



Issue Date: 24 February 2017

CASE NO.: 2016-ERA-00004

In the Matter of:

SANDRA BITTNER,
Complainant,

v.

ARIZONA PUBLIC SERVICE COMPANY,
Respondent.

**ORDER APPROVING SETTLEMENT AND
DISMISSING MATTER**

This matter arises under the Energy Reorganization Act of 1974 (“ERA”), 42 U.S.C. 5851, and the implementing regulations found at 29 C.F.R. Part 24. The matter was received for hearing in December 2015 and is set for hearing on May 2 and 3, 2017, in Phoenix, Arizona. Complainant is represented by attorney Alycia A. Fitz. Respondent is represented by attorney Lewis Csedrik. On February 23, 2017, the parties submitted for approval a second signed Settlement Agreement and General Release that resolved all issues in this matter. *See* 29 C.F.R. § 24.111(d)(2).

The settlement agreement includes a confidentiality provision agreed to by the parties. The files maintained by this Office, including this settlement agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The Department of Labor has regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). Pursuant to the agreement, the parties agree to maintain the agreement confidential and object to any disclosure under FOIA. The settlement agreement is hereby ordered to be placed in a sealed and separate envelope, clearly marked with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. § 70.26 prior to any release of information.¹

¹ Prior to submission of the second settlement agreement, the parties submitted another settlement agreement signed on or about September 23, 2016, and filed in this office on September 27, 2016. There were 2 copies of the first agreement submitted, one by fax and one by U.S. mail. I ultimately rejected that agreement because I found the release language to be overbroad. I am ordering that the two copies of the prior settlement agreement, which I have lined through as superseded, also be placed in the same sealed envelope to prevent disclosure under FOIA until the parties have an opportunity to object to any disclosure request.

In addition, the second Settlement Agreement also includes a general release of liability, which resolves matters under a multitude of laws other than the ERA. My authority over settlement agreements is limited to the statutes that are within my jurisdiction, and I have, therefore, restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this ERA case. *Mann v. Schwan's Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

Having reviewed the second settlement agreement, I find that the terms fairly, adequately, and reasonably settle this claim. *Simon v. Exelon Nuclear Security*, ARB Case Nos. 13-095, 13-096, ALJ Case No. 2010-ERA-007 (Nov. 22, 2013). I hereby approve the settlement agreement, the terms and conditions of which are adopted by reference and incorporated into this Order.

Having approved the agreement, the matter is dismissed with prejudice. All dates are vacated.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge