



In the Matter of:

DAVID VINCENT,

ARB CASE NO. 02-066

COMPLAINANT,

ALJ CASE NO. 00-CER-024

v.

DATE: July 30, 2003

**LABORERS' INTERNATIONAL UNION
LOCAL 348,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Noel McMurtray, Esq., *Mill Creek, Washington*

FINAL ORDER OF DISMISSAL

The Complainant David Vincent filed a complaint against the Respondent Laborers' International Union Local 348 (LIU) under the whistleblower protection provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. § 9610 (West 1995), and the Solid Waste Disposal Act (SWDA), 42 U.S.C.A. § 6971 (West 1995). Following a hearing, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) dismissing Vincent's complaint. The Complainant then filed a petition for review by this Board. The issue we consider is whether Vincent's appeal should be dismissed for lack of prosecution.

BACKGROUND

When Vincent's complaint arose, Roy F. Weston Co. employed him at the Hanford Work Site. R. D. & O. at 3-4. He alleged that LIU's decision to remove him as a shop steward and to bar him from serving as a steward in the future constituted retaliation in violation of the CERCLA and the SWDA. The ALJ held a hearing pursuant to 29 C.F.R. § 24.6 (2001). To determine whether the LIU qualified as a covered entity

under the CERCLA and the SWDA employee protection provisions, the ALJ examined the specific entities that are identified for coverage by the CERCLA and SWDA anti-retaliation provisions and determined that the LIU would be covered only if it had served as Vincent's employer. *Id.* at 6-9. Based both on the parties' stipulation that LIU did not employ Vincent, and on Vincent's testimony, as a "very sincere and credible witness," the ALJ ruled that the LIU had not acted as Vincent's employer in a manner that could support CERCLA or SWDA coverage. R. D. & O. at 3, 9-10. Because the LIU did not qualify as a covered respondent under the CERCLA or the SWDA, the ALJ on April 2, 2002, dismissed the complaint. R. D. & O. at 10-11.

On April 10, 2002, the Complainant filed a petition for review by this Board. The Board issued a Notice of Appeal and Order Establishing Briefing Schedule on April 18, 2002. Under that Order, he was afforded until May 16, 2002, to file an initial brief, and, if the Respondent filed a responsive pleading, the Complainant was also afforded until July 2, 2002, to file a reply brief. On May 7, 2002, Vincent's attorney filed a Notice of Withdrawal of Counsel. Vincent's attorney also requested that the Board provide Vincent a four-month extension of time to submit briefing in the case, in order to afford him time to retain new counsel. The LIU opposed both the withdrawal of Vincent's counsel and the request for an extension of time for filing briefs. LIU urged that Vincent's attorney should not be allowed to withdraw until Vincent retained new counsel and the newly-engaged representative entered an appearance in this appeal. In support, LIU asserted that Vincent's counsel prematurely filed the petition for review on April 10, 2002, and LIU raised a question whether Vincent wished to pursue this appeal.

On May 16, 2002, the Board acknowledged receipt of the withdrawal of the Complainant's counsel and granted in part the Complainant's extension request. Specifically, the Board revised the briefing schedule to provide the parties an additional sixty days for filing their respective pleadings. Pursuant to the May 16, 2002 order, the Board enlarged the deadline for Vincent to file an initial brief to July 16, 2002, and the deadline for him to file a reply brief to August 30, 2002.

DISCUSSION

The Board's review of the Administrative Law Judge's recommended decision in this case under the regulations at 29 C.F.R. Part 24 is not automatic. Rather, an aggrieved party must adhere to the Board's practices and procedures to obtain review of the recommended decision under 29 C.F.R. § 24.8(a), (b). The Board has construed those regulations to require the filing of a brief containing argument in support of the Complainant's petition for review. *See, e.g., McQuade v. Oak Ridge Operations Ofc.*, ARB No. 02-087 (Order) (Oct. 18, 2002); *Solnicka v. Washington Pub. Power Supply Sys.*, ARB No. 00-009 (Order) (Apr. 25, 2000). Like the courts, the Board "must manage its docket in an effort to 'achieve the orderly and expeditious disposition of cases.'" *In re Tri-Gem's Builders*, ARB No. 99-117, ALJ No. 98-DBA-17 (Order) (ARB Feb. 25, 2000) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)).

Because the Complainant had failed to file a brief in this case, the Board, on July 11, 2003, issued an Order to Show Cause why the appeal should not be dismissed for lack of prosecution. The order was phrased in terms that could be easily understood by a complainant representing himself. The Order to Show Cause afforded the Complainant until July 22, 2003, to respond.

The Complainant has not responded to the Board's July 11 Order to Show Cause. Although Vincent's counsel withdrew during the pendency of this appeal, the record of proceedings before us provides no indication that Vincent's failure to file a brief or to respond to the Board's Order to Show Cause is linked to a lack of legal training. Based on that failure to respond, as well as the lengthy period – in excess of eleven months – since the July 16, 2002 deadline for the filing of an initial brief by the Complainant, we conclude that the Complainant has abandoned this appeal.

Accordingly, the Board **DISMISSES** this complaint.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge