



Issue Date: 13 May 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 IN PART AND DENYING IN PART
BECHTEL SAIC'S MOTION TO COMPEL**

On April 13, 2005, Respondent Bechtel SAIC filed a motion asking that the Complainants be compelled to provide more extensive answers to Bechtel SAIC's interrogatories and requests for the production of documents. Unfortunately, as the Complainants have pointed out, the respective counsel did not in fact "meet and confer" before Bechtel SAIC filed its motion. A response to the motion to compel was filed by the Complainants on May 2, 2005.

Review of Bechtel SAIC's discovery requests and the Complainants' responses indicates that in a relatively short time period the Complainants did in fact provide a great deal of information responsive to Bechtel SAIC's discovery requests. In addition, the Complainants' response to the motion to compel provides additional information responsive to some questions about the meanings of some of their initial interrogatory responses (e.g., questions about whether specific medical conditions were allegedly related to Bechtel SAIC's alleged discriminatory conduct and questions concerning whether the Complainants would be producing documents within their custody and control). It further appears that the Complainants are correct insofar as they refused to respond to some requests on the grounds that the requests were unduly burdensome (e.g., requests asking that they specify which documents respond to which document requests and requests asking that they specify the name of every person who may have knowledge concerning this matter). As well, the Complainants' response indicates that they have now provided the FRCP Rule 33 verifications requested by Bechtel SAIC.

Hence, only the following issues warrant further attention: (1) information on employment histories, (2) information on the calculation of damages, and (3) information about prior charges or arrests. Findings concerning these issues are as follows:

1. Information on Employment Histories. Respondent Bechtel SAIC has a legitimate need for information concerning the Complainants' employment histories, but its requests cannot impose obligations on the Complainants that are unduly burdensome. Accordingly, it has been determined that the Complainants may satisfy their obligations to disclose any additional information about their employment histories by providing Bechtel SAIC with copies of their W-2 and 1099 statements from their former employers for the years 2000, 2001, 2002, 2003 and 2004.

2. Information Concerning the Calculation of Damages. Respondent Bechtel SAIC is entitled to know exactly how the Complainants have calculated all elements of their requests for damages. However, such calculations must necessarily continue to evolve until the date of trial. Accordingly, it has been determined that the Complainants will not be required to provide further information about the calculation of their alleged damages until they file their Pre-Trial Statements on June 24, 2005. As indicated in the Revised Pre-Trial Order, those Pre-Trial Statements must explain exactly how any demand for money damages has been calculated.

3. Information About Prior Convictions, Charges or Arrests. The Complainants are correct in pointing out that under the rules of evidence it is not ordinarily permissible to use felony convictions for impeachment purposes unless the convictions occurred within the past 10 years. However, this does not mean that a respondent is barred from obtaining information in discovery about misdemeanor convictions or prior criminal charges or arrests. Misdemeanor convictions concerning false statements or acts of dishonesty are admissible if they occurred within the last 10 years and even information about prior arrests or criminal charges might reasonably be expected to lead to the discovery of admissible evidence. Accordingly, the Complainants will be required to provide Bechtel SAIC the requested information about misdemeanors that involved false statements or acts of dishonesty and information about any prior arrests or criminal charges. However, the Complainants need provide information about such incidents only if they occurred within the last 10 years.

Finally, it is noted that both the Complainants and Bechtel SAIC are asking that they be awarded attorney's fees for the legal costs involved in litigating this discovery dispute. It is concluded that none of the parties has made a showing sufficient to justify the imposition of such a sanction. However, the Complainants' counsel may include the time she expended on this dispute in any future petition for attorney's fees, if the Complainants are ultimately successful in proving a violation of a whistleblower statute.

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Paul A. Mapes
Administrative Law Judge

