

**U.S. Department of Labor**

Office of the Solicitor  
John F. Kennedy Federal Building - Rm. E-375  
Boston, Massachusetts 02203



Reply to the Attention of: **SOL:MAP:NPG:mbq**  
**MMS No. 15-00016**

(617) 565-2500  
(617) 565-2142

November 17, 2015

Honorable Dennis L. Phillips  
Occupational Safety & Health Review Commission  
One Lafayette Centre  
1120 20th Street, N.W., Room 990  
Washington, D.C. 20036-3419

VIA EMAIL

Subject: Secretary of Labor v. Mass Bay Electrical Corp.  
OSHRC Docket No. 14-1578; Inspection No. 967471

Dear Judge Phillips:

Enclosed herewith is the Settlement Agreement in the above-entitled matter, which includes Respondent's Certificate of Service on employees in accord with the Commission's rules. Also enclosed is a draft consent order.

We have electronically served Respondent with a copy of the signed Settlement Agreement and draft order on this date.

Sincerely,

Michael D. Felsen  
Regional Solicitor

A handwritten signature in black ink, appearing to read "M. Pedulla", is written over a horizontal line.

Mark A. Pedulla  
Nathan P. Goldstein  
Trial Attorneys

Enclosures

cc: Paul J. Katz, Esq.  
Scott Zanolli, Esq.  
Ryan Demeritt, IBEW Local 104  
Sean McNamara, IBEW Local 104

*Working for America's Workforce*

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

\*\*\*\*\*

SECRETARY OF LABOR \*  
United States Department of Labor, \*

Complainant, \*

v. \*

MASS BAY ELECTRICAL CORP., \*

Respondent, \*

IBEW LOCAL 104, \*

Authorized Representative. \*

\*\*\*\*\*

DOCKET NO. 14-1578

REGION I

INSPECTION NO. 967471

SETTLEMENT AGREEMENT

Complainant Secretary of Labor, United States Department of Labor (the "Secretary"), and Respondent Mass Bay Electrical Corporation ("Mass Bay" or "Respondent") hereby stipulate and agree that:

(1) On September 17, 2014, the Occupational Safety and Health Administration ("OSHA") cited Respondent for alleged violations of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. (the "Act"), and issued a Notification of Proposed Penalty related to Inspection Number 967471 in the total amount of \$168,000.00.

(2) Respondent, an employer within the meaning of Section 3(5) of the Act, duly filed with a representative of the Secretary a notice of intent to contest the citations and proposed penalty dated October 7, 2014. This notice was duly transmitted to the Occupational Safety and Health Review Commission (the "Commission") and it is agreed that jurisdiction of this proceeding is conferred upon the Commission by Section 10(c) of the Act.

(3) On October 24, 2014, the Secretary filed a Complaint in this matter stating with particularity the violations alleged, the penalty proposed, and the issues in contest before the Commission.

(4) The Secretary and Respondent have agreed to resolve this matter, without the necessity of further litigation, as follows:

(A) Serious Citation 1, Items 1, 2, and 3 remain as characterized. The penalty for each of those Items is reduced to \$5,000.00 per Item. In all other respects, these Items remain as issued.

(B) The Secretary withdraws Serious Citation 1, Item 4.

(C) Willful Citation 2, Items 1 and 2 are recharacterized as Repeat violations.

The penalty for each of those Items is reduced to \$60,500.00 per Item. In all other respects, these Items remain as issued.

(D) The total penalty for all Items is \$136,000.00.

(E) Respondent further agrees as follows:

- (i) Upon execution of this Settlement Agreement, all Mass Bay crane operators and direct supervisors of such crane operators shall be certified on the type and capacity of cranes that they operate or supervise the operation thereof. This requirement applies to any equipment that can operate as a crane at any time. For the purposes of this subparagraph, a "crane operator" or "crane operators" shall include any personnel that performs any function covered by 29 C.F.R. § 1926.1400 *et seq.* For the purposes of this subparagraph, a "direct supervisor" or "direct supervisors" shall include personnel acting in a direct supervisory role in the field of work being performed by a crane operator, including general foremen and foremen. However, this subparagraph shall not be construed to apply to Project Managers, or other office specific management personnel, whose primary function is to oversee the business management of a given project. Any certification required under this subparagraph shall be obtained prior to the operation or supervision of the operation of any equipment covered by this subparagraph. These certifications may be obtained through organizations such as the National Center for Construction

Education and Research (“NCCER”), National Commission for the Certification of Crane Operators (“NCCCO”), Crane Institute Certification (“CIC”), American National Standards Institute (“ANSI”), or other comparable industry organizations offering certifications which satisfy the 29 C.F.R. § 1926.1400 et seq. requirements for operator certification. All crane operators and direct supervisors, as defined in this subparagraph, must be certified on the specific type of equipment being used and the particular capacity for which it is being used. Any newly hired employee that already possesses the requisite certification shall provide documentation of such certification to Mass Bay prior to the operation of any equipment covered by this subparagraph. At least one supervisor certified in accordance with this subparagraph shall participate in the selection and acquisition of owned, rented, leased, or otherwise obtained equipment that can operate as a crane.

- (ii) Upon execution of this Settlement Agreement, all Mass Bay equipment operators shall be qualified persons with respect to the specific equipment they operate (whether digger derricks, excavators, loaders, powered industrial trucks, lulls, cranes, aerial lifts, or otherwise) prior to the operation of any such equipment. Qualified persons, for purposes of this subparagraph, means that such persons will be trained, tested, and evaluated with respect to the particular equipment that those persons operate, and shall perform adequately on such tests and evaluations.
- (iii) Upon execution of this Settlement Agreement, all operators of mobile elevated work platforms shall be certified by the International Powered Access Federation (“IPAF”), or a comparable industry certification and/or training organization such as the Altec SENTRY Program prior to operating any such equipment. Additionally, Mass Bay will provide an in-house training program specific to the operation of mobile elevated work platforms.
- (iv) Within twelve months of the execution of this Settlement Agreement, Mass Bay management, including owner and President William L. Salvucci, Jr., operations manager(s), project manager(s), safety manager(s), and general foreman, shall attend IPAF’s manager’s course for Mobile Elevated Work Platforms (“MEWP”), or a comparable industry certification and/or training organization such as the Altec SENTRY Program prior to operating any such equipment. Any Mass Bay employee who would be subject to the requirement(s) of this subparagraph and is hired by Respondent after the time period set forth in this subparagraph shall satisfy the requirement(s) of this subparagraph within one year of being hired by Mass Bay.

- (v) Within twelve months of the execution of this Settlement Agreement, Mass Bay's direct supervisors, including general foremen and foremen, involved in the performance of utility work shall attend thirty (30) hours of OSHA construction outreach training course(s), such as the courses offered through the OSHA Electrical Transmission and Distribution Partnership. Any Mass Bay employee who would be subject to the requirement(s) of this subparagraph and is hired by Respondent after the time period set forth in this subparagraph shall satisfy the requirement(s) of this subparagraph within one year of being hired by Mass Bay.
- (vi) Within twelve months of the execution of this Settlement Agreement, Mass Bay's safety manager(s), general foremen, and foremen involved in the performance of work covered by 29 C.F.R. § 1926.1400 et seq. shall attend a manager and supervisor training program regarding the OSHA Cranes and Derricks in Construction standards, 29 C.F.R. § 1926.1400 et seq. That training program shall be developed with the objectives of assisting organizations, management, and employers to achieve and maintain compliance with 29 C.F.R. § 1926.1400 et seq. Any Mass Bay employee who would be subject to the requirement(s) of this subparagraph and is hired by Respondent after the time period set forth in this subparagraph shall satisfy the requirement(s) of this subparagraph within one year of being hired by Mass Bay.
- (vii) Within twelve months of the execution of this Settlement Agreement, Mass Bay's safety manager(s) shall obtain either: (a) a Certified Utility Safety Professional ("CUSP") certification that offers safety credentials to utilities, or (b) the Board of Certified Safety Professionals ("BCSP") Certified Safety Professional certification. Within twelve months of the execution of this Settlement Agreement, Mass Bay's general foremen shall obtain BCSP's Safety Trained Supervisor ("STS") certification. Any Mass Bay employee who would be subject to the requirement(s) of this subparagraph and is hired by Respondent after the time period set forth in this subparagraph shall satisfy the requirement(s) of this subparagraph within one year of being hired by Mass Bay.
- (viii) Within four months of the execution of this Settlement Agreement, Mass Bay shall provide, and document the provision of, comprehensive training on its safety program, safety manual(s), and safety policies to all operations management, general foremen, and foremen personnel. This training shall cover the material contained in the IBEW/National Electrical Contractors Association ("NECA") Ten State Safety Manual, where applicable to any of the work that Mass Bay performs. Mass Bay's safety manager(s) shall be responsible for training and educating Respondent's new employees on safety and health matters. Any Mass Bay employee who would be subject to the

requirement(s) of this subparagraph and is hired by Respondent after the time period set forth in this subparagraph shall satisfy the requirement(s) of this subparagraph within twenty-one (21) business days of being hired by Mass Bay.

- (ix) Upon execution of this Settlement Agreement, Respondent shall include a Job Hazard Analysis (“JHA”) process for each project that meets the criteria of OSHA 3071 (2002). Mass Bay’s general JHA process, and the JHA process at each of Mass Bay’s projects and worksites falling under the guidelines of OSHA 3071(2002), shall be documented and shall include input from the safety manager(s) as well as the general foremen and foremen working at the project or worksite for which the JHA is produced.
- (x) Within six months of the execution of this Settlement Agreement, Mass Bay shall develop and implement a policy and program for the investigation of accidents, incidents, and near misses. That policy and program shall be documented and shall include a safety stand down procedure on any accident, incident, or near miss. The policy and program shall be reviewed with all affected Mass Bay employees at the time it is developed. Thereafter, Respondent shall provide such training to new employees and retrain any and all employees on the policy and program as is necessary to ensure that Mass Bay’s affected employees are aware of the policy and program and how to implement it.
- (xi) Respondent shall develop a charter for an in-house safety committee consisting of office management, safety manager(s), foremen, laborers (including linemen and/or operators), and an employee representative of one or more union labor organizations. That safety committee shall meet monthly during normal business hours to discuss and review safety issues that have arisen at Mass Bay’s work sites, upcoming safety issues that could arise in future work, possible revisions to Mass Bay’s safety and health policies and practices, the audits that are the subject of Paragraph 4(E)(xii) below, and any other safety and health related issues implicated by Mass Bay’s work. The committee shall document its meetings, recommendations, and work. Such documentation shall be made available to any Mass Bay employee upon request.
- (xii) Upon execution of this Settlement Agreement, Respondent shall conduct unannounced, comprehensive safety and health audits on a regular basis; such audits shall cover at least ten (10) active Mass Bay worksites per calendar month. These audits must be performed by qualified individual(s); provided, however, that on an annual basis Respondent shall retain the services of a qualified independent safety and health consultant to perform an audit of a representative sample of

Respondent's work sites. Such independent audits shall continue for a period of three (3) years from the date of the execution of this Settlement Agreement. In connection with each internal and independent audit, Respondent (or its consultant, as applicable) shall recommend measures to remedy identified hazards and propose steps to reduce the number, type, severity, and frequency of workplace illnesses and injuries. All audits and recommendations related to this subparagraph shall be documented.

- (xiii) Upon execution of this Settlement Agreement, all Mass Bay worksites on which a lineman or linemen work shall be supervised only by general foremen and foremen that are qualified journeymen linemen.
- (xiv) Respondent shall establish an endowment fund in the names of Joseph Boyd III and John Loughran (the "Boyd/Loughran Fund"). The purpose of the Boyd/Loughran Fund is to provide financial assistance to workers who are interested in obtaining training and education in the fields of line construction project management and/or safety. Respondent shall establish a committee to administer the Boyd/Loughran Fund, which committee shall include at least one of Respondent's owners and a member or officer of IBEW Local 104. Respondent and IBEW Local 104 shall cooperatively select the Boyd/Loughran Fund committee member from IBEW Local 104, which selection shall not be unreasonably blocked by either party. The Boyd/Loughran Fund shall allow applications for financial support from the Boyd/Loughran Fund no less frequently than once per calendar year. Respondent shall make at least three thousand dollars (\$3,000.00) in annual contributions to the Boyd/Loughran Fund for the first ten (10) consecutive years that the Boyd/Loughran Fund is operational, and shall make at least five thousand dollars (\$5,000.00) in annual contributions to the Boyd/Loughran Fund for at least the ten (10) consecutive years following the initial ten-year period that the Boyd/Loughran Fund is operational. Respondent and IBEW Local 104 shall work diligently to create the remaining framework necessary for the Boyd/Loughran Fund to be fully operational no later than one (1) year from the date of the execution of this Settlement Agreement. Respondent shall make its initial contribution on or before the date the Boyd/Loughran Fund becomes fully operational.
- (xv) For a period of one year from the date on which this Settlement Agreement is executed, Mass Bay shall provide to the OSHA Assistant Regional Administrator for Enforcement Programs and Technical Support a list of all projects on which Mass Bay is conducting utility work. Mass Bay shall provide the Assistant Regional Administrator the address of each such project, the nature of the project, and the names of the employees supervising each project. This notification shall be made to the Assistant Regional Administrator when work

begins on each such work site, or at the earliest practicable time thereafter. Said notification shall be emailed to the following individual at the following email address and with the following subject line:

Assistant Regional Administrator for Enforcement  
Programs and Technical Support  
Bhatt.Amee@dol.gov  
Subject: "Mass Bay Electrical – Settlement Project  
Notification"

Said email address may be changed by OSHA in its discretion upon notification to Mass Bay.

(xvi) All documentation referenced in this Paragraph 4(E) shall be maintained by Mass Bay for at least seven (7) years from the execution of this Settlement Agreement and made available to OSHA upon request.

(F) The Citations are deemed amended to include any abatement measures, including agreements as to actions to be taken by Respondent that are described in this Settlement Agreement.

(G) The abatement date for all items of the Citations is thirty (30) days from the date of the execution of this Settlement Agreement unless otherwise specified in this Settlement Agreement.

(5) In view of the aforesaid, Respondent hereby withdraws its Notice of Contest and the parties agree that the Citations and proposed penalties and the abatement measures and dates as amended by this Settlement Agreement shall be affirmed and become the final Order of the Commission.

(6) The Secretary reserves the right to petition the appropriate United States Court of Appeals for summary enforcement of the final Order entered in this proceeding by the Commission, pursuant to Section 11(b) of the Act.

(7) Respondent certifies that the violations alleged have been abated or will be abated by the abatement dates as shown in the Citations as amended above. For each item in the Citations which is affirmed in this Settlement Agreement, Respondent will submit to the issuing Area Director an Abatement Certification as required by 29 C.F.R. § 1903.19(c). For each item such certification shall be submitted within thirty (30) days of the execution of this Settlement Agreement or within ten (10) days of the abatement date described herein, whichever is later. Respondent also agrees to submit such abatement documentation as is required by 29 C.F.R. § 1903.19(d).

(8) Respondent further certifies that the penalties, as amended, will be paid in four (4) equal installments of \$34,000.00. The first such installment shall be paid at or before the time of the execution of this Settlement Agreement. Each subsequent installment shall be paid within sixty (60) days after the date of the previous installment.

(9) Respondent certifies that this Settlement Agreement has been given to employees represented by an authorized representative, by serving a copy on IBEW Local 104, Occupational Safety Health and Education Trust Fund, Attention Ryan Demeritt and Sean McNamara, 130 West Street, Walpole, MA 02081 by (Check one)  X  first class mail, \_\_\_\_\_ personal delivery, on  November 18, 2015 , in accordance with Rules 7 and 100 of the Commission's Rules of Procedure. It is hereby further certified by Respondent that this Settlement Agreement has been served on employees by posting the Settlement Agreement at the workplace subject to the OSHA inspection, in a place where the Citation is required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure. Respondent further agrees that it shall post this Settlement Agreement at all of its workplaces within thirty (30) days after the date on which this Settlement Agreement is executed.

(10) Respondent agrees to comply with the Act in all respects in the future.

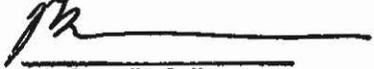
(11) None of the foregoing agreements, statements, stipulations, and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the Citation, Notification of Penalty, and the Complaint in this matter. The agreements, statements, stipulations, findings, and actions taken herein are made for the purpose of settling this matter economically and amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Act.

(12) Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

For the Secretary:

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor



Mark A. Pedulla

Nathan P. Goldstein  
Trial Attorneys  
t: 617.565.2500  
f: 617.565.2142  
pedulla.mark.a@dol.gov  
goldstein.nathan@dol.gov

U.S. Department of Labor  
Attorneys for Complainant

Post Office Address:  
U.S. Department of Labor  
Office of the Regional Solicitor  
JFK Federal Building—Room E375  
Boston, Massachusetts 02203

DATE: November 17, 2015

For Respondent:

  
Paul Katz

749 Heath Street, Suite 401  
Chestnut Hill, MA 02467

t: 617.566.0898  
paulkatz@oshaadvocate.com

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR \*  
United States Department of Labor, \*

Complainant, \*

v. \*

MASS BAY ELECTRICAL CORP., \*

Respondent, \*

IBEW LOCAL 104, \*

Authorized Representative. \*

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DOCKET NO. 14-1578

REGION I

INSPECTION NO. 967471

ORDER

The parties have reached a resolution of this matter, which is embodied in the attached Settlement Agreement signed by the parties.

The Settlement Agreement is approved in its entirety in accordance with its terms.

SO ORDERED.

\_\_\_\_\_  
The Honorable Dennis L. Phillips  
U.S. OSHRC JUDGE

Dated: \_\_\_\_\_, 2015

CERTIFICATE OF SERVICE

I hereby do certify that all parties have consented that all papers required to be served may be served and filed electronically. I further certify that I served the foregoing SETTLEMENT AGREEMENT and proposed ORDER on the 17th day of November, 2015 by emailing one (1) copy of those documents to:

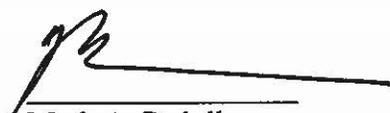
Paul J. Katz  
Paul J. Katz, Attorney at Law  
749 Heath Street, Suite 401  
Chestnut Hill, MA 02467  
paulkatz@oshaadvocate.com

Scott Zanolli  
Pierce & Mandell, P.C.  
11 Beacon St., Suite 800  
Boston, MA 02108  
scott@piercemandell.com

Ryan Demeritt  
IBEW Local 104  
Occupational Safety Health and Education Trust Fund  
13 West Street  
Walpole, MA 02081  
demeritt@ibew104.org

Sean McNamara  
IBEW Local 104  
Occupational Safety Health and Education Trust Fund  
13 West Street  
Walpole, MA 02081  
mcnamara@ibew104.org

the last known email addresses.

  
Mark A. Pedulla