



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION**

1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

OSHRC Docket No. 06-0936

BILLIE GOWANS, d/b/a BILLY G'S,

Respondent.

**APPEARANCES:**

Judson H.P. Dean, Attorney; Catherine Oliver Murphy, Regional Solicitor;  
Howard M. Radzely, Solicitor; U.S. Department of Labor, Washington, DC

For the Complainant

Billie Gowans, *pro se*; Philadelphia, PA

For the Respondent

**REMAND ORDER**

Before: RAILTON, Chairman; ROGERS and THOMPSON, Commissioners.

BY THE COMMISSION:

In an order dated December 13, 2006, Administrative Law Judge G. Marvin Bober issued a Consent Order Approving Settlement in the above-captioned case. Billie Gowans, d/b/a Billy G's ("Billy G's"), appearing *pro se*,<sup>1</sup> filed a letter with the Commission on January 10, 2007, objecting to the payment required by the approved

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<sup>1</sup> Nothing in the record indicates that Billy G's was ever represented by counsel.

settlement agreement.<sup>2</sup> Commissioner Horace A. Thompson III subsequently directed this case for review on January 12, 2007. For the following reasons, we remand this matter to the judge for further proceedings consistent with this opinion.

### **Background**

The fatality of a Billy G's employee triggered an inspection by OSHA of Billy G's worksite from March 11 through April 11, 2006. On May 5, 2006, the Secretary issued to Billy G's one serious and one willful citation, with a total penalty amount of \$27,100, for alleged violations of several general industry lockout/tagout standards. The citations were timely contested by Billy G's. On June 16, 2006, the Secretary filed a Joint Motion For Extension Of Time To File A Complaint that indicated a need "for additional time to explore an informal resolution," which was granted on June 22, 2006. Subsequently, the parties duly filed a complaint and answer, and the case was assigned to Judge G. Marvin Bober on September 6, 2006.

By facsimile dated October 4, 2006, the Secretary advised the judge that she and Billy G's had reached a verbal settlement, and the judge received the fully executed settlement agreement on December 4, 2006.

### **Discussion**

As stated in the Commission's Rules of Procedure, "[s]ettlement is permitted and encouraged by the Commission at any stage of the proceedings." Commission Rule 100(a), 29 C.F.R. § 2200.100(a). However, "[t]he Commission must be assured that a proposed settlement represents a genuine agreement between the parties and a true meeting of the minds on all provisions thereof." *84 Components Co.*, 20 BNA OSHC

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<sup>2</sup> The letter, captioned "Reject settlement agreement" states, in its entirety, as follows:

I, Billie Gowans[,] hereby reject the payment agreement made by OSHA inspection #308992338.[] Based on the findings by OSHA, im [sic] currently being denied new employment and or new contracts. I am not working at the present time and based on this incident, im [sic] having a problem obtaining workers. Billie g can not get any new contracts based on what the inspection report reveals. I am in complete disagreement with paying the settlement amount. And [I] would like to appeal this matter before the Honorable G. Marvin Bober.

2063, 2064 (No. 02-0363, 2003) (citing *Aerlex Corp.*, 12 BNA OSHC 1989, 1986-87 CCH OSHD ¶ 27,847 (No. 85-1257, 1986)).

Here, the parties' settlement agreement approved by the judge contains the following contradictory language:

Respondent will pay the reduced penalty of \$16,200 in thirty-six (36) monthly installments over a period of three years in accordance with the following plan. The first payment of \$450 shall be due on the first day of the month following approval of this Settlement Agreement by the ALJ (for example, if the Settlement Agreement is approved by the ALJ during the month of December 2006, the first payment would be due on January 1, 2007). The remaining *thirty-five (35) payments* of \$450 each shall be paid on the first of every month thereafter *for a total of 10 payments over 5 years*. . . . In the event that Respondent fails to satisfy any of these *10 payment deadlines*, Respondent shall be in default[.]

(Emphasis added.) This contradictory language reflects a failure on the part of the parties, as well as the judge, to carefully review the approved settlement agreement. This failure, at a minimum, precludes any finding of a “genuine agreement between the parties and a true meeting of the minds on all provisions[.]” particularly where the record lacks any explanation from, or correction by, the parties and/or the judge with regard to the inconsistent language.

Accordingly, we set aside the judge's order approving the settlement agreement and remand this case to the judge. On remand, the judge should closely review the agreement, including the contradictory language noted above, and seek further information or clarification from the parties, if necessary, prior to final approval of the

agreement. If the parties do not agree within thirty days of the date of this order to amend their agreement, the judge should set this matter for a hearing date.

SO ORDERED.

\_\_\_\_\_/s/\_\_\_\_\_  
W. Scott Railton  
Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Thomasina V. Rogers  
Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Horace A. Thompson III  
Commissioner

Dated: February 12, 2007

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UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ELAINE L CIAO, SECPETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

Complainant,

v.

BILLIE GOWANS, dba BILLY G'S,  
and its successors,

Respondent.

OSHRC DOCKET  
NO. 06-0936

INSPECTION  
NO. 308992338

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CONSENT ORDER APPROVING SETTLEMENT

The parties advise that all matters in dispute have been amicably resolved and agree to entry of the order set forth below. It is therefore ORDERED that:

1. The Settlement Agreement is approved and the terms thereof are incorporated into this Order;
2. The Citation and Notification of Penalty is modified in accordance with the Settlement Agreement; and
3. The total penalty associated with the affirmed Citation amounts to \$16,200.

\_\_\_\_/s/\_\_\_\_\_  
Judge, OSHRC

December 13, 2006