U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

LARRY D. SMYTH,

COMPLAINANT,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, LANL,

RESPONDENT.

ARB CASE NO. 98-068

ALJ CASE NO. 98-ERA-0003

DATE: March 13, 1998

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. §5851 (1988 and Supp. V 1993). The parties submitted a Settlement Agreement and Release of All Claims seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge issued a Recommended Decision and Order on January 22, 1998 approving the settlement.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 29 C.F.R. §24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *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.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the ERA. See ¶¶2,3. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

> [The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

We have therefore limited our review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

Paragraph 2 of the agreement could be construed as a waiver by Complainant of any causes of action he may have which arise in the future. As the Secretary has held in prior cases, *see Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord., Aug. 8, 1985, such a provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

The Board requires that all parties requesting settlement approval of cases arising under the ERA provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to the complainant's claims. See Settlement Agreement ¶8.

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and **DISMISS THE COMPLAINT WITH PREJUDICE**. See Settlement Agreement ¶1.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member