



Issue Date: 31 March 2017

OALJ Case No.: 2016-ERA-00006
OSHA Case No.: 0-0160-15-029

In the Matter of:

TERRY HATHAWAY,
Complainant,

v.

BATTELLE ENERGY ALLIANCE,
Respondent.

ORDER APPROVING SETTLEMENT AGREEMENT
AND CANCELLING HEARING

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, U.S. Code Title 42, section 5851 (“ERA”) and its implementing regulations at 29 C.F.R. Part 24.

This case is currently scheduled for hearing on April 18, 2017 in Pocatello, Idaho. On March 9, 2017, Complainant filed a *Stipulation to Dismiss the Action with Prejudice* advising the court the parties had reached a settlement. On March 30, 2017, the parties submitted an executed *Release and Settlement Agreement* (“Settlement”) for my review and requested the matter be dismissed with prejudice.

The ERA and implementing regulations provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement. 42 U.S.C. § 5851(b)(2); 29 C.F.R. § 24.111(d)(2).¹ Under the ERA, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Edmisten v. Ray Thomas Petroleum*, ARB No. 10-020, ALJ No. 2009-STA-00036 (ARB Dec. 16, 2009). Consistent with this required review, the regulations direct the parties to file a copy of the settlement “with the administrative law judge or the ARB, as the case may be.” 29 C.F.R. § 24.111(d)(2). Any settlement approved

¹ 29 C.F.R. § 24.111(d)(2) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge.

by the Assistant Secretary, the ALJ or the ARB constitutes the final order of the Secretary and may be enforced pursuant to § 24.113. 29 C.F.R. § 24.111(e).

Having reviewed the settlement agreement and its provisions, which includes dismissal of the complaint with prejudice, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest. I also find that the settlement was not procured through duress.² Accordingly, I approve the parties' settlement and dismissal of the complaint with prejudice.³ The parties shall implement the terms of the approved settlement as specifically stated in their agreement.

ORDER

The settlement agreement is APPROVED and this matter is DISMISSED with prejudice. The April 18, 2017 hearing in Pocatello, Idaho is CANCELLED.

SO ORDERED:

STEPHEN R. HENLEY

Chief Administrative Law Judge

² The parties have agreed that the financial terms of the settlement will be treated as confidential. 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. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS." Consequently, 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. See 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

³ This approval applies only to the ERA complaint over which the Office of Administrative Law Judges has jurisdiction.