

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 July 2008

CASE NO.: 2008-ERA-00007

In the Matter Of:

JOSEPH JONES
Complainant

v.

ARIZONA PUBLIC SERVICE
Respondent

**ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed by Joseph Jones against Arizona Public Service Company under the Energy Reorganization Act (ERA) of 1974 as amended, 42 U.S.C. §5851, and the regulations promulgated thereunder 29 C.F.R. Part 24. On July 2, 2008 the parties filed a Joint Motion for Approval of Settlement Agreement, Dismissal With Prejudice and Confidential Treatment of Settlement Agreement in accordance with 29 C.F.R. § 24.6 and attached a Settlement Agreement and General Release resolving all issues in the complaint for review and approval.

The administrative law judge's role in reviewing the parties' settlement agreement is limited to ascertaining whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the Act. 42 U.S.C. §5851(b)(2)(A); 29 C.F.R. §§ 24.6(f)(1), 24.7(a), 24.8(a); *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989); *see also Thompson v. U.S. Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989). 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 Settlement Agreement provides that the terms of the Agreement shall be governed and construed under the laws of the State of Arizona. 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).

Paragraph 7 of the Settlement Agreement titled “Confidentiality” restricts disclosure of information relating to this case, and this settlement, with some delineated exceptions. I note, however, that the parties have attempted to bring this provision into compliance with applicable case law by specifically providing in paragraph 8 that the provision does not restrict disclosure where required by law and does not preclude Complainant from communicating with appropriate regulatory agencies on any subject including nuclear safety, workplace safety or public safety. Thus, the confidentiality provision does not violate the requirements 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); *Brown v. Holmes & Narver, Inc.*, 90-ERA-26 (Sec’y May 11, 1994).

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.

Pursuant to the requirements of the Act and the implementing regulations, I have carefully reviewed the terms of the parties’ Settlement Agreement, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint.

ACCORDINGLY, it is hereby ORDERED that:

1. The parties’ Settlement Agreement is APPROVED and
2. The complaint of Joseph Jones is DISMISSED with prejudice.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review

must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).