

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 May 2005

CASE NO.: 2004-ERA-24

In the Matter of:

MARK G. WILLIAMS,
Complainant,

v.

INDIANA MICHIGAN POWER COMPANY,
Respondent.

**RECOMMENDED
(1) APPROVAL OF SETTLEMENT AGREEMENT, (2) ORDER OF DISMISSAL WITH
PREJUDICE, AND (3) CONFIDENTIAL TREATMENT OF SETTLEMENT
AGREEMENT**

The above-captioned case arises under Section 5851 of the Energy Reorganization Act of 1974 ("ERA" or "Act"), 42 U.S.C. § 5851, and the implementing regulations found at 29 C.F.R. Part 24. On July 13, 2004, Mark G. Williams ("Complainant") filed with the Office of Administrative Law Judges ("OALJ") a request for hearing in which he appealed the dismissal of his complaint against the Indiana Michigan Power Company ("Respondent") by the Occupational Safety and Health Administration ("OSHA"). On July 23, 2004, I issued the Notice of Hearing, scheduling the hearing for August 24, 2004, in Kalamazoo, MI.

On August 10, 2004, the parties submitted a Joint Motion For Continuance, requesting that the hearing be rescheduled for January 10, 2005. On August 14, 2004, I approved the parties' joint request and rescheduled the hearing to begin January 10, 2005.

By an October 29, 2004, Joint Motion for Continuance and Proposed Stipulated Scheduling Order, the parties requested the trial be rescheduled to begin June 6, 2005. By a November 3, 2004 Scheduling Order, I approved that schedule change.

On April 1, 2005, I received a Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement. On May 2, 2005, I received an addendum to the settlement agreement titled Settlement Proceeds Distribution and Cost, which I had requested on April 21, 2005. The parties have no objections to filing this as an addendum to the settlement agreement dated March 31, 2005.

In ERA cases, when parties file a request for dismissal, an ALJ must review the settlement and make a recommendation of whether the settlement is fair, adequate and reasonable. *Hoffman v. Fuel Economy Contracting*, 87-ERA-33 at 4 (Sec’y Aug 4, 1989) (citing *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9 and 10, (Sec’y Mar. 23, 1989)). Under 29 C.F.R. § 24.6 of the regulations implementing the ERA, an ALJ is authorized to issue only a recommended decision, which must be reviewed by the Secretary before it becomes final. See 42 U.S.C. § 5851(b)(2)(A). The Secretary has repeatedly held that an ERA case cannot be dismissed on the basis of a settlement “unless the Secretary finds that the settlement is fair, adequate and reasonable.” *Hoffman*, 87-ERA-33 at 3 (citing *Fuchko and Yunker*, 89-ERA-9 and 10, Secretary’s Order to Submit Settlement Agreement issued March 23, 1989, at 2.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

I note that the parties are represented by counsel. The parties agree to confidentiality of the agreed terms of the settlement and agree not to disclose information to third parties regarding the terms of the settlement, except as required by law.

After careful consideration of the settlement agreement, I find the terms of the agreement are fair, adequate, reasonable, and adequately protect Complainant. I further find that it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case.

By signing the Settlement Agreement and Release, the parties have demonstrated their intent to keep the settlement agreement confidential pursuant to 29 C.F.R. § 70.26. The settlement agreement will remain confidential insofar as provided by law. Pursuant to 29 C.F.R. § 18.56, the settlement agreement and exhibits will be maintained within a “restricted access” portion of the record.

RECOMMENDED ORDER

Upon consideration of the foregoing,

IT IS HEREBY ORDERED, the settlement agreement will remain confidential insofar as provided by law. Pursuant to 29 C.F.R. § 18.56, the settlement agreement and exhibits will be maintained within a “restricted access” portion of the record. The complaint filed by the Complainant in this matter shall be **DISMISSED WITH PREJUDICE**.

A

WILLIAM S. COLWELL
Administrative Law Judge

Washington, D.C.
WSC:dj

NOTICE OF REVIEW:

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, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.7(d) and 24.8.