

## § 1978.112

of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order shall begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(d)(1) *Investigative settlements.* At any time after the filing of a section 405 complaint by an employee and before the finding and/or order are objected to, or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlement.* At 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 Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ or the Administrative Review Board, United States Department of Labor as the case may be.

(3) If, under paragraph (d)(1) or (2) of this section the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in §1978.107(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Sec-

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retary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his or her decision in writing and, if the case is before the administrative law judge, or the Administrative Review Board, United States Department of Labor on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in §1978.107(b).

[53 FR 47681, Nov. 25, 1988, as amended at 61 FR 19986, May 3, 1996]

### MISCELLANEOUS PROVISIONS

#### § 1978.112 Arbitration or other proceedings.

(a) *General.* (1) An employee who files a complaint under section 405 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 405 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may proceed with the investigation and the issuance of findings and orders regardless of the pendency of other proceedings.

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 405 complaints.

(3) Where complainant is in fact pursuing remedies other than those provided by section 405, the Secretary may, in his or her discretion, postpone a determination of the section 405 complaint and defer to the results of such proceedings.

(b) *Postponement of determination.* When a complaint is under investigation pursuant to §1978.103, postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 405 and those proceedings are not likely to violate rights guaranteed by section 405. The factual issues in such proceedings must be substantially the same as those raised by a section 405 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(c) *Deferral to outcome of other proceedings.* A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before the Assistant Secretary or the Secretary defers to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 405 complaint.

#### § 1978.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to occur.

#### § 1978.114 Statutory time periods.

The time requirements imposed on the Secretary by these regulations are directory in nature. While every effort will be made to meet these requirements, there may be instances when it is not possible to meet these requirements. Failure to meet these requirements does not invalidate any action

by the Assistant Secretary or Secretary under section 405.

#### § 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the judge or the Secretary on review may, upon application, after three days notice to all parties and intervenors, waive any rule or issue such orders as justice or the administration of section 405 requires.

### PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

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AUTHORITY: 49 U.S.C. 42121; Secretary of Labor's Order 5-2002, 67 FR 65008 (October 22, 2002).

SOURCE: 68 FR 14107, Mar. 21, 2003, unless otherwise noted.