

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

ELODIA GUZMAN,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	Case No. 20B00103
YAKIMA FRUIT AND COLD STORAGE,)	
Respondent.)	

ELODIA GUZMAN,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	Case No. 20B00104
SRTC OF VANCOUVER, INC,)	
Respondent.)	MARVIN H. MORSE
		Administrative Law Judge

ORDER GRANTING MOTION TO CONSOLIDATE PROCEEDINGS
(December 18, 2000)

I. Procedural Background

On January 19, 2000, Elodia Guzman (Guzman) filed a charge against two enterprises, Yakima Fruit and Cold Storage (Yakima), and SRTC of Vancouver, Inc. (SRTC) in the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). Guzman alleged that Yakima and SRTC were in violation of 8 U.S.C. § 1324b. By letter dated May 26, 2000, OSC advised Guzman that it would not file a Complaint against Yakima or SRTC, and that she could file her own complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). On September 6, 2000, Guzman filed a complaint against Yakima and a complaint against SRTC.

At an initial telephonic prehearing conference on November 27, 2000, in *Yakima*, held as scheduled an hour before the similar conference in *SRTC*, I inquired whether the parties had considered seeking consolidation of the two cases. Guzman, by counsel, Columbia Legal Services, Yakima, Washington, responded by offering an oral motion to that effect, to which

counsel for Yakima, Gary E. Lofland, Esq., disagreed. As confirmed by the First Prehearing Conference Report and Order, a timetable was established for the filing of Complainant's written motion to consolidate and of Respondent's response. Pursuant to that timetable, on December 4, 2000 (by facsimile transmittal), with Memorandum in Support, Guzman filed her *Yakima* Motion to which Yakima filed its Opposition on December 11, 2000. Pursuant to a virtually identical scenario, Guzman filed a substantially identical Motion and Memorandum in *SRTC* on December 4, to which SRTC, by counsel, William T. Grimm, Esq., filed its Opposition on December 7, 2000.

Complainant filed an identical Motion and Memorandum in each docket, contending that both cases involve the same or substantially similar issues of law and fact, and that consolidation would (1) result in judicial economy, (2) reduce burdens on the parties and witnesses, and (3) not prejudice Respondents.

SRTC's Opposition concedes that there are common facts in the two cases, but argues that Complainant alleges different acts of discrimination in each case. SRTC suggests that to combine the cases would needlessly intertwine Yakima and SRTC in different sets of factual circumstances, risking possible confusion with regard to liability; SRTC has the right to present its defenses independently and separately from those of Yakima, and any efficiencies resulting from consolidating cases can be accomplished without compelling the Respondents to defend themselves in the same proceeding.

Yakima's Opposition argues that combining the two cases needlessly intertwines evidence and issues, potentially complicating the case and the record.

2. Discussion

Guzman alleges two separate discriminatory episodes, both involving refusal to hire and/or termination. As to the first incident in August 1999, Yakima defends by contending that Guzman was refused employment because work was not available, in response to which Guzman "intends to call SRTC personnel to testify regarding the availability of employment . . . and the nature and timing of SRTC's negotiations" with Yakima "to provide a labor force for" certain work at Yakima. Memorandum at 5. It follows, says Complainant, that testimony by SRTC personnel is necessary for her "to establish that [Yakima's] explanation" for failure to hire her in August 1999 is pretextual. *Id.*

As to the second episode in September 1999, Complainant implicates discrimination by both Respondents on the theory that Yakima instructed SRTC, which had assigned her for duty at Yakima, to terminate her employment at Yakima.

Yakima opposes consolidation, arguing that its case stands alone and merger of the dockets would confuse the situation. Yakima asserts it employed Guzman as a seasonal

warehouse worker from May 1994 until she was relieved of duties on June 10, 1999, consistent with Yakima's general personnel practices, because her work authorization expired and the employer was aware of pending deportation proceedings. She was given two weeks to resolve her situation, failure of which would require that she reapply for employment. When she returned after the two week window, with a new authorization card, Yakima was not hiring due to seasonal and market fluctuations. Shortly afterwards, Yakima perceived the need for employees at a different location than her previous one and, electing to use temporary employees in lieu of its own work force, Yakima contracted with SRTC to recruit, hire and assign workers. Guzman applied to and was hired by SRTC on September 13, 1999, assigned to Yakima's second shift (at Wapato) the next day. Yakima supervisors allegedly concluded she (and over two months, 48 others) was found unsuitable for that workforce.

3. Conclusion

While it appears that only Yakima and not SRTC is directly involved in the over-documentation allegations, i.e., the first of the two alleged discriminatory episodes, it is just as clear that testimony by personnel of both respondents will be necessary to unsnarl the second incident. It would be redundant and an unnecessary imposition on Complainant as the individual complainant to obligate her to twice take the stand as a witness in each of two separate, but intimately related, cases. A unitary evidentiary hearing will serve to explain, not obfuscate, factual disputes as a predicate for informed decision-making. Otherwise, we run the risk of unresolved finger-pointing among the parties. On the basis of the submissions before me, consolidation can only serve to expedite the hearing and decisional processes.

Complainant relies on the discretionary authority of the administrative law judge (ALJ) to consolidate cases where "the same or substantially similar evidence is relevant and material to the matters at issue in each such hearing," 28 CFR § 68.16, and cites also Rule 42(a) of the Federal Rules of Civil Procedure to the effect that the court may effect consolidation when an action involves "a common question of law or fact." Fed. R. Civ. P. 42(a).¹

There is ample OCAHO case precedent for consolidating cases involving common parties, issues, and/or witnesses. See *United States v. Carpio-Lingan*, 6 OCAHO no. 914, 1076, 1077 (1997); *Hensel v. Oklahoma City Veterans Affairs Medical Center*, 3 OCAHO no. 532, 1321, 1322 (1993); *United States v. Mesa Airlines*, 1 OCAHO no. 74, 462, 465 (1989).

Applying the procedural principles to the case at hand suggests no reason to withhold consolidation. I perceive no legitimate downside risk to any party by such action. Accordingly, in the exercise of judicial discretion, I grant Complainant's Motion in each docket.

¹The Rules of Practice and Procedure for cases before ALJs (Rules), at 28 CFR §68.1, contemplate availability of the Federal Rules of Civil Procedure as a general guideline.

As the result, the second telephonic prehearing conference previously scheduled for Tuesday, January 9, 2001 will be held on a consolidated basis at 12 noon, EST, 9:00 a.m., PST.

SO ORDERED.

Dated and entered this 18th day of December, 2000.

Marvin H. Morse
Administrative Law Judge