IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001, *et al.*,	)	
Plaintiffs,	)	Civil Action Nos. 05-CV-1251-MLB-KMH and 07-CV-1043-MLB-KMH
vs.	)	
The Boeing Company, *et al.*,	)	
Defendants.	)	

FINAL ORDER AND JUDGMENT APPROVING
THE HARKNESS CLASS SETTLEMENT

Upon consideration of all documents filed in support of (i) Plaintiffs' Unopposed Motion for (1) Preliminary Approval of Class Action Settlement, (2) Modification of the Class Definition and Class Certification, (3) Approval of Proposed Notice to the Class, and (4) an Order Setting the Date for Class Settlement Fairness Hearing (the "Preliminary Approval Motion") (Docs. 632, 632-1 through 632-5, and 633); (ii) Motion for Attorneys' Fees and Expenses and papers filed in support (Docs. 634-636); (iii) the proposed Plan of Allocation and Distribution Order with changes ("Plan of Allocation") (Doc. 639-1); (iv) all objections filed to granting the relief requested in the Motions (Docs. 641, 643-647, 650-662,); (v) Joan Farr and Nicholas Wagner's Motion to Compel (Doc. 642) and the responses and replies thereto; and (vi) Plaintiffs' and Boeing's Submissions in Favor of Final Approval (Docs. 667, 668); and

Upon the Court having entered on May 11, 2015, its Order Preliminarily Approving Class Settlement, Conditionally Certifying Class Action as to Damages, Approving Notice to Class Members and the Plan of Notice, and Setting Date for Settlement Fairness Hearing (the "Preliminary Approval Order") (Doc. 637); and

Upon the Court having received a Declaration (Doc. 668-1) attesting to the mailing of Class Notice in accordance with the Preliminary Approval Order; and

Upon a hearing having been held before this Court on August 19, 2015 (the "Settlement Fairness Hearing") (i) to determine whether to grant final approval to the Settlement; (ii) to determine whether to approve the amended Plan of Allocation; and (iii) to rule upon such other matters as the Court might deem appropriate,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

Except as otherwise defined herein, all capitalized and undefined terms used in this Final Order and Judgment Approving the Harkness Class Settlement shall have the same meanings as ascribed to them in the Settlement Agreement and Release ("Settlement Agreement") executed by Settling Plaintiffs and Boeing through their counsel.

1. The Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Harkness Class Members.

2. By Order dated July 14, 2008, this Court certified the Harkness Class for liability purposes under Fed. R. Civ. P. 23(b)(1) and (b)(2) (Doc. 118).

3. By its Preliminary Approval Order (Doc. 637), this Court adopted the following modified class definition for the certified Harkness Class (the "Class"):

> IAM-, SPEEA-, and IBEW-represented Boeing workers in Wichita who were participants in The Boeing Company Employee Retirement Plan ("Boeing Pension Plan") as of June 16, 2005, who had at least ten years of vesting service on that date, who were at least 49 years old but not yet 55 on that date, who went to work at Spirit or its predecessor, Mid-Western Aircraft Systems, on or around June 17, 2005, and who lived to at least age 55.

4. Further, the Court in its Preliminary Approval Order conditionally certified the Harkness Class as to damages, finding that the prerequisites of Rule 23(a) and Rule 23(b)(1) were satisfied.

5. In accordance with Fed. R. Civ. P. 23 and the requirements of due process, the Harkness Class has been given proper and adequate notice of the Settlement Agreement and the Plan of Allocation, as well as of Class Counsel's application for an award of attorneys' fees and for reimbursement of costs and expenses, such notice having been carried out in accordance with the Preliminary Approval Order. The notice and Plan of Notice implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted the best notice practicable; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Settlement Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

6. The Court hereby approves the Settlement Agreement and orders that the Settlement Agreement shall be consummated and implemented in accordance with its terms and conditions.

7. The Court finds that the Settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, and was entered into by Boeing and Settling Plaintiffs in good faith and without collusion, and more particularly finds:

a. The Settlement was negotiated vigorously and at arm's-length by the Settling Plaintiffs and Class Counsel on behalf of the Harkness Class and Boeing and Boeing's counsel;

b. The Harkness claims were settled after the Court largely denied both sides' Motions for Summary Judgment, by order of December 11, 2012 (Doc. 581). The Settlement was reached following arm's-length negotiations among counsel, all of whom were

thoroughly familiar with this Litigation. The negotiations were overseen by a mediator of national renown. Settling Plaintiffs and Boeing had sufficient information to evaluate the settlement value of the Litigation;

c. If the Settlement had not been achieved, Settling Plaintiffs and Boeing faced the expense, risk, and uncertainty of extended litigation concerning the Released Claims, for which serious questions of law and fact exist. Moreover, a trial would have resulted in a considerable expenditure of judicial resources;

d. The amount of the Settlement is fair, reasonable, and adequate, and an immediate recovery outweighs the mere possibility of future relief after further protracted and expensive litigation;

e. At all times, the Settling Plaintiffs have acted independently of Boeing and in the interest of the Harkness Class;

f. The Court has duly considered the objections to the Settlement that were filed and that were raised during the Settlement Fairness Hearing. (Docs. 640, 641, 643, 644, 645, 646, 647, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662). The Court denies those objections for the reasons stated by Class Counsel and Boeing in their respective submissions in favor of final approval. The Court has also duly considered the motion to compel filed by two objectors and denies the motion for the reasons set forth by Class Counsel and Boeing in their respective responses to that motion. (Doc. 642).

8. The Court certifies the Harkness Class as to damages under Rules 23(b)(1), solely for purposes of implementing the Settlement Agreement, because prosecuting separate actions by the Class Members would create a risk of inconsistent adjudications and adjudications that, as a practical matter, would be dispositive of the interests of other Class Members.

9. The Court approves the final list of Class Members, based on the list the Settling

Plaintiffs filed under seal. The Court finds that the list of Class Members was compiled after extensive research and was based on the best available data. The Court approves the inclusion of individuals in the Harkness Class who were on a leave of absence or otherwise not physically present and working in Wichita on June 16, 2005, nevertheless were deemed to be employed there, and whose accrued Boeing pensions transferred to Spirit AeroSystems at that time. The Court specifically finds that Mark Heffington and Steven Basic are not members of the Harkness Class and that Joan Farr Heffington, widow of Mark Heffington, has no standing to object to the settlement because she is neither the executor or administrator of the estate of Mark Heffington. (Docs. 643, 644, 646).

10. The Plan of Allocation as amended (Docs. 639 and 639-1), is rationally related to the Settling Plaintiffs' theories of recovery in the Litigation, which concern the complaints about an inability to access the pensions transferred to Spirit and lost health insurance, and is approved as adequate, fair, and reasonable.

11. In accordance with the process established in the Settlement Agreement, Boeing will wire-transfer the Common Fund Settlement Proceeds in conformity with written instructions provided by the Claims Administrator no more than 21 days after Judgment becomes Final and Unappealable. The Claims Administrator will then begin the process of distributing the Net Common Fund Amount as Payments to Class Members pursuant to the process set forth in the Plan of Allocation.

12. The Court finds that Payments to Class Members, which are the distributions to Class Members from the Net Common Fund Amount according to the Plan of Allocation, are in lieu of the claims asserted by the Settling Plaintiffs in this Litigation and released by this Settlement. While the Settlement Agreement recites all of the claims released thereby, the payments to the Class Members under the Plan of Allocation do not include payment for each of

the released claims. As a result of arm's length, good-faith negotiation, the parties agreed to a compromise by providing a payment for Class Members, which payments relate to the following categories:

a. Benefits from a pension plan in which they allege they were or should have been participants, but which pensions were transferred to Spirit (first round of payments).

b. Reimbursement of documented medical expenses paid by Class Members (second round of payments).

c. General restitutionary payment regarding health expenses related to the release of the contractual claims recited in the Settlement Agreement and not otherwise addressed by the payments in paragraphs (a) and (b), above (third round of payments).

13. The Court dismisses with prejudice all claims by the Harkness Class Representatives for themselves and all others similarly situated and by the Union Plaintiffs on behalf of their members who are part of the Harkness Class from the Litigation, but the Court retains jurisdiction to enforce the terms of this Settlement Agreement, with the exception of disputes or interpretative issues arising from amount(s) to which an individual Class Member is entitled to receive from the Net Common Fund Amount.

14. Any disputes or interpretive issues regarding the Payments to Class Members from the Medical Claims Reimbursement shall first be submitted to the Claims Administrator for a decision. If any party or Class Member disagrees with the decision made by the Claims Administrator, the party or Class Member may then submit the dispute to a neutral Third Party as part of a claims review process. The Third Party, designated by the Settling Plaintiffs and Class Counsel, will review claims and issue a final decision within ninety days. The Third Party's costs and fees will be paid from the Common Fund Settlement Proceeds. There is no further right of appeal from the Third Party's final decision. The Court shall retain jurisdiction

as to disputes or interpretive issues concerning the Plan of Allocation that do not concern the amount(s) to which an individual Class Member is entitled to receive from the Net Common Fund Amount, pursuant to Sections 2.2(d) and 8.6 of the Settlement Agreement.

15. The Court orders that Boeing and the Released Parties will have no responsibility or liability for determining eligibility for or allocation of the Net Common Fund Amount or any other acts of the Claims Administrator. Similarly, the Court orders that Boeing, the Released Parties, Settling Plaintiffs, Union Plaintiffs, and Class Counsel have no responsibility or liability for calculations made according to the formula set forth in the Plan of Allocation which the Court has now approved. The calculations under the formula are based on information that is unique to each Class Member, and sent to that Class Member by the Claims Administrator in the Information Addendum on June 1, 2015 as part of the court-ordered Notice of Proposed Class Action Settlement. Class Members had the opportunity to dispute the listed information until July 15, 2015. As part of the Preliminary Approval Order, the Court approved the means by which Class Members were apprised of the information and the means of initiating a dispute, which the Claims Administrator is charged with resolving. Under these circumstances, as set forth above, the Court orders that Boeing, the Released Parties, Settling Plaintiffs, Union Plaintiffs, and Class Counsel have no responsibility or liability for calculations made according to the formula set forth in the Plan of Allocation.

16. The Court adjudges that the Settling Plaintiffs are deemed conclusively to have released all Released Claims against all Released Parties, based on the meaning of those terms in the Settlement Agreement. Therefore, the Court bars and permanently enjoins the Settling Plaintiffs from prosecuting, commencing, or continuing any of the Released Claims against any of the Released Parties.

17. The Court recognizes that, by agreeing to settle the Released Claims, Boeing does not admit, and specifically denies, any and all liability to the Settling Plaintiffs.

18. The Court finds that the Claims Administrator, Gilardi & Company, has given notice to the Harkness Class according to the Preliminary Approval Order and as required by law and due process.

19. The Court finds that the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, as have been satisfied, as the prescribed CAFA notices were served more than 90 days before the Settlement Fairness Hearing.

20. The Court approves the arrangement by which the Union Plaintiffs will be reimbursed from the Common Fund Settlement Proceeds for any Administration Fees and Expenses that they advance to the Claims Administrator before the Judgment becomes Final and Unappealable.

21. The Court approves the agreement between Boeing and the Union Plaintiffs that they will limit public comment on the Settlement Agreement to statements that the parties agreed to a resolution of the matter.

22. The Court orders that the Protective Order will continue to govern the use and disclosure of all documents and information designated in the Litigation as confidential by any party until judgment on the entire Litigation (including the claims of the seventeen individual McCartney/Boone Plaintiffs) becomes Final and Unappealable.

23. The Court approves the parties' agreement that the Settlement Agreement and the certification of the Harkness Class as to damages may never be used for any purpose in any subsequent litigation against the Released Parties, other than to enforce the terms of the Settlement Agreement.

24. The Court approves the Release as set forth in Section 1.23 of the Settlement

Agreement and as follows:

> 1.23 **"Released Claims"** means and includes all past or present claims, demands, actions, causes of action, grievances, allegations, rights, obligations, costs, losses, and damages arising in whole or in part from or in connection with acts or omissions of any of the Released Parties of any and every kind or nature, whether in law or in equity, in tort or contract, or arising under any statute or regulation, based upon the causes of action described which were, or could have been, asserted or made in the Litigation by or on behalf of the Settling Plaintiffs. Also, without limiting the generality of the foregoing, "Released Claims" include, but are not limited to, claims arising from: (i) the alleged breach of contractual promises to treat the Class Members as laid off and to provide certain pension benefits and health benefits to them as laid-off Boeing employees; (ii) the alleged unlawful interference with the pension and health care rights of the Class Members; (iii) the denial of benefits to Class Members based on the alleged incorrect application of the governing terms of various benefit plans; (iv) the amendment of the Boeing Company Employee Retirement Plan and transfer of plan assets and liabilities to the plans of Spirit; (v) the alleged eligibility for or entitlement to benefits under The Boeing Company's retiree medical or pension plans; (vi) Boeing's administration and interpretation of its retiree medical, pension, or layoff benefit plan documents; (vii) any alleged rights Settling Plaintiffs have as third party beneficiaries to any Boeing contract regarding its retiree medical, pension, or layoff benefit plans; (viii) the Class Members' termination of employment from The Boeing Company; (ix) any compensation or benefit the Class Members allegedly earned or accrued as an employee of The Boeing Company, including any such alleged compensation or benefit from the retiree medical, pension, or layoff benefit plan, including The Boeing Company Employment Retirement Plan and the Pension Value Plan; and (x) The Boeing Company's decision to sell and sale of its Wichita Commercial Facilities and the effects of that decision and sale. The Settling Plaintiffs expressly recognize that this Settlement Agreement releases all Settling Plaintiffs' claims for benefits from any Boeing retiree medical, pension, or layoff benefit plan. Released Claims do not include the claims of the McCartney/Boone plaintiffs or the claims of the Union Plaintiffs on behalf of the McCartney/Boone Plaintiffs, and the claims of those 17 individuals and of the Unions concerning them will remain pending in the Litigation. Notwithstanding any of the above, the Released Claims do not include claims related to any employee benefits earned by a Class Member while employed by Boeing after June 17, 2005. Also notwithstanding any of the above, the Released Claims do not include claims for benefits under the Boeing Voluntary Investment Plan for any Class Member who is still an acknowledged participant or beneficiary of the Boeing Voluntary Investment Plan.

25. If the Settlement Agreement is terminated or fails to become effective for any reason, then the Settling Plaintiffs and Boeing will return to their respective status in the Litigation as of the date immediately prior to the parties' Settlement Agreement, and they will proceed in all respects as if this Settlement Agreement and all related Orders of the Court had

never been executed, and all parties agree to the Court's vacating of all Orders entered pursuant to this Settlement Agreement.

26. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

27. The Court grants the Motion for Attorneys' Fees and Expenses (Doc. 634). The Court finds that the requested attorneys' fees and expenses are authorized by the Settlement Agreement. The Court further finds that the request here was made by motion filed with the Court, and that the notice sent to the class informed the class members of the attorneys' fees request (Doc. 637-1). The Court finds that Class Counsel has achieved more than some degree of success on the merits, as that phrase is described in *Hardt v. Reliance Standard Life Insurance Co.*, 560 U.S. 242, 245 (2010). The Court approves the payment of these fees pursuant to 29 U.S.C. §1132(g). The Court has considered the factors set forth in *Gordon v. U.S. Steel Corp.*, 724 F.2d 106 (10th Cir. 1983) and its progeny, and the Court finds that those factors are satisfied here and all support payment of the requested fees. The Court finds that the time records filed with the Court substantiate the claimed number of hours or work. The Court further finds that the requested hourly rates are reasonable and that they substantiate the fee amount requested. In sum, the Court finds that Class Counsel has substantiated the requested amount of fees and costs and that they are reasonable and should be paid. The Court further concludes that the requested fees are more than reasonable under the analysis set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974).

28. The Court concludes that certification of this Final Order and Judgment Approving the Harkness Class Settlement ("Final Order") satisfies the requirements of Fed. R. Civ. P. 54(b), and the Court therefore certifies this Final Order as a final judgment pursuant to that Rule. Specifically, the Court finds:

a. This Litigation involves more than one claim for relief and multiple parties.

b. This Final Order adjudicates fewer than all the claims of all the parties to the Litigation. This Final Order is directed toward the Harkness Class and Harkness Class Representatives and the Released Claims of the Settling Plaintiffs. However, the claims brought by the 17 individual McCartney/Boone Plaintiffs and the claims of the Union Plaintiffs on behalf of the McCartney/Boone Plaintiffs (collectively "McCartney/Boone Claims") remain pending in the Litigation.

c. The Released Claims by and on behalf of the Harkness Class are separable from the McCartney/Boone Claims, as they turn on different factual questions, different legal issues, and allow for separate recovery. No appellate court would have to decide the same issues more than once, even if there are separate appeals of the Released Claims and the McCartney/Boone Claims.

d. This Final Order is the ultimate disposition of all Released Claims and is a final judgment of the Released Claims.

e. There is no just reason to delay review of this Final Order, because it disposes of claims that are separate and distinct from the remaining McCartney/Boone Claims. A Rule 54(b) certification of this Final Order is efficient and practical, as it will allow this Final Order to become Final and Unappealable on its own terms, thereby allowing the Settlement Agreement to take effect, without delays tied to the further litigation of the remaining McCartney/Boone Plaintiffs.

29. Pursuant to Fed. R. App. P. 7, and Tennille v. Western Union Co., 774 F.3d 1249 (10th Cir. 2014), the Court requires any appellant to file a bond in the amount of $5,000 to ensure payment of the parties' costs on appeal. The Court finds that this bond is necessary to

ensure against the considerable risk of the appellants' non-payment of costs if the appeal is unsuccessful.

Ordered: ___September 3, 2015.

_____s/ Monti Belot_____
Honorable Monti L. Belot
U.S. District Court Judge