



In the Matter of:

KEVIN JAMES,

ARB CASE NO. 97-034

COMPLAINANT,

ALJ CASE NO. 94-WPC-4

v.

DATED: March 11, 1997

KETCHIKAN PULP COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD¹

ORDER

This case arises under the Water Pollution Control Act (WPCA), 33 U.S.C. § 1367 (1988). The parties submitted a Joint Notice of Settlement to the Administrative Law Judge seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Decision and Order on December 13, 1996 approving the settlement.

The record in this case as received by the Board does not contain a copy of the settlement agreement. Therefore, the parties are ordered to submit a copy of the agreement for review to the Board, as it would be error to approve the settlement and dismiss the case without reviewing the agreement to determine whether it is fair, adequate and reasonable. *See* 29 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, 89ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The Board also requires that all parties requesting settlement approval of cases arising under the employee protection provisions of the WPCA provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between

¹On 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). 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 procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

the parties. *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3.

Complainant recently notified the Board of concerns regarding the confidentiality of the settlement agreement entered by the parties. The records in this case are agency records which must be made available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. In the event a request for inspection and 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.

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 (1995).²

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (10) days from the issuance of this Order. Respondent may submit a response within fifteen (15) days of the issuance of this Order.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member

²Pursuant 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 shall notify the submitter promptly, 29 C.F.R. § 70.26(e); and the submitter will be given a reasonable period 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 suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).