



**In the Matter of:**

**COLEEN L. POWERS,**

**ARB CASE NO. 04-111**

**COMPLAINANT,**

**ALJ CASE NO. 2004-AIR-019**

**v.**

**DATE: March 14, 2008**

**PAPER, ALLIED-INDUSTRIAL,  
CHEMICAL & ENERGY  
WORKERS INTERNATIONAL  
UNION (PACE),**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**ORDER**

On August 31, 2007, the Administrative Review Board (ARB) issued an Order of Remand in a complaint Coleen L. Powers filed under the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21),<sup>1</sup> the Sarbanes-Oxley Act of 2002 (SOX),<sup>2</sup> and six environmental acts.<sup>3</sup> In its order, the ARB vacated the ALJ's dismissal of Powers's complaint and specifically

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<sup>1</sup> 49 U.S.C.A. § 42121 (West Supp. 2006).

<sup>2</sup> 18 U.S.C.A. § 1514A (West 2006).

<sup>3</sup> The Toxic Substances Control Act (TSCA), 15 U.S.C.A. § 2622 (West 1998); the Federal Water Pollution Control Act (FWPCA), 33 U.S.C.A. § 1367 (West 2001); the Safe Drinking Water Act (SDWA), 42 U.S.C.A. § 300j-9 (West 2003); the Clean Air Act (CAA), 42 U.S.C.A. § 7622 (West 2003); the Solid Waste Disposal Act (SWDA), also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. § 6971 (West 2003); and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. § 9610 (West 2005).

instructed the ALJ to afford all the named respondents an opportunity to respond to the complaint and to determine whether the complaint states a claim. *Powers v. Paper, Allied-Industrial Chemical & Energy Workers International Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-019, slip op. at 18 (ARB Aug. 31, 2007).

On October 4, 2007, Powers filed a Motion to Amend the August 31, 2007 Order of Remand (Petition), and on November 3, 2007, Powers filed a further pleading styled “Supplemental Responses to ARB’s August 31, 2007 ‘Order of Remand’” (Supplemental Petition). The ARB construed these pleadings as a motion for reconsideration.

On December 21, 2007, the ARB issued an Order Granting Reconsideration in Part, which dismissed Powers’s SOX claim and revised the August 31, 2007 Order of Remand to eliminate references to the SOX. *Powers v. Paper, Allied-Industrial Chemical & Energy Workers International Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-019 (ARB Dec. 21, 2007)

On February 24, 2008, Powers filed a further pleading entitled: (1) Repeated Oct. 4, 2007, Oct. 7, 2007, and November 3, 2007 Motions for Mandatory Judicial Notice of Law and 7<sup>th</sup> Amendment Constitutional Challenges; (2) Objections & Accompanying Motion to Amend the erroneous, *dateless* US DOL ARB paper titled, “*Order Granting Reconsideration in Part*” [sic]; (*First Rec’d Notice of Via Cert. Mail, Return Receipt Requested, on Jan. 04, 2008*); (3) Concerns, Objections, and Motion for Clarification of US DOL ARB’s *dateless* AMENDED (“Revised”) “ORDER OF REMAND” (Rec’d via Cert. Mail Jan. 04, 2008); (4) Renewed May 12, 2004 and October 12, 2004 Motions for Reassignment to Different ALJ as a Matter of Constitutional Due Process; and (5) Response in Opposition to PACE/USW January 2008 Motion Titled, “Motion Requesting Documents Pertaining To and Clarification ...”

This pleading consists of a series of motions, nearly all of which have been addressed in the ARB’s previous two decisions. We decline to consider yet again Powers’s various so-called arguments and admonitions that we take “mandatory judicial notice of law” and amend our two decisions in this case according to her ideas of how those decisions should have been issued. We nonetheless note that none of her contentions, statements, opinions, and conclusions has any relevance to the posture of her complaint, which has been remanded to the ALJ for further proceedings.

We have discussed Powers’s motion for recusal of the ALJ, *Powers*, slip op. at 16-17 (Aug. 31, 2007), and any renewal of that motion is properly before the ALJ, as are her numerous other motions regarding discovery and service. The bankruptcy proceedings that delayed the ARB’s consideration of Powers’s case for almost a year are no longer an issue. *Powers*, slip op. at 2 (Aug. 31, 2007). Finally, the ARB properly severed only the SOX portion of Powers’s complaint in its December 21, 2007 decision. See *Powers v. NWA, Inc.*, No. 05-2468, 2008 WL 553237 (W.D. Tenn. Feb. 28, 2008) (court dismisses complaint for failure to follow filing restrictions but permits Powers to proceed with SOX claim that was removed pursuant to 18 U.S.C.A. § 1514A(B)(1)(B) and 29 C.F.R. § 1980.114(a), its implementing regulation).

We note that Powers continually refers to ARB case number 04-083 in her pleading. The ARB dismissed Powers's interlocutory appeal, ARB No. 04-083, as moot on July 30, 2004 because Powers's appeal of the ALJ's May 7, 2004 dismissal of her complaint was then pending before the Board as ARB case number 04-111. ARB No. 04-083 is not part of this case and should not be cited. *See Powers*, slip op. at 2 n.3 (Aug. 21, 2007).

Finally, in the interests of judicial economy, the ARB will accept no further pleadings from Powers in this case until after the ALJ has issued her decision on remand. *See Seater v. Southern Cal. Edison Co.*, ARB No. 96-013, ALJ No. 1995-ERA-013, slip op. at 2 n.3 (ARB Oct. 29, 1999) (ARB declines to address the specific of complainant's motions in the interest of judicial economy).

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

**Janet R. Dunlop**  
**General Counsel**