

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

MARK A. HOLT (Appeal No. 2011-198)

ROBERT A. PICKERING (Appeal No. 2011-200)

PATRICK J. WISE (Appeal No. 2011-201)

ESTATE OF PATRICK J. WISE, Christopher Wise, Administrator (Appeal No. 2011-201)

And TRASIMOND SOILEAU (Appeal No. 2011-233)

APPELLANTS

V. **FINAL ORDER SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION

And

KENTUCKY PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular July 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 3, 2016, Appellant Mark A. Holt's Motion for Extension of Time to File Exceptions, Appellee KET's Response to Appellant Holt's Motion for Extension of Time, Appellant Patrick J. Wise's Motion for Attorney's Fees and Other Relief Allowing Patrick Wise and the Estate of Patrick Wise to Be Made Whole, Appellant Mark Holt's Exceptions, Appellants' (Wise and Soileau's) Exceptions, KET's Exceptions, KET's Response to Appellants' Exceptions, Appellee Personnel Cabinet's Response to Motion for Attorney Fees, KET's Response to Appellant Wise's Motion for Attorney Fees and Other Relief, Appellants Wise and Soileau's Response to KET's Exceptions, Appellants Wise and Soileau's Corrected and Supplemental Response to KET's Exceptions, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Appellant Mark A. Holt's Motion for Extension of Time to File Exceptions is **DENIED**. The Board did not review Appellant Mark A. Holt's Supplemental Memorandum in Support of Reversal of the Recommended Order (tendered). The Board did review Appellant Mark A. Holt's Exceptions, which were timely filed.

IT IS HEREBY ORDERED that Appellant Patrick J. Wise's Motion for Attorney's Fees and Other Relief Allowing Patrick Wise and the Estate of Patrick Wise to Be Made Whole is **WITHDRAWN**.

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice G. D. C. O'Connell, Chief Justice of the High Court of Justice, Ireland, and President of the Law Society of Ireland."

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellants Mark A. Holt's and Robert A. Pickering's appeals are therefore **DISMISSED**; Appellant Trasimond Soileau's appeal is **SUSTAINED to the Extent** of Partial Settlement as approved by the Personnel Board on March 13, 2015, and Otherwise **DISMISSED**, and Appellant (Estate of) Patrick J. Wise's appeal is **SUSTAINED to the Extent** of Partial Settlement as approved by the Personnel Board on March 13, 2015, and the Recommended Order dated May 3, 2016.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13th day of July, 2016.

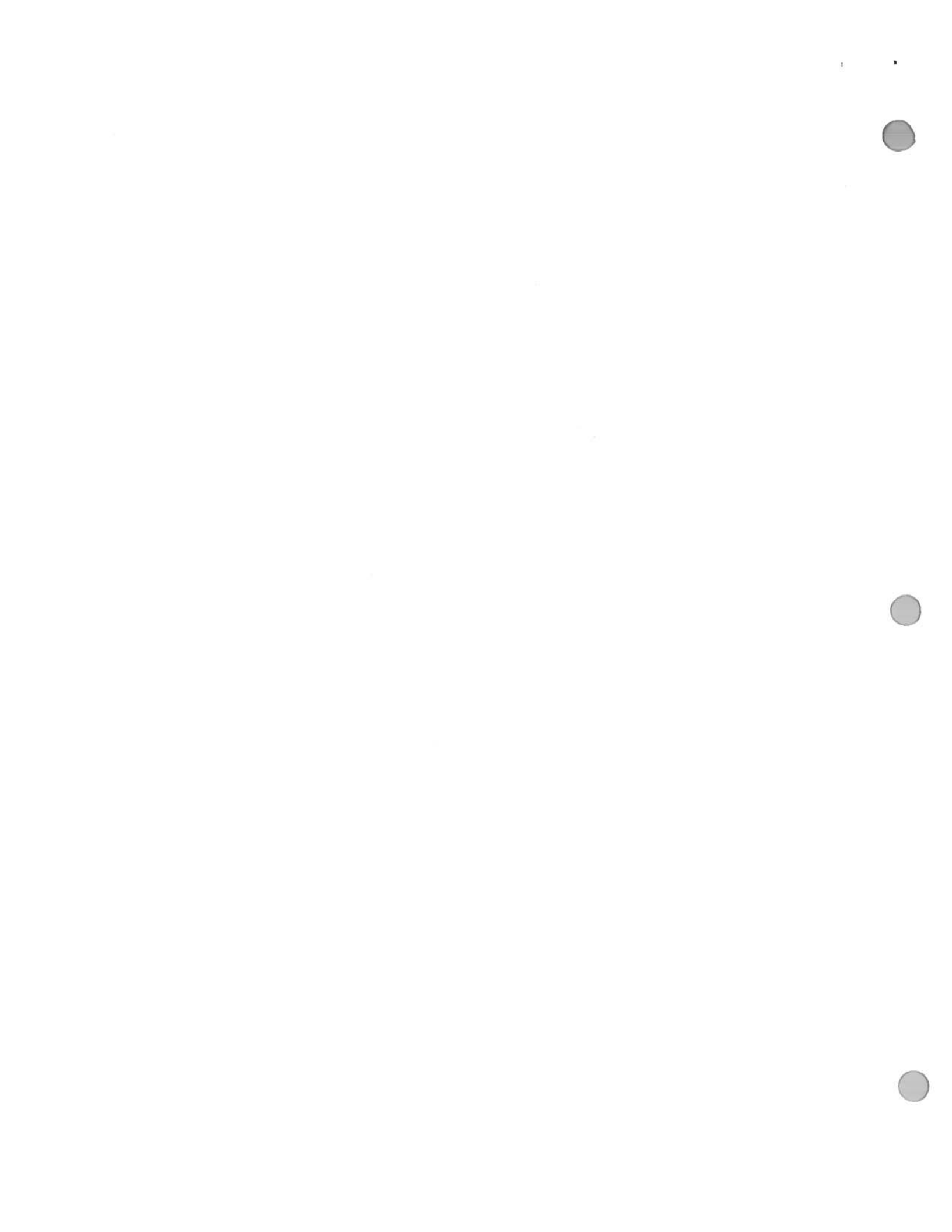
KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Brian Judy
Hon. Matt James
Hon. Rosemary Holbrook
Hon. Edward E. Dove
Hon. Robin Cornette
Hon. John L. Tackett



**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**MARK A. HOLT (Appeal No. 2011-198)
ROBERT A. PICKERING (Appeal No. 2011-200)
PATRICK J. WISE (Appeal No. 2011-201)
And TRASIMOND SOILEAU (Appeal No. 2011-233)**

APELLANTS

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION

And

KENTUCKY PERSONNEL CABINET

APELLEES

** ** ** ** **

This matter came on for an evidentiary hearing on January 21, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Mark A. Holt, was present at the evidentiary hearing and was represented by the Hon. Edward Dove. The Appellant, Robert A. Pickering, was present at the evidentiary hearing and was represented by the Hon. John Tackett. The Appellants, Patrick J. Wise and Trasimond Soileau, were present at the evidentiary hearing and were represented by the Hon. Robin Cornette. The Appellee Kentucky Authority for Educational Television (KET) was present and was represented by the Hon. Brian Judy and the Hon. Matt James. Also present as Agency representative was Ron Brown. The Appellee Personnel Cabinet was not present at the evidentiary hearing by prior arrangement.

The evidentiary hearing was continued on January 22, 23, 24, 27, 28, 29, 30, 2014; March 31, 2014; April 1, 2, 3, 2014; May 22, 23, 27, 2014; June 20, 2014; July 17, 31, 2014; and September 22 and 23, 2014.

BACKGROUND

APPEALS

1. Appellant Mark A. Holt filed his appeal (Appeal No. 2011-198) on September 9, 2011, and checked the boxes for "Dismissal" and "Discrimination." In the narrative portion of his appeal, Appellant stated he was appealing having been terminated because of his age, and in retaliation for reporting illegal activity and safety issues.

2. Appellant Robert A. Pickering filed his appeal (Appeal No. 2011-200) on September 9, 2011, stating he had worked in an atmosphere of harassment and hostility from management, and believed he was terminated in retaliation for his calling attention to safety issues, improper employee behavior and questions imposed as to the ethics and honesty of management decisions. Mr. Pickering checked the box for "Dismissal" on his appeal form.

3. Appellant Patrick J. Wise filed his appeal (Appeal No. 2011-201) on September 9, 2011, stating he believed he was discriminated against by his supervisor, James Rous, and indicated he was also appealing discrimination based upon race, color, sex and age over 40. Mr. Wise's dismissal letter also stated that KET records demonstrated he had 18.92 years of service, and that he may wish to invoke his rights under KRS 18A.130 and KRS 18A.135 by contacting the Personnel Cabinet to be placed on re-employment lists.

4. Appellant Trasimond Soileau filed his appeal (Appeal No. 2011-233) filed his appeal on October 21, 2011, alleging age discrimination in that he was 58 years old and had more experience than the 38-year-old person who replaced him. Appellant also stated he believed he may have been retaliated against under the Whistleblower Act. In Mr. Soileau's dismissal letter, he was notified that KET records show that he may qualify for reversion, since he has 16.33 years of service. He was informed he may wish to invoke his rights under KRS 18A.130 and KRS 18A.135 by contacting the Personnel Cabinet to be placed on re-employment lists.

MOTIONS TO DISMISS

5. KET filed Motions to Dismiss each of these appeals. They alleged the Appellants did not file their appeals within 30 days, as required by KRS 18A.095(9) and

(18)(a). KET stated that the Appellants were unclassified employees at the time of their dismissal without cause on September 9 or 10, 2010.

6. KET contended that KRS 18A.095(29), which is the one year "catchall" statute of limitations for employees who have been penalized, does not apply because the Appellants did receive written notice of their terminations.

7. KET relied on the case of *Martin v. Corrections Cabinet*, 822 S.W. 2d 858 (Ky. 1991) as further support that unclassified employees such as the Appellants claiming illegal action would have 30 days from the date of the action taken to file an appeal with the Personnel Board.

8. In his response to the Motion to Dismiss, Appellant Mark A. Holt contended:

The 30-day rule does not apply because KET did not give me an appeal form, or advise me of my right to appeal; therefore, the one-year rule applies.

Mr. Holt was referring to KRS 18A.095(16)(b), which provides that an appeal form should be attached to any notice of dismissal or other action an employee may appeal pursuant to this statute.

9. Appellant Pickering alleged race and sex discrimination, and stated he agreed with the response of Mr. Holt with respect to KET's Motion to Dismiss. Specifically, he agreed with the argument regarding timeliness, and the failure to advise him of his right to appeal.

10. Appellant Wise agreed that his dismissal letter did not include an appeal form, and, thus, he would have one year to file his appeal to the Personnel Board.

11. In his response to the Motion to Dismiss, Appellant Soileau argued that KET did not properly inform him of his KRS 18A.095(3) rights.

12. Hearing Officer Boyce A. Crocker entered a Recommended Order on January 20, 2012, recommending dismissal of the four Appellants' appeals as untimely. He found their appeals should have been filed within 30 days of their dismissal pursuant to KRS 18A.095(9). He further found that KET should have attached an appeal form to the letter of dismissal, even though the Appellants were unclassified pursuant to KRS 18A.095(16)(b). He stated this failure did not change the fact that the Appellants had 30 days to appeal their dismissals.

13. The Appellants filed Exceptions to the Recommended Order. The Personnel Board also received a Response to Exceptions from KET and heard oral arguments from the parties.

REMAND TO HEARING OFFICER

14. On April 18, 2012, the Personnel Board entered a Remand Order rejecting the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order. The Board's Order is attached to this Recommended Order as **Recommended Order Attachment A**. The Board considered the four Appellants to be unclassified employees who were dismissed without cause. The Board found KET was required to attach appeal forms to their notices of dismissal pursuant to KRS 18A.095(16)(b). The Board further found that the Appellants may appeal these actions pursuant to KRS 18A.095(14)(a). KET's Motion to Dismiss was denied, and the appeals were remanded to the Hearing Officer for further action. The appeals were also consolidated.

15. Following remand, KET filed an additional Motion to Dismiss Trasimond Soileau's appeal, stating he did not meet the one-year filing deadline set forth in KRS 18A.095(29). After reviewing a response from Mr. Soileau and a reply from KET, and hearing oral arguments from the parties, the Hearing Officer denied the Motion to Dismiss. He found the Board had already determined that the failure to attach the appeal form prevented the statute of limitations from starting to run. He also found that KRS 18A.095(29) did not apply, because Appellant Soileau received written notice of his right to appeal to the Personnel Board.

16. In an Order dated November 21, 2012, the Hearing Officer consolidated the appeals (along with two other KET Appellants) and joined the Personnel Cabinet as a party to consider the matter at the December 2012 Personnel Board meeting. Pursuant to 101 KAR 1:365, Section 6(2), the matter was also designated as an Interim Order to be reviewed by the Board (see **Recommended Order Attachment B** to this Order).

17. KET filed a motion with the Personnel Board requesting all the appeals be dismissed. The Personnel Cabinet filed a Motion to Intervene and the Appellants responded. In an Order dated January 2, 2013, the Board denied the Motion to Alter, Amend or Vacate, and returned the appeals to the Hearing Officer (see **Recommended Order Attachment C** to this Order).

18. Following several pre-hearing conferences and discovery requests among the parties, these matters were scheduled for an evidentiary hearing to begin in January 2014. KET filed Motions to Dismiss in all four appeals, which were passed to the merits of the appeals by the Hearing Officer.

EVIDENTIARY HEARING

19. At the outset of the evidentiary hearing, each Appellant, who was now represented by counsel, stated the claims that were being made. Mr. Holt was claiming age discrimination and retaliation. Mr. Wise was claiming age discrimination, race and gender discrimination and that he was illegally classified as a non-merit employee. Mr. Soileau was claiming age discrimination, gender discrimination, retaliation and that he was illegally classified as a non-merit employee. Mr. Pickering was alleging age discrimination, retaliation, race and gender discrimination and a hostile work environment.

20. The parties waived opening statements. The burden of proof on all issues was on the Appellants. The Appellants announced they would put on their cases, and none would rest until all the Appellants rested.

21. **Ron Brown** was called as the first witness. He is the Human Resources Director for KET, a position he has held for approximately five years. He previously held human resource positions for Kentucky State University and Somerset Community College. He has a Master's of Public Administration with an emphasis in Human Resources. Mr. Brown testified he is responsible for Human Resources functions at KET including hiring, training, reports and compliance.

22. With respect to the dismissals in this case, Mr. Brown testified that he was not involved in deciding who to dismiss. He stated this was done by the senior management group, which consisted of the Executive Director Shae Hopkins and the Senior Directors. He identified the Senior Directors as Michele Ripley, Mike Brower, Craig Cornwell, Donna Verhoeven, Tim Bischoff and Julie Schmidt. (Fred Engel and Nancy Carpenter are also Senior Directors.) After they made their selections, Mr. Brown testified he reviewed the personnel files of each of these individuals selected for dismissal to see if there was anything out of compliance. He did not provide the files to senior management, and they did not request them. Mr. Brown is aware that the senior management group had salary information regarding the employees. Mr. Brown was not aware of exactly what criteria the senior management group considered in deciding who to dismiss.

23. Mr. Brown testified that this process came about as a result of budget difficulties within KET. He stated they were forced to eliminate a number of non-critical positions, and to modify the duties with other positions. He referred to this as a re-structuring. He stated this was exacerbated by the number of staff lost prior to 2010 due to retirements and other losses. Specifically, with respect to retirements, he stated they were random and were not evenly spread throughout the organization of KET.

24. Mr. Brown believed that he became aware of exactly who was to be terminated approximately two to seven days prior to the actual dismissals. Mr. Brown worked on their dismissal letters, and consulted with attorneys, including Dan Egbers from the Personnel Cabinet.

25. Mr. Brown knew Mark Holt's name and knew he worked in Transmissions. He stated that as far as he knows, Fred Engel, the Senior Director of Technology, recommended Mr. Holt for dismissal. All of the dismissals associated with this case were not for cause.

26. Mr. Brown was aware that 11 of the 13 who were dismissed in 2010 were over 40 years of age. Mr. Brown testified there were two merit employees at KET who worked in Transmissions. He stated there were two others who had retired in the last few years. To his knowledge, all other employees were hired under the non-merit system as a result of KRS 18A.115(1)(f). He testified that non-merit employees did not receive formal evaluations.

27. Mr. Brown testified that Trasimond Soileau worked in the IT Department. He stated that the IT Department consisted of Mr. Soileau, Matt Bone and Cynthia Lowell. He was aware that Mike Brower had complained about computers not being set up, and Mr. Soileau's name was mentioned specifically.

28. During the time that Mr. Brown worked for KET, Donna Verhoeven was Mr. Soileau's supervisor most of the time. Mr. Brown is not aware of any training that Donna Verhoeven had with respect to computers. He was aware that Mr. Soileau had complained about Donna Verhoeven. Mr. Soileau had concerns about Ms. Verhoeven's management style, which he described as abrasive.

29. Mr. Brown testified that Mr. Pickering's supervisor was Mike Brower. He described Brower as someone who voiced his opinion. Mr. Brown described Mr. Pickering's duties as Set Designer. He testified that, since Mr. Pickering left, sets have been designed at KET by contractors. Mr. Brown testified that no one has been hired to replace Mr. Pickering.

30. Mr. Brown testified that during discovery in this case, there was an allegation that the hard drive on Mr. Pickering's KET computer had been damaged. Mr. Brown was involved in the investigation. They determined that another hard drive was attempted to be destroyed with a hammer and a drill. This was the result of there being over 200 old hard drives that nothing had been done with. Under the retention policy, it was their understanding that these hard drives could be destroyed. After they learned how difficult it was to try to destroy these manually, they decided to hire a professional entity to destroy the hard drives.

31. During the course of this investigation, Mr. Brown testified that they learned that Mr. Pickering's hard drive was damaged with a small divot. It was his understanding that the vast majority of information on Mr. Pickering's hard drive was still available. Mr. Pickering's hard drive was not one of those scheduled for destruction.

32. Mr. Brown introduced documents concerning Mark Holt (KET Exhibit 1), Robert Pickering (KET Exhibit 2), Pat Wise (KET Exhibit 3) and Trasimond Soileau (KET Exhibit 4). KET Exhibit 5 consisted of documents concerning Cynthia Lowell, who was an employee working for the KET Foundation. He described the Foundation as a closely-related entity to KET. Their employees were paid through Foundation funds, and not state dollars. He said the employees worked side-by-side with state employees. Mr. Brown was the Human Resources Director for state and Foundation employees. KET Exhibit 6 was a list of KET employees, including ages, names and start date.

33. Mr. Brown testified that the average age of KET employees was 47 years old before and after the 13 terminations in 2010.

34. **Appellant Mark Holt** was the next witness to testify. Mr. Holt resides in Worthington, Kentucky, which is approximately 10 miles from Ashland. While he was in high school, Mr. Holt took courses in industrial electricity. Following high school, he went to Ashland State Vocational Technical Center, where he studied electronic communications. He was employed with CSX Railroad as a telephone maintainer, and employed in the electronics field since graduating high school. He obtained an FCC Radio/Telephone Operator's License in 1985.

35. Prior to working for KET, Appellant Holt was employed as a Senior Network Technician for Ashland, Inc., and as an Electronic Technician for three employers.

36. In 1999, the Appellant was hired by KET as a Senior KET Broadcast Technician. Mr. Holt was assigned to the Transmissions section. His main duty was to provide maintenance of the television transmitter tower located at Ashland. The Ashland tower was one of 16 transmitters operated by KET. KET also operates an additional five translators. Mr. Holt testified he lived approximately ten miles away from the Ashland tower. He stated that the closest any other employees were to the Ashland tower was at least an hour away. Mr. Holt testified he worked on the transmitter both by himself and with other technicians. He stated he was capable of operating the television transmitter as well as the weather transmitter for KET. He was employed with KET when they switched from an analog transmitter to a digital transmitter. He helped with this installation and also trained on this new equipment.

Mr. Holt knew how to operate the uninterrupted power system (UPS system) as well as the diesel-powered generator. These items were installed to ensure that KET's signal was on the air without interruption, even in cases of emergencies.

37. In 2000, Mr. Holt was promoted to a KET Technical Supervisor. For part of his time, Mr. Holt stated he was a working Supervisor. He stated he had problems with Rick Crider with attendance. Mr. Crider was late a lot, and could not drive to work sites. He also had issues with an employee, Roy Paxton. He stated that Mr. Paxton was a pretty good technician, however, he would not go to schools, would not do work around the shop, and would use the excuse that he did not bring work clothes with him.

38. The Appellant introduced an Employee Evaluation form he received in 2003 from his supervisor, Kenneth Combs. This evaluation indicated he exceeded performance criteria in the areas of job knowledge and skills, quality of work, productivity, improvement in performance and conduct. This evaluation was for 2002. (Holt Exhibit 3.) Mr. Combs remained his Supervisor until 2005. Mr. Holt testified this was the last written evaluation that he received at KET.

39. In December 2004, Bob Ball, another of Mr. Holt's Supervisors, asked that he take over another employee's duties as the school's Technical Services Coordinator. Mr. Holt accepted these additional job responsibilities and performed his duties well. He was recommended for a five percent salary increase.

40. Effective August 1, 2004, Mr. Holt's title was changed to KET Broadcast Technician Specialist with no salary increase. The Appellant was approved for a five percent salary increase effective December 15, 2004. (Holt Exhibit 4.)

41. In 2004, the Appellant's official title was KET Broadcast Technician Specialist, however, his working title was Technical Services Coordinator. Mr. Holt described the duties that he took on as additional duties supporting schools. He served as the liaison with the education programs in the schools. He was responsible for a number of site visits, and provided tutorials to teachers. They also provided news in the classroom. Mr. Holt testified that when he took on the additional duties supporting the schools, he maintained his original duties involving the Ashland site. As a Technical Services Coordinator, he was also responsible for providing technical solutions by phone and e-mail to schools and the general public concerning KET's signal reception, and the operation of KET equipment. Mr. Holt served as a liaison with cable and satellite providers to solve problems so that KET programs could be delivered to their customers. Mr. Holt also provided advice to schools, coordinated field efforts for conversion from satellite to DTV reception of KET programs at the schools, and

consulted with technical field staff for solving school system problems. (KET Exhibit 1, page 7.)

42. In September 2010, at the time of his dismissal, Mr. Holt was 50 (he turned 51 in November). He stated that he learned around that time that KET was going to stop supporting the schools. He stated that he still had a full week's worth of duties without his school activities.

43. Following his dismissal, Mr. Holt stated that Roy Paxton and Rick Crider were both still employed in the Eastern Region. He stated that Paxton was considerably younger than he, and did not have the years of experience that Mr. Holt had. Mr. Crider did not have an FCC license, and did not have formal electronics training. Mr. Holt testified that having an FCC license was a requirement when he started with KET, however, it was dropped after a while. He stated that the other employees had to work under someone who had a license. He stated that besides himself, Bill Joseph and Ken Combs had FCC licenses. Mr. Holt did not think that Crider or Paxton had the knowledge or experience that he did. Mr. Holt considered himself to be an excellent employee. Mr. Crider had all kinds of problems as an employee. Bill Joseph and Donna Verhoeven were aware of these problems.

44. Mr. Holt is now employed with the Boyd County School system as a Maintenance Technician. He maintains their computer system.

45. Mr. Holt believes he was dismissed from KET because he was older than the other individuals who were kept following the dismissals. He also believes it was in retaliation for having complained about problems with other employees' time and attendance, and having complained about the road to his work site, which he believed was unsafe. He stated that after he made this complaint, his state car was taken away. He also felt there was erosion of the foundation by the Ashland tower.

46. As far as his safety concerns, the Appellant testified that he informed his supervisor, Ken Combs, about these. He stated that Mr. Combs' instruction was to "keep it in the zone," and not to take these concerns to Lexington.

47. When Mr. Holt learned that he had been dismissed, he was devastated. He felt he had built up the Ashland site, and he had planned to continue working until it was time to retire from KET.

48. **Shae Hopkins**, the Executive Director for KET, was called as the next witness. She was promoted to Executive Director on January 1, 2010. She previously served as the Deputy Director for Programming and Production, under Executive

Director Mac Wall. She started with KET in 1986. She has experience with development and production.

49. Around the timeframe of 2010, KET was experiencing some serious budget cuts. Over the course of several years, KET sustained budget cuts totaling 26%. Ms. Hopkins testified that 60% of KET's funds come from state appropriation. She estimated that 15% comes from the Commonwealth Fund for KET, and 15% comes from the Corporation for Public Broadcasting. The remainder comes from miscellaneous sources.

50. During 2010, KET also received stimulus funds from the federal government in the amount of \$248,582.10. This was a one-time appropriation, and Donna Verhoeven had the responsibility to spend these funds on operating expenses.

51. Ms. Hopkins testified that during 2010, there were discussions concerning restructuring at KET. She stated that a number of "critical needs" where positions needed to be filled were identified. The vacant positions were the result of a number of factors, including ten employees being terminated in 2008, five other positions being eliminated and approximately 40 retirements. As a result, in 2010, Senior Directors within KET were given the responsibility of reviewing positions within their section, and identifying those which could be recommended for termination. The Senior Directors (identified by Ron Brown in Paragraph 22), together with Ms. Hopkins, held a series of meetings in the summer of 2010 to develop a list of positions to eliminate. The list was presented to the KET Authority Board for final action.

52. Ms. Hopkins stated that the purpose of the meetings was to identify critical positions to fill and to eliminate others by way of budget cuts. She stated that alternatives to termination, including cutting costs were attempted. She stated that \$200,000 was saved by eliminating the Kentucky Fund for Independent Productions. She also stated that there were some savings from cutting utilities at KET. In 2010, there were not many raises at KET, however, some employees receive raises as a result of promotion. Ms. Hopkins stated that there were cubicles which were added in 2010, although she does not know the cost of these additions.

53. Wise and Soileau's Exhibit 6 were Ms. Hopkins' special meeting notes. These notes included the following statement:

Over the last several months, we've conducted an extensive internal review of every position, and assessed skills and structures - in order to determine what strategic adjustments were needed to best align our resources and workflow to support our core services.

54. Ms. Hopkins then proceeded to inform the KET Authority Board of the restructuring plan. In addition to 13 dismissals, Ms. Hopkins identified positions that could not be filled internally, seven positions funded by grants that were being moved to full-time staff and 14 promotions. She estimated an annualized savings of approximately \$144,000.

55. Ms. Hopkins testified that she knew that 11 out of the 13 who were terminated in 2010 were over 40 years of age. She stated that the majority of KET's workforce was also over 40.

56. Ms. Hopkins did not remember specifically when Mark Holt's name was brought up regarding termination. She stated she was aware that Mr. Holt worked in Transmissions, and that he assisted with the schools and was involved with transmitter maintenance.

57. Ms. Hopkins stated she was not aware of Mark Holt's work history or training. Likewise, she stated the same with respect to Rick Crider. Ms. Hopkins testified that she was not aware of timesheet problems or attendance problems with other Transmission employees. She was also not aware that Mr. Holt had an impeccable record. She stated that she followed the recommendation of Fred Engle, the Senior Director of Technology.

58. Ms. Hopkins stated that her understanding was that Mark Holt's position was eliminated because a large part of his responsibility was going away because KET was no longer supporting school services. She does not recall any discussion at her level with Senior Directors about getting rid of someone less qualified than Holt. She stated that if such a discussion were held, it would have been between Fred Engle and Curtis Harper.

59. Ms. Hopkins identified a document which she believes was prepared by Donna Verhoeven, which was used during a restructuring discussion among the Senior Directors. From this document, it appears that Mark Holt's name was not on the list of non-essential positions on June 14, 2010. Ms. Hopkins identified some notes referencing Mark Holt's name, however, she could not offer any insight as to the meaning of these notes. Ms. Hopkins stated that David Crider, Rick Crider and D. Smith were the names listed as of June 14, 2010, as non-essential positions from the Transmission Section.

60. Ms. Hopkins identified Joint Exhibit 1, page 50, as a document prepared by Donna Verhoeven, dated August 19, 2010. This document listed Mark Holt under non-essential positions from the Transmission Section. It also stated that the fiscal impact of his firing would be \$61,000. This figure included salary and fringe benefits.

61. Ms. Hopkins stated that the proposed dismissals were presented to the meeting of the Kentucky Authority for Educational Television Board Meeting on September 9, 2010. These dismissals were approved by the Authority Board. She stated that the Authority Board met in a special meeting that day at 6:00 p.m. She is aware that the dismissal letter for Mark Holt was dated September 9, 2010.

62. Ms. Hopkins testified that there was paperwork generated from the Senior Directors' meetings for the dates of June 14, 2010; August 17, 2010; August 19, 2010; August 26, 2010; and September 9, 2010. (Wise and Soileau Exhibit 3.) She stated that in June 2010 there was some discussion of getting rid of a maintenance position at Bishop Lane in Louisville. Some names were on the list on June 14, 2010, and remained on the list, including Trasimond Soileau and Robert Pickering. On August 17, 2010, one name was added to the list, going from ten to eleven. Mr. Wise was not on the list on June 14, August 17 or August 19. On August 26, 2010, there was a list with 12 positions that did not include Mr. Wise. Finally, Mr. Wise was included on a second list prepared on August 26, 2010.

63. Ms. Hopkins had no recollection why the maintenance position occupied by Mr. Wise was added to the list so late. She understood Mr. Wise was recommended for dismissal because of a bad attitude and unwillingness to work on the new digital equipment.

64. Ms. Hopkins stated that she did not recall any discussion of Trasimond Soileau's education background or work history. She stated that several of the Senior Directors discussed that he did not have the skills of the other IT staff. She specifically identified Fred Engle, Mike Brower and Donna Verhoeven, and possibly others. Mr. Soileau had been supervised by Donna Verhoeven until Fred Engle was hired, at which point Mr. Engle became his Supervisor.

65. Ms. Hopkins acknowledged that in a response to an interrogatory KET identified Craig Cornwell as someone who had issues with Soileau providing IT support. She described Soileau as having trouble prioritizing his work. Ms. Hopkins stated that Mr. Soileau had been able to fix her computer, however, she felt he was rather slow. She stated that Mr. Soileau's request for network training had been denied in 2008. She stated that Donna Verhoeven was frustrated trying to work with Soileau. She stated that Mr. Soileau provided basic support for IT. She also described Donna Verhoeven as abrasive and condescending.

66. Ms. Hopkins stated that Mr. Soileau was compared to Matt Bone and Cynthia Lowell as other IT employees. She stated that they did discuss other alternatives, such as putting Soileau in a different role, or reducing his salary, so that it was more commensurate with his skills. Ms. Hopkins acknowledged that Soileau had

the highest salary in IT, and was the oldest. She testified that Matt Bone was considered for termination. He did have some job performance problems. Ms. Hopkins described Soileau's position as "non-essential as filled."

67. Ms. Hopkins acknowledged that Soileau was never disciplined, and he was well-liked by other employees. In 2010, he was assigned to work user support. She testified that Donna Verhoeven had a business and budget background, and she is not aware of any particular background in IT. Ms. Hopkins was aware that Mr. Soileau had raised complaints to the KET Authority Board about Donna Verhoeven. She was not aware of these until she saw the information in providing discovery in this case.

68. Ms. Hopkins testified that Robert Pickering was recommended for termination by Mike Brower. She stated Mr. Pickering was recommended for dismissal because there were no more full-time scenic designers in public television. She stated she learned that Nebraska Public Television and Nashville Public Television also did not have full-time scenic designers. She also made an inquiry of state network administrators and learned no one had a full-time scenic designer. She stated that agencies contracted the work out when it needed to be done. That is what KET has done since Mr. Pickering's dismissal.

69. Ms. Hopkins testified she was also aware that Mr. Pickering performed duties as a Studio Manager. She stated these are essential duties which have to be performed, however, they do not constitute a full-time job. She stated that other members of the crew have taken over these duties since Mr. Pickering's dismissal.

70. Ms. Hopkins testified Mr. Pickering took over lighting duties after Don Dean, the former Lighting Director, retired. She stated that other staff members have taken over these responsibilities following Mr. Pickering's dismissal. Ms. Hopkins did not believe that the combination of Set Designer, Studio Manager and Lighting Director would constitute a full-time position at KET.

71. Ms. Hopkins testified that over the years she was aware of the fact Mr. Pickering and Mike Brower did not get along. On occasion, she had referred them to Ron Brown for his assistance in resolving issues between the two.

72. Ms. Hopkins testified, regarding the Studio B project. She stated the original idea was to build a permanent set for Studio B for use of public affairs broadcasts for KET. The project went on for years, and there was frustration that they could not reach an agreement on a design. She stated Mike Brower was in charge of the project, and Mr. Pickering was in charge of putting together a design for the studio. She stated that Mr. Pickering had to come up with a design that satisfied multiple parties. Ms. Hopkins was extremely frustrated at the lack of progress and the length of time it

took to complete this project. The project was completed by a contractor after Mr. Pickering was dismissed. The set that was built to fit in Studio B was too large and had to be placed in Studio A. Ms. Hopkins stated she felt the set should have gone in Studio A all along.

73. Ms. Hopkins testified that Nancy Carpenter spoke up during the meeting with the senior directors. She was in favor of keeping Mr. Pickering, as she thought she would need his expertise with scenic support for the GED program. Carpenter felt that Mr. Pickering's work would be essential for this project. Nonetheless, the senior directors, as a group, felt that Mr. Pickering's position was non-essential; he was recommended for dismissal and dismissed.

74. Ms. Hopkins testified that on occasion there was tension between Mr. Pickering, as Studio Manager who did not want to have events in his studios, and the Development Director, who liked to have fundraising events in the studio. Ms. Hopkins liked to rely on the Fire Marshall for determination as to the number of people allowed to attend such an event safely.

75. Ms. Hopkins stated she did not know if Mr. Pickering was ever disciplined. She stated she had an open door policy and employees were free to use the Ombudsperson program, as well. She stated she would not expect an employee to be disciplined for raising concerns regarding safety issues with their supervisor.

76. Ms. Hopkins did not recall any discussion of hiring a Studio Manager in the future, or specifically, in January 2011. Ms. Hopkins stated Mr. Pickering was the only production employee who was dismissed in 2010.

77. Ms. Hopkins denied there was a climate of fear and intimidation among the staff in 2010 or at the time of the hearing. She stated that in her experience people did not want to get involved in things like this hearing.

78. During Ms. Hopkins' testimony, an issue came up regarding a letter dated March 12, 2013, sent to individuals identified on Jim Witt's witness list.¹ The letter was admitted into evidence as Wise and Soileau Exhibit 7 (hereinafter "the letter"), and is attached to this Order and incorporated herein as **Recommended Order Attachment D**. All three Appellants' attorneys alleged that witnesses were not coming forward for fear of retaliation from KET. They considered the letter to be part of the pattern of

¹ Jim Witt (Appeal No. 2011-197) and Tom Boone (Appeal No. 2012-127) were the other two KET employees dismissed in September 2010 who challenged their dismissals with the Personnel Board. In March 2013, all six appeals were consolidated. The appeals filed by Witt and Boone were later separated and have already been decided by the Personnel Board. 2014 WL 219026 (KY PB).

intimidation of witnesses. The Hearing Officer set aside time at the start of the next day of hearing for the parties to discuss this issue. Ms. Hopkins testified about this letter later in the proceedings.

79. Following the conclusion of Ms. Hopkins' testimony, counsel and the Hearing Officer had a lengthy discussion regarding the letter. Appellants' counsel were given the authority to contact any Appellee's witness, without notifying KET counsel, as allowed by law. In addition, KET was required to identify the portion of the letter which was not drafted by the attorneys. The letter, which had the name of Matt James, Assistant Attorney General, was not on any type of letterhead and was sent in a KET envelope. It was not signed by Matt James, although his name was at the conclusion of the letter. Counsel for KET stated they did not authorize the letter to be sent out. All the recipients of this letter were sent a second letter on order of the Hearing Officer, clarifying some of the issues in the letter. The recipients were instructed to contact the Hearing Officer if they had concerns. No such contact was made during the pendency of this matter. The issues regarding the letter were raised with witnesses as the hearing progressed.

80. **Mike Howard** was employed at KET from 1980 through May 2008, when he retired. When he retired, he was a Systems Integration Purchasing Specialist. He purchased for Master Control, Jim Rous and Engineering.

81. He testified he worked with Patrick Wise. He stated that Mr. Wise was a skilled worker. Mr. Howard was involved in the transition from standard definition to high definition. He selected Mr. Wise to work with him on this project. He stated Mr. Wise was always helpful. He stated that Mr. Wise built the studio in Somerset in 1999. The quality of his work was very good. He stated that Mr. Wise was one of the top guys in the Maintenance Department, along with Paul Sprester and David Threlkeld. He testified that Wise could do digital work. He never knew Wise to refuse to do any work. He never saw any problems with Mr. Wise's attitude or work ethic. He summed up by saying, "If Pat Wise worked on a project, it would be done right and you knew he would do a good job."

82. Mr. Howard testified that he knew Trasimond Soileau from working with him. He was shocked to hear that he was fired. He never had any trouble with Mr. Soileau; found him personable and stated he would take care of any computer problems they had. He never heard any concerns about Mr. Soileau's work.

83. Mr. Howard testified that he was familiar with Robert Pickering, and that he was a take-charge guy and always working. He knew that his work was good and there were no complaints about his work. He was shocked to hear he had been fired.

84. Jim Rous was retired from KET. He worked for 26 years, from 1986 through 2011, and at UK before that. He started as a merit employee, as a senior level Technician. Approximately 15 years later, he took a position as a Supervisor. At the time, he had to give up his merit status and become non-merit in order to get the Supervisor's position. He stated that this became the practice at KET shortly after he started. Many employees who were merit when they were hired had to give up their merit status in order to take any type of a promotion. At the time of his retirement, he identified Chuck Burgess as the only remaining merit employee in the KET building in Lexington.

85. As Maintenance Supervisor, a position he took over in 1999 or 2000, he was a working Supervisor. He was responsible for scheduling and handing out work orders. He was Patrick Wise's Supervisor the entire time Mr. Wise worked at KET. Mr. Rous described Pat Wise as very skilled. He stated that anything you could throw at Mr. Wise, he could fix. He described Wise as "the top in the shop." He stated that Mr. Wise already had experience from UK before he came to KET.

86. Mr. Rous testified that KET was mandated to go from analog to digital transmission. They worked with a contractor, Roscor, who installed the equipment. He stated this was a huge project, and took quite some time. He stated that Roscor would install equipment and the Maintenance Department would have to figure out how to operate and maintain it. Rous described working on this conversion as a joint effort from among the entire Maintenance staff. He stated that the entire Maintenance staff had a major learning curve on this project.

87. Rous testified that Mr. Wise and Scott Gabbard went to a school in Oregon to learn about the K-2 server. Rous stated that these two were selected because Gabbard was very much into computers and Wise had more seniority and experience than anyone in the shop.

88. Rous denied that Wise ever said that he did not pick anything up in the class. He also denied that Wise ever refused to work on the digital equipment or demanded more money to work on digital equipment. Rous also denied that he ever said that Wise made any of these statements. Mr. Rous stated he thought the source of these statements was probably Mike Brower, who had served as an Interim Supervisor over the Maintenance Section after Rick Melton resigned and before Fred Engle was hired.

89. Mr. Rous testified that Mike Brower would not be in a position to assess Mr. Wise's work. He stated that Mr. Brower did not have the technical ability to understand Wise's work. He also stated that when he was Supervisor over the Maintenance Section, Brower had very little contact with Rous and his staff. Mr. Rous

stated that Fred Engle probably had the ability to understand the work Wise and the others were doing, however, he did not have enough time in the few months he served as Wise's supervisor before the terminations. Rous stated that Engle had a lot on his plate at this time, taking over supervisor of multiple sections of KET.

90. Rous testified that employees in Maintenance were cross-trained. He stated that in order to know how to fix equipment, it was helpful to know how to operate the equipment. He stated that, in addition, they were sometimes shorthanded in Master Control or Ingest, and Maintenance employees would be called on to fill in. Rous specifically stated that Wise was cross-trained to work in Master Control.

90. Mr. Rous described Mr. Wise as quiet. He said no one had a better work ethic in the shop. He stated that Wise was topnotch. He stated that no one could compete with Pat Wise's installation work, which looked like a factory harness. Wise had worked installations in Frankfort, Somerset, and Louisville. In addition, he would work overtime or midnights; anything that was needed. Rous stated he never said he could not get any work out of Pat Wise. He stated that no one who knew Wise would say anything like that. Pat Wise worked on the K-2 server. Mr. Rous never told anyone that Pat Wise was distant.

91. Mr. Rous stated that he found out about Mr. Wise's termination when he received a call on his day off from Fred Engle. He stated he was really surprised. When he came in on the following Monday, he asked Mr. Engle for an explanation, and Mr. Engle gave no comment. Rous stated that if he had been asked for his input, Pat Wise would have been the last one he would have recommended for firing in his department.

92. Mr. Rous thought it was a real problem that at KET there was no written information regarding an employee's work performance. He stated there was no documentation at KET regarding how well employees did. He stated that back when he was a merit employee, there were performance evaluations every year. At the time he retired and the time of these firings when almost all employees were non-merit, nothing written was produced regarding an employee's performance.

93. Rous testified he received the letter. He stated that it was upsetting to him. He did not understand why KET might be furnishing him with an attorney. He stated he left in good standing and did not know why he would be reporting something to KET at this time. He was aware that Rick Melton and Rhonda Jasper Marks had also received the letter.

94. Mr. Rous stated that prior to his termination, no one ever consulted him about Mr. Wise's job skills, work performance or his ability to work on the digital conversion. Mr. Rous stated that Pat Wise could do Jerome Johnson's job. He identified

Mr. Johnson as a Master Control employee who was African-American and had been disciplined for "stealing time."

95. Mr. Rous testified that he worked with and knew Mr. Soileau. He had no problems with Mr. Soileau and heard no complaints. He stated that Mr. Soileau took care of the computer needs of the Maintenance staff. He contrasted this with Cynthia Lowell, who would come and review a problem, and then would have to leave and consult with Matt Bone or Tras Soileau as to what needed to be done.

96. Mr. Rous did not know Mark Holt, but stated he knew Mr. Holt remained in the Transmission Section after Donnie Land was hired. He stated Mr. Land cleaned house, and Mr. Holt survived this, so he must have been a good worker.

97. Mr. Rous stated he was familiar with Robert Pickering for his studio work, design work and lighting. He stated he found Mr. Pickering to do excellent work and he was very professional. He stated that Pickering had a good work ethic, and the quality of his work was excellent. He never heard any complaints. He was aware that Mr. Pickering could do camera work and other work. He stated the lighting work that Mr. Pickering used to do is now being done by Kelly Campbell, who was in his 30's, and George Murphy, who was in his 50's. Rous stated that Pickering and Mike Brower often clashed.

98. Mr. Rous stated he spoke with J. R. Pemberton, an employee at KET, who told him he was not going to testify. He stated that he did not want any part of this matter. Mr. Pemberton stated he did not have any type of problem with Mr. Pickering, but he had a family to support.

99. After Mr. Wise was fired, no one replaced him. Later Kevin Wooten, who performed maintenance in Louisville, was also fired. After Mr. Rous retired, Paul Sprester was promoted to take his place, and they hired a new employee.

100. **Appellant Patrick Wise** was employed as a Maintenance Engineer from October 1, 1991, until his firing on September 9, 2011. He was responsible for maintaining all broadcast equipment. He was 57 years old when he was fired and 60 at the time of his testimony. Mr. Wise had performed similar duties for the University of Kentucky television and The Learning Channel since 1979. He had experience operating, maintaining, adjusting and repairing television studio and remote electronic equipment. He had also supervised Master Control and Operation Engineers. At his previous employment, he had also been responsible for providing training and guidance to other employees.

101. When Mr. Wise was hired at KET, he was hired into a non-merit position. He was hired by Jessie Holbrook. In later years, Jim Rous was his supervisor and Rick Melton was his second-line supervisor. The last few months of his employment, Fred Engle was his second-line supervisor.

102. Mr. Wise worked at KET when they went through the conversion from analog to digital in 2007 and 2008. This conversion was mandated by the Federal Communications Commission. During this first phase of the conversion, Mr. Wise worked closely with Michael Howard.

103. Mr. Wise also testified regarding the final phase of the conversion starting in 2008 when Roscor installed equipment for high-definition digital. He described it as a difficult transition where Roscor would install things and the maintenance engineers would have to figure out a way to stay on the air and learn the new equipment. Mr. Wise testified they were given materials to read and study on their own. They also received a little training from Roscor. In 2009, Mr. Wise attended formal training in Oregon regarding the K-2 server. Mr. Wise attended this training with Scott Gabbard. He believes he was selected for this training because of his experience in the first phase of the conversion. Mr. Wise did not recall saying he did not get anything out of the training. He testified that their instructor was very intelligent, and gave a mixture of theory and hands-on use of the equipment. Mr. Wise testified that the hands-on portion was important to him, as he felt it was necessary to see the way things actually work together in order to learn the new equipment. After they returned from this training, Mr. Gabbard did more of the work on the software, and Mr. Wise did more work on the hardware and some of the software work. He checked this equipment daily in what he described as the "core of KET." He stated that all the electronic equipment could be controlled from this area. Mr. Wise said he was in the core every day, monitoring the K-2 server.

104. Despite Roscor's involvement, Wise testified they had to do their own installations regarding the distance learning project. This project was on-going and not completed at the time he was fired. Once the equipment was installed, they received minimal support from Roscor, and often had to deal with the manufacturer. Wise worked on a system that backed the K-2 server. He stated that they had multiple systems similar to a bank, so that even if some equipment failed, they could stay on the air. He stated that, in addition to monitoring the digital equipment every day, he dealt with legacy equipment, including tape machines and DVD recorders. He also worked involving the library of tapes, which continued to have to be maintained.

105. Wise was cross-trained to work in Master Control and Tape Ingest. He described this as taping programs sent from PBS and trimming them for broadcast. Wise testified that he worked some shifts in Master Control. He felt he could do the

jobs in that area. In addition to being available to work in that area, another advantage of being cross-trained was that it helped to be able to know how to operate and maintain the equipment. Wise also had experience supervising the Master Control Unit at The Learning Channel.

106. Wise denied that he ever said he did not want to work on the digital equipment or that he would not do this work without being paid more money. He testified he did a considerable amount of work on the digital equipment. He stated he did not really work with Fred Engle, and saw him occasionally in the shop. Wise testified he was available to work overtime whenever they needed it and in fact received a Block 50 payment sometime in 2008 or 2009. He said this occurred during the digital conversion and while he was performing work in Frankfort.

107. Wise testified he never refused to do any digital work. He never received any complaints from Rous, Engle or Brower about his work. He does not recall sitting down doing nothing when Mr. Engle saw him. He stated that if someone saw him like this, it could be because part of the job of troubleshooting is thinking and trying to figure things out. He said he often proceeds carefully. He stated the work they do is not like working on a lawnmower.

108. Mr. Wise stated he attended Engineering staff meetings and meetings of all staff. He did not consider himself to be distant during these meetings, nor did he hear any such complaint from any supervisors.

109. Mr. Wise stated that he was the oldest in the Maintenance Engineering section, and the highest paid, other than Jim Rous.

110. When Wise was fired, he described it as a "shock" to him. He stated he could maintain the digital equipment, and was learning more every day. He stated this was a major change, and that no one was an expert on the equipment when he was fired. He thought his strengths were working on the K-2 server, all the legacy systems, including tape machines, and general maintenance.

111. Mr. Wise stated he knew Bob Pickering, and he thought he was very qualified and very impressed with his work. He described Pickering as conscientious. He kept his job area clean and orderly. He felt Mr. Pickering was always busy, either as a Lighting Director, Set Designer or Studio Manager.

112. Fred Engle testified that he was the Senior Director of Technology at KET starting May 2, 2010. Previously he had worked with Roscor from 2007 through 2009. This was the contractor involved with KET's digital conversion. Prior to that, he worked 28 years for a television station in Chicago. When Engle started at KET, he was

responsible for supervising a total of 53 employees. As the Senior Director of Technology, he supervised Maintenance Engineering, Transmissions and IT, as well as other sections. As a Supervisor, he was involved in recommending the dismissal of Appellants Wise, Soileau and Holt. He was also involved in recommending the dismissal of 11 of the 13 employees fired in September 2010.

113. Engle has a Bachelor of Science in Broadcast Electronic Technology and an Associate Degree in Radio-Television Services. He has extensive manufacturing training. He described Roscor as a systems integration and media and electronics dealer. He was the Vice President of Broadcast and served as a liaison to the sales staff, assisting with the coordination of bids, including the request for proposals on the KET digital conversion project. He also worked for WTTW in Chicago as the Vice President of Technology, a job that was very similar to his duties at KET.

114. Before his first day of work, Mr. Engle received an email from Mike Brower, who had temporarily supervised some of the areas Engle would be taking over. Mr. Brower gave his assessment of some of the employees and recommended dismissal of others.

115. Engle testified he started work on May 2, 2010, and attended a Senior Directors' meeting the next day. These meetings were scheduled for every Tuesday. He stated that the Senior Directors attended these meetings unless they were unavailable. A number of things were discussed at these meetings, including a restructuring that involved identifying critical needs and positions which were not needed.

116. The IT Department was supervised by Donna Verhoeven prior to Mr. Engle's arrival. He testified that the IT Department consisted of Tras Soileau, Matt Bone and Cynthia Lowell. Mr. Engle testified that Mr. Soileau was mainly involved with desktop support. He stated that Matt Bone performed the high-end network administrator duties on computers and assisted Soileau with user support. Cynthia Lowell worked part time in IT and part time for the KET Foundation. Engle's observation was that Ms. Lowell was a self-starter and had very strong organizational skills.

117. Although he had only started on May 2, 2010, Mr. Engle stated he felt comfortable recommending Mr. Soileau for dismissal as early as June 14, 2010. Mr. Soileau was the highest paid employee in the IT Department, and was not considered to be a strong performer. Several other members of the Executive staff stated they did not want him to work on their computer, including Shae Hopkins, Craig Cornwell and Donna Verhoeven. He stated there were a large number of computers that were sitting there uninstalled. Engle stated he had to get help from Transmissions to set up these

computers. He also felt that KET was hampered with cumbersome, non-compatible, over-lapping email systems, which were not being addressed. Mr. Engle's assessment was that firing Tras Soileau would have little impact on the performance at KET. Nonetheless, he felt there was a need for an additional employee in IT at KET.

118. Engle acknowledged, upon his arrival at KET, Mr. Soileau asked for training, a request that Mr. Engle never responded to. He does not recall Mr. Soileau complaining that Mr. Engle never gave him any work assignments. Mr. Engle has a vague recollection that Mr. Soileau sent him a lengthy email, however, he did not recall reviewing the attachments, which included Mr. Soileau's resumé. (Trasimond Soileau Exhibit 10.)

119. Engle testified other options were considered, including reducing Soileau's salary or finding him another role at KET. He testified that the other divisions could not absorb Mr. Soileau.

120. Engle acknowledged that Matt Bone had some performance issues as an employee. There were concerns about the accuracy of his time reporting; that he was working on non-KET projects at KET on work time, and he could not get along with other staff. Engle provided Mr. Bone with a memo of concern, recommending improvements for his work performance on January 25, 2011. This memo referred to concerns of a former supervisor of Bone's (meaning Donna Verhoeven). Engle stated that Mr. Bone was a highly skilled employee who was critical to KET's IT needs, who sometimes lacked focus. He stated that the purpose of his memo was to get Mr. Bone back on track. He stated that it was successful. He acknowledged that Mr. Bone and Cynthia Lowell had some problems getting along, in general. He testified that, in his opinion, the IT situation improved after Mr. Soileau's dismissal. (Wise and Soileau Exhibit 11.)

121. Mr. Engle received a report from Ms. Verhoeven that Mr. Soileau's work performance was questionable. She specifically stated she did not want him working on her computer. Mr. Engle was not aware that Mr. Soileau had made complaints about Verhoeven to KET Authority Board members. He also was not aware that Soileau and Bone had asked Verhoeven about obtaining a new email system. Engle did not have any information about Verhoeven's computer skills.

122. Mr. Engle was also in charge of supervising the Transmission Section. Curtis Harper was the Director of Transmissions. He was located in Murray, Kentucky. He also had Supervisor Bill Joseph covering the eastern half of the state from Morehead, as well as another supervisor in Madisonville. Mr. Engle testified that KET was responsible for 16 transmitters and four translators. Engle testified that Transmissions had 23 employees prior to the terminations. The list from the Senior Directors' meeting

of June 14, 2010, does not include Mark Holt's position or name, but does list three Transmission positions for dismissal. Several of the directors took notes, which included mention of Mark Holt's name as the School Coordinator or that he was responsible for viewer tech calls. (Joint Exhibit 1, pages 24 - 39.)

123. Mr. Engle testified that he reached out to Curtis Harper as his supervisor, and discussed Mr. Holt and the other Transmissions employees. With respect to Mr. Holt, he learned that his primary responsibility was coordinating the education program with schools and providing technical services for the schools. Mr. Engle stated it was clear early on that a number of cuts in Transmissions were needed.

124. A spreadsheet for the August 17, 2010 Senior Director's meeting included Rick Crider as one of three Transmission employees identified as a non-essential position. Several Senior Directors crossed out Rick Crider's name and wrote in Mark Holt. (Joint Exhibit 1, pages 40 - 43.)

125. Mr. Engle testified that he did not review the credentials of the Transmission employees. He was not sure who had FCC licenses. He stated that used to be a requirement to work in this field, but was not anymore. Mr. Engle was not aware of Mr. Holt's complaints regarding safety of the Ashland tower, other employees carrying guns on school property, or other employees having problems with time and attendance.

126. Mr. Engle testified he was not sure if the recommendation to dismiss Mr. Holt came from Curtis Harper or from Shae Hopkins, during a Senior Directors' meeting. Ms. Hopkins pointed out that they had stopped providing services to the school, and were not taking these calls anymore. Because they were not supporting the schools, they could not afford to maintain this position. Mr. Engle did not conduct any kind of review of the possibility of Mr. Holt performing the duties of Rick Crider, Dave Crider or Roy Paxton, the other employees in the eastern part of the state. Mr. Engle stated it did not matter that Mr. Holt made the most money of the Transmission employees or that he was closest to the Ashland tower.

127. Engle recommended four Transmission employees plus Rhonda Jasper Marks (from that section) for dismissal. All were dismissed in September 2010. Since then, other positions have been lost due to retirements, resignations and death. These positions have not been filled, and now there are 15 positions in Transmissions. Mr. Engle was not aware of any complaints regarding Mr. Holt's work.

128. Mr. Engle testified that early on he received input from Mike Brower regarding Pat Wise in Maintenance Engineering. Mr. Brower provided him with a spreadsheet which had the following quote regarding Pat Wise, "General Engineer,

sometimes attitude problems; won't take on new duties without new pay." (sic) Brower stated that Wise was not engaged as the other employees in the digital conversion project. Engle testified that Rous also told him that Wise would not do anything, and he could not get any work out of him. Engle testified that he personally observed Wise as he walked through Transmission not working. Engle was not aware of Wise working on the new system. He only repaired the old analog equipment.

129. Engle testified that he never specifically asked Jim Rous who he should terminate. He stated that Rous would have told everyone in his section. All he got from Rous regarding his employees was a general evaluation. Engle's impression was that Wise's strengths were with the older technology; that he did not get anything out of going to the K-2 training.

130. Engle stated that early on in the process he thought it would be Kevin Wooten's position that would be eliminated. He was an Engineer who worked in Louisville. The Louisville equipment was old analog equipment which broke down frequently. Engle changed his mind and felt they needed Kevin Wooten in Louisville to repair this outdated equipment, and that Wise would be the choice to fire. Engle did not think it was feasible to have anyone else do the work in Louisville due to the driving distance.

131. Mr. Engle testified there are currently eight people in Maintenance, and Mr. Wise was not replaced.

132. Mr. Engle testified he was not aware of an extensive review of every position in KET. Specifically, the only employee he recalled being discussed in the meetings by Mike Brower in Production was Bob Pickering. The reason his position was recommended for termination was the position was no longer necessary. He does not recall any discussion of hiring a Studio Manager in six months.

133. Mr. Engle was aware that Larry Grizzle had reviewed videotapes with Bob Pickering and told him this was inappropriate. Mr. Grizzle no longer has access to videotapes. Mr. Engle and Ron Brown have this access.

134. Mr. Engle testified that KET had approximately 200 hard drives in storage and no specific policy for their destruction. He asked two employees to destroy one of the hard drives designated as 109. They discovered this process was too hard, and decided to contract this process out. Around this time, they learned of an allegation that Bob Pickering's hard drive had been intentionally damaged. Mr. Engle did not know what happened to Pickering's hard drive, and stated he did not conduct the investigation into this matter.

135. **Mike Brower** is the Senior Director of Production for KET. Mr. Brower has a Bachelor of Fine Arts, Master of Arts and Master of Fine Arts degrees. He has worked as an independent contractor on video productions, specifically putting on seminars for a school reform project for Brown University. In addition, prior to being employed with KET, he served as a contractor for 18 months, producing for the Education Division a workshop for teachers. Although he does not have any specialized training in set design, he has designed sets and performed other duties with respect to productions prior to being employed with KET.

136. Mr. Brower was hired by KET in April 1996, and was 45 years old at that time. In his role, Mr. Brower works with producers, associate producers, directors, videographers, audio people, studio management and technical editors. Mr. Brower's boss is Shae Hopkins, and he works closely with Carl Babcock in his division.

137. Mr. Brower testified that, as a part of senior management, the need for terminations goes back to 2008 and the first round of 10 terminations. He stated there have been continuous discussions after the 2008 firings, usually associated with budget cuts. The 2010 firings were part of a process. Brower testified that he was asked to look through his division and identify non-essential positions that could be outsourced. He stated this has been an ongoing process in his division, and they simply do not have enough technical people. He works with about as many contractors now as he does employees. Throughout the process, leading up to 2010, he worked with Carl Babcock in addition to the other Senior Directors. His recollection was that as a group, the Senior Directors were trying to reach a financial number which resulted in a target of 13 positions to eliminate.

138. After going through this process in his division, Mr. Brower identified and recommended Studio Manager Robert Pickering for termination. He does not recall discussing any other employees for termination at that time. He does not recall any discussion of alternatives to terminating Robert Pickering, such as a salary decrease. At the time of his termination, Mr. Pickering was serving as a Studio Manager, Set Designer and performing some of the duties that used to be done by Lighting Director, Don Dean. Mr. Brower testified that Pickering was well-qualified with respect to all three of these sets of duties. He felt that Mr. Pickering's position was non-essential to be held by an employee because of the fact that the building of sets was only an occasional function. He felt this easily could be contracted out. As far as Studio Manager duties, Mr. Brower stated these could be easily distributed among other existing staff members. Lastly, lighting duties could be contracted out and more routine lighting became a natural part of other employees' duties.

139. At the time of his termination, Mr. Pickering had been involved in what was originally known as the "Studio B" project for approximately four years. This

project was originally intended to provide a flexible design for public affairs broadcasts in Studio B, which was the smaller of KET's two main studios. Studio B was the home to most of the public affairs broadcasts. The idea was not to use Studio A for this project because of its unique nature. Studio A was a particularly large studio and had a unique lighting mechanism which made it extremely flexible for a wide variety of uses.

140. Brower described the Studio B project as a slow-moving project. He stated that Mr. Pickering was unable to come up with a design which was well received by those producer/directors within KET who would need to use it, and by Shae Hopkins. The main design that Mr. Pickering came up with was questioned by all concerned, including lighting concerns, safety concerns and whether it would last, due to the nature of the moving parts that Mr. Pickering had utilized in his design. Mr. Brower testified that he asked Pickering for alternatives, and he was not provided with any. Eventually, after Mr. Pickering was terminated, this project was contracted out to a firm from North Carolina, who provided a set that they determined was too tight of a fit for Studio B, and they had to utilize Studio A.

141. Mr. Brower testified that he also contacted a national organization and questioned an entire group of PBS stations to see if other stations had full-time set designers or studio managers. Mr. Brower testified that the result was that no one else had a full-time studio manager/set designer.

142. Mr. Brower testified that he and Mr. Pickering clashed over a number of issues. He stated that Mr. Pickering had safety concerns over wires in the back of some of the sets. He also questioned the use of lights that he felt were old and possibly dangerous. He had concerns about the number of people that were being allowed into the studio for outside events. Mr. Pickering was against holding outside events in the studios and definitely wanted to limit the number of people for such events. He also disagreed with Mr. Brower over the storing of the Telefund set when not in use. Mr. Brower acknowledged that they both got angry over some of these issues.

143. Mr. Brower and Mr. Pickering clashed over the progress of the Studio B project. Mr. Pickering accused Mr. Brower of being harassing and menacing towards him, a charge which Mr. Brower denied. (Pickering Exhibits 5 and 16.) Mr. Brower also testified that he thought that Mr. Pickering was completely inappropriate when he blind-copied Shae Hopkins on an email between Pickering and Brower. Ms. Hopkins replied over her frustration with Mr. Pickering and the use of a black limbo generic set while the Studio B project was ongoing.

144. Mr. Brower testified that Pickering was identified for termination by the time of the Senior Directors' meeting on June 14, 2010. (Joint Exhibit 1, page 32.) Brower testified that Nancy Carpenter, the Senior Director of Education, stated that she

needed some set design work for her GED program, and was in favor of keeping the set designer for that purpose. Mr. Brower testified that it was pointed out this work was only occasional, and could be contracted out. He testified that after Mr. Pickering was terminated, this project took a different direction, and no set design work was necessary. Mr. Brower could not explain handwritten notes on exhibits referencing a studio manager, set designer or lighting director. (Joint Exhibit 1, pages 32 and 36.)

145. Mr. Brower disagreed with KET's response to Interrogatory 12 and stated that Kelly Campbell performs some lighting and studio function work. (Pickering Exhibit 1, page 6.) Mr. Brower testified that Mr. Campbell is 31 years old. (Pickering Exhibit 3.)

146. Mr. Brower testified that he might have written the handwritten notes on Joint Exhibit 1, page 32, but he could not be sure. Mr. Brower eventually identified Joint Exhibit 1, page 32, as his handwriting. He stated emphatically there was no discussion regarding hiring a studio manager or set designer during the Senior Directors' meetings.

147. Mr. Brower testified he was temporarily in charge of Engineering after Rick Melton resigned and until Fred Engle was hired.

148. Mr. Brower testified that the Ombudsperson program was designed to assist employees with problems communicating with supervisors and management.

149. Mr. Brower testified that after Rick Melton resigned, Brower was temporarily put in charge of the Engineering group, as well as Master Control. He served as the second-line supervisor over the Maintenance Engineers. He stated he had some direct observation of their work, but also met with Jim Rous on a daily basis. He testified they were in the midst of the digital conversion. He testified that Jim Rous selected Scott Gabbard and Pat Wise to attend K-2 training in Oregon. Brower testified that Rous told him that when Wise returned from the training he was not interested in working on the K-2 server without a pay raise. Brower testified that Gabbard enthusiastically worked on the K-2 server. Mr. Brower did not speak directly to Pat Wise about this. He also did not receive any direct recommendation from Mr. Rous about employees.

150. Brower testified that Jim Rous was in the best position to be aware of Pat Wise's job duties, job skills, job performance and work ethic. When Fred Engle started working, Mr. Brower gave Engle his assessment of employees, including Pat Wise. Brower told Engle that Wise had an attitude problem and would not take on new duties without additional pay. (Joint Exhibit 1, page 94.) Brower testified that Fred Engle recommended Pat Wise for dismissal. Mr. Brower was not sure if it was Donna

Verhoeven or Fred Engle who recommended Tras Soileau for dismissal. Brower recalled that Donna Verhoeven stated that Soileau had difficulty with more than one task at a time. Others had concerns when he worked on their computer, including Shae Hopkins and Craig Cornwell. Brower stated he did not voice any complaints about Soileau in the executive staff meetings.

151. Brower stated that Donna Verhoeven could be fairly abrasive at times. In general, however, he thought she was fair and straightforward.

152. Brower stated that June 14, 2010, was around the time when they began naming names in the process of identifying non-essential positions. Brower testified as to the ages of the members of the executive staff as of September 10, 2010, the date of the terminations. Brower was 59.44; Nancy Carpenter was 61.43; Craig Cornwell was 58.33; Julie Schmidt was 49.86; Michele Ripley was 48.67; Shae Hopkins was 53.81; Fred Engle was 53.37; Donna Verhoeven was 48.47 and Tim Bischoff was 34.33. (Pickering Exhibit 3.)

153. Brower considered Pickering to be insubordinate. Nonetheless, he did not consider Pickering's insubordination, his age or his salary when he recommended him for dismissal. Mr. Brower stated he had no issue with Pickering's work product on studio design or set building.

154. Brower envisioned the budget for the Studio B project to be between \$225,000 to \$250,000. He later stated they could probably go as high as \$300,000. He testified that Pickering submitted a number of designs for Studio B, however, they were either outside of this budgeted amount, or were not satisfactory for some other reason. Some of these projects were recommended at under \$300,000. Following Mr. Pickering's dismissal, KET hired a contractor to complete the Studio B project. This project became complete sometime in 2012.

155. After his dismissal, Brower found documents on Pickering's computer showing a considerable amount of outside work Pickering was involved in. Based on the time of the emails, Brower concluded much of this work was done on KET time.

156. Brower testified that the restructuring that took place in September 2010 included filling six critical vacant positions, transferring seven positions from grants, contracts or enterprise to positions with recurring dollars, promoting 14 current staff to fill essential duties of vacant positions and to eliminate 13 non-essential positions. (Joint Exhibit 1, page 80.)

157. Brower testified he believed that Donna Verhoeven prepared these documents. Later in his testimony, Mr. Brower clarified that it was Fred Engle who

recommended Tras Soileau for dismissal. He recalled an incident where computers were not set up for people in his division. They got tired of waiting for IT employees and so, a Transmission employee and Jason Robertson set up the computers.

158. Brower described Chuck Burgess as a merit employee who was quite insubordinate and outspoken in meetings. He did good audio work.

159. Don Dean testified that he served as KET's Lighting Director from 1988 until his retirement on December 31, 2009. He worked with a number of supervisors in Productions who are no longer with KET. Craig Cornwell served as his supervisor for several years. From 2004 until his retirement, Mike Brower was in charge of Productions. Mr. Dean was 62 when he retired.

160. Dean testified that taking care of lighting duties for KET was a full-time job. He was involved in building, implementing and keeping track of inventory. He testified that for years he attended production meetings, however, after Mr. Brower took over, he was not invited to these meetings. He felt that priorities within KET had changed, and Dean felt marginalized as an employee towards the end of his employment. He did have overtime working on projects such as Jubilee, the Abraham Lincoln project and events at the Kentucky Center for the Arts.

161. Mr. Dean testified that he worked closely with Bob Pickering. He stated that Pickering was an excellent worker and highly skilled as a studio manager and set designer. He testified that Pickering's studio was always in good shape and the sets and props were properly stored. As a set designer, Dean testified that Pickering was very skilled at designing sets and was quite capable of performing the physical labor to build the sets.

162. After Dean retired, he learned that Pickering took over lighting duties. He said that Pickering was quite capable of performing these duties. He stated that a Videographer, Frank Simkonis, might be superior to Pickering as far as field lighting, however, Pickering was more skilled at studio lighting. He testified these are two highly skilled employees.

163. Dean did have reservations about Pickering taking over the lighting duties. He felt that Pickering was taking on too much, and he feared that Mike Brower would use these extra duties to try and fire Pickering. He testified he knew Brower was trying to get rid of Pickering. Dean said that towards the end of his employment Pickering and Brower had a very adversarial relationship.

164. He stated that much of this was over the Studio B project. He stated that the Studio B project started as an idea between Dean and Pickering. He stated that

Brower took the idea over and presented it as his own. Dean stated he was involved in the Studio B project as it went forward, mainly in a reactive posture. He stated this process went on for years, and that Brower and others in management had set up a moving target for Pickering. He was not sure if it was intentional or not, however, Dean testified that Brower made it very difficult for this project to progress.

165. Dean testified that the end result of the Studio B project being contracted out, not fitting in Studio B and having to be placed in Studio A was about as bad a result as you could get for KET. He testified that Studio A was a unique studio which was lost as a resource for KET.

166. Dean testified that meetings with Brower and Pickering were very unpleasant. He stated that Brower could be ugly, loud, intimidating and threatening.

167. Towards the end of his employment, Dean did not trust Brower at all. He stated that his office was taken away and he had to share an office with the Production Secretary. He was told this had happened because he was not productive. He could not discuss this matter directly with Brower, so he went to Mac Wall, the CEO. Wall told Dean that there was no problems with his performance and his job was secure. Dean testified that his old office was given to Rob Elliott, a Producer in his late 20's.

168. Dean testified that Brower did not respond well to criticism or feedback. He stated that Brower often had ideas which did not work, however, he would not listen to criticism. He described a V-shaped set for Kentucky Tonight, trying to use the One-on-One set in the old Studio B and the use for years of the "black limbo generic set." He stated Brower had insisted they get rid of or destroy old sets in anticipation of the Studio B project being finished. As a result, they had to use a plain set for years while the project remained unfinished. He stated this was an embarrassment to a network of KET's stature.

169. Dean testified that when Brower was in charge of production, younger people were favored to get promotions. He cited three as Matt Grimm, Nick Helton and Brandon Wickey. He stated that a long-time Associate Producer with "Kentucky Tonight," Carolyn Gwynn, was passed over for promotion to Producer in favor of a younger candidate.

170. Dean was involved with the Ombudsperson program since its inception in the 1990s at KET. Dean was one of the original Ombudspersons, and served as either an Ombudsperson or Alternate during the remainder of his employment. He stated that it started out as a good idea, a program designed to promote equity and fairness for employees in dealing with problems with their supervisors at work. He stated that as time went on, he became disillusioned with the program and feared that management

was using it as a tool to identify problem employees. In later years, he discouraged employees from using the Ombudsperson process.

171. Dean worked with Tras Soileau and found him helpful at fixing computer issues. He also worked with Pat Wise on electronic set-ups and adjustments. Although he did not work with Wise regularly, all the work Wise did for him was fine and he had no complaints.

172. Dean did not receive a copy of the letter, but spoke with three current employees of KET who did receive the letter and discussed it with him. Dean saw a copy of the letter. He found the letter to be a "threatening and intimidating document."

173. **Rick Melton** testified that he is retired from KET, where he served as the Director of Studio Engineering. In that capacity, he supervised the areas over Studio Maintenance, Master Control, Building Maintenance and the Mail Room. He was employed at KET from May 1990 until May 2009. He became the Director of Studio Engineering around 2000. He is currently employed with the Meridian Corporation, and serves as the Chief Engineer of the Maintenance Division. They provide maintenance services for the Fayette District and Circuit Court.

174. Melton testified he was familiar with Pat Wise. He knew him from both of their employment at the University of Kentucky. When Wise was applying for a position at KET, Melton gave him a good reference. With respect to his work at KET, Melton said Wise was "as good as there is in the shop." He referred to Wise as "top of the list." He stated that Wise could perform engineering work at a component level. He stated that Mr. Wise's installations were the best, and he could easily tell which ones Wise had worked on. He never heard any complaints about Mr. Wise's work.

175. He described the digital conversion as a massive changeover with a steep learning curve. He stated they were going from the known to the unknown. He stated that Mr. Wise's work after the digital conversion compared favorably to others. He said Wise participated fully with the new equipment, and he had no concerns that Wise could work with the digital equipment. During the changeover, he stated that overtime was quite common, as they also had to work on the analog equipment. Melton stated that Jim Rous was in the best position to assess Mr. Wise's work.

176. Melton started as a merit employee at KET. He said he had to give up his merit status in order to become a supervisor at KET. This occurred when Virginia Fox was CEO of KET.

177. Melton testified that his employment went okay when he was supervised by Sally Hamilton and Linda Hume. He testified he started having difficulties at KET

when Donna Verhoeven became his supervisor. According to Melton, morale suffered greatly among his staff when they discovered Ms. Verhoeven had received a \$30,000 per year raise. Melton had been telling his staff for years there was no money for raises. In April and May of 2009, Mr. Melton had confrontations with Donna Verhoeven over a KET water bill that had not been paid, and threats from the water company to turn KET's water off. Melton testified that water is crucial to KET's operation of air conditioners for much of its technical equipment. Melton blamed Verhoeven for not timely paying the water bill and jeopardizing KET's operations. Melton also clashed with Verhoeven over his reimbursement for a trip to Las Vegas for the Broadcasters Convention. Melton's travel expenses exceeded his estimate due to the fact that the hotel he stayed at did not provide either a state or convention rate on weekends. Melton had charged the expenses on his personal credit card and had to jump through a number of hoops to get his reimbursement. Melton felt that Verhoeven was giving him the runaround as far as getting reimbursed for his travel expenses.

178. Melton also stated that Verhoeven used profanity with him on the telephone and when he met with her and Ron Brown on May 12, 2009. Mr. Melton was offended when Ms. Verhoeven blamed him for the water bill, and questioned his management skills. She instructed Ron Brown to sign Mr. Melton up for management classes. At this point, Melton had enough, and quit his position at KET. (Wise and Soileau Exhibit 12.)

179. When Melton first discovered the water bill had not been paid, he contacted Shae Hopkins and Mac Wall to find out why the water bill had not been paid. He testified that Ms. Verhoeven was furious with him, and retaliated against him by setting him up for the management class. Based on his years of service with KET, and his length of time as a supervisor, Melton considered this an insult, and felt he could no longer work at KET. He later made an offer to stay until the end of the month, however, KET accepted his resignation effective May 12, 2009.

180. Melton testified that Pat Wise was cross-trained to do Master Control or Ingest work. He stated he could do the work of either Jerome Johnson or Tony Gwynne. He testified that Tony Gwynne was hired because he was Black, even though he was only the fifth- or sixth-best candidate they had interviewed some years ago. He stated he had recommended another candidate who was superior, but was instructed by Virginia Fox that they had to hire Gwynne.

181. Melton testified that Lena Combs worked as an Operator, although she might have been more suited for Master Control. He stated she had a limited skill set, and could not work at the component level.

182. Melton testified that Trasimond Soileau had a good reputation, and did good work at KET. Melton never heard any complaints. He stated that Matt Bone could not be depended on. He did not think that Cynthia Lowell had the necessary skills to help with problems such as emails.

183. Melton testified that Bob Pickering was involved in almost all the work being done in the studio. He did not hear any criticism of Pickering. He did notice that the relationship between Mike Brower and Pickering was strained.

184. **Shae Hopkins** returned to the stand and testified regarding the letter. (Wise and Soileau Exhibit 7.) She testified that the staff at KET was being contacted by current and former staff from KET regarding Jim Witt's activities. Mr. Witt had filed a witness list regarding his Personnel Board appeal, and was contacting potential witnesses. Linda Hume reported she had been contacted by a number of people, including Renee Shaw, who had been contacted by Bob Pickering. As a result, Ms. Hopkins began to discuss with KET attorneys whether or not there was a letter they could send to the parties providing some information. Apparently various drafts were relayed between the attorneys and Ms. Hopkins. She worked with Linda Hume and Ron Brown regarding this issue. She stated there were some edits to limit the letter to one page, and she also corrected some spelling. Ms. Hopkins thought the KET attorneys told her it was okay to send the letter out. She testified that the language in Wise and Soileau's Exhibit 7 included the phrase "current and former staff." She stated this was her mistake, as she had inserted this language from an earlier draft and thought this was the language they had agreed on. She stated she learned later that this was incorrect. She instructed Barbara O'Keefe, her assistant, to send this letter out. She was not sure of the method of distribution, or the exact date it went out.

185. Once the letter went out, she heard from various people at KET. Barbara O'Keefe said she did not want to testify, as she had done that previously in a case involving Chuck Burgess and did not wish to go through that again. Nick Helton thanked them for sending the letter out, and stated that it should have been sent to all staff. A former KET employee, Rhonda Jasper Marks, complained about the letter.

186. Most of the discussion with staff and former staff went to Linda Hume. Ms. Hopkins testified that they sent the letter to the individuals on Jim Witt's witness list.

187. Ms. Hopkins did not see any problems with the letter, including the language, "We strongly suggest that you do not discuss matters related to the pending litigation, except with the current management of KET and its counsel." She did not think this would be interpreted by employees as suggesting they would be retaliated

against if they spoke with the Appellants or their attorneys. Ms. Hopkins stated there had never been any type of retaliation at KET.

188. After the letter had gone out and it was being discussed in the various appeals, Ms. Hopkins was not aware of any efforts KET made to mitigate the effect of the letter. She was not aware that any employees had reportedly stated they were intimidated by the letter. She stated that, in her view, she thought some people might be intimidated by the process. She specifically stated she had heard from employees that did not want to have to go to the Personnel Board and testify.

189. Ms. Hopkins stated that the staff at KET would be uncomfortable working with Mr. Pickering after the comments he made following his termination. There had been some talk about contracting with him as a set designer after he was terminated, however, after they read his comments in the newspaper article about the decline in quality of KET broadcasts, they chose not to hire him back.

190. Although Ms. Hopkins testified she spoke with other PBS affiliates about whether or not they had set designers, she did not ask a similar question regarding fulltime Studio Managers or Lighting Directors. She did not know why Kelly Campbell was not listed as someone who took over lighting duties after Mr. Pickering's termination, and stated she was not the source of this information.

191. Ms. Hopkins testified that she thought Rick Melton had a reputation for being hot-headed and he had intimidated employees. She was aware he resigned after Donna Verhoeven had suggested he needed management training.

192. **Linda Hume** testified that she is the Senior Director for Finance and Administration at KET. She served in similar capacities for KET before and after the terminations in this case, however, she was not employed with KET at the time of the terminations. She started with KET in 1987 as an Accountant for the Foundation. She worked for several years and eventually was promoted to Deputy Executive Director for Administration and Support, a position she was serving in when she retired on September 1, 2008. In that capacity, she was supervisor of Trasimond Soileau and Rick Melton. Following her retirement, she was replaced by Donna Verhoeven.

193. Ms. Hume returned to KET in September 2012. She overlapped with Donna Verhoeven at that point for approximately four to six weeks. Ms. Hume has an Accounting Degree from the University of Kentucky. She is an acquaintance of Verhoeven, but does not keep in touch with her.

194. Ms. Hume testified she became the supervisor over the IT Department in the summer of 2007, when Terry Tucker, the former supervisor, retired. She supervised

the Department for approximately one year. She hired Matt Bone after Tucker retired, knowing it might be a while before they hired an IT supervisor. Cynthia Lowell also helped out in IT as well as assisting in several other departments. Ms. Hume testified that she was satisfied in general with the work that Mr. Soileau did. He was given a raise while she was his supervisor. She stated that Soileau was well-liked at KET, and that some staff preferred Soileau to work on their computer. Others preferred Matt Bone, thinking that Soileau was too slow.

195. Hume testified that Fred Engle is now the Director over IT. As of the date of her testimony, Ms. Hume testified that IT consisted of Matt Bone, James Grimm and a part-time employee.

196. Ms. Hume testified that during the pendency of this litigation, she became aware of a witness list filed by Jim Witt. She stated that she and others were getting calls that Jim Witt was distributing subpoenas. As a result, Ms. Hume and Shae Hopkins spoke with KET counsel about sending a letter to potential witnesses to answer some of their questions and concerns. She stated that some of the questions included "Could Witt be delivering subpoenas?" "Were the subpoenas real?" "Could Mr. Witt talk to employees?" "Did the employees have to talk to Mr. Witt?" "Do the employees need to obtain their own counsel?" She specifically stated that Mike Brower, Fred Engle and Nick Helton asked this last question. Mr. Helton had already contacted counsel. Mary Francis Cecil contacted Ms. Hume. She was upset because Mr. Witt had wanted to meet with her. Ms. Cecil was a retired HR Director and did not want to meet with Mr. Witt.

197. Ms. Hume stated that she worked on this matter at KET with Shae Hopkins and Ron Brown. They also had input with counsel regarding the content of the letter. Ms. Hume specifically stated that they recommended that Linda Hume be the contact person for those with questions. In addition, Shae Hopkins added the language of "current and former staff." She stated they also discussed the possibility of including KET Board members in the letter, but decided not to.

198. Ms. Hume testified that on-going discussions with KET counsel regarding the letter beginning in the latter half February 2013. She testified that they sent the letter out on plain paper (not letterhead for KET or AG) and unsigned, based on their understanding that the attorneys had told them it was okay to send the letter out "as is." Ms. Hume testified that they sent the letter to the individuals on Jim Witt's witness list, which was entered into the record as Wise and Soileau Exhibit 16. Wise and Soileau Exhibit 15 was a list kept by Barbara O'Keefe of who the letter was sent to. Ms. Hume stated that they started with Witt's witness list and added four individuals. She knew that Larry Grizzle and Barbara O'Keefe were two of them. She also stated that they included the Senior Directors and others as time went on. She stated that a couple

of Mike Brower's employees approached him, and they were also provided a copy of the letter. Ms. Hume testified that Rhonda Jasper Marks, a former KET employee, complained about the letter, especially that it was sent to her at her current employer's address. Ms. Marks was one of the terminated employees at KET. Ms. Hume stated they did not have a current home address for Marks, and that is why it was sent to her work address. She testified that Nick Helton contacted them and suggested that they should send it to all staff, and thanked them for the letter.

199. Ms. Hume was not sure whether Rhonda Jasper Marks was part of the Ombudsperson program or not. Ms. Hume described the Ombudsperson program as a way for employees to discuss issues or concerns without going to their supervisor or to senior management.

200. Ms. Hume testified that she was involved with setting up meetings for Ms. Cornett and Mr. Tackett to meet with current KET employees. She stated that employees were given three options: (1) they could meet with KET employees on worktime with KET counsel and HR present; (2) they could meet with Ms. Cornett or Mr. Tackett on their own time without KET counsel or anyone else present; and (3) they could decline to meet with Ms. Cornett and Mr. Tackett. Ms. Hume stated that employees chose options 1 and 3. She is not aware of anyone who chose option 2.

201. Ms. Hume did not work with Bob Pickering. She testified she understood he was very creative. She stated she did not have any problems with him presenting purchase orders in a timely fashion. Ms. Hume did not have any knowledge of the Lyric Theater matter, however, she was able to authenticate Pickering Exhibit 7 (emails concerning this event).

202. Ms. Hume testified she was involved in discovery where members of senior management identified their handwritten notes from the Senior Directors' meetings. She testified that Mr. Brower had difficulty recognizing his handwriting.

203. Ms. Hume testified she was involved in the hard drive investigation with Ron Brown. Ms. Hume testified that the investigation determined that there were approximately 280 hard drives which were being stored and had not been destroyed. She testified that Fred Engle had looked into the possibility of destroying these. He asked Larry Grizzle and Josh Estes, a part-time IT employee, to try and destroy one of the hard drives identified as Hard Drive 109. Apparently they tried destroying this hard drive with a hammer. Eventually they used a drill. Mr. Engle determined that the efforts to destroy the hard drive through this method were too difficult, and they decided to use a contractor. The investigation also revealed that the hard drive belonging to Robert Pickering had a divot or puncture in it. Ms. Hume stated there were varying theories, including one that other hard drives had been dropped on this

hard drive, or that the damage had been done with a screwdriver. The end result of the investigation was no one confessed to damaging Mr. Pickering's hard drive. They were able to recover all but a very small portion of the data on Mr. Pickering's hard drive. The data on his hard drive, as well as emails off KET's email server were provided to Mr. Pickering as a part of discovery. Ms. Hume testified that the investigation also revealed that Mr. Pickering's hard drive revealed over 550 documents, including personal correspondence, invoices, contracts, communications relating to work Pickering performed outside of KET duties. The creation of these documents was cross-referenced with Mr. Pickering's KET timesheets, and 81% of these documents were created while on KET time. The conclusion of the investigation was that they could not determine how Mr. Pickering's hard drive was damaged. Ms. Hume thought it was not a coincidence, and that Mr. Pickering's hard drive was intentionally damaged. (Pickering Exhibit 2.)

204. When asked if anyone had been intimidated during the litigation process, or if any intimidation had been attempted, Ms. Hume testified that Ms. Hopkins had received an anonymous letter. She stated that the anonymous letter stated that Matt Bone and James Grimm are trash, and that Ms. Hopkins should settle this case or she would be taken down too.

205. Ms. Hume testified that she supervised Rick Melton from 2005 through 2008. She stated that Mr. Melton had a quick temper. He would rant and rave, calm down, and go back to work. She testified that she supervised Donna Verhoeven during this same period of time. Ms. Verhoeven was blunt, straight-forward and abrasive. She could see how the two of them working together would be a very contentious relationship. She stated she was not sure if Donna Verhoeven had the patience to deal with Mr. Melton. Hume did not have any personality conflicts with Mr. Melton.

206. Ms. Hume testified she remembered Pat Wise and was not aware of any performance problems. She stated that she did not have any type of personality conflict with Mr. Wise.

207. **Clark Bradshaw** testified that he is a Graphic Designer at KET, and has held that position since 2005. He was 33 years old when he was hired, and 41 the day he testified. Prior to working for KET, he was a Graphic Designer for Channel 36.

208. Mr. Bradshaw testified he was involved in the Studio B project. His job was to make a computer model of the plans that Mr. Pickering came up with. He stated that Bob gave him everything he needed. He thought Bob Pickering did excellent work as a Set Designer, and what he produced on the Studio B project looked great. Bradshaw testified he was not sure who was in charge of this project, as it seemed to be

designed by a committee. He stated that Mr. Pickering was frustrated because the project changed over time and it went on for so long.

209. Bradshaw testified that Mary Ann Brooks is his supervisor, and Mike Brower is his second-line supervisor.

210. Mr. Bradshaw attended a Studio B meeting with Brower and Pickering. He stated that there was a disagreement and that Brower blew up at Pickering. He stated that Brower screamed, "Goddammit Bob" and went on an angry rant at Pickering. Bradshaw had never seen Brower get upset like this before. After it was over, Brower went to Bradshaw's office and apologized for his behavior at the meeting.

211. Bradshaw testified that now set design is done by a contract person, Roger Bondurant. He stated lighting is handled by different people on the crew day-to-day. He stated the Floor Director usually handles the lighting. He testified that when there is a full-time Studio Manager or Set Designer such as Bob Pickering, things run smoother and it's good to have. He is not sure if the production quality has deteriorated. He stated the lighting has suffered. He feels that the studio is still okay.

212. When asked about Wise and Soileau Exhibit 7, he stated the letter seems familiar and he believes he received a copy. He recalls conversations with other employees poking fun at each other. He stated that those who received the letter treated it like being called to the principal's office. He did not feel like they were in trouble. It was more like they were inconvenienced. He recalls discussing this with Matt Bone and Charles Lister. He stated Mr. Pickering called him, and he stated it was okay to put him on Pickering's witness list.

213. Mr. Bradshaw recalled receiving an email from Linda Hume about meeting with attorneys for the Appellants. He did not recall that there was an option to decline. He chose to meet on the clock at KET because he was more comfortable with KET lawyers there. He did not feel intimidated or threatened.

214. With respect to lighting, he testified that George Murphy and Kelly Campbell do a lot of the lighting. He stated that Campbell was trying to learn how to do the lighting.

215. Prentice Walker testified that he is an Operations Technician Principal in the Production Department at KET. He has been employed since October 1987. He was 29 when he was hired, and was 56 at the time of his testimony. In addition to his present job, he has previously been the Assistant Lighting Director and also a Crew Chief. Currently Carl Babcock is his supervisor, and Mike Brower is his second-line supervisor.

216. He testified about the "Red Green" live audience event in the summer of 2010. He stated this was set up for 100 - 150 people in the studio with a comedian to perform.

217. He testified that Bob Pickering had set up the lighting for this event, and had pre-set the lights and left written instructions for Walker. Mr. Pickering was going to be on vacation at the time of this show. Mr. Walker arrived and found Mike Brower and Craig Cornwell, who told him that the show was going to start early. Walker noticed that the studio was extremely and uncomfortably hot. He stated that the air conditioner needed to be turned on and the lighting needed to be adjusted. After considerable work, he was able to get it to where it was acceptable, but not what it should have been, as it was set up by Mr. Pickering.

218. There was a post-production meeting regarding this event with Carl Babcock, Bob Pickering, an Ombudsperson, Chuck Burgess and Walker. He stated that Mr. Brower was not at the meeting. It was Mr. Walker's opinion after the meeting that someone got to the board, did not know what they were doing, and that is why the lighting was messed up. He stated it probably was Mike Brower or Craig Cornwell. Walker testified he did not know who had requested the Ombudsperson, who was Rhonda Jasper Marks.

219. Mr. Walker testified that the Studio B redesign was impossible to maneuver in Studio B and had to be moved to Studio A. He stated that he believed KET lost out by Mr. Pickering not being involved because of his understanding of the studio and productions that are run by KET. He stated that since Mr. Pickering's termination, the crew maintains sets in place. He stated that George Murphy and Kelly Campbell do lighting and do some of the work moving sets around. He stated that Pickering's lighting work was superior. He stated that Murphy and Campbell became involved immediately after Mr. Pickering's termination.

220. With respect to Wise and Soileau Exhibit 7, the letter, Mr. Walker testified that he was familiar with it. He stated that he did not personally receive a copy, although he had heard about it. He knew that people within KET were nervous and that there were rumors. He said there was a feeling that people might get in trouble. He stated Mary Beth Hester, an employee, expressed that she did not want to get involved. Mr. Walker has his own pending litigation against KET. He is alleging race discrimination.

221. Mr. Walker testified that younger employees are favored at KET. He stated he is the oldest one of the crew. He said that younger members are more likely to be promoted and get more opportunities. He believes he has been overlooked for promotion. Mr. Walker testified he has been demoted at KET. He stated that he sat in

his office for two years without any assignments. At one point, Mike Brower came by, looking at his office and moved Walker out of his office. He put a desk in the crew room. Walker stated he was moved back to where he started 27 years ago. Recently he was allowed to do a documentary on Korean War veterans, which was his first production in several years.

222. He testified that management favors young individuals like Kelly Campbell, who are eager to please management and easily controlled. He stated that Mr. Pickering was not easily controlled, and was known to speak his mind and express his opinions. Walker did not see hostility between Pickering and Brower. He said he was not involved.

223. Walker testified he believed he was going out on a limb by testifying. He said he was a non-merit employee and could be fired at any time. Walker testified that those who criticized management or speak out are not playing by the rules, not playing the game. He identified Chuck Burgess as a merit employee who was outspoken and asked questions.

224. Mr. Walker testified about his pride in working at KET. He testified he cried when he got the job at KET and, in the years he has worked there, he has tried to get along with everyone.

225. **Doug Campbell** is employed as an Engineer in Operations at KET. He testified his current job duties are in Ingest. He downloads broadcasts from PBS, places them on servers for playback. He is also responsible for trimming these broadcasts and working with captioning. He has been employed at KET for 24 years, and he started in education. Prior to that, he worked for University of Kentucky Television for four years as a crew chief. He has a degree from the University of Kentucky in telecommunications. He testified that at Jim Rous' request he cross-trained Pat Wise on Ingest duties. Mr. Campbell worked with Pat Wise at UK and KET. He stated that Mr. Wise was familiar with all aspects of Engineering and could work on the digital as well as the analog equipment. He had no complaints about Mr. Wise's work and felt that it was outstanding.

226. Mr. Campbell is familiar with Tras Soileau. He stated that Soileau maintained their computers and felt he was very good, very professional and had no complaints about his work. He had heard no complaints from anyone else.

227. Mr. Campbell stated that Chuck Burgess was an Audio Technician who embraced the digital early on. He stated that his work is of very good quality.

228. Mr. Campbell stated he received a copy of the letter in March 2013. He found the letter to be intimidating. He heard J. R. Pemberton speaking with Alex Cummings and Pemberton stated he was not going down there to risk his job. He stated that Mr. Cummings agreed with him. He stated that the general talk around KET was to stay away. He felt there was nervousness around this time. He stated employees were aware of the ten employees who had been fired in 2008 and the 13 who were fired in 2010. He stated part of what was troubling was that the Governor had announced furloughs for employees, including KET, and stated that this would prevent the need for terminations. Shortly after this, 13 employees were terminated at KET. He did not take his concerns to management because he did not believe it would be in his best interests. He stated he planned to retire at the end of the year (2014).

229. In January 2012, Mr. Campbell met with the Ethics Commission. He stated he signed a non-disclosure agreement and was told not to talk to anyone about his testimony. He had previously told his supervisors that he was going to the Ethics Commission. He stated that before he went, Ron Brown told him that he would be hearing about a lot of issues from disgruntled employees, and that his advice was "do not get caught up in that shit." He stated that both Ron Brown and Fred Engle approached him after he met with the Ethics Commission and asked him about his testimony. He told both of them he was not allowed to discuss it.

230. In December 2008, Mr. Campbell attended a meeting with Nancy Carpenter and Mike Brower concerning the move of his program from education to productions. He said that during the meeting Mr. Brower had told them to not be concerned, and that "most of the jackasses were gone." Mr. Campbell interpreted this remark as referencing Don Dean and others, who he described as older, more outspoken troublemakers. He stated that in the same meeting Nancy Carpenter stated that what KET needed was younger, more malleable types such as Josh Powell. He stated that he heard this from Nancy Carpenter more than once.

231. Mr. Campbell testified that he worked with Bob Pickering at KET. He stated that Bob was fantastic, and heard no criticism of his work. When Campbell worked in education, Pickering built some of the sets that he used. He stated that Pickering was also great at lighting, both in the studio and on location. He also saw Pickering work in the workshop. When asked about who would replace Pickering, Campbell stated that sets were not being built by any employees and this work was contracted out. He stated that Kelly Campbell does some of the lighting. He described the current lighting as passable, and in general, poor lighting. He said a lot of it was done at the last minute, with just some lights thrown up. He recounted a story he had heard where Kelly Campbell did not know how to use a light meter. He stated Kelly Campbell was a good employee at what he did for distance learning, which was to work as a DVD duplicator.

232. **Chuck Burgess** testified he was employed at KET as an Audio Operations Technician. He started in June 1991 and retired in March 2012. Mr. Burgess was hired as a merit employee and maintained his merit status throughout his employment. He testified he was the last merit employee at the KET building in Lexington. He testified there were a couple of other merit employees in Transmission, who worked in the field at KET. He testified he was drawn to KET because of its stellar reputation in broadcasting, the benefits and retirement.

233. At the time of his testimony, he was employed as a Disc Jockey with Cap City Communications.

234. Burgess testified that during his KET tenure, he won two Emmys and was nominated on a third occasion. He was 57 when he testified, and 55 at the time of his retirement. He testified he retired because he felt it was time to move on. He was discouraged by events at KET. He included the firings of the 13 employees in 2010, and the oppressive environment. He stated that employees were scared. He also stated that they were not doing productions, just a lot of talking head political shows. He stated that it was an environment where they were constantly being threatened with being fired. Burgess described an event that happened towards the end of his employment where a couple of others who assisted him with audio work with a big production were talked to sternly and threatened with firing over wearing blue jeans.

235. Burgess testified that he was considered outspoken at KET. He got upset over issues of equality. He pointed to the hiring of Ann Deck in the late 1990's. He stated she was not qualified and could not do the job. He had heard she was only hired because she was an acquaintance of Virginia Fox, the CEO at that time. According to Burgess, she was eventually fired for incompetence.

236. Burgess testified that he worked with Pat Wise indirectly on remotes and through the studio. He stated that Wise was very good at troubleshooting. He constantly saw Wise at his bench working and he was good at what he did. He never heard any complaints about Pat Wise and was shocked when he was fired.

237. Burgess testified that Tras Soileau did a good job keeping their computers working and responding to complaints if they had problems with emails, etc. He stated that following Soileau's firing, they had IT issues and could not get a quick response. He stated he was shocked to hear that Tras Soileau was fired. He stated Soileau was good at his job and had been there a long time.

238. Mr. Burgess testified that he attended the Board meeting where the 13 employees were fired. He stated he was shocked by the informality of the meeting. He stated that the staff and Board members were socializing and laughing before and

during the meeting. He stated that Bob Pickering and Paul Sprester were also there at the meeting. After it was over, Mike Brower came out and talked to Mr. Pickering. He later learned in a phone call from Mr. Pickering that Pickering had been fired. Burgess testified he was shocked. He said he gets emotional thinking about it. He testified about the excellent work that Pickering did.

239. He testified he was aware of Pickering's work as a Set Designer, Lighting Director and Studio Manager. He stated that the studio was safe and clean. He said the sets were stored properly and that Pickering was a stickler for cleanliness and orderliness in the studio. He stated that immediately after the firings, George Murphy and Kelly Campbell did some of the lighting. He stated that you could tell the poor quality in the lighting. He told the story of Kelly Campbell trying to use the light meter, and having it turned the wrong way. He testified he was familiar with Bob Pickering's concerns about safety over cables and occupancy levels. He testified he knew that Mr. Pickering had aspirations to produce and felt that he was qualified to do so.

240. Mr. Burgess was involved in the Red Green incident which occurred on a Sunday. The event was scheduled in Studio A. He stated that when he arrived, it was so hot it was like an oven and they were concerned about people passing out or fainting. He stated that Mike Brower and Craig Cornwell were there. Mr. Pickering was out of town, but he had pre-set the lighting and left instructions. Prentice Walker stated the instructions were thrown on the floor near the trash. Following this, they had a post-production meeting, which was attended by Mr. Burgess, Prentice Walker, Bob Pickering, Carl Babcock, Roger Tremain and Rhonda Jasper Marks, the Ombudsperson. Burgess testified that they learned from the meeting that Mike Brower had powered everything up. He said that Carl Babcock did not want to embarrass Brower.

241. Burgess testified he heard Brower refer to Pickering as a jackass.

242. After the terminations, Burgess testified that KET did extensive redecorating. He also testified that production levels were slipping after people like Bob Pickering were let go. He stated that they were slipping to public access level.

243. Mr. Burgess testified regarding a three-day suspension that he received, and an appeal he filed with the Personnel Board. Burgess testified he was suspended for requesting leave to work at the Three-Day Event. He put his leave down as comp time for two days. Later, he was told by Tom Bickel to change it to sick time and it will all go away. He later was suspended for three days for lying on his timesheet. He felt he was treated unfairly through the whole occurrence. He testified that Barbara O'Keefe testified as a witness on his behalf about his leave request. He stated that she was very uncomfortable having to testify, and the entire situation was difficult. A copy

of the Final and Recommended Orders from the Personnel Board appeal were entered as KET Exhibit 13.

244. Mr. Burgess testified that KET favored younger employees and practiced age discrimination. He talked about younger, less-experienced employees being promoted to producers. Burgess testified that Mary Beth Hester was passed over for a promotion in favor of a younger employee. He testified that the day after the terminations, he was having discussions with another employee about a movie when Carl Babcock came by and told Brent Abshire he would need to see him at 2 o'clock. As Babcock walked away, Burgess stated it sounds like fun. Babcock told him, "You keep it up, you are next." Babcock later gave Burgess a written reprimand for talking negatively about KET.

245. Burgess testified he received a copy of the letter in a KET envelope. He stated he thought it was unusual because he was addressed as Charles Burgess and he was never referred to by that name at KET. He said he had a phone conversation with Mary Beth Hester, and they stated it seemed like witness tampering. He stated that the employees were intimidated over the letter.

246. James Pemberton testified that he is a Facility Technician employed in Maintenance at KET. He was hired there in 2003. He stated he was 43 when he was hired, and was 54 at the time of his testimony. He found out about the job at KET from his brother-in-law, Larry Grizzle, who he works with in Maintenance. Fred Engle is his direct supervisor. He stated that the Maintenance Department is Larry Grizzle and himself. Another employee, Alex Cummings, retired about two weeks before Pemberton's testimony.

247. Mr. Pemberton testified that he was familiar with Bob Pickering and knows him from working on lighting and building sets at KET. Mr. Pemberton testified he likes Pickering and that, in his opinion, he does good work. He testified that at Rick Melton's request, he has assisted Pickering with Telefund sets. He testified he has heard complaints about Pickering possibly pushing deadlines. He stated that the atmosphere at KET around the time of the termination "was good, I guess." He stated he was not concerned and did not feel threatened. He said that after the termination things have changed and people are more on edge. He stated it is difficult losing your friends, and you do not want to see them lose their jobs. He said he felt the same way following the 2008, as well as the 2010, terminations.

248. He testified that Larry Grizzle is not responsible for the security key cards, however, he did not know any of the details about that.

249. With respect to the hard drive, Mr. Pemberton testified that he assisted Josh from IT in trying to destroy a hard drive. Pemberton said he hit it with a hammer and it did not do the damage he expected it to. He said at that point, Larry Grizzle drilled a hole in the hard drive.

250. Later he met with Linda Hume and Ron Brown over the hard drive issue, and told them the same thing as he testified at the hearing. He said they informed him if he was called as a witness to tell the truth.

251. Mr. Pemberton stated he received the letter in his mailbox at work. He does not recall if he had a conversation with Larry Grizzle and Alex Cummings about why they received the letter. He stated he might have had a conversation with Jim Rous about the letter, but is not sure. If he did have such a conversation, he might have said something about being concerned about his family and keeping his job. Pemberton testified that he knew he did not want to testify. He acknowledged he was a little afraid testifying. He stated he has not been threatened with his job.

252. Mr. Pemberton was concerned when Mr. Pickering left the safety guards off the table saw in the shop at KET. He testified that Roger Bondurant is doing sets and Kelly Campbell is doing lighting.

253. Mr. Pemberton did not work with Pat Wise, although he heard good things about him.

254. Mr. Pemberton testified about the redecorating at KET. He said that they contracted out the work on the carpets. He said they did painting and general remodel work. He said that they remodeled a restroom, the front lobby, visitor's center, bathroom and one of the kitchens.

255. Mr. Pemberton was asked about performing work at the home of various management officials at KET. He stated that he built a dresser for Mac Wall on his personal time, and that Mac Wall paid him for this item.

256. Mr. Pemberton testified that the letter and the discussions about issues at KET has not affected his testimony.

257. **Donna Verhoeven** testified that she was employed at KET from October 1, 2000, until her retirement on September 30, 2012. She started as an Accounting Clerk at KET earning \$27,500 per year. When she retired, she was the Senior Director of Finance and Administration. She earned around \$106,000 per year. She stated her background was in accounting, and she worked for 16 years for the Bluegrass Community Action Agency. Ms. Verhoeven testified that, by virtue of being employed

in the accounting field, starting in 1980, she was somewhat knowledgeable about computers. She stated she was mostly self-taught. She stated she had set up computer systems where she worked, and as a consultant with small businesses.

258. For years, Ms. Verhoeven served as KET's Budget Analyst. She performed this function while holding several different job titles. She testified about the fact that KET lost a number of positions from 2008 on. She testified they lost over 70 employees in 2008 due to retirements and terminations. She stated that due to budget cuts, by 2010 their personnel cap was around 120. She testified that the process of reducing the budget at KET was an ongoing process from 2008 through 2010. According to Ms. Verhoeven, of the many positions they lost during 2008, she believed only three or four were filled. She testified that the Senior Directors had monetary goals and had to be mindful of personnel caps while deciding critical positions to fill and which positions to eliminate. She stated they also considered promotions and adjustments. She said one other complication was to try and make sure they were not using one-time money to fund recurring needs.

259. She made reference to the memo contained on Joint Exhibit 1, page 9. The reference there was to "Network IT, salary reduction or elimination." This note referred to Tras Soileau. She stated he was not serving the needs of KET in that position. According to Ms. Verhoeven, when Mr. Soileau would get a new supervisor such as herself, Linda Hume or Fred Engle, he would give them a speech about how training had been withheld from him by Terry Tucker, and do not expect much from him. When Ms. Verhoeven supervised IT, she complained that Mr. Soileau and Matt Bone would work together the whole time. According to Ms. Verhoeven, Mr. Bone was primarily responsible for network support and Mr. Soileau was primarily responsible for desktop support. She stated that Tras always wanted training so that he could learn network support. She told him numerous times that they could not do that under their budget situation, and that was not his job description. Ms. Verhoeven testified that prior to becoming Mr. Soileau's supervisor, she was aware he had attended a training course that cost KET over \$2000. She stated that he did not complete the course, or did not pass the test. She questioned whether KET should request the training fee back from Mr. Soileau. Cynthia Lowell also provided user support.

260. According to Ms. Verhoeven, Mr. Soileau was slow in providing desktop support. She stated he often could not be found, and took a long time to respond to staff when they needed help with their computers. She specifically mentioned people in the business office being frustrated with Soileau. She acknowledged there was documentation referencing Matt Bone's time and attendance issues and doing personal work at KET. (Wise and Soileau Exhibit 11.) She testified that Mr. Soileau's attendance problems were just as severe as Mr. Bone's, although there is no documentation to support it. She referred to Soileau's attendance issues as "earn and burn." She stated

that Mr. Soileau was involved in office romances and could usually be found at the desk or office of whoever his latest interest was. She testified they had 40 new computers which needed to be set up and Mr. Soileau was slow to respond. She stated that this was an ongoing problem from about January 2010 through July 2010. Eventually, the Transmissions staff set up these computers. Soileau provided some assistance.

261. Ms. Verhoeven testified that Matt Bone had an excellent skill set with respect to computers. She testified that from time-to-time he had a problem with motivation. Although she initially denied it, she acknowledged she probably spoke to Fred Engle about some of these issues after he took over supervision of IT.

262. Ms. Verhoeven testified that around the time that Rick Melton resigned from KET Mr. Soileau started attending Board meetings. She stated that Mac Wall, the Executive Director, asked her about firewall issues which he had heard about due to an employee making a private complaint to a Board member. Ms. Verhoeven stated she knew this complaint came from either Matt Bone or Tras Soileau. She testified she associated firewall issues more with Bone than Soileau. She said that staff members attended Board meetings usually if they were involved in a project that was being discussed with the Board. If they were not, generally they were expected to use their leave time. Ms. Verhoeven identified Wise and Soileau Exhibit 18 as an email from Fred Engle to Mr. Soileau regarding this issue in August 2010.

263. Ms. Verhoeven testified that Fred Engle recommended termination of Tras Soileau to the Senior Director meetings. Ms. Verhoeven stated that she dissented to firing Tras Soileau although she was not able to convince the other Senior Directors. She believed someone else may have spoken up for him, but she is not sure who. Ms. Verhoeven was reluctant to agree with the termination of Soileau because of his longtime employment with KET. Ms. Verhoeven testified that she never gave her opinion to Fred Engle about Soileau. Ms. Verhoeven testified that Tras Soileau was not seen as competent to duplicate DVDs. This came up in the context of considering him for other positions as opposed to termination.

264. Ms. Verhoeven testified that she had issues with Rick Melton when she served as his supervisor. She stated these included his failure to report to her regarding threats to turn the water off and issues with his travel voucher from his trip to Las Vegas. As a result of this, she recommended management training for him. She had heard from Jim Rous and others that Melton used threats and intimidation with his staff. She testified that when she explained this to Mr. Melton in a meeting, he resigned. Mr. Melton offered to come back or to stay on to complete particular projects after his resignation, however, his resignation was accepted and he was not allowed to return.

265. Ms. Verhoeven testified she was friends with Rhonda Jasper Marks and that she tried to help her. She said that Fred Engle recommended her termination, stating that her role was not critical. Ms. Verhoeven was surprised. She was aware that Ms. Marks served as an Ombudsperson.

266. She testified that Fred Engle recommended Pat Wise for dismissal. She stated his name came from Jim Rous.

267. Ms. Verhoeven testified that she knew Robert Pickering from KET. She stated he would occasionally question procedures for getting purchases approved with the business office. She stated he specifically questioned her about getting some of his budgets approved for the Studio B redesign. She stated that it was not a question of her approving the budget; it was more a question of the designs not being approved by Mike Brower or others. Ms. Verhoeven testified that the Studio B redesign was viewed as part of the 15-million dollar digital conversion project.

268. "With respect to the extensive internal review of every position," Ms. Verhoeven testified that was up to the Senior Directors. She stated that Mr. Brower conducted this review and came up with Mr. Pickering's position as a recommendation for termination. She stated that Shae Hopkins expressed some hesitancy due to the fact that they were in the middle of the Studio B re-design. Ms. Verhoeven stated she encouraged Ms. Hopkins to let Mr. Brower decide, since the position was in his area.

269. With reference to the notes on Joint Exhibit 1, page 32, such as "50% lighting, 50% studio camera op" or "Studio Manager - 6 months," Ms. Verhoeven does not recall any specific discussion. She stated they might have been simply a wish list of the author. She stated that some of the Senior Director meetings lasted all day and she testified she would tune in and out depending on the discussion that was going on. She brought her laptop along and did other work during some of these meetings.

270. Ms. Verhoeven stated that Joint Exhibit 1, page 80, includes a category with seven positions that were positions with recurring dollars currently funded with grants, contracts, and enterprise. She stated these included Sarah O'Keefe, Justin Allen and John Bacon. She understood the goal of the recommendation was to make these positions paid through state dollars. She testified that Cynthia Lowell, although she listed in this category, never became a state employee. Ms. Lowell remained a Foundation employee

271. With respect to Mark Holt, Ms. Verhoeven stated that he took calls from the schools when they needed to switch the cable box. She testified the only time he received these calls was when the schools wanted to switch so they could watch the

SEC tournament. She stated that this was all he did, and it was pointed out to them by Board Member Sally Hamilton that his job was obsolete.

272. **Appellant Robert Pickering** was hired as the Studio Manager for KET in October 1999. He served in this position until he was terminated on September 9, 2010. Pickering also served as KET's Set Designer and, following the retirement of Don Dean, as KET's Lighting Director.

273. Mr. Pickering has a Bachelor of Arts in Theater Arts from the University of California, Chico. He also received a Graduate Degree in the Czech Republic and a second Graduate Degree from Southern Illinois University. He owned his own scenic and lighting designer shop. He also taught at California State University and at Butte Community College.

274. During his time with KET, Mr. Pickering performed numerous duties and functions. He served as a Producer-Director on seven arts-related packages. He also directed some pieces with Nancy Carpenter. He served as an on-air host, and could pitch in on camera operations. As part of his duties as Studio Manager, he helped with audio, make-up, loading equipment and videography. Mr. Pickering was involved with in-house workshops for educators, including lighting and set design.

275. In 2010, the year he was terminated, Mr. Pickering testified he worked on 14 projects outside of regular shows. These included the Red Green event, the Kentucky Authors Forum, the Renaissance Dance, Election Coverage, Jubilee and Education Matters. He also had responsibilities with respect to KET's regular shows, Comment on Kentucky, Kentucky Tonight and News Quiz, as well as the shows he referred to as semi-regular, Connections and One-to-One.

276. Mr. Pickering testified he was nominated for an Emmy in 2006. While he worked for KET, he was never criticized for set design, management of the studio or his lighting work.

277. For the first half of his years with KET, Mr. Pickering testified he was supervised by Craig Cornwell who, at that time, was the Director of Production. He testified that Mr. Cornwell was a great supervisor. He described him as professional, inclusive and supportive. He said that Mr. Cornwell respected him and supported his work. While Mr. Cornwell was his supervisor, Mr. Pickering received his only written evaluation in June 2000. (Pickering Exhibit 9.) Mr. Pickering was given "Exceeds" performance criteria rating in Job Knowledge and Skills, Quality of Work, Productivity and Employee Conduct. He was given a "Meets" rating in Improvements in Performance. In the written evaluation, Mr. Cornwell praised his skills, his hard work and his enthusiastic attitude.

278. Mr. Pickering testified that the situation changed completely when Mike Brower took over production. He stated they stopped having weekly production meetings and that morale diminished greatly with Brower. He stated that Mr. Brower withheld information, was dishonest and took ideas from staff, including Pickering and others, and promoted them as his own.

279. Mr. Pickering testified at length about the Studio B project. He stated that the idea started with Don Dean and Pickering, trying to come up with a more unified look for a public affairs set. The goal was to have it easily set up for the crew, and to make it an easy identification for viewers. He stated they discussed their idea with Mike Brower in 2006. Mr. Pickering stated they went to the CNN facilities in Atlanta to come up with ideas. He stated they were looking to have something similar to CNN which would give KET broadcasts a signature look. Mr. Pickering stated there were varying amounts and direction coming from management on this project. He came up with an original concept, based on the CNN model, which came in at over \$1,000,000. Mr. Pickering knew this would not be the project they would work on, however, he thought that coming up with such a design would help management come up with more realistic expectations as to what KET could accomplish.

280. Throughout the next several years, Mr. Pickering produced budgets and designs for a Studio B set in a timely manner. He stated that on a couple of occasions, he created models, had meetings showing his designs to management, and then would get no feedback. Mr. Pickering came up with a circular truss design, where monitors were raised, lowered and slid, and the cables were off the floor, freeing the cameras. He felt this gave it a unique look and worked well in the studios. He had a detailed model produced in January 2009. He heard positive feedback regarding the production and design, but did not hear anything for three or four months.

281. Mr. Pickering testified about attending a meeting in December 2008 regarding the Studio B project. He said that Mike Brower was hostile during the meeting, which also included Carl Babcock, George Murphy and Clark Bradshaw. He stated that Brower was upset over the progress of the Studio B project. Mr. Pickering was uncomfortable with the meeting, and stated he has never been treated in that manner in his professional career. Mr. Brower's memorandum following the meeting was introduced as Pickering Exhibit 16. Mr. Pickering's response to that memorandum was introduced as Pickering Exhibit 5. In short, Brower blamed Pickering for lack of progress on Studio B, while Pickering testified that Brower had not followed up when Pickering had presented him with ideas and concepts. In his response, Pickering stated in his professional life he had never experienced a meeting where he was met with so much "anger, false accusations, and general disrespect" as he experienced from Mike Brower in the meeting.

282. Mr. Pickering testified that he continued to have problems with Mr. Brower, including Mr. Brower complaining that he had blind-copied Shae Hopkins on an email in 2010. Pickering testified that he blind-copied Ms. Hopkins because he did not trust Mike Brower. Ms. Hopkins responded by being upset about the lack of progress on the Studio B project and the length of time they had been forced to use a generic set for public affairs broadcasts.

283. Mr. Pickering testified that the Studio B project was a frustrating experience. He stated that he believed he did everything he was supposed to do, and that Mr. Brower simply could not make a decision. Mr. Pickering stated they were within six weeks of getting into this project once a decision was made.

284. Mr. Pickering testified that he raised a number of safety concerns with his supervisors at KET. Mr. Pickering referenced a 2006 incident where he pointed out to Mr. Brower that a portion of the studio used for storage of sets was kept in an unsafe condition. Mr. Pickering specifically complained about heavy industrial cables, which created a safety hazard. He proposed speedbump containers which organized the cables and reduced the tripping hazard. Mr. Pickering claimed that Brower "blew up at him." Pickering walked away not performing what he thought was an unsafe duty. Pickering stated that Brower screamed at him, "Walk away and you lose your job." Pickering later received a written reprimand over this incident. (Pickering Exhibit 12.)

285. Mr. Pickering also had safety concerns regarding dust in the workshop and lights which needed to be replaced. In each of these incidents, he brought them to Mike Brower's attention. Pickering stated Mr. Brower took no action.

286. Mr. Pickering testified regarding a fundraising event held in the studio where he had concerns about the number of attendees in the studio. Mr. Pickering invited the Fire Marshall to review. He stated that Ms. Hopkins attended the meeting and lobbied for a higher attendance number. Mr. Pickering was left in an awkward position, arguing against his bosses on a matter that he felt involved safety. As a result of the meeting, Mr. Pickering believed an unsafe number of people were allowed to attend the event in the studio. Mr. Pickering felt that Ms. Hopkins had not provided the Fire Marshall with full information, including that one of the exits, which was used to increase the attendance, would be blocked on the night of the event.

287. With regard to all of these safety issues, Mr. Pickering felt that he followed the KET Employee Handbook, which called for him to report such incidents to his supervisors. (Pickering Exhibit 17.) Mr. Pickering felt he was retaliated against by management for raising these concerns.

288. Mr. Pickering testified he was passed over for promotions while he worked at KET in favor of younger employees. He pointed out that there was a Production Manager position open. Mr. Pickering felt he was well-qualified, however, they selected John Breslin, who was five to ten years younger than Mr. Pickering. He also pointed out a number of Producer-Directors who worked for KET who were in their early or mid-30s. He stated these were coveted jobs at KET, which allowed for creativity and had room for advancement. He pointed out Sarah O'Keefe and Justin Allen as examples of individuals placed in these roles.

289. Mr. Pickering felt that KET management, especially Mike Brower, favored younger employees. Pickering stated that Mr. Brower did not like to be questioned and did not like to be challenged by employees. The young employees who were favored by Brower, according to Pickering, included John Bacon and Kelly Campbell.

290. Mr. Pickering also testified he believed he was the victim of sex discrimination at KET. He testified regarding a female employee, Jo Motsinger, who Pickering believes took KET equipment upon her retirement. He said that KET officials overlook the fact that she took a sewing machine belonging to KET worth approximately \$1,500. When Mr. Pickering complained about this incident, he was accused of having anger management problems. He was accused of having anger management problems also when discussing the hazardous cables with Mr. Brower.

291. Mr. Pickering testified he was arbitrarily prevented from applying for a grant from the Kentucky Fund for Independent Producers because he was not eligible as a KET employee. Mr. Pickering disagreed, stating there was nothing in the written rules preventing his application and Tom Thurman, a younger KET employee, received the grant in 2005. This was the same year Pickering was told he could not apply.

292. Mr. Pickering testified about being reprimanded for wearing jeans when the Governor was at the KET studios for an Education Matters program. Mr. Pickering stated that the dress code that day was not to wear blue jeans. Mr. Pickering stated that he did not wear blue jeans, however, he was accused of it at a later date by Carl Babcock. Mr. Pickering went to Larry Grizzle, the Facilities Supervisor, to review the security tape to show he was wearing appropriate clothing on that date. Mr. Pickering stated that once KET management learned that Mr. Grizzle was helping him view the security tape, Fred Engle approached Larry Grizzle and told Grizzle he was never to review tapes like that again. Shortly thereafter, Grizzle was stripped of responsibilities for monitoring security cameras and providing access badges to visitors and contractors to KET.

293. Mr. Pickering testified he was involved with the "Red Green" live show in July 2010. Mr. Pickering was going to be on vacation at the time of the event, however,

he pre-set the lighting and left instructions for Prentice Walker for this event. After the event was over, a post production meeting, run by Carl Babcock, was held with those involved. Mr. Brower did not attend the meeting. Mr. Pickering had heard that the production was a near-disaster. As a result, he requested Rhonda Jasper Marks, an Ombudsperson to attend the meeting with him. He stated that Mr. Babcock stated he was uncomfortable in the meeting with Ms. Marks there. Mr. Pickering stated that the result of the meeting was that either Mike Brower or Craig Cornwell had brought up every light in the studio and prevented them from getting the appropriate lighting for the event. Mr. Pickering requested an Ombudsperson because he felt he would be blamed for the event.

294. Mr. Pickering testified he was at KET on September 9, 2010, when the KET Authority Board met to discuss terminations of employees. After the meeting was over, Mike Brower told him he had been dismissed without cause, and he had 30 minutes to pack up and leave. Pickering was 52 at the time he was fired by KET. He was 42 when he was hired. A newspaper article appeared in the Lexington Herald-Leader shortly after the 13 terminations. Mr. Pickering was quoted as saying that the quality of KET broadcasts may suffer due to the loss of talented employees.

295. Mr. Pickering testified that after losing his job at KET, he obtained employment at the Lyric Theater. He was scheduled to work an event with KET staff. Shortly before the production was to take place, Mr. Pickering received a voicemail from Renee Shaw that KET was not going to need Mr. Pickering's services. Mr. Pickering lost his job at the Lyric Theater shortly thereafter and has never worked with KET on any project since the day of his termination.

296. Mr. Pickering testified he did not know about the damage to his hard drive. Mr. Pickering acknowledged there were invoices on his work computer. He stated many of these were created at home, although some were created at work at KET. He stated that due to his job duties, he did not always work an 8:30 a.m. to 5:00 p.m. schedule, and often worked later hours in order to work a full day at KET.

297. Mr. Pickering contacted 17 PBS stations and discovered all employed a studio manager, including affiliates in Austin, Miami, Pittsburg, Oklahoma City, Denver, Charlotte and St. Paul. A few stations used different job titles, such as stage director, production manager or director of production, however, all performed stage manager duties.

298. At the time of his testimony, Mr. Pickering was an Adjunct Professor of Theater at Georgetown College earning \$26,000 per year. He stated when he worked at KET he made somewhere between \$39,000 and \$42,000 per year. Mr. Pickering testified that when he was fired at KET, he felt crushed and betrayed. He felt the firing was

personal and that Mike Brower had gotten rid of him. He felt his firing was due to retaliation and discrimination. While working at KET, Mr. Pickering was proud of the commitment to excellence on the part of the staff.

299. **Appellant Trasimond Soileau** testified that he was 58 years old when he was fired by KET in 2010. He is married and his wife, Ellen, also works at KET. She is the Editor of Visions magazine and also is a writer. He testified that his youngest child was 5 years old when he was fired. Mr. Soileau worked for KET for 19 years and two months. He was looking to retire at 31 years.

300. Mr. Soileau had purchased 5 years of "air time" from retirement. He is not able to use this until he has 20 years of service. He stated the HR Department at KET was aware of this because he had to fill out the appropriate paperwork with them.

301. Mr. Soileau testified he has a Bachelor Degree in Physics from the University of Kentucky. Mr. Soileau had a summer job with General Electric. After college, he managed a restaurant, and then went to work for an electrical contractor. After the contractor went bankrupt, Mr. Soileau started his own company, Apex Electric, as a 50% owner. Soileau and his partner were supervisors, and they had 20 employees. Mr. Soileau bought an IBM computer in 1982, and started writing software for the business.

302. Mr. Soileau found he liked computer work and changed to operating his own computer consulting firm, which he called Integrated Business Solutions. He started that in 1989, and worked there until he was hired at KET. He was asked to give a quote to do contract work for KET. At that time, Terry Tucker had no money in contracting pool, so instead they hired him as an employee. Mr. Soileau stated he was interested in this move because of the steady income and the retirement plan, etc. In July 1991, he started at KET. He was strictly a programmer when he started. He stated he worked off-site, so he had no interruptions. When the lease ran out at their outside office, Mr. Soileau worked out of his home for a while. He set up programs for overtime, payroll and inventory.

303. Mr. Soileau testified that Terry Tucker was his supervisor. They worked together on a number of projects. They both took four or five network classes. Once Mr. Soileau was reassigned to the KET building, he started doing user support, as well as working on servers. After taking a Novell network class, Mr. Soileau selected a server, bought it, installed it and maintained it. He also assigned rights and managed the server. Mr. Soileau testified there was a relaxed work environment when he started at KET, and it was a more creative workplace. He stated the morale was great. His evaluations were either all "Good" or "Exceeds." He stated he received four or five evaluations and then they stopped. He was not sure why evaluations stopped.

304. Mr. Soileau stated he started when Len Press was the CEO of KET. He also worked with Virginia Fox, Sally Hamilton as Interim CEO, Mac Wall and Shae Hopkins. He stated that when Virginia Fox was CEO, he started doing user support for the Executive Suite. He stated that Terry Tucker was not a people person, and he made people uncomfortable when he worked on their computers. Mr. Soileau testified that it takes special qualities to be good at user support. In addition to knowing computers, he stated you have to be able to work with people and not embarrass them, to give them support and to encourage them.

305. In 2007, Terry Tucker was out for an extended period of time following an injury. He unexpectedly retired. For approximately four months, Mr. Soileau ran the IT Department for KET by himself. Once Mr. Tucker was gone, Linda Hume became his supervisor. She hired Matt Bone to help out with IT. Mr. Soileau stated that she did not assign either one of them to be supervisor. She told them that in about a year she would select which one would supervise the IT Department.

306. While Linda Hume was his supervisor, Tras Soileau received a raise and also attended training. Mr. Soileau was involved in a training course which he did not complete, because he was called back to assist Matt Bone at KET.

307. While Linda Hume was supervisor, she determined they did not have enough help to do all the IT work that KET required. She hired Cynthia Lowell to work part-time for IT. She spent the rest of her time working on KET's web project.

308. Linda Hume retired without ever naming a supervisor of IT. Donna Verhoeven took over as supervisor. Mr. Soileau testified that in the first meeting she had with the IT Department, she told him that he would work on user support the rest of his career. Mr. Soileau testified he requested training on a number of occasions from Ms. Verhoeven. She would not approve him training, although she sent Cynthia Lowell and Matt Bone to training sessions.

309. Mr. Soileau described Ms. Verhoeven as abrasive and abusive as a supervisor. He said she would talk sternly and would not listen. She often placed her hand in his face in a very dismissive manner.

310. Mr. Soileau testified about the installation of computers at KET. He stated they often purchased a number of computers with money left over towards the end of the budget cycle. He stated they would get a large number of computers all at one time, and it would take some time for Mr. Soileau to be able to install these. He said they never had enough people in IT when he worked at KET. Mr. Soileau testified it generally took a half day to set up a computer. He stated this took a long time due to the tremendous workload they had. He stated there were occasions when employees

from Transmissions would help install computers. He stated he often had to follow-up and do the actual installation work after they had unboxed and plugged in the computer. He stated that Ms. Verhoeven never saw the distinction between various employees, and just referred to them generically as technical people, including the folks from IT.

311. In May 2009, Mr. Soileau had a conversation with Mary Francis Cecil. At that time, she was retired from her position as Personnel Administrator for KET. He discussed problems at KET, including problems primarily with Ms. Verhoeven. He stated that 15 minutes later, he received a call from Sally Hamilton, who at that time was a KET Authority Board Member. Mr. Soileau discussed some of the concerns he had regarding Ms. Verhoeven. Ms. Hamilton stated she would like for Mr. Soileau to tell this to Hilma Prather, who, at that time, was Chairman of the KET Authority Board. Mr. Soileau sent Ms. Prather a lengthy email discussing these issues on May 16, 2009. (Wise and Soileau Exhibit 21.) In his email, Mr. Soileau stated he believed Verhoeven was unfit for her job. He talked about Verhoeven not replacing the firewall and switch, locking IT out of meetings regarding the digital conversion, re-deploying old computers without giving direction, hoarding computers and smart phones and mismanaging the uninterrupted power supply. He also talked about her rude and belittling behavior directed at him and other employees. He also repeated rumors he had heard about Ms. Verhoeven that had nothing to do with her work at KET.

312. Mr. Soileau believed that Ms. Verhoeven became aware of his email and she retaliated against him for sending it. Mr. Soileau commented on Ms. Verhoeven's testimony, where she stated that she was told about some issues involving the firewall and she knew the information must have come from IT. Mr. Soileau observed that she had to know he had sent the email, because the only two people in IT were Soileau and Matt Bone. Soileau stated that she knew these issues did not come from Matt Bone, because Verhoeven and Bone were at one time good friends.

313. During his last year of employment, Mr. Soileau and his wife attended four board meetings, either together or separately. Mr. Soileau believed he was singled out when he received an email on August 3, 2010, from Fred Engle, stating that in the future, he would have to request leave time to attend board meetings. (Wise and Soileau Exhibit 18.)

314. Fred Engle served as Mr. Soileau's supervisor from May 2010 through his dismissal on September 10, 2010. During this time, Mr. Soileau had no serious conversations with Mr. Engle about his work. Engle did not give any work assignments to Mr. Soileau. Mr. Soileau sent Engle an email on July 20, 2010, notifying Mr. Engle of his qualifications, his need for training, and his plan to work several additional years. (Wise and Soileau Exhibit 10.) At one point, he approached Mr. Engle and stated that

he felt like he was going to be fired because he was not getting any work assignments. Mr. Soileau stated that Mr. Engle responded that he was reading too much into things.

315. Mr. Soileau testified that at the time of his termination, there were three employees in IT: Mr. Soileau was 58 years old, Matt Bone was 32 and Cynthia Lowell was 38.

316. When Soileau was fired on September 10, 2010, he stated he was not surprised. He stated that he assumed he would be fired, as he had not received any work assignments for some time. He had talked with an attorney about this possible dismissal before this action happened.

317. Mr. Soileau testified that he believed his dismissal was the result of age discrimination. He pointed to the fact that he had been limited to user support, and had been denied training, while both Lowell and Bone had been allowed to attend training. Mr. Soileau also pointed to the fact that Donna Verhoeven had removed him from meetings with Roscor about the digital conversion project. Mr. Soileau felt he was more qualified to work in KET's IT Department than Cynthia Lowell. He did not believe Ms. Lowell could match him in either user support or programming skills. Mr. Soileau also disputed the testimony that he only did low level IT work. He stated he managed servers, took care of viruses and managed the network.

318. With respect to Matt Bone, Mr. Soileau stated that Mr. Bone's skills were very good with respect to the network. He stated that Mr. Bone could do user support, but did not like to do it. He stated that he and Mr. Bone were proficient in different sets of programming languages. Mr. Soileau believed he was better than Bone at troubleshooting, and could solve issues with computers quicker. Mr. Soileau stated he was praised for his work at KET, including election coverage and user support. He stated that Terry Tucker never had to supervise him, and he was a self-motivated employee.

319. Mr. Soileau testified that for many of the same reasons with respect to Ms. Lowell, he believed his dismissal was the result of sex discrimination.

320. Mr. Soileau also testified that he faced retaliation after his email to Hilma Prather became known by Verhoeven. He believed his dismissal was also related to retaliation.

321. Mr. Soileau testified that after receiving his dismissal letter, he contacted the Personnel Cabinet about getting on re-employment lists. He stated he was told by the Personnel Cabinet he was not eligible to be placed on such lists, even though it was stated in his dismissal letter. (KET Exhibit 4.)

322. **Terry Tucker** testified that he worked at KET from 1983 through 2007. He was in charge of the IT Department. He hired Soileau in 1991.

323. Tucker testified that he did not have to supervise Mr. Soileau much. He stated that Mr. Soileau started out as a Network Manager, however, both Mr. Tucker and Mr. Soileau evolved into user support out of necessity. By the time Mr. Tucker left KET, he stated they did not have time for much of anything else. At the time that Tucker was getting ready to leave KET, the Production group was becoming digital. Tucker tried to steer them away from digital as much as possible. He felt it was too complicated.

324. Tucker stated he did most of the work that was Macintosh-based, and Soileau did the work that was DOS-based. He stated that one of Soileau's best qualities was that he was personable, and people liked him. He said that because of those qualities, Soileau was better at user support than Tucker was. He also thought that Mr. Soileau was very persistent, and he would work at something until he figured it out. He stated Soileau had good technical skills, and because of his background in electronics, he knew a lot about the mechanics of computers. He stated that Soileau was an excellent troubleshooter. He recommended Soileau for a merit raise.

325. Tucker testified that he thought Soileau was capable of working on the mail server, but not on the firewall. Mr. Tucker did not recall leaving anything behind in writing for future supervisors of IT.

326. **Sally Hamilton** testified she was the Chief Administrative Officer for the City of Lexington. Ms. Hamilton was the Deputy Executive Director for Finance and Administration at KET from September 1993 through December 2003. She served while Virginia Fox was Executive Director of KET. She was in charge of what she referred to as the "back office" at KET, including the Business Office, Engineering, IT, Support Services and Master Control. In 2007, she was appointed by Governor Fletcher to fill a two-year term on the KET Authority Board.

327. Ms. Hamilton testified that she knew Mr. Soileau because IT reported to her. At that time, IT consisted of Terry Tucker and Tras Soileau. She stated that Mr. Soileau was responsible for user support of the Executive Offices. She felt he had a good work ethic, he was dependable and trustworthy. She stated he had a gentle demeanor, never made anyone feel stupid for having problems with their computers. She was not aware of any complaints about Mr. Soileau or any conflicts he had at work. She continues to serve as a job reference for Mr. Soileau.

328. Ms. Hamilton stated she was aware of Mr. Soileau's email to Hilma Prather (Wise and Soileau Exhibit 21), and recommended that he send it. She stated she

probably had four conversations with Mr. Soileau about problems he was having at KET. She stated he felt persecuted by Donna Verhoeven, and that she had undermined his credibility and performance within KET. Ms. Hamilton stated she had also received calls from Rick Melton about problems he was having with Ms. Verhoeven. Ms. Hamilton stated that Mr. Melton was a competent employee and she was satisfied with his work. She thought he was a skilled technical employee. She felt he was not getting the support he needed from Ms. Verhoeven. She was aware of the controversy over payment of the water bill. She stated that when she worked with Mr. Melton, she felt there were times when he needed to stop and take a breath. She did not think there was anyone at KET to tell him that when he was complaining to her about Ms. Verhoeven.

329. After she directed Mr. Soileau to get in touch with Hilma Prather, she did not receive any specific follow-up from Ms. Prather, nor did she expect any. She never heard from Mr. Soileau that his problems were resolved. As Ms. Hamilton was getting ready to leave the KET Authority Board, they were evaluating Executive Director Mac Wall. She stated that the evaluation was that everything at KET was fine, and everyone was happy. Ms. Hamilton stated she did not think that everyone was happy, and that some employees felt they were not being treated fairly or being listened to. She stated the Board thanked her, but had no specific comment.

330. Ms. Hamilton stated that she believed Mr. Soileau's and Mr. Melton's complaints should be taken seriously. Ms. Hamilton acknowledged she never heard Ms. Verhoeven's side of these events. Her recollection was that Verhoeven was a very good employee.

331. **Matt Bone** testified he has worked for KET for 15 years, and has worked in the IT Department for seven or eight years. When Terry Tucker retired, Matt Bone wanted his job. He was hired to work in IT, but was not made the supervisor. Mr. Bone has an Associate Degree in IT from Bluegrass Community College. He has almost finished his Bachelor Degree in IT from Western Kentucky University.

332. The entire time Mr. Bone has worked at KET in IT, he stated that they have been extremely busy. He stated that both he and Tras did user support, and that it was probably 60% of the work they did. He stated that Mr. Soileau was good at user support; he had a good personality, and had more patience than Mr. Bone. He stated Tras was good at diagnosis and troubleshooting. He stated they had a good working relationship and would ask each other things all the time. When they started working together, Linda Hume was the supervisor over IT, and he was aware of no complaints that she had about Tras's work.

333. When Donna Verhoeven took over IT, Ms. Verhoeven told Soileau that he would always do user support. Mr. Bone thought Ms. Verhoeven was rude and

abrasive towards Soileau. He stated that Mr. Soileau wanted training, and did not always want to be doing user support. He stated that Ms. Verhoeven would hold her hand up, and cut Soileau off while he was discussing things with her at their staff meetings. Ms. Verhoeven did not want Soileau working on her computer. Soileau discussed concerns about her with Bone. He was afraid she was out to get him. They both felt that she took credit for work that IT had done.

334. Mr. Bone stated that before she supervised IT, Verhoeven and Matt Bone were friends. He stated that they both would smoke, and they would often talk in the smoking lounge about personal matters, kids, etc.

335. Mr. Bone testified that Donna Verhoeven would talk down to Soileau in meetings. Mr. Bone also felt that Verhoeven was more lenient with him than she was with Soileau with respect to attendance.

336. Mr. Bone thought Ms. Hume was a better supervisor than Verhoeven. He stated that Ms. Hume brought Cynthia Lowell in as a part-time IT employee. He quoted Ms. Hume as saying they would try it out and she wanted them to report if they had any problems with Cynthia Lowell. Mr. Bone thought that Linda Hume was open as a supervisor, although things were somewhat difficult because no one specifically was in charge within IT. He felt she was much more diplomatic, fair and understood things.

337. In contrast, Mr. Bone did not think that Donna Verhoeven understood the work they did in IT. She had some knowledge of Microsoft Office or Access, but she did not understand the issues that they had to deal with. She did not understand when they asked to upgrade KET's computer system.

338. Mr. Bone testified that he worked with Cynthia Lowell in the IT Department for approximately five years. He was a supervisor over her for a short period of time after the terminations. Mr. Bone believed that Ms. Lowell improved during those five years, however, when Mr. Soileau was terminated, he felt Soileau's IT skills were superior to Lowell's. With respect to user support, he felt she was brash and did not have much patience with users. Mr. Bone stated that contrary to Ms. Lowell's assertions, she never touched the firewall at KET. He stated that he believes she works for someone that contract with the Kentucky Horse Park.

339. Mr. Bone testified that whenever he was working on a system upgrade, server install, or a switch install, Mr. Soileau was involved on every occasion. He stated that Mr. Soileau confided in him that Terry Tucker had Soileau do user support, and there was certain stuff he did not want Soileau to know. He also confided in Bone that he felt Terry Tucker had withheld training. He never recalls Mr. Soileau describing

himself as having "limited abilities." Mr. Bone felt like Mr. Soileau asked Fred Engle for things to do once Engle became their supervisor. He stated that Mr. Soileau was looking for challenges. He felt like they tried to have a team effort atmosphere within IT. He described an incident where an email server went out. He ran to the server and received assistance from both Mr. Soileau and Mr. Engle.

340. Mr. Bone testified that Ms. Verhoeven made some unusual decisions in charge of IT. She would not let him get a cell phone to mirror what the others might have, and instead allowed him to use Rick Melton's old Blackberry. He also stated that Mr. Soileau would certainly have the skills to duplicate DVDs.

341. Mr. Bone was aware that Mr. Soileau thought he would be dismissed. Mr. Bone did not think so. He stated he felt like they needed more people in IT, not less. Mr. Bone felt he had superior IT skills to Mr. Soileau. He gave, as one example, his work on the firewall at KET.

342. **Rhonda Jasper Marks** testified that she worked at KET from September 1994 until she was fired on September 10, 2010. She was an Administrative Assistant with Transmissions and was 50 years old at the time of her dismissal. She stated she was "blown away" when she was fired. She had no warning, had never been disciplined and had received raises. She stated that Fred Engle was her supervisor at the time of her termination. She had only had brief discussions with him, and he had no idea what she did. In addition to her duties in Transmissions, she also helped out in the Business Office.

343. She testified she was friends with Donna Verhoeven. Although she did some work for the Business Office, she was officially offered to move to the Business Office. After this offer had been made, Ms. Marks went to Shae Hopkins and requested not to work for Donna Verhoeven. She stated that Ms. Verhoeven targets people, and she did not want to be one of those people. Ms. Marks stated that she told Ms. Hopkins, "If you decide for me to work for Ms. Verhoeven, I will make it work, because I need my job." Ms. Marks believes that her reluctance to work for Verhoeven was a factor in her firing.

344. Ms. Marks served as an Ombudsperson at KET for approximately six to eight years. She was aware Mr. Soileau had complained to the Board about Donna Verhoeven.

345. Ms. Marks stated she knew Tras Soileau, and she never heard any complaints about his work.

346. She testified that Mr. Pickering was the "Studio Guru" at KET. She had never heard any complaints about his work. Ms. Marks stated she represented Mr. Pickering twice as an Ombudsperson. The first dealt with an incident where Mr. Pickering was accused of wearing blue jeans when he did not. She was aware that Larry Grizzle had reviewed the videotape with Mr. Pickering. Grizzle was told never to do that again by Mr. Engle.

347. Ms. Marks also attended the meeting about the Red Green event with Mr. Pickering, although she did not reveal that was who had asked her to attend the meeting. She stated Carl Babcock asked her why she was at the meeting.

348. After this meeting, she stated that Donna Verhoeven and Ron Brown spoke with her and told her she should not attend a supervisory meeting like that. She was asked by Ron Brown, "Didn't you realize how being there could be an explosive situation for KET?" Ms. Marks stated she felt intimidated and threatened. She left the meeting and got her own Ombudsperson. She thought about resigning as an Ombudsperson or staying on. She thought surely they would not fire an Ombudsperson. She stated that none of the other Ombudspersons she talked to thought she had done anything wrong by attending the meeting. She stated Ron Brown instructed her never to attend a meeting without consulting management first. Ms. Marks testified that the Red Green event was on July 25, 2010. The meeting regarding the event was on August 23, 2010, and she was fired on September 10, 2010.

349. Ms. Marks testified she received the letter from KET at her work office. She contacted the Attorney General's office to see if it was real. She stated she felt harassed, intimidated, upset and angry over this letter. When asked how it made her feel about testifying at the hearing, she stated, "I'm here against my will." She stated that what KET did to her was humiliating. She stated that she went through therapy to keep KET out of her mind.

350. **Bill Joseph** testified he worked for KET for 24 and one-half years. He was the Eastern Zone supervisor over Transmissions. He stated that they were responsible for six transmitters and three translators in the eastern part of the state. He was responsible for paperwork, purchasing and supervising. He currently has two other employees, Roy Paxton and David Sturgill. Following the terminations in 2010, they lost two more employees. Mark Sturgill was killed, and another employee left on disability. Before the terminations, Mr. Joseph supervised eight in the eastern region.

351. Mr. Joseph works in Morehead and is responsible for the transmitter there, as well as others throughout the region. He stated that Roy Paxton lives in Martin County and David Sturgill lives in Pound, Virginia. He stated it would take Roy Paxton approximately 45 minutes to respond to any problem at the Ashland tower.

352. Mr. Joseph stated he never had any problems with Mark Holt. He never heard any complaints about Holt. He also was never aware that Mr. Holt reported employees carrying guns or that there was a problem with the tower in Ashland. Mr. Joseph was not asked his opinion regarding the 2010 terminations.

353. Mr. Joseph stated he met with Mr. Holt regarding the termination. He stated his conversation was that Mr. Holt was let go because they no longer were supporting the schools. He thought Holt would be placed back servicing the transmission system. Mr. Joseph was not involved in the decision, and does not know what criteria were used as far as dismissals.

354. Mr. Joseph stated that Rick Crider was good on the transmitters and was probably the best all-around technician. He stated that Mark Holt did an excellent job serving the schools. He stated that he handled all calls for assistance and did them well. He stated their service to the schools scaled back and then was stopped. Mr. Joseph supervised Holt in 2009 and 2010 after Kenny Combs retired.

355. **Curtis Harper** is the Director of the Transmission system for KET. He has been employed with KET for 17 years, and lives in Marshall County. The nearest transmitter to him is in Graves County. He stated it can be a challenge to supervise this branch, with employees all over the state.

356. He stated that Mr. Holt started as a Transmission Technician, just like Harper. They worked together on projects. He never heard any complaints about Mr. Holt's work.

357. Mr. Harper never heard any complaints about the physical condition of the Ashland tower from Mark Holt or anyone else.

358. Before Fred Engle arrived, Mr. Harper stated that in 2009 he had discussions with Donna Verhoeven about employees they could let go. He did not suggest Mark Holt. He did suggest other employees. He stated Mr. Holt's name came up in early 2010 when the funding to help the schools was ending. Mr. Harper stated it was his intention to put Mark Holt back in the field. He did not think Mr. Holt would be terminated. He thought Mr. Holt would be given a vehicle and be put in rotation to assist with any work that needed to be done on any of the towers in the eastern part of the state. Mr. Harper estimated that at the time of his termination, the school assistance made up 95% of Mr. Holt's work. Mr. Harper stated he discussed this matter with his two assistants, Bill Joseph and Robert Johnson. He stated that Mark Holt was not recommended for termination when he was aware of this process.

359. When Fred Engle took over as supervisor, Mr. Harper was aware of three names that were being considered for dismissal. Mark Holt's name came up, but there was no specific discussions about terminating him. No one had ever complained that morale was bad, because Holt did not do any work.

360. Counsel for Wise and Soileau introduced Wise and Soileau Exhibit 24, a program evaluation from the Legislative Research Commission regarding KET, written in 1981. Counsel argued this provided legislative history for KRS 18A.115(1)(f), which included KET for the first time with its 1982 amendments. Counsel argued this demonstrated that KET was not an exempt agency, but that KET was allowed to determine which positions are exempt from the merit system. Counsel stated she believed it was never the intention to allow KET to exempt all positions from the merit system. She pointed out that KET continued to hire employees for merit positions for another ten years. Counsel for KET did not object to the exhibit, but stated he did not agree that it constituted legislative history of KRS 18A.115(1)(f). Following the introduction of this exhibit, all Appellants rested.

361. Counsel for KET made a motion for directed verdict on all claims against all Appellants. The motions were denied. It was established that Mr. Pickering's claim of hostile work environment only called for relief if Mr. Pickering otherwise won his claim and was reinstated to his position at KET.

362. **Kelly Campbell** testified he was the Production Support Coordinator at KET. He was hired in 2005, when he was 26 years old. He was 31 years old at the time of the dismissals in these cases. He stated his duties include creating and producing DVDs. He also serves as a Technical Editor for KET, and a Technical Director of studio events. He stated he helps out in other areas. His job description was entered into the record as KET Exhibit 14. He stated he knows Robert Pickering. Mr. Campbell is not a Set Designer or Studio Manager. He stated that about 15% of his job deals with lighting. He stated that lighting duties currently at KET are split three ways between himself, George Murphy and a contract employee, Roger Bondurant.

363. Mr. Campbell stated that he has a degree in mass communications from Middle Tennessee State University. He stated he learned some about lighting in a general broadcast class while in school. He had not done any lighting work before he came to work for KET. He never assisted or worked with Don Dean or Robert Pickering on lighting matters. Mr. Campbell acknowledged he did lighting work prior to October 6, 2011, after reviewing Pickering Exhibit 6, an email from Mike Brower recommending Mr. Campbell for a raise. Mr. Campbell had no idea why he was not included in an interrogatory response from KET as to the employees that had taken over lighting duties after Mr. Pickering left.

364. KET called **Ron Brown**, who testified about the KET Foundation versus the KET Authority. He testified they have separate boards, separate minutes, although some members serve on both boards. Mr. Brown performs Human Resource functions for both entities. He stated that the Foundation is less complicated. It is not a state entity and the CEO makes the final decisions. With respect to the Authority, the board must pass a resolution for terminations, appointments, etc. The Foundation is set up as a 501(c)(3) corporation, while the Authority is a state entity. He stated that all KET employees are unclassified and salary adjustments require a resolution. He stated that one advantage that the KET unclassified employees have is to receive salary adjustments separate from regular merit increment increases. Mr. Brown discussed resolutions involving the Appellants in this case for raises outside of regular increments. (KET Exhibits 3, 4, 15 - 21.) KET introduced through Mr. Brown KET's Exhibit 22, which was a promotion chart including Authority and Foundation promotions from 2006 through 2014. Mr. Brown acknowledged that the Foundation and the Authority have the same health insurance, retirement plan and same KET salary schedule. He stated that employees of both entities served furlough days in Fiscal Year 2011.

365. Mr. Brown testified that he recalled meeting with Rhonda Jasper Marks regarding the fact that she had attended a meeting to represent an employee. He thought this was contrary to the purpose of the Ombudsperson program, which was meant to be confidential. He stated he did not recall a lot of the details. He stated that the Ombudspersons have a copy of the Ombudsperson Procedure and Criteria, which was introduced as Wise and Soileau Exhibit 25. After reviewing the document, he thought Ms. Mark's conduct violated the policy, although there was no specific prohibition from attending a meeting listed in the procedure. Mr. Brown testified that he knew that Ms. Marks had attended the meeting on Robert Pickering's behalf, because Mike Brower had told him.

366. Mr. Brown testified that with respect to Mr. Pickering's blind-copying Shae Hopkins on emails, he could have used the grievance process, which would have allowed him to bypass Mr. Brower's level and proceed to Ms. Hopkins.

367. **Craig Cornwell** is the Senior Director of Programming at KET. He has worked at KET for 20 years; the first ten as Director of Production, and the next ten in his current position. He described his duties as being responsible for acquiring, selecting and researching all the programs on KET. He testified that the Senior Directors were involved in the termination process in 2010. He stated this was the result of budget concerns and technology changes. He said there were needed personnel cuts and the Senior Directors had to decide who to let go. He described the process as determining non-essential jobs or jobs whose duties could be disbursed

among others in the department. He did not recall filling additional positions being part of the process.

368. Mr. Cornwell testified that Misty Adams from his department was identified for termination. He stated originally Cathy Morton was also on the list, however, she was not terminated. She took over some of Misty Adams' duties, and was not included in the 13 to be terminated.

369. Mr. Cornwell stated there were a series of four or five meetings in the summer of 2010. He believes he attended three or four of these meetings. He stated the Senior Directors were responsible for looking at everyone in their section. He does not recall there being discussions about alternatives to termination.

370. Mr. Cornwell testified about the differences between younger and older employees. He stated that younger employees are interested in achieving and moving up the ladder. He stated that they have a superior knowledge of technology. He stated that older employees are more set in their ways and they do not always follow directives. Older workers can present more of a challenge for management. Due to changing technology, KET had to start making changes. He denied that the Senior Directors focused on age when looking at who to terminate.

371. Cornwell testified that he hired Mr. Pickering. He stated he was very satisfied with the quality of Mr. Pickering's work.

372. Mr. Cornwell testified that Mr. Pickering's position was identified for termination because they felt it was a position they could do without. KET was no longer doing large productions, and did not have the funding for these types of events. He believed that scenic design was becoming obsolete as a result of the digital conversion project. He testified they still needed people to perform the duties of Studio Manager and lighting, however, he felt these were distributed among other employees, including George Murphy and Roger Bondurant. Mr. Cornwell said he did not have any concerns with Mr. Pickering keeping up with technological changes. He did not see Pickering as someone who was set in his ways.

373. Mr. Cornwell worked with Mark Holt on answering phones when customers had to convert their televisions to digital. He was aware that Mr. Holt worked with the schools and did troubleshooting with school technology. When most of the work they were doing with the schools stopped, he was not sure that Mr. Holt had many duties left. He was not sure about the process of identifying Mr. Holt for termination, other than to say he believes it was recommended by Fred Engle because Transmissions was included in his area. He did not know whether Mr. Holt had been considered for other duties.

374. Mr. Cornwell testified he only knew Pat Wise in passing. As far as he knows, Fred Engle recommended his termination.

375. Mr. Cornwell testified that Tras Soileau worked on his computer. He was concerned about Mr. Soileau's skill level. He recalls a time when Soileau was trying to install Blu-ray software on his computer, and Mr. Soileau had trouble. When he finished, there was no audio. Mr. Soileau tried again, and then stated he was not familiar with the software. Mr. Cornwell's recollection was that someone else from IT came along several days later and fixed it. Mr. Cornwell was not surprised when Mr. Soileau's name came up for termination. He testified that IT was changing. He did not think that Mr. Soileau kept up with the technology. He knew that Shae Hopkins and Donna Verhoeven also had problems or concerns with Mr. Soileau working on their computers.

376. Mr. Cornwell introduced KET Exhibit 23, a list of awards KET has won since 2010. He testified that ratings at KET have increased dramatically over four years following 2010. He stated KET has been singled out for using capabilities in education. Mr. Cornwell, himself, has been recognized as Programmer of the Year.

377. At the conclusion of Mr. Cornwell's testimony, KET rested.

378. **Appellant Pat Wise** testified on rebuttal that when he started at KET in 1991, the majority of employees in Engineering were merit employees. He stated that he performed the same duties as they did, however, he was told he had to be hired as non-merit. He did not know if he made any more money. He did have a slightly different job title.

379. Following the completion of testimony, a conference was held on October 9, 2014. Prior to the conference, the Personnel Cabinet filed its position statement regarding Mr. Soileau's re-employment rights. The Personnel Cabinet argued that Mr. Soileau's service at KET did not count as classified or unclassified service for purposes of determining whether or not he was a career employee who had either reversion or re-employment rights. For this reason, it was decided that all parties would have a chance to respond to the Personnel Cabinet's statement. All parties also wished for a ruling regarding this issue before proceeding to briefing the merits of the appeals. After position statements were filed by all parties, Counsel for Mr. Soileau and Mr. Wise (who also had been notified he had re-employment rights) entered into settlement negotiations. The parties filed settlement agreements with the Personnel Board on March 4, 2015. On March 13, 2015, the Personnel Board entered a partial settlement order regarding Wise and Soileau and the Personnel Cabinet. The parties agreed that Mr. Wise and Mr. Soileau would be able to exercise re-employment rights pursuant to KRS 18A.135 for five years following the date of the agreement. The parties also

acknowledged that the compromise should not be construed as an admission by either party of the improper interpretation or application of any law with respect to the appeals. A copy of the settlement agreements and the order approving the agreements are attached to this Recommended Order as **Recommended Order Attachment E** (Soileau), **Attachment F** (Wise Settlement Agreement) and **Attachment G** (Personnel Board Order Approving Partial Settlement).

380. A conference was also held on February 6, 2015, outlining a briefing schedule for the parties. There were 20 days of hearing. The parties asked for a rather lengthy briefing schedule, with the reply briefs being due November 20, 2015. After extensions were granted, the reply briefs were filed on January 25, 2016. At that time, this matter stood submitted to the Hearing Officer.

381. On September 18, 2015, Counsel for Patrick J. Wise filed a Motion to Substitute the Estate of Patrick Wise as a party to this appeal. Patrick Wise passed away on August 1, 2015. His son, Christopher Wise, was appointed Administrator of Mr. Wise's estate, and requested that Mr. Wise's estate be substituted as the real party of interest in this matter. No party filed any objection to this motion.

FINDINGS OF FACT

1. Mark A. Holt was hired by KET as a Senior KET Broadcast Technician effective April 1, 1999. On March 18, 1999, the Kentucky Authority for Educational Television passed the following resolution:

Under the provisions of KRS 18A.115(1)(f), the Kentucky Authority for Educational Television hereby resolves to appoint Mark A. Holt to a Senior KET Broadcast Technician position at a monthly salary of \$2,250.00 effective April 1, 1999. The Authority further requests that the Education, Arts and Humanities and Personnel Cabinets take the necessary steps to effect this personnel action. (KET Exhibit 1.)

Similar resolutions were passed by the Kentucky Authority for Educational Television when Mr. Holt was promoted in April 2000, when he had a title change in August 2004, and when he received a salary adjustment in December 2004. In his dismissal letter of September 10, 2010, Mr. Holt was informed "this action is being taken without cause, and for this reason, you do not have the right to appeal your dismissal to the State Personnel Board except as provided by KRS 18A.095." Throughout these proceedings, Mr. Holt was referred to as an unclassified or non-merit employee. (KET Exhibits 1, 9 and 15, and Testimony of Ron Brown and Mark Holt.)

2. Robert A. Pickering was hired by KET as a KET Program Administrator on October 18, 1999. The Kentucky Authority for Educational Television adopted resolutions pursuant to KRS 18A.115(1)(f) at the time of his hiring, and when he was given a salary adjustment in December 2000. Mr. Pickering's dismissal letter of September 9, 2010, stated he was dismissed without cause and could not appeal to the Personnel Board, except as provided by KRS 18A.095. Throughout these proceedings, Mr. Pickering was referred to as an unclassified or non-merit employee. (KET Exhibit 2 and Testimony of Ron Brown.)

3. Patrick J. Wise was hired by KET as a KET Broadcast Technician Specialist effective October 1, 1991. The Kentucky Authority for Educational Television adopted a resolution pursuant to KRS 18A.115(1)(f) on August 19, 1991. In the resolution appointing Patrick Wise, the Kentucky Authority for Educational Television stated:

WHEREAS, recent developments at KET have necessitated the need for highly-skilled technicians to make the transition not only to KET's new building, but to advance the technological changes and innovations which are needed to keep KET on the competitive edge of rapidly changing technology and educational services, and

WHEREAS the search for such skilled technicians has proven fruitful in the location of Patrick J. Wise, who has agreed to accept employment with KET, and who brings to the position over 15 years of progressive experience in electronic technology.

In his dismissal letter of September 10, 2010, Mr. Wise was informed that his dismissal was taken without cause, and he did not have a right to appeal to the Personnel Board except as provided by KRS 18A.095. The dismissal letter also pointed out that since he had 18.92 years of service, he may wish to invoke his rights under KRS 18A.130 and KRS 18A.135 by contacting the Personnel Cabinet to be placed on re-employment lists. Throughout these proceedings, Mr. Wise was referred to as a non-merit or unclassified employee. (KET Exhibit 3 and Testimony of Ron Brown, Jim Rous and Patrick Wise.)

4. Trasimond Soileau was hired by the KET Foundation as a Computer Network Specialist effective July 1, 1991. While still a Foundation employee, he was given a raise on May 15, 1994. On May 16, 1994, Mr. Soileau was appointed as a KET employee. The resolution adopted by the Kentucky Authority for Educational Television on May 4, 1994, states:

Under the provisions of KRS 18A.115(1)(f), the Kentucky Authority for Educational Television hereby resolves to appoint Trasimond D.

Soileau to the non-merit position of KET Administrative Assistant at an annual salary of \$32,364.24, effective May 16, 1994. The Authority further requests that the Cabinet and the Department of Personnel take the necessary steps to effect this action.

Similar resolutions were adopted by the Kentucky Authority for Educational Television when Mr. Soileau received salary adjustments in January 1997, October 1999 and September 2007. When he was dismissed by KET on September 10, 2010, Mr. Soileau was informed the action was taken without cause, and he had no right to appeal his dismissal to the Personnel Board except as provided by KRS 18A.095. He was also informed that based on the fact that he had 16.33 years of service, he qualified for reversion, and may wish to invoke his rights under KRS 18A.130 and KRS 18A.135 by contacting the Personnel Cabinet to be placed on re-employment lists. Throughout these proceedings, Mr. Soileau was referred to as a non-merit or unclassified employee. (KET Exhibits 4, 16 - 21 and Testimony of Ron Brown and Trasimond Soileau.)

5. The Hearing Officer finds that all four Appellants were unclassified employees of KET. The Hearing Officer makes this finding based on the Kentucky Authority for Educational Television Resolutions with respect to each of these employees at the time they were hired and when they received raises or promotions. In addition, their P-1s, which were introduced into evidence, reflect they were non-merit. Their dismissal letters are also consistent with their status as non-merit. Finally, the overwhelming testimony was that all the Appellants were non-merit or unclassified employees.

6. Beginning in 2008, KET was facing a series of budget cuts. These cuts resulted in the termination of 10 employees in 2008. A large part of KET's budget consists of fixed costs, so when they were faced with budget cuts, personnel costs was the primary part of the budget where cuts were made. (Testimony of Shae Hopkins, Ron Brown, Mike Brower, Donna Verhoeven and Craig Cornwell.)

7. In 2009, there were a number of retirements (some witnesses testified there were as many as 40). Between the retirements and terminations, most positions were not filled; with only a handful actually being filled. Thus, the budget was reduced through attrition. Cutting personnel through retirements, however, was random, in that KET sustained a large number of cuts in one area where employees were needed, and no cuts in another area where there may have been room to eliminate some positions. (Testimony of Shae Hopkins and Donna Verhoeven.)

8. Because of the nature of the budget cuts, some managers saw this as an ongoing process, and were always looking for positions to eliminate. Mike Brower and Donna Verhoeven testified this was an ongoing process. Curtis Harper acknowledged

he was identifying for Donna Verhoeven which employees could be let go in the Transmissions Department in 2009. (Testimony of Mike Brower, Donna Verhoeven and Curtis Harper.)

9. On January 1, 2010, Shae Hopkins was promoted to Executive Director of KET. In May 2010, after an extensive national search, Fred Engle was hired as Senior Director of Technology. (Testimony of Shae Hopkins and Fred Engle.)

10. In the summer of 2010, Shae Hopkins asked her Senior Directors to identify critical personnel needs and non-essential positions. The Senior Directors were Nancy Carpenter, Senior Director for Education; Craig Cornwell, Senior Director for Programming; Julie Schmidt, Senior Director for External Affairs; Michelle Ripley, President of the Commonwealth Fund for KET; Shae Hopkins, Executive Director; Fred Engle, Senior Director for Technology; Donna Verhoeven, Senior Director for Finance and Administration; Tim Bischoff, Senior Director for Marketing and Online Content; and Mike Brower, Senior Director for Production Operations. Each Senior Director was asked to review their own area and bring this information to the meeting of Senior Directors. They were given no specific guidance other than to identify critical needs that needed to be filled due to losses through attrition or technological changes, and non-essential positions. Mike Brower identified his task as determining those positions whose duties could be outsourced. Craig Cornwell remembers identifying non-essential positions, but does not recall reviewing for critical needs. (Testimony of Craig Cornwell, Shae Hopkins, Donna Verhoeven and Mike Brower.)

11. The Senior Directors had a series of meetings to discuss restructuring of personnel. It is unclear exactly how many meetings were held discussing personnel matters. Documentation from some of these meetings was preserved by Donna Verhoeven, who was prepared to shred the documents, however, she did not when complaints were filed with the EEOC. Spreadsheets prepared by Ms. Verhoeven and distributed to the Senior Directors who made notes during the meeting were prepared for June 14, 2010, August 17, 2010, August 19, 2010, August 26, 2010, and a final list prepared for September 9, 2010. The list from September 9, 2010, was prepared for the KET Authority Board and proposed 13 employees for termination. (Testimony of Shae Hopkins, Fred Engle, Mike Brower and Donna Verhoeven. Wise and Soileau Exhibit 3 and Joint Exhibit 1, pages 24 through 59.)

12. On September 9, 2010, the KET Authority Board met in a special meeting for the purposes of discussing personnel actions. The KET Authority Board approved the 13 terminations, including the four Appellants, recommended by Ms. Hopkins and the Senior Directors. In special meeting notes prepared by Ms. Hopkins, she stated that since 2008, KET has lost 65 employees and hired only seven new employees. She stated that KET's personnel level was at its lowest in more than 30 years. Ms. Hopkins stated,

“Over the last several months, we have conducted an extensive internal review of every position, and assessed skills and structures - in order to determine what strategic adjustments were needed to best align our resources and workflow to support our core services.” Ms. Hopkins recommended six new hires, seven positions currently funded grants, contracts or enterprise that should be funded with recurring dollars and moved to full-time staff, 14 promotions of current staff who will be assuming significantly more responsibilities, and 13 positions identified as non-essential and recommended for elimination. She stated the net annualized savings would be approximately \$144,000. (Testimony of Shae Hopkins and Wise and Soileau Exhibit 6.)

13. In reality, there was no “extensive internal review of every position.” The Senior Directors who testified (Fred Engle, Mike Brower, Donna Verhoeven and Craig Cornwell) at the evidentiary hearing, testified they were not asked to conduct such a review. In addition, KET’s Personnel Director, Ron Brown, was not included in the process. He was not asked to provide personnel files to the Senior Directors. His only involvement was to provide basic information regarding the 13 identified for termination after they had been recommended by the Senior Directors, including salary and age information. The Senior Directors did not review position descriptions or, in many cases, bring any documents with them to the Senior Directors’ meetings. Fred Engle discussed terminations with Curtis Harper, the supervisor of Transmissions, however, he did not discuss the possible termination of Mark Holt. Mr. Engle did not discuss terminations in KET Studio Maintenance Department with supervisor Jim Rous. The review of the positions by each Senior Director was done within their own section. There was no discussion of all employees during the Senior Directors’ meetings, only those employees who had been identified for termination. The Senior Directors were not asked to conduct an “extensive internal review of every position” assessing skills and structures. (Testimony of Ron Brown, Fred Engle, Mike Brower, Jim Rous, Donna Verhoeven, Curtis Harper and Craig Cornwell.)

14. Eleven of the 13 employees terminated were supervised by Fred Engle, including Appellants Mark Holt, Patrick Wise and Trasimond Soileau. Appellant Robert Pickering was supervised by Mike Brower. One other person terminated was supervised by Craig Cornwell. Eleven of the 13 terminations were male. Eleven of the 13 terminations were over 40 years of age. KET’s workforce before and after the terminations was primarily male and over 40 years of age. All of the Senior Directors were over 40 years of age, except for Tim Bischoff. (Testimony of Ron Brown, Shae Hopkins, Mike Brower, Fred Engle, Donna Verhoeven and Craig Cornwell. Joint Exhibit 1, page 60, and Pickering Exhibit 3.)

15. Since the 2010 terminations, KET has won or been nominated for over 100 national, statewide and regional awards. KET’s overall viewership is up 25%, especially in key demographics. (Testimony of Craig Cornwell and KET Exhibit 23.)

16. Craig Cornwell, the Senior Director of Programming at KET, testified in response to KET counsel's questioning:

Hon. Brian Judy: Now there has been testimony concerning differences between younger and older employees at KET. During your 20 years at KET, have you noticed a difference between younger and older employees when it comes to following directives of management?

Craig Cornwell: Well, I think it would just be natural that younger employees want to achieve and, you know, move up the ladder, but you know, the other thing that I notice about younger employees, is that they come in with a lot of superior knowledge of the technology changes these days. It's, you know, when I first started in this business, computers were just a daydream, and now you have to have good computer skills because everything is relying on that. Technology is just changing the way we do business.

Hon. Brian Judy: Have you observed whether or not younger employees or older employees are more likely to follow directives from management without objections?

Craig Cornwell: No, in any workplace I've been in, the older employees are more set in their ways. They do not like change. And management sometimes has to make very difficult decisions about change and how to deal with changing technology or how to deal with budget cuts. You know, in my experience at KET, I came in as Director of Production. There were a number of older employees who had been there 15, 20 years, and we, as the technology changed - really as soon as I walked in the door - we had to start making changes. And there was a lot of push back from the old...the veterans who had been there who said, "Hey,

why can't we do it the way we used to do it? We have always done it this way." (sic) And you would have to explain that we cannot continue to do it this way because we will be dinosaurs. Our technology - we are in the broadcast industry. It is our technology, it is changing. We have to change with the times. (Testimony of Craig Cornwell.)

17. Shae Hopkins testified that age was not a part of the criteria used to determine the employees to be dismissed, or discussed at all during the decision-making process. Mr. Engle testified that age was not a consideration in the terminations. Mr. Brower testified that age was never mentioned in the termination meetings. Ms. Verhoeven testified that age was never part of the discussion in the termination meetings. Mr. Cornwell testified that age was not a factor in the terminations, and that job duties were the focus. (Testimony of Shae Hopkins, Fred Engle, Mike Brower, Donna Verhoeven and Craig Cornwell.)

18. Mark Holt has been employed in the electronics field since graduating high school, and obtained a FCC radio/telephone operators license in 1985. Prior to working for KET, Mr. Holt was employed as a Senior Network Technician for Ashland Inc. and as an Electronic Technician for three other employers. (Testimony of Mark Holt. Holt Exhibits 1 and 11.)

19. In 1999, Mark Holt was hired by KET as a Senior KET Broadcast Technician and assigned to the Transmissions Section. His primary duty was to provide maintenance of the television transmitter tower located at Ashland. Mr. Holt lives 10 miles from the Ashland tower. The nearest any other employees lived to the tower was 45 minutes to an hour away. Before and during his employment at KET, Mr. Holt attended a number of training courses in the electronics field, and obtained a number of certificates. Mr. Holt worked on the transmitter both by himself and with other technicians. He was capable of operating the television transmitter, the weather transmitter, and knew how to operate the uninterrupted power supply (UPS) as well as the diesel power generator. Mr. Holt was employed with KET when they switched from an analog transmitter to a digital transmission. He helped with this installation and also was trained on this equipment. Mr. Holt received an "Exceeds" evaluation in 2002, the last time he was evaluated. From 2000 to 2004, Mr. Holt served as a KET Technical Supervisor. (Testimony of Mark Holt. Holt Exhibits 7 - 11.)

20. In 2004, Mr. Holt's title was changed to KET Broadcast Technician Specialist, with a working title of Technical Services Coordinator. Mr. Holt took on additional duties supporting the schools. He served as the liaison to the education

program in the schools. He was responsible for site visits and provided tutorials to teachers. He was responsible for news being presented in the classrooms. He provided technical solutions by telephone and email to schools and the general public concerning KET's signal reception and operation of KET equipment. Mr. Holt also provided advice to the schools, coordinated field efforts for conversion from satellite to D-TV reception of KET programs at the schools, and consulted with technical field staff for solving school problems. Mr. Holt testified he continued to maintain the Ashland tower. (Testimony of Mark Holt and Holt Exhibit 1.)

21. By the summer of 2010, KET was no longer supporting schools in the same way. Schools were watching KET content over the internet. The support duties that Mr. Holt previously provided were no longer needed. Mr. Holt stayed busy performing other duties including transmitter tower maintenance, both technical and physical, and other work in support of the transmission section. (Testimony of Shae Hopkins, Mark Holt, Fred Engle, Bill Joseph, Curtis Harper and Craig Cornwell.)

22. In 2009, Curtis Harper, the Director of the Transmissions Section at KET, recommended three names for termination to Ms. Verhoeven, who was supervising over the Transmissions area at that time. Mr. Engle became aware of these names when he took over as supervisor. There was a discussion of Mark Holt's name, however, there was no specific discussion about terminating him. Mr. Harper believed that Mr. Holt would be given a state vehicle and put into the field to assist with transmitter maintenance. Mr. Harper estimated that at the time of Mark Holt's termination, the school assistance made up 95% of his work. The Hearing Officer finds that is an exaggeration, however, Mr. Holt was in charge of the school support for KET and it was a large part of his duties. Likewise, the Hearing Officer does not believe Ms. Verhoeven's testimony that Mr. Holt had nothing to do with the schools other than adjust their connections so they could watch the SEC basketball tournament. (Testimony of Mark Holt, Curtis Harper and Donna Verhoeven.)

23. Fred Engle suggested Mark Holt for termination to the Senior Directors' meetings based on information from Shae Hopkins that KET was no longer supporting the schools. Mr. Holt was recommended for termination not because of any problems with his performance, but because the Senior Directors believed that with the lack of support for the schools, Mr. Holt's position was no longer essential for KET's mission. It does not appear there was any analysis as to whether or not Mr. Holt would be a viable candidate to return to the field assisting with transmitter maintenance and to dismiss some other Transmissions employee. The Senior Directors agreed that Mr. Holt's position should be terminated. Curtis Harper learned that Mr. Holt would be terminated two days before the termination. He stated he was surprised when he learned this. Mr. Holt testified he was devastated by his termination. (Testimony of Fred Engle, Curtis Harper and Mark Holt.)

24. Mr. Holt alleges that his termination was the result of age discrimination, pointing to the fact that KET retained two younger, less-qualified individuals, Rick Crider and Roy Paxton. At the time of the dismissals, Rick Crider was 42 years old, and Roy Paxton was 43 years old and Holt was 50 years old. Bill Joseph testified that Rick Crider was probably their best all-around technician. The Hearing Officer finds that the Appellant has failed to establish that age was a substantial motivating factor in his termination. The overwhelming evidence presented demonstrates that Mr. Holt was dismissed because KET's Senior Directors believed the vast majority of his job duties went away when KET stopped supporting school services. Mr. Holt's age and his relative qualifications as a Transmissions employee compared to other employees was simply not a factor in their decision. There is no evidence that KET attempted any kind of a serious discussion of the relative merits of the employees in the Transmissions section other than Mr. Harper's initial identification of three employees for termination, which did not include Mr. Holt. In addition, the testimony has established that the Transmissions section of KET has continued to dwindle with employees leaving and not being replaced. (Testimony of Fred Engle, Shae Hopkins, Bill Joseph, Curtis Harper and Mark Holt, and Pickering Exhibit 3.)

25. Mr. Holt also alleges that his dismissal was in retaliation for having reported safety violations of the Ashland tower. Mr. Holt testified that he reported his concerns to Ken Combs, his former supervisor, who told him not to report it to Frankfort. Mr. Holt submitted pictures of the Ashland tower as Holt Exhibit 6 to demonstrate what he believed were unsafe conditions. KET disputed that the conditions at the Ashland tower were unsafe. Mr. Joseph testified there was some soil erosion, however, the tower was in no danger. Ms. Hopkins, Mr. Engle, Ms. Verhoeven and Mr. Cornwell all testified that they were not aware of any complaints by Mr. Holt about the safety of the Ashland tower. Mr. Holt presented no evidence that anyone in KET management knew about his complaints about the safety of the Ashland tower and, therefore, the Hearing Officer finds the decision to terminate Mr. Holt was in no way retaliation for his having raised safety concerns at KET. (Testimony of Shae Hopkins, Fred Engle, Bill Joseph, Donna Verhoeven, Craig Cornwell and Mark Holt.)

26. Robert Pickering was hired at KET in 1999 as a Studio Manager/Set Designer. Mr. Pickering arrived at KET with excellent credentials. He had three degrees in various theater arts, had years of experience as a college-level instructor and running his own scenic and lighting designer shop. When Mr. Pickering was hired at KET, Craig Cornwell was the Director of Production and was Pickering's supervisor. Mr. Cornwell was pleased with Mr. Pickering's work, and Mr. Pickering found Mr. Cornwell to be a very supportive supervisor. (Testimony of Robert Pickering, Craig Cornwell and Pickering Exhibit 9.)

27. Mike Brower took over as Director of Production in approximately 2004. From there forward, he was Mr. Pickering's first or second-line supervisor. Although they had a rocky relationship, Brower generally praised Pickering's set design and studio management work. From Mr. Pickering's perspective, Brower was not receptive to Pickering's safety concerns, treated him unfairly (Kentucky Fund for Independent Producers) and was not supportive of his work (Studio B project). From Mr. Brower's perspective, Pickering was insubordinate, did not follow the chain of command and Pickering did not produce new designs regarding Studio B when he was informed of concerns regarding his circular truss design. Mr. Pickering and Mr. Brower did not have a good working relationship and neither one enjoyed working with the other. (Testimony of Robert Pickering, Mike Brower, Don Dean, Clark Bradshaw, Chuck Burgess and Pickering Exhibits 5, 12, 14 and 16.)

28. Mr. Brower, as the Senior Director of Production, had the task of reviewing the Production Department and recommending employees for termination. Mr. Brower recommended Robert Pickering for termination. He stated that PBS stations, networks and television, in general, was going away from having full-time set designers and would simply contract the work out when necessary. Stations, including KET, were going to permanent sets utilizing monitors, which could be changed by changing the image on the monitor. Mr. Brower believed he had been tasked to identify positions which could be outsourced. Because he saw that set design would be infrequent and sporadic, he felt this would be an appropriate position to eliminate. Fred Engle testified this was consistent with what he had seen at his previous job in Chicago. Craig Cornwell, although originally shocked that Pickering was identified for termination, agreed with the concept. Apparently Nancy Carpenter felt she might need Mr. Pickering's services as a Set Designer with her education program. The other Senior Directors disagreed. Executive Director Shae Hopkins agreed that Pickering's job as a Set Designer was non-essential. Both Hopkins and Brower testified they received supporting information from other KET affiliates and networks about the lack of full-time Set Designers. (Testimony of Mike Brower, Fred Engle, Craig Cornwell and Shae Hopkins.)

29. Mr. Brower presented Mr. Pickering's name for termination to the Senior Directors' meeting on June 14, 2010. Mr. Brower's notes from the meeting included the handwritten notes, "Studio Manager/Lighting Dir - 50% lighting/50% - Studio - cam. op." and "Studio manager (6 mo.)." Mr. Brower claimed he did not know what these notes meant, although he could testify in detail about several other handwritten notes from the same day. He insisted there was no discussion of hiring a studio manager in six months or at any time in the future. Ms. Hopkins' notes from the same meeting include the notation "? future: studio manager/set design." She did not recall what this note meant and said there was no discussion of hiring a studio manager or set designer in the future. The Hearing Officer does not find this testimony credible. From

these notes from two different people who attended the Senior Directors' meeting, it is clear there was some discussion regarding hiring to fill these positions in the future. The Hearing Officer finds there was some discussion regarding these positions, however, there was no evidence of a decision to hire a studio manager, set designer or lighting director. In fact, no studio manager, set designer or lighting director has been hired since Mr. Pickering was fired in September 2010. (Testimony of Mike Brower and Shae Hopkins. Pickering Exhibit 1, Answer to Interrogatory 10, Joint Exhibit 1, page 32 and 36.)

30. Mr. Pickering's name remained on every list of terminations thereafter and he was terminated on September 9, 2010, by the KET Authority Board. (Testimony of Shae Hopkins, Mike Brower, Robert Pickering, Chuck Burgess and Joint Exhibit 1.)

31. Although classified as a Studio Manager, Mr. Pickering always performed a number of duties. He always performed some lighting duties, and took over more of these duties when Don Dean retired in 2009. Over the years, he served as a Producer/Director, a Director, an On-Air Host, Camera Operator, and worked with audio, make-up, loading equipment and videography. He also did in-house workshops. Mr. Pickering worked on 14 projects outside of regular shows in 2010, in addition to having responsibilities on all of KET's regular and semi-regular shows. Nonetheless, KET's Senior Directors thought of Mr. Pickering as primarily a Set Designer/Studio Manager, and did not consider him for filling other positions. (Testimony of Robert Pickering, Mike Brower and Shae Hopkins.)

32. The Hearing Officer finds that Mr. Pickering failed to prove that his termination was the result of age discrimination. Mr. Pickering was 52 at the time he was fired. The Hearing Officer finds that KET fired Mr. Pickering because they did not believe they needed a Set Designer. Mr. Pickering has pointed out that it seemed odd that KET would fire their Set Designer while they were in the middle of their largest set design project, the Studio B project. This may be true, however, KET's plan was to contract this work out, which they did. On the one hand, this Studio B project was finished within a year. On the other hand, the project was, on some levels, a disaster because the design from the contractor did not fit into Studio B and had to be used in Studio A. KET lost a special resource, which they had in Studio A. Nonetheless, KET has not suffered much, because the types of productions that were available in only Studio A have not been produced by KET because of a lack of funding. Mr. Pickering presented evidence that he was an excellent Set Designer; that he was an extremely conscientious Studio Manager; and he was talented as a Lighting Director, as well. In addition, the evidence supported that Mr. Pickering could perform a wide variety of duties. Nonetheless, KET viewed Mr. Pickering's job as unnecessary, based on the fact that few sets were being built, and that Studio Manager and lighting duties could be taken over by other staff members. While the testimony of some KET management

witnesses lacked credibility, specifically that there was no discussion regarding a studio manager at the June 14, 2010 meeting, the Appellant did not present sufficient evidence contradicting the Appellee's stated reason for Mr. Pickering's dismissal. Mr. Pickering also alleges he proved KET's reason for firing him was pretext by establishing that several other PBS stations had studio managers. This evidence did not change the fact that KET did not believe that a studio manager was an essential position for their network.

33. Mr. Pickering did not prove that his dismissal was the result of retaliation. While Mr. Pickering put forth evidence that he complained of a number of safety violations, the evidence did not establish there was a causal connection between this activity and his dismissal. Mr. Brower saw Pickering's complaints as evidence of insubordination and a failure to follow the chain of command. While he did not get along with Mr. Pickering, Brower was willing to put up with Pickering until he determined his position was not essential. There is no evidence in the record that Pickering's complaints of safety violations played any role in KET's decision to terminate his employment.

34. Mr. Pickering raised a claim of sex discrimination. The only evidence he offered was of KET looking the other way at misconduct by a female employee that had nothing to do with Mr. Pickering's dismissal. The Hearing Officer finds that Mr. Pickering did not prove sex discrimination.

35. Mr. Pickering also alleged a claim of hostile work environment. The evidence established that Mr. Pickering did not get along with Mr. Brower. There was no evidence that the conditions were anything other than a supervisor and an employee who did not work well together and who did not get along.

36. Mr. Pickering raised a claim of race discrimination, however, no evidence was presented on this claim. Mr. Pickering's termination was not the result of race discrimination.

37. Mr. Pickering presented evidence of damage to his computer hard drive. Mr. Pickering alleged it was intentionally damaged by KET management. KET alleged that the hard drive was intentionally damaged on Mr. Pickering's behalf so they would not discover invoices and other private work documents he had on his state computer. The Hearing Officer finds, after hearing all the evidence with respect to Mr. Pickering's computer hard drive, it is unknown how his hard drive was damaged. (Testimony of Ron Brown, Linda Hume, Fred Engle, Mike Brower, Robert Pickering and James Pemberton.)

38. Patrick J. Wise was appointed as a Broadcast Technician Specialist at KET on October 1, 1991. His job duties were to "operate, adjust and repair studio broadcast television equipment, to assure equipment meets manufacturer's and FCC specifications." Mr. Wise came to KET with 12 years of similar experience working for the University of Kentucky television and The Learning Channel. He also had supervisory experience over Master Control and Operation Engineers. Mr. Wise had an excellent reputation regarding the quality of his work and his work ethic at KET. (Testimony of Ron Brown, Jim Rous, Patrick Wise, Rick Melton and KET Exhibit 3.)

39. Mr. Wise played a crucial role in the Studio Engineering Division during the first digital conversion, working with Mike Howard, and the second digital conversion, being among two Engineers to attend the first training session regarding the K-2 server. Mr. Wise was also cross-trained to perform Master Control and Ingest duties. He was in the process of training David Threlkeld on the K-2 server in September 2010. Mr. Wise handled the hardware component of the K-2 servers, monitoring them multiple times a day and maintained the array of hard drives. He testified he knew how to address a failing hard drive, and how he went about replacing a hard drive within the system. He also monitored and maintained hard drive arrays for the back-up system for the K-2 server. (Testimony of Jim Rous, Patrick Wise, Rick Melton and Mike Howard.)

40. After Fred Engle was hired in May 2010 and the Senior Directors began conducting meetings to identify positions that were non-essential, they initially identified the Engineer at Bishop Lane in Louisville. This position was held by Kevin Wooten and was identified as a position to eliminate until August 26, 2010. (Joint Exhibit 1, pages 1 through 52.) The Bishop Lane facility included old legacy equipment. Mr. Engle determined that Mr. Wooten was needed to be on hand to fix this equipment, which frequently broke down. He testified it was not practical to have one of the Engineers from Lexington drive to Louisville to repair this equipment. Mr. Engle stated he made the decision to recommend Patrick Wise for termination based on the input of Mike Brower, Jim Rous and his personal observations. Mr. Engle alleged that Jim Rous told him that he could not get any work out of Patrick Wise. Mr. Engle also testified that he would walk through the Maintenance area, and on at least one occasion he saw Mr. Wise doing nothing, and he stated he never saw him working on the digital equipment. Mr. Brower testified Mr. Rous told him that Mr. Wise would not work on the digital equipment unless he received extra pay. (Testimony of Fred Engle and Mike Brower.)

41. Jim Rous directly refuted this testimony. Mr. Rous testified he never made these statements to Brower or Engle, nor would he have made these statements. He stated that Mr. Wise was one of his best workers. He referred to him as "top in the shop," and stated Wise is the last person he would have recommended for termination.

Mr. Rous said Mr. Engle never consulted him about who to terminate in his division. Mr. Rous testified that Mr. Wise never made any such statements about wanting extra pay. He stated Wise had an excellent work ethic and would do whatever he was asked. (Testimony of Jim Rous.)

42. Patrick Wise also refuted these statements. He stated he never told anyone he would not work on the digital equipment without receiving extra pay. He testified at length about the work he did on the digital equipment, including going into extensive detail. He also commented that if someone observed him not doing anything for a brief moment, they probably saw him trying to figure something out. Mr. Wise testified that maintenance work involves a lot of troubleshooting and his usual practice would be to try to figure things out, rather than just dive in without a plan to correct the problem. (Testimony of Patrick Wise.)

43. The Hearing Officer resolves this factual dispute in favor of Mr. Rous and Mr. Wise. Mr. Engle, Mr. Brower and Ms. Hopkins all testified that Mr. Rous was in the best position to observe, understand and evaluate Mr. Wise's work and his work ethic. Mr. Rous impressed the Hearing Officer as a credible witness. He is a retired KET employee who left in good standing. In fact, Mr. Rous was being considered for a 5% adjustment at the same time the Senior Directors were deciding who to terminate. (Joint Exhibit 1, pages 49, 51, 53.) He did not appear to have a particular axe to grind against KET or against any particular employee or managers. Patrick Wise also impressed the Hearing Officer as a credible witness. Mr. Wise was soft-spoken and somewhat uncomfortable talking about his own abilities and achievements. Once he became used to testifying and was asked to provide answers with specific technical details about his knowledge, skills and the work he performed, he answered questions with particularized knowledge about the K-2 server, the digital conversion project, Roscor's involvement and the training he attended. (Testimony of Shae Hopkins, Jim Rous, Fred Engle, Mike Brower and Patrick Wise.)

44. The Hearing Officer also resolves this factual dispute against Mr. Engle and Mr. Brower and in favor of Mr. Rous and Mr. Wise based on the overwhelming evidence in the record. Multiple witnesses testified regarding the quality of Mr. Wise's work and his reputation for having a strong work ethic.

A. Mr. Rous said Mr. Wise was a leader during KET's digital conversion, and the rest of the Maintenance Department used his work as a guide. When Mr. Wise did cable work, Mr. Rous described it as looking like it came from the factory. With respect to work ethic, Mr. Rous described Wise as a "stand-up guy" and a "workhorse." Rous stated Wise would do whatever he was asked, including working extra hours or midnights.

B. Mike Howard testified that he never heard any complaints or concerns about Mr. Wise's attitude or work ethic. When Mr. Howard was in charge of the original digital conversion at KET, he specifically selected Mr. Wise as the Maintenance Engineer he wanted to work with on this project due to the quality of his work. Mr. Howard praised Wise's electronic and mechanical skills. He stated that Mr. Wise was the person to go to if you wanted things to be done right, and if you did not want someone just jumping in and tearing things apart. Mr. Howard also praised Mr. Wise's work on the installations in Somerset, Kentucky.

C. Linda Hume testified she was not aware of any performance problems regarding Mr. Wise's work at KET.

D. Chuck Burgess testified he never heard any complaints or criticisms about Wise's work at KET. Burgess testified that Wise was good at what he did and knew exactly what he was doing. Mr. Burgess would often stop and ask Mr. Wise to explain to him what he was working on.

E. Doug Campbell testified he never heard any complaints raised at KET about Mr. Wise's work. He stated Wise had an outstanding reputation for his work ethic. Mr. Campbell testified that he worked with Wise on cross-training in Ingest, and Wise was one of only three Maintenance Engineers so cross-trained.

F. Rick Melton, who served as Mr. Wise's second-line supervisor, stated that Mr. Wise was as good as there was in the shop. He stated that Mr. Wise's wiring skills were a work of art, and he could tell by observing a rack which one Mr. Wise had worked on. He described Wise as the go to guy if you needed work done. He also testified that Mr. Wise could perform work at the component level.

G. Mr. Wise also went with members of KET's Production staff and worked on remotes, setting up and monitoring equipment. Prentice Walker praised Wise's work, referring to him as diligent and conscientious.

H. Matt Bone described Mr. Wise's installation of two email servers as "art," stating he was really articulate with his work.

Based on the totality of the evidence in this case, the Hearing Officer finds it more likely than not that Patrick Wise worked diligently on the digital equipment and

never refused work assignments or demanded more pay. The Hearing Officer also finds Jim Rous never made such statements. (Testimony of Jim Rous, Mike Howard, Linda Hume, Chuck Burgess, Doug Campbell, Rick Melton, Prentice Walker, Matt Bone and Patrick Wise.)

45. Mr. Wise was the oldest of the employees in Studio Engineering and the highest paid, other than the supervisor, Jim Rous. Mr. Wise was the only member of the Engineering staff whose dismissal would have saved the same or more money for KET as terminating Kevin Wooten. This information was provided to the Senior Directors in one form or another by Donna Verhoeven and Ron Brown prior to the time of the terminations. The Hearing Officer finds it more likely than not that Mr. Wise's age and KET's management's stereotypes about older workers being set in their ways and not interested in keeping up with the new technology were the reasons that Mr. Wise was singled-out for termination among the staff in the Maintenance Department. (Testimony of Ron Brown, Donna Verhoeven and Craig Cornwell, and Wise and Soileau Exhibit 2 and Joint Exhibit 1, pages 55, 58, 60 and 61.)

46. Although the Hearing Officer believes the record supports that Mr. Wise was more qualified than Lena Combs, the only female in the Studio Engineering Division, the Hearing Officer does not find evidence in the record that KET's decision to fire Patrick Wise was based on sex discrimination. There is no evidence in the record that Fred Engle or anyone else ever considered Lena Combs for dismissal or that there was any specific comparison of Mr. Wise and Ms. Combs in making this determination.

47. The Hearing Officer finds that Mr. Wise did not produce evidence of race discrimination in KET's decision to keep Jerome Johnson and fire Mr. Wise. There was no evidence KET considered Mr. Wise for a position in Master Control or Ingest, despite the fact that he was cross-trained in those areas. Throughout this case, it is clear KET considered employees primarily for the position they worked in, not for other positions that they might be able to work in.

48. Trasimond Soileau was hired by the KET Foundation as a Computer Network Specialist effective July 1, 1991. He came to the KET Foundation with a Physics Degree from the University of Kentucky. He worked for several years with an electrical company. He eventually co-owned his own electrical contracting company, where he supervised and managed approximately 20 employees. He later owned and operated his own computer consulting business, Integrated Business Solutions. He offered to do some contract work for KET, however they hired him as a Foundation employee instead. He started as a Programmer working off-site, developing programs for overtime, payroll and inventory. (Testimony of Trasimond Soileau and KET Exhibit 4.)

49. From 1991 through 2007, the IT Department at KET consisted of Mr. Soileau and his supervisor, Terry Tucker. Mr. Soileau eventually moved on-site at KET, and more of his duties became user support. In 1994, he became a state employee. Mr. Soileau was more suited for user support than Mr. Tucker, although user support made up 80% of their work by the time of Mr. Tucker's retirement. Mr. Soileau and Mr. Tucker divided up the programming and user support work. KET, especially the Production Department, was moving towards digital operations. Mr. Tucker resisted digital as much as possible, feeling it was too complicated. Mr. Soileau operated KET's IT Department for a few months by himself, before and after Tucker's retirement. (Testimony of Trasimond Soileau and Terry Tucker.)

50. Following Tucker's retirement, KET did not hire a replacement IT Supervisor. Supervision over the IT Department became the responsibility of Linda Hume. She hired Matt Bone, who was working in another department at KET. She also was supervisor when Cynthia Lowell was assigned to work half-time for the IT Department. (Testimony of Linda Hume, Matt Bone and Trasimond Soileau.)

51. Following Linda Hume's retirement in 2008, Donna Verhoeven became the supervisor over IT. At the first meeting she had with the IT staff, she told Mr. Soileau that his job was to do user support and that would remain his job the rest of his career. She was not interested in Mr. Soileau receiving training regarding programming, as she felt there was enough work to keep him busy in user support. While Ms. Verhoeven was skilled as an Accountant and handling budget matters for KET, she was clearly challenged trying to supervise KET's IT Department. KET's network needed updating, its email systems were in disarray, KET's firewall was neglected, and other needs were put off pending the hiring of KET's Director of Technology. Just as significantly, Ms. Verhoeven upset the working relationship that Mr. Soileau and Mr. Bone had, by directing Soileau to do strictly user support and Bone to take care of all of the network needs. Mr. Soileau, who wanted to stay up-to-date with the changing network issues involving KET, felt he was being abused, misused and marginalized, while being overworked trying to keep up with user support. Mr. Soileau was no longer sure exactly what his role was at KET in IT, and his work suffered. His strength, providing IT support to the Executive staff suffered to the point that Shae Hopkins, Craig Cornwell and others complained he could not take care of their needs. (Testimony of Trasimond Soileau, Matt Bone, Donna Verhoeven, Shae Hopkins and Craig Cornwell.)

52. In 2009, Mr. Soileau contacted former HR Director, Mary Frances Cecil, who put him in touch with Sally Hamilton, who had previously been a Deputy Executive Director at KET, and at that time was on KET's Authority Board. Mr. Soileau described his problems and concerns regarding Ms. Verhoeven. Ms. Hamilton encouraged Mr. Soileau to get in touch with Hilma Prather, who was Chair of the KET

Authority Board at that time. Mr. Soileau sent Ms. Prather a 14-page email describing his problems at KET with Donna Verhoeven. The email was sent on May 16, 2009, four days after Rick Melton resigned from KET. In addition to describing his own problems at KET, Mr. Soileau discussed Mr. Melton's problems with Ms. Verhoeven and repeated personal rumors he had heard about Ms. Verhoeven that do not concern her work. In the email, Mr. Soileau stated that Ms. Verhoeven was unfit for her job, and gave examples of what he called mismanagement and poor decision-making. He also discussed Ms. Verhoeven's decision to exclude IT from the digital conversion meetings and the failure to update the firewall and switch, as well as the uninterrupted power supply. (Testimony of Trasimond Soileau, Sally Hamilton and Wise and Soileau Exhibit 12 and 21.)

53. In May 2010, when Fred Engle started as the Senior Director of Technology for KET, the IT Department was a disaster. KET had multiple email systems which were not compatible and hard to operate. Numerous computers had been purchased and not set up. The firewall and switch needed attending, and the uninterrupted power supply needed updating. Mr. Soileau was unsure of his role in IT, wanting to provide network services, but being told user support was his only role. Matt Bone was unfocused, had poor attendance due to personal issues, and was operating his own business while at work. Meanwhile, Cynthia Lowell was keeping track of Mr. Bone and Mr. Soileau's comings and goings. Within his first month or so on the job, Mr. Engle determined that Mr. Soileau was the highest paid employee in the IT Department and was not considered a strong performer. He believed that Mr. Soileau's firing would have little impact on the performance of the IT Department at KET. Mr. Engle received feedback from other Senior Directors that they did not want Soileau working on their computers. Mr. Engle felt comfortable recommending Mr. Soileau's dismissal. The Senior Directors agreed with him, and he was dismissed September 10, 2010. Mr. Soileau's name appeared on every list of employees to be terminated starting in June 2010. (Testimony of Fred Engle, Shae Hopkins, Craig Cornwell, Donna Verhoeven, Trasimond Soileau and Matt Bone, and Joint Exhibit 1, pages 1 through 60.)

54. Mr. Engle made a fairly quick decision that Mr. Soileau should be recommended for termination from the IT Department. There is no evidence that Mr. Engle was influenced by Mr. Soileau's age or sex in making this determination. His first impression was that Mr. Soileau was part of the problem in the IT Department, and his assessment never changed. Whether this assessment was accurate or not, Mr. Soileau did not present any evidence that Mr. Engle did not believe Mr. Soileau was a weak performer whose termination would not hurt KET's operations.

55. Mr. Soileau did not prove that his termination was the result of retaliation. Mr. Soileau argues that Ms. Verhoeven retaliated against him for his 2009 email, and led

the charge on his dismissal. The Hearing Officer does not believe that the evidence establishes this is the case. The evidence establishes that Ms. Verhoeven did not work well with Mr. Soileau from the time she took over supervision of the IT Department. She had no faith in his abilities, and criticized his performance from the very beginning, thus, Mr. Soileau sent the email. There is no indication that her assessment, her opinion or her statements regarding Mr. Soileau changed after the email was sent.

56. As a witness, Ms. Verhoeven presented some helpful financial information regarding KET's budget situation and some of the documents involved in the 13 terminations in 2010. The Hearing Officer does not find Ms. Verhoeven's testimony regarding Mr. Soileau's abilities, work performance or work ethic as an employee of KET credible, and does not rely on this testimony in reaching this decision. Mr. Soileau argues that testimony from Ms. Verhoeven and about Ms. Verhoeven demonstrates a pattern of retaliation against employees such as Rick Melton, Rhonda Jasper Marks and Mr. Soileau. The Hearing Officer finds this testimony does not establish a pattern of retaliation, although it does strongly suggest that Ms. Verhoeven was a poor manager who alienated staff. She did not possess the management skills or patience of her predecessor, Linda Hume. Mr. Soileau's career at KET never recovered from Verhoeven's determination that he was only to work user support. Her decision, however, was not the result of illegal retaliation.

57. During the hearing in this matter, the Appellants argued they were hampered in being able to present evidence in this case by the letter KET sent to employees and former employees on Jim Witt's witness list on March 12, 2013 (see Recommended Order Attachment D.) In post hearing briefs, the parties do not ask for any specific relief regarding this issue. The Hearing Officer finds that there were witnesses who were troubled by the letter, but it did not impact their testimony. The Hearing Officer finds that the letter and subsequent discussions about the letter did have an impact on the testimony of James Pemberton. Mr. Pemberton did not want to testify and, to the Hearing Officer, appeared like he had to say something negative about Mr. Pickering. He offered testimony regarding Mr. Pickering removing the guard from the table saw in the workshop. The testimony did not have any impact on the case, and did not weigh in the Hearing Officer's recommendation regarding Mr. Pickering's claim. The other witness who was clearly influenced by the letter was Rhonda Jasper Marks. Ms. Marks did not want to testify, wanted to put the events at KET behind her, and was greatly upset by receiving the letter at her new workplace. The letter caused Ms. Marks to be an angry witness; angry at KET and angry about this hearing process. Nonetheless, her testimony did not impact the recommendation regarding any of these four appeals.

CONCLUSIONS OF LAW

1. Appellants Mark A. Holt, Patrick J. Wise, Robert A. Pickering and Trasimond Soileau were unclassified employees with KET. The Hearing Officer concludes that the language contained in the resolutions to hire them "under the provisions of KRS 18A.115(1)(f), the Kentucky Authority for Educational Television hereby resolves to appoint..." is sufficient to establish their employment is exempt from the classified service and, thus, they are unclassified or non-merit employees. Mr. Soileau's resolution goes on to state he is being appointed "to the non-merit position of KET Administrative Assistant." The Hearing Officer makes this conclusion because the statute cited in the Kentucky Authority for Educational Television resolutions, KRS 18A.115(1)(f) is an exemption to the classified service. Thus, the language in the resolution is sufficient to exempt all the Appellants from the classified service.

2. As unclassified employees who were dismissed without cause, Holt, Wise, Pickering and Soileau could appeal to the Personnel Board based on claims of discrimination or retaliation. The Hearing Officer so concludes based on the language contained in KRS 18A.095(14)(a), which provides that any employee who believes he has been discriminated against may appeal to the Personnel Board. The Personnel Board's jurisdiction with respect to discrimination is not limited to classified employees. *Martin v. Corrections Cabinet*, 822 SW2d 858 (Ky. 1991).

3. This interpretation is further supported by KRS 344.025, which reads: "No provision in KRS Chapter 18A shall be construed to preclude any classified or unclassified state employee from appealing to the Personnel Board any action alleged to be in violation of laws prohibiting discrimination based on a person's status as a qualified individual with a disability, sex, age, religion or race or national origin, in accordance with this chapter."

4. The Hearing Officer rejects KET's argument that these four employees are something other than classified or unclassified employees, and have no right to appeal to the Kentucky Personnel Board. Some positions listed in KRS 18A.115(1) are completely outside the classified or unclassified service. Examples include KRS 18A.115(1)(l), "The judicial department, referees, receivers, jurors, and notaries public;" KRS 18A.115(1)(m), "Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers and employees of local boards of education;" and KRS 18A.115(1)(n), "Patients or inmates employed in state institutions;" KET employees are different. Clearly without a Kentucky Authority for Educational Television resolution, KET employees are classified employees (see Chuck Burgess' testimony.) In addition, Holt, Pickering, Wise and Soileau were referred to as unclassified employees throughout their employment, throughout the testimony in this

case, and throughout the official personnel documents, which KET and the Personnel Cabinet prepared. Finally, 101 KAR 5:015, Section 2(4) identifies employees appointed pursuant to KRS 18A.115(1)(f) as unclassified employees. There is no doubt the Appellants are unclassified employees and they have the right to appeal discrimination and retaliation claims to the Personnel Board.

5. The Hearing Officer rejects the argument put forth by Appellants Patrick J. Wise and Trasimond Soileau that they have been illegally classified as unclassified or non-merit employees. In support of the argument, counsel for Appellants Wise and Soileau relies on Wise and Soileau Exhibit 24, *Program Evaluation, Laws And Regulations Affecting Kentucky Educational Television* prepared in December 1981. In this report, the staff of the Legislative Research Commission supports the position that KET should have the authority to designate its management employees and on-air personalities as unclassified employees. Counsel for Wise and Soileau argues that this document makes up part of the legislative history for the current version of KRS 18A.115(1)(f), and demonstrates that the Kentucky Authority for Educational Television should be limited in the employees it may exempt from the classified service. The problem with this argument is when the Legislature adopted KRS 18A.115(1)(f), they put no such restrictions on the Kentucky Authority for Educational Television. The first rule of statutory construction when reviewing a Kentucky statute is the plain language of the statute. See KRS 446.130 and KRS 446.080(4). The starting point for statutory construction is to use the plain meaning of the words used in the statute. *Revenue Cabinet v. O'Daniel*, 153 SW3d 815 (Ky. 2005), "We are not at liberty to add or subtract from the legislative enactment or discover meanings not reasonably ascertainable from the language used." *Commonwealth v. Harrelson*, 14 SW3d 541, 546 (Ky. 2000). In this case, this language is clear and unequivocal that the Kentucky Authority for Educational Television had the authority to exempt the Appellants' positions from the classified service and did so.

6. KET next argues that the four Appellants' appeals should be dismissed as untimely. The Personnel Board has already ruled on this issue in its orders, Recommended Order Attachments A and C. These Orders are adopted and incorporated herein as a part of this Order. As unclassified employees, the Appellants only have 30 days to have filed their appeals with the Personnel Board from receipt of their notice of dismissal pursuant to KRS 18A.095(9). The Personnel Board has already determined, however, that time for the Appellants' appeals did not start to run, because KET did not attach an appeal form to their notices of dismissal as is required in KRS 18A.095(16)(b). The Personnel Board also determined that KRS 18A.095(29) does not apply to Mr. Soileau's appeal, because that subsection only applies to a situation where an Appellant has not received written notice of his or her right to appeal. Mr. Soileau did receive such a notice. (KET Exhibit 4.) All four appeals are timely filed with the Personnel Board.

7. All four Appellants have made age discrimination claims in this case. They may prove their age discrimination claims by either direct or indirect evidence. If by indirect evidence, Kentucky courts follow the *McDonald-Douglas* burden shifting framework. The Plaintiff must establish a *prima facie* case by showing that the Plaintiff: (1) was a member of a protected class; (2) was discharged; (3) was qualified for the position from which they were discharged; and (4) was replaced by a significantly younger person. Once a *prima facie* case is established, the employer may rebut it by providing a legitimate, non-discriminatory reason for the termination. If a legitimate, non-discriminatory reason is given, the burden shifts back to the Plaintiff to establish that the reason is pretext for masking the discriminatory motive. The burden of persuasion remains with the Plaintiff at all times to demonstrate that age was the but-for cause of the dismissal. *Williams v. Walmart Stores Inc.*, 184 SW3d 492, (Ky. 2005) and *Yeschick v. Mineta*, 675 F.3d 622, 632 (Sixth Cir. 2012). An employee who was fired and not replaced can establish he is the victim of age discrimination. The question is always "whether, under the particular facts and context of the case at hand, the Plaintiff has presented sufficient evidence that he or she suffered an adverse employment action under circumstances which gives rise to an inference of unlawful discrimination." *Macy v. Hopkins County School Board of Education*, 484 F.3d 357, 365 (Sixth Cir. 2007). One way of establishing the fourth element is by establishing that the Plaintiff possesses superior qualifications to those who were not discharged. *Rachells v. Cingular Wireless Employee Services, LLC*, 732 F.3d 652, 653 (Sixth Cir. 2013).

8. Mark A. Holt established a *prima facie* case of age discrimination. Mr. Holt was 50 at the time of his termination. He was qualified for his position, and he presented evidence that he possessed superior qualifications to Roy Paxton and Rick Crider, who were not dismissed. KET, however, was able to articulate a legitimate, non-discriminatory reason for Mr. Holt's termination. The reason was that Mr. Holt's primary job responsibility was to support KET broadcasts to the schools and to answer questions regarding this program. By 2010, KET was no longer supporting the schools' program to justify Mr. Holt's position. Mr. Holt was unable to put forth evidence that KET's stated reason was a pretext for age discrimination. Mr. Holt was able to argue that he could have been returned to the field and done transmitter maintenance such as Paxton and Crider. KET was under no obligation to change his job responsibilities and to fire one of the other individuals. *Romans v. Mich. Dep't of Human Servs.*, 668 F.3d 826, 837-38 (6th Cir. 2012); *see also McBrearty v. Ky. Cmty & Technical Coll. Sys.*, 262 SW3d 205, 214 (Ky. Ct. App. 2008).

9. Robert A. Pickering established a *prima facie* case of age discrimination. Mr. Pickering was 52 at the time he was terminated by KET. He was well-qualified for his job as a Studio Manager/Set Designer and Lighting Director for KET. He established he was more qualified than younger members of the production team who were retained. KET has articulated a legitimate, non-discriminatory reason for Mr.

Pickering's dismissal. KET stated that because of the changing nature of public television, they no longer needed a full-time set designer and Mr. Pickering's Studio Manager and lighting duties could be distributed among other members of the Production staff. Mr. Pickering was unable to establish that KET's articulated reason was a pretext for age discrimination. The parties presented conflicting evidence regarding whether or not other stations had set designers or studio managers. Nonetheless, KET had the right to make their own decision going forward as to whether or not this was a necessary position. Mr. Pickering was unable to establish that younger workers or any one worker replaced him. Kelly Campbell performed some lighting duties and other work, but the evidence does not establish that he replaced Robert Pickering. KET certainly could have rearranged duties and kept Mr. Pickering, given his many talents in the area of production, however, they were under no obligation to do so. *Romans v. Mich. Dep't of Human Servs.*, 668 F.3d 826, 837-38 (6th Cir. 2012); *see also McBrearty v. Ky. Cmty & Technical Coll. Sys.*, 262 SW3d 205, 214 (Ky. Ct. App. 2008).

10. Patrick J. Wise established a *prima facie* case of age discrimination. He was 57 at the time he was terminated. He was well-qualified for his position. He established the fourth element by establishing that he possessed superior qualifications to those who were not discharged. Mr. Wise had more experience, his job performance was judged better by his supervisors who observed his work, and he was seen as a leader during KET's digital conversion, even training other employees on the new K-2 server. KET articulated a legitimate, non-discriminatory reason for his dismissal; that Mr. Wise was not interested in working on the new digital equipment, and had a bad attitude. Mr. Wise was able to establish that KET's articulated reason for his dismissal was a pretext for age discrimination. The overwhelming evidence in the record was that Mr. Wise was an excellent employee in studio maintenance, considered to be "the top in the shop" and among the best qualified with the best work ethic. The information regarding his disinterest in working on the digital equipment and his bad attitude were alleged primarily to originate with Jim Rous. Jim Rous denied he ever made these statements to Fred Engle or Mike Brower, and Pat Wise denied ever making them to Jim Rous. Based on the Findings of Fact, Mr. Rous and Mr. Wise did not make these statements and Wise was capable and willing to work on the digital equipment. Mr. Wise was the oldest and highest paid member of the Studio Maintenance staff, and his work was superior to younger individuals in the Maintenance staff who were retained. Mr. Wise has established that his termination was the result of illegal age discrimination.

11. Mr. Wise's claim of age discrimination is also supported by direct evidence in the form of testimony by Craig Cornwell that older workers at KET are seen as set in their ways and resistant to change. This is eerily similar to the reasons articulated by Fred Engle that Mr. Wise had not embraced the digital technology.

12. Trasimond Soileau presented a *prima facie* case of age discrimination. Mr. Soileau was 58 years of age at the time of his termination, and he was qualified to work in KET's IT Department. Mr. Soileau was dismissed while the younger members of the IT staff, Matt Bone and Cynthia Lowell, were retained. KET articulated a legitimate, non-discriminatory reason for Mr. Soileau's termination. Mr. Soileau was terminated by KET because he was viewed as the highest paid member of the IT staff, who was viewed as a poor performer in performing low-level user support and not capable of performing high-end network administrator duties. Mr. Soileau was unable to establish that KET's stated reasons for his dismissal were a pretext for illegal age discrimination. Partially the result of events which were not his fault, Mr. Soileau was viewed as ineffective, indecisive and unhelpful in many aspects of IT. In addition, Mr. Soileau appears to have been blamed for many of the problems with KET's IT Department at the time that Mr. Engle arrived. This assessment may not have been fair or accurate, but the evidence did not establish it was the result of illegal age discrimination.

13. Robert A. Pickering made a claim of race discrimination, but did not present any evidence regarding race discrimination or make any race discrimination arguments in either his closing brief or his reply brief. Robert A. Pickering has abandoned and failed to prove his claim that his termination was the result of illegal race discrimination.

14. Patrick J. Wise claimed his termination was the result of race discrimination. He has made a *prima facie* case, establishing that he was qualified to work in Master Control and Ingest, while Jerome Johnson, an African-American who had been disciplined by KET for stealing time, was retained. KET articulated a non-discriminatory reason for its decision by stating that while Mr. Wise had been cross-trained to work in Master Control and Ingest, he was not employed as such. There was no evidence that KET was routinely moving employees around between sections in order to not terminate employees. In addition, there is no indication that KET had a history of favoring African-Americans over white employees. Patrick J. Wise failed to establish that his dismissal was the result of illegal race discrimination.

15. Robert A. Pickering alleged gender discrimination, however, he only alleged that one female was treated more favorably at the time of her resignation from KET, and he did not make any allegations that it had anything to do with his termination. For that reason, Robert A. Pickering has failed to prove his claim of gender discrimination.

16. Patrick J. Wise made a claim of gender discrimination. Mr. Wise established a *prima facie* case of gender discrimination. Mr. Wise established he was let go from his position while Lena Combs, the only female in the Studio Maintenance Department was retained. Mr. Wise has established that KET's articulated reason for

his dismissal was pretext, however, he has not established any evidence that the real reason was gender discrimination. No evidence was put forth that KET favored female employees, and certainly no evidence was presented that KET favored female employees in its Maintenance Department. Patrick J. Wise failed to prove his claim of gender discrimination.

17. Trasimond Soileau established a *prima facie* case of gender discrimination. Mr. Soileau, a male who was qualified for his position in IT, was let go while KET retained Cynthia Lowell, a female employee. KET argues Ms. Lowell is not similarly situated to Mr. Soileau for several reasons. At the time of Soileau's termination, Lowell only worked part-time in IT. In addition, Ms. Lowell was an employee of the KET Foundation. Nonetheless, the evidence established that she was a member of the IT Department and worked alongside Mr. Bone and Mr. Soileau. There appeared to be no distinction between the three employees of this department. Mr. Soileau put forth evidence that he was more qualified in many aspects of IT than Ms. Lowell. Mr. Engle, who recommended Mr. Soileau's dismissal, testified that he found Ms. Lowell more qualified to work in IT in part because of her organizational skills. There was no evidence put forth that the stated reason was a pretext. Mr. Soileau failed to establish that the decision to terminate him was the result of illegal gender discrimination.

18. None of the Appellants have claimed they were dismissed for retaliation for having filed, assisted or participated in any claim of discrimination.

19. Mr. Holt, Mr. Pickering and Mr. Soileau have made retaliation claims in their appeals. KET argues that because they have not alleged retaliation for having filed a claim of discrimination, they are alleging a violation of the Whistleblower statute. KET argues since 1997, the Personnel Board has held it lacks jurisdiction to hear claims for violations of the Whistleblower statute, citing *Combs v. Madison County PVA Office*, 96-265 (Feb. 18, 1997), 1997 WL 34671570 (Ky. PB) and *Noe v. Justice Cabinet, Department of Corrections*, 2002-466 (Apr. 24, 2003), 2003 WL 25751228 (Ky. PB). In the *Combs* case, the Personnel Board stated that it did not have jurisdiction to hear a Whistleblower case and dismissed the Appellant's claim for failure to be filed within the statute of limitations. In the *Noe* case, an Interim Order from a Hearing Officer stated that the Personnel Board should not exercise jurisdiction over the Appellant's Whistleblower claims because he had a Whistleblower action pending in Franklin Circuit Court. In many other cases, however, the Personnel Board has adjudicated retaliation claims. Some of these cases cite the Whistleblower statute, and some do not. *Kenneth Tramontin v. Cabinet for Health and Family Services*, 2003-372, (Jul. 19, 2005), 2005 WL 6154637 (Ky. PB); *Janet Bewley v. Cabinet for Health and Families and Children*, 2001-243 and 2002-069, (Nov. 13, 2002) 2002 WL 34428687 (Ky. PB); *Leonard Gardenour v. Justice Cabinet, Department of Corrections*, 2001-278 (Nov. 13, 2002) 2002 WL 34428761 (Ky. PB); *Birchel Calvin Estep v. Transportation Cabinet*, 2009-136, (Sep. 14, 2010), 2010 WL 3940159 (Ky.

PB); *William Rasinen v. Education and Workforce Development Cabinet*, 2009-221, (Aug. 15, 2011), 2011 WL 3792887 (Ky. PB); *Sonia Diaz v. Transportation Cabinet*, 2008-055, (Apr. 21, 2009) 2009 WL 1176151 (Ky. PB) and *James Witt and Thomas Boone v. Kentucky Authority for Education Television and Kentucky Personnel Cabinet*, 2011-197 and 2012-127, (May 14, 2014) 2014 WL 2191026 (Ky. PB). A more accurate statement than that put forth by KET would be that the Personnel Board has struggled to determine the extent of its jurisdiction to hear retaliation claims.

20. The Hearing Officer concludes, having read the previous Personnel Board cases, the briefs of the parties, and the statute, that the Personnel Board does not have jurisdiction to hear a Whistleblower claim brought pursuant to KRS 61.101, et seq. The Whistleblower statute sets forth a very specific statutory scheme allowing actions to be filed in Circuit Court within 90 days after the occurrence of the alleged violation. KRS 61.103(2). The Whistleblower statute also contains very specific provisions regarding the burden of proof, and burden-shifting. KRS 61.103(3).

21. The Personnel Board has exercised jurisdiction over retaliation claims. The Hearing Officer concludes that the basis for jurisdiction of these claims is KRS 18A.095(1), (9) and (14)(a). The provision which applies in this case is KRS 18A.095(14)(a), which reads, "Any employee, applicant for employment, or eligible on a register, who believes he has been discriminated against, may appeal to the Board." As the Kentucky Supreme Court determined in *Martin v. Corrections Cabinet*, 822 S.W. 2d 858 (Ky. 1991), this subsection is broader than Subsection 12 (of KRS 18A.095), and permits appeals of all forms of illegal discrimination. The Court, in *Martin*, phrased the discrimination as "this appeal is in regard to a discharge in **retaliation** for refusal to violate the prohibitions of KRS 18A.140 against political favoritism." *Martin* at 860. (Emphasis added.) Clearly the Court, in *Martin*, considered KRS 18A.095(14)(a) discrimination to include illegal retaliation.

22. Mark Holt has alleged his termination was in retaliation for raising safety concerns regarding the transmission tower in Ashland, and employees bringing guns to schools. Mr. Holt was unable to establish that any of his disclosures were a contributing factor in his dismissal. No member of KET's management team was aware Mr. Holt's complaints. He had filed these complaints with his immediate supervisors, who either have retired or did not pass the complaints along to Frankfort. As a result, Mr. Holt has failed to establish that his dismissal was the result of illegal retaliation. *Workforce Development Cabinet v. Gaines*, 276 SW3d 789, 794 (Ky. 2008).

23. Robert Pickering has alleged his termination was the result of illegal retaliation for having brought forth safety concerns to KET management, including Mike Brower and Shae Hopkins. These concerns include unsafe cables, unsafe dust in the workshop, unsafe lighting and KET events being held inside a studio which are

over a safe capacity. The Hearing Officer concludes that Pickering engaged in conduct which is protected by KRS 18A.095(14)(a), when he contacted KET management about these issues. Although Brower and Hopkins were aware of Pickering's issues, the Hearing Officer has already found that these claims played no role in their decision to terminate Pickering. Thus, the Hearing Officer concludes there is no causal connection between Pickering's protected activity and the decision to terminate him, and he has not established a *prima facie* case of retaliation. In addition, KET has articulated a legitimate, non-retaliatory reason for Pickering's termination. That is, they no longer needed a Set Designer and Studio Manager, and lighting duties could be distributed among other staff. The Hearing Officer concludes that Pickering was unable to establish that his complaints of safety violations were a contributing factor in his dismissal, and his retaliation claim must fail. *Davidson v. Department of Military Affairs*, 152 SW3d 247 (Ky. App. 2004).

24. The Hearing Officer concludes that Trasimond Soileau engaged in conduct which is protected by KRS 18A.095(14)(a), when he contacted Sally Hamilton and Hilma Prather, members of the KET Authority Board, regarding claims of mismanagement on the part of Donna Verhoeven. Although Verhoeven may have been aware of some of Soileau's complaints against her, the Hearing Officer has found that this information played no role in the decision to terminate Soileau. Thus, the Hearing Officer concludes there is no causal connection between Soileau's protected activity and the decision to terminate him, and he has not established a *prima facie* case of retaliation. In addition, KET has articulated a legitimate, non-retaliatory reason for Soileau's termination, that is, its belief that Soileau was not a productive member of the IT staff. The Hearing Officer concludes that Soileau was unable to establish that his contact with members of KET's Authority Board was a contributing factor in his dismissal, and his retaliation claim must fail. *Davidson v. Department of Military Affairs*, 152 SW3d 247 (Ky. App. 2004).

25. Robert Pickering put forth a claim of hostile work environment, however, it was agreed that this was not a part of his termination claim, and would only be an issue if Mr. Pickering prevailed on his other claims and was ordered reinstated to his previous position.

26. Trasimond Soileau's and Patrick Wise's claims relating to re-employment rights pursuant to KRS 18A.130 and KRS 18A.135 have been resolved with a partial settlement of this matter.

27. Patrick Wise's son, Christopher Wise, who was appointed the Administrator of Mr. Wise's estate has taken the appropriate steps to be substituted as the real party of interest in this matter.

RECOMMENDED ORDERS

The Hearing Officer recommends to the Personnel Board that the appeal of **MARK A. HOLT V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-199)** be **DISMISSED**.

The Hearing Officer recommends to the Personnel Board that the Estate of Patrick J. Wise be substituted as the Appellant in the appeal of **PATRICK J. WISE V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-201)**. With respect to Mr. Wise's claims for re-employment rights pursuant to KRS 18A.130 and KRS 18A.135 in the appeal of the **ESTATE OF PATRICK J. WISE V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-201)** be **SUSTAINED** to the extent of the relief afforded the Appellant by said settlement as approved by the Personnel Board on March 13, 2015. Lastly, the Hearing Officer recommends to the Personnel Board that the appeal of the **ESTATE OF PATRICK J. WISE V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-201)** be **SUSTAINED** to the extent that the dismissal of Patrick J. Wise be set aside and the Estate of Patrick J. Wise be ordered to receive back pay and other benefits from September 10, 2010, the date of his termination until August 1, 2015, the date of his death, and that the Estate of Patrick J. Wise otherwise be made whole. KRS 18A.095(22)(a) and KRS 18A.105 and 200 KAR 12:030.

The Hearing Officer recommends to the Personnel Board that the appeal of **ROBERT A. PICKERING V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-200)** be **DISMISSED**.

The Hearing Officer recommends to the Personnel Board that the appeal of **TRASIMOND SOILEAU V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-233)** be **SUSTAINED** to the extent of the relief afforded the Appellant by said settlement as approved by the Personnel Board on March 13, 2015. The Hearing Officer recommends to the Personnel Board that the appeal of **TRASIMOND SOILEAU V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION AND KENTUCKY PERSONNEL CABINET, (APPEAL NO. 2011-233)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of Hearing Officer Mark A. Sipek this 3rd day of May, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Matt James
Hon. Brian Judy
Hon. Rosemary Holbrook
Hon. Lesley Bilby
Hon. Robin Cornette
Hon. Edward E. Dove
Hon. John L. Tackett

Recommended Order
Attachment A

18A.095, to determine the relief sought, to define the issues, address any other matters relating to these appeals, and to discuss the option of mediation.

4. The Board notes these appeals were not consolidated, however, they will be decided on this one Order. As this case goes forward, the Board strongly recommends to the parties that these appeals be consolidated.

5. a. Appellant James D. Witt, Jr. (Appeal No. 2011-197) filed his appeal on September 8, 2011, checking the boxes for dismissal and discrimination. Appellant indicated discrimination based upon race, color, religion, sex, age over 40, and also claimed retaliation, *vis-a-vis*, the Whistleblower Act. Appellant noted in his appeal that he is over 60 years of age, with 41 years of working experience and having worked over 9 years at KET. He states the retaliation claims deal with his report of instances of employees' malfeasance.

b. Appellant Mark A. Holt (Appeal No. 2011-198) filed his appeal on September 9, 2011, and checked the boxes for dismissal and discrimination. In the narrative portion of his appeal, Appellant stated he was appealing having been terminated because of his age and in retaliation for reporting illegal activity and safety issues.

c. Appellant Robert A. Pickering (Appeal No. 2011-200) filed his appeal on September 9, 2011, stating he had worked in an atmosphere of harassment and hostility from management, and believed he was terminated in retaliation for his calling attention to safety issues, improper employee behavior, and questions imposed as to the ethics and honesty of management decisions.

d. Appellant Patrick J. Wise (Appeal No. 2011-201) filed his appeal on September 9, 2011, stating he believed he was discriminated against by his supervisor, James Rous, and indicated he was also appealing discrimination based upon race, color, sex and age over 40.

e. Appellant Trasimond Soileau (Appeal No. 2011-233) filed his appeal on October 21, 2011, alleging age discrimination in that he was 58 years old and had more experience than the 38 year-old person who replaced him. Appellant also stated he believed he may have been retaliated against under the Whistleblower Act.

BACKGROUND

1. The parties were in agreement that all five Appellants were unclassified employees with KET. Appellants Patrick Wise and Trasimond Soileau were also career employees, although neither had attained status in the classified service.

2. The Appellee filed motions to dismiss all five appeals. All Appellants responded and the Appellee filed replies.

3. The Appellee alleged that Appellants did not timely file their appeals with the Personnel Board. The Appellee alleged that as unclassified employees, the Appellants had thirty (30) days to file an appeal from their dismissal alleging discrimination, retaliation or other illegal actions with the Personnel Board. Counsel relied on KRS 18A.095(9), and KRS 18A.095(18)(a) in support of its motions to dismiss.

4. After reviewing the Motions to Dismiss, the responses and replies, the Hearing Officer entered five separate Recommended Orders, recommending that all five appeals be dismissed as untimely. The Hearing Officer found the appropriate statute of limitations was KRS 18A.095(9), which states that the parties would have thirty (30) days from the date of the underlying action to file their appeals with the Personnel Board. The Hearing Officer further found that the Appellee gave proper notice to the Appellants of their dismissal.

5. The Hearing Officer found that the Appellee failed to provide appeal forms to the Appellants with their letters of dismissal and that such was required pursuant to KRS 18A.095(16)(b). The Hearing Officer found, however, that the failure to attach the appeal form was not fatal to Appellee's dismissal actions. The Hearing Officer noted the dismissal letters made reference to KRS 18A.095 and that employees exercising due diligence could have procured appeal forms to the Personnel Board with little difficulty.

FINDINGS OF FACT

1. The Board finds that all five Appellants were unclassified employees with KET. The Board notes that Appellants Trasimond Soileau and Patrick Wise were career employees, but had not attained status in the classified service.

2. The Board finds that the Appellee dismissed Appellants James D. Witt, Jr. and Robert A. Pickering on September 9, 2010, and Appellee dismissed Appellants Mark A. Holt, Patrick J. Wise and Trasimond Soileau on September 10, 2010.

3. The Board finds that all five Appellants received similar notices indicating that their dismissal would be effective immediately on September 9 or 10, 2010. In addition, each notice contained the following paragraph: "This action is being taken without cause and for this reason, you do not have the right to appeal your dismissal to the State Personnel Board except as provided by KRS 18A.095."

4. None of the Appellants were provided with appeal forms to the Personnel Board as alleged by the Appellants, and as admitted by counsel for the Appellee at oral argument before the Personnel Board.

5. The Appellants filed their appeals with the Personnel Board on the following dates: James D. Witt, Jr., September 8, 2011; Mark A. Holt, September 9, 2011; Robert A. Pickering, September 9, 2011; Patrick J. Wise, September 9, 2011; and, Trasimond Soileau, October 21, 2011.

CONCLUSIONS OF LAW

1. The Board agrees with the Hearing Officer that the appropriate statute of limitations for unclassified employees who have been dismissed is thirty (30) days, contained at KRS 18A.095(9). The Board agrees with the Hearing Officer that the Appellees were required to attach appeal forms to the notices of dismissal pursuant to KRS 18A.095(16)(b). This subsection reads as follows:

The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney.

The Board concludes that the appeal forms were required to be attached to the dismissal notices even though the Appellants were unclassified and the dismissals were not for cause. As these appeals demonstrate, the Appellants "may appeal" these actions pursuant to KRS 18A.095(14)(a).

2. The Board disagrees, however, that the failure to attach the appeal form is not fatal to the Appellee's dismissal actions and its use of the statute of limitations defense in this case. The Board concludes that the Appellee's failure to attach the appeal forms, as admitted at Oral Argument by counsel for the Appellee, demonstrate that the notices did not comply with the provisions of KRS 18A.095 and thus, the time to file these appeals did not start to run on the date they received the notice of their dismissals.

3. The Board concludes that the Appellee's Motions to Dismiss these appeals should be **DENIED**, and these appeals should be remanded to the Hearing Officer for further action, including any necessary pre-hearing conferences or evidentiary hearings.

4. The Board recommends the parties consider consolidation of these appeals since they involve similar issues. Nonetheless, the Board recognizes that there may be different outcomes in these appeals, depending upon the individual fact situation for each Appellant.

5. On remand, the Board instructs the Hearing Officer to pay careful attention to the provisions of KRS 18A.095(29) and determine whether it applies to these fact situations and its impact on the five appeals.

ORDER REMANDING

The Personnel Board **ORDERS** that the appeals of Appellant **James D. Witt, Jr.** (Appeal No. 2011-197), Appellant **Mark A. Holt** (Appeal No. 2011-198), Appellant **Robert A. Pickering** (Appeal No. 2011-200), Appellant **Patrick J. Wise** (Appeal No. 2011-201), and Appellant **Trasimond Soileau** (Appeal No. 2011-233) **vs. Kentucky Authority for Educational Television**, be **REMANDED** to the Hearing Officer for further proceedings consistent with the Board's Findings of Fact and Conclusions of Law.

SO ORDERED this 18th day of April, 2012.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Morgan Ransdell
Hon. Aaron Ament
Hon. Clay A. Barkley
Mr. James D. Witt, Jr.
Mr. Mark A. Holt
Mr. Robert A. Pickering
Mr. Patrick J. Wise
Mr. Trasimond Soileau
Board Members

Recommended Order

Attachment B

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

JAMES D. WITT, JR.	(Appeal No. 2011-197)	
MARK A. HOLT	(Appeal No. 2011-198)	
ROBERT A. PICKERING	(Appeal No. 2011-200)	
PATRICK J. WISE	(Appeal No. 2011-201)	
TRASIMOND SOILEAU	(Appeal No. 2011-233)	
THOMAS BOONE	(Appeal No. 2012-127)	APPELLANTS

V. INTERIM ORDER

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION APPELLEE

* * * * *

The appeals of **Patrick J. Wise v. KET** (Appeal No. 2011-201) and **James D. Witt, Jr. v. KET** (Appeal No. 2011-197), came on for a pre-hearing conference on October 10, 2012, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, KY, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellants Patrick J. Wise and James D. Witt were present and not represented by legal counsel. Appellee KET was present and represented by the Hon. Clay Barkley and the Hon. Matt James. Also present were Trasimond Soileau and Thomas Boone.

The appeals of **Mark A. Holt v. KET** (Appeal 2011-198) and **Robert A. Pickering v. KET** (Appeal No. 2011-200) came on for a pre-hearing conference on October 26, 2012, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, KY, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellants Mark A. Holt and Robert A. Pickering were present and not represented by legal counsel. Appellee KET was present and represented by the Hon. Clay Barkley and the Hon. Matt James. Also present were Trasimond Soileau, Thomas Boone, Patrick Wise, and James Witt, Jr.

The purposes of the pre-hearing conferences were to discuss discovery issues, discuss the status of the appeals, discuss possible consolidation, and scheduling matters.

At these pre-hearing conferences, the parties had discussions regarding a number of issues. There were also motions pending in some of the existing appeals, and as many issues as possible will be discussed in this Order.

WHEREFORE, the Hearing Officer, having reviewed the files, having listened to the statements of the parties, and being duly advised, hereby **ORDERS**, as follows:

CONSOLIDATION AND SCHEDULED EVIDENTIARY HEARING

1. Based on the agreement of all seven parties, the following appeals are **HEREBY CONSOLIDATED**:

JAMES D. WITT, JR.	(Appeal No. 2011-197)
MARK A. HOLT	(Appeal No. 2011-198)
ROBERT A. PICKERING	(Appeal No. 2011-200)
PATRICK J. WISE	(Appeal No. 2011-201)
TRASIMOND SOILEAU	(Appeal No. 2011-233)
THOMAS BOONE	(Appeal No. 2012-127)

2. These matters are scheduled for an evidentiary hearing to be conducted on **January 28, 29, 30, 31, and February 1, 2013, at 9:30 A.M. ET, at 28 Fountain Place, Frankfort, KY.**

3. The issues shall be the Appellants' claims of discrimination and retaliation with respect to their dismissal from KET. The burden of proof shall be upon the **Appellants** and shall be by a preponderance of the evidence. As the party bearing the burden of proof, the Appellants shall proceed first in the presentation of evidence.

4. The Hearing Officer has previously listed the issue as to whether or not the Personnel Board has jurisdiction. The Hearing Officer previously phrased this issue, as follows:

An additional issue shall be the impact of KRS 18A.115(1)(f) on this appeal. The sub-issues are as follows:

- (a) Was the Appellant determined to be exempt from the classified service by KET?
- (b) If so, does the Personnel Board have jurisdiction to determine the Appellants' claims of discrimination and retaliation?
- (c) The burden of proof shall be by a preponderance of the evidence and the burden shall be on the **Appellee** for this issue.

5. At the pre-hearing conference held on October 10, 2012, counsel for the Appellee stated that the Appellee wished to preserve this issue and raise it as a precaution, but did not wish to request the Personnel Board to rule on this issue. Since the issue has been raised and may be dispositive of the case, the Hearing Officer will continue to list it as an issue. Obviously, the Appellee is not required to present evidence or further pursue this issue, if it chooses not to. Counsel for the Appellee stated that there were no factual issues, and this was strictly a legal argument and a matter of statutory construction. The Hearing Officer disagrees, and believes there are at least some basic factual questions which either could be answered by evidence or stipulation. Nonetheless the issue will continue to be listed, and it is up to the Appellee as to whether or not this issue is presented in any way. If the Appellee presents evidence or argument regarding this issue, the Appellants will have a full opportunity to respond.

6. Witness and Exhibit Lists are due no later than January 18, 2013.

DISCOVERY ISSUES

7. The parties engaged in a lengthy discussion regarding discovery issues at both of the above-referenced pre-hearings. At the pre-hearing conducted on **October 10, 2012**, the Hearing Officer **SUSTAINED** the Appellee's objection to Mr. Witt's Request for Discovery No. 5 regarding the two unknown men that accompanied Ron Brown and Fred Engle on the night of September 9, 2010, during the termination, and Request No. 6 from Mr. Wise regarding the same issue. The Hearing Officer determined that these requests were not relevant to the current proceedings, and it was not shown that the answer would lead to the discovery of any relevant evidence.

8. The Hearing Officer ordered the Appellee to provide a response to Mr. Witt's Request No. 33 regarding exculpatory evidence and Mr. Wise's Request No. 42 on the same subject. The Appellee stated it did not believe any exculpatory evidence existed; however, it agreed to review this matter and produce any evidence that is deemed responsive to these requests. Any such response was to be produced by **November 13, 2012**.

9. At the pre-hearing conference on **October 26, 2012**, the Hearing Officer ordered the Appellee to review Mr. Holt's Request for Discovery Nos. 5, 19, and 26, and provide the information by **November 26, 2012**, or provide a more specific objection.

10. Mr. Holt agreed to make more specific requests regarding items 3 and 8, which he provided on October 31, 2012. The Hearing Officer **ORDERS** the Appellee to respond to these matters by **November 26, 2012**, either by producing the items or presenting a specific objection.

11. With respect to Mr. Pickering's discovery request, the Appellee was **ORDERED** to review Request Nos. 16, 17, 18, 25, and 26, and provide the requested information (or a more specific objection) by **November 26, 2012**.

12. The Hearing Officer notes that Mr. Pickering was ordered to respond to KET's response for discovery by **November 13, 2012**, and he did so on November 20, 2012.

13. Mr. Pickering also indicated that he would provide a response to other written objections to his request for discovery by **November 13, 2012**, and he did so on November 20, 2012.

14. The Hearing Officer is unaware of any discovery requests being filed in Mr. Boone's or Mr. Soileau's appeals. If the parties are going to need discovery in these appeals, their discovery requests should be filed as soon as possible.

MOTION TO DISMISS

(Appeal of Thomas Boone v. KET 2012-127)

15. The Appellee's Motion to Dismiss is **DENIED**.

(a) A motion to dismiss for failure to state a claim should only be granted if it appears that Appellant would not be entitled to relief under any set of facts that could be proved in support of his claim. *Pari-Mutuel Clerk's Union, Local 541 v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977). All allegations on the appeal form are accepted as true for purposes of ruling on the motion. *Pike v. George*, 434 S.W.2d 626 (Ky. 1968). The appeal form, like a complaint in a civil action, should be liberally construed in a light most favorable to Appellant. *Gall v. Scroggy*, 725 S.W.2d 867 (Ky. App. 1987).

(b) The Personnel Board has already considered the appeals filed by five other former KET employees and determined that their appeals were not barred by the 30-day statute of limitation contained at KRS 18A.095(9) because the Appellee failed to comply with KRS 18A.095(16)(b) by not attaching an appeal form to the notice of dismissal. Those appeals were remanded by the Personnel Board, and the Hearing Officer was directed to pay careful attention to the provisions of KRS 18A.095(29) and determine whether it applies to this fact situation.

(c) KRS 18A.095(29) states, as follows:

Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

(d) Although KRS 18A.095(29) has been referred to as a “catch-all” provision, it applies to very specific situations. In reviewing the facts involved with Boone’s situation, it is clear he was penalized when he was notified of his dismissal on September 9, 2010. The Hearing Officer believes the issue involved in this appeal is whether or not Mr. Boone “[h]as not received a written notice of his or her right to appeal as provided in this section.” As with the other KET employees, Mr. Boone did receive a written notice of his dismissal. Although Boone alleges it was confusing and misleading, the notice did provide him notice of his right to appeal. The notice included the sentence, “[T]his action is being taken without cause, and for this reason you do not have the right to appeal your dismissal to the State Personnel Board, except as provided by KRS 18A.095.” **Emphasis Added.** Clearly, the Appellant was provided written notice of his right to appeal to the Personnel Board. What he was not provided was an appeal form, as was required by KRS 18A.095(16)(b), which states, “[T]he appeal form shall be attached to any notice...of dismissal...an employee may appeal under the provisions of this section.”

(e) Having carefully reviewed this section, the Hearing Officer believes the provisions of KRS 18A.095(29) do not apply because the Appellant did receive written notice of his right to appeal to the Personnel Board; however, he did not receive a copy of the appeal form. the Hearing Officer believes this determination is consistent with the Court of Appeals’ instruction in Commonwealth Department of Revenue, Finance and Administration Cabinet v. McDonald, 304 S.W.3d 62 (Ky. 2009).

In McDonald, supra, the Court of Appeals, citing longstanding principles of statutory construction held, as follows:

A number of statutory construction principles bind courts. We “may not interpret a statute at variance with its stated language.” *SmithKline Beecham Corp. v. Revenue Cabinet*, 40 S.W.3d 883, 885 (Ky. App. 2001). “[S]tatutes must be given a literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required.” *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002). Further, we cannot add or subtract from the language used in a statute. *Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000).

Applying these principles, the Hearing Officer concludes that because Mr. Boone received a written notice of his right to appeal, the provisions of KRS 18A.095(29) do not apply.

(f) Having made this determination, the Hearing Officer will follow the determination made earlier by the Personnel Board in the other KET cases that failure to attach an appeal form, pursuant to KRS 18A.095(16)(b), means the time to file this appeal did not start to run on the date Mr. Boone received notice of his dismissal. As no party has established the Appellant has ever been provided an appeal form, there is

nothing in the record to establish the time to file an appeal has ever started to run. Therefore, there is nothing in the record to establish the appeal is untimely.

TRASIMOND SOILEAU
MOTION TO ALTER, AMEND, OR VACATE INTERIM ORDER
OF SEPTEMBER 5, 2012, FILED BY KET

16. In the appeal of **Trasimond Soileau v. KET** (Appeal No. 2011-233), the Hearing Officer issued an Interim Order on September 5, 2012, denying KET's Motion to Dismiss this appeal. KET raised the issue that the appeal was filed beyond the 1-year statute of limitations contained in KRS 18A.095(29). The Hearing Officer issued an Order similar to the Order in **Thomas Boone v. KET** (Appeal No. 2012-127). This Order is attached to this Order as **Attachment A**.

17. In addition to requesting that the Order be altered, amended, or vacated, KET asked that the Personnel Board review the appeal. KET made this request pursuant to 101 KAR 1:365, Section 6(2), which provides, "[U]nless an Interim Order provides for review by the Board prior to the conclusion of a hearing, the Board shall review an Interim Order when it considers the Recommended Order, record, and exceptions." KET has raised similar arguments in Soileau's case and Boone's case. As KET argued in its motion, the Interim Order resolved the dispositive issue concerning the application of the statute of limitations in KRS 18A.095(29). The Appellant has filed a response, and the Appellee has filed a reply. After reviewing all these documents, the Hearing Officer finds that the Appellee's motion to alter, amend, or vacate the interim order of September 5, 2012, is **DENIED**.

The request by KET to be heard by the full Personnel Board is **GRANTED TO THE EXTENT** that the Hearing Officer designates this Interim Order as an Order to be reviewed by the Personnel Board prior to the conclusion of the hearing pursuant to 101 KAR 1:365, Section 6(2).

18. This Interim Order (and the Hearing Officer's Interim Order issued September 5, 2012, in **Trasimond Soileau v. KET**) shall be placed on the agenda for the Personnel Board's December 14, 2012 meeting. The parties may file any response to the Interim Order (to be reviewed by the Personnel Board) by **November 30, 2012**. Any reply may be filed by no later than **December 6, 2012**.

MOTION TO INTERVENE
FILED BY THE
PERSONNEL CABINET

19. On September 24, 2012, the Personnel Cabinet filed a Motion to Intervene in the appeal of **Trasimond Soileau v. KET** (Appeal No. 2011-233) for the limited purpose of advising the Board on the issue of timeliness of Appellant's appeal from his dismissal from an unclassified position. The Personnel Cabinet makes arguments with respect to the Board's determination that it is necessary to attach an appeal form to the

notice of dismissal. This issue has already been decided by the Personnel Board. However, the issue as to whether or not KRS 18A.095(29) applies in this situation and would make the appeal untimely has not yet been resolved by the Personnel Board. This is the issue that the Hearing Officer believed it is appropriate for the Personnel Board to review.

20. The Appellant has filed a response opposing the Motion to Intervene by the Personnel Cabinet. Having reviewed the motion and the response, the Hearing Officer **GRANTS** the motion so that the Personnel Cabinet may participate at the Board during the Board's consideration of this matter at its regularly scheduled December 14, 2012 meeting.

21. This Interim Order (and the September 5, 2012 Interim Order in **Trasimond Soileau v. KET**) are scheduled for oral argument at the regular Personnel Board meeting on **Friday, December 14, 2012, at 9:30 a.m. ET**, at 28 Fountain Place, Frankfort, KY. The issue shall be the timeliness of Soileau's appeal and whether Boone's appeal, and whether or not KRS 18A.095(29) applies. **Arguments should be limited to five to seven minutes each.** All parties are expected to be present or represented by counsel to answer any questions of the Board.

SO ORDERED at the direction of the Hearing Officer this 21st day of November, 2012.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Clay Barkley
Hon. Matt James
Hon. Dinah Bevington
Mr. James D. Witt, Jr.
Mr. Mark A. Holt
Mr. Robert Pickering
Mr. Patrick J. Wise
Mr. Trasimond Soileau
Mr. Thomas Boone

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2011-197

TRASIMOND D. SOILEAU

APPELLANT

V.

INTERIM ORDER

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION

APPELLEE

This matter came on for a pre-hearing conference on August 15, 2012, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, KY, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant Trasimond Soileau was present and not represented by legal counsel. Appellee Kentucky Authority for Educational Television (KET) was present and represented by the Hon. Clay Barkley.

The purposes of the pre-hearing conference were to discuss the status of this appeal, to discuss the Appellee's Motion to Dismiss, and to schedule an evidentiary hearing, if appropriate.

This pre-hearing conference was held in conjunction with pre-hearings in the appeals filed by Mark Holt, James Witt, Patrick Wise, and Robert Pickering. The parties did not agree on consolidation of these appeals. Pursuant to 101 KAR 1:365, Section 6(7), there must be agreement of all parties for two or more appeals to be consolidated; and, as a result, these appeals shall be heard separately going forward.

The Hearing Officer heard oral argument from the parties regarding the Appellee's Motion to Dismiss. The Appellee filed its motion alleging this appeal was untimely, as not having been brought within one year pursuant to KRS 18A.095(29). The Appellant has filed a response stating that he believes the appeal is timely filed. The Appellee has filed a reply. The Appellant objected to the reply stating it was filed out of time; however, the Hearing Officer ruled the reply would be considered timely.

The Hearing Officer also addressed the issue raised in the Appellee's objection regarding whether or not the Personnel Board had jurisdiction over the Appellant as an unclassified employee based on the language contained at KRS 18A.115(1)(f). The Hearing Officer asked the Appellee if they were raising this issue and requesting a ruling on a motion on this issue, or simply preserving the issue in the record. Counsel

Attachment A

for the Appellee stated he was not requesting a specific ruling and was just preserving the record. The Hearing Officer stated he believed any finding with respect to this statute would require evidence, as it appears there may be a question of fact and law as to the effect of KRS 18A.115(1)(f) on the Personnel Board's ability to hear this appeal. In any event, the Hearing Officer included this as an issue and stated both parties would be allowed to present evidence with respect to this issue. The Hearing Office made a preliminary determination that (with respect to this issue) the burden of proof would be upon the Appellee.

The parties discussed scheduling and other issues at the request of the Hearing Officer so they would not have to come back for an additional pre-hearing, if the Motion to Dismiss was denied. If either party intends to request discovery, they should proceed as soon as possible in order not to affect the hearing dates.

WHEREFORE, the Hearing Officer, having reviewed the file, (including Appellee's Motion to Dismiss, Appellant's response, and Appellee's reply), having heard the arguments of the parties, and being duly advised, hereby **ORDERS**, as follows:

1. The Appellee's Motion to Dismiss is **DENIED**.

(a) A motion to dismiss for failure to state a claim should only be granted if it appears that Appellant would not be entitled to relief under any set of facts that could be proved in support of his claim. *Pari-Mutuel Clerk's Union, Local 541 v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977). All allegations on the appeal form are accepted as true for purposes of ruling on the motion. *Pike v. George*, 434 S.W.2d 626 (Ky. 1968). The appeal form, like a complaint in a civil action, should be liberally construed in a light most favorable to Appellant. *Gall v. Scroggy*, 725 S.W.2d 867 (Ky. App. 1987).

(b) The Personnel Board has already considered this matter and determined that this appeal is not barred by the 30-day statute of limitation contained at KRS 18A.095(9), because the Appellee failed to comply with KRS 18A.095(16)(b) by not attaching an appeal form to the notice of dismissal. On remand, the Personnel Board directed the Hearing Officer to pay careful attention to the provisions of KRS 18A.095(29) and determine whether it applies to this fact situation.

(c) KRS 18A.095(29) states, as follows:

Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

(d) Although KRS 18A.095(29) has been referred to as a "catch-all" provision, it applies to very specific situations. In reviewing the facts involved with Soileau's situation, it is clear that he was penalized when he was notified of his dismissal on September 10, 2010. The Hearing Officer believes the issue involved in this appeal is whether or not Mr. Soileau "[h]as not received a written notice of his or her right to appeal as provided in this section." As has already been stated by the Personnel Board, Mr. Soileau did receive a written notice of his dismissal. Although Mr. Soileau alleges it was confusing, this notice did provide him notice of his right to appeal. The notice included the sentence, "[T]his action is being taken without cause and for this reason, you do not have the right to appeal your dismissal to the state Personnel Board, except as provided by KRS 18A.095." **Emphasis Added.** Clearly, the Appellant was provided written notice of his right to appeal to the Personnel Board. What he was not provided with was an appeal form, as was required by KRS 18A.095(16)(b), which states, "[T]he appeal form shall be attached to any notice...of dismissal...an employee may appeal under the provisions of this section."

(e) Having carefully reviewed this section, the Hearing Officer believes the provisions of KRS 18A.095(29) do not apply, because the Appellant did receive written notice of his right to appeal to the Personnel Board; however, he did not receive a copy of the appeal form. The Hearing Officer believes this determination is consistent with the Court of Appeals' instruction in Commonwealth Department of Revenue, Finance and Administration Cabinet v. McDonald, 304 S.W.3d 62 (Ky. 2009).

In McDonald, *supra*, the Court of Appeals, citing longstanding principles of statutory construction, held, as follows:

A number of statutory construction principles bind courts. We "may not interpret a statute at variance with its stated language." *SmithKline Beecham Corp. v. Revenue Cabinet*, 40 S.W.3d 883, 885 (Ky. App. 2001). "[S]tatutes must be given a literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required." *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002). Further, we cannot add or subtract from the language used in a statute. *Commonwealth v Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000).

Applying these principles, the Hearing Officer concludes that the Appellant, having received a written notice of his or her right to appeal, the provisions of KRS 18A.095(29) do not apply.

(f) Having made this determination, the Hearing Officer is bound by the determination made earlier by the Personnel Board that the failure to attach the appeal form, pursuant to KRS 18A.095(16)(b) means that the time to file this appeal did not start to run on the date Mr. Soileau received notice of his dismissal. As no party has established the Appellant has ever been provided an appeal form, there is nothing in the

record to establish the time to file an appeal has ever started to run. Therefore, there is nothing in the record to establish the appeal is untimely.

2. This appeal is scheduled for an evidentiary hearing to be conducted on **January 24 and 25, 2013**, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, KY.

3. Issues for the evidentiary hearing shall be whether or not the Appellant's dismissal was based on age and race discrimination, or retaliation. The burden of proof shall be upon the **Appellant** and shall be by a preponderance of the evidence. As the party bearing the burden of proof, the **Appellant** shall proceed first in the presentation of evidence. Both parties may call witnesses and through their testimony introduce documents into evidence for consideration by the Hearing Officer. Each party will have an opportunity to cross-examine any witnesses.

4. An additional issue shall be the impact of KRS 18A.115(1)(f) on this appeal. The sub-issues are as follows:

(a) Was the Appellant determined to be exempt from the classified service by the Kentucky Authority for Educational Television?

(b) If so, does the Personnel Board have jurisdiction to determine the Appellant's claims of discrimination and retaliation?

(c) The burden of proof shall be by a preponderance of the evidence and the burden shall be on the **Appellee** for this issue.

5. An additional issue shall be whether or not the Personnel Board has jurisdiction over the Appellant pursuant to KRS 18A.115(1)(f). The burden of proof on this issue shall be upon the **Appellee** and shall be by a preponderance of the evidence.

6. The Hearing Officer informed Appellant that if there are documents or items that the Agency has in its possession that he needs in order to prepare for the evidentiary hearing, he can prepare a "Request for Discovery" listing—with specificity—those items or documents. **That request should be sent to the Personnel Board, with a copy to counsel for the Agency.** The Hearing Officer informed Appellant that typically the Request for Discovery would be granted subject to any objections the Agency might have; that means the Agency would produce the documents or items requested. If there are any objections, those will be resolved by the Hearing Officer.

7. Witnesses can be subpoenaed to testify at the evidentiary hearing using the enclosed subpoena form. **It is the responsibility of the parties to make copies of the subpoena and follow the instructions on the face of the subpoena form to ensure correct service.** Should any witnesses be subpoenaed to testify at the evidentiary hearing who are not otherwise required to appear by the Appellee, Appellant might be responsible for the expenses incurred by witnesses as a result of attending the evidentiary hearing, such as mileage.

8. The parties shall file with the Personnel Board, and serve upon the opposing party, a list of witnesses and exhibits that they intend to use during the evidentiary hearing no later than **January 14, 2013**. A copy of a Witness and Exhibit List is enclosed for Appellant's convenience. The parties shall provide on the day of the hearing **four (4) copies of any exhibits** that they wish to introduce. [101 KAR 1:365, Section 7(2)].

SO ORDERED at the direction of the Hearing Officer this 5th day of September, 2012.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Clay Barkley
Mr. Trasimond Soileau

Recommended Order
Attachment C

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

JAMES D. WITT, JR. (Appeal No. 2011-197)
MARK A. HOLT (Appeal No. 2011-198)
ROBERT A. PICKERING (Appeal No. 2011-200)
PATRICK J. WISE (Appeal No. 2011-201)
TRASIMOND SOILEAU (Appeal No. 2011-233)
And THOMAS BOONE (Appeal No. 2012-127)

APPELLANTS

V. BOARD ORDER

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION

And

KENTUCKY PERSONNEL CABINET

APPELLEES


** ** * * *

The Board, at its regular December 2012 meeting, having considered the Hearing Officer's Interim Orders dated September 5, 2012; November 21, 2012; and, November 29, 2012, and having considered the motion by KET to alter, amend or vacate the response by Appellant Soileau; the reply by KET; the Personnel Cabinet's Motion to Intervene; the response by Appellant Soileau; the motion to dismiss by KET; the response by Appellant Boone ("Facts and Determinations"); and the responses to the Interim Order by Appellant Soileau, KET and the Personnel Cabinet, and having listened to the Oral Arguments of the parties, and being duly advised,

IT IS HEREBY ORDERED that KET's Motion to Alter, Amend or Vacate is DENIED, and these consolidated appeals shall be returned to the Hearing Officer.

SO ORDERED this 2nd day of January, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Clay A. Barkley
Hon. Matt James
Hon. Whitney Meagher
Hon. Dinah Bevington
Mr. James D. Witt, Jr.
Mr. Mark A. Holt
Mr. Robert A. Pickering
Mr. Patrick J. Wise
Mr. Trasimond Soileau
Mr. Thomas Boone

Recommended Order
Attachment D

March 12, 2013

RE: *James D. Witt, Jr.* Personnel Board Appeal No. 2011-197
Mark A. Holt Personnel Board Appeal No. 2011-198
Robert A. Pickering Personnel Board Appeal No. 2011-200
Patrick J. Wise Personnel Board Appeal No. 2011-201
Trasimond D. Soileau Personnel Board Appeal No. 2011-233
Thomas P. Boone Personnel Board Appeal No. 2012-127

To Whom It May Concern:

The Kentucky Authority for Educational Television (KET) is currently in pending litigation brought by several of its former employees before the Kentucky Personnel Board. KET, current and former staff are being represented by Matt James and Brian T. Judy, attorneys with the Office of the Kentucky Attorney General.

It has come to our attention that the above listed individuals may have contacted you to discuss aspects of their respective pending cases before the Personnel Board or to serve a subpoena upon you. If any of the above listed individuals have already discussed or should try to discuss matters involving KET with you related to their dismissal or KET's current operations, we request that you decline and refer them to the Attorney General at the contact information listed below. You are under no legal obligation to discuss their cases with them and we strongly suggest that you do not discuss matters related to the pending litigation except with the current management of KET and its counsel.

If you receive a subpoena from any of the above appellants, please inform Linda Hume as to the time and manner that you were served with the subpoena, and she will contact us. If you have already been served with a subpoena, please also inform Linda Hume and be prepared to honor it until otherwise notified. The contact information for the Attorney General's office is:

Matt James
Assistant Attorney General
700 Capitol Ave., Ste. 118
Frankfort, KY 40601
(502) 696-5601
matt.james@ag.ky.gov

We apologize for any inconvenience and we appreciate your cooperation.

Sincerely,

Matt James
Brian T. Judy

Recommended Order
Attachment D

APPELLANT'S
EXHIBIT

Vice + Sol
7

Recommended Order

Attachment E

Received

MAR 04 2015

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

Personnel Board

MARK A. HOLT (Appeal No. 2011-098)
ROBERT A. PICKERING (Appeal No. 2011-200)
PATRICK J. WISE (Appeal No. 2011-201)
TRASIMOND D. SOILEAU (Appeal No. 2011-233)

APPELLANTS

v.

KENTUCKY EDUCATIONAL TELEVISION
and
PERSONNEL CABINET

APPELLEES

NOTICE OF SETTLEMENT AGREEMENT

Comes the Appellee Personnel Cabinet, by counsel, and submits the attached settlement agreements relating to Appellants Trasimond Soileau and Patrick Wise for review and final action by the Personnel Board pursuant to 101 KAR 1:365 Section 6(8).

Respectfully submitted,



Whitney W. Meagher
Office of Legal Services
Personnel Cabinet
501 High Street, 3rd Floor
Frankfort, Kentucky 40601
Phone: (502) 564-7430
Fax: (502) 564-0224

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via mail to the following on this the 4 day of March, 2015:

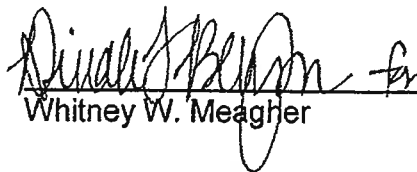
Hon. Brian Judy
Hon. Matt James
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601
brian.judy@ky.gov
matt.james@ky.gov
Counsel for the Appellee
Kentucky Authority for Education Television

Hon. Robin Cornette
177 N. Upper Street, Suite 101
Lexington, Kentucky 40507
cornettelaw@windstream.net
Counsel for Appellants
Trasimond Soileau and Patrick Wise

Hon. Edward E. Dove
201 W. Short Street, Suite 300
Lexington, Kentucky 40507
eddove@windstream.net
Counsel for Appellant
Mark A. Holt

Hon. John L. Tackett
201 W. Short Street, Suite 310
Lexington, Kentucky 40507
tackettlawky@hotmail.com
Counsel for Appellant
Robert A. Pickering

Hon. Mark Sipek
Kentucky Personnel Board
28 Fountain Place
Frankfort, Kentucky 40601
Via facsimile: (502) 564-1693
MarkA.Sipek@ky.gov


Whitney W. Meagher

Received

MAR 04 2015

Personnel Board

SETTLEMENT AGREEMENT

Between

TRASIMOND SOILEAU

And

KENTUCKY PERSONNEL CABINET

In the matter of

KENTUCKY PERSONNEL BOARD APPEAL NO. 2011-233

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between Trasmond Soileau and the Personnel Cabinet in consideration of the following promises and agreements:

WHEREAS, Mr. Soileau has expressed interest in exercising reemployment rights referenced in his notice of termination dated September 10, 2010;

WHEREAS, previously the Personnel Cabinet has advised it would not permit Mr. Soileau to exercise reemployment rights;

WHEREAS, Mr. Soileau and the Personnel Cabinet (collectively "the Parties") have agreed to compromise and settle this dispute to provide for a friendly and amicable resolution of all claims relating to the issue of whether Mr. Soileau may exercise reemployment rights as a result of his termination from the Kentucky Authority for Educational Television (hereinafter "KET");

I. AGREEMENT BETWEEN THE PARTIES

For and in consideration of the mutual agreement of the Parties to abide by the provisions of this Settlement Agreement, the sufficiency of which are acknowledged, the Parties agree and covenant as follows:

A. The Parties acknowledge and agree that this Agreement is a result of a compromise of any and all disputes related to the subject of this Agreement and shall not at any time or for any purpose be construed as an admission by either party of the proper interpretation or application of any law whether in this appeal or otherwise and shall not be construed as an admission by either party of any liability via statute, regulation, contract or other conduct.

B. The Parties agree that the Personnel Cabinet will allow Mr. Solleau to exercise reemployment rights when he applies for positions within the KRS Chapter 18A classified service for which he qualifies.

C. The Parties agree that reemployment rights are outlined by KRS 18A.135, and include the right to priority consideration for any vacant, posted KRS Chapter 18A classified position for an individual qualifies with the distinction of a "reemployment candidate." No vacancy may be filled from a competitive register until the qualified reemployment candidate who has applied to a position has been reemployed, offered reemployment, or properly considered. If more than one reemployment candidate applies to a position, then the reemployment candidates shall be considered by order of seniority. An appointing authority may refuse to reemploy a qualified reemployment candidate only for cause.

D. The Parties agree that Mr. Soileau shall be allowed to exercise reemployment rights until the expiration of five (5) years from the date of this agreement, or until Mr. Soileau is reemployed into a position within the KRS Chapter 18A classified service, whichever occurs sooner.

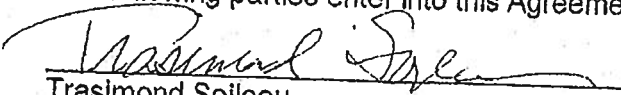
E. In consideration of the obligations of the Parties, Mr. Soileau agrees to release and to forever discharge the Personnel Cabinet, their employees, officers, and agents from any and all liability arising from and related to reemployment rights.

II. ACCEPTANCE AND BINDING AGREEMENT

The Parties hereto agree that acceptance of this Agreement and performance in accordance with the terms of this Agreement by both parties is considered full accord and satisfaction. This Agreement, totaling four (4) pages, shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns. This Agreement may not be modified except by written addendum signed by all parties. No waiver or provision of this Agreement will be valid unless it is in writing and signed by the person or party to be charged. Further, the Parties agree to keep the Agreement and its terms confidential to the extent permissible under law.

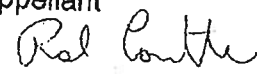
III. SIGNATURES

The following parties enter into this Agreement:



Trasimond Soileau
Appellant

Date: 2/11/15



Robin Cornette
Counsel for Trasimond Soileau

Date: 2/23/15

Walter Gaffield
Walt Gaffield, Appointing Authority
Personnel Cabinet

Date: 2/6/2015

Dinah T. Bevington for
Whitney W. Meagher
Counsel for Personnel Cabinet

Date: 2-6-15

Reviewed as to form by:

Dinah T. Bevington
Dinah T. Bevington
General Counsel
Personnel Cabinet

Date: 2-6-15

Recommended Order
Attachment F

Received

MAR 04 2015

Personnel Board

SETTLEMENT AGREEMENT

Between

PATRICK WISE

And

KENTUCKY PERSONNEL CABINET

In the matter of

KENTUCKY PERSONNEL BOARD APPEAL NO. 2011-201

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between Patrick Wise and the Personnel Cabinet in consideration of the following promises and agreements:

WHEREAS, Mr. Wise has expressed interest in exercising reemployment rights referenced in his notice of termination dated September 10, 2010;

WHEREAS, previously the Personnel Cabinet has advised it would not permit Mr. Wise to exercise reemployment rights;

WHEREAS, Mr. Wise and the Personnel Cabinet (collectively "the Parties") have agreed to compromise and settle this dispute to provide for a friendly and amicable resolution of all claims relating to the issue of whether Mr. Wise may exercise reemployment rights as a result of his termination from the Kentucky Authority for Educational Television (hereinafter "KET");

I. AGREEMENT BETWEEN THE PARTIES

For and in consideration of the mutual agreement of the Parties to abide by the provisions of this Settlement Agreement, the sufficiency of which are acknowledged, the Parties agree and covenant as follows:

A. The Parties acknowledge and agree that this Agreement is a result of a compromise of any and all disputes related to the subject of this Agreement and shall not at any time or for any purpose be construed as an admission by either party of the proper interpretation or application of any law whether in this appeal or otherwise and shall not be construed as an admission by either party of any liability via statute, regulation, contract or other conduct.

B. The Parties agree that the Personnel Cabinet will allow Mr. Wise to exercise reemployment rights when he applies for positions within the KRS Chapter 18A classified service for which he qualifies.

C. The Parties agree that reemployment rights are outlined by KRS 18A.135, and include the right to priority consideration for any vacant, posted KRS Chapter 18A classified position for an individual qualifies with the distinction of a "reemployment candidate." No vacancy may be filled from a competitive register until the qualified reemployment candidate who has applied to a position has been reemployed, offered reemployment, or properly considered. If more than one reemployment candidate applies to a position, then the reemployment candidates shall be considered by order of seniority. An appointing authority may refuse to reemploy a qualified reemployment candidate only for cause.

D. The Parties agree that Mr. Wise shall be allowed to exercise reemployment rights until the expiration of five (5) years from the date of this agreement, or until Mr. Wise is reemployed into a position within the KRS Chapter 18A classified service, whichever occurs sooner.

E. In consideration of the obligations of the Parties, Mr. Wise agrees to release and to forever discharge the Personnel Cabinet, their employees, officers, and agents from any and all liability arising from and related to reemployment rights.

II. ACCEPTANCE AND BINDING AGREEMENT

The Parties hereto agree that acceptance of this Agreement and performance in accordance with the terms of this Agreement by both parties is considered full accord and satisfaction. This Agreement, totaling four (4) pages, shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns. This Agreement may not be modified except by written addendum signed by all parties. No waiver or provision of this Agreement will be valid unless it is in writing and signed by the person or party to be charged. Further, the Parties agree to keep the Agreement and its terms confidential to the extent permissible under law.

III. SIGNATURES

The following parties enter into this Agreement:

Patrick Wise
Patrick Wise
Appellant

Date: 02/12/2015

Rob Cornette
Robin Cornette
Counsel for Patrick Wise

Date: 02/23/2015

Walt Gaffield

Walt Gaffield, Appointing Authority
Personnel Cabinet

Date: 2/6/2018

Dinah T. Bevington for

Whitney W. Meagher
Counsel for Personnel Cabinet

Date: 2.6.15

Reviewed as to form by:

Dinah T. Bevington

Dinah T. Bevington
General Counsel
Personnel Cabinet

Date: 2.6.15

Recommended Order
Attachment G

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

MARK A. HOLT (Appeal No. 2011-198)
ROBERT A. PICKERING (Appeal No. 2011-200)
PATRICK J. WISE (Appeal No. 2011-201)
AND TRASIMOND SOILEAU (Appeal No. 2011-233)

APPELLANTS

VS. PARTIAL SETTLEMENT ORDER REGARDING
WISE AND SOILEAU AND THE PERSONNEL CABINET

KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION,
SHAE HOPKINS, APPOINTING AUTHORITY

AND

KENTUCKY PERSONNEL CABINET
TIM LONGMEYER, APPOINTING AUTHORITY

APPELLEES

** ** * * * * *

The Board at its regular March 2015 meeting having considered the proposed partial settlements of **PATRICK WISE (APPEAL NO. 2011-201) VS. KENTUCKY PERSONNEL CABINET AND TRASIMOND SOILEAU (APPEAL NO. 2011-233) VS. KENTUCKY PERSONNEL CABINET** submitted by the parties in the form of "Settlement Agreements" and being duly advised,

IT IS HEREBY ORDERED that said settlements be, and hereby are implemented as agreed to by the parties and are incorporated herein as a part of this Order, and the Appellants' appeals are therefore **SUSTAINED to the extent** of the relief afforded the Appellant by said settlement.

This is not a Final Order and these consolidated appeals remain with the Hearing Officer for submission of Findings of Fact, Conclusions of Law and Recommended Order on all other issues.

SO ORDERED this 13th day of March, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK SECRETARY

Copies hereof this day sent to:

Hon. Robin Cornette
Hon. Dinah Bevington
Hon. Whitney Meagher
Hon. Brian Judy
Hon. Matt James
Hon. Edward E. Dove
Hon. John L. Tackett

