

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

**LA JOMAC GROUP, INC., JAG
PREMIER, INC., DATA
PROCESSING SPECIALISTS, INC.,
GURO ENTERPRISES, LLC, AND
BOLLINGER SHIPYARDS, INC., Joint Employers**

**Cases: 15-CA-137333
15-CA-137337**

and

CHARLES LEBLANC, an Individual

**RESPONDENT BOLLINGER SHIPYARDS, INC.'S
MOTION TO ACCEPT SETTLEMENT AGREEMENT**

Respondent, Bollinger Shipyards, Inc. (“Bollinger”), by undersigned counsel, respectfully moves for an Order accepting the non-Board settlement agreement attached hereto as Exhibit 1, over any potential objection of Counsel for the General Counsel. As established below, Bollinger’s Motion should be granted.

I. INTRODUCTION AND PROCEDURAL HISTORY

The underlying Charges in this case involve an alleged failure to hire – a typical salting case. Three of the respondents in this case, La Jomac, Jag, and Guro, provide contract employees to employers for temporary work assignments. One of the customers of these contractors was Bollinger who occasionally used temporary employees for its shipyard projects. The Counsel for the General Counsel contends that contractors, La Jomac, Jag, Guro, and Data Processing Specialists, either individually or collectively, failed to hire a number of employees based on their alleged union support. The Counsel for the General Counsel alleges that because these employees, if hired, would have been assigned to work at Bollinger, Bollinger is liable for alleged misconduct of the labor suppliers.

Despite its belief that under the Counsel for the General Counsel’s theory, even if all of the allegations were established and true, Bollinger is not liable for any alleged wrongdoing, Bollinger

and Charging Party (as well as each individual discriminatees) reached a non-Board settlement, fully remedying these Charges (*See* Exhibit 1). Bollinger has agreed to pay each of the alleged discriminatees backpay as a remedy. To date, the allegations related to the other respondents have not been resolved.

II. THERE ARE NO OBSTACLES TO SETTLEMENT

The General Counsel has not stated any obstacles to settlement. In fact, Counsel for the General Counsel Beauford Pines, via email, stated on May 2, 2019, “it is not a question of whether the Bollinger agreement will be approved, it is just timing.” The time is now. Despite Mr. Pine’s repeated assurances that the agreement executed by Bollinger and Charging Party would be approved, the Region has failed to do so. Bollinger has repeatedly requested that the Region approve the settlement but instead, Bollinger is repeatedly told that the approval is forthcoming. It is now one week before the trial is scheduled to start on May 14 and Bollinger is being prejudiced by the Region’s unexplained delay in this case.¹

The Region has had plenty of time to review and approve the settlement agreement but yet, has failed to do so. On April 19, 2019, Counsel for Bollinger sent Counsel for the General Counsel the proposed settlement agreement. On April 22, 2019, Charging Party sent his approval of the proposed settlement agreement, again copying Counsel for the General Counsel. On April 30, 2019, Counsel for the General Counsel received the fully executed settlement agreement. Bollinger nonetheless continues to await the Region’s approval of the settlement agreement.

¹ While Bollinger assumes that the Region is delaying its approval of the settlement until it determines whether the other respondents will also settle their claims, thereby allowing the Region to dismiss the Charges in their entirety rather than procedurally removing Bollinger from this matter, Bollinger should not be unduly burdened by the Region’s actions in this case. Because the Region refuses to approve the settlement agreement, Bollinger is required to continue to prepare as though it is proceeding to trial including holding the calendars of its witnesses and counsel.

III. THE PROPOSED SETTLEMENT IS CONSISTENT WITH THE PRINCIPLES SET FORTH BY THE BOARD IN *INDEPENDENT STAVE*

The settlement agreement executed by Bollinger and Charging Party is consistent with the considerations set forth in *Independent Stave*, 287 NLRB 740 (1987) as reaffirmed in *UPMC* 365 NLRB No. 153 (2017). The Board in *UPMC* overruled *Postal Service*, 364 NLRB No. 116 (2016) which held that ALJs would no longer be permitted to accept a respondent's offered settlement terms over the General Counsel's objections. Thus, Your Honor has the authority under extant Board law to grant the instant motion. In *UPMC*, the Board unequivocally announced that with it was "return[ing] to the Board's prior practice of analyzing all settlement agreements... under the 'reasonableness' standard set forth in *Independent Stave*...". The Board observed that it has "long had a policy of encouraging the peaceful, non-litigious resolution of disputes" which promotes "industrial harmony" and avoids the "risks inherent in protracted litigation. *UPMC* at *3.

The multi-factored test set forth in *Independent Stave* analyzes whether: (1) the parties have agreed to be bound and the position of the General Counsel; (2) the settlement was reasonable in light of the alleged violations, risks of litigation, and stage of litigation; (3) there has been any fraud, coercion or duress; and (4) respondent has a history of violations or breaching previous settlement agreements. Here, all of the factors favor the settlement reached by Bollinger and Charging Party. Indeed, this is precisely the type of case the Board had in mind in *UPMC*.

IV. APPLICATION OF *INDEPENDENT STAVE* FACTORS

As stated, all of the *Independent Stave* factors are present.

First, both parties have agreed to bound by the settlement agreement as evidenced by their signing of the agreement. Moreover, Counsel for Bollinger has informed both Charging Party and Counsel for the General Counsel that it has the backpay checks in its possession and is ready to disperse them as soon as the agreement is approved by the Region.

Second, the settlement agreement is reasonable in light of the alleged violations, risk of litigation and stage of the litigation. The allegations consist of an untimely and tenuous failure to hire allegation, based solely on an alleged joint employment relationship after employees are assigned to work at Bollinger (which none of the alleged discriminatees were). Tellingly, no Bollinger employees were impacted by the allegations set forth in the Charges and Bollinger has proportionally remedied any monetary liability at issue.

While Bollinger believes that the Region's theory of liability *as related to Bollinger* is wholly without merit, Bollinger was prepared to defend itself vigorously against these allegations. Despite Bollinger's willingness to defend itself, in the interest of avoiding a multi-day hearing and the associated litigation costs, Bollinger and Charging Party voluntarily reached an agreement resolving the allegations against Bollinger.

With regard to the stage of the litigation, the time to have these claims resolved is before all parties gear up for a full-blown trial with its attendant costs and expense. Bollinger needs to prepare its witnesses (who have been required to block out an entire week for potential hearing), issue subpoenas, and the Region, Charging Party, and other respondents presumably need to expend similar resources to respond to the allegations related to Bollinger.

Third, there has been no fraud, coercion or duress. Nothing more needs to be said about this factor.

Finally, Bollinger has no history whatsoever of prior violations or breaching settlement agreements. To the contrary, Bollinger does not have a history of violating the Act or breaching agreements. It is important to reiterate here that since the instant charges were filed more than four years ago, no subsequent charges against Bollinger have been filed.

Given the undisputed facts and applicable legal precepts, the Regional Director's refusal to formally approve the settlement agreement in this case is inappropriate and prejudicial to

Bollinger. The most reasonable course of action is for the parties to settle these claims without further litigation.

CONCLUSION

The undisputed facts of this case strongly favor acceptance of Bollinger and Charging Party's signed settlement agreement. Accordingly, Bollinger respectfully requests that its motion be granted.

Respectfully submitted this 7th day of May, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

s/Andrew P. Burnside

Andrew P. Burnside (LA Bar No. 14116)
One Shell Square
701 Poydras Street, Suite 3500
New Orleans, LA 70139
Phone (504) 648-2609
drew.burnside@ogletreedeakins.com

Sarah M. Rain
111 Monument Circle, Ste. 4600
Indianapolis, IN 46204
Phone: (317) 916-2167
sarah.rain@ogletreedeakins.com

Attorneys for Bollinger Shipyards, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of May, 2019, the foregoing was filed electronically and is available for viewing and downloading from the National Labor Relation Board's e-filing system, and has been served on all parties via email as follows:

Charles Leblanc (tristate2@uanet.org)
Rusty Gray, Esq. (rgray@bakerdonelson.com)
Trey Range, Esq. (trange@bakerdonelson.com)
Jorge Guerrero (jorgeguerrero1977@hotmail.com)
Beauford Pines, Esq. (beauford.pines@nlrb.gov)

s/Andrew P. Burnside

ANDREW P. BURNSIDE

38423447.2

NON-BOARD SETTLEMENT AGREEMENT

This Settlement Agreement ("the Agreement") is entered into by Charging Party Charles LeBlanc ("Charging Party") and Respondent Bollinger Shipyards, LLC. ("Bollinger") in settlement of the allegations asserted by the Charging Party against Bollinger in NLRB Case Nos. 15-CA-137333 and 15-CA-137337 ("the Charges").

WHEREAS, to avoid the possible future costs, burdens, or distractions of litigation, the Charging Party and Bollinger now desire and, through the execution of this Agreement, intend to dispose of and resolve fully and completely any and all disputes, causes of action, claims, issues, and/or differences between Charging Party and Bollinger related to the allegations contained in the Charges as of the date of the signing of this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements, and undertakings by the Parties and in full settlement of the Charge, the Parties agree as follows:

1. Charging Party agrees to seek amendment/withdrawal of the allegations in the Charges to remove any reference to or allegations related to Bollinger by requesting that the Regional Director for the National Labor Relations Board ("NLRB") approve such amendment/withdrawal of the Charges related to Bollinger, with prejudice. Charging Party acknowledges and agrees that the Bollinger's performance under this Agreement is contingent upon the Regional Director's approval of the amendment/withdrawal of the Charges. Charging Party further agrees that if the NLRB Regional Director does not approve the amendment to the Charges, this Agreement shall be rendered null and void. The Agreement is in no way intended to affect the Charges as related to allegations against other respondents.
2. Charging Party agrees not to file any further lawsuits, administrative charges or claims of any kind against Bollinger arising out of the alleged failure to hire the alleged discriminatees, identified in Paragraph 3 below, in 2014 or seek to amend the Charges to include additional allegations related to Bollinger arising out of the conduct set forth therein.
3. In exchange, Bollinger agrees to pay the alleged discriminatees backpay and interest as follows:

| Name | Backpay | Interest |
|-------------------------|---------|----------|
| Leonard Aguilar | \$5,841 | \$1,659 |
| Samuel D. Bankester | \$5,841 | \$1,659 |
| Steve Lee Fayard | \$5,841 | \$1,659 |
| Chris Inghram | \$5,841 | \$1,659 |
| Charles LeBlanc | \$5,841 | \$1,659 |
| Scott T. LeFevre | \$5,841 | \$1,659 |
| Christopher Glen Newell | \$5,841 | \$1,659 |
| James Joseph Templet | \$5,841 | \$1,659 |
| Landon D. Varnell | \$5,841 | \$1,659 |

The amounts listed in the Backpay column are gross before payroll taxes and will be reduced for applicable taxes for which a federal W-2 form, and, if applicable, a state equivalent to IRS W-2 will be issued. The Interest amounts will be paid in the amounts indicated for which an IRS Form 1099 will be issued. The alleged discriminatees agree to fill out 2019 IRS W-4 and equivalent state forms as a precondition to receipt of payment.

4. By the execution of this Agreement, the Company does not admit the commission of any unfair labor practices, any joint employment relationship with any other employer, or any other alleged unlawful conduct.
5. This Agreement constitutes the entire agreement of the Parties, and no other promises have been made. The Parties have been advised concerning the meaning of this Agreement, and enter into it freely. This Agreement may be executed in counterparts to facilitate the obtaining of all necessary signatures.

The Parties agree that they have read this Agreement, understand and agree to its terms, and have knowingly and voluntarily signed it on the dates written below.

Charles LeBlanc

By: Charles LeBlanc

DATE: 4-29-19

Bollinger Shipyards, LLC

By: AMK

Name / Title: Andrew St. Germain/EVP, CFO

DATE: 4-30-19

38193415.2