UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. HEINZ PET PRODUCTS, a/d/a STAR-KIST FOODS, INC., Respondent.	:	OSHRC NO. 98-0558
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, Authorized Employee Representative.	:	

ORDER

The United Food & Commercial Workers International Union ("the Union"), the authorized employee representative in this matter, has submitted a letter requesting that a settlement agreement signed by Respondent and the Secretary not be approved.

On March 9, 1998, Respondent was issued a citation alleging various violations of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq*. ("the Act"). Respondent contested the alleged violations, and, on April 24, 1998, certified that it had posted the notice of contest as well as the notice to affected employees informing them of their right to participate in the proceeding before the Commission. Respondent and the Secretary then entered into settlement negotiations, and, on July 9, 1998, the Secretary sent the finalized settlement agreement to Respondent for execution. On July 16, 1998, the Union requested party status on behalf of the affected workers in this matter, and the request was granted on July 17, 1998. On July 22, 1998, the Union filed the above-noted letter, asking that the settlement agreement not be approved. The Secretary filed the executed settlement agreement with the undersigned on July 29, 1998.

In its letter, the Union objects to the settlement and states that it desires "an opportunity to review the underlying materials upon which the Solicitor has based his assessment that all conditions found during the inspection have been abated and to present evidence on the objection." The Union

then states that in its experience the Secretary routinely involves worker representatives in "all aspects" of settlement negotiations and that in this case there was no contact with employees about the "alleged abatement of hazards." Finally, the Union states that Respondent has a history of safety violations and that it is "puzzled at the penalty reduction ... and reclassification of citations."

With respect to the Union's asserted lack of involvement in the settlement process, Commission precedent accords employees the right to an opportunity for meaningful participation in the settlement process. *Kaiser Aluminum & Chem. Corp.*, 6 BNA 2172, 2173 (No. 76-2293, 1978); *General Elec. Co.*, 14 BNA OSHC 1763, 1765 (No. 88-2265, 1990); *Boise Cascade Corp.*, 14 BNA OSHC 1993, 1993 (Nos. 89-3087 & 89-3088, 1991); *Phillips 66 Co.*, 16 BNA OSHC 1332, 1333 (No. 90-1549, 1993). As the Commission stated in *Boise Cascade*, 14 BNA OSHC at 1996:

> [W]hile we cannot order the method by which the Secretary and employer receive the views of employees or the amount of input they receive ... we expect them to make every effort to provide employees with the opportunity for input in the settlement process as much as practicable.

However, the Commission went on to state, at 14 BNA OSHC 1998, that:

> [W]e conclude that it will not be proper for the judge to inquire into the provision of employee input except in unusual or egregious cases where it appears that the Secretary has contravened his stated policy by denying employees an opportunity for input.

The Union's letter asserts that the Secretary did not contact employees about the "alleged abatement of hazards." However, in view of the foregoing, this fact even if true would provide no basis for Commission inquiry into the settlement agreement. Further, because the Union's letter does not assert that the Secretary denied employees an opportunity for input, there are no "unusual or egregious" circumstances justifying Commission intervention in this matter. Finally, there is another more fundamental reason for approving the agreement. The Union objects primarily because it believes the cited hazards have not been abated as stated in the agreement. In a like case, the Third Circuit held that the Commission may hear employee objections to a settlement only when the objections relate to the reasonableness of the abatement period. *Marshall v. OCAW (American Cyanamid Co.)*, 647 F.2d 383 (3d Cir. 1981). There, the Commission held it had jurisdiction to consider the union's claim that the employer had not abated the cited condition as set out in the settlement agreement; the Commission thus refused to approve the agreement and remanded the case

to the administrative law judge to resolve the abatement issue. The court reversed, finding that section 10(c) of the Act limits employee contests to the reasonableness of the abatement period and that employees may not be heard on other matters, including whether abatement has occurred; the court noted that the Commission's decision infringed upon the Secretary's prosecutorial discretion and that the union's remedy, if it believed abatement had not occurred, was to file another complaint with the Secretary. *Id*. at 387-88.

Based on the Union's statements in its letter and the court's decision in *Marshall v. OCAW*, the governing precedent in this matter, the Commission has no jurisdiction to hear the Union's objections to the settlement agreement. *See American Cyanamid Co.*, 9 BNA OSHC 2052, 2053 (No. 77-3752, 1981). The terms and conditions of the executed settlement agreement dispose of all matters at issue between the parties in this proceeding, and the agreement meets all criteria for Commission approval. The settlement agreement is accordingly approved and incorporated as part of this order. Pursuant to section 12(j) of the Act, this order will become a final order of the Commission at the expiration of 30 days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs its review.

Irving Sommer
Chief Judge

Date: