

§ 1955.34

stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

§ 1955.34 Fees of witnesses.

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Subpart E—Hearing and Decision

§ 1955.40 Hearings.

(a)(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under § 1955.10(b)(1) but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b)(1) A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examina-

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tion or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the administrative law judge may be relied upon subsequently in the proceeding.

(4) Formal exception to an adverse ruling is not required.

(c) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Labor by reason of its functions is presumed to be expert: Provided, that the parties shall be given adequate notice, at the hearing or by reference in the administrative law judge's and the Secretary's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(d) When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of proof of what the party expects to prove by the answer of the witness orally or in writing. Written offers of proof, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(e) Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties and the public upon payment of the actual cost of duplication to the Department of Labor in accordance with 29 CFR 70.62(c).

(f) Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections may be ordered by the administrative law judge or agreed to in a written stipulation by all parties or their representatives. Where the parties are in disagreement, the administrative law judge shall determine the corrections to be made and so order. Corrections may be interlineated in the official transcript so as not to obliterate the original text.