



In the Matter of:

WIEB VAN DER MEER,

ARB CASE NO. 97-078

COMPLAINANT,

(ALJ CASE NO. 95-ERA-38)

v.

DATE: April 8, 1997

WESTERN KENTUCKY UNIVERSITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**NOTICE OF REVIEW
AND
ORDER ESTABLISHING BRIEFING SCHEDULE
AND
PRELIMINARY ORDER**

The Recommended Decision and Order (R. D. and O.) issued on March 14, 1997 by the Administrative Law Judge (ALJ) has been transmitted to the Board for review. The following briefing schedule is established in this case. Respondent may file an initial brief, not to exceed 30 double spaced typed pages, on or before **May 5, 1997**. Complainant may file a reply brief, not to exceed 30 double spaced typed pages, on or before **June 4, 1997**. Respondent may file a rebuttal brief, exclusively responsive to the reply brief and not to exceed 10 double spaced typed pages, on or before **June 19, 1997**.

All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper.

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and the implementing regulations (29 C.F.R. Part 24) to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996). 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. Final revisions to the procedural regulations (61 Fed. Reg. 19982) implementing this reorganization were also published on May 3, 1996.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210 (Telephone Number, 202-219-4728; Facsimile Number, 202-219-9315).

PRELIMINARY ORDER

As noted, on March 14, 1997, the ALJ issued the R. D. and O. in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found in favor of the Complainant and recommended expungement of any reference to the adverse action against the Complainant from all University files; posting of the ALJ's R. D. and O. in this case on appropriate bulletin boards for a period of not less than sixty (60) days; release -- without comment -- of the R. D. and O. in this case to the press; and payment to Complainant of compensatory damages.

The ALJ further allowed thirty (30) days from the date of the R. D. and O. for Complainant's counsel to submit a fees and costs petition and an additional fifteen days from Respondent's receipt of the fees and costs petition for Respondent to reply to the petition for fees and costs. Since the amended ERA requires that a preliminary order awarding damages, except compensatory damages, be issued when a complainant prevails before an ALJ, the following preliminary order is hereby entered:

(1) Respondent shall expunge any reference to the adverse action against the Complainant from all University files; and

(2) Respondent shall post the ALJ's R. D. and O. in this case on appropriate bulletin boards for a period of not less than sixty (60) days.

The ALJ ordered Respondent to release -- without comment -- the R. D. and O. to the press. We are not going to preliminarily order this recommended relief because we question our authority to order such relief in a final order. The parties, if they so choose, may address this issue in their

briefs. The parties and interested persons are hereby further directed to note that when the ALJ issues a supplemental recommended order on attorney's fees and costs, a supplemental preliminary order and briefing schedule will be issued.

SO ORDERED.

DAVID A O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member