

Case 2:05-cr-06046-EFS Document 37 Filed 03/07/2006

1 James A. McDevitt
United States Attorney
2 Eastern District of Washington
GREGORY M. SHOGREN
3 Assistant United States Attorney
402 East Yakima Avenue, Suite 210
4 Yakima, WA 98901
Telephone: (509) 454-4425

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 07 2006

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

CR-05-6046-EFS

10 vs.

Plea Agreement

11
12 KIMBERLY SOLHEIM,

13 Defendant.

14 Plaintiff, United States of America, by and through James A. McDevitt,
15 United States Attorney for the Eastern District of Washington, and GREGORY M.
16 SHOGREN, Assistant United States Attorney for the Eastern District of
17 Washington, and Defendant KIMBERLY SOLHEIM, and the Defendant's
18 counsel, Mr. Ben Hernandez, agree to the following Plea Agreement:

19 I. Guilty Plea and Maximum Statutory Penalties:

20 The Defendant agrees to plead guilty to Count 1 of the Indictment filed on
21 November 9, 2005, charging the Defendant with Falsification of Entries in Labor
22 Union Records, in violation of Title 29 U.S.C. Section 439(c).

23 The Defendant understands that the charge contained in Count 1 of the
24 Indictment is a misdemeanor charge. The Defendant also understands that the
25 maximum statutory penalty for Falsification of Entries in Labor Union Records in
26 violation of 29 U.S.C. § 439(c), is not more than 1 year imprisonment; a fine not
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1 to exceed \$10,000; a term of supervised release of not more than 1 year; restitution
2 and a \$25.00 special penalty assessment.

3 The Defendant understands that a violation of a condition of supervised
4 release carries an additional penalty of re-imprisonment for all or part of the term
5 of supervised release without credit for time previously served on post-release
6 supervision.

7 2. The Court is Not a Party to the Agreement:

8 The Court is not a party to this Plea Agreement and may accept or reject this
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
10 Court. The Defendant understands that the Court is under no obligation to accept
11 any recommendations made by the United States and/or by the Defendant; that the
12 Court will obtain an independent report and sentencing recommendation from the
13 U.S. Probation Office; and that the Court may, in its discretion, impose any
14 sentence it deems appropriate up to the statutory maximums stated in this Plea
15 Agreement.

16 The Defendant acknowledges that no promises of any type have been made
17 to the Defendant with respect to the sentence the Court will impose in this matter.
18 The Defendant understands that the Court is required to consider the applicable
19 sentencing guideline range, but may depart upward or downward under the
20 appropriate circumstances.

21 The Defendant also understands that should the sentencing judge decide not
22 to accept any of the parties' recommendations, that decision is not a basis for
23 withdrawing from this Plea Agreement or a basis for withdrawing this plea of
24 guilty.

25 3. Waiver of Constitutional Rights:

26 The Defendant, understands that by entering this plea of guilty the
27 Defendant is knowingly and voluntarily waiving certain constitutional rights,
28 including:

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SOLHEIM 2-24-06.frm

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- 1 (a). The right to a jury trial;
2 (b). The right to see, hear and question the witnesses;
3 (c). The right to remain silent at trial;
4 (d). The right to testify at trial; and
5 (e). The right to compel witnesses to testify.

6 While the Defendant is waiving certain constitutional rights, the Defendant
7 understands the Defendant retains the right to be assisted through the sentencing
8 and any direct appeal of the conviction and sentence by an attorney, who will be
9 appointed at no cost if the Defendant cannot afford to hire an attorney. The
10 Defendant also acknowledges that any pretrial motions currently pending before
11 the Court are waived.

12 4. Elements of the Offense:

13 The United States and the Defendant agree that in order to convict the
14 Defendant of Falsification of Labor Union Records, in violation of 29 U.S.C. §
15 439(c), the United States would have to prove beyond a reasonable doubt the
16 following elements:

- 17 **First**, the Defendant, willfully made false entries, concealed, or
18 destroyed records, reports, or statements of a labor organization; and
19 **Second**, the records, reports or statements were required to be kept by
20 Section 436 of Title 29, United States Code.

21 Title 29, United States Code, Section 436 and 439(c)

22
23 5. Factual Basis and Statement of Facts:

24 The United States and the Defendant stipulate and agree that the following
25 facts are accurate; that the United States could prove these facts beyond a
26 reasonable doubt at trial; and these facts constitute an adequate factual basis for
27 Defendants's guilty plea. This statement of facts does not preclude either party
28 from presenting and arguing, for sentencing purposes, additional facts which are

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1 relevant to the guideline computation or sentencing, unless otherwise prohibited in
2 this agreement.

3 The Office of Labor-Management Standards, U.S. Department of Labor,
4 conducted an investigation of Kimberly Solheim, the bookkeeper for the
5 Brotherhood of Locomotive Engineers (BLE), Division 402, in Pasco, Washington
6 in July, 2005. BLE is and was a labor organization engaged in an industry
7 affecting commerce within the meaning of Sections 402(I) and 402(j) of Title 29,
8 United States Code.

9 Solheim's husband, Kurt Solheim, was the secretary-treasurer of BLE.
10 Before accepting the position as secretary-treasurer, he obtained the permission of
11 BLE membership for his wife to perform all of the duties as secretary-treasurer.
12 Those duties included responsibility for managing the day-to-day activities of the
13 union, including disbursing BLE funds (accounts payable), purchasing office
14 equipment, depositing funds into the BLE bank account, and maintaining records
15 of all transactions involving BLE monies.

16 Beginning on July 11, 2001, and continuing until July 25, 2003, Kimberly
17 Solheim wrote unauthorized checks from the BLE account payable to her
18 husband, Kurt Solheim, totaling approximately \$14,635.¹ She then deposited the
19 checks into their joint bank account and used the funds for her own purposes.
20 There is no evidence that the husband knew anything about the scheme. Kimberly
21 Solheim falsified the records of BLE to conceal the fact that the checks were
22 issued to her husband. Those records are required for submission to the Secretary
23 of Labor in the annual financial report and are records required to be kept by
24 Section 436 of Title 29, United States Code.

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¹The exact amount to be determined by the Court with the assistance of the
United States Probation Office.

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1 Solheim was interviewed about the funds and signed a written statement on
2 August 17, 2005, admitting her criminal conduct. She said that she knew that
3 what she did was unlawful at the time she did it. She has paid over \$5,000.00 to
4 date in restitution to BLE.

5 6. Waiver of Inadmissibility of Statements:

6 The Defendant agrees to waive the inadmissibility of statements made in the
7 course of plea discussions with the United States, pursuant to Fed. R. Crim.
8 P. 11(f). This waiver shall apply if the Defendant withdraws this guilty plea or
9 breaches this Plea Agreement. The Defendant acknowledges that any statements
10 made by the Defendant to law enforcement agents in the course of plea discussions
11 in this case would be admissible against the Defendant in the United States's case-
12 in-chief if the Defendant were to withdraw or breach this Plea Agreement.

13 7. The United States Agrees:

14 Dismissal:

15 At the time of sentencing, the United States agrees to move to dismiss
16 Count 2 of the Indictment, which charges the Defendant with Embezzlement of
17 Labor Union Funds, in violation of 29 U.S.C. § 501(c).

18 Not to File Additional Charges:

19 The United States Attorney's Office for the Eastern District of Washington
20 agrees not to bring any additional charges against the Defendant based upon
21 information in its possession at the time of this Plea Agreement and arising out of
22 Defendant's conduct involving illegal activity charged in this Indictment, unless
23 the Defendant breaches this Plea Agreement any time before or after sentencing.
24

25 8. United States Sentencing Guideline Calculations:

26 The Defendant understands and acknowledges that the United States
27 Sentencing Guidelines (hereinafter "U.S.S.G.") are not applicable to this case
28 because the offense of conviction is a misdemeanor, and that the Court will

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1 determine the Defendant's applicable sentencing guideline range at the time of
2 sentencing after considering the Defendant's circumstances and the factors
3 contained in Title 18 United States Code, Section 3553.

4 The Defendant agrees to pay the \$25 mandatory special penalty assessment
5 to the Clerk of Court for the Eastern District of Washington, at or before
6 sentencing, and shall provide a receipt from the Clerk to the United States before
7 sentencing as proof of this payment, as a condition to this recommendation by the
8 United States.

9 9. Incarceration:

10 Length of Imprisonment:

11 The United States and the Defendant agree to recommend that the Court
12 impose a sentence of probation only.

13 10. Criminal Fine:

14 The United States and the Defendant are free to make whatever
15 recommendation concerning the imposition of a criminal fine that they believe is
16 appropriate.

17 11. Probation:

18 The United States and the Defendant agree to recommend that the Court
19 impose a 1- year term of probation to include the following special conditions, in
20 addition to the standard conditions of probation:

21 (1) that the Defendant provide financial information, provide copies of
22 Federal income tax returns and allow credit checks, at the direction of the
23 Probation Officer;

24 (2) that the Defendant shall disclose all assets and liabilities to the
25 Probation Officer and shall not transfer, sell, give away, or otherwise convey or
26 secret any asset, without the advance approval of the Probation Officer; and
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1 (3) that the Defendant be prohibited from incurring any new debt, opening
2 new lines of credit, or enter any financial contracts or obligations in amounts more
3 than \$1,500 without the prior approval of the Probation Officer;

4 (4) that the Defendant participate and complete financial counseling and life
5 skills programs at the direction of the Probation Officer;

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8 12. Restitution:

9 The Defendant hereby stipulates and agrees to an order of restitution in the
10 amount to be determined by the Court with the assistance of the United States
11 Probation Office. The parties reserve the right to present evidence and argument
12 on the issue of the amount of the restitution order.

13 13. Mandatory Special Penalty Assessment:

14 The Defendant agrees to pay the \$25 mandatory special penalty assessment
15 to the Clerk of Court for the Eastern District of Washington, at or before
16 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the
17 Clerk to the United States before sentencing as proof of this payment.

18 14. Additional Violations of Law Can Void Plea Agreement:

19 The Defendant and the United States agree that the United States may at its
20 option and upon written notice to the Defendant, withdraw from this Plea
21 Agreement or modify its recommendation for sentence if, prior to the imposition
22 of sentence, the Defendant is charged or convicted of any criminal offense
23 whatsoever or if the Defendant tests positive for any controlled substance.

24 15. Appeal Rights:

25 Nothing in this Plea Agreement shall preclude the United States from
26 opposing any motion for reduction of sentence or other attack of the conviction or
27 sentence, including but not limited to proceedings pursuant to 28 U.S.C. § 2255
28 (Writ of Habeas Corpus). Should this conviction be set aside, reversed, or

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1 vacated, this Plea Agreement is null and void and the United States may institute
2 or re-institute any charges against the Defendant and make derivative use of any
3 statements or information the Defendant has provided.

4 The Defendant agrees to waive the right to appeal the judgment and
5 sentence if the Court imposes a sentence in accordance with this Plea Agreement.

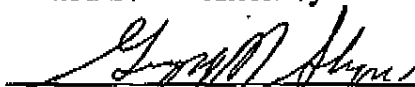
6 16. Integration Clause:

7 The United States and the Defendant acknowledge that this document
8 constitutes the entire Plea Agreement between the United States and the
9 Defendant, and no other promises, agreements, or conditions exist between the
10 United States and the Defendant concerning the resolution of the case. This Plea
11 Agreement is binding only upon the United States Attorney's Office for the
12 Eastern District of Washington, and cannot bind other federal, state or local
13 authorities. The United States and the Defendant agree that this agreement cannot
14 be modified except in a writing that is signed by the United States and the
15 Defendant.

16
17 Approvals and Signatures

18 Agreed and submitted on behalf of the United States Attorney's Office for
19 the Eastern District of Washington.

20 James A. McDevitt
21 United States Attorney

22 
23 _____
24 GREGORY M. SHOGREN
Assistant U.S. Attorney

25 3-6-06
26 _____
27 Date

28 I have read this Plea Agreement and have carefully reviewed and discussed
every part of the agreement with my attorney. I understand and voluntarily enter
into this Plea Agreement. Furthermore, I have consulted with my attorney about

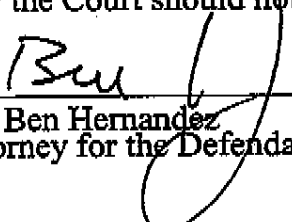
1 my rights, I understand those rights, and I am satisfied with the representation of
 2 my attorney in this case. No other promises or inducements have been made to
 3 me, other than those contained in this Plea Agreement and no one has threatened
 4 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
 5 guilty because I am guilty.

6
 7 
 8 _____
 KIMBERLY SOLHEIM
 Defendant

3/7/06

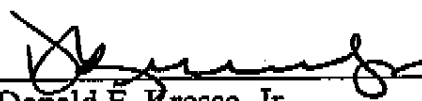
 Date

10 I have read the Plea Agreement and have discussed the contents of the
 11 agreement with my client. The Plea Agreement accurately and completely sets
 12 forth the entirety of the agreement between the parties. I concur in my client's
 13 decision to plead guilty as set forth in the Plea Agreement. There is no legal reason
 14 why the Court should not accept the Defendant's plea of guilty.

15
 16 
 17 _____
 Mr. Ben Hernandez
 Attorney for the Defendant

3-7-06

 Date

19
 20 
 21 _____
 Donald E. Kresse, Jr.
 Supervising AUSA

3/6/06

 Date