

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 March 2009

Case No.: 2009-OFC-00003

In the matter of

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

SCOTT TECHNOLOGIES OF DELAWARE, INC.,
D/B/A SCOTT HEALTH AND SAFETY,

Defendant.

ORDER APPROVING CONSENT FINDINGS
AND
ORDER CANCELLING FORMAL HEARING

This cause of action is filed pursuant to Executive Order 11246 (30 Fed. Reg. 12319), as amended; pursuant to Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. §793), as amended; and pursuant to 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (38 U.S.C. §4212), as amended, and is governed by the implementing Regulations found at Code of Federal Regulations, Title 41, Chapter 60. On January 13, 2009, the Office of Federal Contract Compliance Programs, U.S. Department of Labor (Plaintiff) filed a Complaint with the Office of Administrative Law Judges, for an expedited administrative hearing against the above-named Defendant under the provisions of the 41 CFR § 60-30.31. On February 2, 2009, the Defendant filed its Answer and Request for Formal Hearing with the Office of Administrative Law Judges, Newport News, Virginia, pursuant to 41 CFR §60-30.32. A formal hearing is scheduled to commence at 9:00 AM, Tuesday, March 17, 2009, in Charlotte, North Carolina.

On March 12, 2009, the Parties jointly filed Consent Findings and thereby stipulate, agree and consent, pursuant to 41 CFR § 60-30.13, to entry of findings as follows:

1. This matter arises under Executive Order 11246, as amended (hereinafter "EO11246") and regulations issued there under.
2. Jurisdiction is conferred in this matter pursuant to §§208 and 209 of EO11246, 41 CFR §60-1.26 and 41 CFR Part 60-30.
3. Defendant, Scott Technologies of Delaware, Inc., d/b/a Scott Health and Safety, maintains a place of business at P.O. Box 569, Monroe, North Carolina 28111, and has and is engaged in the business of the supply of defense accessories for the United States military.
4. Defendant is and has been a government contractor within the meaning of EO11246 and the regulations there under, and is and has been subject to the contractual obligations imposed on such government contractors and subcontractors by EO11246 and the regulations there under.
5. Prior to the initiation of this action, Plaintiff advised Defendant that upon completion of its desk audit analysis, the Plaintiff found indicators of a need for further in-depth investigation of Defendant's compensation practices and attempted to secure voluntary compliance through means of conciliation and persuasion. These efforts were unsuccessful.
6. Specifically, by letter dated February 6, 2007, the Plaintiff sought the following information to continue its investigation:

- “1. Employee ID number (or suitable ID for matching purposes)
2. Gender
3. Ethnicity (White non-Hispanic, Black non-Hispanic, Hispanic, Asian, American Indian, other)
4. Time with company or date of hire
5. Time in current position or date last change in grade/title
6. Age or date of last degree earned
7. Current annual salary or hourly wage
8. Part-time vs. full-time status
9. Exempt vs. non-exempt status
10. Job title
11. Grade level or salary band classification
12. Employee location (if not housed at this facility)

Please also include any other factors that may affect compensation in your workforce or any written compensation policies you feel may be helpful for us to understand your compensation system better.

In addition, for job group 6 (Crafts) and job group 8 (Laborers) for the period August 1, 2005 to July 31, 2006, please provide a detailed narrative on the Recruitment, Hiring, and Selection process (step by step). In the narrative, please note the exact

step at which an individual is tracked by race and gender and the step at which the individual is identified as having met the minimum qualifications of the job for which he/she applied. Please include how the Internet is used in the selection process and the exact step at which the individuals using it are tracked by race and gender.”

7. Defendant, Scott Health and Safety questioned the need for the Plaintiff to engage in further review and denied access to the documents and to Defendant’s facility.
8. However, without admitting that the indicators are valid or that Office of Federal Contractor Compliance Programs’ (OFCCP) request for additional data is lawful, the Defendant, desiring to cooperate with the OFCCP, hereby agrees to the following:
 - (a) Defendant agrees that it will not deny access to OFCCP compliance officer(s) who seek access to company documents for the purpose of gathering the information requested by the Department in its letter dated February 6, 2007.
 - (b) Defendant agrees that it will supply each item of information requested by the Department in its letter dated February 6, 2007.
 - (c) Defendant agrees that it will permit OFCCP compliance officer(s) to conduct on-site inspection if such inspection is deemed by OFCCP to be necessary to investigate unresolved problem areas identified in the Affirmative Action Plan (AAP) and supporting documentation during the desk audit, to verify that the contractor has implemented the AAP and has complied with those regulatory obligations not required to be in the AAP, and to examine potential instances or issues of discrimination.
 - (d) Nothing herein is intended to relieve Defendant from compliance with the requirements of EO11246 or its implementing regulations, nor to limit OFCCP’s right to review Defendant’s compliance with such requirements.
 - (e) Jurisdiction, including the authority to issue any additional orders necessary to effectuate the implementation of the provisions of this Consent Findings and the Order, is retained by the Office of Administrative Law Judges until such time as the Department concludes its review and provides notice of such to the Office of Administrative Law Judges.
 - (f) If, during the term of the Order, OFCCP believes that Defendant has violated any portion of said Order, Defendant will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. Defendant will have 15 days in which to respond in writing.
 - (g) Enforcement proceedings for violation of the Order may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged), upon filing with the Administrative Law Judge a motion for an Order of

Enforcement and/or Sanctions. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

- (h) Liability for violation of the Order may subject the Defendant to the sanctions set forth in EO11246 and its implementing regulations.
- (i) If a Motion for Enforcement or Clarification indicates by signature of counsel that the motion is unopposed by the Plaintiff or Defendant, as appropriate, the motion may be presented to the Administrative Law Judge without hearing, and the proposed Order may be implemented immediately. If said application or motion is opposed by any party, the party in opposition shall file a written response within 20 days of service of such motion.

9. The Parties further agree that:

- (a) The final Order disposing of this proceeding shall have the same force and effect as an Order made after full hearing;
- (b) The entire record on which such final Order shall be based shall consist solely of the Complaint, Answer, and these agreements and consents; and,
- (c) Each Party shall bear its own costs, fees (including attorney fees) and expenses as were incurred by it in connection with any stage of these proceedings.

10. The Parties waive:

- (a) Any further procedural steps in this matter; and,
- (b) Any rights to challenge or contest the validity of these findings and any Order entered in accordance herewith.

After review of the filed Consent Findings, Complaint and Answer, this Administrative Law Judge finds that the Consent Findings are in compliance with 41 CFR § 60-30.13, are in the best interests of all the Parties, and adequately resolve all pending issues for this matter.

ORDER

IT IS HEREBY ORDERED that **the formal hearing** scheduled for March 17, 2009 in Charlotte, North Carolina, **is CANCELLED** and that **the Consent Findings are ADOPTED AND APPROVED** as the final Administrative Order pursuant to the provisions of 41 CFR § 60-30.13.

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ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb