

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH HEALEY, TOM O'DRISCOLL,
ALAN PORTER, JAMES RYAN, JAMES B.
HOWLAND, KARL DIEDE, JIM TIMOTHY
and JOHN RYAN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 134, FREEMAN ELECTRICAL, INC.,
GLOBAL EXPERIENCE SPECIALISTS, INC.,
and METROPOLITAN PIER AND
EXPOSITION AUTHORITY,

Defendants.

No. 11 cv 8892

Judge Matthew F. Kennelly
Magistrate Judge Jeffrey Cole

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between the following parties: the GES Class Members (which includes Plaintiff John Ryan and GES Class Members Harry Bjorklund, William Creamer, Robert Crooks, Steve Daguerra, Barry David, James Kane, Timothy McQueeny, Elsa Nyberg, Kevin Vanko and Thadaeus Widomski) and Defendant Global Experience Specialists, Inc., by and through their respective counsel of record.

1. DEFINITIONS

- 1.1 "Action" shall mean the civil action filed on December 14, 2011, in the United States District Court for the Northern District of Illinois, Eastern Division, entitled, *Joseph Healey, et al. v. Local 134 International Brotherhood of Electrical Workers, et al.*, Case No. 1:11-cv-08892.
- 1.2 "Agreement" shall mean this Class Action Settlement Agreement and Release.
- 1.3 The "Certified Class" shall mean all Local 134 members who were laid off by Freeman and GES between August 12, 2011 and September 30, 2011.
- 1.4 "Class Counsel" shall mean Despres, Schwartz & Geoghegan Ltd.

- 1.5 “Class Representatives” shall mean the Plaintiffs previously appointed by the Court to serve as class representatives.
- 1.6 “Complaint” shall mean the operative complaint in this Action, filed on April 5, 2012, including the amendments thereto.
- 1.7 “Court” refers to the trial court in which this Action was brought.
- 1.8 “Final Judgment as to Action” shall mean the final resolution of this Action.
- 1.9 “Final Judgment as to GES” shall mean the last Court order to be entered relating to (1) the Court order granting final approval of the Agreement and judgment entered by the Court with respect to GES, and (2) any Court order thereafter awarding attorneys’ fees with respect to the Agreement.
- 1.10 “Freeman” shall mean Defendant Freeman Electrical, Inc.
- 1.11 “GES” shall mean Defendant Global Experience Specialists, Inc.
- 1.12 The “GES Class Members” shall mean the members of the Certified Class who were employed by GES, except for the one potential GES Class Member who opted out of the Certified Class. Such GES Class Members shall specifically include Plaintiff John Ryan, Harry Bjorklund, William Creamer, Robert Crooks, Steve Daguerre, Barry David, James Kane, Timothy McQueeney, Elsa Nyberg, Kevin Vanko and Thadaeus Widomski.
- 1.13 “Local 134” shall mean Defendant Local 134 International Brotherhood of Electrical Workers.
- 1.14 The “Parties” to the Agreement shall mean GES and the above-defined GES Class Members.
- 1.15 “Preliminary Approval Order” shall mean the Court order granting preliminary approval of this Agreement and authorizing issuance of the notice.
- 1.16 “Principal Agreement” shall mean the Principal Agreement between the Electrical Contractors’ Association of the City of Chicago and Local 134, to which GES is a signatory.

2. RECITALS

This Agreement is entered into with regard to the following facts:

- 2.1 On or about December 14, 2011, Plaintiffs filed this Action on behalf of themselves and a putative class of similarly situated employees. On or about December 20, 2011, Plaintiffs filed an Amended Complaint.

- 2.2 On or about April 5, 2012, Plaintiffs filed a Second Amended Complaint, which named GES as a defendant to the Action for the first time.
- 2.3 In the Complaint, Plaintiffs allege that they were laid off from their jobs with Freeman and GES as a result of certain agreements, entitled Interpretive Side Letters, between Local 134 and Freeman and Local 134 and GES. Plaintiffs further allege that by entering into those Agreements, Local 134 breached its duty of fair representation to the Class Members and Freeman and GES breached the Principal Agreement. In addition, Plaintiffs allege that the Interpretive Side Letter violated state law, specifically the MPEA Act.
- 2.4 Plaintiffs believe this Action is meritorious and that this Action is appropriate for class action treatment. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against GES through summary judgment, trial, and any possible appeals. Plaintiffs are also aware that the Agreement avoids additional burdens to unnamed GES Class Members in responding to discovery, attending depositions, and testifying at hearings and/or trial as needed. Plaintiffs are aware of the burdens of proof necessary to establish liability for the claims asserted in this action and GES' defenses thereto. Based on the foregoing, Plaintiffs have determined that the settlement set forth in this Agreement is fair, adequate, and reasonable and is in the best interests of the Plaintiffs and GES Class Members.
- 2.5 GES denies any liability or wrongdoing of any kind associated with the claims alleged and maintains that its practices have at all times been lawful and proper. GES has concluded, however, that it is in its best interest to settle this Action on the terms set forth in this Agreement in order to avoid further litigation, expense and inconvenience.
- 2.6 On or about August 22, 2013, the Court certified a class pursuant to Federal Rule of Civil Procedure 23(b)(3), consisting of all Local 134 members who were laid off by Freeman and GES between August 12, 2011 and September 30, 2011 (the "Certified Class").
- 2.7 The Certified Class consists of Local 134 members who were employed by both GES and Freeman. Twelve (12) members of the Certified Class were employed by GES.
- 2.8 On or about September 4, 2013, Class Counsel mailed a notice of Class Action Lawsuit to the Certified Class.
- 2.9 The period to opt out of the Certified Classes expired on October 15, 2013, and John Farkas was the only member of the GES Class Members who opted out of the Action.
- 2.10 Plaintiffs have concluded that the settlement reflected in this Agreement is fair, reasonable, and adequate and is in the best interest of the GES Class Members.

- 2.11 The entry of Final Judgment as to GES in this Action shall dismiss with prejudice all claims that were alleged or could have been alleged in the Action against GES. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this settlement reflected in this Agreement, to effectuate its terms, and to dismiss this Action with prejudice with respect to GES.

3. TERMS OF SETTLEMENT

- 3.1 Settlement Payment. Within fourteen (14) business days after entry of the Final Judgment as to GES, GES shall pay each GES Class Member a payment of \$15,757.57, less any applicable taxes and other withholdings, subject to the provisions of Paragraph 4.5 below (the “Payment”).
- 3.2 Class Counsel Fees. Class Counsel, on behalf of the GES Class Members, shall make an application to the Court for an award of attorneys’ fees and expenses. GES agrees that a fee and expense application of up to \$86,666.67 is fair and reasonable and does not object thereto.
- 3.3 Non-Retaliation, Non-Discrimination.
- (a) Non-retaliation. GES will not retaliate against any GES Class Member who is a party to this settlement because of his or her participation in the Action.
- (b) Non-discrimination. Consistent with the terms of the Principal Agreement, GES will not discriminate against any GES Class Member who is a party to this settlement in the assigning of work or hours or in any other manner. For the purposes of the Agreement, “discriminate” shall be defined as treating any GES Class Member differently than any other employee with respect to the assigning of work or hours because of such GES Class Member’s participation in the Action. To “discriminate” also shall include any discrimination against any GES Class Member in violation of state, federal or other applicable laws.
- (c) Enforcement. For a three (3) year period, GES will refer any claims for retaliation or discrimination to either the referral appeals committee identified in the Principal Agreement or the dispute resolution process contained in any successor labor agreement thereto. For purposes of adjudicating any such retaliation claims, the standard to be applied will be whether the employment action in question occurred because of retaliation. For purposes of adjudicating any such discrimination claims, the standard to be applied will be whether any meaningful disparity in the assignment of work or other condition of employment is: (1) consistent with the Principal Agreement; and (2) materially related to a legitimate business concern of GES. The Parties specifically recognize that included

in these legitimate business concerns are matters such as ability to timely, efficiently, and safely perform work and the possession of “special skills” formally recognized by Local 134 and GES, including but not limited to familiarity with the electrical systems at McCormick Place. The Parties specifically recognize the rights and obligations in Section 2.02, 2.12, 4.17 and 12.01 of the Principal Agreement. Notwithstanding any other provision of this Agreement, no discrimination that is otherwise unlawful or a breach of the Principal Agreement shall be defensible on any grounds.

3.4 Release of Claims.

- (a) Released Claims by Class Members. Each of the GES Class Members (other than those who opt out by following the opt-out instructions in the Motion and in accordance with the terms herein) shall execute a Release of Claims in favor of GES (the “Release”) as part of the consideration to be received by GES under the Agreement. Neither the GES Class Members, the Plaintiffs, nor any of the other class members are releasing any claims against Freeman or Local 134.
- (b) Each GES Class Member who is under age forty (40) shall execute the Release which is attached hereto as **Exhibit A-1**. Each GES Class Member who is age forty (40) or over shall execute the Release which is attached hereto as **Exhibit A-2**. The parties hereby incorporate by reference the terms and definitions contained in Exhibits A-1 and A-2, as if they were fully set forth herein.

4. NOTICE, OPT-OUT, AND DISTRIBUTION PROCESS

- 4.1 Consent by GES Class Members and Class Representatives. Class Counsel has discussed the effects of the settlement provided for in this Agreement with all GES Class Members and all such GES Class Members have consented to the Agreement. In addition, Class Counsel has provided the Class Representatives notice of the settlement provided for in the Agreement, and they consent to the Agreement.
- 4.2 Notice. Class Counsel will distribute notice of the Agreement and of the right to object to it to each of the members of the Class within one week of the Court’s preliminary approval of the Agreement. Class Counsel will mail the notice attached hereto as **Exhibit A-3** to all GES Class Members, enclosing the relevant release. Class Counsel will mail the notice attached hereto as **Exhibit A-4** to all other members of the Class.
- 4.3 Objections. All member of the Class shall have thirty (30) days from the distribution of the notices to file objections to the Agreement with the Clerk of the Court, as set forth in Exhibits A-3 and A-4.
- 4.4 Opt Out. GES Class Members shall have thirty (30) days from the distribution of

the notices to submit their executed Release to Class Counsel or opt out of the Agreement pursuant to the opt-out instructions contained in Exhibit A-3. Class Counsel shall timely provide to GES' counsel an original copy of each GES Class Member's executed Release and shall certify to GES' counsel which Releases or requests to opt out were timely or untimely received. Class Counsel will timely notify GES Class Members whose Releases or opt-outs are untimely or denied for other reasons.

- (a) If any of the GES Class Members timely opt out of this Agreement or revoke a Release he/she has executed, any party hereto shall have the right, in his, her or its sole discretion, to withdraw from this Agreement within 10 (ten) days of his, her or its receipt of notice that the GES Class Member is opting out of the Agreement.
- (b) If any party exercises his, her or its right to withdraw pursuant to this provision, this Agreement will be null and void, and the Parties will be returned to their respective positions *status quo ante* as if this Agreement had never been made, and the Parties will be relieved from any stipulation or orders made in connection with this Agreement. Any election to withdraw from this Agreement on this basis shall be made prior to Final Judgment as to GES and notice shall be provided to the other party and to the Court.
- (c) If, for whatever reason the Agreement does not become final, the fact that the Parties were willing to stipulate as provided in this Agreement shall have no bearing on, or be admissible in connection with, this Action or any other proceeding.

4.5 Distribution of Payment to GES Class Members.

- (a) GES is only obligated to pay, and only agrees to pay, the Payment to those GES Class Members who submit a timely and validly executed Release pursuant to Paragraph 3.4 of this Agreement. To be timely, the Release must be postmarked or faxed by the date indicated in the Motion. To be valid, the Release must be completed in full and signed by the GES Class Member under penalty of perjury.
- (b) Assuming that the Agreement is not cancelled pursuant to Paragraph 4.5(a) above, GES shall prepare and mail via overnight mail checks made payable to each GES Class Member for \$15,757.57, less any applicable taxes and other withholdings, after the entry of the Final Judgment as to GES and within fourteen (14) business days after its receipt of each GES Class Member's timely executed and submitted Release and IRS Form W-9, provided no GES Class Member revokes any revocable Release.

4.6 Payment of Attorneys' Fees to Class Counsel.

- (a) Class Counsel, on behalf of the GES Class Members, shall make an application to the Court for an award of attorneys' fees and expenses. GES agrees that a fee and expense application of up to \$86,666.67 is fair and reasonable and does not object thereto.
- (b) Within fourteen (14) business days after the entry of the order awarding attorneys' fees and expenses to Class Counsel, GES shall pay the amount awarded by the Court (the "Class Counsel Fee") to Class Counsel.

4.7 GES' Total Settlement Liability.

- (a) The Payment and Class Counsel Fee shall represent GES' total settlement liability, inclusive of administrative expenses, class representative fees, costs, expenses, attorneys' fees, interest and any other charges.

5. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

5.1 Promptly upon execution of this Agreement, Class Counsel shall file a Motion for Preliminary Approval seeking a determination by the Court as to the fairness, adequacy, and reasonableness of the Agreement and seeking entry of a Preliminary Approval Order in the form attached hereto as **Exhibit A-5**. The Motion for Preliminary Approval and the Preliminary Approval Order shall include the following:

- (a) The scheduling of a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the Class;
- (b) Approval as to form and content of the proposed notice, including the instructions regarding how to opt out;
- (c) Approval as to form and content of the proposed Release of Claims;
- (d) Direction of the mailing of the notices and the Releases by first class mail to the members of the Class; and
- (e) Preliminary approval of this Agreement and the settlement reflected herein.

6. GOOD FAITH SETTLEMENT

6.1 The Parties hereby agree that the settlement provided for in this Agreement was entered into in good faith, such that GES is discharged from any and all liability for the claims brought in this Action, including, but not limited to, being discharged from any liability to pay indemnification or contribution to any other party for claims that were raised or could have been raised in the Action.

7. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

- 7.1 Following preliminary approval by the Court of this Agreement and the settlement reflected in it and the completion of the relevant related processes described herein, Class Counsel shall file a motion with the Court seeking entry of an order of Final Judgment as to GES, in the form attached hereto as **Exhibit A-6**, which shall contain the following provisions:
- (a) Approving the settlement reflected in this Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, finding that the settlement was entered into in good faith, such that GES is discharged from any and all liability for the claims brought in the Action, including, but not limited to, being discharged from any liability to pay any potential claim for indemnification or contribution by any other party for claims that were raised or could have been raised in the Action, and directing consummation of its terms and provisions;
 - (b) Approving Class Counsel's petition for an award of attorneys' fees and reimbursement of costs in an amount not to exceed \$86,666.67;
 - (c) Dismissing all claims in this Action against GES (including all individual claims and claims of the Certified Class presented therein) with prejudice, without fees or costs to any party except as provided in this Agreement;
 - (d) Incorporating the Release of Claims set forth in Paragraph 3.4 herein, including all subparts thereto and Exhibit A-1 and Exhibit A-2 hereto, and forever discharging the GES Releasees (as defined in Exhibits A-1 and A-2) from any claims or liabilities arising from or related to this Action or the Released Claims;
 - (e) Permanently barring and enjoining the GES Class Members who have not been timely and properly excluded from the Class and any person acting on their behalf from: (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal court, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction against the GES Releasees based on or relating to the claims and causes of actions, or the facts and circumstances relating thereto, in this Action or the Released Claims; and (ii) organizing such non-excluded GES Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit against the GES Releasees based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action or the Released Claims;

- (f) A finding that all GES Class Members have been provided with actual notice of the Agreement and the settlement provided for herein;
- (g) A finding that the Court has determined that no subclass certification is necessary for purposes of settlement given the known identity of all GES Class Members, and Class Counsel's actual contact with the GES Class Members; and
- (h) Retaining jurisdiction solely for the purpose of addressing: (i) enforcing this Agreement and the settlement reflected in it; (ii) addressing settlement administration matters; and (iii) addressing post-Final Judgment matters as may be appropriate under applicable legal procedures, court rules, and enforcement of this Agreement and the settlement reflected in it.

8. INADMISSIBILITY OF THIS AGREEMENT IF NOT APPROVED

- 8.1 If this Agreement is not approved by the Court or for whatever reason does not become final and binding, the Agreement shall not be used or be admissible in the Action or any subsequent proceedings either in this Court or in any other court or forum.

9. PARTIES' AUTHORITY

- 9.1 The respective signatories to this Agreement represent that they are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions.

10. MUTUAL FULL COOPERATION

- 10.1 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, the execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Agreement. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of GES and its counsel, take all necessary steps to secure the Court's Final Judgment.

11. NO PRIOR ASSIGNMENTS

- 11.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,

action, cause of action, or right released or discharged in this Agreement.

12. NO ADMISSION

- 12.1 Nothing contained in this Agreement is to be construed as or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of GES or any of the GES Releasees, and GES and the GES Releasees deny liability therefore. Each of the Parties has entered into this Agreement with the intention to resolve his, her or its disputes without assessing blame or liability. This Agreement is a settlement document and shall be inadmissible as evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

13. NOTICES

- 13.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

- (a) To the Class:

Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington Street, Suite 711
Chicago, Illinois 60602
312-372-7391 (facsimile)

- (b) To GES:

Mary Margaret Moore
Bryan Cave LLP
161 N. Clark Street, Suite 4300
Chicago, Illinois 60601
(312) 602-5050 (facsimile)

14. RETURN OF DOCUMENTS

- 14.1 Class Counsel agrees to return all documents and electronic information produced by GES during the course of this Action within 30 days of the Final Judgment as to this Action. Class Counsel further agrees not to use, not to disseminate, not to retain, to permanently delete, and/or to destroy all copies of all documents and electronic information produced by GES during the course of this Action within 30 days of the Final Judgment as to this Action.

15. CONSTRUCTION

- 15.1 The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

16. CAPTIONS AND INTERPRETATIONS

- 16.1 Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision. Each term of this Agreement is contractual and not merely a recital.

17. MODIFICATION

- 17.1 This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties, and once approved by the Court, any modifications to this Agreement must also be approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

18. INTEGRATION CLAUSE

- 18.1 This Agreement contains the entire agreement between the Parties relating to the resolution of this Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged into this Agreement. No rights under this Agreement may be waived except in writing.

19. BINDING ON ASSIGNS

- 19.1 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

20. CLASS MEMBER SIGNATORIES

- 20.1 It is agreed that because the GES Class Members are numerous, it is impractical to have each GES Class Member execute this Agreement. The notice will advise all GES Class Members of the binding nature of the release and permit them to request a copy of this Agreement if they so desire. Excepting only the GES Class Members who timely opt out of the settlement reflected in this Agreement, the

notice shall have the same force and effect as if this Agreement were executed by each GES Class Member.

21. COUNTERPARTS

- 21.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

22. PUBLIC COMMENT

- 22.1 The GES Class Members and Class Counsel shall not issue any press release or similarly initiate publicity regarding the Agreement or any aspect of the settlement reflected in it with any representative of any print, radio, television, electronic, or web-based media.

23. TERMINATION OF THIS AGREEMENT

- 23.1 Except as otherwise provided herein, in the event the Agreement is terminated or fails to become effective for any reason, other than a breach by any of the Parties, the Parties to this Agreement will be returned to their respective positions *status quo ante* in this Action as of June 23, 2014.

24. APPLICABLE LAW

- 24.1 The Parties agree that this Agreement and its exhibits shall be governed by and interpreted according to the laws of the State of Illinois, without giving effect to any conflict of law principles or choice of law principles.

25. EFFECT OF COURT ORDERED MODIFICATION

- 25.1 To the extent that the Court makes immaterial changes to this Agreement or to any document described herein or appended hereto, the Parties shall nonetheless be bound to perform their obligations under the Agreement. However, to the extent that the Court makes material changes, each of the Parties has the right to withdraw from the Agreement; if so, all Parties will be returned to their respective positions *status quo ante* with respect to this Action as if this Agreement had never been made, and all Parties will be relieved from any orders or stipulations made in connection with this Agreement.

Dated: _____, 2014

DESPRES, SCHWARTZ & GEOGHEGAN, LTD.

By: _____

Michael P. Persoon, Counsel for
John Ryan, Harry Bjorklund, William Creamer,
Robert Crooks, Steve Daguerre, Barry David,
James Kane, Timothy McQueeny, Elsa Nyberg,
Kevin Vanko and Thadaeus Widomski

Dated: _____, 2014

BRYAN CAVE LLP

By: _____
Mary Margaret Moore, Counsel for
Global Experience Specialists, Inc.