

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

OTIS ELEVATOR COMPANY,

Respondent.

CASE NO. OSH 2012-19

ORDER NO. 496

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference/settlement conference held in this matter by conference call by the Hawaii Labor Relations Board (Board) on February 26, 2013, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant and Julie Waters for Respondent (by telephone), IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

Citation 1, Item 1a: 29 CFR 1910.178(1)(4)(iii)

Citation 1, Item 1b: 29 CFR 1910.178(1)(6)

Whether the grouped violation and penalty of \$962.50 resulting from the Citation and Notification of Penalty, Citation 1, Items 1a and 1b, of Inspection No. 316266295, were valid and proper.

Citation 1, Item 1a alleged:

29 CFR 1910.178(1)(4)(iii) was violated because:

An employee tasked with operating a YALE PROPANE POWERED FORKLIFT, Model # GLP040ADNUAFO85, Serial # 486208 was not re-evaluated within the required three year period.

Citation 1, Item 1b alleged:

29 CFR 1910.178(1)(6) was violated because:

At the time of inspection, the company's forklift trainer's certification was expired as of May 11, 2000. Also, there were no written certification records available to verify compliance with the powered industrial truck operator training and evaluation requirements for the field workers who were allowed to operate a forklift.

- B. During the initial conference/settlement conference, Respondent's counsel stated that Respondent had affirmative defenses to assert. The deadline for Respondent to file its statement of affirmative defenses with the Board is one week from the date of the initial conference/settlement or, the close of business on **March 5, 2013**.
- C. The deadline for the parties' final naming of witnesses is **April 1, 2013**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- D. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **April 26, 2013**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- E. The deadline for the filing and exchange of exhibit lists is **May 22, 2013**.
- F. Trial in this matter is scheduled for **May 29, 2013 at 9:00 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- G. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by motion of the parties, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. OTIS
ELEVATOR COMPANY
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DATED: Honolulu, Hawaii, February 27, 2013.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SESNITA A. D. MOEPONO, Member



ROCK B. LEY, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Julie Waters