DATE: June 20, 1995
CASE NOS. 94-ERA-33
94-ERA-45

IN THE MATTER OF

JAMES E. RHYNE,

COMPLAINANT,

v.

BRAND UTILITIES SERVICES, INC.,
VECTRA SERVICES, INC., and
ENTERGY OPERATIONS, INC.,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT

Before me for review is the Recommended Decision and Order issued May 15, 1995, by the Administrative Law Judge (ALJ) in this case, under the employee protection provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851 (1988) and the implementing regulations at 29 C.F.R Part 24 (1994). The ALJ recommended approval of the settlement agreement and dismissal of the complaint with prejudice, having found the agreement fair, adequate and reasonable. *See 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 ALJ has recommended that I not "endorse" certain language in the agreement that pertains to the Respondents' positive employment references for the Complainant. I decline to follow this recommendation given the restraints inherent to my

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authority. *Macktal v. Secretary of Labor,* 923 F.2d at 1155.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the ERA.

See Settlement Agreement, Paragraph 2. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. 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 defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Sec. Ord. Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Sec. Ord. on Remand, issued November 3, 1986.

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

I note that pursuant to the Settlement Agreement, Paragraph 6, the Complainant agrees to keep the terms of the agreement confidential. I have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act (FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure . . . ." *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Ord. Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6. *See also Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec. Final Ord. 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-5, Sec. Final Ord. Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same); *Reid v. Tennessee Valley Auth.*, Case No. 91-ERA-17, Sec. Ord. Approving Settlement and Dismissing Complaint with Prejudice, Aug. 31, 1992, slip op. at 3 n.1 (same); *Daily v. Portland Gen'l Elec. Co.*, Case No. 88-ERA-40, Sec. Ord. Approving Settlement and Dismissing Case, Mar. 1, 1990, slip op. at 1 n.1 (same).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection or copying of the record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the

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document would have to be disclosed.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (1994).[1]

As so construed, I find the terms of the agreement to be fair, adequate and reasonable, and therefore approve the settlement agreement. Accordingly, the complaint is DISMISSED

WITH PREJUDICE. *See* Settlement Agreement, Paragraph 3.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] 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).