

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DEPARTMENT OF COMMERCE,
Agency,

v.

HUGH J. DOLAN,
Respondent.

DOCKET NUMBER
HQ75219010050

DATE: OCT 25 1990

Administrative Law Judge, Washington, D.C., pro se.

Carol Anning, Esquire, Washington, D.C., for the
agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Jessica L. Parks, Member

OPINION AND ORDER

The Board has under consideration the Recommended Decision of Administrative Law Judge Jalette (Judge Jalette) in this proceeding initiated by the Department of Commerce against the respondent.¹ Judge Jalette recommends that the Board find good cause for the agency's proposed furlough of not more than 22 workdays and that the Board authorize the agency to proceed with the furlough. The Board ADOPTS the Recommended Decision.

On September 4, 1990, the Department of Commerce (agency) filed a complaint pursuant to 5 U.S.C. § 7521 and 5 C.F.R. §§ 1201.131-1201.136 proposing to furlough the agency's only administrative law judge for a period not to

¹ The Respondent is the agency's only administrative law judge.

exceed 30 calendar days beginning no earlier than October 1, 1990, due solely to budgetary reasons. The complaint was initiated to ensure the agency's compliance with the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (the Gramm-Rudman-Hollings Act).² The agency's complaint stated that "the initial sequester order of August 25, 1990, results in a level of funding significantly less than the current level for the period October 1-15, 1990."³ The complaint stated that the agency proposed the action in order to avoid a deficit of funds in fiscal year 1991 and a violation of the Anti-Deficiency Act because maintaining the present rate of spending would result in an expenditure of funds in excess of the Department's authorized budget.

On September 11, 1990, Administrative Law Judge Reidy issued a Notice and Order scheduling a hearing for September 28, 1990. Subsequent to the issuance of this notice, the parties entered into a Settlement Agreement which resolved all issues arising from the complaint. The parties agreed: that the respondent waived the right to a hearing in this matter; that the furlough at issue was proposed for budgetary reasons and involved no allegations by the agency of wrongdoing or impropriety by the respondent; that the respondent agreed to a voluntary furlough for the same

² The relevant sections of the Gramm-Rudman-Hollings Act are codified at 2 U.S.C. §§ 901-22 (1988).

³ The complaint also stated that a final sequester order due to be issued on October 15, 1990, may result in sequestration of funding beyond October 15.

number of days and to be taken simultaneously with the furlough of non-judge employees of the Department of Commerce, Office of the Assistant Secretary of Administration, and that the voluntary furlough would be for no more than 22 workdays, served intermittently, beginning no earlier than October 1, 1990, and ending no later than December 31, 1990.

The respondent further agreed that he would not initiate any legal action to challenge the furlough that is the subject of the agreement, nor attempt to recover any lost pay as a result of the furlough. The parties further agreed that in the event Congress should pass legislation enabling Federal agencies to reimburse employees for pay lost as a result of the furlough, the agency would reimburse the respondent to the same extent that other employees of the Department of Commerce are reimbursed. The agency agreed to withdraw its complaint with regard to the respondent. The respondent was given until October 11, 1990 to file exceptions. However, no exceptions were filed.

Judge Jalette found that the agreement was entered into freely and that it is lawful and recommended that the Board approve the settlement agreement and issue an order dismissing the complaint.

Pursuant to 5 U.S.C. § 7521, the Board has jurisdiction over the agency's complaint which proposes to furlough the

respondent for 30 days or less.⁴ The Board favors the settlement of actions between an agency and its employees, including those actions initiated by the employing agency against one of its administrative law judges. *Social Sec. Admin., Department of Health and Human Services v. Givens*, 27 M.S.P.R. 360, 362 (1985). The Board will approve a settlement agreement where it was entered into freely and is not unlawful. *Social Sec. Admin., Department of Health and Human Services v. Pucci*, 27 M.S.P.R. 358, 359 (1985). Here, we find that the respondent and the agency entered into the settlement agreement freely; and, that the settlement agreement is consistent with law, equity and public policy, as well as legal on its face. Further, we find that the settlement agreement resolves all matters involved in the present complaint.⁵ Accordingly, the Board ADOPTS the Recommended Decision and DISMISSES the complaint.

⁴ Section 7521 reads:

(a) An action may be taken against an administrative law judge under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board. (b) The actions covered by this section are -- ...
(5) a furlough of 30 days or less.

⁵ The settlement agreement has not been entered into the record for enforcement purposes as neither party has so requested.

This is the final decision of the Merit Systems Protection Board. Judicial review may be sought in accordance with the provisions of 5 U.S.C. § 7703.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.