

A SPECIAL STUDY

**THE
TENNESSEE
VALLEY
AUTHORITY**

and the Merit Principles



A Report to the President
and the Congress of the United States
by the U.S. Merit Systems Protection Board

THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419
August 17, 1989

Sirs:

In accordance with the Civil Service Reform Act of 1978, it is my honor to submit this U.S. Merit Systems Protection Board report titled "The Tennessee Valley Authority and the Merit Principles."

This report discusses the findings of a study of the merit system of the Tennessee Valley Authority (TVA), a Government corporation not subject to most Federal civil service laws and regulations. It is the first Board report to address a merit system outside the civil service requirements that cover most other Federal agencies.

The report describes how TVA differs from Federal civil service agencies in managing its human resources. It also assesses TVA's policies and procedures against the nine statutory merit system principles established by the Civil Service Reform Act. In some instances it suggests ways the corporation could strengthen its merit system. Finally, it identifies some TVA practices that might be beneficial to civil service agencies.

I think you will find this report useful as you consider issues affecting the ability of the Federal Government to achieve its human resource goals and maintain high standards of integrity.

Respectfully,

Daniel R. Levinson

The President
The President of the Senate
The Speaker of the House of Representatives
Washington, DC



THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES



**A Report to the President
and the Congress of the United States
by the U.S. Merit Systems Protection Board**

U.S. Merit Systems Protection Board

DANIEL R. LEVINSON, Chairman

MARIA L. JOHNSON, Vice Chairman

SAMUEL W. BOGLEY, Member

Lucretia F. Myers, Executive Director

Office of Policy and Evaluation

Evangeline W. Swift, Director

Project Supervisor

Frederick L. Foley

Project Manager

Harry C. Redd III

Project Analysts

Ron W. Finnell, D.P.A.

Paul van Rijn, Ph.D.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
Background	i
Summary of Findings	ii
Conclusions	vi
Recommendations	vii
INTRODUCTION	1
Creating a Framework	1
Organizing for Human Resource Management	2
LABOR-MANAGEMENT RELATIONS	5
Major Differences in Labor-Management Relations	5
1. Discussion	5
2. Conclusions	7
RECRUITING AND EMPLOYMENT	9
Major Recruiting and Employment Differences	9
1. General	9
2. Recruitment and Selection for Management Jobs	10
3. Recruitment and Selection for Bargaining Unit Jobs	11
a. Selection of Internal Candidates for Bargaining Unit Jobs	12
b. Selection of Outside Candidates for Permanent Bargaining Unit Positions	12
c. Selection of Outside Candidates for Temporary Blue-Collar Positions	13
d. Testing Requirements	14
4. Conclusions	14
COMPENSATION	17
Major Differences In Compensation Practices	17
1. General	18

2. Management Employees	18
a. Pay Philosophy	18
b. Total Compensation, Not Just Salary	19
c. Contract Rather Than Salaried Employees	21
3. Bargaining Unit Employees	21
a. General	21
b. Blue-collar Employees	21
c. White-collar Employees	22
4. Retirement System	22
5. Conclusions	23
POSITION CLASSIFICATION	25
Major Position Classification Differences	25
1. Introduction	25
2. Classification of Blue-Collar Positions	26
3. Classification of White-Collar Positions	26
4. Classification of Management and Executive Positions	27
5. Conclusions	27
APPRAISING AND REWARDING PERFORMANCE	28
Major Differences in Appraising and Rewarding Performance	28
1. Performance Appraisal Systems	29
a. General	29
b. Performance Appraisal System for Management Employees	29
c. Performance Appraisal for Executives	32
d. Performance Appraisal System for Bargaining Unit Permanent Employees	32
e. Performance Appraisal for Temporary Blue-Collar Employees	32
2. Incentives for Excellence in Performance	32
3. Conclusions	33
DOWNSIZING THE WORK FORCE	35

Major Differences in Work Force Downsizing	35
1. General	35
2. Methods	35
3. The Union Challenge	36
4. Management Creativity	36
5. Impact	37
6. Conclusions	39
EMPLOYEE RELATIONS	40
Major Differences in Employee Relations	40
1. Ways to Resolve Conflicts or Disputes	40
2. Conduct, Discipline, and Ethics	41
a. General	41
b. Ethics Program	41
c. Restrictions on Hiring Relatives (Nepotism)	42
d. Protection Against Partisan Political Activity	42
3. Conclusions	43
WHISTLEBLOWER PROTECTIONS	44
Major Differences In Whistleblower Protections	44
1. General	44
2. Additional Safeguards for Nuclear Power Employees	45
3. Conclusions	47
CONCLUSIONS.....	49
 APPENDIXES	
Appendix A--Facts About TVA	A-1
Appendix B--The Merit System Principles	B-1
Appendix C--Methodology	C-1
Appendix D--TVA Comments Concerning this Report	D-1

EXECUTIVE SUMMARY

This report discusses the results of a study by the U.S. Merit Systems Protection Board (MSPB) of selected aspects of human resource management in the Tennessee Valley Authority (TVA). Established as a Government corporation in 1933, TVA is required to adhere to the basic merit principles characteristic of Federal civil service agencies. As a corporation, however, TVA is excluded from most of the specific laws, rules and regulations which govern the content and conduct of personnel programs in other executive branch agencies. Compared to these other agencies, therefore, TVA has much greater flexibility in its human resource management systems and its ability to tailor those systems to its unique needs. This report describes some of the major aspects of TVA's merit system, compares and contrasts them with those used by most other Federal agencies, and assesses how well TVA meets the requirements of the underlying merit principles.

BACKGROUND

TVA is charged with planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory. As a corporation, TVA was given broad authority to establish its own personnel systems and procedures without regard to most

Act of 1944, the Equal Pay Act of 1963, the Civil Rights Act of 1964, as amended, and the Fair Labor Standards Act of 1938, as amended. Each of these placed additional obligations or restrictions upon the corporation but, overall, TVA still has a significantly greater degree of freedom in this regard than most Federal agencies.

*** * * TVA was given broad authority to establish its own personnel systems and procedures * * *.**

Federal civil service laws, rules, and regulations. The law creating the corporation established a few basic guidelines--hiring and promotions were to be based on relative merit and efficiency without regard to political affiliation; pay for employees in trades and labor occupations was to be based on local area pay rates; and no employee could receive a salary greater than that paid to any of the three members of the Board of Directors. Beyond that, TVA was given a great deal of flexibility in the way it managed its human resources. Over time, that flexibility has been somewhat delimited by subsequent laws, for example, the Veterans Preference

Forty-five years after TVA was created, Congress passed the Civil Service Reform Act of 1978 (CSRA). That act explicitly encourages more decentralization of Federal personnel authority to Federal civil service agencies which, unlike TVA, are governed by all of the civil service laws, rules, and regulations contained in title 5 of the U.S. Code. In addition, CSRA provided for the use of research and demonstration projects to test new and different personnel concepts including some that would require the waiver of existing personnel laws or regulations. Most parts of the Act do not apply to Government corporations such as TVA, with at least one major exception. Nine basic merit principles are articulated in CSRA, and Government corporations, including TVA, are expected to comply with these principles.

MSPB was also established by the Civil Service Reform Act of 1978 and, among its other responsibilities, assigned the task of conducting special studies of the "civil service and other merit

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

systems'' to determine whether they are operating in accord with the merit principles and are free of prohibited personnel practices. In this context, TVA falls within the definition of an "other merit system."

This report contains the results of MSPB's review of selected aspects of TVA's system for human resource management. It compares and contrasts TVA's personnel policies and practices with those of Federal civil service agencies (the latter are defined in this report as those agencies covered by Federal personnel law contained in title 5 of the U.S. Code). The report also provides an assessment of the degree to which TVA is in compliance with the statutory merit system principles.

TVA is particularly interesting since from its creation it had the ability to exercise a great deal of flexibility and innovation in human resource management. When compared to the civil service agencies, therefore, TVA provides some alternative personnel practices and policies for consideration. This report provides some insights into the feasibility or desirability of incorporating some of those policies and practices into the civil service agencies.

*** * * compared to civil service agencies, TVA provides some alternative personnel practices and policies for consideration.**

SUMMARY OF FINDINGS

The MSPB review of TVA's personnel policies and practices revealed some major differences when compared with the Federal civil service agencies. The following highlight some of those key differences, by program area:

Labor Relations

- TVA negotiates with employee unions on a wide range of major personnel matters including pay, job classification, and health insurance. Civil service agencies are precluded--by law--from negotiating on these matters.
- TVA encourages union membership and, as discussed under the heading of recruitment and employment, provides "preference" to union members under certain conditions. Civil service agencies neither encourage nor discourage union membership; neither do they grant preferential treatment to union members.
- Both TVA management and union representatives consider their relationship to be productive and mutually beneficial.

Recruitment and Employment

- TVA considers union membership to be a "positive factor" in evaluating a candidate's qualifications for competitive appointment to a bargaining unit position. Blue-collar union contracts use the term "union preference" in describing this provision. In addition, TVA uses union hiring halls as a major (and sometimes sole) recruiting source for temporary blue-collar positions. Civil service agencies may not consider union membership as a factor in selection for employment.
- The intent of TVA's provision regarding "union preference" in competitive selection for blue-collar employment appears to conflict with the merit principle requiring selection and advancement based solely on the basis of relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity.
- Outside applicants for TVA bargaining unit positions are typically rated in broad categories

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

but any qualified applicant may be selected even if not among the highest ranked applicants. There are exceptions where applicants eligible for veterans' preference are involved. For example, a nonveteran may not be selected over a higher ranked veteran. The method used to select outside applicants for management positions in TVA can vary widely since there are almost no set requirements. By contrast, filling vacancies in civil service agencies by competitive appointment is highly prescriptive. Applicants are assigned a numerical score and are ranked by this score. Selection must be from among the top three rated candidates who are available.

- Written or skills-based examinations developed by the Department of Labor and required by TVA for some of their entry-level jobs are administered by various state employment offices. Tests used by civil service agencies must be developed or approved by the U.S. Office of Personnel Management (OPM) and administered by or under specific delegation from OPM.
- The methods used and the process by which TVA recruits and selects employees for its bargaining unit positions are heavily influenced by negotiated agreements with the applicable unions. When filling a managerial position, TVA uses an unstructured process with only general outside constraints (e.g., the statutory merit system principles). Civil service agencies fill all positions in accord with the relatively specific requirements of civil service law and regulation. Accordingly, employee unions influence the recruitment and selection process in civil service agencies significantly less than in TVA.

*** * * the corporation is closer to the goals of decentralization and deregulation currently being espoused within the civil service agencies.**

- Compared to civil service agencies, the TVA approach to filling vacancies frequently provides more timely action and gives more authority to (and places greater responsibility on) selecting officials. In this regard, the corporation is closer to the goals of decentralization and deregulation currently being espoused within the civil service agencies.

Compensation

- TVA has authority to set pay subject only to a statutory salary ceiling and a requirement to pay "laborers and mechanics" no less than the prevailing wage. Salaries in the civil service agencies are set in accord with a fairly rigid structure established by law and regulation.

TVA takes a "total compensation" approach to pay for management positions * * *.

- The corporation negotiates pay rates and job classification methods for bargaining unit employees. These are non-negotiable items for civil service agencies.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

- TVA takes a "total compensation" approach to pay for management positions which can include "sign on" bonuses and performance-based bonuses that can be substantially higher than those available in civil service agencies. Further, unlike the civil service agencies, the corporation can provide payment of all costs for some employee benefits, and deferred compensation payments. As one extreme example of the use of this flexibility, the recently hired chief of the nuclear power function, whose salary is \$77,300, received a first year total compensation package of \$217,300 with the possibility of maintaining that level of income in subsequent years depending on his performance.
- With the ability to exercise greater flexibility in pay setting and the willingness to use those flexibilities, TVA arguably comes closer than do civil service agencies to the merit principle calling for pay rates to be established "with appropriate consideration of both national and local rates paid by employers in the private sector." The corporation uses union negotiations and a locality wage approach in setting both blue-collar and white-collar pay for bargaining unit positions.
- Compared to civil service agencies, TVA's more flexible approach to compensation also gives it greater opportunity for successful recruitment of key managerial talent. The ability to offer a total compensation package worth up to nearly three times the maximum amount available in the civil service is an obvious positive recruiting factor. Pay system flexibility, however, can also be used to restrain salary costs. This was illustrated by the corporation's "freeze" on pay for management employees in conjunction with a major "downsizing" of the work force.
- The corporation has established its own retirement system. This system was used to the

corporation's advantage to encourage large numbers of employees to voluntarily retire during a recent major reduction in force. TVA also pays into the pension fund of each blue-collar union to help fund pension benefits for temporary blue-collar employees. Civil service agencies provide retirement coverage through the Civil Service Retirement System or the Federal Employees Retirement System, both of which offer less flexibility than the TVA system, and temporary employees in civil service agencies receive only social security coverage.

Position Classification

- TVA is free to develop its own approach to job classification and provides a major role for unions in the process (e.g., serving on joint committees that assign pay levels to white-collar job classifications and handle blue-collar classification appeals through the negotiated grievance process. Using its flexibility, the corporation has tried several different approaches in an attempt to find one most responsive to their needs. Civil service agencies, on the other hand, follow a fairly rigid system for position classification which is not negotiable and provides no formal decisionmaking role for unions.

Appraising and Rewarding Performance

- TVA's performance appraisal system varies based on employee categories, i.e., no temporary blue-collar employees receive an appraisal, permanent bargaining unit employees are not required to have written performance expectations but they do receive an appraisal, and management employees are required to have written performance expectations in place for at least 90 days before they are appraised. Civil service agencies have a standard performance appraisal system for all employees, but the requirement for written performance

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

appraisals do not apply to temporary employees who work less than 120 days in any 12-month period. The civil service system--somewhat similar to TVA's system for management employees--requires written performance expectations (performance elements and standards) to be in place for at least 90 days before an employee may be rated.

- In some parts of TVA, management employees are appraised within the constraints of a forced distribution which predetermines the maximum percentage of employees who may receive a particular rating. Civil service agencies, on the other hand, are prohibited by law or regulation from using a forced distribution.
- Compared to civil service agencies, TVA has a more demanding "pay-for-performance" system for its management employees. For example, TVA managers cannot "work their way" to the top of the salary range for their grade unless they have consistently been rated above the mid-point on a five level performance appraisal system. Furthermore, once achieving the top of the pay scale, their salaries will remain constant--as the scale is adjusted upward--unless they are rated above the mid-point. By contrast, in the civil service agencies, supervisors and managers under the performance based Performance Management and Recognition System (PMRS) can eventually move to the top of the pay scale and, once there, will remain as long as they are rated at least at the mid-point on the five level appraisal system. Finally, typically less than half of all TVA managers are rated above the mid-point compared to the almost 70 percent of civil service managers under PMRS.
- The TVA performance appraisal system for permanent bargaining unit employees, on the other hand, provides no linkage of pay to performance (an earlier "pay-for-perform-

ance" system for white-collar bargaining unit employees was abandoned by the corporation). Further, unlike the civil service agencies, TVA does not utilize a performance-based incentive awards system that provides one-time cash awards or base salary adjustments (i.e., quality step increases). This is a weakness in their system in that it ignores a potentially valuable tool for employee recognition and, ultimately, productivity enhancement.

- Another potential weakness in the TVA appraisal system is the lack of a requirement for written performance expectations in conjunction with the appraisal for permanent bargaining unit employees. This approach overlooks the motivational benefits associated with clear communication of performance expectations.

Downsizing the Work Force

- Within a relatively short period of time, TVA initiated and completed a major reorganization and downsizing which reduced the work force by approximately 17 percent. The negative impact of this action on corporation employees was ameliorated somewhat by TVA's ability to offer incentives (e.g., double severance pay and some retirement benefits based on just 5 years' service) for voluntary separations. By contrast, civil service agencies are far more limited in the inducements they can offer employees to motivate voluntary separations.

Employee Relations

- TVA's bargaining unit employees have protections against arbitrary actions and prohibited personnel practices roughly equivalent to those of employees in the civil service agencies. In the corporation those protections are driven largely by negotiated grievance procedures. The corporation's management

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

employees, however, have significantly fewer protections and no formal internal dispute resolution mechanism (e.g., a grievance procedure) available.

Whistleblower Protections

- TVA is subject to the merit principle in the Civil Service Reform Act of 1978 which calls for the protection of employees from reprisal if they should "blow the whistle" on fraud, waste, or mismanagement. Unlike the civil service agencies, however, TVA is not subject to the protective mechanisms established in that act, such as access to the Office of Special Counsel. TVA is likewise excluded from coverage of the newly-passed Whistleblower law. However, TVA employees are provided protection through internally established procedures. In addition, its nuclear power employees have protections established by the Energy Reorganization Act of 1974.

CONCLUSIONS

In its 55 years of existence, TVA has developed a matrix of personnel policies and procedures tailored--to a greater extent than that possible in

*** * * TVA has fashioned a system for human resource management which contains some striking contrasts to that of the civil service * * * .**

civil service agencies--to its unique human resource needs and environment. This is due, in large part, to the comparatively less detailed and restrictive legal and regulatory framework under which the corporation's personnel system operates. With this greater degree of autonomy, TVA has fashioned a system for human resource management which contains some striking contrasts to that of the civil service

agencies, in addition to some expected similarities.

To the extent that the contrasting provisions of TVA's personnel policies and procedures are in compliance with the basic merit system principles--and with one exception they appear to be--they demonstrate the viability of a significantly different approach to some basic personnel functions. What appears to work well for the corporation may or may not work equally well in the civil service agencies. It has a unique history and culture. Its very designation as a "corporation" marks it as a hybrid within the Government. Through the sale of the power that it generates, a major portion of its operation is self-funded. Its mission is geographically defined and its personnel policies and practices are influenced by its location.

Having made this observation, however, we should also note that every Federal department and agency is unique to some extent--in mission, resource allocation, and work force composition among other attributes. This highlights part of the challenge of public personnel administration--allowing agencies to custom design a personnel system to their individual needs while maintaining appropriate control and oversight of those elements necessary and common to all merit systems.

Currently, there are a number of Federal initiatives involving greater delegation and deregulation of personnel authorities to the civil service agencies. A goal of this trend towards greater "decentralization" is to give civil service agencies more control over their personnel programs and systems. Comparatively, TVA has had much greater control over the shape and functioning of its personnel system since its establishment. This review also has value, therefore, as a vehicle for examining some of the possible benefits and pitfalls of a highly decentralized Federal personnel system. The goal, of course, of this dialectic process is the development of a stronger and more effective public service.

RECOMMENDATIONS

Many of the current initiatives within the executive branch to “decentralize” and “deregulate” personnel management authorities in civil service agencies will not approach the degree of flexibility evident in the Tennessee Valley Authority’s human resource management system without some significant changes in title 5 of the U.S. Code. On the other hand, the corporation has the flexibility needed to correct actual or potential weaknesses in its own system through unilateral action. With these points in mind, we recommend the following:

☞ As Congress and the U.S. Office of Personnel Management continue their efforts to improve Federal personnel laws, policies, and procedures to better meet the legitimate needs of the individual civil service agencies, consideration should be given to some of the more positive experiences of the Tennessee Valley Authority described in this report.

☞ TVA, on the other hand, needs to address the concerns expressed in this report regarding possible weaknesses in selected personnel management areas. Specifically, TVA:

- ◆ Should amend its policy on “union preference” in selection for blue-collar appointments to assure that union membership, per se, does not influence

selections. A reminder should be provided to all selecting officials advising them that selections are to be based solely on an evaluation of each candidate’s job-related ability, knowledge, and skill after fair and open competition;

- ◆ Should consider establishment of alternatives (e.g., posted vacancy announcements or an applicant inventory system) to the currently unstructured process of encouraging internal candidate interest for management positions by reliance on “word of mouth” or other informal means of communication;
- ◆ Should consider establishment of a formal internal dispute resolution mechanism or process for supervisors and managers who are not covered by negotiated grievance procedures; and
- ◆ Needs to provide greater internal oversight and evaluation of the personnel processes as it moves toward even greater decentralization of those processes.

INTRODUCTION

Creating a Framework

The Tennessee Valley Authority (TVA) was established in 1933 during the depths of the Nation's greatest depression.¹ In his message transmitting its enabling legislation to Congress, President Franklin Roosevelt stated his hope that this new corporation, "clothed with the power of government but possessed of the flexibility and initiative of a private enterprise,"² would be able, through "planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory * * *, [to improve] the general social and economic welfare of the Nation."³

The corporation was specifically created for "the purpose of maintaining and operating * * * [properties] owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins * * *."⁴ In carrying out those functions, the corporation would construct dams, and it would generate electrical power which it was expressly authorized to sell "to States, counties, municipalities, corporations, partnerships, * * * [and] individuals."⁵ Appendix A of this report provides a picture of the corporation's activities today.

This Government corporation is managed by three Directors who are appointed to 9-year terms by the President of the United States with the advice and consent of the Senate. Its funding was to be derived from its own business operation and from

Treasury appropriations. Its functions were seen as governmental, although many of them were to be performed through the letting of contracts. The corporation, however, would also hire staff, and that staff was to be considered as being "substantially employed" by the United States.⁶

To allow maximum business flexibility, its Directors were authorized to make staff appointments "without regard to the provisions of Civil Service laws applicable to officers and employees of the United States."⁷ The Directors were required to appoint, select, and promote staff "on the basis of merit and efficiency"⁸ and were forbidden to base their judgments "on any political test or qualification."⁹ In addition to those important constraints, the TVA Act set a limitation on the maximum salary for any employee and required that pay for blue-collar employees not be less than the prevailing rate in the area for similar work. Within these requirements, the Board members were authorized to hire and fire employees--and to set salaries, define duties, classify positions, and create a personnel system--without regard to the provisions of title 5 of the United States Code.¹⁰

In conducting this study, we have been particularly mindful of two major changes in the thrust of the laws governing employee rights and agency obligations that have been enacted since 1933, and which apply to TVA. First, the law is now significantly more concerned with the rights of employees and candidates for employment. During the past 55 years, Congress has specifically made it unlawful to discriminate in Federal employment on the basis of race, nationality, gender, religion, or handicapping condition. Similarly, in order to assist

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

certain categories of individuals, Congress has enacted laws like the Veterans Preference Act, the handicap discrimination law, and special statutes dealing with Vietnam-era veterans.

Second, when Congress in 1933 required TVA to base its personnel actions on merit, there were few laws or court decisions which invested the concept of merit with legal meaning. The original civil service act was passed in 1883 primarily to curtail the widespread practice of basing hiring decisions upon political considerations. Ending patronage, rather than defining management and employee rights and obligations, had been the goal of the Pendleton Act.

Uncertainty regarding the legal meaning of merit continued until the Civil Service Reform Act of 1978 (CSRA) articulated nine merit system principles.¹¹ Congress declared that these principles, which were to govern Federal personnel management at all executive agencies including Government corporations like TVA, needed to be "expressly stated [in order] to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business."¹²

Therefore, in initiating this study we had a particular interest in examining how TVA had adapted its merit system to meet its obligations, under the increased requirements concerning employee rights and agency obligations, which Congress enacted subsequent to the creation of the corporation.

Organization for Human Resource Management

During the course of this study, TVA initiated an extensive reorganization and downsizing, including a major reduction in force (RIF). That RIF reduced the work force of roughly 32,800 people by around 17 percent, with the loss of jobs for approximately 4,000¹³ permanent employees and 1,700 temporary employees. TVA reported that the

4,000 permanent count included 889 management positions. Additionally, some 1,900 of approximately 3,800 contractor employees in the work force were also separated as a result of the downsizing.

In terms of organization and size, therefore, the corporation experienced some significant changes during the course of this study. However, many of the systems and procedures that underlay TVA's merit systems--and which are the focus of this report--have been basically unchanged by the reorganization. The corporation is still considering changing some key systems or procedures, primarily through decentralization or redelegation of authority to lower levels of management.

This report is not all-inclusive. Organized around traditional human resource management programs (e.g., recruitment and selection, compensation, employee relations), it focuses on describing ways that TVA differs markedly from civil service agencies. Consequently, not every human resource management program or activity has been described. For example, the corporation's Equal Employment Opportunity program is very similar in structure to that of any civil service agency, so we have not discussed it in this report. Similarly, we have not described the corporation's employee development and training programs, or activities aimed at team building and employee communications, all of which are receiving special emphasis following the recent downsizing and restructuring. In these areas we found the corporation to be more similar to, than different from, civil service agencies.

When this study began, the primary organizational subdivision within TVA was the Office. Office heads, analogous to private industry vice presidents or Federal agency assistant secretaries, reported to the General Manager, whose role was that of chief operating officer. The General Manager reported to the three-member Board of Directors, who are the corporation's policymakers. The President designates one of the three Board mem-

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

bers to be Chairman. All Board decisions, whether programmatic or administrative in nature, are determined by majority vote.

One way TVA differs from civil service agencies is in the volume of regulations governing its human resources program. The corporation has fewer than 250 pages of policy guidance (called General Releases) concerning human resources--comparable in purpose to the more than 900 pages of regulations published by the U.S. Office of Personnel Management (OPM) in title 5 of the Code of Federal Regulations. The corporation is subject in full to a few of OPM's regulations (e.g., those pertaining to leave transfer, post employment restrictions, and the Federal Employees Government Life Insurance program), and to parts of others, the most notable of which pertain to reduction in force and adverse actions.

**The corporation has fewer than
250 pages of policy guidance * * *
concerning human resources * * *.**

The policies on human resource management are supplemented by the TVA Personnel Manual that provides procedural guidance to personnel office staffs. Its approximately 800 pages are comparable in purpose to the more than 6,000 pages of supplementary guidance found in OPM's Federal Personnel Manual. Finally, there are four bargaining agreements with the umbrella labor organizations that provide structure for the human resource management program. These agreements contain the primary directives for dealing with most employees on pay and other negotiated subjects.

TVA has a corporate Office of Employee Relations made up of a Division of Personnel, a Labor Relations Staff, and an Equal Opportunity

Staff. The Division of Personnel develops and recommends policy and centrally administers certain parts of the personnel program, such as receiving, rating, and retaining applications for permanent positions, and referring applicants in response to requests from managers through their servicing personnel offices.

The Labor Relations Staff represents management during contract negotiations and administers the negotiated grievance process. The Equal Opportunity Staff develops and recommends policy, tracks affirmative action progress, evaluates equal employment opportunity accomplishments, and recommends corrective or disciplinary action where warranted.

Offices may have personnel officers who serve largely in advisory capacities. Approximately 24 Division Personnel Officers are the backbone of the operating personnel program, providing, through their staffs, advice and operating assistance to Division Directors, who head organizational units directly below Offices. There is a further network of some 70 subordinate field division personnel offices to provide services as close as possible to lower levels of line management.

Because of the particular requirements associated with nuclear energy, the Office of Nuclear Power has a separate Nuclear Personnel organization. This organization maintains a functional relationship with the corporate Division of Personnel, but the relationship is less clear-cut than in the case of other TVA operating personnel offices.

Line managers are delegated substantial authority and responsibility for managing human resources. Because of the high degree of unionization in the corporation, those managers must be fully aware of the provisions of the labor-management agreements that apply to employees under them. Labor relations specialists and union shop stewards both play a role in maintaining their awareness. As

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

they carry out their human resource management responsibilities, managers receive assistance from their personnel officers and are under scrutiny by higher levels of management and by members of the Equal Opportunity Staff.

While the Office of Employee Relations has the paramount role in shaping the merit system, two other staff offices also have significant roles. An Assistant General Counsel has the policy lead in the area of employee ethics, and the Office of the Inspector General has a major role in the investigation of allegations concerning employee conduct.

Additional human resources management information essential to supervisors has been compiled and organized in one easy-to-use desk reference called the "Supervisor's Handbook." In effect, this loose-leaf notebook is a fourth means through which TVA gives structure to its merit system.

TVA management reviewed this report before it was published. A letter from the Chairman of the TVA Board of Directors, commenting on the report, is included as appendix D.

⁸ 16 U.S.C. 831e.

⁹ Ibid.

¹⁰ 16 U.S.C. 831b. Title 5 of the United States Code ("Government Organization and Employees") is the body of law that establishes the framework for the civil service and most Federal agencies. This report calls covered agencies "civil service agencies."

¹¹ 5 U.S.C. 2301(b). These are listed in appendix B.

¹² 5 U.S.C. 1101 note (Civil Service Reform Act of 1978, Findings and Statement of Purpose).

¹³ This and the following figures were taken from "Inside TVA," vol. 9, No. 13, June 30, 1988, p.1.

Chapter Notes

¹ Tennessee Valley Authority Act of 1933, ch. 32, 48 Stat. 58 (1933) (codified as amended at 16 U.S.C. 831 et seq.). (Subsequently referred to as the TVA Act.)

² "Message to the Seventy-Third Congress from the President of the United States transmitting a request for legislation to create a Tennessee Valley Authority," The White House, Apr. 10, 1933.

³ Ibid.

⁴ 16 U.S.C. 831.

⁵ 16 U.S.C. 831i.

⁶ Posey v. Tennessee Valley Authority, 93 F.2d 726, 727 (5th Cir. 1937).

⁷ 16 U.S.C. 831b.

LABOR-MANAGEMENT RELATIONS

MAJOR DIFFERENCES IN LABOR-MANAGEMENT RELATIONS

TVA:

1. Negotiates with employee unions on a wide range of matters, including pay, job classification and health insurance.
2. Officially encourages all bargaining unit employees to become union members and treats such membership as a "positive factor" in selection for appointment for blue-collar positions.
3. Is exempt from oversight by both the National Labor Relations Board and the Federal Labor Relations Authority.

Civil Service Agencies:

1. Are prohibited by law from negotiating on pay, job classification, and health insurance, and a wide range of other matters considered non-negotiable "management rights."¹⁴
2. Cannot encourage or discourage employees to become union members and are prohibited from considering union membership in any personnel management decision including selection for appointment.¹⁵
3. Are subject to oversight by the Federal Labor Relations Authority.

1. Discussion

One of the sharper contrasts between the corporation and civil service agencies is in the nature of their respective relationships with employee unions. Unions play a much larger role in shaping personnel policies and procedures in TVA than they do in the civil service agencies. Part of the reason is simply that the civil service agencies have less discretion on what can be negotiated.

Unions play a much larger role in shaping personnel policies and procedures in TVA than they do in the civil service agencies.

In addition to a generic list of "management rights" that are specified in law as being non-negotiable, civil service agencies are also bound by a comprehensive framework of personnel laws and Governmentwide regulations that mandate what might otherwise be considered negotiable. By contrast, TVA has a significantly different legal framework which is markedly less prescriptive of the corporation's specific personnel practices, while still requiring adherence to the basic merit system principles.

One result is that compared to civil service agencies, unions in TVA have a greater degree of control or influence over personnel policies and procedures, and the decisions that flow from those policies and procedures. For example, until overturned by court action in September 1984,¹⁶ one contract provision gave preference to union members over nonunion members in deciding which

employees would be affected first by involuntary transfers. Although that particular contract provision has been dropped as a result of the court ruling, it illustrates management's willingness to provide very specific advantages to recognized unions and their members.

The corporation recognizes 15 different unions representing blue-collar employees. These include international unions representing most crafts and trades such as the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, and the United Brotherhood of Carpenters and Joiners of America. Representatives of these unions comprise the Trades and Labor Council, which since 1940 has been the "umbrella" negotiating organization for blue-collar employees. Currently, there are three different contracts covering blue-collar employees.¹⁷ At the time of our review, the corporation had approximately 10,000 permanent and temporary blue-collar employees.¹⁸

Since 1950, TVA has also recognized a Salary Policy Employee Panel--comprised of five unions or associations--as the collective bargaining agent for white-collar employees. Two of the five organizations are international unions affiliated with the AFL-CIO; the others are associations that have only corporation employees as members. This panel represents custodial, public safety, and white-collar employees in nonmanagerial positions. Throughout this report, employees represented by the Salary Policy Employee Panel are referred to as "white-collar employees." At the time of our review, there were approximately 18,500 permanent white-collar employees.

A third major category of corporation employees are managers, supervisors, and some specialists with "lead" responsibilities. These employees are not covered by the terms of negotiated contracts. Throughout this report, these employees are referred to as "managers" or "management employees." At the time of our review, the corporation had approximately 4,800 management employees.

TVA was established before the National Labor Relations Act was passed--and ultimately was exempted from its coverage. The corporation is also excluded from any oversight by the Federal Labor Relations Authority. Despite this lack of external

The corporation has an official policy of encouraging its employees to become and remain members of the appropriate unions.

labor relations oversight, the corporation has a history of using the collective bargaining process as a key means to establish compensation and personnel policies for its nonmanagerial employees. Pay policies, pay rates and salaries, job classifications, and the coverage and cost to employees of health insurance plans are among the issues largely determined through collective bargaining for both white- and blue-collar employees. By contrast, none of these latter issues is subject to union negotiation in civil service agencies.

The corporation has an official policy of encouraging its employees to become and remain members of the appropriate unions. In addition, the following language is typical of a provision for "union preference" contained in each of TVA's negotiated blue-collar contracts:

Membership in unions party to this Agreement is advantageous to employees and to management, and employees are accordingly encouraged to become and remain members of the appropriate unions. Such membership is a positive factor within the limits permitted by applicable laws and Federal regulations in appraising relative merit and efficiency in selection for appointment.¹⁹

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

Although this contract language contains the general disclaimer that any preference given to union members shall be "within the limits permitted by applicable laws and Federal regulations," a question arises as to whether TVA's actual practices for the recruitment and selection of blue-collar employees are in accord with the merit principles. This will be discussed more fully in the next section of this report.

The broad scope of labor relations activity is evident in the range of employee issues settled through negotiated grievance procedures. Blue-collar employees use the grievance process to resolve disagreements over the application of corporation policy, allegations of unfair treatment, or the classification of their positions. White-collar employees may use the grievance process to challenge a selection (for promotion or new hire) decision, the application of corporation policy, or the content of their job description.

White-collar employees have access to binding arbitration in grievances involving disciplinary actions or a claim of misapplication or misinterpretation of a specific provision in a supplementary agreement. For grievances on other matters, a negotiated "tripartite appeal board" process may be used. The board consists of a corporation representative, a union representative, and an arbitrator. Unanimous decisions of the board are binding, split decisions are advisory only. Under terms of the contract, moreover, "[t]he opinion of [this board] and TVA's actions in response to that opinion shall not be subject to review by any court of law."²⁰

The three blue-collar negotiated agreements permit employees to appeal grievance decisions on disciplinary actions and misapplication or misinterpretation of contract provisions to TVA's Director of Labor Relations. The appeal may be made directly by the employee in which case the decision of the Director of Labor Relations is final. The appeal

may also be made through the union in which case a conference of all concerned parties may be held before the Director of Labor Relations makes a decision. In the latter case, the Director's decision may be further appealed to an arbitrator whose decision is binding.

As will be discussed further in the section of this report on TVA compensation practices, the U.S. Secretary of Labor has final authority in wage disputes involving blue-collar positions. Binding arbitration is used to settle wage disputes involving white-collar positions. Both practices are completely foreign to civil service agencies.

2. Conclusions

For various reasons, including greater specificity in the legal framework of the civil service, there are significant differences between TVA and civil

*** * * the corporation * * * negotiates on such "bedrock" personnel matters as pay, job classification, and health benefits.**

service agencies in their respective approaches to labor-management relations. The bottom line is that unions in TVA have greater influence over personnel policies and practices than their counterparts have in civil service agencies. This is largely because the corporation has more options regarding what may be negotiated. For example, it negotiates on such "bedrock" personnel matters as pay, job classification, and health benefits. By law, those issues are non-negotiable within civil service agencies.

Further, civil service agencies and TVA differ on the question of how to treat union membership.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

Civil service agencies are "neutral" on this issue--neither encouraging nor discouraging employees to join unions--while TVA actively encourages union membership. The corporation also treats such membership as a "positive factor" in selecting for appointment for blue-collar bargaining unit jobs.

Our review of the corporation's labor relations program leads to the following conclusions:

■ Both TVA and union officials report few occurrences of protracted, hard-fought negotiations. Management views the structure and operations of their labor relations program as one that is compatible with the corporation's environment and culture and, therefore, effective.

■ The large extent to which TVA involves its employee unions in the operation of the corporation's human resource management efforts and the significant amount of influence the unions are able to exert on personnel policies and practices stand in sharp contrast to the role of unions in civil service agencies.

■ The intent of TVA's agreement to give preference to union members in blue-collar hiring appears to be in conflict with the merit system principle calling for jobs to be filled on the basis of fair and open competition with selections based solely on relative ability, knowledge, and skills. This issue is explored more fully in the next section of this report.

¹⁷ One contract covers construction workers, a second covers temporary operating, maintenance, and modification employees, and the third covers permanent operating and maintenance employees.

¹⁸ As used by TVA, employees who work full-time or part-time regular schedules are generally referred to as "annual" employees. Most temporary employees who work less than full time or for a limited time period (and often on an "as needed" basis) are referred to as "hourly" employees. (However, there are a few temporary employees who work full-time regular schedules and who are "annual" employees as the term is used by TVA.) Some "hourly" employees may work for TVA for many years, being laid off when there is no need for their services and hired again as needed. Throughout this report, "annual" employees in TVA are referred to as "permanent" employees and "hourly" employees are referred to as "temporary."

¹⁹ "General Agreement Between the Tennessee Valley Authority and the Tennessee Valley Trades and Labor Council Covering Annual Operating and Maintenance Employees, revised March 15, 1984, and Supplementary Schedules Revised Through May 13, 1986," Article III.

²⁰ "Articles of Agreement Between the Tennessee Valley Authority and the Salary Policy Employee Panel, revised and approved October 1, 1984, and Supplementary Agreements as of October 1, 1986," S-11.E.

Chapter Notes

¹⁴ The Civil Service Reform Act of 1978 established a generic list of "management rights" which are codified at 5 U.S.C. 7106.

¹⁵ See 5 U.S.C. 7116(a)(2) and 5 U.S.C. 2302(b)(6).

¹⁶ Bowman v. Tennessee Valley Authority, 744 F.2d 1207 (6th Cir. 1984).

RECRUITING AND EMPLOYMENT

MAJOR RECRUITING AND EMPLOYMENT DIFFERENCES

TVA:

1. Has very few set requirements governing the process of filling management jobs.
2. Fills bargaining unit jobs through a process heavily influenced by negotiated agreements with their unions.
3. Rates new-hire applicants for permanent bargaining unit jobs in broad categories. Refers most of the qualified and available applicants for any particular job without regard to the category rating. Any referred candidate may be selected after consideration is given to veterans preference.
4. Considers union membership to be a "positive factor" in the blue-collar selection process and uses union hiring halls as a recruiting source for temporary blue-collar employees.
5. Uses state employment service offices to give written or skill-based tests (developed by the Department of Labor) for some entry-level jobs.
6. Under the negotiated grievance procedures, allows bargaining unit employees to grieve nonselection for promotion.

Civil Service Agencies:

1. Fill all jobs in accord with specific requirements based in law or regulation.
2. Union impact on the recruitment and selection process is much more limited than that in TVA.
3. Give new-hire applicants specific numeric scores. Applicants are referred in rank order and selection must be from among the top three available candidates. Also have authority to hire certain types of people direct (without competition).
4. Must view union membership as a nonmerit factor, and may not consider union membership in referring or selecting employees.
5. May use only written or skill-based tests developed or approved by the Office of Personnel Management (OPM). The tests must be administered by OPM or by agencies under specific delegation from OPM.
6. Do not allow any employees to grieve nonselection for promotion from among a group of properly ranked and certified candidates.

1. General

TVA and civil service agencies are subject to the same basic merit system requirements. These

include hiring and promotion based on relative ability to do the job, taking actions without discrimination, due regard to veterans preference, and the goal of a representative work force. The specific

methods or procedures used by the corporation in meeting these requirements, however, are dramatically different from those used in civil service agencies.

Compared to TVA, civil service agencies operate under a greater set of legal and regulatory requirements which are intended to assure merit system compliance for most jobs--both management and nonmanagement. Title 5 of the U.S. Code provides the legal framework and OPM publishes implementing regulations which in turn are augmented by individual agencies. Employee unions may negotiate on some relatively minor aspects of the recruitment and selection process but their impact is typically limited. The end result is that selecting officials in the civil service agencies are more constrained than their TVA counterparts in recruitment and selection matters.

TVA provides very few centrally mandated requirements for the process of filling management positions. The process of filling nonmanagement positions is heavily influenced by the terms of negotiated agreements with employee unions. One of the few specific requirements which TVA has injected into the selection process is that a candidate may not be hired ahead of another equally or better qualified candidate who is eligible for veterans preference. Moreover, for any entry-level job (including entry-level management jobs), some entire categories of white-collar jobs, and all blue-collar jobs, any minimally qualified candidate who is eligible for veterans preference based on a military service-connected compensable disability of at least 10 percent must be hired before any other candidates, regardless of the other candidates' relative qualifications.

Even with these restrictions, however, selecting officials within TVA still generally have more discretion in filling their jobs than do their civil service counterparts. Merit system compliance within TVA rests largely on the individual integrity of each selecting official.

2. Recruitment and Selection for Management Jobs

TVA imposes very few central requirements on the process of recruitment and selection for management positions. Corporation policy requires managers to consider internal candidates first when filling management positions. However, decisions on whether to announce a management vacancy and from how wide an area applications will be accepted are flexible, even when selecting from among current employees. These decisions are left either to the selecting official or are a matter of policy determined individually within each of nearly two dozen TVA Divisions. In addition, no type of skills inventory system is used and selection may be from among any of the qualified applicants. This leads to wide variation in the scope and nature of the competition for management positions. It is not unusual for many employees to be unaware that an opportunity for a promotion or reassignment to a management vacancy existed until after the position is filled.

When a decision is made to consider candidates outside of TVA for a management position, the corporation uses a variety of approaches to identify and attract those candidates. These may include notifying State Employment Service offices and using paid advertising in newspapers and trade journals. For some particularly hard-to-fill higher-level positions, executive search firms may be used and personal contacts with likely candidates or sources may take on added importance.

Civil service agencies, on the other hand, are subject to more stringent requirements regarding methods of competition for management positions. These requirements cover both recruitment and selection from among current Federal employees and from among candidates outside of Government. When considering new-hire candidates from outside Government, civil service agencies often depend on OPM to refer candidates for competitive service jobs and to certify that they are among the best qualified,

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

that veterans preference is observed, and that selection is from among the top three available candidates.

Civil service agencies typically consider internal candidates for management (and other) vacancies and also have flexibilities regarding whether, and how widely, to announce the vacancy. However, only the top-rated applicants are referred to the selecting official, and selections are made under agency programs approved by OPM. By contrast, in TVA all qualified candidates are usually referred. In the end, both civil service and TVA managers make their selections based on merit.

3. Recruitment and Selection for Bargaining Unit Jobs

The process used by TVA to recruit for and fill a bargaining unit position reflects the strong relationship that exists between TVA and its employee unions. Negotiated agreements with each of the unions generally require managers to attempt to fill these positions from among current employees before recruiting outside. The following language from one of the agreements is illustrative:

*** in general it is the policy to promote or transfer present employees rather than appoint candidates from outside TVA. After present employees are considered *** an outside candidate may be appointed if his qualifications can be shown to be superior to those of employee candidates.²¹

As shown by the following quote, when the corporation recruits from outside the agency to fill a blue-collar bargaining unit position, union membership is considered a "positive factor:"

Selection of candidates for appointment is made from well-qualified people ***. Applicable Federal laws and regulations such as veterans' preference laws are applied as appropriate. Membership in a union affiliated with the [Tennessee Valley Trades and Labor] Council is a positive factor of merit and efficiency which is considered in determining relative qualifications for appointment.²²

In keeping with this policy, TVA's standard employment application form specifically requests information about union membership. For temporary blue-collar positions, moreover, union halls are routinely used as one of the important sources of outside candidates.

***** TVA's policy of providing hiring preference to union members for blue-collar jobs appears to be in conflict with the statutory merit principles ***.**

Although the same language doesn't appear in the white-collar contract, the corporation (as noted in earlier sections) officially encourages white-collar union membership, and in the past has granted preference to white-collar union members in some other personnel actions. The clear intent of TVA's policy of providing preference to union members for blue-collar jobs appears to be in conflict with the statutory merit principles which apply to TVA as well as to the civil service agencies. One of those principles requires that recruitment be based solely upon relative ability after fair and open competition which assures equal opportunity to all candidates.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

TVA, however, believes that it is justified in its use of union preference, and that its practice is consistent with this merit principle (see appendix D). No court has yet addressed the legality of TVA's position, and MSPB does not agree with the corporation's position. Clearly, TVA's blue-collar union preference policy is in sharp contrast with the situation in civil service agencies, where union membership is considered a nonmerit factor that cannot be considered in the recruitment or selection process.²³

The basic procedures used by TVA to fill bargaining unit positions are described in the sections that follow.

a. Selection of Internal Candidates for Bargaining Unit Jobs

A selecting official who wishes to consider internal candidates when filling a vacant position notifies the servicing personnel office which posts an announcement of the vacancy. All employees who notify the personnel office that they wish to be considered for the position and who meet the minimum qualifications are referred to the selecting official. The list of internal candidates referred may be relatively large (e.g., 60 applicants eligible for promotion for 1 vacancy). Although the selecting official may choose any candidate referred, the corporation expects the selected person to be the best qualified candidate. Under the terms of the negotiated grievance procedures, bargaining unit employees may grieve nonselection for promotion.

By contrast, although many civil service agencies also use a vacancy announcement process to solicit interest among current employees, if there is a sufficiently large number of minimally qualified applicants (typically more than 10) these applicants are rated and ranked by personnel specialists or a panel of knowledgeable individuals against specified job-related criteria. From among all minimally

qualified applicants, only the smaller number of candidates rated as "best qualified" will be referred to the selecting official for further consideration. Civil service employees may not grieve nonselection for promotion from among a group of properly ranked and certified candidates.

b. Selection of Outside Candidates for Permanent Bargaining Unit Jobs

The corporation maintains an "open register" system for permanent bargaining unit positions. More than 25,000 applications from outside TVA are screened and categorized annually. For each job in which an applicant is interested, personnel specialists assign the candidate one of four ratings ranging from "clearly exceptional" (level 1) to "unqualified" (level 4). Each application is acknowledged and entered into a computerized Applicant Information System.

A selecting official who wishes to fill a permanent position with an outside candidate would again contact his or her servicing personnel office to request a list of qualified candidates. The personnel office screens candidates on the Applicant Information System against the job qualifications and availability for the location. Even including every available outside applicant with a category rating of "meets minimum qualifications" (Level 3) and above, the list of candidates referred to the selecting official typically does not exceed 10 to 15 individuals. In rare cases when the list of candidates rated minimally qualified or better is very large or the selecting official requests, finer distinctions may be made among the candidates before referral. In any case, the selecting official may select any of the candidates referred regardless of that candidate's assigned category rating, so this is not really a "competitive" process in the same strict sense as the word is used in civil service agencies.

The selection is subject to review by the personnel office for any obvious deficiencies, e.g., the selection of an obviously inferior candidate over one who is notably superior, continuation of a possible pattern of discrimination, or lack of due consideration to veterans preference. In most cases, any perceived problems are resolved informally.

By contrast, for many positions in civil service agencies, an outside candidate must undergo some type of competitive rating process (called "examination"). Each candidate is assigned a numerical score, on a scale of 100, based on the merits of education, experience, and (sometimes) written test scores. Veterans are awarded additional points. These "examinations" are administered or otherwise controlled by OPM. Only the highest rated candidates (usually five to seven) are referred to the selecting official. Selection must be made from the top three available candidates, except that a veteran may not be passed over in favor of a lower scoring nonveteran.

c. Selection of Outside Candidates for Temporary Blue-Collar Jobs

Recognized unions are a major source of applicants for temporary blue-collar positions (all of which are bargaining unit positions) in TVA. According to union officials, the normal practice for each union hall is to refer members for employment based on the length of time since each has last worked--those who have been without work the longest are among the first referred. This practice is based on the unions' position that all members are journeymen in their crafts and, therefore, equally qualified. Unions are officially required to recognize TVA's obligation to provide preference to veterans by referring members who are veterans ahead of equally qualified nonveterans regardless of the length of time they have been out of work. Since TVA does not have access to the union

rosters, it primarily relies upon voluntary compliance by the unions.

In 1984, the corporation initiated a new system for hiring temporary blue-collar employees. This system allows a selecting official to furnish the appropriate union hiring hall a list of names of the union members he or she wants referred for an opening. The individuals on the list often are ones who have worked for the selecting official in the past and who were considered especially effective on the job. TVA officials reported that during 1988 approximately 40 to 50 percent of the temporary blue-collar vacancies were filled through use of this "call by name" process.

Union representatives expressed reservations about the use of "call by name" since they believe it may neglect "more deserving" (out of work longer) workers or allow selections based on "nonmerit reasons." (Ironically, the union practice of referring members for jobs based on the length of time each has been out of work is itself a nonmerit practice based on the concept of merit contained in the statutory merit principles.) The union halls honor "call by name" requests, however, since the corporation has the option of bypassing them entirely.

By contrast, civil service agencies are obliged to fill even temporary blue-collar jobs through competitive procedures with the objective of selecting the individuals who are the best qualified for the positions. When obtaining a list of qualified candidates from OPM, civil service agencies may also request an individual by name. That individual must be rated by OPM as among the top candidates before he or she can be referred. Union hiring halls are not used by civil service agencies as a source of referrals.

d. Testing Requirements

Several entry-level TVA bargaining unit occupations have special testing requirements. For example, some clerical and other support positions require a typing or stenography test and all candidates for entry-level blue-collar positions are required to take the General Aptitude Test Battery. In addition, candidates for Nuclear Plant Operator must undergo a screening process which includes a structured interview process and personality (psychological) tests.

These tests are administered on a regular basis by local State Employment Service offices that are operated in cooperation with the U.S. Department of Labor. These offices administer the tests for TVA at no cost but require the corporation to notify them of any subsequent job placements. By contrast, when civil service agencies use tests, they are developed or approved by OPM and administered by or under the control of OPM.

4. Conclusions

The employment systems of both TVA and the civil service agencies share a common set of underlying merit system principles and objectives. Both systems are also required to comply with basic legal requirements concerning veterans preference and nondiscrimination. From this common base, however, both systems have evolved along quite different lines. The differences in the two systems appear, at least in part, to be due to different operating philosophies. TVA has given its employee unions a much larger voice in the employment process than civil service agencies have given to unions with which they deal. The corporation has also given selecting officials proportionately greater discretion in the recruitment and selection process than their civil service counterparts. Its employment system is characterized by relatively few centrally imposed requirements.

Civil service agencies, on the other hand, have a more comprehensive set of requirements specified in law or regulation which govern the operation of their employment process. This more detailed legal framework (e.g., selection in accord with the "rule of three" for new hires) is contained in title 5 of the U.S. Code. The requirements have the effect of limiting the discretion of supervisors in selecting employees, making the process difficult to understand, minimizing the role of the unions, and causing delays in filling positions.

An understanding of the TVA employment process and how it compares to the process followed by civil service agencies leads to the following observations:

■ As OPM and the civil service agencies work toward greater delegation, deregulation, and "simplification" of the employment process, the TVA experience may be useful if examined both as an alternative approach to the operation of a merit-based employment system and one that is already much less governed by specific regulation and procedure. This is not to suggest that the corporation should necessarily serve as a "model." What seems to work for it may not work elsewhere and, as noted below, its practices are not without shortcomings. Some of its employment practices do offer, however, a sharp counterpoint to those of the civil service.

■ The intent implicit in TVA's agreement to consider union membership a "positive factor" in selection for appointment to permanent bargaining unit positions is in conflict with the merit system principles. In addition, TVA's use of union halls as a primary source of applicants for temporary blue-collar positions may also be in conflict with these principles. For example, one of the merit system principles requires that:

[r]ecruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.²⁴

Within this context, therefore, any exclusive use of union halls to fill a vacancy makes the corporation vulnerable to the continuation of any inequities that may exist within any of the unions. In other words, should any union provide less than fair and open consideration in its decisions of who it will allow into the union, then a subsequent corporation selection based on referrals of candidates from the union cannot be in compliance with the principle of fair and open competition, including the need for adequate public knowledge of the vacancy.

*** * * any exclusive use of union halls to fill a vacancy makes the corporation vulnerable to the continuation of any inequities that may exist within any of the unions.**

In like manner, should a union member be given extra "credit" for appointment consideration based solely on that membership (as opposed to relative ability, knowledge, or skills for the position in question), then the process could again be in conflict with the merit principles. The argument that union membership is advantageous to employees and TVA management may, by itself, be

insufficient to justify membership-related credit. Should it be demonstrated that union membership (perhaps through special union-sponsored training) has enhanced an individual's ability to perform a particular job, then credit can be given to recognize the enhanced skill, but not to recognize union membership, per se.

■ TVA's unstructured approach to filling management positions could benefit from more structure than it currently has to better meet the intent of the merit system principles. For example, a policy of announcing management vacancies when considering candidates for promotion could increase the applicant pool and help assure that promotions are based on "fair and open competition." Although the corporation allows individuals to express generic interest in promotional opportunities at any time, not all highly qualified employees will do so. Neither would such an expression of interest necessarily be remembered if separated by a significant amount of time from when an actual vacancy occurred. A formal skills inventory system to document interest and which would automatically be consulted is an alternative. In the rush of filling key vacancies and in the absence of some established recruiting practices, it is too easy to overlook some highly qualified individuals. The TVA Chairman's letter (appendix D) commenting on a draft of this report indicates that the corporation has initiated actions that may effectively establish a form of skills inventory system.

■ By providing a high degree of managerial discretion and flexibility in the recruitment and selection process, TVA has created a system that already embodies many of the goals of decentralization and deregulation in the civil service agencies--more timely action on personnel decisions and more personnel responsibility for line managers. The corporation's heavy reliance on the integrity of individual managers for merit system compliance is

undoubtedly justified in most instances but it also highlights the need for some reasonable measures to guard against individual or systemic abuse. TVA reports that they have recently established a human resource evaluation capability to provide such safeguards. We would encourage TVA in this effort and urge them to provide the resources and management support necessary to fully implement an effective oversight and evaluation function. The TVA Chairman's letter acknowledges the importance of this capability.

Chapter Notes

²¹ "Articles of Agreement Between the Tennessee Valley Authority and the Salary Policy Employee Panel, revised and approved October 1, 1984, and Supplementary Agreements as of October 1, 1986," Supplementary Agreement 7A.

²² "General Agreement Between the Tennessee Valley Authority and the Tennessee Valley Trades and Labor Council, And Supplementary Schedules, Covering Annual Operating and Maintenance Employees," revised through May 13, 1986, p. 27. This language appears in all three blue-collar contracts.

²³ Because of the provisions of 5 U.S.C. 7116, the first "merit promotion requirement" listed in Federal Personnel Manual (FPM) chapter 335, section 1-4, states that actions under an agency's promotion plan "shall be made without regard to * * * labor organization affiliation or nonaffiliation * * *."

²⁴ 5 U.S.C. 2301(b)(1).

COMPENSATION

MAJOR DIFFERENCES IN COMPENSATION PRACTICES

TVA:

1. Has its own authority to "fix compensation" subject to a statutory salary ceiling (currently \$80,700).
2. Has no legal limit on the total amount of compensation it may pay an employee.
3. Under its pay-for-performance plan for management employees, does not guarantee that "solid performer" (level 3 rating) employees receive a comparability increase if salary schedules are adjusted following salary surveys. Thus, these employees may "fall behind" in their placement within their pay ranges (without an actual loss in pay) when an adjustment occurs.
4. May pay a bonus to management employees who fill shortage category or hard to fill jobs. The bonus may be paid to new hires or to current employees.
5. Has seven separate salary schedules for white-collar bargaining unit occupations.
6. Negotiates pay rates for bargaining unit employees.
7. Administers its own retirement system and pays into various unions' pension and welfare funds for hourly Trades and Labor employees (who are not eligible to join the corporation's retirement system). The TVA Retirement System includes a Social Security component.

Civil Service Agencies:

1. Pay white collar salaries according to civil service law under procedures established by law or OPM regulations. GS and GM salaries are "capped" at \$75,500. Senior Executive Service salaries are "capped" at \$80,700 (both "caps" became effective in January 1989).
2. Have legal limits on the total amount of compensation they may pay any employee. The limits are the product of separate limitations established for salary, performance-based bonuses, and other incentive awards.
3. Under the pay-for-performance plan for management (GM) employees, guarantee that "fully successful" (level 3 rating) employees receive the full amount of any "comparability increase" applied to adjust salary schedules. Thus, these employees do not "fall behind" on the pay ranges when an adjustment occurs.
4. May pay higher rates for shortage category employees (including ones in management jobs), but not bonuses.
5. Have a single salary schedule (General Schedule) for all nonexecutive white-collar occupations.
6. Cannot negotiate on pay.
7. Provide retirement coverage to eligible employees through either the Civil Service Retirement System or the Federal Employees Retirement System (the latter includes a Social Security component).

1. General

The Board of Directors and the General Manager establish the corporation's pay policies under the basic authority of the TVA Act. The act gives the Board of Directors authority to "fix the compensation" of employees subject to two specific constraints: (1) no regular employee can receive a salary higher than that received by a Board member (Executive Level IV, paying \$80,700 as of January 1989), and (2) rates of pay for "laborers and mechanics" can't be less than the prevailing rates paid for work of a similar nature in the vicinity. "Laborers and mechanics" are the blue-collar employees who comprised about one-third of the work force at the time of this study.

Although its pay system is not subject to title 5 provisions, TVA is subject to other Federal pay laws that govern the private sector. These include Fair Labor Standards Act provisions concerning minimum wages, overtime pay for certain types of employees, and other recordkeeping requirements, as well as provisions of the Equal Pay Act of 1963.²⁵ Pay practices for management and bargaining unit employees are quite different, so they are addressed separately below.

2. Management Employees

a. Pay Philosophy

Management employees are assigned to a salary schedule known as the M Schedule, which has 13 classification grades. Of these roughly 4,800 employees, approximately 220 are above the grade M-7 level. They are the corporation's executives. TVA has set the top salary for its highest graded executives at \$80,500 in order to stay below the legal \$80,700 salary limit.

Management employees in grades M-1 through M-7 (the bulk of the management work force) are under a total pay-for-performance system. Any

salary increase they receive is based solely on performance. There is no "comparability," or "cost of living," component to this pay system, as there is for civil service managers, supervisors, and management officials under the pay-for-performance system called the Performance Management and Recognition System (PMRS). The performance appraisal system for management employees is discussed later under the section on appraising and rewarding performance.

TVA uses salary survey data collected from businesses and industries which it considers to be its direct competition for management employees in setting managerial pay. That practice embodies a major goal of merit principle 3, which is to set pay by giving consideration to rates in the private sector. Moreover, TVA's experience in setting pay for management employees by reference to relevant local (and--selectively--national) pay rates might well be instructive for policymakers who are currently debating the wisdom and feasibility of basing more of the Federal pay schedules on regional or locality rates.

Except for some of the executive level grades which have one or two rates, M Schedule grades have three key rates--a minimum, a midpoint, and a maximum. Nonexecutive employees may be paid any rate between the minimum and maximum for their range. For them, the importance of the midpoint is that of a reference point for determining how much of a salary increase each employee's performance earns.

The corporation considers its competition for most management employees to be the general labor market covering several industries in the Southeastern United States rather than a market which consists of a single industry, such as utilities, in a broader geographic setting. TVA has determined that it will position itself within that market at the 50th percentile, meaning that half of the companies surveyed will pay more than the corporation and

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

half will pay less. TVA has also decided to base its rates on salary information obtained as closely as possible to the middle of each fiscal year (April 1). The salary rates are adjusted at the same time employees' salaries are adjusted (the end of the calendar year). The adjustments to salary rates have no effect on individual employees unless an increase is needed to raise an employee to the new minimum for the salary range. This is unlike the civil service practice of giving all level 3 ("fully successful") or higher rated employees under PMRS the full value of any general increase to the pay schedule (and half of that increase to employees rated below "fully successful" but above "unsatisfactory"), plus any additional earned increase determined by the performance rating.

The differing civil service and TVA pay philosophies produce very different practical results. As noted above, civil service PMRS employees rated level 3 or higher always get the full amount of any general pay increase. They therefore never "lose ground" on the salary schedule as pay rates are adjusted. However, TVA level 3 ("solid performer" in corporation terms) employees may experience no pay increase when the ranges for their grades are adjusted based on market considerations. Thus, while they don't actually lose pay, they "lose ground" on the salary schedule. This is most likely to be true for "solid performers" who are being paid above the midpoint rate. As is noted later in the discussion concerning the performance appraisal system for management employees, about 43 percent of TVA's management employees receive level 3 ratings, compared to about 30 percent of civil service GM²⁶ employees, so this difference is significant.

b. Total Compensation, Not Just Salary

TVA, however, has a problem in paying comparable salaries to some of its managers because of the statutory limitation that no employee may be

paid a salary greater than that of a Board member. Board members' salaries are set by Congress, which effectively creates a "salary cap." That cap limits TVA's ability to pay competitive salaries based upon relevant labor markets to all of its executives, as well as to some high level technical and scientific employees.

*** * * the corporation uses a "total compensation" approach to increase income for managers.**

To avoid this limitation that no salary may exceed the rate of pay for Executive Level IV positions, the corporation uses a "total compensation" approach to increase income for managers. TVA asserts the right to do this because--unlike civil service agencies--its statutory salary limit is not accompanied by a statutory limit on total compensation.

Under the civil service pay system various laws establish both maximum salary limits and total compensation limits. For example, GS and GM employees may not receive a salary greater than the rate of pay for Executive Level V (\$72,500 in December 1988). Other laws limit the size of performance bonuses that may be paid to GM employees (20 percent of salary), and the size of incentive awards that may be paid to GS and GM employees. Similar limits apply to the total amount of compensation which can be received annually by a member of the Senior Executive Service. The TVA act does not include any similar total compensation limits.

One example of the corporation's total compensation approach is that, until recently, it paid the full cost of medical and dental insurance premiums for all M Schedule employees. Another example is

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

that it also paid, for executive-level managers, the employee's contribution (in 1988 a maximum of \$3,379.50) to social security. (Except for employees who belong to the Civil Service Retirement System by virtue of Government service elsewhere, all managerial employees are covered by social security.) Both of these benefits were eliminated effective October 1, 1988, when TVA also froze all management salaries. These actions were taken to ensure that all employees shared in the cost-saving measures the corporation was taking.

The corporation also utilizes other, and even more significant, compensation enhancement devices in order to compensate its management employees competitively in excess of the salary cap. For example, in September 1988, the corporation announced the selection of a new head for its nuclear power function. The salary for the new nuclear chief's position was set, below the cap, at \$77,300. However, he also received a "\$100,000 cash relocation incentive and \$40,000 in supplemental retirement benefit payments."²⁷ These benefits brought his first year's total compensation to \$217,300. In addition, TVA announced that in his "second and subsequent years, [he] will be eligible for performance-based bonuses that will bring his total compensation to the same [\$217,300] level, if they are earned."²⁸

The nuclear chief's future bonus eligibility was based on a new plan adopted by the Board of Directors, the details of which had not been released at the time of this report. Under this plan all of TVA's executives became eligible for bonuses based on performance, with the amount of each bonus to be decided by the Board of Directors.²⁹

The nuclear chief's relocation bonus was larger than, but similar to, a major compensation enhancement package called "Staffing Arrangements." These arrangements are in the form of bonuses paid to new hires or current employees as a recruitment

or relocation incentive to fill management positions regarded as critical or difficult to fill.

Persons in grades M-1 through M-9 can qualify for a staffing arrangement bonus of up to \$12,000. Those in grades M-10 through M-12 can qualify for a bonus of up to \$24,000. New hires for positions designated as critical to the nuclear program can also qualify for payment of *additional* staffing arrangement bonuses. These additional bonuses can be for as much as \$24,000. Since 1986, TVA has paid staffing arrangement bonuses in excess of \$24,000 to 13 employees, 7 of whom received \$48,000, the maximum allowable.

TVA guidelines for this program identify the levels of delegated authority for approval and the documentation required. The corporation recently made public an Inspector General report³⁰ of an audit of this program. That report, which received detailed press coverage in the Knoxville area,³¹ identified a number of payment irregularities and systemic problems. Among the systemic problems was the absence of provisions to recover bonus payments if the individuals did not remain in the job for the agreed-upon 1-year period, and the absence of provisions to recover bonus payments made to individuals later found to have falsified their employment applications. The report also noted that "justifications were incomplete in one-third of the cases we reviewed, and there is relatively little independent review of such justifications in any event."³² It recommended adopting tighter controls for the program.

The Board suspended the program in June 1988, following receipt of the OIG report, and reinstituted it in October 1988 with stringent controls. Any payment under this program now must be approved by the Board of Directors.

Between 1980 when the program began, and June 1988 when it was suspended, TVA paid out

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

\$7,392,350 in 1,229 different bonuses to individuals through this program. The average payment was just over \$6,000 and three of every four staffing arrangement bonuses were paid to employees in the Office of Nuclear Power.

Civil service agencies cannot pay such bonuses to help attract employees to hard-to-fill locations. (Recent legislation does allow the Federal Bureau of Investigation--an agency excepted from the civil service--to pay bonuses to attract and retain employees in the New York City area.) The only tools that the civil service has to authorize payments in excess of traditional compensation limitations are special pay rates, and cost-of-living differentials that apply to some locations outside the contiguous 48 states.

c. Contract Rather Than Salaried Employees

In addition to the use of pay enhancements to supplement capped salaries so the corporation can pay managers competitive compensation, TVA has used personal services contracts to obtain the services of managers and key nuclear power advisors in the Office of Nuclear Power. When our study began the director of that office was one such contractor-manager. TVA had contracted for his services at a rate of \$29,600 per month, or \$335,200 per year. At the peak of its nuclear contract activity, TVA had 11 contractor managers and 21 contractor advisors, each costing the corporation, by contract, more than the salary cap. As discussed in the ethics portion of this report's section on employee relations, the TVA's use of contractor-managers has created conflict of interest problems for the corporation.

3. Bargaining Unit Employees

a. General

Pay for bargaining unit employees is determined through collective bargaining. In preparing for pay negotiations, TVA annually conducts wage

and salary surveys of appropriate sources. The survey area is the TVA region. The data are used by all participants to develop their proposals, but the similarity between pay practices for blue-collar and white-collar employees ends there.

b. Blue-Collar Employees

There are no salary ranges for blue-collar jobs. Instead, specific craft positions have fixed hourly or annual rates determined through an annual negotiations process. Under a provision of the TVA act, if no agreement on blue-collar rates is reached, the union representing the affected employees may appeal to the Secretary of Labor, who makes the final decision. One or two of the 15 blue-collar unions file such appeals each year.

TVA's approach to setting blue-collar pay resembles the approach used by the civil service for similar jobs. About 400,000 civil service blue-collar employees are paid under a "prevailing rate" approach that relies on locality pay surveys. However, there are important differences between how civil service and TVA blue-collar rates are set. The first and foremost difference is that civil service employees have no right to negotiate for their pay and the rates are therefore not set through negotiation or through a decision made by the Secretary of Labor. In addition, at TVA, only a single rate is set for each job classification, while a range of five rates is set in the civil service wage-grade system for nonsupervisory positions in each occupation (civil service supervisory positions may have single or several rates, depending on the local practice for the occupation). And while the rates paid TVA blue-collar employees may not, by law, be less than the prevailing rates in the survey area, since the unions can negotiate the rates, they may exceed those prevailing rates. TVA's blue-collar unions also independently conduct their own wage surveys.

Corporation officials told the study team that there is no binding definition of what constitutes the "prevailing rate" (e.g., median, mode, etc.). The

corporation uses whatever figure it can logically support and negotiates to pay that rate. In many instances it chooses the rate most frequently paid. In most cases that ends up being the rate agreed upon for journeyman employees following negotiations. The corporation believes it pays foremen (whose pay also is determined through this process) 1 or 2 percent more than the "prevailing rate" in many instances. This is because TVA must determine a single rate for each foreman category, but in many instances (particularly operating, as opposed to construction, settings) the comparable private sector jobs are part of management rather than in a union, and TVA must negotiate the rate by comparison to salary ranges.

c. White-Collar Employees

Virtually every step in the process for determining pay for white-collar employees differs from the civil service process for general schedule employees, where pay rates and structure are mandated by legislative and executive authority, and are not subject to collective bargaining. Seven separate salary schedules³³ are negotiated for TVA employees in various occupational fields represented by the five unions and associations that make up the Salary Policy Employee Panel. If TVA and the Panel fail to agree on a salary structure for any of the groups of white-collar employees, the Panel appeals the disputed rates first to mediation, then to binding arbitration if necessary. The corporation is not required by law to determine white-collar pay through negotiations, or even on the basis of prevailing rates as in the case of blue-collar jobs. Rather, it elected to do so for reasons not rooted in its enabling legislation.

The corporation's white-collar pay rates are realistic for their geographic locality, in large part because the locality is relatively small and the pay survey information comes from employers who are likely to be direct competitors of the corporation. By way of contrast, the civil service white-collar

pay rates, which are also established following annual salary surveys, are not intended to reflect pay in specific localities. Instead, they are based on nationwide surveys. Thus, the civil service general schedule rates are higher than the prevailing rates in some areas of the country, and lower than the prevailing rates in others.

*** * * TVA initiated and then, 7 years later, in 1988, abandoned a merit pay system for its white-collar employees.**

No discussion of white-collar pay would be complete without mentioning that TVA initiated and then, 7 years later, in 1988, abandoned a merit pay system for its white-collar employees. That system provided for merit increases based on performance. Because of underfunding and other implementation problems (e.g., perceived inequities in the distribution of merit pay awards within and among units), the corporation abolished that system, while concurrently appointing a compensation task force to consider the future of white-collar merit pay. The rise and fall of that system is discussed later in this report in the section dealing with appraising and rewarding performance. For the moment, it is sufficient to note that TVA both implemented and abandoned this pay-for-performance system for nonmanagerial employees, demonstrating that the corporation has the ability to engage in significant experimentation in the compensation area.

4. Retirement System

The corporation has its own retirement system which it established in November 1939. With one exception, all *permanent* employees must join that system. The exception is that otherwise-eligible TVA employees who are members of the Civil

Service Retirement System or the Federal Employees Retirement System as a result of Federal service elsewhere must stay with that other system.

The TVA Retirement System has a seven-member Board of Directors (three appointed by management, three elected by the membership, and the seventh picked by these six). The system has an annuity component paid by each member's contributions and a pension component paid by TVA contributions. (Employees are also covered by social security.) Members must pay at least 3 percent of their base pay into the annuity component, up to the social security base, and 6 percent of amounts above that base. They may pay more into this component up to a maximum established by the Internal Revenue Code. Additionally, the system has a 401(k) plan analogous to the Thrift Savings Plan under the Federal Employees Retirement System, and a voluntary after-tax savings plan. This latter plan permits employees to deposit money on which taxes have been paid, and to defer taxes on the interest the deposits earn until the money is withdrawn.

Temporary blue-collar employees are not eligible for membership in the corporation's retirement system. Instead, through provisions in the negotiated contracts, the corporation makes monthly payments into the various unions' pension and welfare funds.

5. Conclusions

■ Merit system principle 3 provides that pay rates should be established "with appropriate consideration of both national and local rates paid by employers in the private sector * * *."³⁴ Because TVA surveys the salaries of businesses with whom it directly competes for managerial talent, and uses those survey results to set managerial pay, its approach to setting managerial pay is consistent with this principle. However, as we observed

earlier, the corporation has recently frozen managerial pay. Any lengthy period of "frozen" pay for managers could place TVA's salary structure for management employees at odds with this proviso. It could also undermine the effectiveness of the corporation's management pay-for-performance system.

TVA's pay-for-performance experiences could * * * be instructive to policymakers.

In using regional pay survey data as the basis for the negotiations for bargaining unit employees, TVA's approach to setting such pay is also consistent with the above quoted portion of merit system principle 3. The corporation's approach to using locality pay has worked well, in part, because the boundaries are relatively small and because the bounded population is relatively homogeneous. Its 55-year experience with "locality" pay could prove instructive to policymakers currently considering refocusing civil service pay rates away from national norms.

■ TVA's pay-for-performance experiences could also be instructive to policymakers. The pay-for-performance provisions of title 5 are scheduled to expire in 1989 unless reenacted. Therefore, Congress must consider the worth of those provisions and whether they should be reenacted, amended, or abandoned. TVA is another merit system that has wide experience with pay for performance. Its management employees are under a total pay-for-performance system now being "fine-tuned." The corporation also has tried and abandoned a merit pay system for its white-collar employees. In considering whether or not to continue pay for performance for civil service employees--including possibly extending the

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

concept to additional levels of employees--the Congress should find value in reviewing the pros and cons of the TVA experience.

■ The ability to pay recruiting or placement bonuses for certain managerial jobs is a strong plus for any organization's compensation scheme. So is the "total compensation" approach management is using to remain competitive in the managerial and executive job market, even in the face of the corporation's statutory salary cap. (We have accepted the TVA's legal interpretation that it has the authority to make these payments. We have done so because Congress, in part through GAO reports, is aware of these payments and has not questioned TVA's assertion that such payments do not contravene the statutory salary limitation.)

■ Paying into unions' pension and welfare funds for temporary blue-collar employees allows TVA to give those temporary employees an additional degree of retirement security that civil service agencies can't offer to any of their temporary employees. And--as will be seen later in the discussion concerning reduction in force--having its own retirement system allowed the corporation to offer employees inducements for voluntary separation that no civil service agency can duplicate.

Chapter Notes

²⁵ PL 88-38, 77 Stat. 56, 29 U.S.C. Sect. 206 (1976).

²⁶ The GM pay plan includes managers, supervisors, and management officials in GS grades 13, 14, and 15.

²⁷ "Inside TVA Today," vol. 9, No. 18, Sept. 13, 1988, p.3.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Tennessee Valley Authority, "Management and Physicians Recruiting Incentive Program," Memorandum Report to the Chairman and Members of the Board of Directors from the Inspector General, Mar. 30, 1988.

³¹ "TVA Bonus Plan Paid Some Twice," J. Patrick Willard, The Knoxville Journal, Wednesday, Aug. 10, 1988, p. B1.

³² Memorandum Report, op. cit., p.2.

³³ These are the Administrative Schedule (SA); Clerical and General Services Schedule (SB); Engineering and Computer Schedule (SC); Scientific and Program Schedule (SD); Aide and Technician Schedule (SE); Custodial Schedule (SF); and Public Safety Schedule (SG).

³⁴ 5 U.S.C. 2301(b)(3).

POSITION CLASSIFICATION

MAJOR POSITION CLASSIFICATION DIFFERENCES

TVA:

1. May create its own methods of classifying positions without regard to classification provisions found in civil service law.
2. Through negotiations has given unions a significant role in classifying jobs. The unions are represented on joint committees that assign white-collar job series to pay schedules and play an even broader role in classifying blue-collar jobs.
3. For blue-collar jobs, handles classification appeals concerning individual positions through the negotiated grievance process.

Civil Service Agencies:

1. Are covered by the Classification Act of 1949 and must follow the classification requirements established by OPM.
2. Unions have no negotiating rights or decision-making role in the classification process.
3. By law may not use negotiated procedures to handle classification appeals. Instead, handle all classification appeals through a single administrative process.

1. Introduction

Position classification at TVA, as in other large organizations, is a necessary system for organizing work for individual employees. Through such a system, duties can be described, titles can be assigned, qualifications can be determined, and pay levels can be set.

In the classified civil service, jobs are divided into series. The jobs in each series share similar duties and responsibilities. Factors such as the relative difficulty of those duties and responsibilities are then used to determine the grade of each position in a series. Usually the title, series, and grade determinations are made by comparing a position's

duties and responsibilities against classification standards which have been established or approved by the Office of Personnel Management. The grade-determining portions of the standards have been derived, and usually made specific for each white-collar series, from the statutory standards for the 18 grades which make up the General Schedule.³⁵ A different but similar system is used to classify civil service blue-collar jobs. The civil service protects white- and blue-collar employees from arbitrary classification decisions by providing appeals both within the employing agency and to the Office of Personnel Management.

A different system is used in the Senior Executive Service, primarily because classification

standards are not used to determine grades or pay in the SES. However, they are used to determine whether a particular job belongs in the SES. Duties and responsibilities are described, series are selected, and comparisons to other positions are made. However, once a position is classified as SES, the agency sets the level of pay for the person in that job based on such factors as the person's qualifications and performance, the agency budget, difficulty of the job or difficulty in recruiting, etc. A system that establishes employees' levels of pay in this fashion is generally referred to as a rank-in-person system.

In the same way that OPM uses a variety of systems to classify civil service positions, TVA uses several different systems to classify its blue-collar, white-collar, management, and executive positions.

2. Classification of Blue-Collar Positions

The corporation's process for classifying blue-collar positions differs significantly from that used by the civil service for similar jobs. For example, unions have negotiated specific work boundaries for each craft. And while permanent blue-collar employees have written job descriptions, many temporary blue-collar employees don't. Instead, commonly understood craft practice generally controls their work. The duties and responsibilities of, and qualifications required for, each blue-collar classification are determined by a Joint Classification Committee made up of members of management and the Trades and Labor Council. In the civil service, these determinations are made by OPM. And in the civil service, each position must be described in writing.

The corporation's Labor Relations Staff is actively involved in classification matters. It negotiates classification agreements, advises personnel officials and supervisors about appropriate classifications, assists in resolving jurisdictional disputes (when more than one union may claim jurisdiction over the job), and represents TVA in disputes resolved at the arbitration level.

Disputes over the application of a classification schedule to a specific blue-collar position are handled administratively outside the jurisdiction of the Joint Classification Committee. Disputes over the correct classification of an individual position are handled through the negotiated grievance procedure which, taken to its fullest extent, allows an outside impartial referee to make the final decision.

3. Classification of White-Collar Positions

The corporation's white-collar classification structure is similar to that of civil service agencies. Each position is assigned to a job series, which in turn determines its title and grade level. However, unlike the civil service, there are several pay schedules which are established through negotiation, and not a single General Schedule established by Congress. The rates under each pay schedule are different. Therefore, the decision regarding which pay schedule a series should be placed under is extremely important for compensation purposes. The authority to make the pay schedule placement rests with the Director of Personnel. However, TVA and the white-collar unions have created a Joint Salary Schedule Committee, composed of union and management officials, which has an advisory role with regard to such assignments.

The manner in which grades are assigned to particular positions also differs from the practice in the civil service, primarily because of the role which unions play in making that determination. There is so much union involvement in determining grade assignment that union officials who participate in that process receive the same classification training that the Division of Personnel provides to TVA personnel officials. Most positions are graded in accordance with factor guidecharts that have been agreed upon through collective bargaining.³⁶ Initial grade determinations are made by both a management classifier and a union reviewer, and the grade decision is made by the Director of Personnel. If there is an unresolved disagreement between the

corporation and the union concerning pay schedule or grade, the union can pursue the matter through a multi-step classification review process ending in binding arbitration.

4. Classification of Management and Executive Positions

The process of classifying management positions bears the most resemblance to that followed by civil service agencies. Supervisors determine the content of specific positions and those positions are then graded by personnel officials based upon such factors as scope and complexity of work and knowledge and skills. Unlike their counterparts in civil service agencies, TVA's management employees can't appeal classification determinations to an outside agency. Neither can they pursue the matter through a negotiated grievance process, as can the corporation's bargaining unit employees. However, they can appeal their classifications to a Management Classification Review Board (comprised of line managers and Division Personnel Officers) which makes recommendations to the Director of Personnel.

Corporation officials told the study team that top management is dissatisfied with the current management classification system because it gives too much emphasis to reporting relationships and the organizational level of positions. Addressing this dissatisfaction, the corporation is currently replacing its management classification system with one that will be more in line with utility industry classification practices. It is adopting a system developed by the Hay Group, Inc., under which comprehensive information about each job is collected and used to write new position descriptions. Those descriptions are then evaluated based upon a Hay-developed factor-related point system. The resulting point ratings ultimately become the basis for pay determinations. This process is outwardly similar to the civil service's Factor Evaluation System implemented some years ago for many occupations. A

major difference is that the Hay system permits "tailoring" to each client's needs.

The Board of Directors approves the classification of all executive positions. These positions are classified on the basis of position comparisons, with emphasis on position-to-position equity. The grade thus assigned to the position, in turn, determines the base pay for the incumbent. By contrast (as discussed above), in the civil service's Senior Executive Service, pay is determined more by the rank in the person than in the job.

5. Conclusions

The different ways in which TVA and civil service agencies deal with position classification demonstrate the vivid contrast between their systems. The corporation has used its personnel flexibilities to try a variety of classification approaches. For example, because it is not covered by most of the provisions of title 5, it is able to totally revamp its system for classifying management employees without seeking legislative change. Similarly, the corporation is legally free to experiment with different classification methods for blue- and white-collar jobs, although because of its union contracts it must first negotiate any such changes through collective bargaining.

Chapter Notes

³⁵ Those general standards, which were enacted by Congress in 1949, are codified at 5 U.S.C. 5104.

³⁶ Recent plans to consider replacing these guidecharts with a classification system developed by a personnel consulting firm have been placed on hold by management and the unions while the demands caused by the downsizing and reorganization of TVA are addressed.

APPRAISING AND REWARDING PERFORMANCE

MAJOR DIFFERENCES IN APPRAISING AND REWARDING PERFORMANCE

TVA:

1. Has separate and structurally different performance appraisal systems for (1) managers and (2) all permanent bargaining unit employees. Has no performance appraisal system for temporary blue-collar employees.
2. Requires written performance expectations for management employees to be in place for at least 90 days before an employee may be appraised. Does not require written performance expectations for permanent bargaining unit employees.
3. Permits forced distribution of performance ratings for management employees. (This may be eliminated under a new plan now pending.)
4. Can change its performance appraisal systems.
5. Has tried--and for now discarded--a pay-for-performance system for white-collar employees who are not part of management. (Management employees are under a pay-for-performance system although when this report was written all management salaries were frozen.)
6. Has no mechanism to reward top-performing nonmanagerial employees (other than negotiated salary increases or periodic step increases which are generally available to all employees).

Civil Service Agencies:

1. Have performance appraisal systems with similar structural requirements for all categories of employees.
2. Require written performance expectations to be in place for at least 90 days for all employees before the employees may be rated.
3. Are prohibited from forcing the distribution of ratings.
4. Establish their own individualized performance management plans, but most provisions are prescribed by law or OPM regulation.
5. Have pay-for-performance systems for senior executives and middle managers (GM's), but not for nonmanagement employees.
6. Can give Quality Step Increases and cash awards to top-performing nonmanagers.

1. Performance Appraisal Systems

a. General

TVA has separate formal performance appraisal systems for management employees and permanent bargaining unit employees. There is no system for periodic performance evaluation of temporary blue-collar employees. As we noted earlier,³⁷ there are major differences between the meaning of the word "temporary" when used to describe temporary blue-collar employees at TVA and temporary employees in civil service agencies. Civil service temporary employees have time-limited appointments. The appointments are for up to 1 year, and may be extended in 1-year increments for up to 4 years (longer with prior approval by OPM). Agencies must appraise their performance if they work for more than 120 days in any consecutive 12-month period.

Temporary TVA blue-collar employees work "as needed." They receive a separate appointment each time they work, almost always for less than 1 year. However, they may work for TVA for many years, receiving repeated appointments when they are needed and being separated when the work for which they were hired is finished. Regardless of how many years--or how many days per year--these temporary employees work for the corporation, they are not covered by any appraisal system.

b. Performance Appraisal System for Management Employees

The process used for establishing job goals and evaluating the job performance of management employees (grades M-1 through M-7) is called the Management Appraisal System. These employees are given summary ratings which serve as the basis for any pay increase under the related pay-for-performance compensation plan. As noted earlier in

this report in the Compensation section, this is the only way they can gain pay increases.

Table 1 on the following page shows the distribution of management performance ratings for December 1987 (the last time pay was adjusted for management employees before being frozen). The chart also shows the percentage of salary increase each rating permitted. The increases are shown as ranges; the actual percent of increase for an individual is determined by that individual's placement on the salary schedule. Placement above the salary midpoint produces a smaller increase, while placement below the midpoint produces a larger one.

Corporation officials explained that while it is technically possible for an "adequate" rating to provide an increase of up to 2 percent, in practice this almost never occurs. For an employee with this rating to receive any increase, the employee would have to be at the very bottom of the salary schedule and the circumstances leading to the rating would have to have been partially mitigated. The reader should keep in mind that the reflected percentages of increase represent the total salary increase the employee would earn. There is no increase based on adjustments to the salary schedule unless an increase is needed to place the employee at the bottom rate of the revised schedule.

TVA's distribution of ratings is quite different from the distribution of ratings for civil service Performance Management and Recognition System employees (called GM employees), who also are under a pay-for-performance system. As reflected in a 1987 MSPB report,³⁸ 69 percent of all GM employees are rated in the top two rating categories, and an additional 30 percent are rated at the "fully successful" or middle point. Only about 1 percent are rated in the two lowest rating categories. These data are not strictly comparable because the time

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

Table 1

Management Appraisal System Ratings (December 1987)
Listed from Highest to Lowest Possible Ratings.

<u>Rating</u>	<u>Percent of Employees Receiving this Rating</u>	<u>Range of Salary Increase Possible</u>
Exceptional	8.0%	5-10%
Superior	41.3%	3-8%
Solid Performer	42.7%	0-6%
Adequate	7.3%	0-2%
Unsatisfactory	0.7%	0%

periods are slightly different and because the TVA grade range for the management employees is greater than the GM range. Nonetheless, the differences are significant.

TVA's Management Appraisal System has three major elements. First, job goals must be jointly set by employees and their supervisors by October 1 of each year. Then supervisors are strongly encouraged to conduct quarterly informal progress review sessions with subordinate employees. And, in September of the next year, employees are rated by their supervisors against those previously established goals.

Although this process is similar in many ways to the performance appraisal system for civil service managers and supervisors in the GM pay plan, TVA's system is different in one key respect: in the

civil service the forced distribution of employees' ratings is prohibited by law, while at TVA, at the option of their top management, raters in some parts of TVA are required to force the rating distributions into predetermined patterns.

There are also other differences. In the civil service appraisal system ratings are used for many purposes, including serving as a basis for assessing training needs or deciding upon awards. TVA's system tends to overlook these types of subsidiary but valuable purposes of a performance appraisal system.

Another difference is that the percentage of TVA managerial employees who receive the highest performance rating is significantly different than the percentage who receive such a rating in the civil service. The percentage of management employees

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

who received the highest performance rating ("exceptional") was consistent in 1986 and 1987. These figures are shown in table 2 below. They are compared to 1987 figures for men and women in the civil service GM pay plan who received the highest rating ("outstanding") under that system.

Two points are immediately clear:

1. In both cases, a higher percentage of women than men got the highest ratings; and
2. The percentage of TVA managers receiving the highest rating is substantially less than the percentage for civil service managers.

As in the earlier comparison of M Schedule and GM employees, the data are not strictly comparable. However, even allowing for the effects of those differences, the corporation's figures are dramatically lower than the civil service agency figures. A major reason for this difference probably is the use of forced ratings distributions at TVA.

If management plans come to fruition, such forced distributions will be eliminated as part of an overall reform of the Management Appraisal System. The proposals being considered also would simplify the appraisal form, reduce the number of rating categories from the current five to three, require a performance appraisal review every 3 months, and increase flexibility in administering pay.

The proposed performance rating categories are described in terms of the goals that have been achieved: Extraordinary Accomplishment of Goals; Accomplished Goals; and Unaccomplished Goals. By eliminating traditional rating terms such as "exceptional," "superior," or "below average," this proposed system is intended to shift attention from the employee (Is this person exceptional or below average?) to the employee's performance (Did or did not this person achieve the goals established for the position?). Management hopes that, by depersonalizing performance rating terms, more attention will be paid to work expectations in the appraisal process.

Table 2

Percentages of Men and Women Managers Receiving the Highest Performance Rating

	<u>TVA (M Schedule) Employees</u>	<u>Civil Service (GM) Employees</u> ³⁹
Men	7	23
Women	9	30

c. Performance Appraisal for Executives

Performance for executives (above grade M-7) is appraised under a system similar to the existing system for lower-graded managerial employees, except that salary increases for these employees are not effectively tied to performance ratings. As discussed in the compensation section, executive pay is near the statutory top of the salary schedule, and corporation policy favors compensation consistency for executives at the same grade. These effectively place limits on the salaries that will be paid at each executive grade. Consequently, it is virtually impossible for executives to earn salary increases based on performance.

As discussed earlier in the Compensation section, the corporation uses a total compensation approach to overcome the limitations created by the salary cap. Following this approach, it has recently announced a plan for performance-based bonuses for executives. When that plan is put into effect, there should be a better link between executives' performance ratings and their total compensation, even though the ratings will not lead to any adjustment in their basic salaries.

d. Performance Appraisal System for Bargaining Unit Permanent Employees

The heart of the performance appraisal system for bargaining unit permanent employees is the Employee Service Report, which "has been around since the 1940's."⁴⁰ TVA requires completion of this report annually, and at other times such as on the occasion of a promotion or a transfer. Information contained on the Employee Service Report is routinely considered during the promotion process, as well as in determining additional service credit for retention during reductions in force. Its link to white-collar employees' pay was greatly reduced by the 1988 abolishment of merit pay for those employees.

This appraisal system does not require supervisors to judge performance on the Employee Service Report against written performance expectations which have been made known to the employee for some minimum period of time before performance is appraised. Consequently, unlike employees in civil service agencies, TVA's bargaining unit permanent employees are not assured through advance written notice (performance elements and standards) of an opportunity to understand what management's expectations are for their performance.

e. Performance Appraisal for Temporary Blue-Collar Employees

Temporary blue-collar employees do not receive annual performance appraisals and are not covered by any formal performance appraisal system. Supervisors of these employees use a personnel action form to document personnel actions and employee performance. Job performance is described and noted on the form only when a change in job status--usually a change in hours or worksite, lay-off or separation--occurs. According to management, this approach works satisfactorily because these employees are in defined trades or crafts jobs, and their work can easily be judged against accepted journeyman expectations. In the civil service, temporary and intermittent employees are not automatically exempted from performance appraisal requirements. If employees in those categories are reasonably expected to work for more than 120 days in any consecutive 12-month period, their performance must be appraised under the agency's performance appraisal system.

2. Incentives for Excellence in Performance

In one sense TVA's pay-for-performance system for management employees is a strong incentive for encouraging excellence. The corporation's management pay philosophy includes a

specific assumption that employees must consistently perform above "solid performer" (the middle rating on the 5-point scale) if they are to avoid moving toward the lower end of the pay range when the range is adjusted based on salary survey results. Once employees advance beyond the middle point of their salary ranges, they will slip toward the lower end of the range (although not lose pay) at the next salary adjustment if they are not rated above "solid performer." Thus, for many persons TVA requires continued excellence just to remain at the same relative point on the salary schedule. However, persons below the middle point may "hold their own" or advance with a rating of "solid performer," particularly if at the lowest rate.

By contrast, the civil service approach to adjusting pay for GM employees includes an assumption that "fully successful" (level 3 on the 5-level scale) or better performance ensures no "retreating" within the salary range when the range is adjusted by a comparability increase. And GM employees rated one level below "fully successful" are also assured half of any comparability increase.

Additionally, during the time it extended performance-based pay to white-collar employees, the corporation had an incentive system for that part of its work force that was similar to the system for management employees. And as noted above, the corporation recently announced a new performance-based bonus plan for executives.

With the demise of its white-collar merit pay system, TVA has fewer means to recognize and reward its best nonmanagerial performers than are available in civil service agencies. This is because the corporation: (1) has no system (similar to the civil service's Quality Step Increase provisions) for granting expedited pay advancement to its very best white-collar employees; and (2) has no provisions to pay cash awards (similar to civil service's incentive

awards program) to its bargaining unit employees for performing above expectations on a one-time or short-term basis. The corporation does have, however, an honor awards program.

The corporation, like civil service agencies, also has a service awards program tied to longevity with the corporation rather than to performance. Until late August 1988, it also had a suggestions program that provided one avenue for employees to gain recognition and monetary awards. Like similar programs authorized by civil service law, this latter program did not permit payment for suggestions derived from, or relating to, the employee's duties.

3. Conclusions

■ While the current performance appraisal system for managers and its proposed revised version both provide a basis for setting goals and measuring accomplishments, they are primarily focused on pay setting, with little emphasis on other performance appraisal purposes. TVA should explore ways to gain additional value from whatever system it uses to appraise performance of its management employees, through establishing better links between performance appraisal and other human resource management systems.

■ There are weaknesses in the corporation's approach to appraising the performance of its permanent bargaining unit employees. While an argument might be advanced that this is not a major problem for blue-collar crafts and trades jobs (where a journeyman's performance is reasonably well defined), no similar argument can be advanced for the many affected white-collar jobs, including such diverse occupations as clerks, secretaries, chemists, engineers, and computer operators. The absence of a requirement to have written performance expectations in place for any period of time before performance is appraised potentially harms both employees

and management. It leaves employees vulnerable to constantly changing expectations since those performance expectations may be raised as performance improves. It also severely reduces the opportunity for employees and management to ensure that each individual's performance is carefully aimed at achieving the performance goals and expectations of the unit.

■ TVA's lack of incentives for bargaining unit employees creates another weakness in managing performance. As things now stand, the corporation proudly proclaims that excellence in performance is its norm, but has few ways to recognize that excellence or to encourage its continuation for most of its work force.

■ In abolishing its suggestion program, TVA removed a mechanism that potentially could allow good ideas to rise to the top from within the work force. Coming at a time when the corporation was downsizing and reorganizing to save money, this action has cut off a structured means for employees to contribute to that effort.

Chapter Notes

³⁷ See explanation at footnote 18.

³⁸ U.S. Merit Systems Protection Board, "Toward Effective Performance Management in the Federal Government," July 1988, p.8.

³⁹ Source: U. S. Office of Personnel Management, Personnel Systems and Oversight Group, Performance Management Division.

⁴⁰ "Supervisor's Handbook," op. cit., p.10-9.

Downsizing The Work Force

MAJOR DIFFERENCES IN WORK FORCE DOWNSIZING

TVA:

1. Negotiates layoff procedures for temporary blue-collar employees.
2. Must follow some OPM regulations governing reduction in force, but not all.
3. Has, and recently exercised, considerable latitude to offer employees incentives to volunteer for separation to reduce the need for involuntary separation.

Civil Service Agencies:

1. May not negotiate on procedures for laying off temporary employees.
2. Must follow all OPM regulations governing reduction in force.
3. Are limited by civil service law and OPM regulations on the incentives or severance pay they can offer as inducements to volunteer for separation (e.g., early retirement) when faced with reduction-in-force situations.

1. General

During the period of this study, the corporation initiated and substantially completed a major reorganization and downsizing of its work force. Several factors combined to make the reorganization and downsizing necessary. Escalating costs threatened to drive up the price of the electricity TVA generates and sells, which in turn threatened to make them noncompetitive in the electric power industry. Also, idle nuclear power plants were costing the corporation a million dollars a day but generating no electricity and no revenue. Then there was a series of annual decreases in the appropriated funds allocated for nonpower components. Finally, the organizational structure was judged to be fragmented and top-heavy to an extent that impaired

efficient operations. Within months of his appointment in January 1988, the new Chairman recommended the reorganization and downsizing of the corporation and the Board of Directors had approved the plans to execute them.

2. Methods

Layoff and reduction in force (RIF) are the two methods TVA uses to terminate employees because of lack of work, shortage of funds, or reorganization. A layoff is the term for separating temporary blue-collar employees who have worked less than 1 year since their last appointment. Procedures for such layoffs are negotiated with these employees' "umbrella" labor group, the Tennessee Valley Trades and Labor Council. Civil service agencies

may not negotiate over layoff procedures for temporary employees, but rather must follow OPM regulations.

Employees having 1 year or more of continuous service are separated through RIF procedures. The basic elements of OPM's RIF regulations (e.g., establishment of competitive areas and levels) must be followed. Other OPM regulations concerning assignment rights, reemployment priority lists, the "Displaced Employee Program," or the "Voluntary Interagency Placement Program" don't apply, leaving TVA employees with fewer opportunities for placement than their civil service counterparts.

3. The Union Challenge

Negotiated agreements include provisions for the corporation unilaterally to implement new RIF procedures if required to do so as a result of changes in law or new interpretation of law or regulation. Late in 1986, management accordingly announced the adoption of new OPM RIF regulations that grant additional service credit for performance.⁴¹ The announcement followed a legal opinion from the corporation's General Counsel that this change was mandatory.

The Salary Policy Employee Panel asked the corporation to reconsider its decision, and in January 1987 filed a grievance over this action. It later

In implementing the RIF, management exercised some flexibilities not available to civil service agencies.

raised a question of submitting the issue to arbitration. TVA responded that the issue was neither grievable nor arbitrable under the terms of the collective bargaining agreement. The Panel subsequently--and successfully--filed suit in U.S. district court to compel binding arbitration. Following an appeal by TVA, the Circuit Court for the Sixth Circuit determined that TVA was not required to submit the issue to arbitration.⁴² While this was going on, the RIF initiated during this study was carried out under procedures giving additional service credit for performance.

4. Management Creativity

In implementing the RIF, management exercised some flexibilities not available to civil service agencies. For example, the corporation offered double severance pay⁴³ to employees with at least 5 years' service who volunteered for separation. This meant that a separated TVA employee with 10 years' service would receive about 60 percent more severance pay than an equivalent civil service employee. The gap would narrow with increasing length of service, and both would receive about equal severance pay at the 25 year mark. These volunteers could elect to receive severance pay in an immediate or a deferred lump sum, and were eligible for retirement benefits immediately regardless of age. Employees who were voluntarily separated under these provisions were also allowed to continue enrollment (at their own expense) in TVA's health insurance plan at group rates for up to 18 months after their separation.

The RIF was aimed at reducing the permanent work force by about 4,000. About 1,500 employees were approved for voluntary RIF. This reduced the number of employees to be involuntarily separated from 4,000 to 2,500. Employees in a position to take advantage of this offer benefited, as did others who were thereby spared involuntary separation.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

By contrast, civil service agencies usually pay higher rates of severance pay but can't double it, can't pay severance pay in a lump sum, can't offer deferred payment of severance pay, can't pay severance pay to individuals eligible for retirement benefits, and can't offer actuarially reduced retirement benefits to all voluntarily separated employees with at least 5 years' service, regardless of age. Civil service agencies can, under certain conditions, offer employees "early out" retirement. To qualify, an employee must have either (1) a minimum of 20 years' service and be at least 50 years old, or (2) a minimum of 25 years' service without regard to age.

5. Impact

The purpose of the voluntary RIF program was to soften the impact of impending personnel cutbacks. Officials thought that the program would

have special appeal to long-time employees because severance pay would be higher and retirement benefits would be available earlier. They expected it to reduce the adverse effect of the RIF on newer employees, many of whom are women and minorities. As shown below, these expectations appear to have been correct.

Management has monitored the effects of the RIF. Analyses show that the combined effects of the involuntary and voluntary RIF's have been roughly equal among various employee groups. This is demonstrated in table 3 which compares the actual work force makeup before the downsizing began and after it was completed (the effects of normal hiring and separations during this period are also reflected in this table):

Table 3
TVA Analysis of Combined Effect of Involuntary and
Voluntary RIF's on Various Employee Groupings

<u>Employee Grouping</u>	<u>Percent of Work Force April 1988</u>	<u>Percent of Work Force October 9, 1988</u>
Women	20.3	19.8
Minorities	10.3	10.2
Age 40 and over (all employees)	53.2	52.3
Veterans	39.0	38.4
Age under 40 (all employees)	46.7	47.6

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

Several interesting events resulted from the RIF. One is that the proportion of women and minorities in the work force declined only slightly. Because of the seniority principle, the most recently hired often are separated before longer term employees. Minorities and women often are more heavily represented among the newly hired. Therefore, there historically has been a tendency for disproportionately high numbers of both groups to be separated during a RIF.⁴⁴ To a large extent, this did not occur at TVA.

Another is that when the downsizing was completed, the proportion of the work force under age 40 had increased. Typically, more junior employees are separated in disproportionately large numbers during a RIF, so the average age tends to rise. The opposite result at TVA suggests that the voluntary RIF incentives were attractive to older staff. It may also reflect the result of adding service credit for performance.

Also, the percentage of veterans in the work force declined. Since veterans have greater protection than nonveterans during RIF (all other things being equal), this would not be expected. Corporation officials told the study team that this change was caused largely by the abolishment or virtual abolishment of large groups of similar positions that were filled primarily by veterans (for example, drafters and employment officers).

Overall, it appears from the table above that the corporation weathered the downsizing without some of the usual severe effects on work force composition often experienced during a major RIF. However, upon closer scrutiny there were significant differences among categories of employees. The patterns in the table generally held true for management and white-collar employees. The blue-collar employee picture was more mixed, however, with women, minorities, and veterans showing disproportionate gains or losses depending on occupation.

Reasons for this disparity could not be determined within the scope of this study.

There is substantial evidence that the corporation made solid efforts to conduct the RIF in a sound and compassionate manner. One such effort was the hiring of a management consulting firm to facilitate the transition to a vastly altered organization. Management also provided extensive counseling sessions for employees identified for involuntary separation. Hundreds of potential employers within and beyond the Tennessee Valley were notified of the availability of high-quality employees. Job fairs were conducted and employees facing separation were provided numerous materials, instructions, and support in preparing resumes and developing job-hunting skills and strategies.

*** * * the corporation made solid efforts to conduct the RIF in a sound and compassionate manner.**

In addition, a long-standing TVA-OPM agreement on movement between TVA and civil service agencies was amended. The amendment permits involuntarily separated management and bargaining unit white-collar employees who meet certain service requirements to noncompetitively transfer to jobs in the competitive civil service for up to 1 year after separation. (These employees must be qualified for the jobs.) The previous provision permitted such transfer only without a break in service. The agreement does not apply to blue-collar employees.

In interviews, human resource officials told the study team members that the corporation's measures were aimed at achieving two goals: maintaining the dignity of all members of its work force, and

completing the downsizing and reorganization as quickly as possible so TVA could get on with its business.

6. Conclusions

The ability to offer enhanced incentives to encourage voluntary separations during periods of major staff reductions appears to have benefited both TVA and many employees. It also produced results different from the usual outcomes of such reductions. Following a reduction of roughly 4,000 permanent employees, TVA has been left with a slightly younger work force with proportionately almost as many women and minorities as before, and proportionately fewer veterans. These results appear to have been influenced largely by positive incentives and possibly the granting of additional service credit based on performance.

Chapter Notes

⁴¹ 5 CFR. 351, Subpart E.

⁴² Salary Policy Employee Panel v. Tennessee Valley Authority, 868 F.2d 872 (6th Cir. 1989).

⁴³ Severance pay was doubled from 4 days' pay for each year of service, with a maximum of 120 days, to 8 days' pay for each year of service up to a maximum of 240 days. By comparison, civil service severance pay is computed under a formula that provides 1 week's pay for each of the first 10 years' service, and 2 weeks' pay for each year of service beyond 10, plus an adjustment factor for individuals over 40 years of age. The maximum severance pay under the civil service is 1 year's pay.

⁴⁴ U.S. Merit Systems Protection Board, "The RIF System in the Federal Government: Is It Working and What Can Be Done to Improve It?," December 1983, pp.25 and 27.

EMPLOYEE RELATIONS

MAJOR DIFFERENCES IN EMPLOYEE RELATIONS

TVA:

1. Developed negotiated grievance procedures for bargaining unit employees without being required by law to do so.
2. In general gives employees less, and more restricted, access to parties outside TVA for dispute resolution. Emphasis is on internal resolution or--if outside parties are involved --on the use of arbitrators.
3. Has imposed its own restrictions on employment of relatives that are more stringent than those prescribed by civil service law.

Civil Service Agencies:

1. Develop negotiated grievance procedures for bargaining unit employees under requirements established by law.
2. Follow laws and regulations that give employees a wide range of dispute resolution mechanisms involving outside parties and internal means. Employees often may choose between outside parties created by law and ones created by internal negotiated procedures.
3. Follow restrictions on the employment of relatives that are prescribed by civil service law.

1. Ways to Resolve Conflicts or Disputes

All TVA employees have the right to appeal RIF actions to MSPB, as do civil service employees. The right to appeal adverse actions (e.g., removal for cause) to MSPB, however, is restricted to TVA employees who have veterans preference and at least 1 year of continuous service in the same or a similar position. This right does not extend to TVA employees in executive grades. Finally, corporation employees who believe they have been improperly denied restoration rights following military service or recovery from a compensable job-related injury or disability may appeal to MSPB.⁴⁵

Management employees, however, have no formal grievance procedure. This is in sharp conflict with civil service agencies, where all

*** * * in a dispute or grievance situation management employees are limited to working it out informally, living with it, or finding a way to handle it through some other avenue * * *.**

employees (including managers and supervisors) have access to a formal grievance procedure. Because they do not have a defined internal dispute resolution process, in a dispute or grievance situation management employees are limited to working it out informally, living with it, or finding a way to handle it through some other avenue, such as an

EEO complaint, or in limited conditions taking it to MSPB as indicated above. Employees in Nuclear Power may use the Employee Concern Program or the Department of Labor complaint channel (both are discussed later). All of these latter approaches can result in a considerable demand on corporation and personal time and money.

Employees known as "excluded schedule employees"⁴⁶ have a separate process in which their appeals are heard by the Director of Personnel. Each excluded employee is notified of this process and how it works at the time he or she enters an excluded position.

Bargaining unit employees primarily resolve conflicts through the negotiated grievance procedures. Like other employees, however, in limited circumstances they also may seek redress from external agencies such as MSPB or EEOC, as mentioned above.

The Civil Service Reform Act requires all collective bargaining agreements for employees in civil service agencies to contain procedures for resolving grievances, including binding arbitration. Such a negotiated grievance procedure is the exclusive means of redress for bargaining unit members except where a statutory appeals procedure exists. Then the civil service employee may choose either procedure, but usually not both. Arbitration awards may be appealed to the Federal Labor Relations Authority on limited grounds; however, judicial review of arbitration decisions is available only in cases involving adverse actions and EEO complaints.

2. Conduct, Discipline, and Ethics

a. General

Corporation systems and procedures concerning conduct, discipline, and ethics are similar to those found in civil service agencies. These include

an Inspector General's office (OIG), a formally designated Ethics Officer, and policy statements and implementing procedures concerning a wide range of employee relations issues. These policies and procedures, or comparable ones, also apply to certain employees of contractors working for TVA.

The TVA Board established the Office of the Inspector General in October 1985. The Inspector General Act of 1988,⁴⁷ enacted October 18, 1988, establishes statutory inspector general positions for the corporation and certain other organizations. In about 30 cases, that law authorizes the head of the agency, rather than the President of the United States, to appoint the inspector general. In the case of TVA, it authorizes the Board of Directors to make the appointment.

Employees of the Office of Nuclear Power have additional avenues for expressing concerns they may have about nuclear plant design, construction, or operation. These additional safeguards are discussed separately in the section of this report concerning "whistleblowing" protections.

b. Ethics Program

TVA employees are subject to the requirements of the Ethics in Government Act. Some 300 to 350 employees are subject to annual reporting of financial interests. Insofar as its own employees are concerned, the corporation's program is similar to that of any civil service agency.

Contractor managers (called "loaned managers" by TVA) in the Office of Nuclear Power raise special ethical problems. Since they remain employees of their parent companies while serving as management officials, both they and the corporation have to make special efforts to avoid the reality or appearance of a relationship that would benefit the parent companies. These efforts included a provision for these employees to recuse themselves

from contracting decisions with outside companies, which could include their parent organizations.⁴⁸

Initially, TVA did not anticipate the full range of problems that could arise from using these contractor managers (especially the Manager of Nuclear Power). The result was considerable unfavorable publicity concerning conflict of interest. This caused the corporation to contract a private firm to review the facts, and led to an OIG investigation that was reviewed by the Federal Office of Government Ethics (OGE). However, over time many of the difficulties resulting from using contractor managers have been worked out.

An OGE official confirmed⁴⁹ that TVA has made significant improvement in its handling of the contractor manager situation. However, that official also expressed concern about the continued presence of contractor managers in the work force, stating that they represent a potential conflict of interest problem that is not easily resolved. The official said that TVA's efforts to establish and maintain a good Ethics in Government program are evident, and that both the Ethics Officer and OIG staff have been very cooperative in their working relationships with OGE. She declined to offer an evaluation of the quality of TVA's program for this report because OGE has not formally audited that program since September 1985.

c. Restrictions on Hiring Relatives (Nepotism)

Since June 1934, TVA has had a policy, in one form or another, restricting employment of relatives. The current policy meets the requirements of Federal law.⁵⁰ In fact, the policy is more restrictive than the law in two respects:⁵¹ it prohibits any administrative or supervisory relationship between relatives,⁵² and prohibits summer employment at the corporation for children of employees unless that employment is part of a formal TVA training program. Management has recently tightened its

controls over the hiring process to further reduce the risk of violation of restrictions on hiring relatives.

*** * * keeping partisan political activity out of the corporation's business was * * * was one of the cornerstones of the original TVA Act.**

d. Protection Against Partisan Political Activity

TVA employees are subject to the Hatch Act.⁵³ However, the concept of keeping partisan political activity out of the corporation's business was also one of the cornerstones of the original TVA Act. The corporation has had a strong policy setting standards for political activity since 1936. That policy listed all Hatch Act restrictions as well as specific employee political freedoms. In 1940, the Board of Directors determined that this policy was binding on the Directors as well as on the staff. This was significant because the Hatch Act does not apply to members of the TVA Board (who therefore are legally free to campaign for a political candidate). In a 1980 speech, then-Chairman David S. Freeman observed that no TVA Board member had "campaigned for partisan candidates during a history that has spanned 8 presidents and nearly 47 years."⁵⁴ That tradition has remained true through the time of this report.

The current corporation policy contains a description of permitted and prohibited activities and--as noted by the corporation's Inspector General--is consistent with all Hatch Act restrictions. Division Personnel Officers are the initial contact points for questions; the Office of the General Counsel is the back-up contact point.

3. Conclusions

■ The absence of a grievance procedure covering management employees is a weakness in the corporation's management of human resources, particularly in light of the wide grade range covered by this designation. Merit system principle 2 says that "[a]ll employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management * * *." A defined internal dispute resolution procedure for management employees is important to ensuring that this principle is met, and to keeping to a minimum the resources necessary to resolving disputes through external authorities (such as MSPB or EEOC). In commenting on a draft of this report, the TVA Chairman disagreed with the need for a formal internal dispute resolution procedure for management employees (see appendix D). However, he did say that efforts have been initiated to change the corporate culture to one that "encourages employee involvement at all levels."

■ At the same time, the negotiated grievance procedures provide the corporation's bargaining unit employees grievance rights equivalent to those granted by the Civil Service Reform Act to bargaining unit employees in civil service agencies.

■ Clearly, TVA has a strong tradition of protecting employees from partisan political influence and of prohibiting its employees from engaging in a wide range of partisan political activities. The corporation appears to comply fully with merit system principle 8, which says that employees "should be--(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election."⁵⁵

Chapter Notes

⁴⁵ A recent decision of the Federal Circuit, *Noble v. TVA*, No. 88-3436 (Fed. Cir., June 6, 1989), may lead to an expansion of the appellate rights of TVA's preference eligible employees. That case, which involves priority reemployment claims to excepted service positions, is currently on remand to the MSPB.

⁴⁶ This is a small group of white-collar employees who are excluded from the bargaining unit because of the confidential nature of their work. Examples are clerical staff in the labor relations office or in the Office of the Inspector General.

⁴⁷ 102 Stat. 2515 (1988).

⁴⁸ TVA reported that, as of April 1989, all contractor managers had been replaced by corporation employees.

⁴⁹ Telephone interview conducted by MSPB project manager on Aug. 16, 1988.

⁵⁰ 5 U.S.C. 3110.

⁵¹ TVA Inspector General, "Controls over Nepotism in TVA," Audit Report No. 87-0083, Oct. 19, 1987, pp.5-7.

⁵² The law restricts such a relationship if it is the result of advocacy by someone related to the benefiting individual.

⁵³ The law that prohibits Federal officials and employees, and State and local government employees funded by Federal funds, from engaging in a wide range of partisan political activities.

⁵⁴ "Remarks by David S. Freeman, Chairman, Tennessee Valley Authority, before the Tennessee Press Association, Nashville, Tennessee, Jan. 25, 1980," p.3.

⁵⁵ 5 U.S.C. 2301(b)(8).

WHISTLEBLOWER PROTECTIONS

MAJOR DIFFERENCES IN WHISTLEBLOWER PROTECTIONS

TVA:

Protections come largely from internally established procedures or, in the case of nuclear power employees, from the Energy Reorganization Act of 1974. The Office of the Special Counsel has no jurisdiction over TVA.

Civil Service Agencies:

Protections come from civil service law and include recourse to the Office of the Special Counsel.

1. General

Whistleblower protections do not apply to TVA--neither those included in the CSRA nor those included in the Whistleblower Protection Act of 1989. The corporation's employees, therefore, can't complain to the Office of the Special Counsel (OSC) about violations of laws, rules or regulations; or about mismanagement, waste, abuse of authority, or danger to public health or safety. Similarly, OSC has no authority to protect from acts of reprisal any TVA employees who may report such conduct to others.

The corporation has its own safeguards for whistleblowers * * *.

Those whistleblower protections could have been made applicable to the corporation just as the merit system principles were. However, Congress chose not to extend those protections to any employees of Government corporations. This occurred when Congress⁵⁶ excluded Government corporations

from the definition of an "agency" to which statutory prohibited personnel practices apply. Retaliation against a whistleblower is one of those prohibited practices.

The corporation has its own safeguards for whistleblowers, expressed in policy statements and implementing procedures. Line managers are accountable for proper execution of the policy, and special additional delegations of authority are made to specific functional organizations (e.g., Division of Occupational Safety and Health; Office of Nuclear Power) to receive employees' views and to protect those employees from recrimination or retribution.

OIG is the central authority for protecting employees who engage in "whistleblowing" activity and the office charged with investigating their allegations or expressed concerns. All employees may make disclosures through their normal supervisory channels, or directly to OIG by telephone hotline, by mail, or in person. Former employees and the general public also may use the OIG disclosure channels. Disclosures may be made anonymously. TVA has established penalties for taking action against those who make protected

disclosures. Penalties for taking action against such persons range from "written warning" to "termination of employment."⁵⁷

2. Additional Safeguards for Nuclear Power Employees

In addition to the corporation's internal protections for whistleblowers, nuclear power employees (approximately 40 percent of the work force when this study began) are protected by whistleblowing provisions of section 210 of the Energy Reorganization Act of 1974.⁵⁸ Section 210 provisions apply to employees of companies, or the employees of certain contractors of such companies, which--like TVA--are licensed by the Nuclear Regulatory Commission (NRC) to build or operate a nuclear power facility. Those provisions make it unlawful to retaliate against employees who file safety complaints with the NRC, or who participate in any fashion in NRC safety proceedings.

Under the act, allegations of retaliation against employees for exercising their protected rights are investigated and decided by the Department of Labor (DOL). The law provides for a four-stage investigative and review process, involving compliance examiners, administrative law judges, the Secretary of Labor, and U.S. courts of appeal. The early stages of the DOL process place emphasis on reconciliation or settlement.

Under a memorandum of agreement between DOL and NRC, investigators of NRC have access to all case materials relating to TVA. Staff of the NRC Inspector General's office investigate allegations of harassment or intimidation. This investigation is aimed at determining wrongdoing and may lead to fines if wrongdoing is found.

All nuclear industry employees have access to these special complaint channels through implementing regulations published by DOL⁵⁹ and NRC.⁶⁰ Between 1982 and 1985, DOL and NRC in-

vestigated a number of allegations of retaliation and of harassment and intimidation by TVA nuclear power management. Each complaint claimed these unlawful acts followed the complainant's expressions of safety or management concerns or expressions of support for persons who had voiced such concerns. While not all of the allegations were supported, enough were supported to indicate the presence of problems in managing its nuclear work force. Acting upon NRC suggestions, TVA took steps in 1985 to provide its nuclear power employees with additional "inside" communications/complaint channels.

TVA's initial action was to contract with a private company to document and investigate employee concerns about the safety of nuclear activities. That contractor documented over 5,800 employee concerns⁶¹ which covered subjects ranging from safety and technical concerns to misconduct, unethical conduct, and questionable personnel practices.

Early in 1986, the contract expired and NRC assumed control of the contractor's investigative files. Around that same time TVA's Office of Nuclear Power (then recently created) established two special nuclear power programs for addressing employee concerns. One was established solely to examine concerns expressed before February 1, 1986, by employees who were at the Watts Bar nuclear site. The other was the Employee Concern Program (ECP), a permanent, continuing program for receiving and acting on nuclear power employee concerns. Under the latter program, individuals are assigned to each nuclear site for the purpose of receiving employee expressions of concern. Those designated individuals act on those concerns or pass them along to higher ECP officials or to other corporation authorities, including OIG.

After reviewing the contractor's investigations files, NRC asked TVA's inspector general to investigate those situations that fell within his

investigations authority. Through March 1988, NRC had assigned 775 employee concerns from the contractor's files to the corporation's OIG to investigate. In addition, OIG had received 149 referrals for investigation from the Employee Concern Program. Some resulting investigations have led to criminal prosecution or administrative punishment;⁶² others did not support the allegations.

NRC has not referred to OIG any concerns contained in the contractor's files that were expressed under a pledge of confidentiality. There were nearly 400 such concerns when NRC assumed custody of the files. NRC's action has protected the whistleblowing individuals but at the expense of keeping OIG from investigating the concerns.⁶³

*** * * some managers and supervisors still hold adversarial attitudes toward employees who raise concerns.**

An NRC official familiar with TVA's nuclear activity expressed satisfaction with the manner in which the corporation's OIG has pursued nuclear power employees' concerns.⁶⁴ That judgment was based on NRC audits of both OIG procedures and case files. At the same time, that official stated that some managers and supervisors still hold adversarial attitudes toward employees who raise concerns. The NRC official believes this is a result of deeply rooted organizational culture that will be eliminated only by time and persistent managerial effort. Both of these opinions were shared by a DOL compliance examiner in Knoxville who has investigated numerous "section 210" complaints⁶⁵ in TVA, and by

investigators of NRC's OIG with similar TVA experience.

These individuals said that part of the problem was the zeal with which some managers pressed to maintain the corporation's long-standing "can do" attitude. That attitude served well during the boom years of hydroelectric and fossil fuel plant construction. It contributed to TVA's record of building dams and plants below budget and under projected times. It also apparently developed in some managers a belief that such feats could be accomplished while constructing nuclear plants if their employees simply worked hard enough.

In pressing their employees to maintain such high production/construction standards, some managers applied practices that resulted in section 210 allegations of discrimination, harassment, or intimidation against their employees. A culture clash apparently developed, pitting "can do" attitudes against the need for stringent safety standards and meticulous recordkeeping required in the nuclear industry. Animosity developed between these managers and employees who the managers perceived were delaying attainment of construction schedule goals. This situation included employees who believed that quality assurance or safety concerns could not be addressed properly in the time allotted.

Since late 1986, TVA has made a concerted effort to turn this situation around. Considerable management effort has been expended to ensure that: (1) quality assurance and safety issues are properly addressed; and (2) nuclear power managers' actions support policies concerning employee expressions of concern.

***** the key to continued progress lies in how well TVA emphasizes proper implementation of its policies and procedures.**

While NRC and DOL officials don't believe the corporation has yet succeeded in totally eliminating this problem, they believe that substantial progress has been made toward that end. One NRC official stated that the key to continued progress lies in how well TVA emphasizes proper implementation of its policies and procedures.

3. Conclusions

■ The corporation's administratively-established whistleblower protections appear consistent with merit system principle 9, which says that "[e]mployees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences-- (A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."⁶⁶

***** approximately three-fifths of the TVA work force have no statutory whistleblower protections.**

However, approximately three-fifths of the TVA work force have no statutory whistleblower protections. The remaining two-fifths (the nuclear power employees) have statutory whistleblower protections that are narrower in focus than those given to civil service employees by the CSRA.

There is no evidence that the administrative protections established by TVA are less effective than the statutory ones effected by the CSRA. However, the fact remains that the corporation's employees receive their protections through a policy decision of the Board of Directors rather than the Congress of the United States, and the TVA Board may revoke or modify that policy at any time.

There is no prohibition against extending CSRA's whistleblower protections to the entire TVA work force. Arguably, these employees should be granted whistleblower protections which are fully equal to those covering the activities of civil service employees. The effects would be positive: broader statutory protections for the entire work force with no diminution of existing statutory protections for nuclear power employees.

■ TVA's dealings with nuclear whistleblowers appear to have improved substantially since 1985. Officials of NRC and DOL remain concerned, however, that even with the improvement some of the corporation's managers still are perceived as acting in a manner that inhibits nuclear employees from feeling free to express their concerns. The NRC and DOL officials do believe that the corporation is moving in the right direction to deal with this concern.

Chapter Notes

⁵⁶ In 5 U.S.C. 2302.

⁵⁷ The penalties quoted are from TVA's General Release XIII--Employee Discipline, Misconduct, Appendix 1: Schedule of Disciplinary Offenses and Penalties for Misconduct, July 9, 1987, p.6.

⁵⁸ PL 93-438, title II, section 210, codified as 42 U.S.C. 5851.

⁵⁹ 29 C.F.R. 24.1 et seq.

⁶⁰ 10 C.F.R. 50.7.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

⁶¹ "Tennessee Valley Authority Office of the Inspector
General Semiannual Report, October 1, 1987 - March 31, 1988,"
p.11.

⁶² Ibid., pp.10-15.

⁶³ "Tennessee Valley Authority Office of the Inspector
General Semiannual Report, October 1, 1986 - March 31, 1987,"
No. 2, Apr. 30, 1987, p.4.

⁶⁴ Interview conducted by MSPB project manager on Aug.
16, 1988.

⁶⁵ See text at footnote 58.

⁶⁶ 5 U.S.C. 2301(b)(9).

CONCLUSIONS

The Tennessee Valley Authority and civil service agencies are anchored by the same underlying merit principles. However, development of their respective human resource management systems has followed very different paths. This divergence in personnel policies and practices is possible because TVA operates, overall, under less specific legal and regulatory guidelines than do civil service agencies. The broadly stated "merit principles" enumerated in the Civil Service Reform Act of 1978, however, apply equally to both.

Of course, the fact that TVA management has adopted certain unique personnel policies and practices which it believes are effective for them does not necessarily mean that those same policies and practices would work equally well in civil service agencies. Moreover, the apparent intent of a policy granting "union preference" in blue-collar hiring appears to be in conflict with the statutory merit principles. It would be forbidden in the civil service agencies; we believe it should be changed in the corporation. As a related issue, the extensive use of union hiring halls as a recruiting source for temporary blue-collar jobs raises a question of compliance with the statutory requirement for "fair and open competition" in filling vacancies. Our review did not find any other TVA policy or practice to be in violation of the merit principles.

*** * * a merit system can have many different forms.**

What this report does clearly illustrate is that a merit system can have many different forms. TVA's system is one that provides a great deal of management discretion bounded by general guidelines and, through employee unions, one that allows a significant degree of employee involvement. Moreover, the corporation's ability to make relatively rapid and significant changes in its approach to human resource management--such as dropping a pay-for-performance system for white-collar bargaining unit employees or changing to a new system for job classification--can be of significant value in meeting new or changing organizational demands or pressures. In comparison, civil service agencies work under a merit system based more heavily on controls and a limitation on options for managers in the personnel process.

Although neither system is inherently superior to the other, there are any number of scenarios wherein TVA's greater flexibility (and, by extension, greater adaptability) provide an advantage. Although this review suggests several areas in which TVA might strengthen its personnel programs, it also identifies a number of the corporation's policies and practices--along with a basic difference in approach--which is worth consideration by Congress, the Office of Personnel Management, and individual civil service agencies as they seek to improve relevant personnel laws, policies, and practices.

APPENDIX A--FACTS ABOUT TVA

1. The Tennessee Valley Authority:

- Provides electric power service to a region of approximately 78,000 square miles, including all or part of 170 counties with a combined 1985 population of 7,099,100.
- Operates flood control and navigation programs in the Tennessee River watershed, which covers 40,910 square miles and includes all or part of 125 counties in 6 states. The 1985 population of those counties was 4,918,300. Release of water from TVA dams during low-water periods aids in maintaining navigable depths on the lower Ohio and Mississippi Rivers. Its navigation program on the Tennessee River is an integral part of the Interconnected Inland Waterway System.
- Operates in a region of 201 counties with an area of 91,000 square miles and a 1985 population of 8,127,200, allowing for overlap between the two activities just listed.
- Manages a nationwide fertilizer research program engaged in both basic and applied research, aimed at developing and promoting new and improved fertilizers and more efficient fertilizer marketing and use practices across the United States.
- Had a peak employment of almost 53,300 in 1980, and employed approximately 32,800 people as of September 1987.* The reduction in force initiated after this study began reduced employment by some 5,700 employees, to approximately 27,100.

2. TVA programs fall into two financial categories. The first is the power program, which is self-financing. The other is all nonpower programs (navigation, flood control, fertilizer development, regional resources development, etc.), which are funded through congressional appropriations.

Before 1959, most money for building dams and steam plants was provided by congressional appropriations. TVA is repaying to the U.S. Treasury the \$1 billion of appropriations that was invested in the power program, and also paying a return annually on the outstanding balance. These payments come from power revenues.

TVA has the authority to borrow up to \$30 billion to finance construction of power facilities. All operating expenses are paid from power operating revenues.

While the power program is TVA's principal source of income, the fertilizer program (which is not operated to generate income) produces substantial revenue from the sale of fertilizers. This income is used to finance part of the operating expenses of the fertilizer program. The other nonpower programs depend almost entirely on appropriations for both operations and construction. For fiscal year 1987, TVA's appropriation was \$100 million.

* "Inside TVA," vol. 9, No. 4, Mar. 1, 1988, p.5.

APPENDIX B--THE MERIT SYSTEM PRINCIPLES*

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard for political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public welfare.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be--(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--(A) a violation of any law, rule or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

* 5 U.S.C. 2301(b).

APPENDIX C--METHODODOLOGY

General

A three-member MSPB team conducted this study between early April and late August 1988. The team:

- Reviewed issuances governing policies, procedures, and organizational structure, supplemented by other documents provided by management;
- Reviewed the negotiated agreements between TVA and the two "umbrella" organizations with which the corporation has formal employee-management relationships;
- Visited corporation facilities twice, interviewing line and staff officials and union officials, observing the organization, and collecting information;
- Reviewed news and trade publications concerning power and nuclear power and interviewed an editor of a major publishing company that publishes two key nuclear trade publications;
- Conducted telephone interviews with current or former TVA employees who have filed and won claims of discrimination or reprisal with the Department of Labor and/or the Nuclear Regulatory Commission under procedures established for nuclear industry power employees; and
- Interviewed staff in Congress and in executive branch organizations whose duties establish a relationship with TVA. This group included individuals in the House Committee on Interior and Insular Affairs, the Federal Office of Government Ethics, the Nuclear Regulatory Commission, and the Department of Labor's Employment Standards Administration.

TVA officials reviewed this report, and their comments and suggestions were considered in its final preparation. As noted in the introduction to the report, the comments from the Chairman of the TVA Board of Directors appear in appendix D.

Specifics

A. Categories of issuances and publications reviewed:

- General Releases, particularly the Codes issued by the General Manager that state policies and delegate responsibilities;
- Personnel Manual;

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

■ “General Agreements and Supplementary Schedules” between the TVA and:

1. The Tennessee Valley Trades and Labor Council covering blue-collar:
 - Annual Operating and Maintenance Employees;
 - Construction Employees; and
 - Temporary Hourly Operating, Maintenance, and Modification Employees.
2. The Salary Policy Employee Panel, covering white-collar employees.

■ “Supervisor’s Handbook;” and

■ “TVA Handbook.”

B. Facilities visited by the study team:

- Corporate Headquarters, Knoxville, Tennessee;
- National Fertilizer Development Center, Muscle Shoals, Alabama;
- Office of Power, Chattanooga, Tennessee; and
- Kingston Fossil Power Plant, Kingston, Tennessee.

C. Summary information concerning interviews conducted (numbers and kinds of people):

- 15 supervisors and managers at the National Fertilizer Development Center;
- 19 managers and supervisors in the Office of Power;
- 6 managers and supervisors at the Kingston Fossil Power Plant;
- 1 assistant manager at the Kingston Fossil Power Plant;
- 1 instructor/trainer responsible for apprentices at the Kingston Fossil Power Plant;
- 2 administrative support personnel at the Kingston Fossil Power Plant;
- 7 union officials representing Salary Policy (primarily white-collar) employee unions;

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

- 3 union officials representing Trades and Labor Council (blue-collar) employee unions;
- 2 TVA employees representing the Knoxville Chapter of Federally Employed Women;
- 1 Division Personnel Officer, Office of Power;
- 3 Labor Relations Officers, Office of Nuclear Power; and
- Officials in the following headquarters offices--
 - Office of the General Counsel;
 - Office of the Inspector General;
 - Division of Personnel;
 - Labor Relations Staff; and
 - Equal Opportunity Staff.

Within the corporate personnel office (Division of Personnel), some 28 interviews were conducted. These included virtually every branch chief and section head.

It should be noted that representatives of the Office of Nuclear Power declined to meet with the study team, citing the press of business. While the team did meet with three members of the Labor Relations Staff of the Office of Nuclear Power, that meeting was unplanned, of short duration, and "worked in" around scheduled meetings with representatives of the Salary Policy Employee Panel and the Trades and Labor Council.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

APPENDIX D--TVA COMMENTS CONCERNING THIS REPORT

TENNESSEE VALLEY AUTHORITY KNOXVILLE, TENNESSEE 37902

OFFICE OF THE BOARD OF DIRECTORS

JUN 23 1989

Mr. Daniel R. Levinson
U.S. Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

Dear Mr. Levinson:

Thank you for sending the report, "The Tennessee Valley Authority And the Merit Principles," to me for review prior to publication. Overall, the report generally presents an objective and balanced description of TVA's application of the merit principles. However, since the study was performed just as TVA was undergoing major changes involving almost every aspect of its operations, including Human Resources management, the report to some extent reflects an organizational structure and human resource policies and procedures that have since been substantially altered. Consequently, our comments in response to the recommendations included in the report's Executive Summary include some recent changes at TVA which we believe will enable the corporation to better apply the merit system principles in TVA.

Regarding the first recommendation on "union preference" in selection for appointments, we wish to clarify that this preference applies only to selection for appointment to trades and labor positions, of which the vast majority are for temporary hourly trades and labor positions. (Annual trades and labor positions are almost always filled from the large number of current TVA annual and hourly employees qualified for such positions.) The negotiated agreement covering such employees provides that union membership will be considered a positive factor in appraising relative merit and efficiency in selection for appointment within the limits permitted by applicable laws and Federal regulations. In view of TVA's statutory mandate to produce electric power at rates as low as feasible and given the unique nature of TVA's needs for such temporary employees, and its longstanding history of cooperation and negotiations with the Tennessee Valley Trades and Labor Council (Council), we believe that this limited union preference policy is consistent with the TVA Act and the merit principles guidelines in section 2301 of Title 5.

The bulk of TVA's current temporary trades and labor work is for modifications and maintenance (outage) work at TVA's power plants. This work requires large numbers of skilled craftpersons to be available on short notice and work for a specified short duration to complete a project. Although TVA uses a number of methods and sources to obtain the

An Equal Opportunity Employer

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

2

Mr. Daniel R. Levinson

JUN 23 1989

necessary qualified craftpersons, union halls have proven to be the most appropriate source of qualified individuals. Appointments to these positions are typically for brief periods of time necessary to complete a specific task.

In addition, TVA generally does not maintain its own screening, testing, and training programs to measure or validate the qualifications of applicants prior to employment and, indeed, usually does not have the time to do so for such immediate personnel needs. It has been TVA's experience that craft union membership is a reliable guide to determining qualifications. Union membership is not, however, a qualifying or disqualifying factor in selections for temporary craft workers, and nonunion members are also hired. TVA often obtains recruits from hiring halls because in many cases this is the most appropriate source from which to quickly and efficiently acquire large numbers of verifiably trained, skilled, and qualified workers who desire temporary work on a specific short-term repair or construction project in TVA. This has proven to be a highly cost-effective means of staffing such operations.

Second, your report commented about the absence of a formal process to encourage internal candidates for management positions. While there is no TVA-wide procedure or policy requiring that management vacancies be advertised internally, some organizations have established such procedures. Further, TVA has recently modified its performance appraisal process so that it addresses individual career development objectives as well as performance appraisal. Employees will be provided an opportunity annually to discuss and document their career objectives and interest in other positions. This information can then be used to develop staffing plans (including filling vacancies) and succession planning strategy.

Third, regarding the suggestion that TVA consider establishing a formal internal dispute resolution mechanism or process for those employees not covered by a negotiated grievance procedure, we believe that current procedures provide adequate mechanisms for resolving such issues. TVA management employees currently have access to a variety of forums in which to express their dissatisfaction with particular actions or make allegations of misconduct or policy violations. These include discussions with their supervisors or higher level management, or filing complaints with TVA's Inspector General's office, the Equal Opportunity staff, and in some situations, the Merit Systems Protection Board. Additionally, such nonrepresented employees in Nuclear Power may also raise matters with TVA's Employee Concern Program.

THE TENNESSEE VALLEY AUTHORITY AND THE MERIT PRINCIPLES

3

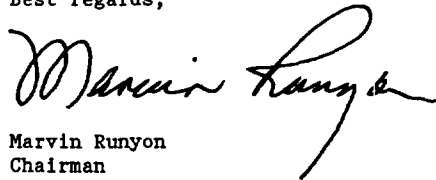
Mr. Daniel R. Levinson

We are in the process of changing our corporate culture to one that encourages employee involvement and participation at all levels. Consequently, we expect that there will be little need for additional formal complaint procedures. Further, our corporate culture is becoming one that encourages employees to pursue differences up through the organization's chain of command while simultaneously encouraging and rewarding management initiative in dealing directly and effectively with employees' use of these channels to express themselves.

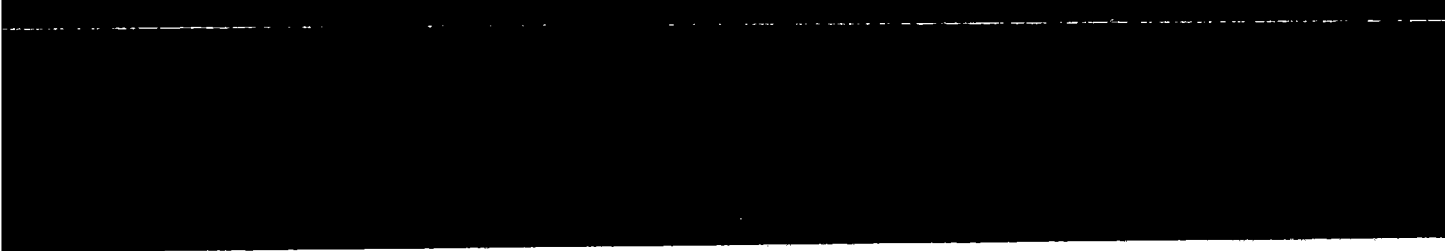
The final suggestion made in the report was that TVA establish greater internal oversight of those human resources functions that have been moved to line organizations as a result of our restructuring. The corporate Human Resources staff is committed to implementation of an effective policy evaluation process to track human resource activity within the various organizations. Human Resources' Policy and Evaluation group has responsibility for evaluating our line organization's human resources activities.

As the report makes clear, TVA's flexibility in human resources management has served both TVA and its employees very well over the years. This was particularly evident during our 1988 reorganization and downsizing. We hope that our experience will provide useful insights for the Office of Personnel Management and other Federal agencies as they struggle to meet the challenge of keeping the Federal sector staffed with capable people, operating efficiently, and providing a quality work environment.

Best regards,



Marvin Runyon
Chairman





A Report to the President
and the Congress of the United States
by the U.S. Merit Systems Protection Board