

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE CHARGES OF LUC)
V. TO AND OF)
FERNANDO LOPEZ)
)
UNITED STATES OF)
AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324b Proceeding
) CASE NO. 93B00146
MONFORT, INC. a)
DELAWARE)
CORPORATION,)
Respondent.)
_____)

ORDER OF CLARIFICATION

On August 6, 1993 a six count Complaint was filed against Respondent by the United States, through its counsel, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), based on the charges of two charging parties. Respondent's Answer was filed on September 2, 1993. On October 12, 1993, Complainant filed a Motion to Amend the Complaint to add another charging party, Celia Gutierrez. The motion was granted in my October 28, 1993 Order. Respondent filed its Answer to the Amended Complaint on November 29, 1993.

On December 13, 1993, Ms. Gutierrez, by and through her counsel, motioned to withdraw her charge in this case and to be allowed to withdraw from this litigation. Ms. Gutierrez further asserted that the United States, by and through its counsel, is not seeking any relief on her behalf.

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On December 20, 1993, OSC filed a letter pleading in which it stated that it did not object to Ms. Gutierrez's motion. Its position was that Ms. Gutierrez's withdrawal did not affect its ability to proceed with this case. EEOC v. United Parcel Service, 860 F.2d 372 (10th Cir. 1988). Additionally, it stated that should I grant Ms. Gutierrez's motion, it could still seek relief on her behalf, although it did not appear that she was entitled to any back pay relief. OSC asserted that any civil money penalty awarded for Respondent's alleged unfair document practice with respect to Ms. Gutierrez would be paid to the United States.

I agree with OSC that Ms. Gutierrez's withdrawal as a charging party will not affect its ability to proceed with this case. 8 U.S.C. 1324b(d); United Parcel Service. However, OSC contends that it may seek relief on Ms. Gutierrez's behalf but that she is not entitled to back pay.

As the record appears to show that Ms. Gutierrez is still employed by Respondent, and thus an order of rehire would be inappropriate, I am directing OSC to file a memorandum, on or before close of business, January 28, 1994, in which it clarifies and supports its position regarding its ability to seek relief on Ms. Gutierrez's behalf and details what relief it might be seeking.

SO ORDERED this 13th day of January, 1994, at San Diego, California.

MILTON E. FROSBURG
Administrative Law Judge