



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
One Lafayette Centre
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Washington, DC 20036-3419

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SECRETARY OF LABOR
Complainant,
v.
STERLING/ICC, AND ITS SUCCESSORS,
Respondent.

OSHRC DOCKET
NOS. 93-0895
93-0896

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on December 2, 1993. The decision of the Judge will become a final order of the Commission on January 3, 1994 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before December 22, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: December 2, 1993

DOCKET NOS. 93-0895 & 93-0896

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for **Regional** Trial Litigation
Office of the Solicitor, U.S. DOL
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John Patrick McGinley
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Sterling/ICC
4401 Hartwick Road
College Park, MD 20740

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th St. N.W., Suite 990
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SECRETARY OF LABOR,

Complainant,

v.

STERLING/ICC, and its
successors,

Respondent.

Docket Nos. 93-0895
93-0896

Appearances:

Maureen A. Russo, Esq.
U.S. Department of Labor
Philadelphia, Pa.

For the Complainant

John P. McGinley
Vice President
College Park, MD

For the Respondent

Before: Administrative Law Judge Irving Sommer

DECISION AND ORDER

By order dated June 17, 1993 the undersigned dismissed the Respondent's notice of contest as being untimely filed. The Respondent requested review of this decision and in an order dated July 19, 1993 the Commission directed that "appropriate further proceedings be conducted to allow the Respondent an opportunity to offer proof of the circumstances alleged in Mr. McGinley's June 9, 1993 letter." In said letter the Commission indicated that "Mr McGinley suggests that he was misled by OSHA to believe that it was necessary to hire a lawyer in order to contest a citation."

A hearing was held in Washington, D.C. on August 26, 1993, at which time both parties appeared and were represented.

John R. Wiseman, the district supervisor of the Washington, D.C. office of OSHA testified that he had engaged in an informal conference with Mr. McGinley on or about January 23, 1992, concerning the citations issued to the company. Wiseman emphatically stated that he had at no time told McGinley that if the citations were contested that a lawyer was necessary to proceed. Wiseman said, "I tell all people that they may conduct this themselves or have somebody from their company." (Tr 17). In response to the question of his counsel, "And did you ever suggest or imply, during the course of the events, anything that would lead Mr. McGinley to believe that if he wished to contest these particular citations, he would need legal counsel?" his response was, "No, I did not." The testimony of Mr. McGinley fully establishes that Wiseman at no point told him that in order to proceed further he needed to hire counsel. Actually he admitted he was told that if he desired to proceed further he could represent himself or get a lawyer. (Tr 31).

A careful analysis of the evidence of record, the testimony of the witness herein compel the conclusion that the Respondent was in no way misled by OSHA with respect to his rights to proceed further either representing the corporation himself or with counsel of his choice. The failure of the Respondent to proceed was in no way caused by any deception by OSHA.

Accordingly, the decisions dated June 17, 1993 dismissing the notice of contest in the captioned cases are RE-AFFIRMED as issued.



IRVING SOMMER
Judge

DATED: NOV 26 1993
Washington, D.C.