U.S. Department of Labor

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

IN THE MATTER OF

B. SCOTT DAVIDSON, CASE NO. 94-ERA-25

COMPLAINANT, DATE: June 24, 1996

v.

TEMPLE UNIVERSITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Stipulation of Settlement and an Addendum A thereto, seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a decision on June 6, 1996, recommending that the settlement be approved.

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. 42 U.S.C. § 5851(b)(2)(A) (1988). *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.

[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)(copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the 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.

1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶¶ 4 and 9. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations that Respondents violated the ERA.

Paragraph 6 of the Stipulation and paragraphs 2 and 3 of the Addendum pertain to the confidentiality provisions of the agreement, and do not prohibit Complainant from reporting any suspected nuclear safety concern to the proper governmental authority, from participating in any proceeding or investigation pertaining thereto, or in restricting any disclosure by him where required by law. Complainant and his counsel are required to timely notify the Respondents' legal counsel in the event they receive legal process or an order purporting to require disclosure of the agreement. We do not find this notification requirement violative of public policy, since it does not restrict or impinge upon the Complainant or his counsel from such disclosure after appropriate legal process. *McGlynn v. Pulsair Inc.*, Case No. 93-CAA-2, Sec. Final Order Approving Settlement, June 28, 1993, slip op. at 3.

The parties' 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 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[2/] *See Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

We construe ¶ 8 of the Stipulation providing that the agreement will be governed by the laws of Pennsylvania as excepting the authority of the Board and any Federal court, which shall in all respects be governed by the laws and regulations of the United States. *See Carter v. Electrical Dist. No. 2 of Pinal County,* 92-TSC-11, ARB Order (May 30, 1996).

[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).

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. *See* ¶¶ 4 and 9.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member