

U.S. Department of Labor

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Office of the Solicitor

John F. Kennedy Federal Building - Rm. E-375

Boston, Massachusetts 02203

Reply to the Attention of:

SOL: JSA:tms

SOL# 10-34991



August 3, 2010

Honorable Irving Sommer
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street, N.W., Rm. 990
Washington, D.C. 20036-3419

Subject: Secretary of Labor v. U.S. Postal Service
OSHRC Docket No. 10-1102

Dear Judge Sommer:

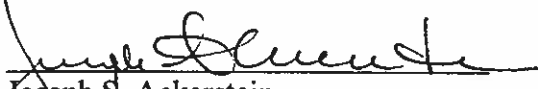
Enclosed please find the Motion of the Complainant for Consolidation of Cases and Stay, and proposed Order Granting Consolidation and Stay of Proceedings.

As you will note from the motion there are numerous citations that have issued, and are about to issue, against the U.S. Postal Service nationwide for similar violations of electrical safety work practices, 29 C.F.R. §§1910.331-335. Complaints have been filed in at least five (5) cases to date. Nine (9) other cases are pending before the Commission and three (3) citations have issued with contests expected. See Attachment A to motion. The inspections continue with more citations expected. Given the common issues and parties, and the number of citations to be issued in total, which may exceed 30-40, a consolidation of all these cases would conserve judicial and litigation resources.

Additionally, a stay of at least 90 days is being sought while the parties attempt to negotiate a settlement. Negotiations involving the Secretary, the U.S. Postal Service, and the American Postal Workers Union, AFL-CIO have already been initiated.

Sincerely,

Michael D. Felsen
Regional Solicitor


Joseph S. Ackerstein
Senior Trial Attorney

Enclosure

cc: Judge Dennis L. Phillips

Working for America's Workforce

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
United States Department of Labor,

Complainant,

v.

U.S. POSTAL SERVICE,

Respondent.

DOCKET NO. 10-1102

REGION I

INSPECTION NO. 312343775

MOTION OF THE COMPLAINANT FOR CONSOLIDATION OF CASES AND
STAY

The Complainant hereby moves pursuant to Procedural Rule §2200.9 of the Occupational Safety and Health Review Commission that the above captioned matter be consolidated with other related pending cases before the Commission, and be considered a continuing motion for anticipated future cases to be soon filed, based on citations either already issued or to be issued against the Respondent throughout the country for alleged violations of electrical safety related work practices, 29 C.F.R. §1910.331-335, by the Respondent in its Processing and Distribution Centers and National Distribution Centers. The Respondent has approximately 260 such facilities across the country with common or similar electrical safety issues. Thus, the Secretary's complaint filed with the Commission in this matter on July 6, 2010 seeks enterprise-wide relief under the Commission's grant of authority to issue an order "directing other appropriate relief."

In support of the motion for consolidation, the Complainant asserts that the above matter was the first of numerous inspections initiated by the Complainant beginning in October 2009 across the country. Since that time at least five complaints and a significant number of citations arising from comparable conditions have issued. (See Attachment A). It is anticipated that all of these citations will be contested and, therefore, will eventually be on the Commission's docket. Additional citations are continuing to issue in the interim.

The parties are in the process of initiating settlement negotiations intended to resolve all these matters. Given the scope of the Secretary's investigations of the Respondent, including the significant number of citations already issued with respect to the electrical violations, those anticipated to be issued, and the cases currently pending before the Commission assigned to various judges, consolidation of all matters involving the Complainant and Respondent concerning violations of the electrical standards will conserve judicial and litigation resources, and is in the best interests of the Commission and the parties.

Similarly, the Complainant further moves pursuant to Rule § 2200.63 that there be a short stay of proceedings to allow the parties to pursue their negotiations at the national level and not be hampered in the interim by discovery issues or even mandatory settlement proceedings. Discussions between the parties have already initiated and, given the scope and nature of the matter, a settlement would appear to have reasonable prospects.

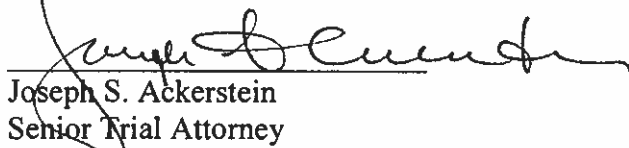
Accordingly, the Complainant requests a consolidation of all existing matters set forth in Attachment A, and future cases that come before the Commission as will be specifically identified by the parties that pertain to violations under 29 C.F.R. §1910.331-335, once the cases enter the Commission's docket. Complainant further requests that the proceedings for all these cases be stayed in the interim for at least 90 days pending on-going negotiations (except for the filing of complaints).

Both the Respondent and the American Postal Workers Union, AFL-CIO have been advised of this motion. The undersigned has conferred several times with both parties but each party has a separate position on the scope and length for the stay of proceedings and it is best for each party to present its own position to the court.

Respectfully submitted,

M. Patricia Smith
Solicitor of Labor

Michael D. Felsen
Regional Solicitor


Joseph S. Ackerstein
Senior Trial Attorney

U.S. Department of Labor
Attorneys for Complainant

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Dated: August 3, 2010

ATTACHMENT A

COMPLAINTS FILED AND CITATIONS ISSUED AGAINST RESPONDENT FOR VIOLATIONS OF 29 C.F.R. 1910.331-335

COMPLAINTS FILED TO DATE

Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 09-1954,
Inspection No. 313070096 (Judge Welsch)

Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1102,
Inspection No. 312343775 (Judge Phillips)

Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1123,
Inspection No. 313414344 (Judge Augustine)

Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1037,
Inspection No. 312600356 (Judge Rooney)

Secretary of Labor v. U.S. Postal Service, Inspection No. 312391709 (Order of
Docketing has not yet issued)

OTHER CASES CURRENTLY BEFORE THE COMMISSION (COMPLAINTS TO BE FILED SHORTLY)

- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1251,
Inspection No. 312636939 (Judge Rooney)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1325,
Inspection No. 312493620 (Judge Rooney)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1326,
Inspection No. 312493661 (Judge Rooney)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1266,
Inspection No. 313027930 (Judge Bober)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1225,
Inspection No. 313862286 (ALJ unknown)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1224,
Inspection No. 313862302 (ALJ unknown)
- Secretary of Labor v. U.S. Postal Service, OSHRC Docket No. 10-1433,
Inspection No. 313993453 (ALJ unknown)

- Secretary of Labor v. U.S. Postal Service, Inspection No. 313862294 (Notice of Contest received on June 23, 2010, but Order of Docketing has not yet issued)
- Secretary of Labor v. U.S. Postal Service, Inspection No. 313177537 (Notice of Contest received on July 20, 2010, but Order of Docketing has not yet issued)

CITATIONS THAT HAVE BEEN ISSUED AND ARE EXPECTED TO BE CONTESTED SOON

- Citation issued on July 22, 2010 (Inspection No. 311593164), to the USPS facility at 195 Sykes Ave, White River Junction, VT, for violations of electrical safety-related work practices standards 29 C.F.R. §§ 1910.332(b)(1) and (2), 1910.332(c), 1910.334(c)(1) and (2), 1910.333(b)(2), 1910.335(a)(1)(i), (ii) (iii), (iv) and (v) and 1910.335(a)(2)(i).
- Citation issued on July 2, 2010 (Inspection No. 313989063), to the USPS facility At 9201 Edgeworth Dr., Capitol Heights, Maryland, for violations of electrical safety-related work practices standards 29 C.F.R. §§ 1910.335(a)(2)(i), 1910.332(b)(1), 1910.332(c), 1910.333(a)(1), 1910.333(a)(2), 1910.335(a)(1)(i), 1910.335(a)(1)(iv), and 1910.335(b)(1).
- Citation issued on July 26, 2010 (Inspection No. 313797060), to the USPS facility in Boston, MA for violations of 1910.332(b)(1); 1910.333(a)(1) and (2); 1910.335(a)(1)(i), (iv) and (v) and 1910.335(a)(2)(i).

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
United States Department of Labor,

Complainant,

v.

U.S. POSTAL SERVICE,

Respondent.

DOCKET NO. 10-1102

REGION I

INSPECTION NO. 312343775

ORDER GRANTING CONSOLIDATION AND STAY OF PROCEEDINGS

The Complainant has moved pursuant to Procedural Rule § 2200.9 of the Occupational Safety and Health Review Commission to have the above cited matter consolidated (1) with other related pending cases before the Commission and (2) with anticipated future cases to be soon filed, based on citations either already issued or to be issued against the Respondent throughout the country for alleged violations of electrical safety related work practices, 29 C.F.R. §§1910.331-335 in its Processing and Distribution Centers and National Distribution Centers. Having reviewed the motion, I find that there are common issues and that consolidation would be in the interests of judicial economy. It is therefore ORDERED that the above cited matter be consolidated with those cases listed in Attachment A as pending before the Commission, those citations issued with complaints anticipated to be soon to be filed with the Commission, and those additional cases to be filed in the future as will be identified by the parties as having the same common electrical issues.

It is further ORDERED that this proceeding and the consolidated cases are stayed for 90 days during negotiations by the parties.

SO ORDERED.

U.S. OSHRC Judge

Dated

CERTIFICATE OF SERVICE

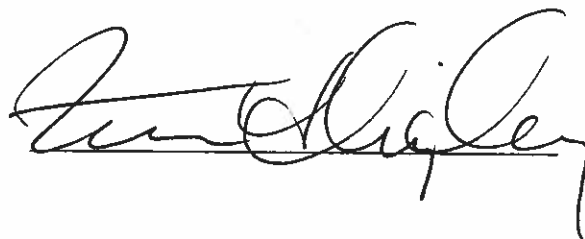
I hereby do certify that I served the foregoing MOTION OF THE COMPLAINANT FOR CONSOLIDATION OF CASES AND STAY and proposed ORDER GRANTING CONSOLIDATION AND STAY OF PROCEEDINGS on the 3rd day of August, 2010, by placing one (1) copy of same in a postage-paid envelope addressed to:

A. Elaine Rogers, Esquire
U.S. Postal Service
Northeast Area Law Office
8 Griffin Road North
Windsor, CT 06006-0170

and

Corey Thompson
Safety and Health Specialist
Industrial Relations
American Postal Workers Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005

the last known address and depositing same in the United States Mail at Boston, Massachusetts.

A handwritten signature in black ink, appearing to read "J. H. Riley", is written over a horizontal line.