



Issue Date: 24 September 2004

Case No.: 2004-STA-41

In the Matter of:

RICKY L. FISHER
Complainant

v.

BUCKEYE STATE LOGISTICS, INC.
Respondent

**RECOMMENDED DECISION AND ORDER
GRANTING WITHDRAWAL OF COMPLAINT**

A hearing was scheduled in the above-styled matter for **September 28, 2004**, in the U.S. District Court, Columbus, Ohio, pursuant to a **Notice of Hearing** I issued on **April 30, 2004**. On September 24, 2004, new counsel for the Complainant submitted an unopposed Motion to Dismiss Hearing. Complainant requests withdrawal of objections to the Assistant Secretary's findings based upon advice of his counsel.

Withdrawal of objections to the Assistant Secretary's findings or order are permitted, under 29 C.F.R. § 1978.111. When permitted, the judge or Board "shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn." *Id.* The regulation distinguishes this procedure from requests for withdrawal made at an earlier point in the proceeding. However, the regulation does not appear to explicitly preclude judges granting overall withdrawal of the complaint, as subsection 1978.111(c) permits withdrawal of objections. Withdrawal of objections as opposed to withdrawal of the complaint, requires affirmance of the now uncontested findings.

Based on the foregoing, I interpret the complainant's motion as one to withdrawal of objections. Thus, I must affirm the Secretary's April, 2004, Findings, reflecting dismissal of the complaint.

ORDER

WHEREFORE, IT IS ORDERED THAT:

1. The scheduled hearing is cancelled;
2. The Complainant's Motion to Dismiss Hearing is granted; and,

3. The Secretary's April, 2004 Findings are affirmed.

A

RICHARD A. MORGAN
Administrative Law Judge