



In The Matter of:

BETTY FREELS,

ARB CASE NO. 95-110

COMPLAINANT,

ALJ CASE NOS. 94-ERA-6

v.

95-CAA-2

LOCKHEED MARTIN

DATE: February 21, 1997

ENERGY SYSTEMS, INC., ET AL.,¹

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DENYING MOTION TO VACATE

Case No. 94-ERA-6 arises under the employee protection provisions of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988 and Supp. V 1993), the Clean Air Act, 42 U.S.C. § 7622, the Toxic Substances Control Act, 15 U.S.C. § 2622, the Safe Drinking Water Act, 42 U.S.C. § 300-j(9)(i), the Water Pollution Control Act, 33 U.S.C. § 1367, and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610 (all 1988).² Consolidated Case No. 95-CAA-2 arises under the employee protection provisions of the environmental acts.

¹Lockheed Martin Energy Systems, Inc. (Energy Systems) was formerly known as Martin Marietta Energy Systems, Inc. The other respondents in Case No. 94-ERA-6 are Oak Ridge National Laboratory (ORNL) and Martin Marietta Corporation. The complaint was dismissed as to four individual employees of Energy Systems who initially were named respondents.

In Case No. 95-CAA-2, the named respondents are: Energy Systems; ORNL; Martin Marietta Corporation; Martin Marietta Technologies, Inc.; ORNL and Energy Systems' Medical, Health, Health Physics, Occurrence Reporting, Environmental Monitoring and Industrial Hygiene Departments; and the Oak Ridge Operations Office of the United States Department of Energy (DOE).

²With the exception of the ERA, we will refer to these statutes as "the environmental acts."

In a Final Decision and Order issued on December 4, 1996, this Board found that Respondents were entitled to summary judgment on the complaint in Case No. 94- ERA-6. In that decision, the Board also dismissed the complaint in Case No. 95-CAA-2 against certain Respondents for lack of jurisdiction and, as to the remaining Respondent, found that Complainant did not state a claim upon which relief may be granted. Accordingly, the Board dismissed the consolidated complaints in their entirety.

Complainant Betty Freels has requested that either this Board or the Secretary of Labor vacate the Final Decision and Order and permit this case to be decided by the Secretary of Labor. Freels contends that this Board is illegal and unconstitutional, arguing that the creation of the Administrative Review Board violated the Appointments and Due Process clauses of the Constitution and the ban on executive lawmaking. Dec. 19, 1996 letter from Edward Slavin, Jr. to David A. O'Brien at 3-10. Freels renewed the request to vacate in a January 3, 1997 letter to David A. O'Brien.

The motion to vacate is DENIED because the Board was acting pursuant to lawfully delegated authority when it issued the Final Decision and Order in these cases.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Presiding Member

JOYCE D. MILLER

Alternate Member

Washington, D.C.