U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

In the Matter of:

KIRTLEY CLEM and MATTHEW SPENCER,

COMPLAINANTS,

v.

COMPUTER SCIENCES CORPORATION,

RESPONDENT.

ARB CASE NO. 2020-0025

ALJ CASE NO. 2015-ERA-00003
2015-ERA-00004

DATE: May 16, 2022

Appearances:

For the Complainants:
Stephani L. Ayers, Esq.; *T M Guyer and Ayers & Friends, PC*; Medford Oregon; Nikolas F. Peterson, Esq.; *Hanford Challenge*; Seattle, Washington

For the Respondent:
Rachel E. Linzy, Esq. and Samuel Zurik III, Esq.; *The Kullman Firm*; New Orleans, Louisiana

Before: James D. McGinley, *Chief Administrative Appeals Judge*; Thomas H. Burrell and Randel K. Johnson, *Administrative Appeals Judges*

DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING CASE WITH PREJUDICE

PER CURIAM. This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (2005), as implemented by regulations codified at 29 C.F.R. Part 24 (2020). Kirtley Clem and Matthew Spencer (Complainants)

filed complaints alleging that their former employer, Computer Sciences Corporation (Respondent), now named General Dynamics Information Technology, Inc., violated the whistleblower protection provisions of the ERA. Consolidating the appeals, the Administrative Law Judge (ALJ) found for Complainants and awarded damages. Respondent appealed the ALJ's decision, and the Administrative Review Board (Board) vacated and remanded with instructions for the ALJ. On remand, the ALJ again found for Complainants and awarded damages. Respondent again appealed the ALJ's decision. On March 10, 2021, the Board affirmed the ALJ's decision.

Respondent petitioned the United States Court of Appeals for the Ninth Circuit for review of the Board's decision. Through the Ninth Circuit's mediation program, Complainants and Respondent reached a settlement agreement on February 28, 2022.

On May 11, 2022, the parties filed a Joint Motion to ARB to Review and Approve Settlement Agreement between the Parties and Voluntarily Dismiss Complainants' Complaint with the Board, stating that the parties had settled the litigation agreed to dismiss the case with prejudice pursuant to the terms of a Settlement Agreement and Release of All Claims (Agreement). The parties request the Board to approve the Agreement and dismiss the case with prejudice. The parties attached a signed copy of the Agreement to the motion.

The ERA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order and petitions the Board for review, the case may be settled if the participating parties agree to a settlement and the Board has accepted the case for review and approves the agreement.[1]

Review of the Agreement reveals that it encompasses 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 delegation of authority.[2] Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this ERA case over which we have jurisdiction.[3]

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[1] 29 C.F.R. § 24.111(d)(2) (2021).

[2] *Ladd v. Babcock & Wilcox Conversion Servs.*, ARB Nos. 2017-0019, -0020, -0065, ALJ Nos. 2013-ERA-00010, 2016-ERA-00005, slip op. at 2-3 (ARB June 19, 2018).

[3] *Id.* at 3.

The Agreement contains a confidentiality clause.[4] The Board notes that the parties' submissions, including the Agreement, become part of the record and are subject to the Freedom of Information Act (FOIA).[5] The FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[6] Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.[7]

The Agreement also provides that it shall be governed by the laws of the State of Washington, to the extent not pre-empted by federal law. We construe this provision as not limiting the authority of the Secretary of Labor, the Board, and any federal court with regard to any issue arising under ERA, which authority shall be governed in all respects by the laws and regulations of the United States.[8]

The Board concludes that the Agreement between Complainant and Respondent is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, we **APPROVE** the Agreement and **DISMISS** the complaints with prejudice.

SO ORDERED.

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[4] The parties stipulate that the Agreement allows Complainants, either voluntarily or pursuant to order or subpoena, to communicate with or provide information to state and federal authorities about suspected violations of law. If the confidentiality clause was interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable "gag" provision. *Helgeson v. Soo Line R.R. Co.*, ARB No. 2019-0054, ALJ No. 2016-FRS-00084, slip op. at 3 (ARB Jan. 13, 2021).

[5] 5 U.S.C. § 552 (2016).

[6] *Ladd*, ARB Nos. 2017-0019, -0020, -0065, slip op. at 3.

[7] 29 C.F.R. Part 70 (2017).

[8] *Simon v. Exelon Nuclear Sec.*, ARB Nos. 2013-0095, -0096, ALJ No. 2010-ERA-00007, slip op. at 2 (ARB Nov. 22, 2013).