

The Bothwell Letter

NEWS & COMMENT FROM LAW OFFICES OF A.P.X. BOTHWELL

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Labor Dept. weighs reform ideas

Chief Judge Paul Igasaki of the U.S. Labor Dept. Administrative Review Board heard advice June 21 from an *ad hoc* panel on proposed policies and procedures. Atty. Tony Bothwell told the Washington meeting that the Board needs to expand and add resources. Judge Igasaki announced that it will expand from three to five judges and, budget permitting, fill two longstanding legal support staff vacancies. Bothwell urged that the Board should review certain matters *de novo*, taking a fresh look at relevant evidence. New rules should be explained in a plain-English brochure and webpage, he suggested. The Board reviews more than 140 whistleblower and wage cases yearly for the Secretary of Labor.

Solis can save nuclear safety programs

Labor Secretary Hilda Solis is to make a decision that could save vital safety programs at the nation's 65 nuclear power plants, according to an article in *Public Utilities Fortnightly*. The Safety Conscious Work Environment programs "could unravel" unless Solis orders that nuclear whistleblower protection rules apply to contractors – who comprise more than 50% of workers in U.S. nuclear electric generating plants, the article by Atty. Tony Bothwell says. Hyperlink to the article at <http://bit.ly/cGTMI1>.

'Mortgage modification' scam alleged

Aurora Loan Services, Inc. of Littleton, Colo. faces claims in federal court by homeowners who say a mortgage modification scam wrecked their credit and disrupted their lives. Quality Loan Service Corp. of San Diego and CMG Mortgage, Inc. of San Ramon are named as co-defendants. Suit was filed May 19 in U.S. District Court in Sacramento by Mortgage Justice Law Group, a joint venture of Hassan Law Firm and Law Offices of Anthony P. X. Bothwell. Victims of possible mortgage scams may visit www.mortgagejusticelaw.com.

'Class action' proposed in Honolulu

Current and former civilian or military staff who experienced racial discrimination at Tripler Army Medical Center in Honolulu may be able to join a "class action" in U.S. District Court to seek monetary damages and other remedies. The Bothwell law firm represents African American and Asian Pacific personnel whose claims of race bias at Tripler are pending before the U.S. Equal Employment Opportunity Commission. Such cases may be consolidated in a new lawsuit in Honolulu's federal court, on behalf of all eligible persons who have worked at Tripler. Extensive testimony has been transcribed regarding allegations of a "Jim Crow" atmosphere that existed in the big Army hospital in 2006-2009. Potential "class action" claimants may contact Atty. Tony Bothwell at (415) 370-9571.

Feds don't dispute pilots' arguments

Chief Magistrate Judge Maria-Elena James heard arguments July 29 in U.S. District Court in San Francisco on age-discrimination claims by 51 airline pilots involuntarily retired under the Federal Aviation Administration's age 60 rule. Justice Dept. Atty. Conor Kells flew in from Washington to tell the Judge that her court lacks jurisdiction. Kells had filed a brief contending (1) that the pilots should have filed their claims in the Court of Appeals instead; (2) that the government is immune because FAA officials exercised "discretion" and "due care;" (3) that the U.S. may not be sued for "misrepresentation;" and (4) that 45 pilots residing outside Northern California should file claims in other federal districts.

Atty. Tony Bothwell told the crowded courtroom (1) that a Justice Dept. brief misrepresented the law, that the government failed to rebut case law affirming District Court jurisdiction in cases on the age 60 rule, and that 49 of the 51 pilots received letters from the FAA saying that they may file their suit in District Court; (2) that FAA officials' intentional misrepresentation of the age rule's purpose contradicted "due care" and exceeded the scope of their "discretionary" authority; (3) that misrepresentation (as in all discrimination cases) is part of the fact pattern but that the cause of action at issue is age discrimination, for which there is no government immunity under the Federal Tort Claims Act, and, further, that it is "undisputed" that the 51 pilots have alleged facts constituting the tort of age discrimination; and (4) that six of the pilots reside in Northern California, and that it is well-established that a District Court has discretion to join plaintiffs with related claims outside the district for "judicial economy and convenience," as was done in an accident case involving claims by many plaintiffs who resided in foreign jurisdictions.

Atty. Kells of the Justice Dept. made no counter-argument when the Judge turned to him.

FAA chief named to airline's board

The age 60 rule, now defunct, was created by the first FAA administrator, Elwood Quesada, as a favor for American Airlines, which had lost labor arbitrations over its age 60 retirement policy, Bothwell said. Quesada was soon appointed to the American Airlines board of directors. Internal FAA documents reveal that officials knew all along that the rule had no safety basis. Studies confirmed that the older and more experienced pilots have always had better safety performance records. "These pilots are in exceptional physical and mental shape," Bay City News Service quoted Bothwell as saying when the case was filed last April. "They all love to fly."

Civil rights, civil liberties, remedies

The Bothwell law firm has assisted whistleblowers in nuclear weapons labs and civilian nuclear and oil industries, and won monetary awards against defendants including the University of California, the U.S. Department of Energy, and a law firm that discriminated against its own Hispanic employees.

Tony Bothwell, a Fulbright lecturer and Kennedy Law professor, has taught law school courses ranging from Taxpayers' Rights to the Law of War. As legal counsel, he has fought for international human rights of clients from Guatemala, Austria, and Oglala Sioux Nation.

In addition to a core legal practice focused on civil rights and civil liberties, the Bothwell law firm has helped clients win monetary awards in injury-accident claims against Silverstein Properties and the City and County of San Francisco; won damages against a Midwest company liable for mold; helped clients in dealing with IRS examiners and collection officers, and in obtaining remedies of adverse credit reports.

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