U.S. Department of Labor

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Issue Date: 01 June 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 DENYING BECHTEL NEVADA'S REQUEST TO BE DISMISSED

On May 11, 2005, an order was issued recognizing Bechtel Nevada as a proper co-respondent in this proceeding. The order was issued in response to a motion that had been filed by the Complainants on April 5, 2005 and served on Bechtel Nevada on April 21, 2005. On May 12, 2005, the counsel for Bechtel Nevada submitted a late response to the Complainant's motion. In brief, the response contends that Bechtel Nevada's alleged "blacklisting" of the Complainants was in fact nothing more than compliance with the terms of a collective bargaining agreement and that any challenge to the collective bargaining agreement can be pursued only in other forums. In addition, the response asserted that because OSHA failed to investigate the allegations against Bechtel Nevada, there were would be a denial of due process if Bechtel Nevada were to now be joined as party to this proceeding.

Because Bechtel Nevada's response to the Complainants' motion was untimely, the response will be treated as a motion for reconsideration. After so considering the response, it has been determined that it fails to provide a convincing basis for denying the Complainants' request that Bechtel Nevada be joined as a co-respondent along with Bechtel SAIC. Even if Bechtel Nevada's apparent refusal to employ the Complainants was in fact mandated by a collective bargaining agreement, that circumstance alone is insufficient to warrant a conclusion that Bechtel Nevada is somehow exempt from being named as a party to this proceeding. Rather, the collective bargaining agreement is, at best, an affirmative defense against the Complainants' allegations. Moreover, it is noted that Bechtel Nevada's refusal to hire the Complainants apparently extended beyond the six-month period specified in the collective bargaining

agreement. Likewise, it is noted that the sole purpose of this proceeding is to determine if either of the Respondents engaged in illegal discrimination against the Complainants and that none of the parties has in any way suggested that any collective bargaining agreement should be invalidated. Hence, there is no reason to conclude that the joinder of Bechtel Nevada as a party to this proceeding will in any way infringe on any other entity's jurisdiction to consider the validity of collective bargaining agreements. Finally, it is noted that there is no merit to Bechtel Nevada's assertion that OSHA's failure to conduct an investigation into the allegations against Bechtel Nevada means that Bechtel Nevada would be denied due process if it were now joined as a party to this proceeding. As noted in the order issued on May 11, 2005, because this proceeding is just beginning and is entirely *de novo*, there is no possibility that the joinder of Bechtel Nevada will in any way impinge upon the company's due process rights.

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Paul A. Mapes
Administrative Law Judge