DATE: May 11, 1994
CASE NO. 90-ERA-11

IN THE MATTER OF

PAUL M. BLANCH,

COMPLAINANT,

v.

NORTHEAST NUCLEAR ENERGY CO.,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER

Administrative Law Judge (ALJ) George A. Fath submitted a Decision Recommending Acceptance of Settlement in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988) on February 28, 1990. The ALJ recommended that the Secretary incorporate the settlement agreement and a joint stipulation between the parties, signed Jan. 31, 1990 and Feb. 20, 1990, respectively, in an order approving their terms and dismissing this case with prejudice.

The terms of the settlement agreement and stipulation have been reviewed. The provisions of ¶ 5 of the settlement appear to encompass the settlement of matters arising under various laws, only one of which is the ERA. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Secretary's Order Nov. 2, 1987, slip op. at 2:

> The Secretary's] authority over settlement agreements is limited to such statutes as are within the [Secretary's] jurisdiction and is

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> defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County. N.C.*, Case No. 85-SWD-4, Secretary's Decision and Order on Remand, issued November 3,

1986.

I have, therefore, limited my review of the agreement and stipulation to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

In addition, ¶ 2 of the agreement provides that Complainant will request the ALJ to put the agreement under seal or take other steps to ensure that the agreement and its terms will not be disclosed to the public. Complainant made that request in a letter to the ALJ on February 1, 1990. The ALJ, however, did not make a specific recommendation on that request.

Disclosure of agency records pursuant to a request from the public is governed by the Freedom of Information Act (FOIA). 5 U.S.C. § 552 (1988). As the Secretary has held numerous times, the settlement agreement and stipulation here are part of the record in this case and as such are "agency records" and must be made available for public inspection and copying as provided in the Freedom of Information Act unless they are exempt from disclosure. *Debose v. Carolina Power and Light Co.*, Case No. 92-ERA-14, Sec'y. Order Feb. 7, 1994, slip op. at 2-4; *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec'y. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip. op at 6. *See also Mitchell v. Arizona Public Service Co.*, Case Nos. 92-ERA-28, 29, 35, 55, Sec'y. Final Order Approving Settlement Agreement and Dismissing Cases, Jun. 28, 1993, slip op. at 2 (request to place settlement agreement under seal denied); *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec'y. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-00005, Sec'y. Final Order Approving Settlement Agreement Jun. 25, 1993, slip op. at 2 (same); *Daily v. Portland General Elec. Co.*, Case No. 88-ERA-40, Sec'y. Order Approving Settlement and Dismissing Case Mar. 1, 1990, slip op. at 1. n.1; 29 C.F.R. Part 70 (1992). Complainant's request that the agreement be placed under seal is denied.

On March 1, 1991, over a year after entering into the settlement, counsel for Complainant wrote to the Secretary requesting that she reject the settlement because Complainant believed Respondent had violated "the spirit and the intent" of the agreement." [1] Respondent's counsel answered that letter on

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April 18, 1991, denying that Respondent had violated the spirit, intent or letter of the agreement. On April 29, 1991, Complainant's counsel replied to Respondent's counsel's letter, providing some detail of the alleged violation of the settlement.

The Fifth Circuit has held that when the parties in an ERA case reach a settlement, the Secretary may either approve it or disapprove it as written. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1156 (5th Cir. 1991). Violation of a settlement may constitute a separate, independent violation of the ERA, [2]

but the Secretary must address a settlement recommended for approval by the ALJ on the record presented to the ALJ. In accordance with the discussion above, therefore, I find the agreement fair, adequate and reasonable and I approve it and this case is dismissed with prejudice.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1]
Complainant's counsel also asserted that Complainant was forced to withdraw his complaint and enter into the settlement "as a result of the extreme financial burden imposed upon him by Northeast Utilities contract lawyers . . . ." It does not appear, however, that Complainant urges the Secretary to reject the settlement for that reason. *Cf. Macktal v. Brown & Root, Inc.*, Case No. 86-ERA-23, Sec. Order Nov. 14, 1989, slip op. at 8-10, *aff'd in part and rev'd in part and remanded Macktal v. Secretary of Labor*, 923 F.2d 1150 (5th Cir. 1992).

[2]
I will refer the relevant documents to the Wage Hour Division for investigation of whether the settlement in this case has been violated. Complainant's attorney's letter of March 1, 1991 shall be considered a complaint for purposes of the time limits in the ERA.