**In the Matter of:**

**RONALD MANN,** **ARB CASE NO. 09-017**

**COMPLAINANT,** **ALJ CASE NO. 2008-STA-027**

**v.** **DATE: December 31, 2008**

**SCHWAN'S FOOD COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

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

Ronald Mann complained that Schwan's Food Company violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified,[1] and its implementing regulations,[2] when it terminated his employment in retaliation for complaints about Schwan's truck repair procedures. After an investigation, the Occupational Safety and Health Administration (OSHA) found that Mann's complaint was meritless.[3] Mann objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).[4]

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[1] 49 U.S.C.A. § 31105 (West 2008). STAA Section 405 provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. Congress has amended the STAA since Mann 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 would apply to this case, because even if the amendments applied, the amended provisions are not at issue in this case and thus the amendments would not affect our decision.

[2] 29 C.F.R. Part 1978 (2007).

[3] *See* 29 C.F.R. § 1978.102.

[4] *See* 29 C.F.R. § 1978.105.

On September 8, 2008, the ALJ received a letter advising him that the parties had "reached a resolution" and that there was no need for a hearing. The letter further indicated that Mann's counsel would shortly be filing a Withdrawal of Objections and Notice of Dismissal. Mann's counsel filed Complainant's Request for Dismissal on October 7, 2008. Accompanying the Request was a letter indicating that Mann had negotiated a settlement agreement with Schwan's and that the ALJ must dismiss the complaint "before the terms favorable to him in that agreement can be applied." Pursuant to the ALJ's request, Mann's counsel provided a copy of the settlement to the ALJ on October 16, 2008. On October 29, 2008, the ALJ issued a Recommended Order Approving Withdrawal of Objection and Dismissing Claim (R. D. & O.) The ALJ's R. D. & O. neither acknowledged that the parties had entered into a settlement, nor did the ALJ approve the settlement as required by the STAA's implementing regulations.[5]

The ALJ forwarded his recommended order and the administrative record to the Administrative Review Board to issue a final administrative decision.[6] The Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ's order.[7] In response, Mann's counsel notified the Board that the case had been settled.

Parties may terminate litigation by entering into an adjudicatory settlement "at any time after the filing of objections to the Assistant Secretary's findings and/or order . . . if the participating parties agree to a settlement **and such settlement is approved by the Administrative Review Board . . . or the ALJ.** A copy of the settlement shall be filed with the ALJ or the Administrative Review Board . . . as the case may be."[8] Although the parties ultimately provided the settlement at the ALJ's request, the R. D. & O. does not approve the settlement. Perhaps hoping to keep the settlement confidential, the parties (and the ALJ) concluded that the regulations' requirement of settlement approval were inapplicable if Mann withdrew his objections to the Secretary's findings.[9] However, "[i]n keeping with the statute, a settlement under the STAA cannot become

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5 *See* 29 C.F.R. § 1978.111(d)(2).

6 R. D. & O. at 2, *see* 29 C.F.R. § 1978.109(a), (c).

7 *See* 29 C.F.R. § 1978.109(c)(2).

8 29 C.F.R. § 1978.111(d)(2) (emphasis added).

9 "At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor." 29 C.F.R. § 1978.111(c). If a party wishes to withdraw objections to the findings or order, the judge or the Board "shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn." *Id.*

effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. . . . Consistent with that required review, the applicable regulations specifically provide that '[a] copy of the settlement shall be filed with the ALJ or the Secretary as the case may be.' 29 C.F.R. § 1978.111(d)(2)."[10] Pursuant to well-established precedent, the Board will not dismiss a complaint, in which there is a settlement between the private parties, unless the settlement is provided to the Board for its review and approval.[11] Thus had the parties attempted to consummate a settlement without the Department of Labor's approval, the settlement would not have been effective.

Because the parties have submitted the settlement as required and have not indicated any opposition to its terms, we deem the terms of the settlement agreement unopposed and will review it in accordance with the applicable regulations.[12]

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA and references cases other than ARB No. 09-017, 2008-STA-027, the case currently before the Board.[13] 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 Mann's current STAA case.[14]

In addition, if the provisions in paragraph 1 (d) of the Settlement Agreement were to preclude Mann from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.[15] Furthermore, the Agreement provides that

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[10] *Tankersley v. Triple Crown Servs., Inc.*, No. 1992-STA-008 (Sec'y Feb. 18, 1993).

[11] *See e.g.*, *Macktal v. Sec'y of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Kingsbury v. West Wis. Transp., Inc.*, ARB No. 07-029, ALJ No. 2006-STA-025 (ARB Jan. 31, 2007).

[12] *See* 29 C.F.R. § 1978.111(d)(2).

[13] Confidential Settlement Agreement and General Release (Settlement Agreement), para. 1 (a).

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

[15] *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).

the parties shall keep the terms of the settlement confidential.[16] The Board notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA)[17]. FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[18] Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.[19]

Finally, we construe paragraph 8 stating that the agreement "shall be governed by, and reviewed in accordance with, the laws of the State of Texas" 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.[20]

The parties have certified that the Agreement constitutes the entire settlement with respect to Mann's STAA claim.[21] The Board finds that the settlement is fair, adequate, and reasonable, and in the public interest. Accordingly, with the reservations noted above limiting our approval to the settlement of Mann's STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**
**Administrative Appeals Judge**

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16 Settlement Agreement, para. 1 j.

17 5 U.S.C.A. § 552 (West 2007).

18 *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).

19 29 C.F.R. § 70 *et seq*. (2007).

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

21 Settlement Agreement, para. 2 (d).