



In The Matter Of:

PAUL A. BLACKBURN,

ARB CASE NO. 96-159

COMPLAINANT,

ALJ CASE NO. 86-ERA-4

v.

DATE: July 22, 1996

METRIC CONSTRUCTORS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER TO SUBMIT SETTLEMENT AGREEMENT

This case, arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1988), is before the Board on remand from the United States Court of Appeals for the Fourth Circuit. *See Blackburn v. Reich*, 79 F.3d 1375 (4th Cir. 1996). The court vacated that portion of the Secretary's Final Decision and Order, dated December 27, 1994, that disallowed attorney fees and costs requested by Complainant, Paul A. Blackburn (Blackburn), for work performed before the appellate court.

On June 17, 1996, an Order was issued permitting Blackburn to file a supplemental fee petition prior to the Board's issuing a final decision on remand. On July 2, 1996, Blackburn filed a Withdrawal of Fee Petition, informing the Board that the attorneys for the parties had reached an accommodation with respect to the outstanding fees and costs. The specific terms of the agreement, however, were not included.

^{1/} On April 17, 1996, the Secretary of Labor delegated authority to issue final agency decisions under this statute and the implementing regulations to the newly created Administrative Review Board (ARB). Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978, May 3, 1996 (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the ARB now issues final agency decisions. A copy of the final procedural revisions to the regulations implementing this reorganization, 61 Fed. Reg. 19982, is also attached.

Under the ERA the Secretary may not terminate a proceeding on a complaint on the basis of a settlement without approving the terms of the agreement negotiated by the parties. 42 U.S.C. § 5851(b)(2)(A); see *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Fuchko v. Georgia Power Co.*, Case No. 89-ERA-9, Sec. Orders., Mar. 23, 1989 and June 13, 1994. Accordingly, the parties are ordered to submit a copy of the terms of their accommodation for approval by the Board, the Secretary's designee. If all the parties, including Blackburn, have not signed the accommodation agreement itself, the parties shall submit a certification or stipulation, signed by all the parties, including Blackburn individually, demonstrating their informed consent to the agreement.

Filings shall be submitted to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C. 20210.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Presiding Member

JOYCE D. MILLER
Alternate Member