

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 17 August 2017

CASE NO.: 2017-AIR-00009

In the Matter of:

WALTER CHMURYNSKI,
Complainant,

v.

TRIUMPH THERMAL SYSTEMS,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT, CANCELING
HEARING AND DISMISSING CLAIM**

This matter arises from a complaint of discrimination filed under the employee protection provision of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR”), 49 U.S.C. § 42121, as implemented by the regulations at 29 C.F.R. Part 1979 (2003). The formal hearing is scheduled for October 25, 2017, in New London, Connecticut.

On August 16, 2017, the parties submitted a “Joint Motion for Approval of Settlement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement,” attaching the parties’ Settlement Agreement (hereinafter the “Settlement”) for my review and approval pursuant to 29 C.F.R. §§ 1979.111(c) & (d)(2). The Settlement resolves all issues raised in the complaint, has been signed by the Complainant and Respondent, and is incorporated herein by reference.

After careful consideration of the Settlement, I find the terms and conditions of the agreements to be fair, adequate, and reasonable under AIR, and that the terms adequately protect the Complainant. Furthermore, I believe it is in the public interest to approve the Settlement as a basis for administrative disposition of this case, and I therefore approve the Settlement pursuant to 29 C.F.R. § 1979.111(d)(2), subject to the below comments.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

Seater v. S. Cal. Edison Co., ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that the Settlement be placed under seal by the undersigned. I find good cause for such restricted access and the Settlement will be maintained in a sealed envelope. *See* 29 C.F.R. § 18.85.

Paragraph 16 of the Settlement Agreement provides that the terms of the Agreement shall be governed and construed under the laws of the State of Ohio. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).

Finally, I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Settlement Agreement pertaining to Complainant’s AIR claim, Case No. 2017-AIR-00009. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

ORDER

It is hereby **ORDERED**:

1. The Settlement submitted by the parties is **APPROVED**;
2. The hearing scheduled for October 25, 2017 is **CANCELED**;
3. The complaint is **DISMISSED WITH PREJUDICE**;
4. In accordance with the regulations, the Settlement constitutes the final order of the Secretary of Labor¹ and may be enforced under 29 C.F.R. § 1979.113; and

¹ 29 C.F.R. § 1979.111(e).

5. The Settlement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA.

SO ORDERED.

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachusetts