

In the Matter of:

RICKY LADD,

COMPLAINANT,

v.

**BABCOCK & WILCOX
CONVERSION SERVICES,**

RESPONDENT.

**ARB CASE NOS. 17-019
17-020
17-065**

**ALJ CASE NOS. 2013-ERA-010
2016-ERA-005**

DATE: June 19, 2018

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Mick G. Harrison, Esq.; Bloomington, Indiana

For the Respondent:

Mark J. Gomsak, Esq.; *Fisher & Phillips LLP*; Louisville, Kentucky

**BEFORE: Joanne Royce, *Administrative Appeals Judge* and Leonard J. Howie III,
*Administrative Appeals Judge***

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

Complainant Ricky Ladd filed two retaliation complaints¹ under the employee protection provisions of the Energy Reorganization Act (ERA), as amended, and its implementing regulations.² He alleged that his former employer, Babcock & Wilcox Conversion Services (BWCS), violated the ERA whistleblower protection provisions when it terminated his employment the first time because he reported unsafe conditions at his workplace and the second time because he previously reported unsafe working conditions and filed a prior ERA claim

¹ The Administrative Review Board consolidated the appeals in a prior order.

² 42 U.S.C.A. § 5851 (Thomson Reuters 2012) (ERA); 29 C.F.R. Part 24 (2017).

against BWCS. Two separate ALJ's dismissed the two cases, the first after a hearing on the merits, and the second, on a motion for summary decision. Both parties appealed the ALJ decision in the first complaint. Ladd appealed the ALJ decision in the second.

While the cases were pending appeal before the Administrative Review Board (the Board or ARB), the parties reached a settlement. Thereafter, the parties submitted a Settlement and Release Agreement to the Board for review, as well as a Joint Motion to Approve Settlement. The parties also submitted notices of withdrawal of each of the petitions for review in these matters.

Upon first reviewing the Settlement and Release Agreement, the Board noted that the agreement states that it is contingent upon BWCS receiving notification from the U.S. Department of Energy (DOE) that it made a determination approving the settlement of the civil actions between BWCS and the DOE. Because we declined to approve an agreement that would be null and void if certain contingencies were not met, the Board issued an order for the parties to submit status reports regarding DOE approval. On June 6, 2018, the parties submitted a joint status report asserting that 1) the DOE approved the parties' settlement, and 2) the contingencies set forth in the settlement agreement were fulfilled, and requested that the Board approve the settlement and other requests. Thus, as it is no longer contingent, we now review the settlement agreement in more detail.

The ERA's implementing regulations provide that settlements "must be submitted for approval in accordance with" the regulations.³ Cases "may be settled if the participating parties agree to a settlement and the settlement is approved" by the ARB.⁴ Settlements the ARB approves "constitute the final order of the Secretary and may be enforced pursuant to § 24.113."⁵

We have reviewed the settlement to determine whether it is fair, adequate, and reasonable.⁶ The parties have certified that the agreement constitutes the sole and entire agreement between Ladd and BWCS. We note that while the settlement agreement encompasses the settlement of any and all claims Ladd had or could have had against BWCS up to the date of the settlement, the Board's authority over settlement agreements is limited to the statutes that are

³ 29 C.F.R. § 24.111(a).

⁴ 29 C.F.R. § 24.111(d)(2).

⁵ 29 C.F.R. § 24.111(e).

⁶ *Simon v. Exelon Nuclear Sec.*, ARB Nos. 13-095, 13-09; ALJ No. 2010-ERA-007, slip op. at 2 (ARB Nov. 22, 2013) (the Board's review of a settlement agreement is limited to ascertaining whether its terms fairly, adequately, and reasonably settle the cases over which we have jurisdiction) (citations omitted).

within the Board's jurisdiction as defined by the applicable statute. Therefore, we only approve the terms of the agreement pertaining to Ladd's two claims that are before us.⁷

While not a part of the agreement itself, the parties have requested in their Joint Motion to Approve Settlement that the Agreement be treated as confidential and privileged commercial and financial information within the meaning of Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2017), and that it be protected from public disclosure under FOIA except as permitted pursuant to 29 C.F.R. Part 70.26 (2017). We note that the parties' submissions, including the Agreement, become part of the record of the case and are subject to FOIA. FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure.⁸ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁹

Finally, the Settlement and Release Agreement provides that the Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky. We interpret this choice of law provision as not limiting the authority of the Secretary of Labor or any Federal court which shall be governed in all respects by the laws and regulations of the United States.¹⁰

We have carefully reviewed the parties' settlement agreement and find that it constitutes a fair, adequate, and reasonable settlement of Ladd's complaints and is not contrary to the public

⁷ See *Price v. Norfolk S. Ry. Co.*, ARB No. 12-020, ALJ No. 2010-FRS-017, slip op. at 2-3 (ARB Feb. 3, 2012).

⁸ *Bowie v. New Orleans Pub. Belt R.R.*, ARB No. 13-007, ALJ No. 2012-FRS-009, slip op. at 2-3 (ARB Mar. 27, 2013) (citation omitted).

⁹ 29 C.F.R. § 70 *et seq.*

¹⁰ See *Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

interest. Accordingly, with the exceptions set out above, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

LEONARD J. HOWIE III
Administrative Appeals Judge