U.S. Department of Labor

Office of Administrative Law Judges
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In the Order of:	)	DATE:	December 2, 1999
	)		
STEVE WELSH, LEE DANSON,	)	CASE NO.'s	1999-ERA-4
GERALD EVANS, MICHAEL YUSTEN,	)		1999-ERA-6
and MICHAEL JOHNSON,	)		1999-ERA-7
Complainants,	)		1999-ERA-8
	)		1999-ERA-9
vs.	)		
	)		
COMMONWEALTH EDISON CO.,	)		
Respondent.	)		
	)		

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINTS WITH PREJUDICE

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. 5851, and its implementing regulations found at 20 C.F.R. Part 24. The parties have submitted a Joint Motion to Approve Settlement, Protect Confidentiality and Dismiss Claim, signed by counsel for the parties of record as well as a an individual Confidential Settlement Agreement and Release for the state claim and one for the Section 211 claim for each complainant (a total of ten individual settlement agreements, each signed by the individual complainant to whom it pertains and by the attorneys of record on both sides); all such documents are attached hereto and incorporated herein by reference.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at part 24.

Section 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Section 18.9(a)-(c). Once agreement has been reached by the parties, the regulation permits the parties to "[n]otify the administrative law judge that the parties have reahed a full settlement and have agreed to dismissal of the action." 29 C.F.R. Section 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Section 18.9(d).

The judge must review the settlement agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. *Bonanno v. Stone & Webster Engineering Corp.*, 97 ERA 33 (ARB 6-27-97).

Upon careful review, this Judge has determined that the Settlement Agreements fully comport with precedent established by the Secretary and/or Administrative Review Board.

Each Settlement Agreement contains a paragraph which provides that the parties shall keep the terms of the settlement confidential, with some delineated exceptions. I note, however, that the parties have attempted to bring this confidentiality provision into compliance with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law.

I note that the parties have designated the Settlement Agreements as confidential commercial information, as defined at 29 C.F.R. Section 70.26, and thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

FOIA, however, requires agencies to disclose requested documents unless they are exempt from disclosure. See *Bonanno, supra*, at p.2; *Klock v. Tennessee Valley Auth.*, 95 ERA 20 (ARB 5-30-96), at p.2; *Darr v. Precise Hard Chrome*, 95 CAA 6 (Sec'y 5-9-95), at p.2; *Webb v. Consolidated Edison Co.*, 93 CAA 5 (Sec'y 11-3-93), at p.2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding." *Darr, supra*, at pp.2-3. See also, *Debose v. Carolina Power and Light Co.*, 92 ERA 14 (Sec'y 2-7-94), at p.3. Nevertheless, the Settlement Agreements shall be placed in a portion of the file clearly designated as confidential commercial information which must be handled in accordance with the appropriate procedure for a FOIA request, which procedure is found at 29 C.F.R. Section 70.26. See generally, *Bonanno, supra*, at n.1.

Accordingly, it is hereby RECOMMENDED that the Settlement Agreements between Complainants Steve Welsh, Lee Danson, Gerald Evans, Michael Yusten, Michael Johnson and Commonwealth Edison Company, be APPROVED and that the matters be DISMISSED WITH PREJUDICE. It is FURTHER RECOMMENDED that the Settlement Agreements be designated as confidential commercial information to be handled in accordance with 29 C.F.R. Section 70.26.

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ANNE BEYTIN TORKINGTON
Administrative Law Judge

Dated:
San Francisco, California

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. 24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of the Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. 24.8 and 24.9, as amended by 63 Fed.Reg. 6614 (1998).