SECRETARY OF LABOR,	:	
Complainant,	:	
v.	:	OSHRC Docket No. 00-0763
FORD MOTOR COMPANY,	:	
Respondent.	:	

ORDER

This matter is before the Commission on a Direction for Review entered by Chairman Thomasina V. Rogers on June 12, 2001. The parties have now filed a Settlement Stipulation and Joint Motion (Settlement) disposing of all remaining issues in this case. In view of the Settlement, we conclude that no further review by the Commission is warranted. Accordingly, the Settlement is approved.

We incorporate the Settlement into this Order and we set aside the Administrative Law Judge's Decision and Order to the extent that it is inconsistent with the Settlement. This is the final order of the Commission.

Date: December 12, 2001

/s/
Thomasina V. Rogers
Chairman

/s/
Ross Eisenbrey
Commissioner

00-0763

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Counsel for Regional Trial Litigation
Stephen D. Turow, Attorney
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, DC 20210

Patricia Rodenhausen, Regional Solicitor
Marc G. Sheris, Attorney
Office of the Solicitor, U.S. DOL
201 Varick St., Room 983
New York, NY 10014

David E. Jones, Esq.
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
600 Peachtree Street, Suite 2100
Atlanta, GA 30308

G. Marvin Bober
Administrative Law Judge
Occupational Safety and Health
Review Commission
1120 20th Street, Ninth Floor
Washington, D.C. 20036-3419

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor, Complainant, v. FORD MOTOR COMPANY, Respondent.	))))))))))	OSHRC Docket No. 00-0763

SETTLEMENT STIPULATION AND JOINT MOTION

COME NOW, the Complainant, Elaine L. Chao, Secretary of Labor, United States Department of Labor (the "Secretary"), and the Respondent, Ford Motor Company ("Ford"), and submit this Settlement Stipulation and Joint Motion pursuant to 29 C.F.R. § 2200.100. This agreement specifies the terms of settlement for Item 3 of Citation I, Item 4 of Citation I, Item 6 of Citation I, Item 7 of Citation I, and Item I of Citation 2 of the Citations and Notification of Penalty issued pursuant to OSHA Inspection No. 302937164 on March 9, 2000 as amended thereafter, thus disposing of all remaining issues in this case as follows:

1. The Secretary, without objection by Ford, hereby withdraws her Petition for Discretionary Review of the judge's holding with respect to Item 3 of Citation I, so that the judge's holding on that item in his Decision and Order of May 2, 2001 ("Decision and Order") becomes a final order pursuant to Section 10 of the Occupational Safety and HealthAct (the "Act"), 29U.S.C. § 659. While taking exceptign to the judge's findings in vacating Item 3 of Citation 1, the Secretary

agrees to forgo further litigation in order to gain the benefits associated with this Agreement, which the Secretary believes will further health and safety goals more fully and effectively than recourse to further litigation.

2. The Secretary, without objection by Ford, hereby withdraws her Petition for Discretionary Review of the judge's holding with respect to Item 4 of Citation I, so that the judge's holding on that item in his Decision and Order becomes a final order pursuant to Section 10 of the Act. While taking exception to the judge's findings in vacating Item 4 of Citation 1, the Secretary agrees to forgo further litigation in order to gain the benefits associated with this Agreement, which the Secretary believes will further health and safety goals more fully and effectively than recourse to further litigation.

3. In relation to the Secretary's withdrawal of her Petition for Discretionary Review with respect to Items 3 and 4 of Citation 1, Ford recognizes the importance of compliance with the deenergization provisions of 29 C.F.R. §1910.333(b) to the health amd safety of its employees. Ford will continue to take reasonable and good faith actions to assure that its employees understand, and adhere to, the deenergization provisions of 29 C.F.R. §1910.333(b).

4. Ford, without objection by the Secretary, and subject to the provisions of Paragraph 9 hereof, hereby withdraws its Petition for Discretionary Review of the judge's holding with respect to Item 6 of Citation I, so that the judge's holding on that item in his Decision and Order becomes a final order pursuant to Section 10 of the Act.

5. Ford, without objection by the Secretary, and subject to the provisions of Paragraph 9 hereof hereby withdraws its Petition for Discretionary Review of the judge's holding with respect

to Item 7 of Citation 1, so that the judge's holding on that item in his Decision and Order becomes a final order pursuant to Section 10 of the Act.

6. Ford, without objection by the Secretary, and subject to the provisions of Paragraph 9 hereof hereby withdraws its Petition for Discretionary Review of the judge's holding with respect to the finding of a violation, the classification of the violation as serious, and the appropriate penalty for the violafion as to Item I of Citation 2, so that the judge's holding on those maNers in his Decision and Order becomes a final order pursuant to Sect on 10 of the
Act.

7. The Secretary, without objection by Ford, hereby withdraws her Petition for Discretionary Review of the judge's holding with respect to the classification of the violation set forth in Item I of Citation 2 as a "serious" violation, so that the judge's holding on that maKer in his Decision and Order becomes a final order pursuant to Section 10 of the Act.

8. As indicated in Paragraphs 6 and 7 above, the Secretary and Ford agree that the violation cited in Item I of Citation 2 should be classified as a "serious" violation, although for reasons that differ ffom the rationale expressed by the judge in his ruling on this classification issue in his Decision and Order. Inasmuch as the judge's rationale on the classification of this item is unnecessary for the disposition of this case by consent, and, if left standing, would prevent the parties from resolving this case without further review of the issue, the parties move the Commission to strike, through entry of an order approving this Settlement Stipulation and Joint Motion ("Stipulation"), that portion of the judge's Decision and Order setting forth his rationale for the classification of the said item.

9. During the proceeding before the judge, the Secretary withdrew Instance "a" in each of Citation I, Item 6; Citation I, Item 7; and Citation 2, Item I. Secretary of Labor's Post-Hearing Memorandum of Law, Page 10. In his Decision andOrder, the judge nevertheless ruled onlustance "a" in each of those items. Inasmuch as the judge thus ruled on matters that were no longer before him, which rulings, if left standing, would prevent the parties from resolving this case without ffirther review of the issues raised, the parties move the Commission to strike, through entry of an order approving this Stipulation, those portions of the judge's Decision and Order affilming h~stance "a" in each of Citation I, Item 6; Citation I, Item 7; and Citation 2, Item I.

10. For all purposes other than actions arising under the Act, Ford denies that it, in any manner, violated the Act or any regulation or standard promulgated thereunder, and specifically denies all of the violations alleged in the Citations and Notification of Penalty and that it caused, or allowed to be caused, proximately or otherwise, any conditions described or violations alleged in the Citations and Notification of Penalty. The parties further acknowledge that, with the exception of actions arismg under the Act, neither this Stipulation, nor anything contained in it, nor Ford's consent to the entry of a final order, nor the final order, nor the payment of any monies in settlement of this matter, nor any other actions taken pursuant to this Stipulation, are intended to be, nor shall they be, offered, used, or admitted in any proceeding or litigation, or construed as evidence of, or as an admission by Ford of any of the following: (a) the existence of any of the conditions asserted in the Citations and Notification of Penalty; (b) that the conditions asserted in the Citations and Notification of Penalty were a cause, proximate or otherwise, of any accidents or damages regarding any claim or proceeding for damages that may exist or arise in the future; (c) any violations of the Act or of any regulation or standard thereunder; or (d) any fault, liability, intentional or reckless misconduct, negligence, or lack of due care

on the part of Ford or any of its employees, agents, or representatives. Finally, the parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and without litigation or further expense.

11. Ford represents that it will make payment of the penalty in the amount of $14,000 by corporate, certified, or cashier's check or by money order made payable to "U.S. Department of Labor - OSHA" and that it will deliver such payment to the following address no later than 60 days from the date on which the Commission enters an Order disposing of this litigation in accordance with this Stipulation:

David Boyce, Area Director
OSHA Buffalo Area Of fice
5360 Genesee Street
Bowmansville, New York 14026

12. In light of the underlying concerns addressed in Items 6 and 7 of Citation I and Item I of Citation 2, Ford agrees to develop, document, and implement hazard analyses evaluafing plant-specific tasks that create the potential for exposure to electrical hazards when performed by one or more of the approximately 4,000 electricians employed by Ford at its 37 manufacturing facilities and parts distribution centers located in 13 states in the United States. Ford will develop the hazard analyses in accordance with the personal protective equipment provisions contained in Chapters 2 and 3 of Part 11 of the NFPA 70E (2000 Edition) *Standard for Electrical Safety Requirements for Employee Workplaces.* These hazard analyses will either designate the personal protective equipment to be used during the performance of the subject task, or they will refer to a label that designates the required personal protective equipment,

which label shall be affxed to the relevant electrical equipment (e.g., electrical control enclosure, junction box, buss plug, transformer, substation). These designafions of personal protecfive equipment shall be made after considering, and where appropriate implementing, the use of engineering controls (e.g., current limiting fuses and circuit breakers to reduce fash protection boundaries) to limit the need for reliance upon personal protective equipment. However, where the Act requires the use of means such as engineering or work pracfice controls to provide protection against the hazards associated with exposure to energized circuits and equipment, Ford will comply with such requirements, where feasible, rather than limiting the protection provided to personal protective equipment.

13. Ford shall complete the hazard analyses, and take appropriate steps to ensure that its electricians performing the tasks with exposure to potential electrical hazards are using the required personal protective equipment, within 15 months of the date that the Commission enters an order disposing of this litigation in accordance with the terms of this Stipulafion. Upon complefion of the hazard analyses, Ford shall provide written assurance to the Secretary that they have been completed and will permit representatives of the Secretary to review a representative sample of them upon request.

14. OSHA acknowledges that, given the present state of its standards and regulations, the hazard analyses protocol described above can be applied to achieve compliance with the requirements of the Act concerning the selection and use of personal protective equipment, if the protocol results in the selection and use of personal protective equipment that a reasonable

person familiar with the hazard, including facts unique to the industry, would consider necessary toadequately protect employees from exposure to electrical hazards.

15. Ford has discussed the resolution of this case, including the development and implementation of the hazard analyses described above, with appropriate of ficials of the United Autoworkers Union ("UAW") representing Ford employees. Ford expects to continue working with the UAW in a cooperative and productive manner in effectuating the provisions of this Stipulation, and is unaware of any opposition by the UAW to Ford's entering into this Stipulation with the Secretary.

16. Each party hereby agrees to bear its own fees (including attomey fees) and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

17. Affected employees herein are represented by UAW Local 897,3800 Lakeshore Rd., Buffalo, NY 14219. Ford certifies that on November 21, 2001, notice ofthe foregoing has been or will be given to employees by posting a true copy of this Stipulation (as executed by Ford) in accordance with Commission's Rule 7(g) [29 C.F.R. 2200.7(g)], and by mailing an additional such copy to the above-named union.

18. The agreements reached and the actions to be taken by the parties herein are contingent upon the Commissi m entering an order approving this Stipulation in its entirety.

ACCORDINGLY, the parties move the Occupational Safety and Health Review Commission for entry of an order appropriate for final disposition of this matter.

For the Respondent:	For the Secretary
FORD MOTOR COMPANY, and its successors	HOWARD M. RADZELY Acting Solicitor of Labor
	JOSEPH M.WOODWARD Associate Solicitor
	DONALD G. SHALHOUB Deputy Associate Solicitor
	DANIEL MICK Counsel for Regional Litigation STEPHEN D. TUROW Attorney
By: /s/ David E. Jones Attorney	By: /s/ Stephen D. Turow Attorney
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C. Dated:11/21/01.	Attorneys for the Secretary of Labor, United States Department of Labor. Dated: 11/26/01.

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR,

OSHRC Docket No. 00-0763

Complainant,

v.

FORD MOTOR COMPANY,

Respondent.

APPEARANCES:

Marc G. Sheris, Esquire
Diane Sherman, Esquire
U.S. Department of Labor

For the Complainant

David E. Jones, Esquire
Ogletree, Deakins, Nash
Smoak & Stewart, P.C.

J. Gordon Christy, Esquire
Ford Motor Company

For the Respondent

BEFORE: G. MARVIN BOBER, Administrative Law Judge

DECISION AND ORDER

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 561-678 (1970)("the Act") for review of two citations issued by the Secretary of Labor, ("the Secretary"), pursuant to Section 9(a) of the Act, and the penalties proposed pursuant to Section 10(a) of the Act.

The citations were issued following an OSHA inspection of a Ford Motor Company, ("Ford") stamping plant in Buffalo, New York. The inspection arose as a result of an electrical accident which occurred at the plant on September 15, 1999. The inspection continued through January, 2001.

Citation 1 alleges serious violations of 29 C.F.R.§§ 1910.303(g)(1)(i), 1910.333(a)(1), 1910.333(b)(2), 1910.333(b)(2)(i), 1920.335(a)(1)(i) and 1910.335(a)(1)(v).[1] Citation 2 alleges a repeated violation of 29 C.F.R. 1910.335(a)(1)(iv), based on a prior citation issued to Ford for a violation of 29 C.F.R. 1910.335(a)(1)(iv) at a Ford facility in Ohio. The prior citation was resolved through an informal settlement agreement.(*See* C-3). The agreement was not submitted to the Occupational Safety and

[1] Citation 1, Item 1 was reclassified from "serious" to "other" on the record, and was subsequently settled with a penalty of $1,000.00. (Tr. 9, 507).

Health Review Commission ("the Commission") for approval and therefore did not become a final order. (Tr. 501, C-3). Respondent's pleading admits that the Commission has jurisdiction over the case.

The trial was held from December 5, 2000 through December 7, 2000. Briefs were submitted on March 26, 2001, and the matter is now ready for disposition.

Relevant Testimony

Deborah Bateman, an electrical apprentice employed by Ford, sustained serious burn injuries while attempting to sever cables feeding through a junction box in the basement of the Ford Buffalo plant on September 15, 1999. She was working under the supervision of journeyman Charles Jordan at the time. Bateman testified that earlier that day, Maury Dole, their electrical leader, walked her to the junction box and told her that she and Jordan were to remove four wires from the junction box, because, as she told the OSHA compliance officer, ("CO") who inspected the job site following the accident, "it was in the way of the contractors." (Tr. 37, 42). Jordan testified that he understood the job involved removing cables that fed into the "soft-start" unit in the basement. (Tr. 73).

After assessing the job, Jordan obtained a ladder, ascended it, and cut two wires inside the box. He then directed Bateman to ascend the ladder and cut two more wires. Bateman cut one wire, but had difficulty accessing the second wire because the space in front of the box was tight, as a result of the existence of a "column" which would not allow the door of the junction box to open all the way. (Tr. 25).[2] Jordan told Bateman to brace her left arm on the box to gain leverage, which she did. Bateman received an electrical shock when she cut the second wire. (Tr.26- 29).

It is undisputed that neither Jordan nor Bateman used available electrical voltage testers, or "wiggies", to determine whether the cables they intended to sever were live before cutting the wires. (Tr. 37-38, 82). It is also undisputed these employees did not properly lock out all the energy flowing into the junction box. (Tr. 171). There is no evidence that either employee violated any safety rules or practices on any date before this accident. (Tr. 639-654).

The junction box contained cables feeding into press line #19, as well as cables feeding into press line #18. (Tr. 156). A caution sign located on the door to the box warned, "CAUTION! separate 460 V 3 phase 60 cycle incoming main feeder line wiring splice box. Wiring remains hot with press disconnect off." (C-8). According to Robert Ball, a former Ford safety engineer in the Buffalo plant, the sign indicates that there is more than one source feeding through the junction box.[3] (Tr. 285). While Jordan had placed a shop lock on the current leading to press line #18 the day before the accident, he did not lock

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[2] The "column" was later identified as a metal pipe, which ran parallel to and 21 ½ inches from the face of the junction box. (Tr. 460-461).

[3] Robert Ball is now in Ford's "Sic Sigma Program." He is not an electrician, and never performed any electrical work at the plant. (Tr. 235, 335).

out press line #19. (Tr. 75, 86). Both Dole and Michael Hayden, the plant engineering electrical supervisor, were aware prior to the accident that the two press lines were powered by the same bus and consequently, fed through the junction box. (Tr. 157, 160).

In contrast with Bateman's understanding of their instructions on the day of the accident, Dole testified that their assignment involved moving a conduit back to an " LB", or condolay, which was protruding from a junction box attached to the press. Dole testified that he did not intend for either Jordan or Bateman to do any work inside the junction box. (Tr. 122-123). Hayden testified in accordance with Dole in this regard. (Tr. 166-167)

At the time of the accident, Ford was in its third or fourth week of a construction project which included refurbishing the press line with new controls. Dole was the electrical leader for this project. (Tr. 149-150). The evidence demonstrates that two Ford employees were instructed to remove a soft start panel from line #18 on the day prior to the accident.[4] (Tr. 59). According to one of these employees, the breakers for the line were locked out. Exposed, charged conductors were nonetheless present in the junction box leading to press line # 18, located in the basement. (Tr. 59-60). It is undisputed that these two employees advised Dole, who had given them the assignment, that they could not clear the wire out of the conduit because of the presence of live wires in the junction box. (Tr. 59-60)

The evidence establishes that Ford, in conjunction with members of the United Auto Workers union ("UAW") prepared, established and enforced safety rules and policies directed towards avoiding accidents resulting from a failure to lock out and/or tag out energy before servicing equipment. As is demonstrated below, Ford also provided extensive training in energy and power lockout and tagout safety practices to its employees, which included periodic refresher courses. Jordan and Batemen were both trained in these practices.

Even though Ford provides fire-retardant coveralls for its electricians, Ford does not require that its employees who work on electrical equipment containing under 600 volts wear them. Nor does Ford require that electricians who work on equipment containing less than 440 volts wear insulated gloves, face shields or nonconductive head gear. (Tr. 245-246, 744-745, 835) While Bateman was wearing safety glasses, nonconductive foot gear, and overalls she purchased herself, her overalls were not determined to be flame resistant or flame retardant, and she was not wearing a face shield, protective gloves, or nonconductive head gear. (Tr. 28, 46-48). During OSHA's investigation of this accident, two other Ford employees advised CO Upton that they performed troubleshooting operations without the protection of flame resistant coveralls, insulated gloves, face shields or nonconductive head gear. (Tr. 494-495, 499-500).

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[4] These employees were Anthony Fontana and Mark Swinarski.

Evidentiary Issue Raised During the Trial

During the trial, the Secretary attempted to introduce oral statements purportedly made to CO Upton by two Ford employees. The Secretary was allowed to make an offer of proof, following which the statements were excluded as hearsay. The Secretary was allowed to revisit the issues in her post trial brief. She has done so, and for the following reasons, I affirm my decision to exclude the proposed statements as hearsay.

Specifically, the Secretary sought to introduce a comment allegedly made by Bob Misztal, identified as an electrical supervisor, to the effect that "(Ford) waits for OSHA to point out electrical violations" (Tr. 914), and a comment made by Robert Ball to the effect that employees choose not to close doors, that they cannot be disciplined, and that he observed an employee committing an electrical violation. (Tr. 909-911). Misztal'S duties apparently included giving the assignments to Dole, who, in turn, gave the assignments to electricians. (Tr. 20-24). Misztal did not testify at trial and no reason for his absence was provided. However, the Secretary's offer of proof clarified that the Misztal statement did not involve, in part if not in whole, the citations at issue in this case. (Tr. 912-913). Ball, on the other hand, testified at trial and denied that he told CO Upton that it was not possible to effectively discipline electricians. (Tr. 260).

Federal Rule of Evidence 801(d)(2)(D) provides, in pertinent part, that "A statement is not hearsay if ... (t)he statement is offered against a party and is...a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." *Id*. *See also Regina Constr. Co*. 15 BNA OSHC 1044, 1047-1048, (No. 87-1309, 1991)[5]. There is no evidence that Misztal, purportedly Bateman's indirect supervisor, was involved in the institution of safety programs or the establishment of Ford's disciplinary policies. Thus, the Secretary failed to establish that Misztal's statement was within the scope of the declarant's agency. Additionally, the record is not clear when either Misztal's or Ball's statements were made. The Secretary also failed, therefore, to establish that the statements were made during the existence of the agency relationship. Further, the statements contain the added evidentiary problem of questionable relevancy. There is no indication that the electrical violations Ball purportedly witnessed occurred after implementation of Ford's lockout/tagout safety program was instituted, or, indeed, whether they occurred at this plant, and as noted above, the Secretary did not establish that Misztal's statement was related to the electrical safety standards in this case.

The Secretary alternatively argues that if the statements are hearsay, they are nonetheless admissible under Fed. R. Evid. 803(8)(C), which allows for the admission of "Records, statements or data

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[5] Rule 71 of the Commission's Rules of Procedure, 29 C.F.R. 2200.71 makes the Federal Rules of Evidence applicable to Commission proceedings.

compilations... of public offices or agencies, setting forth...in civil actions...factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." *Id.* It appears that the Secretary is attempting to use this rule to offer the purported declarations, under the argument that they were part and parcel of a government investigation. However, neither declarant is an employee of a public office or agency. In any event, I find that the proposed declarations lack sufficient indicia of credibility to warrant the use of this rule to admit what would otherwise be inadmissible.[6]

The Secretary's Burden of Proof

To prove a violation of an OSHA standard, the Secretary has the burden of establishing that "(1) the standard applies, (2), the employer violated the terms of the standard, (3) Respondent's employees had access to the violative condition, and (4) the employer had actual or constructive knowledge of the violative condition." *Gary Concrete Prod., Inc* 15 BNA OSHC 1051, 1052 (No. 86-1087, 1991).

Citation 1, Item 2

This Item alleges a violation of 29 C.F.R. 1910.303(g)(1)(i), which provides that:

> [The] dimension of the working space in the direction of access to live parts operating at 600 volts or less and likely to require examination, adjustment, servicing, or maintenance while alive may not be,...[closer than 3 feet, (or 2 feet 6 inches) for installations built prior to April 16, 1981].

The standard further provides that the " workspace may not be less than 30 inches wide in front of the electric equipment." The evidence demonstrates that there was a metal pipe within 21 inches of the front of the junction box Bateman was working on at the time of the accident. (Tr. 470-471). The junction box fed cables from one bus to two separate presses and contained exposed live wires.

At issue, however, is whether the junction box in question was likely to require examination, adjustment, servicing or maintenance, while alive. The testimony adduced at trial indicates that there were no circuit breakers or fuses that would require regular maintenance, examination, adjustment or servicing in the junction box. (Tr. 228, 830-831). Ford's safety specialist, Randy Smitt, testified that his post-accident inspection of the box revealed that the components were merely connection points. Once they are

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[6] Even if the proposed statements were admitted, however, they would not change any portion of this decision. Neither purported statement is credible. There was no evidence that Misztal was involved in Ford's safety policy. Thus, his statement that Ford had a policy to not adopt a safety measure until cited by OSHA is suspect. Further, it flies in the face of the fact that Ford had an extensive safety program with no evidence that it was motivated by prior OSHA citations. Also, the statement purportedly made by Ball appears taken out of context in light of Ball's actual trial testimony. Ball did testify that electricians are disciplined less frequently than other employees for violating lockout, but he explained that electricians do not have to perform lockout on a repetitive basis, as do other trades. (Tr. 323-324).

hooked in, no additional work would normally be required, as contrasted with a circuit board or breaker, which requires periodic maintenance. (Tr. 682-683). The only foreseeable time the junction box would require servicing would be if, according to Dole, an infrared camera detected a problem. (Tr. 121). Even then, however, the Secretary failed to establish that the equipment in the box would require servicing while the current was live.

The only evidence on this issue was that, during a concurrent inspection, CO Upton noticed a loud noise and vibration in the area, which, in his view, indicated that a thread was likely to come loose. (Tr. 466-467). Whether this was related to activity within the junction box, does not indicate that it would be probable that the box, under ordinary circumstances, is likely to require examination, adjustment, servicing or maintenance, while alive. In any event, CO Upton did not open and inspect the junction box to determine whether a thread had indeed come loose. Thus, his statement is mere conjecture. [7]

The Secretary argues that the fact that Jordan and Bateman, and previously Swinarski and Fontana, "did work" in the box dictates a finding that the box was likely to require examination, adjustment, servicing or maintenance while alive. The Secretary also argues that the caution sign located on the outside of the box, indicates that the junction box would require service or maintenance. The Secretary's arguments are unpersuasive. The Secretary presented no proof that the box would require servicing while energized. Indeed, the sign provides information pertaining to the appropriate deenergization of the power running through the junction box so as to avoid the performance of any work while the currents were live. Further, Bateman and Jordan were *removing* the cables, just as Swinarski and Fontana were directed to remove electrical equipment. None of the four was conducting any of the delineated functions which would bring the facts under the ambit of the application of the standard. The Secretary has thus failed to establish that the standard applies, and this Item is vacated.

Citation 1, Item 3

This Item is based on an alleged violation of 29 C.F.R. 1910.333(a)(1), which requires that "Live parts to which an employee may be exposed shall be deenergized before the employee works on or near them, unless the employer can demonstrate that deenergizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations...." CO Upton testified that this item was issued because Ford employees Bateman and Jordan were exposed to live volts which were not deenergized. (Tr. 480). The standard applies, as employees were working near exposed, live currents. The standard was violated, because the lines were not deenergized, and Ford did not submit any evidence that deenergizing would have introduced additional or increased hazards. It is also clear that employees were exposed. It is not clear, however, that Ford had knowledge of the violation.

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[7] Further, CO Upton is not a licensed electrician with expertise to render such a diagnosis from a mere sound.

Ford argues that it could not have known of the violation because Jordan and Batemen were not instructed to do any work inside the junction box. A discrepancy in testimony occurred with respect to the assignment given to Jordan and Bateman on the day of the accident. According to their supervisor, their assignment should not have involved any work within the junction box. Jordan and Bateman, however, understood that their assignment required that they cut the cables in the junction box. I listened to their testimony and observed their demeanor in this regard. Jordan specifically testified that the assignment involved removing the cables that fed into the old soft start in the basement, and thus involved opening the junction box and servicing the cables. I find Jordan's testimony in this regard convincing and credible. Further, it is clear that Ford intended to remove the cables; a line up document from the last shift on the day prior to the accident indicates that an eight hour release on the bus feeding line #18 was required. (Tr. 164, C-12). Additionally, the junction box was ultimately found gutted, with all the cables removed, shortly after the accident. (Tr. 916). Nonetheless, even assuming that Ford knew that Bateman and Jordan would be performing work on the interior of the junction box, and considering the undisputed fact that Ford was aware prior to the accident that live current was running through the junction box, (Tr. 212), there is still the issue of whether Ford knew, or should have known, that Jordan and Bateman would perform work on the interior of the junction box without first having deenergized the current running into the box. There is no evidence of actual knowledge of the facts of this violation. Nor is there evidence that, with reasonable diligence, Ford should have known of the violation. The hazard was transient in nature, and would have been discovered only if an inspection of the area containing the energy source or power to the junction box occurred during the few moments the employees were working at the box, and then, only if the inspector knew that Bateman and Jordan were conducting work on the junction box in the basement at that time.

Constructive knowledge may nonetheless be predicated on an employer's failure to establish an adequate program to promote compliance with safety standards. *New York State Elec. & Gas Corp*. 88 F.3d 98, (2d. Cir., 1996). In this case, the Second Circuit reversed a Commission decision which had affirmed a violation predicated on a single infraction of a respondent's safety rules. In doing so, the Second Circuit determined that, in these circumstances, Commission precedent holds that the burden of proof of showing a failure or inadequacy of a respondent's safety rules is part of the Secretary's case in chief. Under the Circuit Court's interpretation of commission precedent, the burden should not be shifted, in these circumstances, to the respondent to show the adequacy of its safety plan, and the matter was remanded for further determination of this and other issues. *Id*.[8] Following the guidance articulated by the Second

[8] On remand, the Commission vacated the violation in light of the Second Circuit's admonition that it was not proper to impose a requirement for continuous, full-time monitoring of workers. The Commission determined that it was therefore not necessary to further articulate a

Circuit, I address whether the Secretary has met her burden of showing the inadequacy of Ford's safety program.

The evidence demonstrates that Ford maintained an adequate safety program which includes lockout procedures clearly designed to prevent the exposure of employees to energized current. Ford's comprehensive training in energy control and power lockout was established through a national joint committee of Ford employees and union representatives, assisted by outside specialists. The rules are articulated in Ford's "GRASP" handbook (R-1), the Buffalo plant's "General Health and Safety Rules", (R-5), and in Ford's Bulletin 100, which is handed out to every employee who undergoes Ford's energy lockout training. (Tr. 705, C-22). These rules are also communicated to the employees during the extensive training Ford provides. Every employee receives training under the GRASP program, which addresses energy control and power lockout hazards. (Tr. 304). Additionally, apprentice electricians undergo Energy Control and Power Lockout ("ECPL") training, (Tr. 305-306), which is comprised of eight one-hour modules. (Tr. 295-296). During the ECPL training, a lockout participation manual, (R -8) is given to each employee, along with an ECPL Training Program Workbook. (Tr. 296-297, R-10). A pocket-size ECPL mini-manual is also given to employees to keep in their tool boxes for easy reference. (Tr. 297-298, 691-693, R-9). A refresher course is provided annually. (Tr. 206). Electricians also attend a course relating to safe practices in the "Danger Zone", when it is necessary to inspect live equipment. (Tr. 700-701). Ford's safety program also includes the issuance of "safety grams", which discuss specific instances of safety breaches, and are addressed during Ford's safety talks. (Tr. 706-707). The evidence thus demonstrates that Ford's training program, as it relates to lockout procedures, was adequate. Both Bateman and Jordan were trained in these procedures. (Tr. 29, 125, 180, 310, 312-314).

The evidence also demonstrates that Ford took reasonable steps to enforce its rules. Safety inspections and audits are conducted by Ford employees, union representatives, safety engineers and management. The audits include a safety and health assessment of Ford's various plants, during which the facilities are ranked and reviewed over a five-day period. A summary of the assessment report is left with the plant. (Tr. 710-718). In addition, Ford employs union health and safety representatives at the Buffalo plant. Louis Bracci, one such representative, testified that he spends a minimum of four half days a week on the plant floor checking job conditions and ensuring that employees are observing safe working practices. (Tr. 584 -588). Further, Hayden spends up to three hours a day walking the plant for safety violations, (Tr. 175), and, when he was a safety engineer at the plant, Ball spent a few hours every day walking the facility for the purpose of identifying and correcting safety violations. (Tr. 316-318). Ford's

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rule of law regarding the burden of proof of knowledge. *New York State Elec. & Gas Corp.* 19 BNA OSHC 1227, 1231 (No. 91-2897, October 17, 2000).

team also conducts regular audits to ensure that the employees are observing safety rules. (Tr. 548-554, 562).

Ball testified that if an employee is observed violating lockout, his first action would be to try to rectify the problem, by educating and training the employee, and if necessary, recommending discipline. (Tr. 263). In the latter case, Ball presents the problem to management to press charges or allege a wrong, and to request that the labor relations department conduct a hearing to determine proper discipline. (Tr. 263). Jordan was suspended without pay for thirty days after the accident in this case. (Tr. 868). Moreover, Ford presented evidence of both salaried workers and union employees who were disciplined for violating lockout procedures, (Tr. 862-863), and the Secretary did not rebut this evidence.

The Secretary argues that Ford did not enforce compliance with its rules because Ford did not discipline electricians who were caught violating lockout procedures. I find the Secretary's argument unpersuasive. The Secretary failed to identify any electrician employed by Ford who was known to have violated electrical lockout, other than Jordan. The only arguable evidence in this regard came from Bateman, who testified that she had seen a journeyman and an apprentice working on a job without having locked out. (Tr. 32). However, Bateman apparently did not report the incident to Ford, and the Secretary submitted no evidence that Ford had any notice of this alleged violation of lockout procedures. Consequently, I find that the Secretary failed to establish her burden of proving knowledge of the violation. [9] This Item is therefore vacated.

Citation 1, Item 4

This Item alleges a violation of 29 C.F.R. 1910.333(b)(2). This standard provides that "While any employee is exposed to contact with parts of fixed electric equipment or circuits which have been deenergized, the circuits energizing the parts shall be locked out or tagged or both in accordance with the requirements of this paragraph...." The standard thus requires that both a lock and tag be placed on the disconnecting means, and the lock must also be attached so as to prevent operating the disconnecting means without undue force or the use of tools. *See* 29 C.F.R.1910.333(b)(2)(D)(ii). In addition, each tag must contain a statement prohibiting unauthorized operation of the disconnecting means and removal of the tag. *See* 29 C.F.R. 1910.333(b)(2)(B).

The Secretary met her burden of establishing that the standard applies, that employees had access to the hazardous condition, and that a violation occurred. Jordan cut two deenergized cables, and Bateman cut one deenergized cable, before Bateman started to sever a live cable. These two employees were thus

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[9] Even if the Secretary had met her burden in this regard, Ford presented competent evidence that the violations were caused by the unpreventable misconduct of Jordan and Bateman. Ford established work rules designed to prevent the violations, adequately communicated those work rules to its employees, took reasonable steps to discover violations of those work rules, and effectively enforced those work rules when they were violated.

exposed to deenergized circuits. It is clear that the energy source to which Jordan attached a shop lock was not deenergized in accordance with the standard, as no tag was attached. The key to the shop lock was located on a clearly marked board in the electrical shop, so any electrician could obtain the key and energize the source. Because Jordan did not attach a tag, there was no indication that an employee would be exposed if the source were energized at that point in time. (Tr. 489-490).

As with Item 3, however, the Secretary failed to meet her burden of establishing knowledge that these employees would fail to properly attach an appropriately identified tag to the shop lock at the energy source. The evidence demonstrates that Ford established and enforced safety and work rules designed to prevent this type of violation. R-1, the basic GRASP handbook, in instructing employees in the ECPL program, specifically directs employees to use both a safety padlock and a personalized "danger tag". (R-1, p. 26). Similarly, the ECPL Training Program manual directs that electricians who employ lockout procedures ensure that their own tags are attached to the lockout device. (R-8, p. 123). As is discussed above, Ford took adequate steps to communicate its energy control and power lockout rules to its employees and trained Bateman and Jordan in these practices. I also believe that Ford took reasonable steps to discover violations. Furthermore, the testimony is clear that Ford took effective measures to enforce its energy power and lockout rules, when violated. This violation occurred because of a single instance of the failure of two employees to follow Ford's safety program.[10] This item is vacated.

Citation 1, Item 5

This Item alleges a violation of 29 C.F.R. 1910.333(b)(2)(i), which requires that the employer maintain a written program containing the procedures outlined in paragraph (D)(2) of that section. CO Upton recommended this Item because the two documents identified as Ford's written ECPL program (R-8 and C-22) do not expressly direct employees to test to ensure that there is no unrelated voltage back feed or induced voltage after locking out the system. CO Upton testified that Ford's written program was inadequate in that it did not specifically state that electricians must retest their voltage testing equipment after using them on equipment containing voltages in excess of 600 volts. (Tr. 491-493). He also testified that this Item was serious because a serious accident could occur when the safety plan fails to expressly identify these hazards. (Tr. 492-494).

It is true that Ford's program does not state that employees must test specifically for unrelated voltage back feed or induced voltage. The written plan does, however, require that employees trace the current to its source, to ensure that the appropriate source is disconnected, and test to ensure that there is

[10] As noted *supra,* even if the Secretary had established knowledge, the Item would be vacated because Ford met its burden of showing that the violation was the result of the unpreventable and unforeseeable misconduct of two employees, whose work records were previously clean of safety violations.

no energy still present or running through the cables or equipment prior to commencing work. (R-8, pp.107, 143, 162, 150). Additionally, the ECPL manual directs that employees check to ensure that the machine they are working on is unaffected by adjacent and associated machinery (Tr. 687-688, R-8, pp 99-100), and the accompanying workbook tests employees on their knowledge regarding the necessity of determining whether adjacent machinery also needs to be locked out. (Tr. 695, R-10, p. 11). Similarly, Ford's plan does not direct employees to retest their voltage testing equipment after using it on equipment containing voltages in excess of 600 volts, but it does direct employees to check their safety equipment before using it. (R-8, p. 176).

Based on the foregoing, the Secretary has met her burden of showing a violation of the literal terms of the standard. However, Ford's program alleviated any danger of resultant injury. In directing that employees retest equipment after lockout and before work, to ensure that there are no existing currents, the program as written eliminates the hazard. In testing for any current, an employee would discover the presence of induced voltage or back feed, especially if the employee is sensitive to the dangers of stored energy and the effects of adjacent and associated machinery on the equipment at hand. Similarly, checking voltage testing equipment prior to use would identify whether the equipment is working, just as would testing it immediately after using it on equipment containing in excess of 600 volts. Thus, the relationship between the violation and occupational safety is not such that a consequence of the violation would be death or a serious injury. The violation is affirmed, but reclassified as non-serious, and no penalty is assessed.

Citation 1, Items 6 and 7

Item 6 alleges a violation of 29 C.F.R. 1910.335(a)(1)(i), and Item 7 alleges a violation of 29 C.F.R. 1910.335(a)(1)(v). [11] The Secretary contends that Ford violated 29 C.F.R. 1910.335(a)(1)(i) because Ford did not provide or require that its electricians wear appropriate flame-resistant or retardant personal protection, specifically, flame-resistant coveralls and insulated gloves. The Secretary further contends that 29 C.F.R. 1910.335(a)(1)(v) was violated because Ford did not provide or require that its electricians wear appropriate face protection, to protect the face and eyes. In this regard, the Secretary asserts that full face shields should have been provided and required.

Both Items refer to the accident of September 15, 1999. It is undisputed that Bateman and Jordan were not wearing flame resistant coveralls or protective gloves that day, and it is clear that they

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[11] 29 C.F.R. 1910.335(a)(1)(i) requires that "Employees working in areas where there are potential electrical hazards shall be provided with, and shall use, electrical protective equipment that is appropriate for the specific parts of the body to be protected and for the work to be performed." 29 C.F.R. 1910.335(a)(1)(v) directs that "Employees shall wear protective equipment for the eyes or face wherever there is a danger of injury to the eyes or face from electric arcs or flashes from flying objects resulting from electrical explosion."

were both exposed to live wires. There is no evidence that either was wearing a face shield, although Bateman was wearing safety glasses. In addition, CO Upton testified that two other employees were exposed to live wires while not wearing face protection, gloves or flame-resistant coveralls. Specifically, Ford employees Fontana and Swinarski reported that they performed electrical work involving troubleshooting live wires on January 13, 2000 and January 12, 2000, respectively, without wearing the required personal protective gear. Both employees told CO Upton that their hands came within six inches of the exposed, live parts. (Tr. 496-499).

Bernie Ruffenach testified for the Secretary in regard to these Items.[12] He reported that an electrical burn or even death can occur within one foot of equipment containing a 480-volt current. (Tr. 371). Even when an employee has performed lockout procedures, Ruffenach testified, hazards are present. The lockout could fail, another employee could violate lockout, or the employee could become exposed to nearby live wires. (Tr. 392-392). While troubleshooting, the danger of injury is more pronounced, as even a careful employee may accidentally drop a tool or part. The insulation on the "wiggie" could break down, or the employee could brush a body part close to a live wire or experience an internal short circuit. (Tr. 390).

To protect against shock and arc flash at 440 volts, Ruffenach opined that employees with the potential for exposure to live electrical parts should not wear "melt fabrics" such as polyester, nylon, acetate or rayon. Additionally, the outer level of clothing should be flame resistant. Flame-resistant coveralls are readily available, and are accepted in the industry. (Tr. 376-377) For hand protection, electrically insulated gloves are similarly available and will not interfere with dexterity. (Tr. 377- 378). Mr. Ruffenach testified that he has seen electrically insulated gloves worn by electricians in plants all across the country. (Tr. 379).

The record shows that Ford's electricians wear their "normal plan protection", which consists only of safety glasses and ear plugs. (Tr. 161-162). Insulated gloves are not required to be worn by electricians when working on equipment containing 440 volts. (Tr. 249, 161-162). While Ford does provide some coveralls for electricians, it does not require that electricians wear them.[13] (Tr. 244-246). Ford provides, but does not require, rubber mats, rubber gloves, sleevelets, and rubber boots. (Tr. 248-249).

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[12] Bernie Ruffenach is a self-employed safety consultant, whose clientele includes 3M, Coke Refinery, and Lockheed-Martin, among others. A licensed electrician, he also works as an electrical inspector to ensure NEC compliance. He has a Masters Electrician's license, and teaches at Dunwhitty Institute. (Tr. 362-365).

[13] Bateman testified that she purchased and wore her own coveralls because she could not locate coveralls provided by Ford in her size (Tr. 28).

The evidence demonstrates that the standards apply and were violated. With respect to Item 6, Ruffenach's testimony supports the finding that a potential for an electrical hazard exists, even if all lockout and retesting procedures are followed. Lockout may be violated, and there is always the potential for an improper lock out, such as occurred on September 15, 1999. Ruffenach's testimony also establishes that gloves and coveralls are proper protective equipment for the protecton of those parts of the body exposed, and appropriate for the work to be performed. With respect to Item 7, Ruffenach's testimony shows that the named electricians were exposed to the danger of serious facial injuries from electric arcs or flashes from flying objects caused by electrical explosions. None of the four named electricians was wearing flame-resistant coveralls, insulated gloves, or face shields, and Ford conceded that it does not require its electricians working on equipment of up to 440 volts to wear any such personal protection. Furthermore, Ford had no plan or program for providing personal protective equipment to its electricians. Ford either knew or should have known, therefore, that its electricians, especially those performing troubleshooting, would be exposed to live wires without appropriate personal protection. I therefore find that the Secretary has met her burden of establishing a violation of this standard.

Ford argues that its duties under the standards require only that it establish a "hierarchy" of controls. Specifically, Ford urges that if the danger can be eliminated by use of engineering and administrative controls, then there is no requirement to provide personal protection. Melissa Thayer, an engineer with a background in industrial safety, testified that no hazard is presented if the employee properly follows safe ECPL procedures and uses a voltage tester when diagnosing live wires. Ford also refers to prior Commission precedent to the effect that personal protection should not take the place of engineering and administrative controls.[14] I find Ford's argument unpersuasive. That personal protection should not take the place of appropriate engineering and administrative controls does not mean that appropriate and feasible personal protection may be completely disregarded merely because administrative and engineering controls are instituted. Ruffenach's testimony establishes that a danger of injury exists even if all administrative and engineering safety controls are performed. Administrative and engineering controls may fail, as occurred on September 15, 1999. Other employees may violate lockout procedures. The protective equipment contemplated by the cited standards is easily obtained and used and provides protection from these hazards.[15] These Citation Items are therefore affirmed.

CO Upton classified these Items as serious, because of the serious injuries that can result when an employee is not protected by proper protection and electrical arcing or flashes occur. (Tr. 498-500). A

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[14] Ford cites *J.A. Jones Constr. Co.* 15 BNA OSHC, 2201 (No. 87-2059, 1993), for this proposition.

[15] To the extent that the testimony of Ford's witness Thayer is in contradiction with Ruffenach's testimony, I find Ruffenach's testimony more credible.

penalty of $5,000 was proposed for each item. With respect to Item 6, I find that the proposed penalty is appropriate given the complete failure to address personal protection concerns in Ford's safety program, and the likelihood of serious injury or death. With respect to Item 7, however, it is clear that protective glasses were provided or required, and Bateman was wearing glasses on the day of her incident. Given this partial compliance, I conclude that a penalty of $4,000 is appropriate for Item 7.

Citation 2, Item 1

This Item, classified as repeated, also alleges a failure to provide appropriate personal protection to electricians who perform work on electrical equipment. Specifically, Ford is charged with a failure to provide nonconductive head protection to its employees, in violation of 29 C.F.R. 1910.335(a)(1)(iv), wich requires that "(e)mployees shall wear nonconductive head protection wherever there is a danger of head injury from electric shock or burns due to contact with exposed energized parts." In support of this Item, the Secretary identifies the same instances set out in Citation 1, Items 6 and 7. There is no dispute that Bateman and Jordan were not wearing nonconductive head gear while working on the junction box on September 15, 1999. It also is undisputed that both were exposed to energized parts. According to CO Upton's testimony, Ford employees Swinarski and Fontana reported that they perform troubleshooting on live wires, without the protection of nonconductive head gear, and specifically did so on January 12 and January 13, 2000.

Ford does not argue that it provided nonconductive head gear to its electricians who perform work on electrical equipment. Rather, Ford argues that there is no exposure to energized parts if its employees perform appropriate lockout procedures. With respect to situations when it is necessary for electricians to perform diagnostic work on live wires, called troubleshooting, Ford argues that its electricians are not exposed because they work only with insulated electrical testers. As with Citation 1, Items 6 and 7, however, I find that Ruffenach established that there is a potential for exposure even if lockout procedures are followed. If Ford's argument were accepted, there would be no circumstance in which an employee would ever be exposed to energized parts, and the standard would be meaningless. Further, it is in the nature of troubleshooting that electricians are exposed to live or energized parts. The standard applies, it was violated, and employees were exposed to the hazard. I also find that Ford knew or should have known that its employees would be exposed to live electrical parts without the protection of nonconductive head gear, particularly as it was previously cited for a violation of this standard. The Secretary met her burden of establishing a violation of this standard.

The Secretary has not, however, established that this Item is properly classified as repeated. To establish that a violation is repeated, the Secretary must show that there was a final Commission order against the same employer on a substantially similar violation at the time of the alleged repeated violation. *Potlach Corp*. 7 BNA OSHC 1061, 1064 (No. 16183, 1979). Thus, where a settlement agreement

submitted to an administrative law judge for approval did not become a final order until the first day of the inspection which resulted in the issuance of the alleged repeated citation, there was no "prior order", and the classification of the citation as repeated was improper. *Dic-Underhill* 8 BNA OSHC 2223 (No. 10798, 1980). It is undisputed that Ford was previously cited for a violation of this standard and that the citation was disposed of through an informal settlement agreement. (C-3, pp. 3 - 5). Regardless, the Secretary failed to establish that the agreement was submitted to the Commission for approval. There is therefore no evidence of a final order establishing a violation of the standard, and this Item is not properly classified as repeated.[16]

The record in this case clearly shows that employees exposed to live wires are exposed to serious or injury or death, without the protective head gear. This Item is therefore affirmed as serious. Based on the high gravity of the condition, I conclude that a penalty of $5,000 is appropriate.

ORDER

Based on the foregoing decision, the Citation Items are disposed of and the penalties are assessed, as follows:

Citation Item	Violation	Disposition	Classification	Penalty
Citation 1 Item 2	29 C.F.R. 1910.303(g)(1)(i)	Vacated		
Citation 1 Item 3	29 C.F.R. 1910.333(a)(1)	Vacated		
Citation 1	29 C.F.R. 1910.333(b)(2)	Vacated		

[16] In any event, an issue relating to exculpatory language within the agreement would be presented even if the agreement had become a final order. The informal settlement agreement dated November 12, 1998, (C-3), provides that, "(e)xcept for these proceedings, and matters arising out of these proceedings, and any other subsequent OSHA proceeding between the parties, none of the foregoing agreements, statements, findings and actions taken by respondent shall be deemed an admission by the respondent...." Consent agreements, such as settlement agreements, have many of the attributes of contracts, and thus are interpreted using traditional principles of contract interpretation. *United States v New Jersey* 194 F.3d 426, 430 (3rd. Cir. 1999). Where a consent/settlement agreement is unambiguous, it is the court's function to enforce it as written. *See Harley-Davidson Inc. v Moriss* 19 F.3rd. 142, 148 (3rd. Cir. 1994). The agreement in this case is unambiguous, as it specifically allows for the use of the agreement in "any other subsequent OSHA proceedings between the parties." *See Ford Development Corp.* 15 BNA OSHC 2003, 2007-2008 (No. 90-1505, 1992). If the parties intended to prevent consideration of the agreement in further OSHA proceedings, exculpatory language clearly establishing that such is the intention of the parties should be contained in the agreement. Whether such language would be approved by the Commission, however, is unclear. *See Farmers Export Company* 8 BNA OSHC1655 (No. 78-1708, 1980).

Item 4				
Citation 1 Item 5	29 C.F.R. 1910.333(b)(2)(i)	Affirmed	Reclassified as Nonserious	No penalty
Citation 1 Item 6	29 C.F.R. 1910.333(a)(1)(i)	Affirmed	Serious	$5,000
Citation 1 Item 7	29 C.F.R. 1910.335(a)(1)(v)	Affirmed	Serious	$4,000
Citation 2 Item 1	29 C.F.R. 1910.335(a)(1)(iv)	Affirmed	Reclassified as Serious	$5,000

Dated: 14 May 2001
Washington, DC

/s/

G. MARVIN BOBER

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
v.	:	Docket No. 00-0763
	:	
FORD MOTOR COMPANY,	:	
	:	
Respondent.	:	
	:	

CORRECTED DECISION AND ORDER

Pursuant to Rule 90(b)(3) of the Commission's Rules of Procedure, 29 C. F. R. 2200.90 90(b)(3), an oversight was contained in the Decision and Order, dated May 2, 2001. This decision corrects the oversight.

Footnote number one shall read as follows:

> Citation 1, Item I was reclassified from "serious" to "other" on the record, and was subsequently settled with a penalty of **"zero"**.

Dated: 8 JUN 2001
Washington, D.C.

/s/
G. Marvin Bober
Administrative Law Judge