

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

PUSD ALEXANDER HAMILTON
ELEMENTARY SCHOOL
331 South Hudson Avenue
Pasadena, CA 91101

Employer

Docket No. 09-R4D2-0784

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken this matter under reconsideration on its own motion, renders the following decision after reconsideration.

JURISDICTION

On February 10, 2009, the Division of Occupational Safety and Health (the Division) issued to PUSD Alexander Hamilton Elementary School (Employer) one Citation alleging three violations of Title 8, Cal. Code of Regulations. Employer filed a timely appeal contesting all three Items in the Citation.

This matter came on regularly for a scheduled status conference before an Administrative Law Judge (ALJ) for the Board. The matter was settled that day, and memorialized in an Order, and an attached summary table, dated July 31, 2009. In the Order, the ALJ stated "Good cause having been shown, the stipulation of the parties quoted below is accepted and the matter is resolved as set forth in the attached summary table.

The parties resolved Citation 1, Items 1 and 2 during the scheduled July 20, 2009 Status Conference." However, neither the Order nor the summary table specified the nature of the good cause referred to in the Order.

On August 25, 2009, the Board on its own motion ordered reconsideration of the ALJ's Order pertaining to the existence of good cause for the withdrawal of Citation 1, Item 2.

Employer submitted an Answer to the Order of Reconsideration dated September 24, 2009. E-mail communications from the parties to the ALJ are consistent with the withdrawal of Item 2 as part of the negotiated settlement.

ISSUE

Whether there was good cause for withdrawal of Citation 1, Item 2.

DECISION AFTER RECONSIDERATION

Board Regulation, section 364.2 states “(a) Upon a showing of good cause, the Appeals Board may dispose of the issues on appeal by granting a written motion of the parties made at any time, or an oral motion of the parties made on the hearing record or in the prehearing conference.” Absent allegations or indications of fraud, the Board has recognized the Division’s prosecutorial discretion to withdraw citations as part of negotiated settlements. (*Northern California Paper Recyclers, Inc.*, Cal/OSHA App. 09-2352, Denial of Petition for Reconsideration (Jun. 1, 2010); *California Dept. of Forestry*, Cal/OSHA App. 85-1379, Denial of Petition for Reconsideration (Aug. 28, 1986).) Here, withdrawal of Item 2, and affirmation of Item 1, both pertaining to alleged IIPP violations, indicate the withdrawal was part of the total negotiated settlement, and thus within the prosecutorial discretion of the Division. Employer’s Answer addresses its positions regarding the merits of all of the Items in the citation, confirming the global nature of the negotiated settlement, of which withdrawal of Item 2 was only a part. It appears appropriate in this record to accept the agreement and stipulation of the parties. (*E & H 126 Investment Inc*, Cal/OSHA App. 08-3994, Denial of Petition for Reconsideration (Jul. 30, 2009); see also *County of Sacramento v. Workers’ Comp. Appeals Bd.* (3rd Dist. 2000) 77 Cal.App.4th 1114.)

Therefore, ALJ’s Order is affirmed and is reinstated, with amendment to the summary table memorializing that new information provided by Employer in the course of settlement negotiations support the ALJ’s finding of good cause in accepting the entire negotiated settlement.

CANDICE A. TRAEGER, Chairwoman
ARTHUR CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: JANUARY 28, 2011