



Issue Date: 23 October 2007

CASE NO.: 2007-STA-00020

MICHAEL HAWKINS,  
*Complainant,*

V.

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

**RECOMMENDED ORDER APPROVING SETTLEMENT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003), and the implementing regulations at 29 C.F.R. Part 1978 (2004). The parties, on October 17, 2007, filed a Joint Motion to Approve Settlement and Confidential Settlement and Release Agreement in accordance with 29 C.F.R. § 1978.111(d)(2). The Agreement resolves the controversy arising from the complaint of Michael Hawkins under the statute. The parties have filed a request for approval of their settlement agreement and dismissal of the complaint with prejudice.

Pursuant to section 31105(b)(2)(C) of the STAA, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. §1978.111(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board as the case may be." *Id.*

I have carefully reviewed the parties' settlement agreement and have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

Part 14.A. of the Confidential Settlement and Release Agreement provides that the agreement shall be governed and construed under the laws of the State of Washington. This choice of law provision is construed 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. See *Phillips v. Citizens. Ass.n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec.y Nov. 4, 1991).

The agreement encompasses the settlement of matters under laws other than the STAA. See para. 4 of Settlement Agreement. The Department's approval authority over settlement agreements is limited to such statutes as are within the Department's jurisdiction and is defined by the applicable statute. Therefore, I can only recommend approval of the terms of the agreement pertaining to the Complainant's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (ARB Apr. 30, 2003).

Paragraph 8 of the settlement agreement provides that both parties will keep the existence and terms of the settlement agreement confidential. Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the case, including the settlement agreement, become a part of the record in this case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

Accordingly, **IT IS HEREBY RECOMMENDED** that:

- (1) the parties' Settlement Agreement be approved; and
- (2) the above-captioned complaint be dismissed with prejudice.

A

Russell D. Pulver  
Administrative Law Judge

*San Francisco, California*

**NOTICE:** This Recommended Order Approving Settlement and the administrative file in this matter will be forwarded to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, for entry of a Final Order. *See* 29 C.F.R. § 1978.109(a) and 1978.109(c). The parties may file with the Administrative Review Board briefs in support of or in opposition to Recommended Order Approving Settlement within thirty days of the issuance of this Recommended Decision unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).