at the Big Rivers facility in Centertown, Kentucky, was around 375 to 380 feet, and work on some of the units at Sebree, Kentucky, was done at close to 300 feet.

Hill had worked with most of the discriminatees, or had referred them to jobs so he was familiar with their experience and skills. Richard Bowlds was a very good worker and had good work habits. From the union hall, Hill often referred Bowlds to jobs. He noted that Willis Beasley's entire family consisted of ironworkers, and Hill had worked with all of them. He recalled working with Willis Beasley in several power plants. Of Beasley, he said, "he could do any of the work he was given," and "he has good work habits." "He didn't miss work."

Hill had known Ricky Brown since he was a child, and had worked with him. In Hill's opinion, Brown "was a very good ironworker. Shows up every day; very hard worker." Brown had not worked in the craft since at least June, 1993, however. Mark Farmer had worked for the same union employer for the past 13 years, and was "a good ironworker." Hill first met Ron Gower in 1963, when they worked on a Big Rivers shut down project together. Gower "was a good ironworker" who was regularly referred to union jobs until he retired in about 1997.

Hill mentioned that he called Ralph Steven Angel by the name "Steve," so as not to confuse him with his father, who had the same name and was called "Ralph." Steve Angel was also "a very good ironworker. He can do any part of our training." Angel received referrals regularly from the union hall until mid-200, when he became ill, and was unable to work for a while. With respect to Larry Elliott, Hill noted that Elliott had served his apprenticeship out of another union local, unlike Bowlds, Beasley, Brown, Farmer, and Gower, Greg Parks, James Gentry, Hershel Bowlds Jr., and Willis Dean Jr. However, Elliott completed the Union's apprenticeship program and worked as a journeyman ironworker out of Local 103. Elliott was frequently referred to jobs from the union hall until he retired shortly before the beginning of the hearing on remand in July 2000. When Hill worked with Elliott, he observed that Elliott "was very good at any kind of welding." Moreover, Elliott had "good work habits. Always working; staying busy."

Hill and Greg Parks worked together, when the mall at Evansville, Indiana was being constructed. Parks was a good, hard worker. Hill said that Parks died in about 1997. Jimmy Gentry, said Hill, was "top notch" as an ironworker, but left the craft around 1993 to become a firefighter several years before the hearing. Richard Bowlds' brother, Hershel Bowlds Jr., also applied to work for Respondent. Hill worked with Hershel

Bowlds Jr. on a number of projects and considered him "as good as anyone" in the craft. Bowlds worked at a nearby power plant for 3 years, tying and reinforcing rods that go in concrete, also called "rebar work." Bowlds, who was regularly referred to jobs from the union hall, maintained good work habits, as well.

Willis Dean Jr. was referred often for union jobs from the union hall. He had experience as an ironworker in a power plant working with Hill, who noted that his work performance and work habits were good. Donald Hurst worked as an ironworker with Hill around five or six times in power plants, including in the Big Rivers system. Hill said Hurst was a good ironworker, and his work habits were good. Hurst retired from the craft for a short period of time, and then returned to it. When he wanted referrals, he was regularly referred for work by the union hall.

Vince Hill compared the 12 Ironworkers Local 103 discriminatees with persons who had been hired and convincingly established that the discriminatees were qualified for available jobs.

A. Spring Outages

(1) *Richard Bowlds vs. Mike Woosley*: In contrast to the experience and training listed on Richard Bowlds' application, Mike Woosley's application indicated he failed to graduate high school or receive a general equivalency degree (GED). Bowlds showed he had been a journeyman ironworker at a power plant. Woosley indicated he had attended a truck driving school, and none of his prior work experience pertained to iron working. Since he did not show any experience in the type of work required of an ironworker in a power plant, Woosley was not qualified for the job he held and Richard Bowlds should have been hired over him.

(2) *Willis G. Beasley vs. Robert Owen*: Willis Beasley had experience working in a power plant as a journeyman ironworker. Robert Owen's application showed experience as an ironworker cement finisher, which is not part of the iron working craft. Hill found him unqualified to be an ironworker at a power plant. Comparing their relative qualifications, Beasley was much more qualified than Owen.

(3) *Ricky Brown vs. Christopher Ratliff*: Ricky Brown listed his apprenticeship training as well as his work as a journeyman ironworker in a power plant on his application. Conversely, Christopher Ratliff's job application indicated he had been to high school and in the U.S. Army, and then had done some general construction work. Based on his application, Hill said Ratliff was unqualified to be an iron worker at a power plant. In view of their comparative qualifications, Brown was unquestionably more qualified than Ratliff.

(4) *Mark Farmer vs. Earl Armour*: Mark Farmer's application showed he had worked as an ironworker in the Big Rivers system, as well as for one of the largest general contractors in the Evansville, Indiana area. Farmer had a tremendous amount of very specialized experience. On the other hand, Earl Armour's application showed no ironwork experience, and no job references. He did indicate he had done some welding at a tool and die shop, but based on his application, Hill considered Armour unqualified to work as an ironworker, and considered

Farmer far more qualified for the jobs available at the Big Rivers projects in 1990.

(5) *Ron Gower vs. William Vanover*: Ron Gower had extensive experience as a journeyman ironworker, and had even worked on the Big Rivers power plants at one time. In contrast, William Vanover failed to show any sort of training in the ironworker craft on his job application. His application indicated about 1 year of construction experience. Ultimately, Respondent decided Vanover was unqualified as an ironworker, and discharged him 1 week after he was hired, on April 24, 1990, for "unsatisfactory job performance." In light of Vanover's discharge and the reason therefor, Gower was obviously more qualified than Vanover.

(6) *Ralph Steven Angel vs. Darryl Brown*: Angel was a long-time ironworker, with experience in the craft. On the other hand, Darryl Brown's application showed he had previously worked as a "swamper," which Hill thought might be work on an oil rig, but was definitely not within the ironworker craft. He showed that he had done a total of 4 months of work that might fall within the ironworker craft, for two different employers. Based on his application, Hill viewed Brown as not qualified to work as an ironworker in a power plant. A comparison of their respective applications demonstrates that Angel was more qualified than Brown.

(7) *Larry Elliott vs. Jerry A. Wallace Jr.*: Larry Elliott described his work experience on his application as including work at TVA, and other power plants, as well as the largest contractor in Evansville, Indiana. In contrast, Jerry Wallace's application showed slightly more than 1 year of varied work experience as ironworker, for three different employers. Wallace failed to list any training he had received in the craft. In Hill's estimation, Wallace's application would make him unqualified to be referred by the union hall as an ironworker.

(8) *Greg Parks vs. Michael L. West*: Greg Parks was a life-long ironworker, experienced in power plant work. According to Hill, West had been through the Union's apprenticeship program, but then left the craft for several years. Hill said that as of 2000, West had returned to the craft. He applied to work for Respondent at time when he was not working in the craft. His application showed he had worked as a motel manager and three construction companies. His work at the construction companies was not within the ironworking craft, although one of the jobs, cable splicing, was somewhat related to the craft. While Hill was reluctant to describe a current union member as being unqualified when he applied for work in 1990 with Respondent, his work outside the craft for several years before 1990 made him less qualified than Greg Parks for a position as an ironworker on the Big Rivers projects.

(9) *James Gentry vs. Joseph Woods*: James Gentry showed he had been an ironworker since at least 1977, and trained in the areas of "rods and rigging," welding, and blueprint reading. Conversely, Joseph Woods failed to state any training or certifications in the ironworker craft on his application to Respondent. The application showed some work as a rigger and as a "ball maker." At the time he applied to work for Respondent, he was employed as a truck driver. Hill's evaluation of Woods was that he lacked the qualifications of a journeyman iron-

worker. Based on their relative qualifications as evidenced by their job applications, Gentry was more qualified than Woods.

(10) *Hershel Bowlds Jr. vs. Bill Eastridge*: Bowlds' completion of the Union's apprenticeship training program and his years of experience as a power plant ironworker stand in contrast to Eastridge's lack of training or certification as an ironworker, and his previous work experience as "self-employed" in an unspecified field. Although Eastridge indicated he had been employed as an ironworker in Alabama and Georgia, he failed to indicate on his application the dates of employment with his previous employers. Hill considered him unqualified to be an ironworker.

(11) *Willis Dean Jr. vs. Rex D. Shelton*: Willis Dean listed years of experience as an ironworker on his job application. Shelton's application omitted any reference to training or certification in the ironworking craft. Although Shelton's application indicated some ironwork experience, it failed to list the dates Shelton was employed. Dean was the better candidate.

(12) *Donald Hurst vs. Daniel Woods*: Hurst listed training and experience in ironworking on his application, including ironwork in power plants. According to his job application Woods had worked as a laborer and in maintenance. One of the maintenance jobs included some boiler work. He also showed he worked for four years as an ironworker. Hill's evaluation of the two applications was that Hurst was more qualified than Woods. Woods was not qualified for a journeyman position, based on his past work experience.

B. Fall Outages

(1) *Ralph Steven Angel vs. Phillip Small*: Hill evaluated the applications of both individuals and concluded that Angel was more qualified than Small. Ralph Steven Angel showed on his application that he had completed the Union's apprenticeship program. That meant that he could do blueprint reading, welding, rigging, and rebar work, and had training in OSHA requirements. Apprentices also became certified plate welders in the Union's program. Even if Small had been qualified to work as an ironworker on the Big Rivers projects in the Fall outages, Small, who was hired on August 27, 1990, was fired August 31, 1990, for missing more than 3 days of work without an excuse. Therefore, Small's job was available for Angel, who was also more qualified to perform it.

(2) *Willis Beasley vs. Steven Hilburn*: Willis Beasley also listed on his application that he had completed the Union's apprenticeship program, and as with Angel, he was capable of blueprint reading, welding, rigging, and rebar work, and had training in OSHA requirements. When he applied to work for Respondent on the fall outages, Steven Hilburn had already been fired by Respondent from the Spring outages for excessive tardiness and absenteeism. His fall application, like his spring application, failed to show he had any training or certification in any craft. He did indicate some past experience as a boiler-maker and as an ironwelder-welder but Respondent was aware in the fall that Hilburn had been an unsatisfactory employee in the spring. Nevertheless, Respondent hired him on August 20, 1990. Respondent fired him little more than a week later, on August 29, 1990, for committing a "severe, willful/flagrant safety violation." As with Phillip Small, Beasley was more

qualified than Hilburn when Hilburn was hired, and was available to fill his position when Hilburn was discharged.

(3) *Hershel Bowlds Jr. vs. Larry J. Dixon*: Herschel Bowlds listed on his application that he had completed the Union's apprenticeship program, as well. Conversely, Larry Dixon showed only that he completed high school. Dixon failed to include any ironwork experience whatsoever on his application. Dixon indicated he had some experience in pipefitting and as a farm carpenter. Hill found Dixon completely unqualified to perform the work of an ironworker, and rated Bowlds as far more qualified than Dixon for the job for which Respondent hired Dixon.

(4) *Richard Bowlds vs. J. D. Everman*: On his application, Richard Bowlds also noted that he had completed the Union's apprenticeship program, including the training described above. As part of his apprenticeship, Bowlds became a certified plate welder. He showed extensive experience as an ironworker, including work in power plants. Although all three of J. D. Everman's applications for employment listed that he had completed vocational school and had worked around a year as a welder, Hill found Bowlds more qualified to work as an ironworker for Respondent. Hill testified, "A lot of guys can go to a school and sit at a bench and weld. A lot of times when [ironworkers] are welding we'll be on a float, you might be upside down. It's really a different . . . deal." A "float" is a four-foot square platform hanging on ropes. Hill's opinion was verified by Respondent because Everman was fired shortly after he hired for "unsatisfactory job performance."

(5) *Ricky Brown vs. Daniel Woods*: Ricky Brown showed work in the ironworker craft, as well as completion of the Union's apprenticeship program on his application. While Danny Woods also showed ironworker experience on his application, when Hill compared the two applications, he determined that Brown was more qualified than Woods, because of the training Brown received in the Union's program in skills needed in the ironworker craft, as well as safety training.

(6) *Willis Dean Jr. vs. David H. McDonald*: Dean's application reveals that Dean had been a journeyman ironworker for 25 years. He worked in various jobs in the craft, including power plant work. McDonald submitted two applications for employment. McDonald's previous employment was listed as "self-employed," with no description of what McDonald did for a living. Hill compared Dean to McDonald and decided that Dean was more qualified. Ultimately, Respondent found McDonald to be less than adequate as an ironworker, as well. It fired him on September 12, 1990, for "unsatisfactory job performance."

(7) *Larry Elliott vs. Billy W. Archer*: Larry Elliott had completed the Union's apprenticeship training program, and had listed years of experience with large construction employers, including power plants. Respondent's records revealed Archer had been fired five times for cause by Respondent, most recently from the spring outage. In view of their comparative work histories and demonstrated skills and experience, Hill found Elliott unquestionably more qualified than Billy Archer.

(8) *Mark Farmer vs. Donald R. McBrayer*: Mark Farmer listed on his application that he had completed the Unions' apprenticeship program, which showed that he had the skills

and qualifications described above. Respondent's own records reveal that McBrayer had a poor work history with Respondent, i.e., he was once terminated for "incapacitation—alcohol, drugs or other substance" and he was once terminated for "insubordination."

(9) *James Gentry vs. Dock Sparks*: James Gentry listed on his application that he had completed the Union's apprenticeship program, as well as performing journeyman work. Dock Sparks' application showed his most recent work experience was as a carpenter. That job was preceded by a three-month stint as a "boilermaker," and two months working in "iron." Based on their applications, Gentry was more qualified than Sparks.

(10) *Ron Gower vs. Michael L. West*: Ron Gower listed on his application that he had completed the Union's apprenticeship program, as did West. However, Gower continued to work in the craft. In contrast, West's immediate past employment had been as a truck loader. Prior to that job, West had worked as a cable splicer. In view of West's absence from the craft for several years, and Gower's more extensive work experience, Gower was more qualified than West.

(11) *Donald Hurst vs. J. L. Cook*: On his application, Hurst showed he had completed the Union's apprenticeship program, encompassing the skills and qualifications described above. J. L. Cook had worked intermittently as a rigger and "connector." His immediate past employment consisted of a 1-month job as a welder. Before that, Cook had worked only 3 months, as a connector." Cook was fired on October 26, 1990, for excessive "absenteeism or tardiness." A review of the two applications indicates Hurst was far more qualified than Cook.

(12) *Greg Parks vs. Larry C. Hardison*: Parks had been a life-long ironworker, skilled in his craft. Hardison showed experience as a welder for a coal company, and had been hired as a plate welder. Shortly after he was hired, Respondent fired Hardison for "unsatisfactory work performance." Based on Respondent's evaluation of Hardison, and comparing the relative qualifications of Hardison and Parks, it is obvious that Parks was more qualified than Hardison.

VI. LABORERS

Robert E. Johnson, representative of the Laborers Local 1392 out of Owensboro, Kentucky, caused the applications of three of his members to be turned over to Barry Edwards of the Boilermakers Union. The three applications of the members of Laborers Local 1392 all contained the words "voluntary union organizer" and show that its members were qualified. Barry Edwards submitted the three laborer applications to Respondent. An examination of the applications of the voluntary union organizers from the Laborers Local 1392 shows that all the Laborers Union discriminatees were journeymen.

Unlike the boilermaker discriminatees, the pipefitter discriminatees, and the ironworker discriminatee there was no expert witness to make a comparison between the qualifications of the laborer discriminatees and laborers hired and the comparison is made by examining the applications without the aid of an expert witness.

A Spring Outages

(1) *James Jones vs. Jerry C. Andrews*: On his application, Jones showed that he had limited past experience (3 months) as a laborer. In contrast, Andrews' experience as shown on his application was as a roughneck, a classification used in the oil industry. Since Jones possessed experience as a laborer in the Owensboro area, his qualifications were superior to those of Jerry Andrews for a laborer's position with Respondent.

(2) *Ronnie Burk vs. Gregory Bays*: Ronnie Burk showed on his application that he was an experienced laborer who had worked in power plants. On the other hand, Bays had been a gas station attendant and an unspecified "helper." Burk's more specific work experience made him more qualified than Bays.

(3) *Thomas P. Ball vs. A. K. Schroeder*: Thomas Ball had at least 4 months' experience as a laborer. Schroeder showed experience as a laborer, as well, but because his application listed no months for his past employment just years, it is difficult to determine the extent of his qualifications. Quite frankly Ball is no more qualified than Schroeder and I find that the General Counsel has not proved that but for unlawful discrimination Ball would have been hired in the spring.

None of the three people hired as laborers, Andrews, Bap, or Schroeder, had ever worked for Respondent prior to being hired as laborers for the spring outages.

B. Fall Outages

(1) *James Jones vs. F. R. Stanke*: Jones was a local applicant with experience as a laborer. In contrast, Stanke had never worked in the construction industry. He listed his previous jobs as a waiter, a mall attendant, and stocker for a supermarket. Jones was more qualified than Stanke.

(2) *Ronnie E. Burk vs. Henry G. Donald*: Burks' training and experience as a laborer in power plants contrasts sharply with Donald's prior work record as a "freezer selector," a carpenter, factory worker, and farm hand. A comparison of their applications shows Burk was undoubtedly more qualified than Donald.

(3) *Thomas P. Ball vs. Gregory K. Gates*: Thomas Ball showed experience in the laborer craft. Gregory Gates' application, in contrast, showed he had worked as a checker supervisor at a grocery store and as a forklift operator. On September 5, 1990, Gates was fired for excessive "absenteeism or tardiness." In view of Ball's experience in the craft, he was more qualified than Gates who proved an unsatisfactory employee.

None of the three people hired as laborers in the fall, i.e., Stanke, Donald, or Gates had ever worked for Respondent in the past.

VII. ANALYSIS AND CONCLUSIONS

Counsel for the General Counsel and counsel for the Charging Party convincingly demonstrated that there were jobs available for each of the discriminatees which the discriminatees were qualified to perform.

Evidence established specific jobs in the spring and fall outages for the four boilermaker discriminatees who applied in March 1990. Evidence also established specific jobs in the fall outages for the 11 boilermaker discriminatees who applied in May 1990. Evidence also established specific jobs in the spring

and fall outages for the 21 pipefitter discriminatees who applied in March 1990. Evidence also established specific jobs in the spring and fall outages for the 12 ironworkers who applied in March 1990. Lastly, evidence also established specific jobs in the spring outages for two of the three laborer discriminatees and specific jobs for all three laborer discriminatees in the fall outages.

Counsel for the General Counsel and counsel for the Charging Party made their case and then some.

No explanation by Respondent for its failure to hire the discriminatees at either the original trial in 1991 or the trial on remand in 2000 demonstrate that Respondent *lawfully* refused to hire the discriminatees.

Respondent suggested that certain persons hired in lieu of the discriminatees may have appeared at the gate just when people with their skills were needed and they were hired on the spot. Unfortunately no supervisor testified he hired anyone under these circumstances and no employee testified he or she was hired under these circumstances.

Respondent's own staffing plan called for the retaining of applications filed in the spring to be used to hire people in the fall outages. And, of course, the spring applications were used to fill the spring outage requirements. Respondent could easily have contacted the discriminatees and offered them employment but chose not to do so and the reason they chose not to do so is because the discriminatees were union affiliated, indicated a desire to organize and this could potentially interfere with Respondent's desire to remain "open shop" and nonunion.

Respondent also suggests that union picketing made it impractical to hire "voluntary union organizer" applicants for employment. But, of course, the picketing took place to protest the failure to hire the "voluntary union organizer" applicants for employment.

Respondent's argument in this regard is like a defendant about to be sentenced for killing his parents asking for mercy because he's an orphan.

The remedy obviously should be an offer of reinstatement to the discriminatees and backpay from the date they would have been hired but for the discrimination against them.

Ironworker Greg Parks died in 1997 and an offer of reinstatement is not needed, obviously, in his case. Any backpay obligation would terminate also on his death. Ironworkers Larry Elliott and Don Gower retired and it appears Ironworkers Ricky Brown and Jimmy Genty left the ironworker trade some years ago.

There was no evidence that any of the boilermaker, pipefitter, or laborer discriminatees are dead or have left their field.

In light of the evidence presented at the original 1991 trial and the 2000 trial on remand I recommend that the Board reissue its Order spelled out in *Fluor Daniel, Inc.*, 311 NLRB 498 (1993), and that Respondent post the notice the Board ordered posted in that decision. The unlawful discrimination against David Scott Bolen, John Coons, and Steven Coons sustained in 1998 by the U.S. Court of Appeals for the sixth Circuit had not been remedied as of the close of the record in the trial on remand on November 8, 2000.