

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 30 August 2004

Case No.: 2004-ERA-0012

In the Matter of:

DAVID GILBERT
Claimant

v.

FLOUR FERNALD, INC.
Respondent

RECOMMENDED ORDER APPROVING SETTLEMENT

This proceeding arises from complaints filed against Fluor Fernald, Inc., alleging violations of Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851. On August 18, 2004, the parties filed a Joint Motion to Approve Settlement Agreement and Release of Claims. The Complainant and Respondent have jointly executed the agreement and its terms are collectively referred to herein as the "Settlement Agreement." The Settlement Agreement is attached hereto and made a part hereof.

Although Part 24 regulations do not contain any provision relating to dismissal of a complaint by voluntary settlement, under the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which are controlling in the absence of a specific provision at Part 24, the parties in a proceeding before an administrative law judge may reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c).

Under the terms of the instant Settlement Agreement, the Respondent agrees to pay Complainant a stated sum in consideration of releases and discharges stated therein. With respect to the confidentiality provision of the Settlement Agreement, which provides that the parties shall keep the terms of the settlement confidential, it is noted that they have attempted to comply with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law. *See McGlynn v. Pulsair, Inc.*, 93-CAA-2 (Sec'y June 28, 1993).

I have reviewed the Settlement Agreement and I enter the following findings:

1. The Settlement Agreement appears to be fair and reasonable on its face and it further appears that it effects 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 entire record on which this Decision and Order is based consists solely of the complaint and the Settlement Agreement between the parties; and,
4. The parties are hereby deemed to waive any further procedural steps before the undersigned or the Secretary of Labor, as appropriate, regarding the matters, which are the subject of their Agreement.

Based on the foregoing, and in accordance with the agreement of the parties, IT IS RECOMMENDED that:

1. The Settlement Agreement be APPROVED;
2. The Complaint in this matter be DISMISSED, with prejudice; and
3. Pursuant to 29 C.F.R. §70.26, the terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally.

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JOSEPH E. KANE
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 petition for review must be received by the Administrative Review 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.