



In the Matter of:

CHARLES K. PFINGSTEN,

ARB CASE NO. 08-047

COMPLAINANT,

ALJ CASE NO. 2008-STA-004

v.

DATE: February 28, 2008

**COUNTY MATERIALS
CORPORATION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Jason A. Kunschke, Michael Best & Friedrich, LLP, Milwaukee, Wisconsin

**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 January 17, 2008, the parties submitted to a Department of Labor Administrative Law Judge (ALJ) an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice and Confidential Settlement and Release of Claims. The Confidential Settlement was signed by the Complainant, Charles K. Pfingsten, and Kerry A Laabs, the Risk Manager for the Respondent, County Materials Corporation.

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

¹ 49 U.S.C.A. § 31105 (West 2007).

Administrative Review Board . . . or the ALJ.”² The 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 settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On January 25, 2008, the ALJ issued a Recommended Order Approving Settlement and Dismissing Complaint (R. D. & O.). 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 issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ’s recommended decision.⁵ The Respondent replied to the Notice indicating that it agreed with the ALJ’s R. D. & O. and did not intend to file a brief. Pfingsten did not reply to the Board’s Notice. We therefore deem the settlement unopposed under the terms of the Confidential Settlement Agreement and Release of Claims.

Review of the agreement reveals that it encompasses the settlement of matters under laws other than the STAA.⁶ 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 agreement pertaining to Pfingsten’s STAA claim ARB No. 08-047, 2008-STA-004.⁷

Furthermore, if the provisions in paragraphs E and L of the Confidential Settlement Agreement were to preclude Pfingsten from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.⁸

² 29 C.F.R. § 1978.111(d)(2) (2007).

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 Confidential Settlement Agreement and Release of Claims para. B.

⁷ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

Finally, paragraph N provides that the agreement shall be governed and construed under the laws of the state of Wisconsin. 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.⁹

The Board finds that the settlement is fair, adequate and reasonable. Accordingly, as construed and with the reservations noted above limiting our approval to the settlement of the Pfingsten's STAA claims, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

⁸ *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).

⁹ *See Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).