



Issue Date: 26 October 2006

CASE NOS.: 2006-ERA-00015
2006-SDW-00005

In the Matter of:

ELLEN KELLY
Complainant

v.

UNITED STATES ENRICHMENT
CORPORATION
Respondent

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT

This proceeding arises from complaints filed by Ellen Kelly against United States Enrichment Corporation, alleging violations of the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851, the Toxic Substances Control Act of 1976 (TSCA), as amended, 15 U.S.C. § 2622, and the Safe Drinking Water Act of 1974 (SDW), as amended, 42 U.S.C. § 300j-9(i). The relevant procedural regulations appear at 29 C.F.R. § 24.

On October 16, 2006, the parties filed a Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement, a Memorandum of Points and Authorities in Support Thereof, and a Settlement Agreement resolving the above captioned matter and dispute under the Act. The Settlement Agreement was fully executed on October 12, 2006.

Review of the Settlement Agreement reveals “that it may encompass the settlement of matters under laws” other than the ERA, TSCA, or SDW. *Smyth v. Regents of the University of California, LANL*, 98-ERA-3 (ARB Mar. 13, 1998). 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.” *Id.*, quoting *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2. I therefore limit my review of the Settlement Agreement to determining whether the terms thereof are a fair, adequate, and reasonable settlement of Complainant's allegations under the ERA, TSCA, and SDW.

I have reviewed the parties' Settlement Agreement and I make the following findings:

1. The Settlement Agreement appears to be fair, adequate, and reasonable on its face and to effectuate the purposes and policies of the Acts.

2. By their agreement, the parties are deemed to have waived any further proceedings before the United States Department of Labor for matters that are the subject of the Settlement Agreement.

3. This Order shall have the same force and effect as a Decision and Order issued after a full hearing on the merits.

4. At the request of the parties, the terms of the Settlement Agreement shall remain confidential. Should the Settlement Agreement become the subject of a request under the Freedom of Information Act, 5 U.S.C. § 552, the procedures in 29 C.F.R. § 70.26 shall apply.

29 C.F.R. § 18.9; 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 70.26.

Based on the foregoing, and in accordance with the parties' Settlement Agreement, it is ORDERED that:

1. The Settlement Agreement is APPROVED;
2. The complaints are DISMISSED WITH PREJUDICE.

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DANIEL L. LELAND
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).