

USDOL/OALJ Reporter

Rhyne v. Brand Utilities Services, Inc., 94-ERA-33 and 45 (ALJ May 15, 1995)

DATE: May 15, 1995
CASE NOS.: 94-ERA-33; 94-ERA-45

In the Matter of:

JAMES E. RHYNE,
Complainant,

v.

BRAND UTILITY SERVICES, INC.,
VECTRA SERVICES, INC. AND
ENTERGY OPERATIONS, INC.,
Respondent.

Richard L. Peel, Esquire
Stephen M. Kohn, Esquire
For the Complainant

Byron L. Freeland, Esquire
Ramon Martinez, Jr., Esquire
For Respondent Brand Utility

Robin L. Nielsen, Esquire
For Respondent Vectra Services

Doug Levanway, Esquire
For Respondent Entergy Operations, Inc.

Before: STEVEN E. HALPERN, Administrative Law Judge

DECISION AND ORDER - RECOMMENDED

This is a proceeding under the Employee Protection Provision of the Energy Reorganization Act, as amended, 42 U.S.C. § 5851 (1988).

Judging from the pre-trial submissions and the general tenor of the proceeding as hearing approached, it was evident that the parties were prepared to vigorously litigate this matter in a lengthy hearing with an uncertain outcome and a probable appeal. While prior negotiations had not been availing, some two and one-half hours of negotiations among the six attorneys involved in this matter at the courthouse on the morning of the November 21, 1994, hearing in Little Rock, Arkansas resulted in an amicable resolution of the dispute.

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On February 3, 1995, there was filed in the undersigned's office a Settlement Agreement dated December 28, 1994, executed by complainant and his attorney, as well as by representatives of all corporate respondents and their attorneys.

On February 9, 1995, I issued an order finding certain language set forth at item 9B of the Settlement Agreement to be unacceptable. Pursuant to the terms of item 11 of the Agreement, said language was non-severable.

The parties have now[1] submitted a Settlement Agreement Addendum striking the language which I had found unacceptable and substituting therefor, as item (2) of said Addendum, language which is no less offensive than that previously disapproved.

Specifically, in the light of the terms and intent of item (5) of the Settlement Agreement and item (3) of the Settlement Agreement Addendum, I find said language to be misleading and therefore against public policy. Accordingly, I recommend that the Secretary not endorse said language, which also appears in the ultimate sentence of the Exhibit 2 to the Settlement Agreement. Fortunately, however, pursuant to item (4) of the Settlement Agreement Addendum, the parties have now made said language severable.

Complainant is represented by two attorneys, each of whom

has displayed a high level of competence, expertise, and diligence. I have no doubt that the settlement arrived at is in the best of interest of their client. And, given the obvious high caliber of all counsel for the respondents herein, I also have no doubt that the terms agreed upon are in the best interests of their respective clients.

Under all of the circumstances, with the offensive language stricken, I find that the terms of the Settlement Agreement/Settlement Agreement Addendum constitute a fair, adequate, and reasonable settlement of this matter. The fee to complainant's attorneys is disclosed in co-counsel's March 27, 1995, letter.

Accordingly, I RECOMMEND that the agreement, as accepted herein, be approved by the Secretary, and that the Secretary take the action requested at items (2) and (3) of the joint Motion appended to the Settlement Agreement as Exhibit 1, including dismissal of the complaint with prejudice.

SO ORDERED.

STEVEN E. HALPERN
Administrative Law Judge

[ENDNOTES]

[1] Four copies of said Addendum, each bearing different original signatures have been submitted as follows: a copy executed by complainant and his counsel on March 23, 1995; a copy executed by counsel for Vectra Services, Inc., on April 20, 1995; a copy executed by a representative of Brand Utility Services, Inc., on May 1, 1995; a copy executed by counsel for Entergy operations, Inc., on May 8, 1995.

In view of certain confidentiality provisions the Settlement Agreement and Settlement Agreement Addendum are transmitted with but are not appended to this Recommended Decision and Order, nor are any of the terms of those instruments set forth herein.