U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

JAMES B. DEBOSE,

COMPLAINANT,

v.

NORTH CAROLINA POWER AND LIGHT CO.,

RESPONDENT.

ARB CASE NO. 97-062

ALJ CASE NO. 92-ERA-14

DATE: March 12, 1997

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties have submitted a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Decision and Order on February 12, 1997 approving the settlement.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 29 C.F.R. § 24.6. *Macktal v. Secretary of Labor,* 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor,* 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.,* Case Nos. 89-ERA-9, 89ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

Sections 4, 7, 8, 9, 11, and 12 of the agreement provide that the Complainant shall keep the terms of the settlement confidential, with certain specified exceptions. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the

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[1] On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

Freedom of Information Act, 5 U.S.C. § 552 (1988)(FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure . . . ." C*offinan v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services,* ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996, slip op. at 2-3. *See also Plumlee v. Alyeska Pipeline Services Co.,* Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; *Davis v. Valley View Ferry Authority,* Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n. l (parties' submissions become part of record and are subject to the FOIA); *Ratliff v. Airco Gases,* Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. 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 were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the 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.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (1995).[2]

The Board requires that all parties requesting settlement approval of cases arising under the ERA provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Company,* ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to the complainant's claims.

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[2] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor shall notify the submitter promptly, 29 C.F.R. § 70.26(e); and the submitter will be given a reasonable period of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and suit is filed by the requester to compel disclosure, the submitter will be notified. 29 C.F.R. § 70.26(h).

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. See Settlement Agreement § 2.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member