U.S. Department of Labor

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

In the Matter of:

RICHARDO ACCORD,

COMPLAINANT,

v.

ARCO ALASKA, INC.

and

VECO CONSTRUCTION,

RESPONDENTS.

CASE NOS. 95-TSC-3
95-TSC-14

DATE: June 19, 1996

[Editor's Note: The ARB's caption on the decision is in error. This decision relates to 95-TSC-5 and 6.]

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Toxic Substances Control Act, 15 U.S.C. § 2622 (1988), the Water Pollution Control Act, 33 U.S.C. § 1367 (1988) and the Clean Air Act, 42 U.S.C. § 7622 (1988). The parties submitted a Joint Motion to Approve Settlement Agreement and Order of Dismissal and a Settlement Agreement, Release and Covenant Not to Sue, seeking approval of the settlement and dismissal of the complaints of the above cited cases with prejudice. The Administrative Law Judge (ALJ) issued a decision on April 8, 1996, recommending that the settlement be approved.

[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 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. 24 C.F.R. § 24.6. *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, beyond those enumerated above. *See* ¶ 8. 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 agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations the Respondents violated the above enumerated Acts.

Paragraph 5 contains language which provides that the Complainant shall keep the terms of the Settlement Agreement confidential. We interpret this language as not preventing Complainant, either voluntarily or pursuant to an order or subpoena, from communicating with, or providing information to, State and Federal government agencies about suspected violations of law involving the Respondent. *See Corder v. Bechtel Energy Corp.,* Sec. Order, Feb. 9, 1994, slip op. at 6-8 (finding void as contrary to public policy a settlement agreement provision prohibiting the complainant from communicating with federal or state agencies concerning possible violations of law).

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, Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

[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 complaints. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINTS WITH PREJUDICE. Paragraph 2.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member