

STATE OF ALASKA

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD

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STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
)
Complainant,)
)
vs.)
)
CITY OF SOLDOTNA,)
)
Contestant.)
_____)

Docket No. 90-841
Inspection No. Ho-6338-034-90

DECISION AND ORDER

On January 25, 1990, the State of Alaska, Department of Labor (Department) conducted an occupational safety and health inspection at a workplace in Soldotna, Alaska, under the control of the City of Soldotna (Soldotna). As a result of the inspection, the Department issued four citations to Soldotna alleging violations of Alaska occupational safety and health codes and proposing monetary penalties. Soldotna timely contested Citation Nos. 1, 2 and 3 and the accompanying penalties.

Prior to the Board hearing in this matter, the parties entered into a stipulation whereby the Department agreed to reduce Citation No. 3 from a "serious" to a "non-serious" violation with

no monetary penalty, and Soldotna agreed to withdraw its contest of the reduced violation. In addition, Soldotna agreed to withdraw its contest of the violations alleged in Citation Nos. 1 and 2 but continued to contest the monetary penalties assessed for those violations. The parties agreed that the only issue to be decided by the Board was the appropriateness of the penalties assessed against Soldotna for Citation Nos. 1 and 2.

The Board hearing was held in Soldotna on April 25, 1991. The Department was represented by Assistant Attorney General Toby Steinberger. The City of Soldotna was represented by Director of Public Works David Bunnell. Both parties presented evidence and made arguments to the Board. Upon review and consideration, the Board makes the following findings of fact, conclusions of law and order in this matter.

FINDINGS OF FACT

1. On January 25, 1990, Department compliance officer Dwayne Houck conducted a comprehensive occupational safety and health inspection of a maintenance shop operated by the City of Soldotna at Mile 2.5 Funny River Road in Soldotna.

2. As a result of the inspection, the Department issued four citations against Soldotna alleging violations of Alaska occupational safety and health codes.

3. Citation No. 1 alleges a violation of General Safety Code 01.0803(d)(1) for failure to properly guard a table saw. The

violation was classified as "serious" and a monetary penalty of \$500 was assessed.

4. Citation No. 2 alleges a violation of Hazard Communications Code 15.0101(i)(1) for failure to provide a safety education program for employees to inform them of the risks of working with certain chemicals. This violation was also classified as "serious" and a monetary penalty of \$500 was assessed.

5. The monetary penalties were calculated by the Department based on its compliance manual guidelines. Under those guidelines, the initial penalty for "serious" violations is \$1,000. This amount may be reduced by up to 80 percent based on such factors as an employer's good faith in promptly recognizing and abating the violation, its past history of safety and health violations, and its overall company size.

6. On the penalties assessed for Citation Nos. 1 and 2, Soldotna was given the maximum 30 percent reduction for its good faith in promptly abating the violations and an additional 20 percent reduction for employer size. No credit was given for prior history since Soldotna had been cited for a number of OSHA violations, including serious violations, within the three years preceding this inspection. See Exhibit 1. Accordingly, the final adjusted penalty for Citation Nos. 1 and 2 was \$500 each.

7. The record indicates that Soldotna abated the hazards identified in Citation Nos. 1 and 2 within a month of receiving the Department's citations. The Department agrees that Soldotna's abatement of these violations has been satisfactory.

8. Additionally, Soldotna presented evidence of numerous improvements in its safety program and equipment during the past three years. It has spent approximately \$82,000 for safety-related items during this period. Soldotna now has an ongoing safety education program for its employees, including regular safety meetings.

CONCLUSIONS OF LAW

AS 18.60.095(b) of the Alaska OSHA Act provides that an employer who is cited for a "serious" violation shall be assessed a civil penalty of up to \$1,000 for each violation. Under the Department's regulations in 8 AAC 61.140, the Department may reduce the amount of any penalty upon consideration of such factors as the size of the employer's business, the gravity of the violation, the good faith of the employer, and the employer's previous history of violations. Further, penalties may be assessed even though a violation is promptly abated by the employer. In such cases, however, the proposed penalty may be reduced by an additional 50 percent if it is promptly and satisfactorily abated. See 8 AAC 61.140(b), (c) and (d).

After reviewing the evidence and arguments of the parties, we are satisfied that the Department properly followed its compliance manual guidelines in assessing a monetary penalty and giving Soldotna appropriate credit for good faith and employer size. Nonetheless, because of Soldotna's demonstrated commitment to safety as evidenced by the recent improvements to its safety

program as well as its prompt abatement of the violations cited by the Department, we believe that an additional 50 percent reduction of the monetary penalties is justified under 8 AAC 61.140. We decline, however, Soldotna's request to eliminate the monetary penalties altogether. Although Soldotna contends that the entire monetary penalty would be better spent in making further improvements to its safety program instead of going into the State's coffers, we believe that a significant penalty should be assessed for serious violations. Where circumstances warrant, the amount of the penalty may be reduced in recognition of the employer's prompt abatement and improvements in its safety program. We believe that a 50 percent reduction is sufficient.

Soldotna additionally argues that the penalties in this case should be reduced by more than 50 percent based on comparable penalty reductions made by the Department as part of a settlement agreement between the Department and Soldotna following an earlier inspection in November 1988. However, the fact that the Department may have been willing to substantially reduce the penalty for a previous violation as part of a settlement agreement is legally irrelevant to a determination of an appropriate penalty under the circumstances of this case. The Board is not bound by penalty reductions offered by the Department in the course of settlement negotiations in an earlier case. Furthermore, Rule 408 of the Alaska Rules of Evidence makes clear that evidence of settlement negotiations is generally inadmissible. For these reasons, we decline to consider the previous settlement agreement.

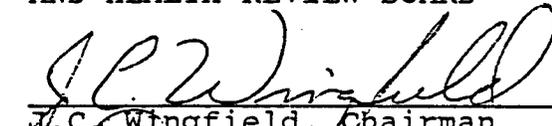
ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby orders as follows:

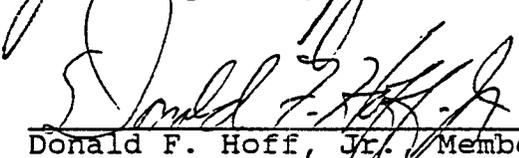
1. Citation Nos. 1 and 2 are each affirmed as "serious" violations.
2. The monetary penalty for Citation Nos. 1 and 2 is reduced to \$250 each, for a total penalty of \$500.
3. Based on the stipulation of the parties, Citation 3 is affirmed as a "non-serious" violation with no monetary penalty.

DATED this ____ day of _____, 1991.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD



J.C. Wingfield, Chairman



Donald F. Hoff, Jr., Member



Lawrence D. Weiss, Member