



**In the Matter of:**

**PATRICK NORTON,**

**ARB CASE NO. 08-079**

**COMPLAINANT,**

**ALJ CASE NOS. 2007-STA-35  
2007-STA-36**

**v.**

**DATE: May 30, 2008**

**UNI-GROUP, INC., UNITED VAN LINES  
and JOHNSON CHERRY CREEK, LLC,**

**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.<sup>1</sup> In March of 2008, the Complainant, Patrick Norton submitted to a Department of Labor Administrative Law Judge (ALJ), (1) the Settlement Agreement and Release signed by Norton and the Respondents United Van Lines, LLC and UNI-Group, Inc.; (2) the Confidential Settlement Agreement & Release of Claims signed by Norton and the Respondent Johnson Cherry Creek, LLC; and (3) unopposed motions to approve these settlements and to dismiss Norton's complaints in 2007-STA-035 and 2007-STA-036.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2007). The STAA has been amended since Norton filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments are applicable to this complaint because even if the amendments applied to this complaint, they are not implicated by the settlement at issue here and thus would not affect our decision.

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.”<sup>2</sup> 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.”<sup>3</sup>

When the parties reached settlement, the cases were pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreements. On April 8, 2008, the ALJ issued a Recommended Order Approving Settlement Agreement in “[t]hese consolidated cases.”<sup>4</sup> The ALJ recommended that the Administrative Review Board (ARB or Board) approve the settlement agreements and dismiss “the consolidated complaints.”<sup>5</sup> According to the STAA’s implementing regulations, the ARB issues the final decision and order in these cases.<sup>6</sup>

The Board issued on April 15, 2008, a Notice of Intent to Review and Briefing Schedule, apprising the parties of their right to submit briefs supporting or opposing the ALJ’s recommended order.<sup>7</sup> On April 16, 2008, Norton filed a statement in support of the ALJ’s recommended order. The Respondents did not respond to the Board’s notice. We therefore deem the settlements unopposed under the terms of the agreement in each case.

Review of the agreements reveals that they may encompass the settlement of matters under laws other than the STAA and reference cases other than ARB No. 08-079, 2007-STA-035 and -036, the cases currently before the Board.<sup>8</sup> 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, this authority is limited to

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<sup>2</sup> 29 C.F.R. § 1978.111(d)(2) (2007).

<sup>3</sup> *Id.*

<sup>4</sup> Recommended Order Approving Settlement Agreement at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> 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).

<sup>7</sup> 29 C.F.R. § 1978.109(c)(2) (2007).

<sup>8</sup> Confidential Settlement Agreement & Release of Claims para. C.; Settlement Agreement and Release para. 2.

cases over which we have jurisdiction. Therefore, we approve only the terms of the agreements pertaining to Norton's complaints in STAA claim ARB No. 08-079, 2007-STA-035 and -036.<sup>9</sup>

Additionally, the Confidential Settlement Agreement & Release of Claims provides that the parties shall keep the terms of the settlement confidential.<sup>10</sup> 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 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.<sup>11</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>12</sup>

Furthermore, if the provisions in paragraphs F. and M. of the Confidential Settlement Agreement & Release of Claims and paragraph 4. of the Settlement Agreement and Release were to preclude Norton from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.<sup>13</sup>

Finally, Paragraph O. of the Confidential Settlement Agreement & Release of Claims and paragraph 6. of the Settlement Agreement and Release provide that the agreements shall be governed and construed, respectively, under the laws of the State of Colorado and the State of Arkansas. We construe these "choice of law" provisions 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.<sup>14</sup>

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<sup>9</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>10</sup> Confidential Settlement Agreement & Release of Claims para. H.

<sup>11</sup> *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).

<sup>12</sup> 29 C.F.R. § 70 *et seq.* (2007).

<sup>13</sup> *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, United States 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).

<sup>14</sup> *See Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The Board finds that the settlements are fair, adequate, and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of Norton's 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**