

ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD  
P.O. BOX 21149  
JUNEAU, ALASKA 99802

STATE OF ALASKA, )  
DEPARTMENT OF LABOR, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
BLITZ ELECTRIC, INC., )  
 )  
Contestant. )  
 )

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Docket No. 87-717  
Inspection No. Ko-1791-876-87

DECISION AND ORDER

This matter arises from a citation issued by the State of Alaska, Department of Labor (hereinafter "the Department") to Blitz Electric, Inc. (hereinafter "the Contestant") following an inspection of Contestant's worksite at Mile 5 of the Glenn Highway on September 16, 1987.

The citation alleges that Contestant violated Alaska Construction Code 05.050(a)(1) by allowing an employee to be working from a man-basket in close proximity to a 12,500-volt powerline and another employee to be working on the ground directly below, with neither man wearing hard hat protection. The Department further alleges that the violation was repeated immediately after, and in spite of, the issuance of a "red tag" restraining order pursuant to AS 18.60.096 by the compliance officer at the worksite. The citation was classified as a "willful" violation and a

penalty of \$3500 was assessed.

Pursuant to 8 AAC 61.155, an informal conference was held between the parties on September 30, 1987. The conference, however, failed to resolve the matter and consequently Contestant filed a written notice of contest, bringing the matter within our jurisdiction.

A hearing was scheduled for March 1, 1988. The hearing was deferred, however, as a result of settlement negotiations between the parties through their respective attorneys. In late March 1988, a settlement agreement was executed by counsel for the parties and was submitted to us for our approval. As part of the settlement agreement, the Department's citation was to be reclassified from "willful" to "repeat" and affirmed as such, and the penalty assessment was to be reduced from \$3500 to \$840.

Upon review of the settlement agreement, we had a number of questions and concerns about the entire matter. Accordingly, we declined to approve the settlement at that time and asked that the matter be scheduled for the next available round of Board hearings. Unfortunately, for administrative reasons, the next available round of Board hearings could not be scheduled until the week of March 13, 1989. A hearing was scheduled in this case for March 16, 1989. After objection was made by Contestant's counsel, a continuance was granted and the hearing was cancelled.

Because of the significant lapse of time since the citations were issued and the settlement agreement was entered into, we do not believe it would serve a useful purpose for this matter to drag on any longer. Accordingly, we will approve the settlement agreement. At the same time, however, we wish to make clear the Board's attitude regarding settlements and indicate some of our concerns about this particular case.

The Board firmly believes that it has broad legal authority to review settlement agreements proposed by the parties. 8 AAC 61.190(a) specifically gives the Board the discretion to permit the parties to negotiate a consent agreement. 8 AAC 61.190(d) further provides that the Board "may" approve any consent agreement submitted to it, implying that the Board also has the discretion to reject any such agreement. Moreover, decisions of the federal OSHA review commission interpreting the federal OSHA law (on which Alaska's OSHA law is based) have also upheld its broad authority to review and, if circumstances warrant, reject settlement agreements. See Rothstein, Occupational Safety and Health Law, § 367 (2nd ed. 1983).

We specifically reject the contention of Contestant's counsel that the Board lacks the authority to disregard a settlement entered into by the Attorney General's office, even after the settlement check has been accepted and cashed by the state. As an independent adjudicatory body, we

are in no way bound by the actions of the state when it is a party in a matter before us. In reviewing settlement agreements, we have a separate, independent responsibility to ensure that the settlement is consistent with the purposes of Alaska's occupational safety and health laws.

In this case, we are especially disturbed by the actions of Contestant's foreman in blatantly disregarding the Department's "red tag" which had just been issued. In no way can we condone or excuse such behavior which is in direct contravention of state law. We understand that there may well have been a "personality conflict" between Contestant's foreman and the Department's compliance officer, but this does not relieve Contestant of its obligation to comply with a duly issued state restraining order. Moreover, we are also troubled by Contestant's evident unwillingness to take responsibility for the actions of its foreman in the face of what was an admittedly repeated hard hat violation. Finally, there is no indication that Contestant had any kind of disciplinary rules or program in place to deal with the situation or that it took any steps to prevent a recurrence of the violation.

Under these circumstances, we have serious reservations about whether the settlement agreement would further the purposes of Alaska's occupational safety and health laws. Nonetheless, we recognize that over a year has passed since the agreement was proposed and that it would

serve little purpose to reopen the matter at this late date. Accordingly, we reluctantly approve the settlement but also put the parties on notice of the Board's policy regarding settlements and its specific concerns in this particular case.

ORDER

1. The proposed settlement agreement in this matter is approved.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1989, at Juneau, Alaska.

ALASKA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

/s/

\_\_\_\_\_  
Guy Stringham, Chairman

/s/

\_\_\_\_\_  
Donald F. Hoff, Jr., Member

/s/

\_\_\_\_\_  
J.C. Wingfield, Member

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1 ALASKA OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD  
2 P.O. Box 1149  
Juneau, AK 99802

3 STATE OF ALASKA, )  
4 DEPARTMENT OF LABOR, )  
5 Complainant, )  
6 v. )  
7 BLITZ ELECTRIC, INC., )  
8 Contestant. )

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9 OSHA Docket No. 87-717  
10 Inspection No. Ko-876-87  
11 103673943

12 SETTLEMENT AGREEMENT

13 The State of Alaska, Department of Labor (Department),  
14 and Blitz Electric, Inc., hereby agree to settle and resolve the  
15 contested citation issued by the department on September 8, 1987,  
16 a copy of which is attached hereto as Exhibit A, as follows:

17 I

18 The violation alleged in the department's citation is  
19 reclassified from "willful" to "repeat" and affirmed. The penalty  
20 assessed in the amount of \$3,500 for the citation is reduced to  
21 \$840.

22 II

23 Blitz Electric, Inc., certifies and represents that the  
24 citation alleged by the department has been abated. The  
25 department may conduct such further follow-up inspection as it  
26 deems necessary to verify abatement.

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501 1-3  
PHONE: (907) 216-3550

GIPPS

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III

Blitz Electric, Inc. agrees that immediately upon signing this agreement, it will post a copy of the agreement and attached citation at places where notices to employees are customarily posted for a period of not less than 10 days and it will serve, by mail or personal delivery, additional copies of the agreement on any authorized employee representatives, in Alaska.

IV

Any employee or employee representative who desires to comment upon or object to any aspect of this settlement agreement may do so by filing such comments and/or objections in writing with the Alaska OSHA Review Board, P.O. Box 1149, Juneau, Alaska 99811, within 15 days of the posting of this agreement. Upon receipt of any such comments or objections, the board may schedule such conference or hearing as it deems appropriate.

V

In executing this settlement agreement, the parties hereby acknowledge and incorporate by reference the provisions of 8 AAC 6.1.190(b) and expressly waive their right to a board hearing.

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DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550



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VI

Each party agrees to bear its own costs and attorneys' fees.

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

DATED: 3/29/88

By: *Jan Hart DeYoung*  
Jan Hart DeYoung  
Assistant Attorney General

BLITZ ELECTRIC, INC.

DATED: March 24, 1988

By: *Grant F. Watts*  
Grant Watts  
Attorney for Contestant

ORDER

Approved at \_\_\_\_\_, Alaska this \_\_\_\_\_  
day of \_\_\_\_\_ 1988.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 278-3550

# EXHIBIT A

3. Issuance Date 09/21/87	Inspection Number 103079943
5. Reporting ID 1050210	6. OCC ID K1731
7. Optional Report No 876-87	8. Page No 1 of 1

## Violation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below

10. Inspection Date(s)

9/16/87 - 9/16/87

11. Inspection Site:

Approximately Mile 5 Glenn Highway  
 Anchorage, AK 99510

Violation Description	Citation Number
Willful	01

To:  
 Itz Electric, Inc.  
 and its successors  
 P.O. Box 111949  
 Anchorage, AK 99510

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet)

This Section May Be Detached Before Posting

LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays) whichever is longer.

This Citation describes violations of the AS 18-60. The penalty(ies) listed below are based on these violations. You must correct the violation(s) referred to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and State holidays) from your receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
	<p>05.050(a)(1): Employees working in areas where there is a danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets.</p> <p>For example: An employee was working from a man basket in close proximity of 12,500 volt powerlines and another employee was working on the ground directly below. Neither employee was wearing hard hat protection. The violation was then repeated immediately after, and in spite of the delivery of a restraining order by an Occupational Safety Compliance Officer.</p>	Immediately Upon Receipt	3500.00

Chief 

18. \$ 3500.00

**NOTICE TO EMPLOYEES** — The law gives an employee or representative the opportunity to object to any abatement order set for a violation if he believes the date to be reasonable. The contest must be mailed to the Alaska Department of Labor Office at the address shown above within 15 working days (excluding weekends and State holidays) of the receipt by the employer of this citation and penalty.

**EMPLOYER DISCRIMINATION UNLAWFUL** — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

Total Penalty for This Citation  
 Make Check or Money Order Payable to: "AOL-LS&S"  
 Indicate Inspection Number on Remittance

**EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION** — The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.