

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 04 November 2016

CASE NO.: 2016-CAA-00001

In the Matter of:

BERNARD E. BEAUDIN, JR.
Complainant,

v.

POWER PLANT MANAGEMENT SERVICES, LLC.,
Respondent.

**ORDER GRANTING PARTIES' JOINT MOTION TO APPROVE
SETTLEMENT AND DISMISS PROCEEDING**

This proceeding arises from a complaint of discrimination filed by Bernard Beaudin, Jr. under the whistleblower provisions of Section 322 of the Clean Air Act ("CAA"), 42 U.S.C. § 7622 and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of The Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A. The procedural regulations governing these statutes are found at 29 C.F.R. Part 24 (2008) and 29 C.F.R. Part 1980 (2011).

On November 2, 2016, the parties filed a Joint Motion to Approve Settlement, along with a copy of the Settlement Agreement.

Based on the record as a whole and upon review of the Settlement Agreement, I find that the terms of the Settlement Agreement are fair, adequate, and reasonable, and it is hereby APPROVED pursuant to 29 C.F.R. §§ 24.111(d)(2) & 1980.111(d)(2), subject to the below comments.

The Respondent has asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Settlement Agreement therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the

parties' request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. § 70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

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 is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Settlement Agreement be restricted by the undersigned under 29 C.F.R. § 18.85 (Restricted Access). I find good cause for such restricted access and the Settlement Agreement will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.85, 70.26; *Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3 (ALJ Jan. 16, 2008).

I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant's CAA and SOX claims, Case No. 2016-CAA-00001. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The parties' Joint Motion is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA;

- (4) The hearing scheduled for December 12, 2016 in Boston, Massachusetts is **CANCELED**; and
- (5) The Complaint of Bernard Beaudin, Jr. is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts