U.S. Department of Labor

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

In the Matter Of:

CALVIN J. CREEKMORE,

COMPLAINANT,

v.

ABB POWER SYSTEMS ENERGY SERVICES, INC.,

RESPONDENT.

ARB CASE NO. 98-038

ALJ CASE NO. 93-ERA-24

DATE: April 27, 1998

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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 Deputy Secretary remanded this case to the ALJ and issued two supplemental orders concerning the issues on remand. After the ALJ issued a Supplemental Recommended Decision and Order on Remand, the parties submitted to this Board a Joint Motion for Dismissal and Approval of Confidential Settlement Agreement and the accompanying Settlement Agreement and Release (Agreement).

The request for approval is based on an agreement entered into by the parties. We 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. United States Dept. of Labor*, 885 F.2d 551, 556 (9th Cir. 1989).

Review of the Agreement reveals that it may encompass the settlement of matters under laws other than the ERA. *See* Agreement at 1. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.,* Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2: "[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." (Citations omitted). We have therefore limited our review of the Agreement to determining whether its terms are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

Paragraph 9 provides that the Agreement will be governed by the laws of Connecticut. We construe this to except the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens' Assn for Sound Energy*, Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

Paragraph 4 provides that the Complainant shall keep the terms of the settlement confidential, with certain exceptions. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988) (FOIA), "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." *Jones v. Pacific Gas & Elec. Co.,* Case No. 97-ERA-3, Final Ord. App. Settlement and Dismissing Complaint, Nov. 4, 1997, slip op. at 2 and cases there cited. 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 concerning the Agreement. We note that, under the applicable regulation, 29 C.F.R. §70.26(b), the parties "request that the Department of Labor treat the Agreement as confidential and make no public disclosure of it except as may be compelled after the parties have had the opportunity to exhaust all legal avenues to maintain its confidentiality." Joint Motion at 1. Accordingly, should a FOIA request encompass the Agreement, the Department of Labor shall follow the provisions of 29 C.F.R. §70.26(e) - (h).

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 certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Co.,* Case No. 95-TSC-7, 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. Joint Motion at 2.

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* Agreement ¶5.

SO ORDERED.

KARL J. SANDSTROM
Member

PAUL GREENBERG
Member