



IN THE MATTER OF

WALTER CARTER,

COMPLAINANT,

CASE NO. 92-TSC-11

DATE: May 30, 1996

v.

ELECTRICAL DISTRICT NO. 2 OF PINAL COUNTY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622 (1988). The Administrative Law Judge (ALJ), upon consideration of the Settlement Agreement reached between the parties and their Joint Motion to Approve Settlement, issued a Recommended Order Approving Settlement on April 1, 1996. Pursuant to the Secretary's Order of April 24, 1996, the parties have submitted a joint response concerning the distribution of the settlement funds.

Since the request for approval is based on an agreement entered into by the parties, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 15 U.S.C. § 2622. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th

^{1/} This matter was filed before the Secretary of Labor pursuant to the Energy Reorganization Act of 1974 and 29 C.F.R. Part 24. The Secretary issued an Order requiring additional information regarding the distribution of the settlement proceeds on April 24, 1996. On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and these regulations to the newly created Administrative Review Board (ARB). 61 Fed. Reg. 19978 (May 3, 1996)(copy attached). The ARB has reviewed the information provided by the parties and the entire record in this case in rendering this final order.

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 (61 Fed. Reg. 19982), implementing this reorganization is also attached.

Cir. 1991); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the TSCA. See ¶¶ 4, 5 and 22. As set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations the Respondent violated the TSCA.

Paragraphs 1 and 4(a) and (b) preserve Complainant's right and that of his family, heirs or representatives to pursue other claims or causes of action against Respondent arising from Complainant's exposure to any toxic, carcinogenic, radioactive, caustic, corrosive, hazardous, or harmful substance or material during his employment with Respondent. We construe these provisions as preserving Complainant's right to pursue any additional actions in this regard.

Paragraph 7 provides that the parties will not, either directly or indirectly, publicize the nature or content of the agreement to persons other than their respective accountants, attorneys, any state tax department or the Internal Revenue Service, or other state or Federal officials as may be required by law. Nor does the agreement prohibit or restrict the Complainant from reporting or testifying about any action which he believes evidences a suspected violation of TSCA, RCRA, CERCLA or other Federal, state or local law to any Federal, state or local agency or official. See ¶ 21.

Paragraph 14 provides that the agreement will be governed by the laws of Arizona. We construe this provision as excepting the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the laws and regulations of the United States. See *Phillips v. Citizens Assn. for Sound Energy*, Case No. 91-ERA-25, Final Order of Dismissal, Nov. 4, 1991, slip op. at 2.

We find that the agreement, as here construed, along with the Joint Response to the Secretary's Order of April 24, 1996, provide for a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. See ¶ 13.

SO ORDERED.

KARL J. SANDSTROM
Presiding Member

JOYCE D. MILLER
Alternate Member