

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration
300 Fifth Avenue, Suite 1280
Seattle, Washington 98104



July 30, 2015

Via UPS Tracking # - 1ZX1067W0193113405
Timothy M. Lawlor
Witherspoon Kelley
422 W. Riverside Ave., Suite 1100
Spokane, WA 99201-0300

Via UPS Tracking # - 1ZX1067W0391845811
Kevin Baumgardner
Corr Cronin Michelson Baumgartner & Preece
1001 Fourth Ave., Suite 3900
Seattle, WA 98154

RE: Bechtel National, Inc./URS Corporation/Ford/0-1960-12-032

Dear Messrs. Lawlor and Baumgardner:

This is to advise you that we have completed our investigation of the above-referenced complaint under the Energy Reorganization Act (ERA), 42 U.S.C. §5851. In brief, the complaint alleged that on or about November 17, 2011, Complainant was laid off in retaliation for engaging in various protected activities dating back to 2005 and that in March 2012, Complainant was blacklisted by Respondent URS (failure to hire) for the same reasons.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region X, finds that there is reasonable cause to believe that Respondent Bechtel¹ violated the ERA and issues the following findings:

Secretary's Findings

Complainant was discharged on or about November 17, 2011. On May 11, 2012, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of the above referenced statute. As this complaint was filed within 180 days of the alleged adverse action, it is deemed timely filed.

The parties are covered under the ERA because Respondent is an employer within the meaning of 42 U.S.C. §5851 and Complainant is an employee within the meaning of 42 U.S.C. §5851.

In 1985, Complainant started working at the Hanford Nuclear Reservation in Richland, Washington.

On December 5, 2003, Complainant filed a Complaint of Discrimination under the ERA against his then-employer, Fluor Hanford Inc.

In 2004, Complainant testified in a Department of Labor whistleblower retaliation investigation.

¹ OSHA has not found reasonable cause to support a violation of the ERA by Respondent URS. Therefore, the complaint against Respondent URS is dismissed at this time.

In October 2007, Complainant was hired by Bechtel National, Inc. to work as a millwright at the Waste Treatment Plant (WTP) at Hanford.

On April 7, 2008, Complainant filed a Complaint of Discrimination under the ERA against potential employers Energy Northwest, Inc. and Battelle National Labs.

Evidence shows that employees of Respondents Bechtel and URS knew that Complainant had filed complaints with OSHA.

Evidence indicates that Complainant was scrutinized and treated more harshly than other employees.

On or about October 4, 2011, Respondent Bechtel prepared evaluations of the WTP's millwrights, including Complainant. Complainant was ranked 25th out of 26 millwrights. No Respondent URS employee rated or ranked Complainant. No Respondent URS employee participated in the decision to lay Complainant off. Only Respondent Bechtel superintendents participated in the ranking and rating of Complainant.

On November 17, 2011, Complainant was laid off.

From November 2011 through March 2012, six separate waves of layoffs reduced Respondent Bechtel's craft workforce by more than half, from 1327 to 631.

On March 6, 2012, Complainant applied for employment with Respondent URS as a Commissioning Specialist/Shift Manager; his application was accepted and reviewed by the human resources department. 40 applications out of 94 were submitted to the hiring manager. Complainant's application was not submitted because Complainant lacked sufficient management or supervisory experience. The Human Resources Representative that reviewed Complainant's application had no knowledge of Complainant's protected activities.

Complainant's protected activity was a contributing factor in Respondent Bechtel's layoff decision, but it was not a contributing factor in Respondent URS's decision not to hire Complainant for the Commissioning Specialist/Shift Manager position. Consequently, OSHA finds reasonable cause to believe that Respondent Bechtel has violated 42 USC §5851(a)(1)(D) and issues the following order.

ORDER

Upon receipt of this Secretary's Finding and preliminary order:

Respondent shall pay Complainant back pay, minus interim earnings, at rate of \$ 4588.50 per month, for the period November 18, 2011 until March 31, 2012.²

Respondent shall pay interest on the back wages and bonus in accordance with 26 U.S.C. 6621.
Respondent shall pay Complainant compensatory damages in the amount of \$ 25,000, for pain and suffering, including mental distress

Respondent shall pay Complainant's attorney's fees in the amount of \$ 7,069.80.

² Respondent Bechtel has shown that if Complainant had not been laid off in the first round of layoffs he certainly would have been laid off by the end of March 2012. Therefore, back pay beyond this date is not appropriate. Likewise, it is not appropriate to order Respondent Bechtel to reinstate Complainant.

Respondent shall expunge Complainant's employment records of any reference to the exercise of his rights under the ERA.

Respondent shall not retaliate or discriminate against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to the ERA.

Respondent shall post immediately in a conspicuous place in or about Respondent's facility, including in all places where notices for employees are customarily posted, including Respondent's internal Web site for employees or e-mails, if Respondent customarily uses one or more of these electronic methods for communicating with employees, and maintain for a period of at least 60 consecutive days from the date of posting, the attached notice to employees, to be signed by a responsible official of Respondent and the date of actual posting to be shown thereon.

In accordance with Federal Regulations, 29 CFR Part 24, *Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended*, Respondent will permanently display in a conspicuous place in or about its premises, including all places where posters for employees are customarily posted, including electronic posting, where the employer communicates with its employees electronically the ERA poster entitled, "Your Rights Under the Energy Reorganization Act." Said poster is attached.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002
Telephone: (202) 693-7300
Fax: (202) 693-7365

With copies to:

Nikolas F. Peterson, Esq.
Hanford Challenge
219 First Avenue South, Suite 310
Seattle, WA 98104

Ken Nishiyama Atha
Regional Administrator, Region X
U.S. Department of Labor – OSHA
300 Fifth Avenue, Suite 1280
Seattle, WA 98104-2397


In addition, please be advised that the U.S. Department of Labor does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence for the record. The ALJ who conducts the hearing will issue a decision based on the evidence and arguments, presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under the Act. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint.

The rules and procedures for the handling of ERA cases can be found in Title 29 of the Code of Federal Regulations, Part 24 and may be obtained at www.whistleblowers.gov.

Sincerely,



Jeff R. Funke, CSP
Acting Assistant Regional Administrator
Office of Whistleblower Programs

cc:  Nikolas F. Peterson, Esq., Complainant's representative (UPS # - 1ZX1067W0392082429)
Chief Administrative Law Judge, USDOL (UPS # - 1ZX1067W0190627231)
DWPP Regional Liaison
Department of Energy - Hanford