



In the Matter of:

JAMAL KANJ,

ARB CASE NO. 14-009

COMPLAINANT,

ALJ CASE NO. 2006-WPC-001

v.

DATE: December 19, 2013

**THE VIEJAS BAND OF KUMEYAAY
INDIANS,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Scott A. McMillan, Esq., *The McMillan Law Firm, APC*, La Mesa, California

For the Respondent:

George S. Howard, Jr., Esq.; *Jones Day*, San Diego, California

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

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

The Complainant, Jamal Kanj, filed a retaliation complaint under the employee protection provisions of the Federal Water Pollution Control Act (FWPCA, the Clean Water Act, or the CWA), and its implementing regulations. 42 U.S.C.A. § 1367 (West 2001); 29 C.F.R. Part 24 (2007). He alleged that his former employer, Viejas Band of Kumeyaay Indians (the Tribe), violated the FWPCA whistleblower protection provisions when it retaliated and discriminated against him because he complained about FWPCA violations. Complaint at 2

(Oct. 3, 2005). The ALJ dismissed the case after a hearing on the merits. The Administrative Review Board (the ARB or the Board) affirmed the ALJ's Decision and Order (D. & O.).

The Tribe appealed the Board's decision to the Ninth Circuit Court of Appeals. While the case was before the Ninth Circuit, the parties reached a settlement. The Ninth Circuit entered an order of remand to the ARB for purposes of reviewing the settlement agreement. Thereafter, the parties submitted the settlement agreement to the ALJ for review.

The FWPCA's implementing regulations provide that "[p]arties to settlements under the Federal Water Pollution Control Act . . . are encouraged to submit their settlements for approval." 29 C.F.R. § 24.111(a). Settlements that are approved by the ARB "constitute the final order of the Secretary and may be enforced pursuant to § 24.113." 29 C.F.R. § 24.111(e).

We have reviewed the settlement to determine whether it is fair, adequate, and reasonable. See *Beliveau v. Naval Undersea Warfare Ctr.*, ARB Nos. 00-073, 01-017, 01-019; ALJ Nos. 1997-SDW-001, -004, -006; slip op. at 2 (ARB Nov. 30, 2000) (the Board's review of a settlement agreement is restricted to ascertaining whether the terms of the settlement are a fair, adequate, and reasonable settlement of the complainant's allegations that the respondent violated the whistleblower provisions of a statute) (citation omitted).

We note that while the settlement agreement encompasses the settlement of any and all claims Kanj had or could have had against the Tribe up to the date of the settlement, 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. Therefore, we only approve the terms of the agreement pertaining to Kanj's current case. *Price v. Norfolk Southern Ry. Co.*, ARB No. 12-020, ALJ No. 2010-FRS-017, slip op. at 1 (ARB Feb. 3, 2012).

We also note that while the Settlement Agreement and Release provides that the settlement terms will be maintained in confidence, the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2013). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure. *Bowie v. New Orleans Public Belt R.R.*, ARB No. 13-007, ALJ No. 2012-FRS-009, slip op. at 1 (ARB Mar. 27, 2013) (citation omitted). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. 29 C.F.R. § 70 *et seq.* (2013).

We have reviewed the parties' settlement agreement and find that it constitutes a fair, adequate, and reasonable settlement of Kanj's complaint and its written terms do not contravene

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

LUIS A. CORCHADO
Administrative Appeals Judge