

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

Issue Date: 12 July 2016

CASE NO.: 2015-ERA-00007

In the Matter Of:

ULRICH WITTE,
Complainant,

v.

ABSG CONSULTING, INC.,
Respondent.

ORDER GRANTING MOTION TO WITHDRAW OBJECTION WITH PREJUDICE

This proceeding arises from a complaint of discrimination filed under Section 211 of the Energy Reorganization Act of 1974 (the “ERA”), 42 U.S.C. § 5851 and the procedural regulations found at 29 C.F.R. Part 24 (2008). By letter dated March 26, 2015, the Regional Administrator for the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as agent for the Secretary of Labor (“Secretary”), issued an order finding reasonable cause to believe that the Respondent violated the ERA and ordered the Respondent, *inter alia*, to: (1) Reinstatement the Complainant to his former position at the rate of \$5,769.60 per week; (2) Pay back wages to the Complainant plus interest for the period of September 28, 2009 until reinstatement; (3) Pay compensatory damages of \$6,000; (4) Pay Complainant’s attorney’s fees of \$15,000; and (5) Expunge Complainant’s employment records of any reference to Complainant exercising his rights under the ERA. On June 5, 2015, the Respondent filed an objection to the Secretary’s preliminary order and requested a hearing pursuant to 29 C.F.R. § 24.106.¹ The trial was scheduled for May 24, 2016, in Washington, D.C. Prior to the trial, the parties informed me that they reached a settlement of this matter. On July 1, 2016, the Respondent’s counsel filed a cover letter and a document entitled: “Confidential Settlement

¹ Respondent indicated in its filing that it did not receive the preliminary order until May 7, 2015.

Agreement and Release” (hereinafter “Settlement Agreement”). I will treat the cover letter as a joint motion to approve the Settlement Agreement.

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the ERA whistleblower provisions. I find that the Settlement Agreement complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 24.111(d)(2), subject to my comments below.

The Respondent has asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Settlement Agreement therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties’ request. *See Duffy v. United Commercial Bank, 2007-SOX-00063* (Oct. 23, 2007). In this regard, I find that the Settlement Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

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., USDOL/OALJ Reporter (PDF), 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 access to the Settlement Agreement be restricted by the undersigned under 29 C.F.R. § 18.56 (Restricted Access). I find good cause for such restricted access and the Settlement Agreement will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.56 & 70.26. *See Sharp v. The Home Depot, Inc., ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at *3* (ALJ Jan. 16, 2008).

There are a few additional points that require brief attention. First, Paragraph 10(f) of the Settlement Agreement contains a choice of law provision naming the District of Columbia as the law which shall govern interpretation of the Settlement Agreement, without regard to the conflict of law provisions thereof. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Phillips v. Citizens. Assoc. for Sound Energy*, Case No. 1991-ERA-00025, slip op. at 2 (Sec’y Nov. 4, 1991).

I also 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 Witte’s current ERA case, 2015-ERA-00007. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Accordingly, it is **ORDERED** that:

- (1) The parties request to approve the Settlement Agreement is **GRANTED**;
- (2) The Settlement Agreement is **APPROVED**;
- (3) The Settlement Agreement shall be designated as confidential and maintained in a separate sealed envelope, subject to the procedures requiring disclosure under FOIA; and
- (4) The Complaint of Ulrich Witte is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts