

Docket Number: 3934

FERGUSON ELECTRIC CO., INC.

Roy S. Cohen, Esquire
Jamie L. Sandman, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

~~Michael Eickert, Chief Counsel~~
David L. Narkiewicz, Assistant Chief Counsel

CLOSED

March 12, 2008

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$1,607,415.90+.

March 13, 2008

Board issued Acknowledgment letter and forwarded a copy of the Claim to Attorney General.

March 24, 2008

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged March 19, 2008.

April 11, 2008

Defendant filed Preliminary Objections and Brief in Support. [04A051308D]

May 12, 2008

Plaintiff filed Response to Preliminary Objections, Memorandum of Law in Support and Proposed Order.

June 27, 2008

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 27th day of June, 2008, upon consideration of the preliminary objections of the Commonwealth of Pennsylvania, Department of General Services, and Ferguson Electric Co., Inc.'s response thereto, it is **ORDERED** and **DECREED** that the Department's demurrer and its preliminary objection to the sufficiency of Counts II and III are hereby **OVERRULED**. It is further **ORDERED** and **DECREED** that a decision on the objection to the Board's in personam jurisdiction over the Department and the objection of failure to exhaust a statutory remedy is hereby deferred to enable the parties to conduct such discovery as may be appropriate to prepare for an evidentiary hearing on said issues as discussed in the foregoing Opinion. To this latter end, the parties are directed to submit to the Board, within 20 days of the exit date of this Order, a proposed schedule for: the close of discovery on the pending preliminary objections; the filing of a pre-hearing memoranda (compliant with BOC R.P. 501(b)); and the dates (and time estimates) for the proposed hearing." Copy forwarded to Plaintiff

and Defendant.

July 1, 2008

Defendant filed Acceptance of Service of Opinion and Order dated June 27, 2008. Receipt of same acknowledged June 30, 2008.

July 17, 2008

Defendant filed Proposed Scheduling information.

July 18, 2008

Plaintiff transmitted via fax letter advising it is in agreement with Defendant's scheduling dates.

July 21, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated June 27, 2008. Receipt of same acknowledged June 30, 2008.

July 24, 2008

Plaintiff filed letter advising that they were in agreement with Defendant's proposed scheduling dates with the exception of October 29 and 30.

July 29, 2008

Board rendered an Order. Order as follows: "**AND NOW**, this 29th day of July, 2008, pursuant to the parties' representations regarding their readiness to proceed and availability to resolve the issues of the Board's in personam jurisdiction over the Pennsylvania Department of General Services and the objection of failure to exhaust a statutory remedy, it is hereby **ORDERED** and **DECREED** as follows: 1. The close of discovery on the pending issues is September 19, 2008; 2. The deadline for filing pre-hearing memoranda is October 10, 2008; and 3. An evidentiary hearing on these issues is scheduled beginning Wednesday, November 5, 2008, and continuing as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA, beginning at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

August 6, 2008

Plaintiff filed Acceptance of Service of Order dated July 29, 2008. Receipt of same acknowledged August 4, 2008.

September 8, 2008

Defendant a letter requesting the Board to revise the existing discovery deadlines by moving them back three weeks.

September 10, 2008

Board rendered an Order. Order as follows: "**AND NOW**, this 10th day of September, 2008, pursuant to a request from Defendant and Plaintiff, the deadlines for close of discovery and filing of pre-trial memoranda in this matter are extended to October 10, 2008 and October 31, 2008, respectively. The hearing shall remain as scheduled per this Board's Order of July 29, 2008." Copy forwarded to Plaintiff and Defendant.

September 15, 2008

Defendant filed Acceptance of Service of Order dated September 10, 2008. Receipt of same acknowledged September 11, 2008.

September 17, 2008

Plaintiff filed Acceptance of Service of Order dated September 10, 2008. Receipt of same acknowledged September 15, 2008.

October 31, 2008

Plaintiff filed pre-hearing memoranda in opposition to Defendant's preliminary objections.

October 31, 2008

Defendant filed pre-hearing statement for preliminary objections evidentiary hearing.

November 5, 2008

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:30 a.m. (continued).

November 14, 2008

Board forwarded letter to parties scheduling the continuation of the evidentiary hearing held November 5, 2008, for Wednesday, December 10, 2008, in Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:30 a.m.

November 20, 2008

Testimony of evidentiary hearing held November 5, 2008 filed.

November 21, 2008

Board forwarded copy of testimony of evidentiary hearing held November 5, 2008 to Defendant.

November 25, 2008

Defendant filed Acceptance of Service of Testimony of evidentiary hearing held November 5, 2008.

December 10, 2008

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:30 a.m. (completed).

January 7, 2009

Testimony of evidentiary hearing held December 10, 2008 filed.

January 8, 2009

Board forwarded copy of testimony of evidentiary hearing held December 10, 2008 to Defendant.

January 12, 2009

Defendant filed Acceptance of Service of testimony of evidentiary hearing held December 10, 2008.

February 9, 2009

Defendant filed Findings of Fact and Conclusions of Law in Support of Preliminary Objections to Plaintiff's Claim.

February 10, 2009

Defendant filed electronic version of Defendant's Findings of Fact and Conclusions of Law as well as a letter advising that DGS did not feel the need to file a separate memorandum of law since it cited legal authority in its Proposed Conclusions of Law.

February 11, 2009

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a brief in support of Defendant's Proposed Findings of Fact and Conclusions of Law.

March 3, 2009

Defendant filed Brief in Support of Proposed Findings of Fact and Conclusions of Law.

April 6, 2009

Plaintiff filed Proposed Finding of Fact, Proposed Conclusions of Law and Brief in Opposition to Defendant's Preliminary Objections.

April 6, 2009

Plaintiff filed copies of the Contract, General Conditions and the DGS Administrative Procedure as requested by the Board.

August 31, 2009

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 31st day of August, 2009, upon consideration of the preliminary objections of the Commonwealth of Pennsylvania, Department of General Services, and Ferguson Electric Co., Inc.'s response thereto, and upon consideration of the testimony and evidence presented at the hearing in this matter, it is **ORDERED** and **DECREED** that the Department's preliminary objection to the Board's in personam jurisdiction over the Department is hereby **SUSTAINED**. The claim is **DISMISSED**." Copies forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

September 3, 2009

Defendant filed Acceptance of Service of Opinion and Order dated August 31, 2009. Receipt of same acknowledged September 2, 2009.

September 10, 2009

Attorney General filed Acceptance of Service of Opinion and Order dated August 31, 2009. Receipt of same acknowledged August 9, 2009.

September 14, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated August 31, 2009. Receipt of same acknowledged September 8, 2009.

September 21, 2009

Plaintiff filed Motion for Reconsideration of Claimant, Memorandum of Law in Support and Proposed Order.

September 23, 2009

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 23rd day of September, 2009, the request for reconsideration filed with this Board by Claimant, Ferguson Electric Co., Inc., is hereby **GRANTED**. A Revised Opinion and Order in this case will be issued contemporaneously with this Order." Copy forwarded to Plaintiff, Defendant and Attorney General.

September 23, 2009

Board rendered a Revised Opinion and Order. Revised Order as follows: **"AND NOW**, this 23rd day of September, 2009, upon consideration of Ferguson Electric Co., Inc.'s request for reconsideration and reconsideration of the preliminary objections of the Commonwealth of Pennsylvania, Department of General Services; Ferguson Electric Co., Inc.'s response thereto; and the testimony and evidence presented at the hearing in this matter, it is **ORDERED** and **DECREED** that the Department's preliminary objection to the Board's in personam jurisdiction over the Department is hereby **SUSTAINED**. The claim is **DISMISSED**.

September 25, 2009

Defendant filed Acceptance of Service of Revised Opinion and Order dated September 23, 2009.

September 25, 2009

Defendant filed Acceptance of Service of Opinion and Order dated September 23, 2009.

October 2, 2009

Attorney General filed Acceptance of Service of Revised Opinion and Order dated September 28, 2009.

October 2, 2009

Attorney General filed Acceptance of Service of Opinion and Order dated September 28, 2009.

October 19, 2009

Plaintiff filed Petition for Review as filed in Commonwealth Court.

October 28, 2009

Commonwealth Court filed Notice of Filing of Petition for Review. 2041 CD 2009.

November 9, 2009

Board forwarded filed to Commonwealth Court.

July 2, 2010

Commonwealth Court Order received. Order as follows: "AND NOW, this 1st day of July, 2010, the September 23, 2009, order of the Board of Claims is hereby AFFIRMED."

September 1, 2010

Commonwealth Court Order received. Order as follows: "AND NOW, this 31st day of August, 2010, **IT IS HEREBY ORDERED** that the above-captioned opinion filed July 1, 2010 shall be designated OPINION rather than MEMORANDUM OPINION and it shall be reported."

May 23, 2011

Supreme Court Order received. Order as follows: "**AND NOW**, this 26th day of April, 2011, the Petition for Allowance of Appeal is hereby **DENIED**."

June 1, 2011

File returned from Commonwealth Court.
