

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

ALOUN FARMS, INC.,

Respondent.

CASE NO. OSH 2012-16

ORDER NO. 494

PRETRIAL ORDER

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Pursuant to the initial conference/settlement conference held in this matter by the Hawaii Labor Relations Board (Board) on January 23, 2013, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant and Michael Moefu, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1: HAR 12-60-2(a)(3)

Whether the characterization as "Serious" and penalty of \$4,400.00 resulting from Citation 1, Item 1, of Inspection No. 316265255, was valid and proper.

Citation 1, Item1 alleged:

HAR 12-60-2(a)(3) was violated because:

- (a) A Delta Rockwell floor mounted drill press, serial number 1416605, was not secured to the floor to prevent walking, moving, and/or tip over.
- (b) The upper blade guard for a Ryobi 10 inch table saw, model RTS10, serial number XX114322187, was missing thus exposing employees to potential serious bodily injuries.

- (c) A Delta 6 inch bench grinder, model DW756, serial number 0044-YL1220, was missing its side spindle guard on the grind wheel side of the machine. The bench grinder was also missing its adjustable work rest and adjustable tongue. The missing spindle guard, adjustable work rest, and adjustable tongue exposed employees to potential serious bodily injuries.

2. Citation 1, Item 2: HAR 12-60-2(a)(3)

Whether the characterization as “Serious” and penalty of \$4,400.00 resulting from Citation 1, Item 2, of Inspection No. 316265255, was valid and proper.

Citation 1, Item 2 alleged:

HAR 12-60-2(a)(3) was violated because:

- (a) A waste container with oily rags and paper material did not have a lid cover. Welding activity was being conducted 5.5 feet away from the waste container thus exposing employees to a fire hazard with the potential for serious bodily injuries.
- (b) One carbon dioxide, one oxygen, and two acetylene gas cylinders in storage were not secured from knock over. Unsecured gas cylinders exposed employees to potential serious bodily injuries.
- (c) Two acetylene gas cylinders that were not in use were missing their valve protection caps. Gas cylinders not in use with missing valve protection caps exposed employees to potential serious bodily injuries.
- (d) A Lincoln electric ranger welder had an area of damage to the insulation of the electrode lead cable that allowed the bare copper conductors to be exposed. The damaged cable exposed the

employees to electrical hazards with the potential for serious bodily injuries.

3. Citation 1, Item 3: HAR 12-60-2(a)(3)

Whether the characterization as “Serious” and penalty of \$3,080.00 resulting from Citation 1, Item 3, of Inspection No. 316265255, was valid and proper.

Citation 1, Item 3 alleged:

HAR 12-60-2(a)(3) was violated because:

- (a) Three conductors of the power cord for the Skilsaw circular saw, serial number 58124, were spliced. The spliced power cord exposes the employees to potential serious bodily injuries from an electrical hazard.
- (b) The outer protective jackets of one orange extension cord and one black extension cord were pulled back one-fourth inch to one-half inch from the attachment plugs and receptacle heads thus allowing the inner insulated conductors to be exposed. The lack of flexible cord strain relief exposes the employees to an electrical hazard with the potential for serious bodily injuries.
- (c) The outer protective jackets of a power cord for Delta Rockwell floor mounted drill press, serial number 1416605, was pulled back three-fourth inch from the attachment plug thus allowing the inner insulated conductors to be exposed. The lack of flexible cord strain relief exposes the employees to an electrical hazard with the potential for serious bodily injuries.
- (d) A Skilsaw circular saw had a flexible power cord with damage to its outer jacket. The damaged power cord allowed conductors and bare copper wires to be exposed. Damaged power cord exposed the employees to an

electrical hazard with the potential for serious bodily injuries.

- (e) A Delta Rockwell floor mounted drill press, serial number 1416605, had a flexible power cord with damage to its outer jacket near the tool's electrical junction box. The damaged power cord allowed conductors to be exposed. Damaged power cord exposed the employees to an electrical hazard with the potential for serious injuries.
- (f) A continuity tester showed a flexible, 3-wire, black extension cord to have an open ground. The extension cord with open ground exposed the employees to an electrical hazard with the potential for serious bodily injuries.
- (g) A flexible, 3-wire, power cord of a Diehard engine starter/battery charger was missing its ground pin. The power cord with open grounds exposed the employees to an electrical hazard with the potential for serious bodily injuries.
- (h) An electrical light switch box was missing its faceplate thus exposing conductors and energized parts. Uncovered conductors and energized parts exposed the employees to an electrical hazard with the potential for serious bodily injuries.

4. Citation 1, Item 4: HAR 12-60-2(b)(1)(A)

Whether the characterization as "Serious" and penalty of \$4,400.00 resulting from Citation 1, Item 4, of Inspection No. 316265255, was valid and proper.

Citation 1, Item 4 alleged:

HAR 12-60-2(b)(1)(A) was violated because:

At the time of inspection, the employer did not have an effective written safety and health program as its

policies, procedures, and rules did not address the control of energy sources, safe operation, cleaning unjamming, servicing, maintenance, and working around their onion machine, ice making machine, corn machine, conveyor systems, and other machinery at their establishment. Lack of guidance from a written safety and health program that does not include sections that address machinery safety and control of energy sources can result in employees being exposed to various machinery and energy safety hazards. One employee sustained serious bodily injuries when he was pulled into a conveyor system.

5. Citation 1, Item 5: 29 CFR 1928.57(a)(6)

Whether the characterization as “Serious” and penalty of \$4,400.00 resulting from Citation 1, Item 5, of Inspection No. 316265255, was valid and proper.

Citation 1, Item 5 alleged:

29 CFR 1928.57(a)(6) was violated because:

An employee, who was working near and/or at an onion machine and its conveyor systems, did not receive training in machine guarding, machine safety, conveyor safety, and the control of energy sources. This employee sustained serious bodily injuries when he was pulled into a conveyor system.

6. Citation 1, Item 6: 29 CFR 1928.57(a)(7)

Whether the characterization as “Serious” and penalty of \$4,400.00 resulting from Citation 1, Item 6, of Inspection No. 316265255, was valid and proper.

Citation 1, Item 6 alleged:

29 CFR 1928.57(a)(7) was violated because:

A Flodin Inc onion machine had no machine guarding and/or inadequate machine guarding in four different areas of the machine’s conveyor systems between the

in-take hopper section and the onion skinning section.

(a) The right and left sides of the conveyor belt and roller assembly under the front side of the in-take hopper did not have any machine guarding. (b) The right and left sides of the conveyor belt and roller assembly under the back side of the in-take hopper did not have any and/or had inadequate machine guarding.

(c) The right, left, and front sides of the conveyor belt and roller assembly at the junction area of two separate conveyors under the back side of the in-take hopper did not have any and/or had inadequate machine guarding. (d) The right and left sides of the conveyor belt and sprockets assembly under the front side of the onion skinning section did not have any machine guarding.

One employee sustained bodily injuries when he was pulled into the conveyor system at its unguarded belt and roller assembly.

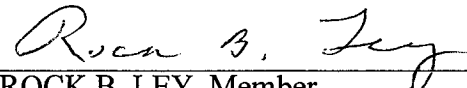
- B. The deadline for the parties' final naming of witnesses is **February 22, 2013**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the address of each witness and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **March 22, 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. The Hawaii Rules of Civil Procedure govern discovery procedures.
- D. The deadline for the parties to file and exchange witness and exhibit lists is **April 16, 2013**. In identifying exhibits, the Complainant shall use numbers and Respondent shall use the alphabet.
- E. Trial in this matter is scheduled for **April 23, 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.

- F. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, January 24, 2013.

HAWAII LABOR RELATIONS BOARD


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:

Herbert B.K. Lau, Deputy Attorney General
Michael Moefu