U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 06 July 2005

In the Matter of

BETTY A. DEVERS *et al*.
Complainants

v.

KAISER-HILL COMPANY
Respondent

Case No. 2001-SWD-00003

ORDER ON REMAND

On June 10, 2003, I issued a *Recommended Decision and Order* in which I recommended that this case be dismissed on the ground that none of the complainants engaged in protected activity under any of the statutes under which this case was brought: the Energy Reorganization Act ("ERA"); Toxic Substances Control Act ("TSCA"); Solid Waste Disposal Act ("SWDA"); and Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). On March 31, 2005, the Administrative Review Board ("ARB") remanded the case to me. The ARB held that I was correct in finding that no protected activity occurred under TSCA, SWDA and CERCLA, but found that the complainants did engage in activity protected by the ERA. On May 11, 2005, the parties filed a *Notice of Settlement* in which they stated that they had reached a confidential settlement agreement resolving all the disputes between the parties, and that shortly they would be filing a *Stipulated Motion to Dismiss With Prejudice*. The stipulated motion was received in this Office on July 5, 2005. It states that the parties have settled the case; each party will bear its own attorneys' fees; and the case should be dismissed with prejudice. It does not discuss the terms of the settlement agreement other than that the parties will bear their own attorneys' fees.

The various employee protection statutes under which this case was brought have differing procedures for approval of settlement agreements. Under the ERA and TSCA, the Secretary of Labor must agree to the terms of the settlement agreement (*see* 42 U.S.C §5851(b)(2)(A); 15 U.S.C. §2622(b)(2)(A)); but CERCLA and SWDA have no such requirement (*see* 42 U.S.C. §9610(b); 42 U.S.C. §6971(b)). Because of this, settlement agreements under the ERA and TSCA must be submitted to the administrative law judge for approval, whereas in cases under CERCLA and SWDA approval of the terms of the settlement agreement is not required. *See, e.g., Beliveau v. Naval Undersea Warfare Center*, ARB Nos. 00-073, 01-17 and 19, ALJ Nos. 97-SDW-1, 4 and 6 (ARB Nov. 30, 2000. Therefore, under CERCLA and SWDA,

but not the ERA or TSCA, a joint motion to dismiss a case can be approved even if the terms of the settlement are not disclosed.

That the procedures for approving settlements differed under the four statutes under which this case is brought could have complicated the question of whether the settlement agreement in this case had to be submitted for approval. But that question is no longer germane, since the only one of the four statutes under which protected activity occurred is the ERA. Since this case now falls solely under the ERA (regardless of the case's ALJ docket number), the settlement agreement must be submitted for approval. Therefore,

IT IS ORDERED that the parties' *Stipulated Motion To Dismiss With Prejudice* is **denied**. The parties shall file an executed settlement agreement containing ***all*** of the terms of the agreement. The parties may request treatment of the settlement agreement as confidential commercial information in accordance with 29 C.F.R. §70.26.

A

JEFFREY TURECK
Administrative Law Judge