



In the Matter of:

**BOBBY W. WRIGHT,**

**ARB CASE NO. 98-039**

**COMPLAINANT,**

**ALJ CASE NO. 96-ERA-41  
97-CAA-6**

**v.**

**DATE: March 18, 1998**

**TENNESSEE VALLEY AUTHORITY**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under the Clean Air Act, 42 U.S.C. §7622 (1988), the Toxic Substances Control Act, 15 U.S.C. §2622 (1988), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §6971 (1988), the Safe Drinking Water Act, 42 U.S.C. §300j-9(i) (1988), the Water Pollution Control Act, 33 U.S.C. §1367 (1988), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9610 (1988), the Toxic Substances Control Act, 15 U.S.C. §2622 (1988), and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (Supp. V 1993) (“the whistleblower acts”) and the applicable regulations at 29 C.F.R. Part 24 (1997). The parties submitted a Joint Motion for Dismissal and a Memorandum of Understanding and Agreement (Agreement) to the Administrative Review Board seeking an order dismissing the complaint in this case. The Administrative Law Judge had held a hearing in the case and submitted a Recommended Decision and Order. The matter was pending final decision before the Board.

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.

The Agreement provides for the settlement of matters under laws other than the whistleblower acts. *See Agreement* ¶1. 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 Board's] authority over settlement agreements is limited to such statutes as are within [the Board'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 its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the whistleblower acts.

The Agreement provides that the Complainant shall keep the terms of the settlement confidential, with certain specified exceptions. ¶4. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988)(FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure. . . ." *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996, slip op. at 2-3. *See also Plumlee v. Alyeska Pipeline Services Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to the FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2 (same).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding. Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70.<sup>1/</sup>

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<sup>1/</sup> Pursuant to 29 C.F.R. §70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA  
(continued..)

The Board requires that all parties requesting settlement approval in cases arising under the whistleblower acts 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* Agreement, ¶ 9

We find that the Agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we **APPROVE** the Agreement and grant the motion to **DISMISS THE COMPLAINT WITH PREJUDICE**. *See* Joint Motion for Dismissal.

**SO ORDERED.**

**DAVID A. O'BRIEN**  
Chair

**KARL J. SANDSTROM**  
Member

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<sup>1/</sup>(...continued)

requests are received for such information, the Department of Labor shall notify the submitter promptly, 29 C.F.R. §70.26(e); the submitter will be given a reasonable period of time to state its objections to disclosure, 29 C.F.R. §70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. §70.26(f). If the information is withheld and suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).