
IN THE MATTER OF
BOISE CASCADE CORPORATION, ET AL.

Docket 8958. Order, Dec. 2, 1975

Denial of complaint counsel's application for review of administrative law judge's order requiring disclosure of certain interview reports to respondents as "Jencks statements."

Appearances

For the Commission: *Amy R. Richter, James C. Egan, Jr., John R. Hoagland and Robert W. Doyle, Jr.*

For the respondents: *Robert T. Johnson, Bell, Boyd, Lloyd, Haddah & Burns, Chicago, Ill., for Boise Cascade Corp. John K. Mallory, Jr., Cleary, Gottlieb, Steen & Hamilton, Wash., D.C., for Champion International Corp. Frank Brewer, Portland, Oreg., George J. Wade, Shearman & Sterling, New York City for Georgia-Pacific Corp. Edwin S. Rockefeller, Bierbower & Rockefeller, Wash., D.C. and Francis A. Kareken, Tacoma, Wash. for Weyerhaeuser Co. Norman J. Wiener, Miller, Anderson, Nash, Yerke & Wiener, Portland, Oreg., Edward T. Tait, Reed, Smith, Shaw & Mc Clay, Wash., D.C., and Hammond E. Chaffetz, Kirkland & Ellis, Chicago, Ill. for Willamette Industries, Inc.*

ORDER DENYING INTERLOCUTORY APPEAL

This matter is before us upon complaint counsel's application under Section 3.23(a)(1) of the rules of practice for review of an order by the administrative law judge which requires that certain interview reports be disclosed to respondents as "Jencks statements."

Complaint counsel do not argue on this appeal that the interview reports are not, in fact, "Jencks statements" but, instead, contend that the law judge made no finding that the materials to be disclosed were "substantially verbatim" accounts of oral statements made by prospective witnesses. See *L.G. Balfour Co.*, 69 F.T.C. 1118, 1123 (1966).

The Commission has ruled that respondents are "entitled to inspect * * * any written report or portions thereof which reflect in substantially verbatim form any oral statement given by the witness to [the] attorney or investigator but any summaries of such statements made by the attorney or investigator should not be produced." *Inter-State Builders, Inc.*, 69 F.T.C. 1152, 1165 (1966).¹ Variances such as "grammatical and syntactical changes, rearrangement into chronological order, or omissions or additions of information immaterial for impeachment purposes will not prevent a transcription from being substantially verbatim." *Id.* at 1156.

After reviewing the documents *in camera*, the administrative law judge ruled that "in most instances the interviewers were trying to report as accurately and as completely as possible the conversation with each prospective witness, even though inconsequential stylistic or punctuation changes may have been made in the actual transcription." The law judge further ruled that "minor sections" of some reports

¹ Production need only be made after the witness has testified on direct examination. In the present case, however, the parties have agreed that, if production is ordered, the reports are to be disclosed forthwith.

Complaint

86 F.T.C.

which contain analytical comment or the subjective impressions of the interviewer need not be produced. Memorandum and Order Respecting Jencks Statements, Nov. 12, 1975, p.2. We read this as a determination that the portions of the reports to be produced are "substantially verbatim." However, in the event that our interpretation of the law judge's order is incorrect, we would expect that he would modify the order to limit production to "substantially verbatim" transcriptions. Accordingly,

It is ordered, That the aforesaid appeal be, and it hereby is, denied. Chairman Engman, with Commissioner Nye joining, stated "Whatever verbal formula the Administrative Law Judge used in determining that interview reports should be turned over to opposing counsel is not of sufficient importance to warrant Commission review. I dissent insofar as the above order suggests we should review his ruling."
