

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

INTERNATIONAL ALUMINUM CORPORATION  
767 Monterey Pass Road  
Monterey Park, CA 91754

Employer

Docket No. 09-R6D2-1185

**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 March 13, 2009, the Division of Occupational Safety and Health (the Division) issued to International Aluminum Corporation (Employer) one citation alleging two violations of Title 8, Cal. Code of Regulations. Employer filed a timely appeal contesting both items in the citation.

This matter came on regularly for a scheduled prehearing conference before an Administrative Law Judge (ALJ) for the Board. The matter was settled at that conference, and memorialized in an Order, and an attached summary table, dated July 27, 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 Order further recited that the parties entered in to the agreement to avoid protracted litigation and the costs associated therewith. However, neither the Order nor the summary table specified the nature of the good cause justifying the withdrawal of Citation 1, Item 1.

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

The Division submitted an Answer to the Order of Reconsideration setting forth the factual basis for agreement relevant to its withdrawal of Citation 1, item 1.

### **ISSUE**

Whether there was good to withdraw Citation 1, Item 1.

### **REASONS FOR 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 the citation was a result of the Employer providing additional evidence regarding the alleged violation. It appears the Division appropriately exercised its prosecutorial discretion and chose to withdraw the citation based on new evidence provided by Employer. On this record it is appropriate 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.* (3<sup>rd</sup> Dist. 2000) 77 Cal.App.4<sup>th</sup> 1114.)

Therefore, the ALJ’s Order resolving the matter is affirmed and the terms of the settlement as set forth in the summary table are reinstated, with the additional statement that Citation 1, Item 1 was withdrawn based on new evidence provided by Employer.

CANDICE A. TRAEGER, Chairwoman  
ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: JANUARY 28, 2011