

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 February 2005

Case No. 2004-WPC-1

JESSIE DALLAS SNIDER
Complainant

v.

CITY OF SALEM
Respondent

APPEARANCES:

Richard R. Renner, Esq.
Dover, OH
For Complainant

Michael D. Kohn, Esq.
Washington, D.C.
For Complainant

Robert J. Krehbiel, Esq.
St. Louis, MO
For Respondent

Before: Thomas F. Phalen, Jr.
Administrative Law Judge

**RECOMMENDED ORDER APPROVING SETTLEMENT AGREEMENT,
AND MUTUAL RELEASE, AND COVENANTS NOT TO SUE**

The above-captioned case arises under the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. Section 1367 and the Regulations found at 29 C.F.R. Part 24. This matter is before me on Complainant's request for hearing and objection to findings issued on behalf of the Secretary of Labor by the Regional Administrator of the Department of Labor Occupational Safety and Health Administration ("OSHA") after investigation of the complaint. 29 C.F.R. §§ 24.3 and 24.4.

Through an order dated April 12, 2004, a formal hearing was scheduled for September 13, 2004. The formal hearing was held September 13-15, 2004 in Salem, Missouri. However, after the hearing, the parties notified the undersigned that they had reached a settlement. On January 26, 2005, the parties submitted a settlement agreement, mutual release, and covenants

not to sue. The parties requested approval of the settlement agreement and dismissal of the complaint with prejudice.

The undersigned received the original executed settlement agreements between Complainants and Respondent, and a copy of the agreement is attached hereto and made a part of this order.

The agreement states that Mr. Snider will be reinstated, retroactively, to his former position, and shall remain employed until he vests in the City's pension plan. Once vested, however, Mr. Snider will resign his position, and agrees not to seek future employment with the City of Salem. But this agreement does not bar Mr. Snider from future employment with contractors to the City of Salem. Also, the City shall pay all past premiums, payments, and contributions necessary for reinstatement to the pension plan, including those that were reimbursed to Mr. Snider upon his termination. Finally, during the interim period of employment, Mr. Snider will be assigned to paid administrative leave, and will be assigned to only those duties that are mutually agreeable.

The agreement states that City of Salem agrees to make all of the following payments:

- 1) No later than January 21, 2005, City of Salem, Missouri, shall cause to be paid to Mr. Snider the sum of \$150,000.00. Each party shall be responsible for their own tax liabilities flowing from this payment.
- 2) No later than January 21, 2005, City of Salem, Missouri, shall cause to be paid to Mr. Snider of the sum of \$4,000.00, and for wages for the period of November 12, 2004 until January 5, 2005. The City shall withhold such taxes as are required by law to be withheld by employers from employee wages, and shall issue a pay stub and Form W-2 for such payment. The parties shall otherwise be responsible for their own tax liabilities flowing from such payment.
- 3) No later than January 21, 2005, City of Salem, Missouri, shall pay, as statutory attorney's fees and costs for the DOL Litigation, the total sum of \$60,000.00, to be paid directly to Richard R. Renner, dba Tate & Renner, City of Salem, Missouri, and shall issue Federal Form 1099 to Richard R. Renner, dba Tate & Renner for the funds paid to him.
- 4) No later than January 21, 2005, City of Salem, Missouri, shall pay, as statutory attorney's fees and costs for the services of attorney Michael D. Kohn in the DOL Litigation, the total sum of \$10,000.00, to be paid directly to the National Whistleblower Legal Defense and Education Fund. City of Salem, Missouri shall issue Federal Form 1099 to National Whistleblower Legal Defense and Education Fund for the funds paid to it.

The agreement includes a number of administrative and protective provisions. The parties agree that this settlement, in no way, constitutes an admission of liability. In addition, it releases the parties from future liability concerning any past act, including the circumstance that

gave rise to this issue.¹ Furthermore, the agreement provides remedies for breach, including a right to damages for the non-breaching party. Finally, the agreement includes a number of miscellaneous provisions related to filing, assignment, and general construction.

After reviewing the settlement agreement, the undersigned finds the agreement to be fair and reasonable. 29 C.F.R. § 18.9(d). Therefore,

ORDER

IT IS ORDERED that, absent a request for review pursuant to 29 C.F.R. § 24.8:

- (1) the settlement agreement be, and hereby is APPROVED; and
- (2) the complaint of Jessie Dallas Snider be, and hereby is DISMISSED WITH PREJUDICE.

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THOMAS F. PHALEN, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.

¹ It is understood that this approval of the undersigned applies to the WPC aspect of the attached agreement only, and that the undersigned and the Administrative Review Board have neither jurisdiction over nor legislative power to release claims arising under the Safe Drinking Water Act, Solid Waste Disposal Act, Toxic Substances Control Act, Clean Air Act, or other state or federal aspects of the settlement agreement.