

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 January 2020

Case No.: 2020-CER-00001

In the Matter of:

MIKE GANTS,
Complainant,

v.

PROBST ELECTRIC,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIM**

This claim arises under the employee-protection provision of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9610 (CERCLA), and its implementing regulations found at 29 C.F.R. Part 24. The court's Prehearing Order of January 9, 2020, requires that "[a]ny settlement agreement must be filed with the court for review and approval." On January 27, 2020, Complainant Mike Gants filed a Motion to Dismiss and a Confidential Settlement Agreement and General Release (Settlement Agreement) signed by Complainant, Amy Gants, Respondent Probst Electric, Inc., and Quanta Services, Inc. for the court's review and approval.

Pursuant to 29 C.F.R. § 24.111(c), Complainant may not withdraw his claim without the approval of the administrative law judge (ALJ). Section 24.111(c) provides:

At any time before the Assistant Secretary's findings or order become final, a party may withdraw its objections to the Assistant Secretary's findings or order by filing a written withdrawal with the ALJ. . . . The ALJ . . . will determine whether to approve the withdrawal of the objections If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings or order, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary. . . . If the objections are withdrawn because of settlement under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, or the Toxic Substances Control Act, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

The parties have complied with this section and the court's Prehearing Order by filing the Settlement Agreement for the court's approval. Any settlement approved by the ALJ becomes the final order of the Secretary.¹

This Order is limited to whether the terms of the Settlement Agreement are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondent violated the CERCLA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*,²

The Secretary's authority over the settlement agreement 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, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

The Settlement Agreement resolves the controversy arising from Complainant's claim against the Respondent. The Settlement Agreement provides that the Complainant will release the Respondent from his claim in this proceeding. The Settlement Agreement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon, among other consideration. And, it provides that the Complainant shall withdraw his claim.

Complainant has agreed that he will not disclose the terms or existence of the settlement, with some exceptions. However, the parties' submissions, including the Settlement Agreement, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act (FOIA).³ FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure.⁴ The records in this case are agency records, which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Settlement Agreement, the United States Department of Labor (DOL) will have to respond and decide whether to exercise its discretion to claim any applicable exemption.

The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily.⁵ The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with pre-disclosure notification if a FOIA request is received seeking release of that information. Accordingly, **the Settlement Agreement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS."** Before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure.⁶

¹ 29 C.F.R. § 24.111(c).

² Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987).

³ 5 U.S.C. § 552, *et seq.*

⁴ *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998.

⁵ 29 C.F.R. § 70.26(b).

⁶ See 29 C.F.R. § 70.26.

Having been advised of the settlement terms by reviewing the Settlement Agreement, the court finds the terms of the Settlement Agreement to be fair, adequate, reasonable, and not contrary to public policy, and are therefore approved. The parties shall implement the terms of the Settlement Agreement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that the court's authority only extends to approving settlement of Complainant's claim against the Respondent under the CERCLA.

Accordingly, it is ORDERED that the Settlement Agreement filed on January 27, 2020, is APPROVED, and thereby becomes the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 24.113; Complainant's Motion to Dismiss is GRANTED; the prehearing telephone conference scheduled for February 5, 2020, is CANCELED; and, this claim is DISMISSED WITH PREJUDICE.

SO ORDERED.

Jason A. Golden
Administrative Law Judge