



**Issue Date: 02 August 2005**

**Case No.: 2005-CAA-11**

**In the Matter of:**

**EDWARD A. SLAVIN, JR.,  
Complainant**

**vs.**

**DEAN DENNIS J. AIGNER,  
Respondent.**

## **RULING ON MOTION TO JOIN PARTY**

### **PROCEDURAL BACKGROUND**

This matter arises from a complaint filed by Edward A. Slavin, Jr. (Complainant) against the University of California at Santa Barbara (UCSB) and Dean Dennis J. Aigner (Respondent) based on the employee protection provisions of the Clean Air Act (CAA)<sup>1</sup>, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)<sup>2</sup>, the Federal Water Pollution Control Act (WPCA)<sup>3</sup>, the Safe Drinking Water Act (SDWA)<sup>4</sup>, the Solid Waste Disposal Act (SWDA)<sup>5</sup>, the Toxic Substances Control Act (TSCA)<sup>6</sup>, and the applicable regulations.<sup>7</sup>

On 15 Dec 04, Complainant filed an administrative complaint with the Occupational Safety & Health Administration (OSHA). OSHA issued a report of investigation on 22 Mar 05. I was detailed to the case and received Complainant's request for hearing on 22 Apr 05. I issued a notice of hearing order the same day, setting the hearing for 21 Jul 05. I subsequently amended the discovery completion date to 5 Jul 05.

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<sup>1</sup> 42 U.S.C. § 7622(2004).

<sup>2</sup> 42 U.S.C. § 9610(2004).

<sup>3</sup> 33 U.S.C. § 1367(2004).

<sup>4</sup> 42 U.S.C. § 300j-9(2004).

<sup>5</sup> 42 U.S.C. § 6971(2004).

<sup>6</sup> 15 U.S.C. § 2622(2004).

<sup>7</sup> 29 C.F.R. Part 24(2004).

On 27 Jun 05, Respondents filed a motion for summary decision which was opposed by Complainant. On 14 Jul 05, I granted the motion in part and dismissed the complaint as to UCSB based on state sovereign immunity. I also continued the hearing. On 19 Jul 05, Complainant filed a motion to add the UCSB Bren School's current Dean, Dr. John Melack, as an indispensable party. Respondent filed his opposition on 26 Jul 05.

## DISCUSSION

In his motion, Complainant cites the rules of practice before administrative law judges.<sup>8</sup> The specific sections he cites define the scope of the rules provide that the Federal Rules of Civil Procedure for the District Courts of the United States apply in any situation not otherwise covered,<sup>9</sup> and authorize administrative law judges to take actions consistent with those rules.<sup>10</sup>

Complainant also cites the Federal Rules of Civil Procedure, which provide for joinder of a person if, "in the person's absence complete relief cannot be accorded among those already parties,..."<sup>11</sup> Complainant additionally cites to Black's Law Dictionary, the U.S. Attorney's Manual and a group of cases, none of which are directly applicable to this case.<sup>12</sup>

Complainant does not state what relief he can not obtain in the absence of joining Dr. Melack. Moreover, moving to join a person as a party presumes that the person could otherwise properly be a respondent, or at least has some real interest in the outcome of the case. Complainant does not state in what capacity Dr. Melack would otherwise be liable under any of the applicable statutes.

Complainant cites nothing in the record indicating Dr. Melack had a role in the alleged discrimination which would make him liable in his individual capacity. (Even if there were, Complainant would have to first file a complaint with OSHA against Dr. Melack in his individual capacity.) Similarly, Complainant cites nothing that indicates Dr. Melack had any role in the alleged discrimination as an officer of UCSB.

Consequently, the only basis for adding Dr. Melack as a party would be in his capacity as UCSB's officer and to allow Complainant to indirectly obtain through Dr. Melack what he could not obtain from UCSB because of its immunity.

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<sup>8</sup> 29 C.F.R. Part 18(2004).

<sup>9</sup> 29 C.F.R. §18.1(2004).

<sup>10</sup> 29 C.F.R. §18.29(2004).

<sup>11</sup> Fed.R.Civ.P. 19(1).

<sup>12</sup> See, e.g., Williams v. Fanning, 332 U.S. 490 (1947) (Postmaster General was not an indispensable party); Hynes v. Grimes Packing Co., 337 U.S. 86 (1949)(Secretary of Interior was not an indispensable party defendant); White v. Osage Tribal Council, 1995 SDW 00001 (ALJ Aug 10 2000) (decision based on timeliness and scope of remand).

I previously found that UCSB was immune from Complainant's private actions against it under the statutes applicable in this case. That ruling was based on a settled constitutional principle. To allow a private party to circumvent state sovereign immunity by simply adding as a party whatever state official happens to be in a position of authority at the time of the litigation (vs the time of the alleged wrongdoing) would frustrate that constitutional principle.<sup>13</sup>

## **DECISION & ORDER**

Complainant's motion to join Dr. Melack is denied.

**So ORDERED.**

**A**

**PATRICK M. ROSENOW**  
Administrative Law Judge

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<sup>13</sup> Cf. Ex parte Young, 209 U.S. 123 (1908). That case does stand for the general proposition that a state official may be subject to injunctive relief in his official capacity, but involved a state attorney general's refusal to enforce criminal laws, and as such constituted a public interest which does not exist in this case, given OSHA's decision to dismiss.