

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

STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
)
Complainant,)
)
vs.)
)
UNITED MUFFLER CITY, INC.,)
)
Contestant.)
)

Docket No. 88-758
Inspection No. Ru-2218-632-88

DECISION AND ORDER

This matter came before the Board for a hearing on April 27, 1989, in Anchorage, Alaska. The State of Alaska, Department of Labor ("the Department") was represented by Assistant Attorney General Lisa Fitzpatrick. United Muffler City, Inc. ("UMC") was represented by Attorney Benjamin Walters. Evidence was submitted in the form of witness testimony and documentary exhibits, and the record was deemed closed at the conclusion of the hearing.

In contest before the Board are four "failure to abate" citations issued by the Department following a safety compliance inspection of UMC's premises at 105 West 5th Avenue in Anchorage on September 14, 1988. The Department had previously inspected UMC's premises on May 31, 1988, and had issued various citations and penalties which were not contested. Upon reinspection, the Department noted that four of the earlier citations had not been corrected and issued four "failure to abate" citations with proposed penalties totalling \$6000. UMC contests all four citations and penalties.

Specifically, the Department alleges that UMC failed to abate the following citations issued after the original inspection: Citation #1-1a for failure to implement and maintain an accident prevention program as required by General Safety Code 01.0105(a)(1); Citation #3-1a for failure to guard live exposed electrical components as required by Electrical Code 03.002(g)(2)(A); Citation #7-4 for failure to replace flexible cords being used as a substitute for fixed wiring as required by Electrical Code 03.004(g)(1)(C)(i); and Citation

#7-6 for failure to provide a work rest on the bench grinder as required by General Safety Code 01.0805(a)(4). The Department's proposed penalties for the failure to abate citations are as follows: \$1800 for Citation #1-1a; \$3000 for Citation #3-1a; \$600 for Citation #7-4; and \$600 for Citation #7-6.

Findings of Fact and Conclusions of Law

There appears to be no dispute that the four violations described above did in fact exist and that UMC failed to correct them within the prescribed time frame after the original inspection. UMC has recognized and admitted these violations and essentially asks us to reduce or eliminate the monetary penalties which it contends impose a significant financial burden upon it. The Department asserts that its proposed penalties were properly calculated but does not oppose a reduction by the Board for good cause.

The original inspection was triggered by a complaint concerning an unsafe hoist and other unsafe conditions at UMC's workplace. In response to that inspection, UMC says it spent \$2800 to fix the hoist and other cited violations. Unfortunately, UMC experienced financial difficulties because of the economic downturn and has been in Chapter 11 bankruptcy proceedings for the past two years. It asserts that it attempted in good faith to correct all of the cited violations but was unable to do so. UMC did not file any requests for modification of the abatement period or the abatement requirements as permitted by the Department's regulations.

The "failure to abate" penalties were calculated according to the Department's compliance manual guidelines. For Citations #1-1a and #3-1a, the original penalty amounts (i.e. those assessed after the initial inspection) were multiplied by the maximum limit of 10 days for the failure to abate. For Citations #7-4 and 7-6 (which did not carry a penalty after the initial inspection), the amount of \$100 was multiplied by the maximum 10 days and mitigation factors (such as size, good faith, past history) were applied to reduce the failure to abate penalty by 40%.

Based on the undisputed evidence, we find that all four "failure to abate" violations existed and therefore we affirm the citations. We also find that the Department's proposed penalties were properly calculated but that because of UMC's financial circumstances, the total amount should be reduced in half to \$3000. In making this penalty reduction, we do not excuse UMC's failure to correct the cited violations and we admonish the company for not making safety its highest priority. We believe the amount of the penalty reduction should be used to immediately establish an ongoing employee

safety program and to correct the specific code violations that remain unabated. In the event that any uncorrected or repeated violations are found in the future, UMC can expect to be penalized to the full extent permitted by law.

Order

1. The four "failure to abate" citations issued by the Department are affirmed.

2. The total monetary penalties for the "failure to abate" citations are reduced to \$3000.

DATED this 6th day of July, 1989.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

Guy Stringham
Guy Stringham, Chairman

Donald F. Hoff, Jr.
Donald F. Hoff, Jr., Member

J.C. Wingfield
J.C. Wingfield, Member

