



In the Matter of:

MICHAEL COLLINS,

ARB CASE NO. 10-097

COMPLAINANT,

ALJ CASE NO. 2006-SDW-003

v.

DATE: June 18, 2010

VILLAGE OF LYNCHBURG, OHIO,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul H. Tobias, Esq., *Tobias, Kruas & Torchia*, Cincinnati, Ohio

For the Respondent:

Fred J. Beery, Esq., Lynchburg Village Solicitor, Hillsboro, Ohio

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*, and Wayne C. Beyer, *Administrative Appeals Judge*

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

On March 30, 2009, the Administrative Review Board issued a final decision and order affirming the Administrative Law Judge's (ALJ's) Recommended Decision and Order in this case.¹ We concurred with the ALJ's determination that the Village of

¹ *Collins v. Village of Lynchburg, Ohio*, ARB No. 07-079, ALJ No. 2006-SDW-003 (ARB Mar. 30, 2009).

Lynchburg, Ohio violated the employee protection provisions of the Safe Drinking Water Act² when it terminated the employment of the complainant, Michael A. Collins.³ We also concurred with his award of back pay and compensatory damages.⁴ But we reversed his award of punitive damages.⁵ On June 30, 2009, we issued a decision affirming the ALJ's recommended Attorney Fee Order of \$69,643.84 in attorney's fees and costs for work performed before the ALJ.⁶

The Village of Lynchburg petitioned the United States Court of Appeals for the Sixth Circuit for review of the Board's merits and attorney's fees orders. On April 27, 2010, the court issued an order granting the parties' joint motion "for a **limited** remand of this cause to the Department of Labor's Administrative Review Board (ARB) for obtaining ARB review and approval of a Settlement Agreement between the Village of Lynchburg and the complainant in the administrative proceedings in the case, Mr. Michael Collins." The court retained jurisdiction of the Village of Lynchburg's appeal pending approval of the settlement agreement. On May 6, 2010, the Village of Lynchburg filed with the Board a Motion to Review and Approve a Settlement Agreement. On May 20, 2010, Collins filed Complainant's Response to Motion averring that he "states no objection to the motion to approve 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.⁷ "A copy of the settlement must be filed with the ALJ or the Board . . . as the case may be."⁸ A settlement under the SDWA cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest.⁹ Pursuant to well-established precedent, the Board will not dismiss a

² 42 U.S.C.A. § 300j-9(i) (Thomson/West 2003)(SDWA).

³ *Collins*, ARB No. 07-079, slip op. at 9.

⁴ *Id.* at 11.

⁵ *Id.*

⁶ *Collins v. Village of Lynchburg, Ohio*, ARB No. 09-040, ALJ No. 2006-SDW-003 (ARB June 30, 2009).

⁷ 29 C.F.R. § 24.111(d)(2) (2009).

⁸ *Id.*

⁹ *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).

complaint in which there is a settlement between the private parties unless the settlement is provided to the Board for its review and approval.¹⁰

Because the Village of Lynchburg has submitted the settlement agreement with a motion for its approval, and Collins has stated that he has no objection to Lynchburg's motion to approve the settlement agreement, we deem the terms of the settlement agreement unopposed and will review it in accordance with the applicable regulations.¹¹

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the SDWA.¹² 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, we approve the agreement only insofar as it pertains to Collins's SDWA claim in ARB Case Nos. 07-079, 09-040 and ALJ Case No. 2006-SDW-003, the cases currently before the Board in ARB Case No. 10-097.

The parties have certified that the Agreement constitutes the entire settlement with respect to Collins's SDWA claim.¹³ 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.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹⁰ 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. 1985-CAA-001, slip op. at 2 (ARB Mar. 20, 2007).

¹¹ See 29 C.F.R. § 24.111(d)(2).

¹² Full and Final Release and Settlement Agreement at paras. 1(b), 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).

¹³ Full and Final Release and Settlement Agreement at para. 4.