

Riedel International

SAFETY AND HEALTH

Order on agreement of parties

Where the parties seek an order on agreement of parties, only the Board has final authority to enter such an order or decline to do so and it will decline to enter an order where the parties' agreement is not supported by the facts and the law. In a WISHA appeal, a misstatement of the controlling law contained in the proposed agreement effectively negates the noteworthy purposes of the written agreement and the Board will decline to enter the order on agreement of parties. ...*In re Riedel International*, BIA Dec., 93 W006 (1993)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

| | | |
|-----------------------------------|---|---------------------------------|
| In re: Riedel International, Inc. |) | Docket No. 93 W006 |
| |) | |
| Citation and Notice No. 111399705 |) | ORDER DECLINING TO ENTER |
| |) | ORDER ON AGREEMENT OF |

PARTIES

APPEARANCES:

Employer, Riedel International, Inc., by
Francis Bradach, Vice-President

Employees of Riedel International, Inc., by
Pacific NW Ironworkers, Local 29, per
Paddy Barry
and International Union of Operating Engineers, Local 701
Francis Wicklander

Department of Labor and Industries, by
Office of the Attorney General, per
Elliott Furst, Assistant

This is an appeal filed by the employer, Riedel International, Inc., on October 28, 1991 with the Safety Division of the Department of Labor and Industries. The Department, reassumed jurisdiction by a notice dated November 25, 1991. Thereafter, on February 4, 1993, the Department issued a Corrective Notice of Redetermination No. 111399705.

On February 18, 1993, the employer appealed the Corrective Notice of Redetermination. The Department transmitted the appeal to this Board on February 25, 1993. In light of the ruling in The Erection Co. v. Department of Labor & Indus., 121 Wn.2d 513 (1993), we have considered this appeal as taken from Citation and Notice No. 111399705 issued by the Department of Labor and Industries on October 17, 1991. The Citation and Notice alleged that the Riedel International, Inc. had committed four violations of regulations promulgated under the authority of the Washington Industrial Safety and Health Act [hereafter "WISHA"]. The Citation and Notice assessed penalties in the sum of \$31,540.00 and set an abatement date of July 26, 1991 for all violations.

This matter is before the Board pursuant to the parties' submission of a written Agreement of Parties. We received the agreement on August 6, 1993. The parties have requested that we enter an Order on Agreement of Parties in accordance with the written Agreement of Parties. The Agreement of Parties has been signed by all interested parties.

1 An Order on Agreement of Parties is a final decision and order of
2 the Board. When parties to an appeal seek an Order on Agreement of
3 Parties, only the Board has final authority to enter such an order or
4 decline to do so, as we do in this appeal. Our authority to enter
5 final orders is imposed by the Legislature. We will enter orders
6 based on the parties' agreement, so long as we find the agreement "is
7 in conformity with the law and the facts." RCW 51.52.095(1).¹ As a
8 result, we have reviewed the written agreement to determine if it is in
9 conformity with both the law and the facts presented to us.

10
11 The written stipulation proposed as the basis for this Board's
12 Order on Agreement of Parties includes the following provision:
13

14 Item 1-1 is affirmed as a "willful" violation. However,
15 the penalty is reduced from \$30,000 to \$1,460. the basis for
16 this reduction in penalty is the Board's finding in Ledcor
17 Industries (Docket No. 91W058) [sic], that the classification
18 of a violation as "willful" is more important than the amount
19 of penalty assessed.
20

21 Agreement of Parties at 1.
22

23 Although it is not clear which order in In re Ledcor Industries,
24 Dckt. No. 91 W058 the parties intend to reference, we believe the
25 reference is intended to identify an Order on Remand from Superior
26 Court entered in that appeal on April 1, 1993. In that order, we
27 declined to enter an Order on Agreement of Parties where only the
28 Department and the employer, but not the employee representatives
29 agreed to its entry. We further determined that the employees'
30 objection to entry of the Order on Agreement of Parties was founded
31 upon prima facie evidence supportive of characterizing the violations
32 as willful and not for an improper purpose.
33

34 In analyzing the employee's objection to entry of the Order on
35 Agreement of Parties, we gave attention to "additional circumstances
36 surrounding the proposed settlement" as directed by the Superior Court.
37 In re Ledcor Industries, Dckt. No. 91 W058 (April 1, 1993) at 4. In
38 doing so, we discussed the parties' respective positions: 1) the
39 Department asserted that the total penalty through settlement might be
40 greater than if the matter were fully heard and 2) the employees
41 asserted that the classification of a violation as "willful" can be an
42 additional economic deterrent.
43

44 We have not stated, at any time, that the classification of a
45 violation is more meaningful than a penalty assessment. We find the

¹This is consistent with the directive of RCW 49.17.140(3) that the Board shall "make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals."

1 statement to that effect in the Agreement of Parties a blatant
2 mischaracterization of our decision. In Ledcor, our Finding of Fact 4
3 stated, in pertinent part:

4
5 The employees' and unions' objection to the proposed
6 settlement is founded upon prima facie evidence supportive of
7 the two "willful" violations as alleged by the Department in
8 its Citation and Notice. The unions believe that, given the
9 facts and the law, the proposed settlement does not best
10 further the interests of employee safety in the work place in
11 that both the characterization of a violation as "willful" as
12 well as assigned penalties have the effect of deterring
13 future safety violations.

14
15 Dckt. No. 91 W058 at 8. (Emphasis added).

16
17 The Agreement of Parties proposed in this appeal appears
18 supportive of the underlying purposes of WISHA in that it is clearly
19 designed to enhance workplace safety. For that reason, we are
20 initially inclined to enter the Order on Agreement of Parties. We are
21 concerned, however, by the reference to our decision in Ledcor and the
22 apparent understanding that penalty reduction is somehow validated by
23 retention of a more serious classification of a citation. For that
24 reason, the agreement maybe inconsistent with the law. In light of the
25 Legislature's directive that our Orders on Agreement of Parties be in
26 conformity with both the law and the facts, we must decline to enter
27 the Order on Agreement of Parties based on an agreement that appears to
28 be founded upon a misunderstanding of the applicable law.

29
30 This Board is committed to the purposes of WISHA and is more than
31 willing to enter agreed orders so long as they conform to the law and
32 the facts. We recognize that the parties have attempted to resolve
33 this appeal in a manner which best promotes workplace safety.
34 Unfortunately, the inclusion of a clause which misstates the
35 controlling law effectively negates the noteworthy purposes of the
36 written agreement.

37
38 We hold that no Order on Agreement of Parties can or will be
39 entered by this Board unless it conforms with the law and the facts.
40 In so holding, we encourage the parties to explore all the mechanisms
41 available for resolving their dispute. The remedies available before
42 this Board include orders: affirming the Citation and Notice; modifying
43 the terms vacating the Citation and Notice; and remanding the matter to
44 the Department. If the matter is remanded to the Department, the
45 Department then may exercise its responsibility to administer WISHA in
46 accordance wit the legislatures directives.

1
2 Accordingly, the request to enter an Order on Agreement of Parties
3 based on the Agreement of Parties received by the Board on August 6,
4 1993, is denied. This matter is referred to the mediation/hearing
5 process for the scheduling of further proceedings. WAC 263-12-093(2).
6

7 It is so ORDERED.

8
9 Dated this 14th day of September, 1993.

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

11 /s/ _____
12 S. FREDERICK FELLER Chairperson

13 /s/ _____
14 FRANK E. FENNERTY, JR. Member

15 /s/ _____
16 ROBERT L. McCALLISTER Member