



Issue Date: 11 July 2007

Case No. 2007-ERA-00006

In the Matter of

CLARK H. FUHLAGE,

Complainant,

v.

AmerenUE-Callaway Nuclear Power Plant,

Respondent.

**RECOMMENDED DECISION AND ORDER**  
**APPROVING SETTLEMENT AGREEMENT**  
**AND DISMISSING COMPLAINT**

This matter involves a complaint filed by Clark Fuhlage, ("Complainant"), against the AmerenUE-Callaway Nuclear Power Plant ("Respondent"), alleging violations of § 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851, ("ERA"). Complainant alleged violations of discrimination and wrongful termination of his employment. By letter, dated March 6, 2007, the Area Administrator for the Occupational Safety and Health Administration, Kansas City, Missouri, issued an investigative report in which he stated there was no reasonable cause to believe that Respondent violated the ERA. By letter, dated March 14, 2007, the Complainant filed a notice of appeal and requested a formal hearing.

On May 10, 2007, the parties, by counsel for the Respondent, filed a letter with this office stating that the parties had agreed to a settlement and advised the undersigned that settlement documents would be forthcoming. On June 14, 2007, the parties filed their Joint Motion for Approval of Settlement Agreement and Dismissal of Complaint. The Confidential Settlement Agreement and General Release ("Agreement") was signed on June 7, 2007, by Clark Fuhlage, Complainant, and Steven Sullivan, a representative of Respondent. I must determine whether the terms of the Agreement

are a fair, adequate, and reasonable settlement of the complaint. *Smyth v. Regents of the Univ. of Cal., LANL*, ARB No. 98-068, ALJ No. 1998-ERA-3 (ARB Mar. 13, 1998); see also 29 C.F.R. §§ 24.6(f)(1), 24.7(a), and 24.8(a).

Paragraph 14 of the Agreement provides that the terms of the Agreement shall be governed and construed under the laws of the State of Missouri. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. See *Phillips v. Citizens. Assoc. for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

The Agreement encompasses the settlement of matters arising under various laws, only one of which is the ERA. See e.g. para. 1. However, I have limited my review of the Agreement to determining whether its terms are a fair, adequate, and reasonable settlement of the Complainant's allegations that Respondent violated the ERA. See *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, (Sec'y Order, Nov. 2, 1987) (holding that "[the Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute").

The parties request that the Agreement remain confidential with certain specified exceptions. See e.g. paras. 9-10. This confidentiality provision does not violate the requirement of the law. See generally *Conn. Light and Power Co. v. Sec'y of Labor*, 85 F.3d 89 (2nd Cir. 1996); *Bragg v. Houston Lighting and Power Co.*, 1994-ERA-38 (Sec'y Order, June 19, 1995). However, the parties are advised that their submissions, including the Agreement, become part of the record of the case, and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The FOIA requires Federal agencies, including the Department of Labor, to disclose requested records unless they are exempt from disclosure under the Act. Therefore, the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co., 1995-ERA-13 (ARB March 27, 1997).*  
The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

After a review of the Agreement, I have determined that the terms of the Agreement are fair, adequate, and reasonable. Therefore, it is recommended that the following Order be entered by the Secretary of Labor:

IT IS HEREBY ORDERED that the Agreement between the Complainant and Respondent is approved and the complaint is DISMISSED WITH PREJUDICE.



LARRY S. MERCK  
Administrative Law Judge

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.