



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
721 19th Street, Room 407  
Denver, Colorado 80202

SECRETARY OF LABOR,

Complainant,

v.

MENOMINEE TRIBAL ENTERPRISES,

Respondent.

OSHRC Docket No.  
08-0404

Appearances:

Denise C. Hockley-Cann, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois  
For Complainant

Joseph Preloznik, Esq., Law Office of Joseph Preloznik, Madison, Wisconsin  
For Respondent

William Kussel, Esq., Director of Legal Services, Keshena, Wisconsin  
For third party intervenor Menominee Indian Tribe of Wisconsin

Before: James R. Rucker, Jr., Administrative Law Judge

**DECISION AND ORDER**

On February 5, 2009, the court issued an Order outlining its decision on Respondent's and third party intervenor, Menominee Indian Tribe of Wisconsin's ("Menominee Tribe"), motions for summary judgment. The court found that the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq.* ("the Act") applies to Respondent's activities at issue in the citations. The parties had previously stipulated to the violations identified in the citations, the classification of the violations, and the proposed penalties, during a conference call with the court on October 21, 2008. The parties agreed that the only disputed issue in this case was whether or not Respondent is subject to the requirements of the Act and the regulations implemented pursuant to the Act.

This matter now comes before the court for consideration of the Secretary's subsequent *Motion for an Order Affirming the Secretary's Complaint and Citation and Notification of Penalty*. Respondent did not file a response to the Secretary's motion. Third party intervenor, Menominee Tribe, filed a letter stating, in pertinent part, that "Menominee Tribe does not object to, or disagree with the Secretary's statement in [s]ection one of its [m]otion that the parties stipulated that the only issue before the [c]ourt was whether the Secretary of Labor had jurisdiction over the workplace subject to the [c]itation, and that the [c]ourt's February 5, 2009 decision regarding summary judgment addressed that issue."

Menominee Tribe objects to this court issuing a final decision in this matter based on Menominee Tribe's belief that the court's February 5, 2009 Order "contained one factual error, and did not include certain facts the Menominee Tribe believes are material." Menominee Tribe requests an opportunity to submit "proposed factual findings" to be included in the court's final decision in this case. The Secretary, also by letter, objects to Menominee Tribe's request to submit additional proposed facts on issues already decided by the court's February 5, 2009 Order.

I note that the parties were required to submit briefs, identifying all facts and legal arguments relating to the application of the Act to Respondent by December 5, 2008. The Secretary, Respondent, and Menominee Tribe all submitted timely briefs on the issue. Therefore, Menominee Tribe's request to now submit additional proposed findings of fact is DENIED.

Pursuant to Commission Rule 61, 29 C.F.R. §2200.61, a case may be fully stipulated by the parties and submitted to the Commission or Judge for a decision at any time. If the parties agree that there are no disputed issues to be tried, summary judgment is appropriate. Anderson Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Matsushita Elec. Ind. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Since the application of the Act to Respondent has been decided, and the citations,

classifications, and proposed penalties are not in dispute pursuant to the parties' stipulation, I find that summary judgment is warranted.

It is therefore ORDERED that the Citation and Notification of Penalty in this case is AFFIRMED as follows:

1. Citation 1 Item 1 is affirmed and a penalty of \$1,800.00 is assessed;
2. Citation 1 Item 2a is affirmed and a penalty of \$1,800.00 is assessed;
3. Citation 1 Item 2b is affirmed with no penalty assessed;
4. Citation 1 Item 3a is affirmed and a penalty of \$1,350.00 is assessed;
5. Citation 1 Item 3b is affirmed with no penalty assessed;
6. Citation 1 Item 4 is affirmed and a penalty of \$2,250.00 is assessed;
7. Citation 1 Item 5a is affirmed and a penalty of \$2,250.00 is assessed;
8. Citation 1 Item 5b is affirmed with no penalty assessed;
9. Citation 1 Item 6a is affirmed and a penalty of \$1,350.00 is assessed;
10. Citation 1 Item 6b is affirmed with no penalty assessed;
11. Citation 2 Item 1 is affirmed with no penalty assessed;
12. Citation 2 Item 2 is affirmed with no penalty assessed;
13. Citation 2 Item 3 is affirmed with no penalty assessed.

SO ORDERED.

Date: April 14, 2009  
Denver, Colorado

/s/ \_\_\_\_\_  
James R. Rucker  
Judge, OSHRC