U.S. Department of Labor

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

In the Matter Of:

ANTHONY J. ROSS,	ARB CASE NOS.	95-036; 95-161; 96-147
COMPLAINANT,	ALJ CASE NOS.	94-ERA-39; 95-ERA-17; 96-ERA-1
	DATE:	July 8, 1996

v.

NORTHEAST NUCLEAR ENERGY COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

These cases arise 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 Settlement Agreement and an Addendum General Release, seeking approval of the settlement and dismissal of the complaints in all three cases. The Administrative Law Judge (ALJ) issued a decision on June 18, 1996, recommending that the settlement with regard to Case No. 96-ERA-1 be approved. The two other captioned cases were pending before the Board prior to the issuance of the June 18, 1996 ALJ decision.

[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.

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 complaints. 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.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* Settlement ¶¶ 1.1, 2.3 and Release ¶¶ 6, 7, 8 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 Respondent violated the ERA.

Settlement sections III and V 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. Each party is required to timely notify the other in the event of receiving 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 the parties from making 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.

Section IX provides that the agreement will be governed by the laws of Connecticut except as to the extent that Federal law is preemptive. We construe this to mean that the authority of the Board and any Federal court, 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* ¶ 1.2.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member