SECRETARY OF LABOR, Complainant, v. 84 COMPONENTS COMPANY, Respondent.	OSHRC Docket No. 02-0363

DIRECTION FOR REVIEW AND REMAND ORDER

This case is before the Commission for a second time. In a previous order issued on February 24, 2003, the Commission remanded this case to Administrative Law Judge Michael H. Schoenfeld for consideration of the issues raised in Respondent's November 25, 2002, Petition for Discretionary Review ("PDR") and Motion for Relief in Connection with the Order Approving Settlement Entered on November 4, 2002 by the Honorable Michael H. Schoenfeld ("motion"). At that time, Respondent claimed that after executing a settlement agreement, both parties discovered that they were not in agreement as to the acceptable method of abating the conditions cited in Citation 1, item 8a, which alleged a violation of 29 C.F.R. § 1910.213(h)(1).[1] Respondent requested that, in view of this misunderstanding regarding the terms of the settlement, the judge's order approving the settlement be set aside and the case remanded for final disposition of the unsettled Citation 1, item 8a, only. The Secretary neither opposed the PDR or the motion, nor did she file a Cross-Petition for Discretionary Review.

---

[1] **§ 1910.213 Woodworking machinery requirements.**

. . . .

(h) *Radial saws.* (1) The upper hood shall completely enclose the upper portion of the blade down to a point that will include the end of the saw arbor. The upper hood shall be constructed in such a manner and of such material that it will protect the operator from flying splinters, broken saw teeth, etc., and will deflect sawdust away from the operator. The sides of the lower exposed portion of the blade shall be guarded to the full diameter of the blade by a device that will automatically adjust itself to the thickness of the stock and remain in contact with stock being cut to give maximum protection possible for the operation being performed.

On remand, the judge affirmed his order approving the settlement agreement. In his order, dated March 14, 2003, he noted at the outset that "Respondent is not aggrieved by the Order Approving the Settlement." He explained that the settlement agreement certified that the conditions had been abated, and that by signing the agreement, the Secretary approved and accepted the method of abatement Respondent believed to be appropriate." He concluded that "[s]hould the Secretary believe that the actions taken by Respondent [are] inadequate abatement, she may commence a failure to abate action," or alternatively, "[s]hould Respondent believe that the corrective actions it took constitute effective if not literal abatement it may proceed with a petition for modification of abatement."

On March 14, 2003, Respondent again filed both a PDR and a motion requesting that the judge's order be vacated and a status conference be held "to schedule further proceedings as to the unsettled Citation 1, item 8a only." Respondent states that the Secretary does not oppose the motion and "concurs with the requested relief sought by [the] motion." Respondent argues that it should neither be subject to a potential failure to abate citation with its daily penalties, nor should it bear the costs of petitioning for modification of abatement.

On April 3, 2003, at the Commission's request, the Secretary submitted a Statement in Response to Petition and Motion in which she states that she agrees with the factual recitation contained in Respondent's PDR and motion. In addition, the Secretary states that she does not oppose Respondent's request that the Judge's order be set aside and the matter remanded for scheduling of further proceedings with regard to item 8(a) only.

"[T]he Commission must be assured that a proposed settlement represents a genuine agreement between the parties and a true meeting of the minds on all provisions thereof." *Aerlex Corp.*, 12 BNA OSHC 1989; 1986-87 CCH OSHD ¶ 27,847 (No. 85-1257, 1986). Based on the parties' submissions, we find that no mutual agreement was reached with regard to the method of abating the conditions alleged in Citation 1, item 8(a).[2]

---

[2]We do not regard the parties' submissions to us on review as inconsistent with the terms of the written settlement agreement, which the judge found to be clear and unambiguous. By signing the agreement, the Secretary did not approve and accept the method of abatement which the Respondent believed to be appropriate. The relevant contractual provision was not a bilateral

Given the circumstances present here, we agree with Respondent that neither a failure to abate action by the Secretary nor a petition for modification of abatement by Respondent would provide appropriate relief. Therefore, we grant respondent's petition for review of the judge's decision, pursuant to 29 U.S.C. § 661(j) and 29 C.F.R. § 2200.92(a), and we set aside the judge's order of March 14, 2003, in which he affirmed his Order Approving Settlement. We also set aside the judge's Order Approving the Settlement.[3] We note that the parties are free to renegotiate the terms of settlement and, if necessary, proceed to trial on any remaining items. Accordingly, we remand this case to the judge for further proceedings consistent with this order.

SO ORDERED.

/s/
W. Scott Railton
Chairman

/s/
Thomasina V. Rogers
Commissioner

/s/
James M. Stephens
Commissioner

Dated: April 18, 2003

---

understanding as to a specified method of abatement but a unilateral declaration that "Respondent affirmatively states that . . . [a]ll violations alleged in the complaint have been abated" with certain exceptions noted.

[3]To the extent the parties claim they remain in agreement with regard to the other citation items resolved by their settlement agreement and therefore would have us set aside the judge's approval order only as to the one item remaining in dispute, we note that it is not the Commission's practice to approve settlement agreements in piecemeal fashion. *Phillips 66 Co.*, 16 BNA OSHC 1332, 1335, 1993 CCH OSHD ¶ 30,191, p. 41,540 (No. 90-1549, 1993).

SECRETARY OF LABOR, Complainant, v. 84 COMPONENTS COMPANY, Respondent.	Docket No. 02-0363

Order

This matter is before the Administrative Law Judge pursuant to the Order of the Commission of February 24, 2003, for consideration "of the issues raised by Respondent."

Most succinctly stated, the parties entered into a settlement agreement which unambiguously resolved all matters at issue. An Order approving the Settlement was issued on November 4, 2002. Thereafter, Respondent claimed that contrary to the clear language of the settlement, the parties were not in agreement as to the requirements for abatement of three instances of alleged violation of a particular standard.

Respondent terms its request as one seeking "relief" from the order approving the settlement agreement. It asserts that only after the agreement was signed by both parties and submitted to the Administrative Law Judge, OSHA representatives notified Respondent that photos submitted by Respondent to OSHA before the agreement was entered into did not demonstrate the abatement OSHA believed had been agreed to by the parties. In sum, Respondent represents that "the method of abatement is still in dispute between the parties."[4]

At the outset it is noted that Respondent is not aggrieved by the Order Approving the Settlement. The agreement certifies that the condition has been abated. By signing the agreement, the Secretary approved and accepted the method of abatement Respondent believed to be appropriate. If the method

[4] Respondent's statements are merely assertions as to OSHA's position inasmuch as OSHA stands mute. The Secretary did not reply to Respondent's motion for relief, its petition for discretionary review or the Commission's Notice of Direction of Review.

It is also noteworthy that Respondent's motion for relief fails to "state in the motion if any other party oposes or does not oppose the motion" as required by Commission Rule 40(a), 29 C.F.R §2200.40(a).

used was not that anticipated by the Secretary, she might be considered to be aggrieved by the Order Approving the Settlement. The Secretary has not, however, taken a position on this record.

Respondent's motion "for relief" is essentially a request to rescind the agreement duly entered into and executed by the parties. The Commission has recognized that rescission may lie where mistake, fraud, illegality or accident have been demonstrated. *Phillips 66 CO.*, 16 BNA OSHC 1332 (No. 90-1549, 1993). Where appropriate, an evidentiary hearing on such an issue might be warranted. Id.

In this matter, however, even if all of Respondent's assertions are accepted as fact[5], the record as a whole would be insufficient to establish mistake, fraud, illegality or accident of sufficient kind and degree to warrant rescission, especially when weighed against the importance of maintaining finality of an agreement freely and voluntarily entered into by knowing and well-represented parties as well as clear, unambiguous language of the settlement agreement. Finally, the parties are not without remedy should they disagree as to the appropriate method of abatement of the item. Should the Secretary believe that the actions taken by Respondent is inadequate abatement, she may commence a failure to abate action. On the other hand, should Respondent believe that the corrective actions it took constitute effective if not literal abatement it may proceed with petition for modification of abatement.

Based upon the above, the Order Approving Settlement of November 4, 2002 is AFFIRMED.

/s/
Michael H. Schoenfeld
Judge OSHRC

Dated: March 14, 2003
Washington, D.C.

[5] Such a finding would be difficult at best in light of the Secretary's silence and Respondent's attempt to portray the state of mind, thinking and beliefs of OSHA officials which are neither of record nor asserted or even confirmed by the Secretary.