



In the Matter of:

GARY JOE PIERCE,

COMPLAINANT,

v.

**UNITED STATES ENRICHMENT
CORPORATION,**

RESPONDENT.

**ARB CASE NOS. 06-05
06-058
06-119**

ALJ CASE NO. 2004-ERA-001

DATE: April 22, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Everett C. Hoffman, Esq., *Priddy, Cutler, Miller & Meade, PLLC*, Louisville, Kentucky; John Frith Stewart, Esq., *Stewart, Roelandt, Stoess, Craigmyle & Emery, PLLC*, Crestwood, Kentucky

For the Respondent:

Sharam Ghasemian, Esq., *United States Enrichment Corporation*, Bethesda, Maryland; Charles C. Thebaud, Jr., *Morgan, Lewis & Bockius, LLP*, Washington, District of Columbia

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

Gary Joe Pierce complained that the Respondent, United States Enrichment Corporation (USEC), suspended him and then terminated his employment in violation of

the employee protection provisions of the Energy Reorganization Act (ERA).¹ An Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) upholding Pierce’s claim and ordering USEC to reinstate Pierce and to pay full back wages and attorney’s fees. Both USEC and Pierce appealed the R. D. & O. to the Administrative Review Board (ARB or Board) pursuant to 29 C.F.R. § 24.8 (2006).² The ARB, in a Final Decision and Order issued on August 29, 2008, affirmed the R. D. & O. Both parties appealed the ARB’s decision to the United States Court of Appeals for the Sixth Circuit.

On April 1, 2009, the Court of Appeals issued an order granting the parties’ joint motion for remand to the ARB “for the limited purpose of allowing the parties to seek approval of their settlement agreement.” The court retained jurisdiction of the parties’ appeals pending approval of the settlement agreement. On April 2, 2009, the parties filed with the ARB a Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement.

The applicable regulations specifically provide that “[a]t any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement” and such settlement is approved by the ALJ or the Board.³ “A copy of the settlement must be filed with the ALJ or the Board . . . as the case may be.”⁴ A settlement under the ERA cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest.⁵ Pursuant to well-established precedent, the Board will not dismiss a complaint in which there is a settlement between the private parties unless the settlement is provided to the Board for its review and approval.⁶

Because Pierce and USEC have jointly submitted the settlement as required and neither party has indicated any opposition to its terms, we deem the terms of the

¹ 42 U.S.C.A. § 5851 (West 2003).

² The regulations have been amended since Pierce filed his complaint, but the amended regulations are not implicated in this case. 72 Fed. Reg. 44,956 (Aug. 10, 2007).

³ 29 C.F.R. § 24.111(d)(2) (2008).

⁴ *Id.*

⁵ *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2-3 (ARB May 30, 2006).

⁶ See e.g., *Macktal v. Sec’y of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Willy v. The Coastal Corp.*, ARB No. 06-090, ALJ No. 2006-STA-025, slip op. at 2 (ARB Mar. 20, 2007).

settlement agreement unopposed and will review it in accordance with the applicable regulations.⁷

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the ERA. The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Thus, our approval is limited to this case, and we approve the agreement only insofar as it pertains to Pierce's ERA claim in ARB Case Nos. 06-055, 06-058, and 06-119 and ALJ Case No. 2004-ERA-001, the cases currently before the Board.⁸

The parties have certified that the Agreement constitutes the entire settlement with respect to Pierce's ERA claim.⁹ The Board finds that the settlement is fair, adequate, and reasonable, and in the public interest. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁷ See 29 C.F.R. § 24.111(d)(2).

⁸ Settlement Agreement, ¶¶ 1.1, 1.3, and General Release, Appendix A, ¶ 5. See *Bricklen v. Great Lakes Chem. Corp.*, ARB No. 05-144, ALJ No. 2005-CAA-008, slip op. at 3 (ARB Oct. 31, 2007).

⁹ Settlement Agreement, ¶ 10.1