



Issue Date: 24 March 2006

CASE NO.: **2006-ERA-00008**

In the Matter of

THOMAS SAPORITO,
Complainant,

v.

FLORIDA POWER & LIGHT COMPANY, ET. AL.,
Respondent.

ORDER RECOMMENDING APPROVAL OF
VOLUNTARY DISMISSAL

This proceeding arises under the provisions of the Energy Reorganization Act of 1974 (ERA), as amended by 42 U.S.C. §5851. The rules set forth in 29 C.F.R. Part 18 apply to this proceeding except as modified by 29 C.F.R. Part 24.

The Complainant filed a discrimination Complaint on December 14, 2005. A February 6, 2006 letter from the Regional Administrator of OSHA stated in part

Prior to the Occupational Safety and Health Administration's completion of a full investigation, Complainant requested a determination be issued without further action and he be provided his right to appeal. Without conducting a full investigation, it is impossible to determine if a violation exists. Therefore, the case is dismissed.

Respondent and Complainant have 5 days from the receipt of these findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will be come final and not subject to court review.

The Complainant filed an appeal with the Office of Administrative Law Judges and the case was assigned to the undersigned Administrative Law Judge. A conference call was held on February 28, 2006. Thereafter, the parties were to file motions and responses.

On March 1, 2006, the Complainant informed the undersigned that

After further consideration and review of the undertaking in going forward with extremely limited resources in the above-captioned matter, the undersigned hereby requests the hearing in the instant action be canceled and

that the complaint be dismissed without prejudice in accordance with Fed. R. Civ. P. 41(a).

Subsequently, the Respondent's counsel informed this office that the client agreed with a dismissal.

Voluntary dismissal of ERA whistleblower complaints are covered by Rule 41 of the Federal Rules of Civil Procedure. Rainey v. Wayne State University, 90 ERA-40 (Sec'y Jan 7, 1991) (order to show cause) Sup op. at 3, dismissed, (Sec'y Feb 27, 1991), Rule 41 applies because there are no procedures for voluntary dismissals contained in either the ERA, the implementing regulations at 29 C.F.R. Part 24, or the regulations at 29 C.F.R. Part 18. Pursuant to 29 C.F.R. § 24.6, the disposition of complaints, including Rule 41(a)(1)(i) dismissals can be effected only by final order of the Secretary. Haymes v. D.P. Associates, Inc., 94-SDW-1 (Sec'y Aug. 16, 1994). Accordingly, as it is clear that the Complainant no longer wishes to proceed in this matter.

It is Recommended, that the Complainant's request for voluntary dismissal be granted and this case be **DISMISSED**, without prejudice.

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's Recommended Decision and Order. The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's recommended decision becomes the