

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 27 September 2005**

Case No.: 2005-ERA-12

In the Matter of

CAROL JOHNSON

Complainant

versus

CASE WESTERN RESERVE UNIVERSITY

Respondent

BEFORE: RUDOLF L. JANSEN  
Administrative Law Judge

RECOMMENDED DECISION AND ORDER  
APPROVING SETTLEMENT AGREEMENT

This proceeding arises from a complaint filed by Carol Johnson (hereinafter Complainant) against Case Western Reserve University (hereinafter Respondent), alleging violations of Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851. The matter was called for hearing in Cleveland, Ohio on September 20, 2005 wherein counsel for the parties announced that the matter had been administratively resolved. On September 23, 2005, I received in this office a document captioned Settlement Agreement, Mutual Release, and Covenants Not to Sue. The document was signed by the Complainant together with an administrative officer of the Respondent. Accompanying the Agreement was a Joint Motion for Dismissal with Prejudice which was signed by both counsel for the Complainant and counsel for the Respondent.

The undersigned must determine whether the terms of the Settlement Agreement, as submitted, are a fair, adequate, and reasonable settlement of the complaint. 29 C.F.R. §§ 24.6(f)(1), 24.7(a), 24.8(a); see also *Hoffman v. Fuel Economy Contracting*, 1987-ERA-33 (Sec'y Aug. 4, 1989 (Order) citing U.S.C. § 5851(b)(2)(A))

The release paragraphs of the Settlement Agreement contain provisions that relate to either existing actions or potential actions which could be brought by either party under other federal, state or local laws. I have no authority to approve these provisions and this Decision and Order makes no determination concerning the propriety of any other actions.

The Settlement Agreement also contains a provision that it is to be governed by and construed in accordance with the laws of the State of Ohio. I interpret that provision as not restricting in any way the authority of the Secretary to bring an enforcement action under 42 U.S.C. § 5851(d) nor as limiting the jurisdiction of the United States District Court to grant all appropriate relief as identified in the statute. *Stites v. Houston Lighting & Power*, 89-ERA-1 and 89-ERA-41 (Sec'y May 31, 1990).

The Agreement also contains a provision that it as well as the negotiations preceding the execution of the Agreement, would be considered confidential although subject to applicable laws. The parties' submissions, including the Settlement Agreement, become part of the record of this case and are subject to the Freedom of Information Act "FOIA", 5 U.S.C. § 552(a). Should a FOIA request be made for the Settlement Agreement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption. See *Debose v. Carolina Power and Light Co.*, 92-ERA-14 (Sec'y Feb. 7, 1994) and *Darr v. Precise Hard Chrome*, 95-CAA-6 (Sec'y May 9, 1994).

The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

#### FINDINGS OF FACT

1. The Settlement Agreement is fair, adequate, and reasonable on its face, and I find that it effectuates the purposes and policies of the statute under which it arises;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits;
3. The Settlement Agreement is the entire and only settlement agreement between the parties arising

from the factual circumstances that formed the basis for the claim under the Energy Reorganization Act;

4. The parties are hereby deemed to have waived any further procedural steps and rights before the undersigned to challenge or contest the validity of this Decision and Order regarding the matter, which are the subject of the Settlement Agreement.

RECOMMENDED ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Settlement Agreement is APPROVED, and the parties shall comply with the terms thereof;
2. This complaint is DISMISSED WITH PREJUDICE;
3. The terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally, excepting as provided by 29 C.F.R. § 70.26.

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RUDOLF L. JANSEN  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's Recommended Decision and Order. The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file your Petition with the Board, you must serve it on all parties to the case as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of

Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. See 29 C.F.R. § 24.8(a). You must also serve copies of the Petition and briefs on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's recommended decision becomes the final order of the Secretary of Labor. See 29 C.F.R. § 24.7(d).