

Federal Scientists Allege RIF Targets Whistleblowers

LOS ANGELES—A group of scientists terminated during a recent reorganization at the U.S. Geological Survey has accused federal officials of manipulating layoff procedures to get rid of whistleblowers, older workers, veterans, women, and people of color. (*Hirshorn v. Department of Interior*, MSPB, No. SF 0351960112 I-1, filed 11/9/95)

Attorneys representing 37 of the 500 workers cut from the agency's Geologic Division in October filed an appeal with the U.S. Merit Systems Protection Board Nov. 9 alleging that the downsizing violated bump and retreat rights and other provisions of a staffing plan. MSPB must hold a hearing on the case within 120 days, according to Mary Dryovage, a San Francisco attorney with the Public Employees for Environmental Responsibility, which is handling the claim.

"Position descriptions were rewritten through various unlawful procedures, including falsification of duties actually performed, coaching individuals who the managers wished to save, rating scientists as unqualified for demotion to positions held by less experienced employees, destroying the documentation which could be used to reconstruct the unlawful conduct," the appeal said.

The appellants, who worked primarily out of the USGS' Menlo Park, Calif., office, also are challenging the alleged basis for the reduction-in-force—a shortage of funds.

Howard Wilshire, a 34-year veteran of the USGS, was one of the scientists let go at Menlo Park—a large earthquake research facility. Wilshire and a co-worker, whose job also was eliminated, gained national attention when they released a controversial report raising concerns about a low-level radioactive waste facility proposed for the Ward Valley area of the Mojave Desert.

Political agendas involved—"This RIF has little to do with budgets and a lot to do with political agendas," Jeffrey Ruch, a PEER attorney based in Washington, said in a statement.

According to Ruch, the Interior Department issued a general RIF notice in March that called for a personnel reduction of 600 because of anticipated cuts to the USGS funding. By the time the agency's proposed funding had been restored, but only 100 of the positions had been added back, he said.

The fact that 400 USGS workers opted for early retirement buyouts between the two notices also weakens the agency's "shortage of funds" argument, he added.

"The problem is that the federal government is becoming very politicized," PEER's Dryovage told BNA. "The workers eliminated were hand-picked using horrendous procedures to appease the right wing of Congress."

Bill Cannon, the USGS geologist who coordinated the RIF, told BNA Nov. 21 that the reorganization was based on President Clinton's budget proposal.

He said that although he could not comment on specific allegations in the complaint, there was no blatant attempt by the agency to violate rules.

"The RIF committee was not dominated by management," Cannon said. "And we had two independent agencies review the procedures."

WARN ACT

'Employment Loss'

Eighteen airport employees who were declared "surplus" when their department was eliminated but who were immediately placed in new positions did not suffer the "employment loss" needed to trigger the notice provisions of the Worker Adjustment and Retraining Notification Act, the U.S. Court of Appeals for the Second Circuit holds. The 18 employees transferred immediately into other positions, remained on the payroll without loss of pay, seniority, or benefits, and suffered no break in service, the court says. (*Gonzalez v. AMR Services Corporation*, 11 IER Cases 279)

Limitations Period

Kentucky's five-year limitations period for actions based on implied contract applies to cases under the WARN Act, a federal district court in that state holds. A WARN Act claim seeks redress for an employer's failure to provide 60 days' notice of a plant closing, the court notes, concluding that this 60-day notice obligation is "most analogous" to a contract implied by law, under which the obligation is created by law without regard to the assent of the parties upon whom the obligation is imposed. (*Mine Workers v. Peabody Coal*, 11 IER Cases 271)

HANDBOOK DISCLAIMER

A company handbook containing progressive-discipline procedures does not constitute an enforceable contract, the Iowa Supreme Court rules. (*Anderson v. Douglas & Lo-mason Co.*, 11 IER Cases 263)

Although the court notes that its previous "handbook" cases concerned provisions on discharge "for cause," the court holds that progressive-discipline procedures are enforceable if they are part of an employment contract. But there was no such contract here, the court finds, since the handbook contains a disclaimer clearly and unambiguously stating that there was no intention to create contractual rights. Nothing about the language of the disclaimer or its location on the last page of the handbook suggests that it does not apply to the progressive-discipline procedures, the court says.