U.S. Department of Labor

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

IN THE MATTER OF

WILLIAM DAVID SIMMONS **CASE NOS. 93-ERA-5**

COMPLAINANT, **95-ERA-41**

v. **DATE: May 30, 1996**

ARIZONA PUBLIC SERVICE CO./
ARIZONA NUCLEAR POWER PROJECT

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINTS

This case arises under the employee protection provision the Energy Reorganization Act, 42 U.S.C. § 5851, and the regulations at 29 C.F.R. Part 24 (1993). The Administrative Law Judge (ALJ) issued a Recommended Order of Dismissal on April 3, 1996 in Case No. 93-ERA-5, recommending approval of a Settlement Agreement reached by the parties and dismissal of the complaint with prejudice. The Settlement Agreement also concerns Case No. 95-ERA-41 which is presently pending the Board's review of a Recommended Decision and Order issued January 18, 1996, recommending dismissal of that case.

The parties submitted a joint motion before the Board, requesting review of the Settlement Agreement as it pertains to both cases. In the interest of judicial economy and in order to effectuate the intent of the parties, we agree to do so.

Because the request for approval is based on an agreement entered into by the parties, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of

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[1] April 17, 1996, the Secretary of Labor redelegated authority to issue final agency decisions under, inter alia, the Energy Reorganization Act and its implementing regulations to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978, May 3, 1996 (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under with the Administrative Review Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

the complaints. 29 C.F.R. § 24.6(b); *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, 89-ERA-10, Sec. Ord., Mar. 23, 1989, slip op. at 2.

The Settlement Agreement appears to encompass the settlement of matters arising under various laws, beyond those encompassed by the above referenced statutes. *See* Settlement Agreement, Preamble; ¶ 3.4. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, we have limited our review of the Settlement Agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

The Settlement Agreement requires the Complainant and Respondent to keep the terms of the Settlement Agreement confidential. *See* ¶¶ 3.1 to 3.6. The Secretary has previously held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act (FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Ord. Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6.

The records in these cases are agency records which must be made available to the public under the FOIA. Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (1994).[2]

We find that the Settlement Agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the settlement and DISMISS the complaints in Case Nos. 93-ERA-5 and 95-ERA-41 with prejudice. Settlement Agreement at ¶¶ 1.1, 1.2.

SO ORDERED.

KARL J. SANDSTROM
Presiding Member

JOYCE D. MILLER
Alternate Member

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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 will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount 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 a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).