



In the Matter of:

**DAVID CHARVAT,**

**COMPLAINANT,**

**v.**

**EASTERN OHIO REGIONAL  
WASTEWATER AUTHORITY,**

**RESPONDENT.**

**ARB CASE NOS. 98-147  
98-148**

**ALJ CASE NO. 96-ERA-37**

**DATE: November 15, 2000**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

Michael D. Kohn, Esq., *Kohn, Kohn & Colapinto, P.C., Washington, DC*  
Richard R. Renner, Esq., *Dover, Ohio*  
E. Dennis Muchnicki, Esq., *Dublin, Ohio*

*For the Respondent:*

Daniel W. Costello, Esq., James A. King, Esq., *Porter, Wright, Morris & Arthur, LLP,  
Columbus, Ohio*  
Gerald P. Duff, Esq., *Hanlon, Duff, Paleudis & Estadt Co., LPA, St. Clairsville, Ohio*

**ORDER**

By motion filed October 5, 2000, Respondent Eastern Ohio Regional Wastewater Authority ("EORWA") requests that this Board Stay This Appeal Pending Resolution of Parallel Action in the Sixth Circuit. In addition to the motion, we have before us Complainant David Charvat's Memorandum in Opposition, EORWA's Response thereto, and Charvat's Reply to EORWA's Response. We construe the Motion as a motion to hold these consolidated cases in abeyance pending disposition of the Sixth Circuit proceeding.

The “parallel action” to which EORWA refers is a statutory tort claim brought by Charvat against EORWA pursuant to 42 U.S.C.A. §1983 (West 1994 & Supp. 2000) in the United States District Court for the Southern District of Ohio, Case No. C-2-97-1035. In Case No. C-2-97-1035, Charvat alleges in part that during his employment with EORWA, EORWA violated his right to freedom of expression in violation of §1983. In the case *sub judice* Charvat charges that EORWA’s decision to terminate his employment was in violation of whistleblower protection provisions in the Clean Water Act, 33 U.S.C.A. §1367 (West 1986), and in the Safe Drinking Water Act, 42 U.S.C.A. §300j-9(i) (West 1991 & Supp. 2000).

On March 2, 2000, the District Court in Case No. C-2-97-1035 denied EORWA’s Motion for Summary Judgment based on EORWA’s qualified immunity and the contention that the whistleblower provisions of the Clean Water Act and the Safe Drinking Water Act preclude Charvat’s §1983 action. EORWA has filed for interlocutory review by the Sixth Circuit.

EORWA has advanced no reason why the action in the Court of Appeals is relevant to the proceeding before this Board. Moreover, the administrative proceeding here is far advanced. A hearing on the merits of Charvat’s environmental whistleblower claims has been held, the administrative law judge has issued a recommended decision, and the parties’ objections thereto have been fully briefed. Under these circumstances, we see no reason for holding the case before us in abeyance.

Accordingly, the motion is **DENIED**.

**SO ORDERED.**

**PAUL GREENBERG**  
Chair

**CYNTHIA L. ATTWOOD**  
Member

**RICHARD A. BEVERLY**  
Alternate Member