RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.'

RELEASED

BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Chairman Subcommittee On Manpower And Housing Committee On Government Operations House Of Representatives

Informal Settlement Of OSHA Citations: Comments On The Legal Basis And Other Selected Issues

The Occupational Safety and Health Administration (OSHA), within the Department of Labor, inspects workplaces and issues citations to employers when it identifies hazardous work conditions violating OSHA standards. In 1980, OSHA implemented a policy allowing the directors of its area offices to negotiate informally with employers and employees and to withdraw or modify citations based on such negotiations.

In response to questions raised by the Subcommittee, GAO found that (1) OSHA has legal authority for informal settlements which may consider the economic feasibility of abatements; (2) except for the abatement date, employees may not contest the terms of informal settlements; (3) the predominate changes made to the original citations through informal settlements involved penalty reductions; (4) OSHA inspectors generally believed that the informal settlement process expedited correction of violations; and (5) employees were usually invited to participate in informal settlement conferences, but seldom attended.

GAO/HRD-85-11
OCTOBER 26, 1984

530401
530492

Request for copies of GAO reports should be sent to:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are $3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are $1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES DIVISION

B-214768

The Honorable Barney Frank
Chairman, Subcommittee on Manpower and Housing
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

As requested in your September 15, 1983, letter, this report discusses the Occupational Safety and Health Administration's informal settlement policy.

As requested by your office, we did not obtain written comments from the Department of Labor. We did, however, discuss the report with department officials and have incorporated their comments.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the House and Senate Committees on Appropriations, the House Committees on Government Operations and on Education and Labor, the Senate Committees on Governmental Affairs and on Labor and Human Resources, and other interested parties.

Sincerely yours,

Richard L. Fogel
Director

GENERAL ACCOUNTING OFFICE REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON MANPOWER AND HOUSING, COMMITTEE ON GOVERNMENT OPERATIONS, HOUSE OF REPRESENTATIVES

INFORMAL SETTLEMENT OF OSHA CITATIONS: COMMENTS ON THE LEGAL BASIS AND OTHER SELECTED ISSUES

D I G E S T

Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651), the Department of Labor's Occupational Safety and Health Administration (OSHA) inspects workplaces. When conditions are found violating OSHA standards, it issues citations to employers describing the dangerous conditions and specifying the dates by which the violations must be corrected (abatement dates). Depending upon the severity of the violations and other factors, the citations may also propose penalties against employers. (See p. 1.)

The Occupational Safety and Health Act of 1970 provides that employers may contest citations, and employees or employee representatives may contest the abatement dates in citations, but if a contest is not filed within 15 working days, the citations together with any proposed penalties become final. If a contest is filed, the adjudication of the citation is assumed by the Occupational Safety and Health Review Commission, an independent quasi-judicial agency. (See pp. 1 and 5.)

In September 1980, OSHA area office directors were authorized to enter into informal settlement agreements with employers before notices of contest are filed. The agreements may include amendments to the proposed penalty, the date by which the hazard must be corrected, characterization of the violation, or withdrawal of the citation. Before 1980, some OSHA area directors had negotiated informal settlement agreements with employers, but many had not because they believed they lacked authority. The purposes of informal settlements are to (1) expedite the correction of hazardous conditions by avoiding delays involved in unnecessary litigation, (2) reduce the litigation burden on the Department of Labor, and (3) give small business persons an

opportunity to resolve citations without engaging in protracted litigation. (See p. 1.)

GAO's review resulted from a request by the Chairman, Subcommittee on Manpower and Housing, House Committee on Government Operations. The review was in response to several questions the Chairman asked relating to legal issues and OSHA's management of the informal settlement program. Specifically, GAO was asked to address, among other things, the following issues.

--OSHA's authority for informal settlements and its authority for reducing, downgrading, or eliminating violations, citations, or penalties.

--OSHA's policies governing area directors' discretion to settle cases informally and the implementation of these policies.

--Legal authority and OSHA's policy regarding economic feasibility of abatement.

--Rights of employees and employee representatives to contest changes in citations, violations, penalties, or abatement dates made during informal settlements.

--The number of citations and violations, and the amount of penalties settled by informal settlements in fiscal years 1981, 1982, and 1983.

--How OSHA determines that unsafe working conditions are corrected. (See p. 1.)

GAO's work was performed at OSHA headquarters and in five OSHA area offices. GAO reviewed 150 randomly selected cases with informal settlements (30 in each of the five area offices) and 11 additional cases identified by the Subcommittee staff to determine (1) what changes were made to the initial citations, (2) whether employees were invited to and participated in settlement conferences, and (3) how OSHA determined that violations were corrected. GAO also reviewed 50 randomly selected cases of follow-up inspections made by OSHA (10 in each area office) to determine the results of these inspections and accompanied OSHA inspectors on 10 follow-up inspections. (See p. 2.)

LEGAL AUTHORITY FOR INFORMAL SETTLEMENT PROCESS

The Occupational Safety and Health Act of 1970 is silent regarding informal settlements--the act neither defines the rights of employees (including their representatives) to contest informal settlements, nor describes what factors OSHA should consider in deciding whether to modify citations and proposed penalties. According to OSHA, its authority for informal settlements is derived from the broad enforcement provisions of the act. Under OSHA's policy, economic feasibility of abatement may be considered during informal settlements. OSHA's positions relating to these issues are supported by court decisions. (See pp. 5 and 8.)

EMPLOYEES' RIGHTS TO CONTEST AND PARTICIPATE IN INFORMAL SETTLEMENTS

Just as the act does not specifically authorize informal settlements, it likewise does not define employees' rights to contest informal settlements. OSHA's policy is that employees or their representatives have the same rights under informal settlement agreements as they have regarding initial citations, i.e., they may contest changes in abatement dates, but may not contest other terms and conditions of violations or penalties. Several court decisions support the legal basis for this policy. (See p. 9.)

OSHA's policy requires that employees and their representatives (unions) be invited to participate in informal settlement conferences. GAO's review showed, however, that few employees or unions elected to participate in settlement conferences. For example, employees were represented by unions in 59 of the 150 cases GAO examined, and the unions were invited to settlement conferences in 56 cases. However, unions participated in only eight informal conferences. Also, the directors of three of the five OSHA area offices we examined said that, to the best of their knowledge, employees had not participated in settlement conferences. (See p. 16.)

CHANGES DURING INFORMAL SETTLEMENTS

Of the 150 informal settlements concluded in fiscal year 1983 that GAO reviewed, the predominate changes to the original citations involved reductions to the proposed penalties. These cases initially proposed penalties of $101,470, which were reduced to $42,569, a decrease of $58,901 or 58 percent.

During fiscal year 1983, OSHA cited a total of 111,735 violations and settled 16,736 violations (15 percent) through informal settlement agreements. The proposed penalties for the 16,736 violations totaled $4.1 million, and after settlement, penalty amounts were reduced to $1.8 million, a reduction of $2.3 million or 56 percent. Other changes that were made during informal settlements included eliminating or downgrading violations and changing the dates by which corrective action was required. (See p. 12.)

INSPECTORS' VIEWS ON THE INFORMAL SETTLEMENT PROCESS

In 37 of the 150 cases GAO reviewed, violations were eliminated or downgraded and/or required correction dates were extended. GAO interviewed 16 inspectors who conducted inspections in 22 of the 37 cases; the inspectors for the other cases were not available. GAO also interviewed two other inspectors who participated in GAO's follow-up inspections. Seventeen of the 18 inspectors believed that the informal settlement process was an improved way to expedite correction of violations, but five expressed concern about the seemingly automatic 50-percent reduction in penalties. Only one inspector opposed the process because he believed the "automatic" 50-percent penalty reduction lessened inspectors' credibility. The advantage of the process most frequently cited by inspectors was the reduction of litigation associated with contested cases. (See p. 15.)

HOW OSHA DETERMINES THAT VIOLATIONS ARE CORRECTED

OSHA relies primarily on employers' written or verbal assurance that violations have been corrected and makes very few on-site follow-up inspections to physically verify that claimed corrections have been made. GAO examined 150 randomly selected informal settlements in five OSHA area offices and found that OSHA made only one follow-up inspection. According to OSHA, few follow-up inspections are performed because such inspections had found that most violations had been corrected.

GAO reviewed 50 randomly selected cases where OSHA had conducted follow-up inspections. OSHA's follow-up inspections showed that of the 415 violations originally cited, employers had corrected 357 (about 86 percent), partially corrected 18 (about 4 percent), and failed to correct 40 (about 10 percent).

OSHA believes that its inspectors' time is more effectively used in conducting initial inspections where hazards are more likely to be found. (See p. 19.)

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Objectives, scope, and methodology	1
2	LEGAL ISSUES AND OSHA POLICIES REGARDING THE INFORMAL SETTLEMENT PROCESS	5
	Legal authority for informal settlements	5
	OSHA's policies governing area directors' discretion to settle cases informally	6
	Legal authority and OSHA's policy regarding economic feasibility of abatement in settling cases	8
	Employees' rights to contest informal settlements	9
3	EFFECTS OF, AND EMPLOYEE PARTICIPATION IN, INFORMAL SETTLEMENTS	12
	Changes during informal settlements	12
	Inspectors' views on the informal settlement process	15
	Extent of employee participation in the process	16
4	HOW OSHA DETERMINES THAT VIOLATIONS ARE CORRECTED AND MONITORS INFORMAL SETTLEMENTS	19
	How OSHA determines that violations are corrected	19
	Monitoring informal settlements	22
APPENDIX		
I	September 15, 1983, letter from the Chairman, Subcommittee on Manpower and Housing, Committee on Government Operations, House of Representatives	24

ILLUSTRATIONS

	Page
Total number of violations cited and informally settled by OSHA nationwide during fiscal years 1981, 1982, and 1983	12
The nationwide penalty totals for informally settled violations	13

Page

Changes for the various types of violations in our sample of 150 cases 13

Methods used for determining corrective action in our sample of 150 cases 20

The number of follow-up inspections for fiscal years 1979 to 1983 22

ABBREVIATIONS

GAO General Accounting Office

OSHA Occupational Safety and Health Administration

OSHRC Occupational Safety and Health Review Commission

CHAPTER 1

INTRODUCTION

The Occupational Safety and Health Administration (OSHA) was established as an agency within the Department of Labor to administer the Occupational Safety and Health Act of 1970 (29 U.S.C. 651). One of OSHA's principal activities is inspecting workplaces and issuing citations to employers found in violation of its standards. Depending upon the severity of the violations and other factors, the citations may propose to assess penalties against the employers. The Occupational Safety and Health Act of 1970 provides that employers may contest citations, and employees or employee representatives may contest the abatement dates in citations, but if a contest is not filed within 15 working days, the citations together with any proposed penalties become final.

In September 1980, OSHA authorized its area office directors to enter into informal settlement agreements with employers after citations are issued, but before notices of contest are filed. The agreements may include changes to the penalty, the date by which the hazard is required to be corrected, characterization of the violation, or withdrawal of the citation. Before 1980, some OSHA area directors had negotiated informal settlement agreements with employers, but many had not because they believed that they were not authorized to do so.

The stated objectives of the revised policy are to (1) make the informal settlement conference a more significant and uniformly applied element of the enforcement process, (2) expedite the correction of hazardous conditions by avoiding delays involved in unnecessary litigation, (3) reduce the litigative burden on the Department of Labor's Solicitor, and (4) give small business persons an opportunity to resolve citations without engaging in protracted litigation.

OBJECTIVES, SCOPE, AND METHODOLOGY

In a September 15, 1983, letter (see app. I), the Chairman, Subcommittee on Manpower and Housing, House Committee on Government Operations, asked us to review OSHA's policy of informally settling citations and to address the following issues.

--OSHA's authority for informal settlements and its authority for reducing, downgrading, or eliminating violations, citations, or penalties.

--OSHA's policies governing area directors' discretion to settle cases informally and the implementation of the policies.

--Legal authority and OSHA's policy regarding consideration of economic feasibility of abatement.

--Rights of employees and employee representatives to contest changes in citations, violations, penalties, or abatement dates made during informal settlements.

--The number of citations and violations, and the amount of penalties settled by informal settlements in fiscal years 1981, 1982, and 1983, including the proportion of proposed violations, citations, and penalties changed as a result of informal settlements and the nature of the changes (upgraded, downgraded, or eliminated) by category of violation.

--How OSHA determines that unsafe working conditions are corrected.

Additionally, the Subcommittee asked us to obtain the views of OSHA inspectors regarding informal settlements of citations resulting from inspections they performed. The Subcommittee also asked us to review 11 specific cases and determine (1) whether employees and their representatives were invited to and actually participated in informal settlement conferences, (2) what changes in citations and penalties were made as a result of the conferences, and (3) whether any basis was cited for those changes. As agreed with the Subcommittee, we limited our examination of these 11 cases to the evidence in OSHA's inspection files which were made available for our examination in Washington, D.C. The Subcommittee also asked us to provide information on OSHA's policy and practice of providing unions information from OSHA's files concerning informal settlement conferences.

Initially our work covered OSHA's (1) headquarters in Washington, D.C.; (2) Atlanta, Georgia, regional office; (3) Atlanta area office; (4) Savannah, Georgia, district office; and (5) Birmingham, Alabama, area office. Also, 10 employer locations in Atlanta and Savannah were included in our review. To assess whether similar conditions existed at other locations, we expanded our work to include OSHA's New York, Chicago, and Dallas regional offices and its Manhattan (New York City); Calumet City, Illinois; and Lubbock, Texas, area offices. Our expanded work was more focused and addressed specific issues to determine whether they were applicable to more than one regional office. The four regional offices--Atlanta, New York, Chicago, and Dallas--covered by our review are OSHA's largest and, in fiscal year 1983, accounted for 67 percent of OSHA's total inspections.

To determine the legal authority for OSHA's informal settlement process, we reviewed the Occupational Safety and Health Act of 1970, and OSHA's regulations and interviewed department officials. We obtained the views of the Assistant Secretary for Occupational Safety and Health on OSHA's statutory and regulatory authority for the informal settlement process and reviewed related court decisions that supported them.

To assess OSHA's implementation of its informal settlement policy, we (1) reviewed pertinent regulations, manuals, instructions, and memoranda; (2) interviewed headquarters, regional, area, and district office officials; (3) examined files of 150 randomly selected cases with informal settlements; (4) examined a random sample of 50 follow-up inspections previously performed by OSHA; and (5) in one area office, accompanied OSHA inspectors as they made follow-up inspections of 10 employers that we selected.

Our selection of the 150 cases with informal settlements (30 in each of the 5 area offices reviewed) was made from computer printouts of OSHA inspections for each area office resulting in citations with penalties which were informally settled in fiscal year 1983. We limited our review to cases informally settled because that was the Subcommittee's basic concern and to cases with penalties because they involve more serious violations than those without penalties.

Because our random selection of 150 informal settlements included only one instance where OSHA made a follow-up inspection, we randomly selected 50 cases (10 in each area office) and examined the results of OSHA's follow-up inspections to determine what OSHA found. Our selection was made from computer printouts of cases where OSHA conducted follow-up inspections in fiscal year 1983 in the five area offices we visited.

Our selections were based on valid random statistical samples. However, we did not project the results of our work because the experience of the five area offices examined may not be representative of other OSHA area offices.

To select the follow-up inspections where we accompanied OSHA inspectors, we obtained from OSHA a listing of citations which (1) were issued by the Atlanta area office, (2) were based on inspections performed in fiscal year 1983, (3) proposed penalty assessments, and (4) had not been the subject of prior follow-up inspections. We clustered the inspections by geographic areas and selected a random sample of 30 cases in the Atlanta area. The OSHA inspectors whom we accompanied had completed 10 inspections at the time we briefed the Subcommittee

staff on the status of our work on December 20, 1983. It was then decided not to make follow-up inspections at the remaining employers.

To develop the statistical data requested on the numbers of informal settlement agreements and the results of those agreements, we obtained and analyzed OSHA management information reports relating to inspections for fiscal years 1979-83. We did not perform a reliability assessment for all the computer data and systems we used. However, for the 150 cases in our sample of informal settlements, we compared OSHA's inspection files to the data shown on the computer printouts.

The 150 cases cited 946 violations. While the computer data were substantially correct, we found errors for 27 of the violations involving 17 of the 150 cases. For example, the computer retained a violation classified as serious when, in fact, the violation had been deleted. Some of the errors involved only one, or a few, of the many data elements on file for each case. Therefore, we cannot attest to the accuracy of OSHA's computer data on the number and types of violations or the amounts of penalties imposed. We used OSHA's computer-generated data because it was the only readily available source of such information. OSHA is aware of inaccuracies in its computer data and is taking steps to improve the computer system.

Our work was performed in accordance with generally accepted government auditing standards. We did not obtain written comments from the department on a draft of the report. However, department officials were given an opportunity to review a draft of this report and provide oral comments, which were considered in preparing this final report.

CHAPTER 2

LEGAL ISSUES AND OSHA POLICIES REGARDING

THE INFORMAL SETTLEMENT PROCESS

The Occupational Safety and Health Act of 1970 is silent regarding informal settlements--the act neither defines the rights of employees (including their representatives) to contest informal settlements, nor describes what factors OSHA should consider in deciding whether to modify citations and proposed penalties.

According to OSHA, its authority for informal settlements is derived from the broad enforcement provisions of the act. Under OSHA's policy, economic feasibility of abatement may be considered during informal settlements. Also, OSHA's policy is that employees or their representatives may contest abatement dates agreed to at settlement conferences, but may not contest penalties or other terms of the settlement. OSHA's positions relating to these issues are supported by court decisions.

LEGAL AUTHORITY FOR INFORMAL SETTLEMENTS

A citation may be issued and a penalty assessed under sections 9(a) and 17, respectively, of the Occupational Safety and Health Act of 1970 for working conditions that violate OSHA's standards. Procedures for enforcing the citation are covered in section 10 of the act, which provides that the employer may contest the citation, and employees or their representatives may contest the abatement dates in citations, at which time the Occupational Safety and Health Review Commission (OSHRC)[1] assumes jurisdiction of the case and the parties involved are afforded an opportunity for a hearing.

Upon completing its review, OSHRC issues an order affirming, modifying, or vacating the citation and proposed penalty. If the citation is not contested within 15 working days, the citation and proposed penalty become final and are not subject to review by any court or agency.

The act does not expressly authorize informal settlement agreements. OSHA believes that its legal authority for informal settlements is implicit in the enforcement provisions of the

---

[1]OSHRC is an independent quasi-judicial agency responsible for adjudicating enforcement actions under the Occupational Safety and Health Act of 1970.

act which, taken as a whole, establish the Secretary of Labor, and OSHA by delegation, as the exclusive prosecutor under the act. Several court decisions support OSHA's belief that it has broad and flexible authority to negotiate informally and settle citations, either before or after a notice of contest has been filed. In one decision, the court stated that:

> ". . . Only [the Secretary of Labor] has the authority to determine if a citation should be issued to an employer for hazardous or unsafe working conditions, . . . and only he may prosecute a citation before the Commission, . . . A necessary incident to the Secretary's prosecutorial powers is the unfettered discretionary authority to withdraw or settle a citation issued to an employer, . . . or to settle, mitigate or compromise any assessed penalty . . .
>
> "Informal dispositions [are] the lifeblood of the administrative process . . . Permitting the Secretary to settle citations issued to employers without hearings before the Commission effectuates the basic remedial purpose of the Act--the rapid abatement of unsafe or unhealthy working conditions." (Donovan v. OSHRC, 713 F.2d 918, 927 (2d Cir. 1983)).

According to this and similar decisions,[2] the Secretary of Labor has broad discretionary authority to reduce, downgrade, or eliminate any citation or proposed penalty issued pursuant to the Occupational Safety and Health Act of 1970, either before or after the filing of a notice of contest. Neither the act nor the cited court decisions place any restriction on the Secretary's authority to reduce, downgrade, or eliminate violations, citations, or penalties.

OSHA'S POLICIES GOVERNING AREA DIRECTORS' DISCRETION TO SETTLE CASES INFORMALLY

OSHA's field operations manual does not provide specific criteria for negotiating informal settlements. To help achieve the intended purposes of informal settlements, OSHA area directors have been given broad authority for informally settling

---

[2]See Oil, Chemical and Atomic Workers v. OSHRC, 671 F.2d 643 (D.C. Cir. 1982); Marshall v. Sun Petroleum Products Co., 622 F.2d 1176 (3rd Cir. 1980); Marshall v. OSHRC, 635 F.2d 544 (6th Cir. 1980); and Dale M. Madden Construction, Inc., v. Hodgson, 502 F.2d 278 (9th Cir. 1974).

cases. OSHA's manual provides that area directors may (1) change the dates for correction of violations, (2) change the classification of the violation (e.g., willful to serious), or (3) change or withdraw a proposed penalty, a citation, or a violation if the employer presents evidence which convinces an area director that changes are justified.

OSHA regional directors in Atlanta, Dallas, and New York told us that they gave oral instructions to their area offices not to consent to proposed penalty reductions exceeding 50 percent without regional office approval. With regional office approval, proposed penalties could be reduced above 50 percent. However, the former Chicago regional director said that area directors in the region during the period covered by our review were not restricted as to how much penalties could be reduced; the amount of the reduction was left to the discretion of the area director.

An OSHA headquarters official said that OSHA does not have a national policy limiting the penalty reduction area directors may approve and that OSHA regions could follow different practices as long as they complied with OSHA's field operations manual. Total proposed penalties for the 150 informal settlements we reviewed were reduced 58 percent. Comparable nationwide data show that total proposed penalties were reduced 56 percent.

OSHA regional and area directors covered in our review said penalties are reduced to avoid a contest, but only after assurance of abatement is obtained. Most of them added that reducing penalties is a primary incentive to accomplish a stated goal of avoiding litigation.

Reducing the percentage of contested cases has been included as one of several performance standards for OSHA's area directors. There is no objective way to assess how this standard affected area directors' decisions during informal settlement conferences, but we discussed this issue with the directors of the five area offices we visited. They said they were aware of OSHA's policy of encouraging and promoting informal settlements as a means of reducing contested cases and attaining other objectives. They said they felt a responsibility to respond to OSHA's management initiatives including its informal settlement policy, but they did not feel pressured or compelled to consent to inappropriate informal settlement agreements.

The five area directors and the four regional administrators for the areas said violations are not downgraded or eliminated in order to settle cases. Three regional administrators and four area directors said violations are changed during

informal conferences only if evidence is submitted by employers justifying a change. One area director added that he would change a violation if he believed OSHA's case was weak and could not be successfully defended if litigated. Only 39 (or 4 percent) of the 946 violations we reviewed were downgraded in classification or eliminated as a result of informal settlements.

Actual changes made on the 150 cases we examined are discussed on page 13.

LEGAL AUTHORITY AND OSHA'S POLICY REGARDING ECONOMIC FEASIBILITY OF ABATEMENT IN SETTLING CASES

OSHA's authority to consider economic feasibility of abatement derives from the Occupational Safety and Health Act of 1970 and court decisions. Section 6(b)(5) of the act provides that in promulgating standards dealing with toxic materials or harmful physical agents, the Secretary is to set standards which "to the extent feasible" assure employee protection. Courts have treated the term "feasible" as used in the act and in certain OSHA regulations as including economic feasibility.[3] Considering economic feasibility in enforcing standards is a logical extension of considering economic feasibility in setting standards. At least one court has said that "economic feasibility should be considered by the Secretary [of Labor] both in promulgating and enforcing [OSHA] regulations." RMI Company, 594 F. 2d at 572. Since settling cases would appear to be part of the process of enforcing its regulations, OSHA's consideration of economic feasibility in the settlement process appears to be supported by the cited decisions.

According to OSHA, its area directors consider the economic feasibility of abatement during informal settlement conferences when the violated standard is phrased in terms of feasible means of abatement. For example, the standard for employee exposure to air contaminants calls for compliance through administrative or engineering controls where "feasible." OSHA's field operations manual defined economic feasibility to mean that the employer is financially able to abate the cited violations. The manual provides that if the cost of undertaking abatement action would seriously jeopardize the employer's financial condition so as to result in the probable shutdown of the business or a substantial part of it, the abatement date will be extended.

---

[3]See e.g., American Textile Manufacturers Institute, Inc. v. Donovan, 452 U.S. 490 (1981) and RMI Company v. Secretary of Labor, 594 F. 2d 566 (6th Cir. 1979).

The manual states:

> ". . . Requirements that would threaten the economic viability of a given industry cannot be considered economically feasible under the OSH [Occupational Safety and Health] Act."
>
> . . . . .
>
> "Proper evaluation of the economic feasibility of engineering or administrative controls does not require the Area Director to understand all available economic information before deciding that the issue of potential economic infeasibility is involved. It is sufficient that the employer produce evidence of economic hardship adequate to convince the Area Director that abatement by such controls would involve considerable financial difficulty.
>
> "Whenever an employer complains that an unbearable economic burden would result from implementation of engineering or administrative controls, the Area Director shall request evidence from the employer."

Area directors we interviewed said that employers often claim economic problems during informal settlements and that these claims are considered. Four area directors said that they had, on occasion, requested employers to submit copies of financial statements as evidence of their claimed economic problems.

In 17 of the 150 cases we reviewed, employers' requests for modifications were based, in part, on claims of economic hardship. In 4 of the 17 cases, the files showed that OSHA obtained evidence to assess employers' claims; two files contained financial statements and two files contained evidence that employers had filed for bankruptcy. The remaining 13 files did not contain any evidence to confirm employers' claims of economic hardship. However, abatement dates were not extended in any of the 17 cases.

EMPLOYEES' RIGHTS TO CONTEST INFORMAL SETTLEMENTS

The Occupational Safety and Health Act of 1970 is silent regarding the legal rights of employees and their representatives to contest changes in violations, penalties, or abatement dates made as a result of informal settlements. The Department of Labor's policy is that employees, or their representatives, may contest changes in abatement dates, but may not contest changes in violations or penalties made as a result of informal

settlements. In the 150 cases we examined, employees or their representatives did not contest any abatement dates.

The Department's policy provides employees and their representatives the same rights under informal settlement agreements as the act provides them regarding original citations. Under the act, employees and their representatives may contest abatement dates in original citations, but they may not contest other features of the original citation, such as the classification of the violations or proposed penalties.

A copy of each informal settlement agreement, which is required to be prominently posted at or near the applicable violation site, contains a notice advising that employees, or their representatives, may only object to or contest any abatement date set for a violation which is believed to be unreasonable. The notice gives instructions on what employees or their representatives must do if they wish to contest abatement dates, including the address where the notice of contest should be mailed and the time limits within which it must be filed.

The Department of Labor cites several court decisions supporting its policy limiting the rights of employees to contest settlement agreements. For example, a July 1983 decision states, in part, that:

> ". . . employees have a limited role in the enforcement of the Act. Under OSHA, employees do not have a private right of action . . . They may not compel the Secretary to adopt a particular standard, . . . As parties, they may not prosecute a citation once the Secretary decides to withdraw it . . .; nor may they continue an appeal of a Commission decision once the Secretary unconditionally asserts that he will not prosecute the citation . . .
>
> "Indeed, the Act subordinates the prosecutorial discretion of the Secretary to the rights of employees in only two specific situations; first, employees have the right to challenge the period for abatement noted in a citation, . . . and second, employees have the right to bring a mandamus action against the Secretary for his failure to enjoin an imminent danger at their

workplace, . . ." (Donovan v. OSHRC, 713 F.2d 918 (2nd Cir. 1983).[4]

Although this case involves employees' objections to a formal settlement made after the employer filed a notification of its intent to contest the citation, the language of this court decision and other decisions cited by the Department of Labor support its position that, in an informal settlement, employees and their representatives may only object to or contest changes in abatement dates. Therefore, we do not believe the Department of Labor's position is improper or outside the scope of its authority.

---

[4]See also Oil, Chemical and Atomic Workers v. OSHRC, 671 F.2d 643 (D.C. Cir. 1982); Marshall v. Sun Products Co., 622 F.2d 1176 (3rd Cir. 1980); and Marshall v. OSHRC, 635 F.2d 544 (6th Cir. 1980).

CHAPTER 3

EFFECTS OF, AND EMPLOYEE PARTICIPATION

IN, INFORMAL SETTLEMENTS

We reviewed 150 informal settlements concluded in fiscal year 1983 and found that changes in the original citation predominately involved reductions to proposed penalties. Inspectors we interviewed generally believed that the informal settlement process was an improved way to expedite correction of violations, but some objected to the seemingly automatic reduction of penalties. Employees or their representatives were usually invited to participate in informal settlement conferences, but seldom attended.

CHANGES DURING INFORMAL SETTLEMENTS

During the past 3 fiscal years, the number and percentage of violations resolved by informal settlements have increased. The predominant changes resulting from informal agreements have been reductions in penalty amounts; few changes have been made to abatement dates or other parts of the citation.

The following table shows the total number of violations cited by OSHA nationwide during fiscal years 1981, 1982, and 1983, and the total number and percentage of violations which were resolved through informal agreements during those years.

	1981	1982	1983
Violations:			
Total number cited	111,819	97,136	111,735
Settled by informal agreements	11,841	13,570	16,736
Percent	10.6	14.0	15.0

Shown on the next page for the same 3 years are the nationwide totals for the penalties originally proposed for violations that were ultimately settled through informal agreements and the resulting changes.

	1981	1982	1983
Penalties:			
Total proposed	$3,160,832	$3,537,005	$4,064,214
Revised penalties	1,468,820	1,453,881	1,773,304
Penalty reduction[a]	$1,692,012	$2,083,124	$2,290,910
Percent reduction	53.5	58.9	56.4

[a]Although some penalty reductions may be attributed to other causes (e.g., correction of errors in initial penalty computations), OSHA believes that most penalty reductions are attributable to informal settlement agreements.

Nationwide data showing changes for the various types of violations were not readily obtainable. However, we did obtain this type of information for the 150 cases in our sample. The 150 cases initially cited 946 violations of OSHA standards. As shown in the following table, 39 violations were either downgraded in classification or eliminated as a result of informal settlements. The classifications of the remaining 907 violations were not changed.

		Violation changes					
Type of violations	Total violations	Downgraded		Eliminated		Total changes	
	Number	Number	Percent	Number	Percent	Number	Percent
Serious	470	22	4.7	13	2.8	35	7.4
Nonserious	453	0	0	2	0.4	2	0.4
Repeat	22	1	4.5	0	0	1	4.5
Willful	1	1	100.0	0	0	1	100.0
Total	946	24	2.5	15	1.6	39	4.1

The 150 cases initially proposed penalties of $101,470. Except for 1 of the 150 cases, the proposed penalties were decreased or eliminated. In the one exception, the employer only asked for and received an extension of time required to correct a violation. As a result of informal settlement conferences, penalties were reduced to $42,569, a decrease of $58,901 or 58 percent.

With respect to the 11 specific cases the Subcommittee asked us to review, we found that, based on informal settlement conferences, changes were made in violation classifications, required correction dates, and/or penalties in eight of the cases. In three of the eight cases, the citation classifications were downgraded, and in three cases required correction

dates were revised. In each of the eight cases penalties were reduced; penalties totaling $10,429 were reduced to $1,420--a reduction of $9,009 or 86 percent. A large portion of the penalty reduction involved a willful violation, accompanied by a proposed $4,999 penalty that was reduced to $100.

In seven of the eight cases, the files cited reasons for the changes. For example, one citation cited an employer with a serious violation and a proposed penalty for an open stairway and elevator shaft without a required guardrail. During the informal settlement conference, the employer, a general contractor, contended that the guardrail was provided, but that it had just been removed by the elevator contractor who was working at the time of the OSHA inspection. As a result of the settlement, the penalty was reduced to zero and the violation classification was changed from serious to nonserious. In one case, however, a 50-percent penalty reduction was agreed to without any explanation. The memorandum of an informal telephone conference states that:

> ". . . [A company representative] requested a penalty reduction. After questioning by [the OSHA representative] there appeared to be no basis for penalty reduction on merits. [The OSHA representative] offered, subject to a written settlement agreement, a 50 percent penalty reduction (from $210 to $105) . . ."

In 2 of the 11 cases, an agreement was not attained as a result of the informal settlement conferences. In these cases, the employers filed formal notices of contest, and subsequently OSHA negotiated a formal settlement with these employers.

Finally, in 1 of the 11 cases the only change made as a result of the informal settlement conference was a minor change in the wording of one of the violations.

OSHA's field operations manual provides that:

> "Area Directors are authorized to change the dates for correction of violations, to change the classification of the violation (e.g., willful to serious, serious to other-than serious), or to change or withdraw a penalty, a citation, a violation, or an item if the employer presents evidence during the informal conference which convinces the Area Director that the changes are justified. Adequate documentation of settlement negotiations and the justification for any changes made shall be placed in the case file."

We examined the 60 case files in the Atlanta and Birmingham area offices to determine what evidence employers presented during settlement negotiations to convince area directors that changes were justified. Four case files did not contain documentation of the settlement negotiations.

The remaining 56 case files showed that employers gave one or more reasons why they believed the proposed citations and penalties should be revised or deleted. Reasons cited by employers included (1) they had implemented a good health and safety program, (2) they had abated the violations, (3) this was their first OSHA inspection, (4) they had no knowledge of the violation prior to the OSHA inspection, (5) they had no control over the circumstances causing the violation, (6) the condition involved an automated operation resulting in little or no employee exposure to the hazard, (7) they did not know they were responsible for the cited violations, (8) the penalties imposed a financial hardship, and (9) the violation resulted from employees' failure to follow instructions.

In 59 of the 60 cases, the employers, consistent with the objectives of the informal settlement program, agreed to abate the violations by a prescribed date. In the remaining case, the employer filed for bankruptcy.

INSPECTORS' VIEWS ON THE INFORMAL SETTLEMENT PROCESS

In 37 of the 150 cases we reviewed, violations were eliminated or downgraded and/or required correction dates were extended. We interviewed 16 inspectors who conducted inspections in 22 of the 37 cases; the inspectors who conducted the remaining 15 inspections were not available to meet with us during our review.

OSHA's policy requires inspectors to attend settlement conferences, if possible. Inspectors attended 12 of the 22 informal settlement conferences. In the other cases, the inspectors were aware of the changes made. The inspectors disagreed with the area director's decisions in only two cases. One inspector believed that the area director's decision to reduce three serious violations to other-than-serious violations was unjustified. Another inspector believed that three other-than-serious violations should not have been eliminated even though no penalties were involved.

In addition to these 16 inspectors, we interviewed 2 other inspectors who participated in our follow-up inspections in the Atlanta area office. Seventeen of the 18 inspectors believed that the informal settlement process expedited correction of

violations, but 5 inspectors expressed concern about the seemingly automatic 50-percent reduction in penalties. Only one inspector strongly opposed the informal settlement process because he believed the "automatic" 50-percent penalty reduction lessened inspectors' credibility.

The advantage of the informal settlement process most frequently cited by inspectors is the reduction of litigation associated with contested cases; 10 inspectors mentioned this advantage. One inspector said that in contested cases, a lot of effort is spent on relatively trivial matters. For example, he was involved in a contested case before 1981 where a proposed penalty of $120 was contested and reduced to $1 by OSHRC.

The following are other comments made by inspectors:

--Four inspectors said informal settlements expedite corrective action because employers must agree to correct hazards promptly.

--Four inspectors said employers have a more positive attitude toward OSHA and its programs, thereby creating goodwill.

--Four inspectors said informal settlements allow OSHA's resources to be better utilized.

The Atlanta OSHA regional administrator estimated that an annual savings of 30 staff years of inspector resources have resulted from informal settlements. The Department of Labor's Atlanta regional solicitor said that her office's workload had been drastically reduced, but she did not specify any estimated savings.

EXTENT OF EMPLOYEE PARTICIPATION IN THE PROCESS

OSHA policy requires that employees and their representatives be invited to participate in informal settlement conferences and that if either management or employees or their representatives object to joint conferences, separate informal conferences must be held.

As requested by the Subcommittee, we reviewed OSHA's case files to determine whether these requirements were met for 11 cases. In eight cases employee unions were invited to attend the informal settlement conferences. In three of these cases, union representatives attended the conferences, and in five cases they did not. In one of the five cases the employer

objected to the union's participation in the settlement conference. OSHA offered to have a separate informal settlement conference with the union representatives, but OSHA's file did not indicate whether a separate conference was held.

OSHA's file for 1 of the 11 cases does not indicate whether employee representatives were invited to or attended the settlement conference. In the remaining two cases, OSHA field staff did not invite employee representatives to the informal settlement conferences. In response to a request for information concerning these and other cases, OSHA advised a House Appropriations Subcommittee, in connection with appropriation hearings for fiscal year 1984, that the requirement for inviting employees or their representatives to settlement conferences has been emphasized in new guidelines issued to OSHA field staff.

In 59 of the 150 cases we examined, employees were covered by unions; employees in the remaining 91 cases were not covered by a union. In 56 cases, union representatives were invited to attend informal conferences; but they participated in only 8 of them. In three cases, one area office failed to specifically invite union representatives as required, but the OSHA area office director advised union representatives by telephone of the outcome of the settlement conferences.

Employers are required to post notices near the site of violations. These notices invite employees to participate in informal conferences. The area director who failed to contact union representatives concerning three settlement conferences said he considered that these posted notices adequately informed unions and employees of their right to attend and participate in the settlement conferences. The directors of two OSHA area offices we examined said employees not represented by unions rarely participated in settlement conferences, and the directors of three area offices said that, to the best of their knowledge, such employees had not participated in settlement conferences.

In each of OSHA's area and regional offices visited, officials said that the same information on informal settlements is provided to unions as to employers, when requested in accordance with the Freedom of Information Act. The 150 cases we examined included only three requests for information under the Freedom of Information Act--one from a union and two from attorneys representing the families of injured workers.

We reviewed these cases and found that the types of information provided and denied seemed to be the same in each case, and they seemed consistent with Labor's regulations for implementing the Freedom of Information Act. These regulations

authorize OSHA to provide copies of summaries of informal conferences, informal settlement agreements, citations, and inspection reports with the names of individuals deleted. Information not to be released includes notes taken during informal conferences, internal management memorandums, opinions, and names of individual complainants.

CHAPTER 4

HOW OSHA DETERMINES THAT VIOLATIONS

ARE CORRECTED AND MONITORS

INFORMAL SETTLEMENTS

OSHA makes few follow-up inspections to determine whether employers have corrected violations. Instead, OSHA primarily relies on written or verbal assurances from employers. Our review showed that employers sometimes did not correct violations as claimed. However, according to OSHA, follow-up inspections identify relatively few uncorrected violations, and therefore, staff resources are more effectively used for making other types of inspections.

OSHA monitors the administration of informal settlement agreements primarily through periodic internal audits of its regional and area offices. These audits examine various aspects of OSHA activities, including the negotiation and administration of informal settlement agreements.

HOW OSHA DETERMINES THAT VIOLATIONS ARE CORRECTED

OSHA uses various methods to determine whether employers correct safety and health violations. The most common method is employers' written or oral communication. Other methods include observations by OSHA inspectors of corrective actions during initial and follow-up inspections.

At the conclusion of an inspection, a closeout conference is held to discuss inspection results. OSHA policy requires inspectors to explain that if citations are not contested, employers are expected to promptly advise the OSHA area director by letter of the specific corrective actions taken. When an employer fails to provide a letter, the area director must determine by telephone contacts or follow-up inspections whether the violations have been corrected.

As the following table shows, relatively few corrective actions involving our sample of 150 cases were physically verified. In most cases, OSHA relied on either written or oral information provided by employers.

Method of determining corrective action	Area office					
	Atlanta	Birmingham	Manhattan	Calumet City	Lubbock	Total
Letters from employers	23	10	3	19	16	71
Verbal assurance during informal conference	4	6	10	5	6	31
Verbal assurance during telephone communication	1	1	14	2	6	24
Observed during initial inspection	0	8	2	2	2	14
No evidence in case files	2	4[a]	1	2	0	9
Follow-up inspections	0	1	0	0	0	1
Total	30	30	30	30	30	150

[a]One company went bankrupt.

In December 1983, we accompanied OSHA inspectors as they made follow-up inspections of 10 employers that were randomly selected in the Atlanta area office. We selected these cases from a universe of fiscal year 1983 inspections resulting in citations with penalties where OSHA had neither conducted nor planned follow-up inspections. In all 10 cases, employers had submitted letters to OSHA stating that the violations were corrected and OSHA had closed the cases. Collectively, these 10 inspections resulted in OSHA citing 55 violations--22 serious violations accompanied by proposed penalties of $3,580 and 33 other-than-serious violations without proposed penalties.

As a result of the 10 follow-up inspections, OSHA cited 3 employers for failing to correct 7 of the 55 previously cited violations--originally 3 of the 7 violations were cited as serious, and 4 were cited as nonserious. OSHA also cited one of these employers for an additional violation. For the eight violations, OSHA proposed penalties totaling $4,000.

In addition, we reviewed 50 randomly selected cases--10 in each of the 5 area offices we visited--where OSHA had conducted follow-up inspections in fiscal year 1983. Of the 415 violations cited in these 50 cases, OSHA found that employers had corrected 357 (86 percent), partially corrected 18 (4.3 percent), and failed to correct 40 (9.6 percent).

Two cases accounted for 30 of the 40 violations not corrected. Most of the violations involving one of the cases were eventually corrected. In the second case, the employer notified OSHA that the company was bankrupt and could not pay the penalty. On a subsequent follow-up inspection, the violations were still uncorrected, and the case has been turned over to the Department of Labor's Solicitor for action.

Of the 415 violations, 279 (67 percent) were for safety hazards and 136 (33 percent) were for health hazards. Safety violations typically included unprotected drive wheels or cutting equipment, raised platforms or stairs without proper railings, or ungrounded electrical equipment. Health violations typically involved high noise levels and exposure to dangerous chemicals.

OSHA's follow-up inspections showed that employers had corrected 265 (95 percent) of the 279 safety violations, but had corrected only 92 (68 percent) of the 136 health violations. OSHA officials explained that health violations are more difficult and take more time to correct than safety violations. OSHA continues to monitor employers until corrective action is completed.

Prior to December 1980, OSHA's policy set no limit on the number of follow-up inspections to be made. The policy was that normally all serious violations would be considered for scheduled follow-up inspections provided available resources and existing workloads permitted them. In December 1980, this policy was amended to limit follow-up inspections to not more than 5 percent of the total number of inspections. The need for follow-up inspections was left to the discretion of area directors except in cases involving citations of imminent danger, willful and repeated violations, or other serious situations where follow-up inspections were mandatory.

Since fiscal year 1980, OSHA has substantially reduced the number of follow-up inspections. The following table shows the number of follow-up inspections conducted over the past 5 years by the five area offices we visited and the number conducted nationwide.

	Fiscal years				
	1979	1980	1981	1982	1983
Atlanta[a]	339	258	168	108	89
Birmingham[b]	300	248	161	47	81
Manhattan	306	151	33	6	19
Calumet City	98	120	35	46	34
Lubbock	115	133	59	22	23
Nationwide	11,676	11,670	5,602	1,566	1,590

[a]Includes follow-up inspections by the Macon and Savannah, Georgia, area offices for fiscal years 1979 through 1982. These offices became part of the Atlanta area office for fiscal year 1983.

[b]Includes follow-up inspections by the Mobile area office for fiscal years 1979 through 1982. This office became part of the Birmingham area office for fiscal year 1983.

OSHA provided us nationwide data which show that 6.7 percent of employers involved in OSHA's follow-up inspections during fiscal year 1983 were cited for failing to abate previously cited violations. OSHA's 1,590 follow-up inspections in fiscal year 1983 identified 845 other violations--190 serious, 3 willful, 178 repeat, and 474 other-than-serious violations.

According to OSHA, the required number of follow-up inspections was reduced because these inspections in the past had found that 99 percent of cited violations had been corrected. OSHA believes that its inspectors' time is more effectively used in conducting initial inspections where hazards are more likely to be found. In addition to follow-up inspections, OSHA made 56,619 initial inspections which identified 110,012 violations--26,029 serious, 148 willful, 1,358 repeat, and 82,477 other-than-serious violations.

MONITORING INFORMAL SETTLEMENTS

Regional offices are responsible for monitoring the informal settlement activities of their area offices, and OSHA headquarters is responsible for monitoring the activities of its regional offices. Monitoring by both headquarters and the regions is accomplished through audits and review of data collected in management information systems. Each of the five area offices we visited had been audited by OSHA regional offices, and each of the four regional offices had been audited by OSHA headquarters.

OSHA's regional offices are required to annually audit each area office under their jurisdiction. These audits are supposed to cover various area office activities, including whether

(1) inspections, including follow-up inspections, are scheduled regarding OSHA's inspection priorities and goals; (2) complaints are properly evaluated; (3) accidents are thoroughly investigated; (4) case files are fully documented; and (5) OSHA compliance personnel are being effectively utilized.

With regard to informal settlement activities, the audits should review (1) compliance with OSHA requirements for employer and employee participation and case file documentation, (2) compliance with other OSHA policies for informal settlements, including execution of written agreements, and (3) the reasonableness of area directors' decisions. As noted earlier, OSHA does not have specific criteria for negotiating informal settlements, and according to a member of OSHA's national office audit team, their determination of the reasonableness of area directors' decisions is generally restricted to whether area directors comply with regional office instructions limiting penalty reductions. Also, the audits should review the timeliness of corrective actions taken by employers and the adequacy of evidence provided by employers as assurance that the actions in fact were taken.

In three cases, the regional office reports on audits of the five area offices we visited indicated that informal settlement policies were examined; in three cases the reports indicated that evidence on employer actions to correct violations was examined. Although each of the regional audit reports we examined did not comment specifically on informal settlements and employer corrective actions, an OSHA headquarters representative said the absence of such comments indicated that the regional audit had not revealed any problems.

Each of the four regional offices we reviewed had been audited by headquarters within the past year, and the resultant reports contained comments indicating that compliance with OSHA's informal settlement policy had been examined. Two of the four audit reports also contained comments indicating that compliance with OSHA's assurance of abatement policy had been examined. For example, one report commented that a substantial number of cases did not contain evidence that violations had been corrected. The report made recommendations to correct this problem; the regional office agreed and stated that implementation had been initiated.

In addition to audits, various internal reports containing data relating to informal settlements and correction of violations are available to regional and headquarters offices for monitoring purposes. For example, regional offices receive two reports monthly containing detailed statistics on inspections by each of its area offices. Also, regional officials may obtain upon request reports containing detailed data on the results and status of each worksite inspection.

BARNEY FRANK, MASS., CHAIRMAN
MEL LEVINE, CALIF.
MAJOR R. OWENS, N.Y.
JOHN M. SPRATT, JR., S.C.
JOE KOLTER, PA.
BEN ERDREICH, ALA.

JOHN R. McKERNAN, JR., MAINE
DAN BURTON, IND.
JOHN N. ERLENBORN, ILL.

225-6751

NINETY-EIGHTH CONGRESS

Congress of the United States

House of Representatives

MANPOWER AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-A
WASHINGTON, D.C. 20515

September 15, 1983

Honorable Charles A. Bowsher
Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

I am writing to request a GAO investigation of the Occupational Safety and Health Administration's informal Settlement Policy. In revising this policy in August 1981, OSHA said its primary goal was to assure the abatement of hazards. There is a serious question of whether this policy is fully consistent with the Occupational Safety and Health Act of 1970 and is achieving the stated goal of hazard abatement.

With respect to the legal authority for the Settlement Policy, please address the following issues as they relate to OSHA's Settlement Policy.

(1) What is the legal authority for informal [pre-contest] settlement conferences?

(2) What is the legal authority and the extent of that authority for any settlement process to reduce, downgrade or eliminate violations, citations, or penalities?

(3) What is the legal authority to assess the economic feasibility of abatement during settlement conferences?

(4) What legal rights do employees and employee representatives have to object to a change in citation, violation, penalty, or abatement date?

Honorable Charles A. Bowsher
Page 2

With respect to the management of the Settlement Policy, please address the following issues?

(1) How does OSHA assure that abatements are made according to agreements with employers?

(2) How does OSHA assure that Area Directors use reasonable discretion and do not exceed authority when settling cases?

(3) Do OSHA Area Directors in any way suggest or imply to employers at settlement conferences that violations or penalties will be reduced or eliminated in return for an employer's agreement not to contest or withdraw a contest?

(4) One factor OSHA uses to evaluate Area Directors is the reduction in contested cases. How does this evaluation criteria affect Area Directors in their decisions to settle cases?

(5) How does OSHA use economic feasibiilty of abatement in settling cases? What criteria is used? How does OSHA independently assess employer assertions of economic hardship?

(6) How many citations, violations, and amounts of penalties were settled by pre-contest settlements in each fiscal year 1981, 1982, and 1983?

(7) During pre-contest settlement in each fiscal year 1981, 1982, and 1983, what proportion of proposed violations, citations and penalties were changed as a result of settlements? What were these changes for each category of violation (i.e., upgraded, downgraded, or eliminated)? I am attaching to this request specific cases where allegations have been made concerning mismanagement and abuse of employee rights. Please address problems raised in hese cases in light of the issued raised above.

Your cooperation in this investigation is appreciated.

BARNEY FRANK
Chairman

BF/JD/js

(206894)

24636

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE,$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE

THIRD CLASS