U.S. Department of Labor

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

In the Matter of:

WILLIAM CIANFRANI,

COMPLAINANT,

v.

PUBLIC SERVICE ELECTRIC AND GAS CO.,

RESPONDENT.

ARB CASE NO. 96-053

(ALJ CASE NO. 95-ERA-33)

DATE: September 19, 1996

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 Joint Motion to Dismiss Complaint and a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a decision on August 23, 1996, recommending that the settlement be approved and the complaint dismissed with prejudice.

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. 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.

[1/] On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and these regulations 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.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* Sections 1 and 20, and Exhibit A. 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 Complainant's allegations that Respondent (or, PSE&G) violated the ERA.

Section 18 provides that "PSE&G agrees to make *reasonable efforts* to assure that employees do not disparage Mr. Cianfrani's past employment with PSE&G by reminding its agents and employees of Company policy on the disclosure of employment-related information and legal responsibilities under Section 211." (Emphasis supplied). We construe this to mean that Respondent's managers, administrators and employees will be made aware that any such conduct is likewise violative of Section 21 of the Settlement Agreement and the occurrence of such would be the basis for a separate legal action and monetary claim by Complainant.

Section 14 provides that the Complainant agrees not to disclose the terms of the agreement except to his attorney, accountant and members of his immediate family, or as required by law. Section 16 provides that the Complainant is free to report or otherwise communicate any suspected nuclear safety concern to the proper Federal or state governmental authority.

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 and 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.[3/]

[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).

[3/] The parties requested in their Joint Motion to Dismiss before the ALJ that certain information in the settlement agreement be designated as confidential commercial information exempt from disclosure under the FOIA. The ALJ's R. D. & O. compromised that request by its incorporation of the terms of the settlement. The Chief Administrative Law Judge correctly opined in his Memorandum issued September 4, 1996, that he lacked the authority to intervene in a matter before or disposed of by another ALJ. However, the Chief Administrative Law Judge as the designated Disclosure Officer pursuant to 29 C.F.R. § 70.2(c) and Appendix A to Part 70(b)(1), is to determine whether such information under his custody is exempt from disclosure under the provisions of FOIA, pursuant to § 552(b). Therefore, the Chief Administrative Law Judge should make such provisions as he deems appropriate to protect the confidentiality of the materials so requested, until a request is made pursuant to the pertinent regulations. The Federal recipients indicated on the ALJ's Recommended Decision Service Sheet are likewise requested

(continued...)

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* Section 2.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member

(...continued)
to observe restricted handling in compliance with FOIA.