



In the Matter of:

**CARI HAWKINS-WILLIAMS,
DARREN WILLIAMS,
MICHAEL HAWKINS,**

ARB CASE NO. 08-013

**ALJ CASE NOS. 2007-STA-016
2007-STA-017
2007-STA-020**

COMPLAINANTS,

v.

DATE: January 31, 2008

**AERO CONSTRUCTION/PACIFIC
COMMERCIAL EQUIPMENT, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (STAA) of 1982.¹ On October 17, 2007, the parties submitted a Settlement Agreement and Release of All Claims signed by the Complainants, Cari-Hawkins-Williams, Darren Williams, and Michael Hawkins, and the Respondent, Aero Construction/Pacific Commercial Equipment, Inc., to a Department of Labor Administrative Law Judge (ALJ). Under the regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ."² The

¹ 49 U.S.C.A. § 31105 (West 2007).

² 29 C.F.R. § 1978.111(d)(2) (2007).

regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be.”³

When the parties reached settlements the cases were pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreements. On October 23, 2007, the ALJ issued a Recommended Order Approving Settlement in each case. According to the STAA’s implementing regulations, the Administrative Review Board (ARB or Board) issues the final decision and order in these cases.⁴

The Board consolidated the cases for decision and issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ’s recommended decisions on November 7, 2007.⁵ On November 19, 2007, the parties jointly filed a letter informing the Board that none of the parties intended to file a brief. We therefore deem the settlements unopposed under the terms of the Settlement Agreement and Release of All Claims in each case.

Review of the agreements reveals that they may encompass the settlement of matters under laws other than the STAA⁶ and reference cases other than ARB No. 08-013, 2007-STA-016, -017, and -020, the cases currently before the Board.⁷ The Board’s authority over settlement agreements is limited to the statutes that are within the Board’s jurisdiction as defined by the applicable statute. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreements pertaining to the Complainants’ STAA claim ARB No. 08-013, 2007-STA-016, -017, and -020.⁸

Additionally, the agreements provide that the parties shall keep the terms of the settlements confidential.⁹ The Board notes that the parties’ submissions, including the agreements, become part of the record of the case and are subject to the Freedom of

³ *Id.*

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 2000-STA-017 (ARB May 30, 2001).

⁵ 29 C.F.R. § 1978.109(c)(2) (2007).

⁶ Settlement Agreement and Release of All Claims para. 3.

⁷ Settlement Agreement and Release of All Claims prefatory para.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Settlement Agreement and Release of All Claims para. 7.

Information Act (FOIA), 5 U.S.C.A. § 552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.¹¹

Furthermore, if the provisions in paragraph 11 of the Settlement Agreements were to preclude the Complainants from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.¹²

Finally, paragraph 14 provides that the agreement shall be governed and construed under the laws of the state of Washington. We construe this choice of law provision as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States.¹³

The Board finds that the settlements are fair, adequate and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of the Complainants’ STAA claims, we **APPROVE** the agreements and **DISMISS** the complaints with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹⁰ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

¹¹ 29 C.F.R. § 70 *et seq.* (2007).

¹² *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Sec’y, U. S.. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action).

¹³ *See Phillips v. Citizens’ Ass’n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec’y Nov. 4, 1991).