U.S. Department of Labor

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

IN THE MATTER OF

GEORGE M. GILLILAN,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

CASE NOS. 89-ERA-40; 91-ERA-31; 94-ERA-5; 95-ERA-9; 95-ERA-26; 95-ERA-32

DATE: May 30, 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 Memorandum of Understanding and Settlement Agreement seeking approval of the settlement and dismissal of the captioned complaints. The Administrative Law Judge (ALJ) issued a decision on April 18, 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 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.

[1/] This matter was filed before the Secretary of Labor pursuant to the Energy Reorganization Act of 1974 and 29 C.F.R. Part 24. The Secretary issued an interim decision in this case on April 12, 1994. 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 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 agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶¶ 1 and 4. 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.

Paragraph 7 provides that the Complainant is not prohibited from reporting any suspected nuclear safety concern to the proper governmental authority, or from participating in any proceeding or investigation pertaining thereto, or in restricting any disclosure by him where required by law. Paragraph 8 provides that the Complainant and his attorney shall keep the terms of the Agreement confidential for a period of up to one year after the effective date of the agreement, and further provides that Complainant and his counsel agree to timely notify the Respondent's 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 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* ¶ 6.

SO ORDERED.

KARL J. SANDSTROM
Presiding Member

JOYCE D. MILLER
Alternate Member

[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).