

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 August 2005

CASE NUMBERS: 2005-SDW-004
2005-SDW-005
2005-SDW-006

In the Matter of:

**GREGORY A. DANN,
LON A. FULLER, and
THOMAS J. KOSCIK,**
Complainants,

v.

**BECHTEL SAIC COMPANY, LLC, and
BECHTEL NEVADA**
Respondents.

ORDER GRANTING MOTION TO COMPEL DISCOVERY RESPONSES

In an order issued in July of 2005, the Complainants' motion for a trial postponement was granted based on a finding that defendant Bechtel Nevada's initial and supplemental responses to the Complainants' discovery requests were so evasive and tendentious that it was necessary to delay the trial until after Bechtel Nevada had provided more complete responses to the discovery requests. The same order also gave both Bechtel Nevada and Bechtel SAIC until July 15, 2005 to provide the Complainants with supplemental responses to their discovery requests. At the same time, Bechtel Nevada was specifically admonished to "be more forthcoming and less argumentative" in its responses to the Complainants' requests.

On July 22, 2005, the counsel for the Complainants filed a motion asking that Bechtel Nevada and Bechtel SAIC be compelled to provide complete responses to the Complainant's discovery requests. Timely responses to the motion were received from both Bechtel Nevada and Bechtel SAIC.

Ruling Concerning Bechtel SAIC

Review of the Complainants' motion and the response of Bechtel SAIC indicates that, with the exception of Bechtel SAIC's response to interrogatory number 30, Bechtel SAIC has provided the Complainants with sufficient responses to their interrogatories. The response to interrogatory number 30, which pertains to a statement allegedly made by Nick Fiore, was

insufficient because it was based on the mistaken premise that Mr. Fiore was not an employee of Bechtel SAIC. Accordingly, Bechtel SAIC is hereby directed to provide the Complainants with a full response to interrogatory 30 by August 15, 2005.

Ruling Concerning Bechtel Nevada

Review of the Complainants' motion and Bechtel Nevada's response indicates that Bechtel Nevada has not heeded the admonishment to be more forthcoming and less argumentative in its responses to discovery requests. Although Bechtel Nevada has provided some additional information acknowledging that its "labor relations" personnel, including Nick Fiore and Clay "Wes" Young, also handled labor relations for Bechtel SAIC, it has repeatedly refused to respond to questions concerning the actions of these personnel on the grounds that it is neither authorized nor required to respond to questions on behalf of Bechtel SAIC. In view of the fact that at least two Bechtel Nevada employees were performing labor relations services for Bechtel SAIC and were directly involved in the events underlying this proceeding, Bechtel Nevada will no longer be permitted to refuse to answer discovery requests on the grounds that it cannot provide answers concerning the actions of Bechtel SAIC. Rather, Bechtel Nevada must provide answers to extent that any of Bechtel Nevada's current or former employees (including employees of Bechtel Nevada's corporate parents and their subsidiaries) have information responsive to the requests.

Hence, Bechtel Nevada is hereby directed to provide full, non-evasive responses to Complainants' Requests for Admission numbers 12, 13, 15, 16, 36-38, 40, 42, 44, 46 and 47, Complainant Fuller's Interrogatories numbers 13-17, 19, Complainant Dann's Interrogatories 24 and 25, and Complainant Koscik's Interrogatories 4, 16, and 20 by August 15, 2005. In addition, to the extent that Bechtel Nevada has withheld information as privileged, it is hereby directed to provide the Complainants with a privilege log consistent with the requirements of the Federal Rules of Civil Procedure no later than August 15, 2005.

A Third Revised Pre-Trial Order setting forth revised pre-trial deadlines is attached.

A

Paul A. Mapes
Administrative Law Judge

THIRD REVISED PRE-TRIAL ORDER

1. Bechtel SAIC and Bechtel Nevada shall deliver more complete responses to the Complainants' discovery requests by hand or air express to the counsel for the Complainants no later than August 15, 2005.

2. If the Complainants regard the foregoing discovery responses to be insufficient, any motion to compel more complete responses must be filed no later than August 17, 2005.

3. Responses to any such motion must be filed no later than August 22, 2005.

4. No later than August 24, 2005 each Complainant shall either air express or hand deliver to the undersigned and to each Respondent, a pre-trial statement containing:

a. A statement setting forth the Complainant's principal contentions of law and fact, including:

(1) A list setting forth each of the Complainant's alleged protected activities, the date of each such activity, and a detailed description of the activity,

(2) A list setting forth each of the alleged adverse actions taken against the Complainant in retaliation for the aforementioned protected activities, the date of each such action, and a statement explaining why the action should be considered to be retaliatory, and

(3) A list setting forth each type of relief sought by the Complainant and a statement explaining exactly how any demand for money damages has been calculated;

b. A detailed summary of the expected testimony of each witness, including each witnesses' name, address and telephone number;

c. A complete list of all exhibits to be offered into evidence, which list shall also include a detailed statement specifically explaining what each such exhibit will prove;

d. Copies of all proposed exhibits.

5. No later than September 2, 2005, each Respondent shall air express or hand deliver to the undersigned and to each Complainant, a pre-trial statement containing:

a. A statement setting forth the Respondent's principal contentions of law and fact, including:

(1) A statement either admitting or denying the occurrence of each protected activity alleged in the Complainant's pre-trial statement,

(2) A statement either admitting or denying the occurrence of each adverse action alleged in the Complainant's pre-trial statement,

(3) A statement either admitting or denying knowledge of each alleged protected activity prior to the occurrence of each alleged adverse action,

(4) A statement either admitting or denying a retaliatory motive for each alleged adverse action,

(5) A detailed statement specifically describing the Respondent's actual motivation for each adverse action asserted to be unrelated to any protected activities,

(6) A statement specifically setting forth any and all objections to each type of relief sought by each Complainant, and

(7) A statement specifically setting forth the factual and legal basis for any affirmative defenses;

b. A detailed summary of the expected testimony of each witness, including each witnesses' name, address and telephone number;

c. A complete list of all exhibits to be offered into evidence, which list shall also include a detailed statement specifically explaining what each such exhibit will prove;

d. Copies of all proposed exhibits.

6. No later than September 9, 2005, each Complainant or his counsel shall contact the counsel for each Respondent for the purpose of discussing a possible settlement.

7. So far as practicable, exhibits shall be on eight and one-half by eleven inch paper, bound in volumes of approximately 100 pages, and sequentially numbered in the lower right-hand corner. Each such volume shall have a cover sheet listing the exhibits in that volume.

8. Except for good cause, no party will be permitted to litigate issues, raise defenses, call witnesses, or introduce evidence not listed in the party's pre-trial statement.

9. Every pre-trial motion shall contain a declaration affirming that prior to submitting the motion the movant party conferred or corresponded with the opposing party in an unsuccessful