



**In the Matter of:**

**JEFF CRAIG,**

**ARB CASE NO. 06-152**

**COMPLAINANT,**

**ALJ CASE NO. 2006-SDW-001**

**v.**

**DATE: April 30, 2008**

**CITY OF TORRINGTON, WYOMING,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Richard R. Renner, Esq., *Tate & Renner*, Dover, Ohio**

***For the Respondent:***

**Richard Rideout, Esq., Cheyenne, Wyoming**

**ORDER OF REMAND**

This case arises under the whistleblower protection provision of the Safe Drinking Water Act, 42 U.S.C.A. § 300j-9(i) (West 2003)(SDWA) and implementing regulations at 29 C.F.R. Part 24 (2007).<sup>1</sup> A Labor Department Administrative Law Judge (ALJ) dismissed a complaint filed by Jeff Craig against the Respondent, City of Torrington,

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<sup>1</sup> The SDWA's implementing regulations, found at 29 C.F.R. Part 24 (2007), have been amended since the Complainant filed his complaint. 72 Fed. Reg. 44,956 (Aug. 10, 2007). It is unnecessary for us to determine whether the amendments apply to this complaint because they are not implicated by the settlement issue presented and thus, even if the amendments were applicable to this complaint, they would not affect our decision.

Wyoming, pursuant to § 300j-9(i), approved a settlement agreement between Craig and the City, and ordered the parties to comply with the terms of the agreement. We vacate the order below and remand the case for further action consistent with this order.

## **BACKGROUND**

In 2005, Craig filed a complaint pursuant to the SDWA against the City of Torrington. He alleged that the City suspended him and then terminated his employment because he reported to the Environmental Protection Agency that the city was violating SDWA safety requirements. The Labor Department's Occupational Safety and Health Administration (OSHA) investigated Craig's retaliation complaint, found that Craig's allegations had merit, and ordered Torrington to reinstate Craig, to pay him damages and attorney fees, and to take other remedial actions.

Both Craig and Torrington invoked their right to a hearing pursuant to 29 C.F.R. § 24.1979.106(a); Craig sought a hearing on damages, and the City sought a hearing on the merits. While the case was pending adjudication before a Labor Department ALJ, Craig and Torrington reached a settlement. They agreed, in relevant part, that after Torrington took certain corrective actions, including making a payment into the Wyoming State retirement plan on Craig's behalf, counsel for Craig and Torrington would file a joint motion for dismissal of Craig's complaint.

The City did not take all the corrective actions promised in the settlement agreement, and the parties never filed a joint motion for dismissal of the complaint. Nonetheless and for reasons that are not reflected in the record, the ALJ received a copy of the signed settlement agreement. On his own motion, the ALJ issued a Decision and Order Approving Settlement Agreement, ordered the parties to "carry out its terms," and dismissed Craig's complaint. *Craig v. City of Torrington*, ALJ No. 2006-SDW-001 (July 19, 2006).

Craig timely petitioned for review of the ALJ Decision and Order and requested that we remand the case to the ALJ for a hearing on the merits or completion by the parties of their settlement agreement. The City concurs with the request for a remand and further proceedings. "The Respondent agrees that material terms of the settlement have not, as yet, been fulfilled and until that occurs that the matter should not be dismissed." Respondent Br. at 4.

## **DISCUSSION**

In their settlement agreement, the parties stipulated that only after the City complied with Section 1, "Payments," of their settlement agreement would they file a joint motion for approval of the settlement agreement and dismissal of the complaint:

## **SECTION 5. DISMISSAL ENTRY**

Within ten days of the payments made under Section 1 of this Settlement Agreement, the parties shall sign and file in the U.S. Department of Labor, an agreed request in the form attached hereto as Exhibit A, asking the Department to dismiss with prejudice the DOL Litigation and all claims by Jeff Craig against City of Torrington, in that litigation, which request will include as an attachment a complete copy of this agreement.

Settlement Agreement at 4, attached to ALJ Order of dismissal. Exhibit A, the proposed Joint Motion for Dismissal with Prejudice, provides in its entirety as follows:

By agreement of the parties, this matter has been settled. Complainant Jeff Craig and Respondent City of Torrington hereby request that this action and all claims asserted herein be dismissed, with prejudice. A copy of the Settlement Agreement, Mutual Release, and Covenants Not to Sue is separately provided.

*Id.* at 7.

“[T]he power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed.” *Macktal v. Sec’y of Labor*, 923 F.2d 1150, 1155 (5th Cir. 1991). By approving the settlement agreement and dismissing the complaint in the absence of the parties’ joint motion to dismiss, the ALJ substituted for the settlement process to which the parties agreed – whereby Craig would not yield his right to a hearing unless and until the City took all the remedial actions described in Section 1 of the agreement – a process whereby Craig’s right to a hearing would be extinguished before the City took the remedial actions promised in Section 1. In other words, the ALJ erred in entering an order of dismissal before the conditions precedent were fulfilled and the parties asked for dismissal according to the terms. *Id.* at 1155-1156 (the Secretary, and perforce the ALJ and ARB, lacks authority to alter a material term of a settlement agreement without the consent of the two parties).

**CONCLUSION**

Accordingly, we **VACATE** the order below and remand the case for a hearing, completion by the parties of their settlement agreement, or any other action consistent with this order.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**