

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

UNITED STATES OF AMERICA, )  
Complainant, )  
 )  
v. ) 8 U.S.C. § 1324b Proceeding  
 ) Case No. 94B00082  
IBP, INC., )  
Respondent. )  
\_\_\_\_\_ )

ORDER  
(June 2, 1995)

Following the initial and only prehearing conference held in this case on September 27, 1994, the parties represented that they were in settlement discussions, and at their request, I twice postponed the second prehearing conference. The parties were directed by the Order dated November 16, 1994 to file progress reports at 30 day intervals starting December 5, 1994. Upon failure to effect such filings, the parties were reminded by the Order dated February 6, 1995 to effect monthly status reports, which they did in February, March and April.

On May 31, 1995, the parties filed a signed but undated "Consent Order" which comprises an agreed disposition between the parties. Following two explanatory introductory paragraphs, the proposed order recites that "In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS, and ORDERS the following" ten enumerated undertakings. Because the May 31 filing contains no document other than the proposed order, the intent of the parties can be gleaned only from that pleading.

For the reasons set out below, I reject the tendered Consent Order, inviting the parties to tender a revised text which includes provisions mandated by the rules of practice and procedure of this Office (rules)<sup>1</sup> applicable to agreed dispositions of cases, and which deletes a provision which I reject.

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<sup>1</sup> See generally Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended at 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. pt. 68) [hereinafter cited as 28 C.F.R. pt. 68].

1. Omitting any reference to the rules, the proposed order fails to comport with the literal requirements of 28 C.F.R. § 68.14(b) which governs content of proposed consent dispositions.

2. Proposed paragraph 10 recites that "this case shall be considered settled and closed for all docket purposes," but against the possibility that "difficulties [may] arise in achieving compliance with the agreements and order," explicitly contemplates that "either party may request that the Court recall the case to the active docket for a hearing on appropriate orders to achieve the purpose of this Consent Order." It is an exercise in sophistry to recite that a case is closed for all (or, any) docket purposes, while obliging the bench to undertake further proceedings at any time on the initiative of a party.

From previous experience, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), is aware of the predilection of this judge to resolve cases without permitting them to languish on the docket once an agreed disposition is achieved. It is for OSC to police the agreement which it has negotiated. Allegations of future violations of 8 U.S.C § 1324b are actionable in their own right. Exercising discretionary authority over the proffered Consent Order, I reject the invitation to provide continuing supervision over compliance with the terms of agreement between the parties. This disposition contrasts with United States v. Strano Farms, 5 OCAHO 748 at 23-24 (1995), where the administrative law judge determined that specific post-decision supervision sought by OSC on a finding of liability after trial on the merits exceeded his authority.

The parties are encouraged to revise the proposed order to comport with 28 C.F.R. § 68.14(b), and with this Order. Such a submission will be timely if filed not later than June 26, 1995. Absent such a filing I may, without further notice schedule the case for hearing.

**SO ORDERED.**

Dated and entered this 2nd day of June, 1995.

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MARVIN H. MORSE  
Administrative Law Judge