



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

MANGANAS PAINTING CO., INC.,

Respondent.

OSHRC Docket Nos. 95-0103 & 95-0104

**APPEARANCES:**

Jordana Wilson, Attorney; Kenneth A. Hellman, Senior Trial Attorney; Joseph M. Woodward, Associate Solicitor; Howard M. Radzely, Acting Solicitor; U.S. Department of Labor, Washington, DC

For the Complainant

Roger L. Sabo, Esq., and Denise L. Hanson, Esq.; Schottenstein, Zox & Dunn, Columbus, OH

For the Respondent

**REMAND ORDER**

Before: ROGERS, Acting Chair; and THOMPSON, Commissioner.

**BY THE COMMISSION:**

This case is before the Commission on remand from the United States Court of Appeals for the Sixth Circuit. *Chao v. OSHRC (Manganas Painting Co.)*, 540 F.3d 519, 528 (6th Cir. 2008). The Secretary filed a petition with the court seeking review only of the Commission majority's decision in Docket No. 95-0103 to vacate Citation 2, Items 13a, 13b, and 13c, as barred by § 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 659(b) ("OSH Act"). *Manganas Painting Co.*, 21 BNA OSHC 2043, 2061-62 (Nos. 95-0103 & 95-0104, 2007). In an opinion dated August 29, 2008, the court granted the Secretary's petition for review, reversed the Commission, and remanded "for further proceedings regarding the merits of the citations at issue." *Manganas Painting Co.*, 540 F.3d at 521.

Under Items 13a, 13b, and 13c, the Secretary alleged that Respondent violated 29 C.F.R. § 1926.451(a) (1994) by failing to provide guardrails on painter's pick scaffolds. In reversing the Commission's narrow disposition of these citation items, the court left standing that part of former Administrative Law Judge James Barkley's decision in which he vacated all three items based on his findings regarding duplicativeness and applicability of the cited standard. In light of subsequent case law relevant not only to the issues addressed by the judge, but other issues raised by the parties that relate to the merits of these items, we now set aside that part of the judge's decision regarding Items 13a, 13b, and 13c, and remand this case to the Chief Administrative Law Judge for further proceedings.

SO ORDERED.

/s/ \_\_\_\_\_  
Thomasina V. Rogers  
Acting Chair

/s/ \_\_\_\_\_  
Horace A. Thompson III  
Commissioner

Dated: April 14, 2009