



In the Matter of:

ERNEST A. OLIVER

ARB CASE NO. 97-063

COMPLAINANT,

ALJ CASE NO. 91-SWD-0001

v.

DATE: September 8, 1997

HYDRO-VAC SERVICES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER

On November 1, 1995, the Secretary found that Respondent Hydro-Vac Services, Inc. discriminated against Complainant Ernest A. Oliver for engaging in activities protected under the Solid Waste Disposal Act of 1988 (SWDA), 42 U.S.C. § 6971 (1988) and the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1367 (1988), when it fired him in August 1990. The Secretary ordered Hydro-Vac to reinstate Oliver to his former position and remanded the case for a recommended decision on the appropriate amount of damages. A Recommended Decision and Order on damages and attorney's fees was issued on February 19, 1997.

Both parties excepted to the ALJ's refusal to issue subpoenas to third parties to testify at the hearing on remand.¹ The ALJ denied the parties' motions for issuance of subpoenas in an Order of October 11, 1996, (copy attached) holding that "[u]nder the Administrative Procedure Act an employee presiding at a hearing only has the authority to 'issue subpoenas authorized by law.' See Section 7(b), 5 U.S.C. § 556(c)(2). There is no such authorization in either the Solid Waste Disposal Act ... or the Federal Water Pollution Control Act...."

The Administrative Review Board invites the Office of the Solicitor to submit, within 30 days of the date of this order, a memorandum of law, not to exceed ten typed, double-spaced pages, setting forth its views on the issue of whether subpoenas can be issued under the SWDA or the FWPCA. If the Office of the Solicitor submits such a memorandum, each party may file a

¹ Each party excepted to the ALJ's R. D. & O. on other grounds as well.

response within 30 days of service of the memorandum. Such responses shall not exceed ten typed, double-spaced pages.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member