

LD/MT

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

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| In the Matter of |) | CASE NO. OSAB 97-020 |
| DIRECTOR, DEPARTMENT OF LABOR |) | (OSHCO No. M0685) |
| AND INDUSTRIAL RELATIONS, |) | (Report No. 120647557) |
| Complainant, |) | (Follow-up No. 120647771) |
| |) | |
| vs. |) | |
| |) | |
| GOVINDA'S NATURAL FOODS, |) | |
| Respondent. |) | |
| |) | |

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LABOR AND INDUSTRIAL RELATIONS BOARD
STATE OF HAWAII

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DECISION AND ORDER

This Occupational Safety and Health case is before the Board on a written notice of contest filed by GOVINDA'S NATURAL FOODS ("Respondent"), to contest a Citation and Notification of Penalty issued by the DIRECTOR of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, via the Division of Occupational Safety and Health ("Complainant").

The issues before the Board are:

- (1) Whether Respondent failed to abate its violation of Hawaii Occupational Safety and Health ("HIOSH") standard, Section 12-62-3; and
- (2) If so, is the imposition and amount of the proposed \$5,600.00 penalty appropriate.

For the reasons which follow, we modify the Citation as to the amount of the penalty.

FINDINGS OF FACT

- 1. Respondent is engaged in the business of processing and delivering fresh fruit and vegetable juices.



2. On March 3, 1997, Hervie Messier, a HIOSH compliance officer, conducted a general inspection of Respondent's worksite.

3. At the time of Mr. Messier's general inspection, there were approximately 12 people employed by Respondent. None of the employees at the worksite had a current, recognized, first-aid training certificate.

4. On March 13, 1997, a Citation and Notification of Penalty ("Citation") was issued against Respondent, alleging a violation of HIOSH standard, Section 12-62-3.

5. HIOSH standard, Section 12-62-3 requires Employers employing 15 persons or less, to have at least one employee with a current, recognized, first-aid training certificate, on their premises during all operating hours.

6. The Citation required Respondent to abate the violation by April 15, 1997.

7. During the closing conference on March 3, 1997, Mr. Messier informed Mr. Thomas Eichler, Respondent's manager, that Respondent could abate the violation by sending an employee to be trained and certified in first-aid.

8. Mr. Messier informed Mr. Eichler of Respondent's duty to abate the violation by the abatement date, certify to HIOSH within 5 days of the abatement date that the violation has been abated, and request abatement extensions, if needed, in writing. He also informed Mr. Eichler of the possibility of a follow-up inspection and additional penalties, if the violation were left unabated.

9. On March 18, 1997, HIOSH sent a letter to Respondent requesting a response as to what corrective action had been taken and whether an extension of the abatement date was needed.

10. HIOSH did not receive an appeal or letter of contest to the Citation.

11. The Citation became a final order of the Director on or about April 3, 1997.

12. On April 30, 1997, HIOSH conducted a follow-up inspection of Respondent's worksite.

13. At the time of the follow-up inspection, there were no employees with a current, recognized, first-aid training certificate, on Respondent's premises.

14. Although Tony Markle, Respondent's assistant manager and driver, had been trained and certified in first-aid, his first-aid training certificate had expired prior to March 3, 1997.

15. On April 7, 1997, Mr. Eichler had enrolled himself in a May 3, 1997 first-aid training program.

16. On May 3, 1997, Mr. Eichler was trained and certified in first-aid.

17. HIOSH standard, Section 12-62-3 was repealed on October 23, 1997. Title 29, Section 1910.151 of the Code of Federal Regulations was simultaneously adopted. Title 29 is the federal occupational safety and health standards.

18. The adopted 29 CFR Section 1910.151(b) provides that "[i]n the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all

injured employees, a person or persons shall be adequately trained to render first aid."

CONCLUSIONS OF LAW

1. Respondent was cited for violation of HIOSH standard, Section 12-62-3, and ordered to abate the violation by April 15, 1997. At the April 30, 1997 follow-up inspection, Respondent still did not have an employee with a current, recognized, first-aid training certificate on the premises. Although Respondent contended that one of its employees had been trained in first aid, that individual's first-aid certification had expired and, thus, was not current. Accordingly, we conclude that Respondent failed to abate its violation of HIOSH standard, Section 12-62-3.

2. Under the circumstances of this case, however, we conclude the imposition and amount of the proposed \$5,600.00 penalty was not appropriate.

Prior to the date by which Respondent was to abate its violation of HIOSH standard, Section 12-62-3, Mr. Eichler had enrolled himself in a first-aid training program. The training was scheduled for May 3, 1997, and Mr. Eichler was trained and certified in first-aid on May 3, 1997.

We further take administrative notice that seven months after Respondent was cited, the stringent requirement that an employee currently certified as trained in first aid be on the premises was repealed and replaced by the federal occupational safety and health standard providing that if there exists an

infirmary, clinic, or hospital in near proximity to the workplace, the requirement of a currently certified first aid trained employee is not mandated. If such facilities were not available, a person adequately trained to provide first aid would be needed.

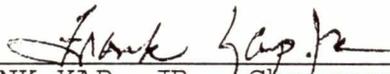
Given these facts, we conclude that a penalty in the amount of \$100.00 shall be imposed.

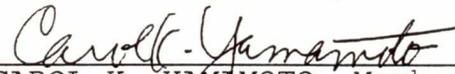
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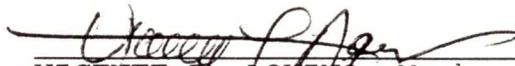
The Citation and Notification of Penalty is hereby modified as to Respondent's failure to abate its violation of HIOSH standard, Section 12-62-3, and modified as to the imposition of the proposed penalty.

MAR - 3 1999

Dated: Honolulu, Hawaii, _____.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Herbert B.K. Lau, Esq.
for Complainant

James T. Eichler
for Respondent

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

