



**Issue Date: 11 April 2014**

Case No.: 2013-ERA-00016

In the Matter of:

WILLIAM E. BOUDREAU,

Complainant,

v.

CB & I,

Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT  
AND  
ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, U.S. Code, Title 42, § 5851 (ERA) and its implementing regulations at 29 CFR, Part 24.<sup>1</sup>

The Complainant filed a complaint on 4/25/13 alleging that Respondent retaliated against him in violation of the ERA by terminating his employment on 2/14/13. The complaint was investigated and on 7/17/13, the Regional Supervisory Investigator, OSHA, Atlanta Regional Office, denied the complaint when he issued the Secretary's Findings that "there is no reasonable cause to believe that Respondent violated the [ERA]." On 8/16/13, the Complainant filed his objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

At the request of the Parties, a settlement judge was appointed on January 7, 2014 pursuant to 29 CFR §18.9(e). The Parties came to an agreement in principle on February 19, 2014 and, on March 21, 2014, the Parties filed their "Negotiated Confidential Settlement Agreement and Release of Claims" (Settlement Agreement) with this office.

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<sup>1</sup> Federal Register, Volume 76, pages 2808 to 2826 (January 18, 2011)

Implementing Federal regulations at 29 CFR §24.111(d)(2) provides that “[a]t any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement must be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the ERA. *See* 42 U.S.C. §5851(b)(2)(A); *Holbrook v. Fluor Daniel Northwest, Inc.*, ARB No. 98-099, ALJ No. 1998-ERA-00004 (ARB Mar. 24, 1998). Once the settlement agreement is approved, it becomes the final action of the Secretary, 29 CFR §24.111(e).

The ERA provides that pursuit of rights and remedies under the ERA does not diminish or affect any right available under other federal or state laws designed to redress the employee’s discharge or other discriminatory action taken by the employer against the employee. However, when evaluating the appropriateness of actions under the ERA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must “be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery.” *Lucia, Abernathy and Cowles v. American Airlines, Inc.*, ARB Case Nos. 10-014 / 015 / 016, at page 8 (Sep. 16, 2011); ALJ Case Nos. 2009-AIR-017 / 016 / 015 (Oct. 15, 2009)

After review of the Settlement Agreement, as well as the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standard required under the ERA and is approved.

### **ORDER**

Accordingly, it is **ORDERED** that:

1. The Settlement Agreement is **APPROVED**; and
2. The Complaint is hereby **DISMISSED WITH PREJUDICE**.

DANA ROSEN  
Administrative Law Judge

DR/JRS/jcb  
Newport News, Virginia