

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No.
)	2:08cv02621
)	
)	
MEMPHIS GOODWILL INDUSTRIES, INC.)	
)	
Defendant.)	

ORDER

Before the Court is Defendant Memphis Goodwill Industries, Inc.’s (“Defendant”) Motion in Limine to Bar the Introduction of Any Evidence Related to Defendant’s Position Statement Submitted to Plaintiff EEOC, Including the Statement Itself and Affidavits Submitted to EEOC. (D.E. #47.) Plaintiff Equal Employment Opportunity Commission (“EEOC”) filed a response in opposition on January 4, 2010. On January 5, 2010, the Court held a motions hearing. Defendant argues that its position statement, supporting affidavits, and requests for information submitted during the EEOC’s investigation should be excluded pursuant to 42 U.S.C. § 2000-e-5(b) and Federal Rules of Evidence 408 and 802. The Court finds that these documents do not constitute conciliation materials barred from admission by 42 U.S.C. § 2000-e-5(b), nor do they constitute settlement information barred from admission by Federal Rule of Evidence 408. Finally, the position statements cannot be excluded as hearsay as an “employer’s position statement in an EEOC proceeding may be admissible to the extent it constitutes an

admission, or to show the employer has given inconsistent statements in justifying its challenged decision, which may tend to prove that its stated reasons are pretexts.” Frazier v. Ind. Dep’t. of Labor, 2003 U.S. Dist. LEXIS 9073, at *16-17 (S.D. Ind. Mar. 17, 2003) (citing Maschka v. Genuine Parts Co., 122 F.3d 566, 570-71 (8th Cir. 1997) and Olitsky v. Spencer Gifts, Inc., 964 F.2d 1471, 1476-77 (5th Cir. 1992)). Therefore, the Court **DENIES** Defendant’s motion.

IT IS SO ORDERED, this the 7th day of January, 2010.

s/Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE