

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

AFO, INC.,

Respondent.

Docket No. 98-0339

Appearances: Maureen A. Russo, Esq.
Office of the Solicitor of Labor
US Department of Labor
For Complainant

Patrick H. Lewis, Esq.
Belkin, Billick, Harrold & Wiencek, L.P.A.
Cleveland, Ohio
For Respondent

Before: Michael H. Schoenfeld, Administrative Law Judge

DECISION AND ORDER

Background and Procedural History

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 - 678 (1970) ("the Act").

Having had a worksite in Beaver Falls, Pennsylvania, inspected by a compliance officer of the Occupational Safety and Health Administration ("OSHA"), A.F.O., Inc. ("Respondent") was issued two citations alleging both willful and serious violations of the Act. A total penalty of \$17,000 was proposed. Respondent timely contested. The case came on to be heard on October 5, 1998, in Pittsburgh, Pennsylvania. No affected employees sought to assert party status.

Jurisdiction

Complainant alleges and Respondent does not deny that it is an employer. Respondent does not deny that it uses tools, equipment and supplies which have moved in interstate commerce and conducts a business affecting interstate commerce.

I thus find that the Commission has jurisdiction over the parties and the subject matter.

Discussion

The parties announced at the hearing that in accordance with Commission Rule 100, 29 C.F.R. § 2200.100, a settlement had been reached.

The terms of the settlement have been reduced to writing and have been submitted. The terms of the settlement meet the requirements of Commission Rule 100(b), 29 C.F.R. § 2200.100(b). Accordingly, the settlement is approved under 5 U.S.C. § 554(c)(1) and Commission Rule 100. The terms of the stipulated settlement are incorporated, in their entirety, by reference in this order.

Dated:

Washington, DC

Michael H. Schoenfeld
Judge, OSHRC

SECRETARY OF LABOR,

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AFO, INC.,

Respondent.

OSHRC DOCKET NO. 98-0339

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, the United States Department of Labor has cited Respondent, AFO, INC. (“Respondent”) with a violation of the Occupational Safety and Health Act (“Act”) of 1970; and

WHEREAS, Respondent has contested this citation and denied the allegations contained in the Complaint issued by the Complainant, Secretary of Labor (“Complainant”), because it does not believe it violated the Act and/or believes that it has good and sufficient defenses; and

WHEREAS, no employees or employee representatives have elected party status, and Complainant and Respondent now desire to settle this matter because Complainant believes that this settlement effectuates the purposes of the Act and Respondent desires to avoid the costs of protracted litigation;

NOW, THEREFORE, Complainant and Respondent agree to the full settlement and disposition of the issues in this proceeding as follows:

1. In connection with Citation No. 2, Items 1a, 1b, and 1c, Complainant hereby modifies the Citation from a willful violation to a violation under Section 17 of the Act. The penalty proposed for Citation Number 2, Items 1a, 1b, and 1c shall remain unchanged;

2. Respondent hereby withdraws its notice of contest with respect to the preceding citation as herein modified;

2a. In connection with Citation Number 2, Items 1a and 1b shall be modified from a willful violation to a violation under Section 17 of the Act. The proposed penalty for Citation Number 2, Items 1a and 1b shall remain unchanged;

3. Respondent agrees to pay the \$17,000.00 penalty assessed, to be paid thirty (30) days after docketing by the Commission of a final order;

4. Respondent, by its execution of this Stipulation and Settlement Agreement, shall not be deemed to agree with any factual assertion or legal theory made by the Complainant in this matter;

5. The parties agree that none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained in the citations, notifications of penalty or complaint herein. The parties agree that the Citation and Notification of Penalty, Complaint, Answer, Stipulated Settlement, Respondent's Notice of Contest, Respondent's Notice of Contest, Respondent's Withdrawal of its Notice of Contest, Respondent's failure to continue to contest, Respondent's payment of any penalty and the Commission's final order entered herein shall not constitute any evidence or admission upon the part of the Respondent, nor is it the parties' intention that the foregoing document be admitted into evidence, in whole or in part, in any proceeding or litigation in any Court, agency or forum, except in proceedings brought directly under the Act by the Secretary of Labor, inasmuch as the contents of the stipulated settlement are for the exclusive benefit of the parties hereto; nor shall they constitute an admission upon the part of the Respondent that any of the conditions alleged in the Citations or Complaint existed or were the cause, or a cause, proximate or otherwise, of any accident, or damages, if any, resulting therefrom;

6. Respondent avers that the conditions alleged as the basis for the Citation have been abated.

7. Each party agrees to bear its own attorney fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended;

8. The parties agree to the entry of a final order consistent with the terms of this agreement; and

9. Respondent hereby certifies that a copy of this Agreement was posted at its offices on this 26 day of October, 1998.

For Respondent

For Complainant

PATRICK H. LEWIS
Attorney for Respondent
Belkin, Billick, Harrold &
Wiencek Co., L.P.A.
Commerce Park IV, Suite 450
23240 Chagrin Blvd.
Cleveland, OH 44122
(216) 831-3377

MAUREEN RUSSO
Attorney for Complainant
U.S. Department of Labor
Room 14480, Gateway Building
3535 Market Street
Philadelphia, PA 19104
(215) 596-5171

OF COUNSEL:

DEBORAH R. PIERCE
Regional Solicitor

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth should communicate such objection within ten (10) days of the posting of this Agreement to:

The Honorable Michael H. Schoenfeld
Administrative Law Judge
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street, 9th Floor
Washington, D.C. 20036-3419

A copy of said objection should also be sent to:

Maureen Russo, Trial Attorney
U.S. Department of Labor
Room 14480, Gateway Building
3535 Market Street
Philadelphia, PA 19104

and

Patrick H. Lewis, Esq.
Belkin, Billick, Harrold & Wiencek Co., L.P.A.
Commerce Park IV, Suite 450
23240 Chagrin Blvd.
Cleveland, OH 44122

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 1998, a copy of the foregoing fully executed Stipulation of Settlement and proposed Order was served by U.S. Mail prepaid on:

Patrick H. Lewis, Esquire
Belkin, Billick, Harrold & Wiencek Co., L.P.A.
Commerce Park IV, Suite 450
23240 Chagrin Blvd.
Cleveland, OH 44122

Maureen A. Russo
Attorney