

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 20 October 2005

In the Matter of

FRANK SPITZNOGLE
Complainant

v.

LEVEL 3 COMMUNICATIONS, INC.
Respondent

Case No. 2005-SOX-00068

ORDER OF WITHDRAWAL

A hearing in this case arising under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (the "Sarbanes-Oxley Act") and the regulations at 29 C.F.R. Part 1980 was scheduled to be held on September 20, 2005 in Denver, Colorado. The case concerns both the complainant's complaint of discrimination by the Respondent and the Respondent's claim for attorneys' fees.

Just prior to the date of the hearing, the parties orally notified this Office that they had resolved the matter and no longer needed a hearing. Accordingly, the hearing was cancelled. On October 17, 2005, the parties executed a *Stipulated Notice of Withdrawal* under which the complainant withdrew his appeal of the determination by the Regional Administrator of OSHA and respondent withdrew its claim for attorneys' fees. Under 29 C.F.R. §1980.111(c),

At any time before [OSHA's] findings become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge The judge . . . will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

Since there is no indication that the claims are being withdrawn due to a settlement, §1980.111(c) applies. Claimant is represented by counsel, and therefore is presumed to understand the consequences of withdrawing his objections to the Regional Administrator's determination that his complaint has no merit. Further, since the complaint is being withdrawn, it makes little sense for respondent to proceed on its claim for up to \$1,000.00 in attorneys' fees.

Under these conditions, the withdrawal of the complaint is approved, and the case is dismissed.

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JEFFREY TURECK
Administrative Law Judge