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United States of America

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1924 Building - Room 2R90, 100 Alabama Street, SW
Atlanta, Georgia 30303-3104

Secretary of Labor,

Complainant,

v.

Action Electric Company,

Respondent.

OSHRC Docket No. 12-1496

Appearances:

Melanie L. Paul, Esq.

Office of the Solicitor, U. S. Department of Labor, Atlanta, Georgia
For the Complainant

J. Larry Stine, Esq., and Mark A. Waschak, Esq.

Wimberly, Lawson, Steckel, Schneider & Stine, Atlanta, Georgia
For the Respondent

Before: Administrative Law Judge Ken S. Welsch

DECISION AND ORDER

Action Electric Co., Inc. (Action) provides electrical services to businesses. On December 7, 2011, under a contract with a steel mill in Cartersville, Georgia, to replace seventeen fans at the cooling bed during a shutdown, an Action leadman/electrician and an apprentice went into the cooling bed basement to discuss replacing the last three fans. While discussing their work, a counterweight which provided movement to the racks on the cooling bed fell from an upright position to the down position when the steel mill maintenance technician initiated the mill lockout procedures. When the counterweight fell, the apprentice was fatally struck from behind and it narrowly missed the leadman. As a result of an inspection by the Occupational Safety and Health Administration (OSHA), Action was issued a serious citation on May 31, 2012. Action timely contested the citation.

The serious citation alleges that Action violated 29 C.F.R. § 1910.147(c)(7)(i) (item 1) by failing to train its employees on the purpose and function of an energy control program and

29 C.F.R. § 1910.147(f)(3)(ii)(D) (item 2) by failing to affix personal lockout or tagout (LOTO) devices on the group lockbox before the employees began servicing work on the fans. The serious citation proposes a \$7,000.00 penalty for the alleged item 2 violation.

The hearing was held on December 18-19, 2012, in Atlanta, Georgia. The parties stipulated jurisdiction and coverage (Tr. 4). The Secretary withdrew item 1, alleged violation of 29 C.F.R. § 1910.147(c)(7)(i) (Tr. 3). The post-hearing briefs were filed on February 22, 2013.

Action denies the applicability of § 1910.147, the LOTO standards, because at the time of the accident the employees were not servicing the fans and the counterweight was not connected to or associated with the operation of the fans. Also, Action claims the steel mill technician failed to ensure that the Action employees were free from hazard before locking out the cooling bed.¹

For the reasons discussed, § 1910.147(f)(3)(ii)(D) is found not applicable. The citation item 2 is vacated and no penalty is assessed.

The Accident

Action is in business to provide electrical services to commercial and industrial companies. Action employs more than 100 employees. Its office is located in Smyrna, Georgia (Tr. 185, 456).

Since 2004, Action, as an approved contractor, has provided electrical service and repair work to the Gerdau Ameristeel US steel mill in Cartersville, Georgia. The steel mill operates 24/7 in melting scrap metal, casting it, and rolling it into angles, channels, flats, and I-beams for structural uses. When the metal is heated and rolled, it is hot, approximately 1600 degrees, and must be cooled before it goes through the straightener (Tr. 24, 39).

To cool the heated metal, the mill moves the metal by conveyor onto the cooling bed from the east side and rakes with grooves “walk” the metal across the bed as the bed moves up and down until it reaches the conveyor which carries the metal to the straightener. The cooling bed is approximately 325 feet long and 100 feet wide. The heated metal is on the cooling bed for approximately one hour. Along the west side of the cooling bed, there are one hundred ten, 3-foot by 3-foot, rotary fans which blow air across the cooling bed. The fans are bolted to a rail underneath the cooling bed, approximately 8 feet above the basement floor. The fans are

¹ Issues that are not briefed are deemed waived. See *Georgia-Pacific Corp.*, 15 BNA OSHC 1127 (No. 89-2713, 1991). At the hearing, Action withdrew its employee misconduct defense and represented that it is not claiming “the employees did anything wrong” (Tr. 7).

powered by electricity and there are four disconnects to disconnect all the fans (Exhs. C-1, C-9; Tr. 25, 82, 191, 229, 241, 250, 252, 285).

The basement under the cooling bed houses numerous mechanical devices including drive motors, rotating shafts, counterweights, chains, drive pulleys, gear boxes, walking beams, and other equipment which lift the cooling bed and move the rakes. There are four access points to the basement; the main ones at the north and south ends, and two others at entrances on the east and west sides that are used infrequently. From the north/south entrances, there is a designated walkway through the basement demarcated by overhead lights, faded yellow paint on the floor, and chain ropes on both sides wrapped from column to column extending almost the entire length of the basement. The designated walkway is the only safe place to walk in the basement when the cooling bed is in operation. Signs at the entrances to the basement state “authorized personnel only.” There are other signs around the cooling bed which state “Do not enter without lockout/tagout.” No mill employees work in the basement. While the cooling bed is in operation, the designated walkway is occasionally used by quality control employees to observe the metal on the cooling bed (Tr. 83, 209-210, 230-232).

The counterweights, which move the rakes, make one to three, 360 degree revolutions in a clockwise direction during operation and are located in three rows approximately every 15 feet in a north/south direction throughout the cooling bed basement. As with other mechanical devices in the basement, there are no guards around the counterweights other than the chain at the designated walkway. During operation, the counterweights’ resting position is at one o’clock. When the cooling bed is de-energized and locked out, the counterweights which weigh “tons of pounds” each, fall from gravity to the six o’clock position (Tr. 84-85, 215, 230).

During shutdown, when servicing and maintenance work is scheduled in the cooling bed basement, the steel mill requires that the machines and equipment be locked out. The lock out is performed by the mill’s cooling bed maintenance technician and takes approximately 20 minutes. It involves locking out the machines and equipment at various locations around the bed (Tr. 233, 247).

In October 2011, the steel mill requested Action to service and replace, as needed, the approximate one hundred ten fans at the cooling bed. An Action leadman and the mill technician responsible for the cooling bed made an evaluation of the fans and determined that seventeen fans needed to be replaced. To replace the fans, Action needed access to the basement (Tr. 243).

On December 9, 2011, during the mill shut down, the Action leadman and an apprentice met at the technician's office at 7:15 a.m. to prepare to replace three fans. Action had already replaced fourteen of the fans on two earlier occasions. The Action leadman, a journeyman electrician, had worked at the steel mill since 2005. The technician told the leadman that he would lockout the cooling bed and meet him later. The leadman understood that they were to meet at the north end entrance to the basement. After the conversation, the mill technician moved the three new fans by forklift to the north end of the cooling bed before initiating the mill's cooling bed lockout procedures (Exhs. C-12A, R-3; Tr. 74, 290, 292-293, 388, 413).

In the meantime, the Action leadman filled out the mill's work permit without the technician's signature and left it at the north end of the cooling bed with the group lockbox. He then sent the helpers to retrieve the tools and took the apprentice into the cooling bed basement by the north entrance. The leadman and apprentice walked through the basement, not on the designated walkway but over conduit, pipes, air lines, and under beams, to the location of the three fans. They were approximately 24 feet off the designated walkway. The cooling bed was shutdown so none of the machines and equipment was running. The apprentice had not worked on the fans and the leadman was discussing with him what work they were going to be doing. They did not physically touch or start any work on replacing the fans. The leadman knew the mill technician had not completed locking out the cooling bed (Tr. 116, 146-147, 197, 255, 369, 373, 376, 397, 423).

The technician did not know and could not see the Action employees were in the basement when he began the lockout procedure. When he initiated the counterweight lockout, the counterweight behind the leadman and apprentice fell from its resting position to the down position. As it fell, it fatally struck the apprentice from behind and missed the leadman by inches. The accident occurred at approximately 7:53 a.m. (Tr. 245, 294, 375, 383).

A compliance safety officer and her supervisor initiated an OSHA inspection at 9:30 a.m. She took photographs/video of the cooling bed and basement, observed the cooling bed in operation on another date, reviewed documents involving the steel mill lockout procedures, and interviewed employees of the steel mill and Action. As a result of the inspection, Action was issued the serious citation. The steel mill was not issued a citation (Tr. 420, 424, 455).

The steel mill investigation into the accident determined that the cooling bed equipment was not locked out and the leadman did not verify that it was locked out although signing the work

permit before entering the basement. The steel mill placed Action on conditional approval status as a contractor requiring Action to submit written specific safety plans for each job and hire a third party consultant to oversee its employees for two years. The leadman was removed from working at the steel mill but remains employed by Action. He was retrained on Action's LOTO procedures (Exh. C-10; Tr. 142-143, 378, 381, 405).

Discussion

Alleged Violations

In order to establish a violation of a safety standard as in this case,

the Secretary has the burden of proving: (a) the applicability of the cited standard, (b) the employer's noncompliance with the standard's terms, (c) employee access to the violative conditions, and (d) the employer's actual or constructive knowledge of the violation (*i.e.*, the employer either knew, or with the exercise or reasonable diligence could have known, of the violative conditions). *Atlantic Battery Co.*, 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994).

There is no significant factual dispute. Although the Secretary has the burden of proof to establish a *prima facie* case, the only issue argued in Action's post-hearing brief is the application of the LOTO standards at § 1910.147 to the work its employees were performing at the time of the accident.

Citation No. 1

Alleged Violation of § 1910.147(f)(3)(ii)(D) (Item 2)

The citation alleges that at "Rolling Mill Area: The employer (outside employer) did not ensure that each employee performing servicing and maintenance activities were in control of the hazardous energy throughout the entire period of exposure. Employees did not affix their personal lockout device to physically secure the isolating device(s) during the servicing or maintenance work performed as specified in the requirements of the group LOTO procedure nor did they avoid working in this area until the lockout process was completed by the host employer, exposing themselves to struck-by hazards."

Section 1910.147(f)(3)(ii)(D) provides:

Each authorized employee shall affix a personal lockout or tagout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.”

The alleged violation relates to the failure of the Action employees to affix their locks on the group lockbox before entering the basement and beginning their servicing and maintenance work. The Action employees were part of a group lockout and were authorized employees who were there to replace three fans.² There is no dispute that the employees did not affix their locks on the group lockout box prior to entering the basement (Tr. 367-368). The leadman acknowledges that “putting locks on group lock box is a necessary step to protect from unexpected energization of equipment” (Tr. 358). Also, replacing the fans constitutes servicing and maintenance work. See § 1910.147(b) definition of *Servicing and/or maintenance* which includes “constructing, installing.”

Action does not dispute that while the employees were discussing their work on the fans, the counterweight fell because of stored energy when being locked out. As stated in the steel mill’s *Cooling Bed LOTO Steps*, “2. Proceed to the 4 crank local station. Rotate rake counter weights to down position by using the E-stop for the cooling bed rake which trips the rake drive and allows counter weights to fall to the zero energy state (down)” (Exh. C-12). Such stored energy, as described by the Secretary, is kinetic energy (motion) which is caused by the conversion of potential energy to kinetic energy after shutting down the machine or equipment. 54 FR 36644, 36647 (September 1, 1989).

Also, there is no issue that the two Action employees were exposed to the hazard of the counterweight falling from stored energy. The employees were standing within the swing radius (zone of danger) of the counterweight discussing their work on the fans. The apprentice was fatally struck by the counterweight and the leadman was within inches of being struck (Tr. 383, 412, 421).

With regard to employer knowledge, the leadman knew the cooling bed was not locked out when he entered the basement. He admitted that he had neither verified lockout nor affixed his

² “An affected employee becomes an authorized employee when the employees’ duties include performing servicing or maintenance covered under this section.” 29 C.F.R. § 1910.147(b) definition of *authorized employee*.

lock to the group lockout box. The lockout was not complete because the technician had not returned to perform verification and sign the work permit (Exh. C-11; Tr. 375-376). Also, the dangers of the cooling bed were visible and obvious. As the mill safety manager testified, “anybody with common sense watching it run will say all this stuff has to be turned off and shut down and locked out before you go down there” (Tr. 200). The leadman had worked at the mill since 2005. There was signage around the bed area warning employees not to enter the basement without locking it out and restricting access to only authorized personnel.

The leadman’s knowledge is imputed to Action because as a supervisor, he was in charge of and supervised the apprentice and other Action employees. He assigned and directed the work. He conducted the job safety analyses, led safety meetings, had authority to issue verbal warnings, was responsible for crew safety, and could stop work (Tr. 343-345).

In terms of failing to place their locks on the group lockbox, there is no dispute regarding the lack of compliance with the terms of the cited standard, employees’ exposure to the falling counterweight, and Action’s knowledge of the failure to lockout the fans and counterweight.

The issue in dispute is the application of the LOTO standards to the counterweights and the work being performed by the Action employees at the time of the accident. Action argues that the standard does not apply because (1) OSHA’s LOTO requirements apply to the “servicing and maintenance” of the fans and did not apply to the counterweights, and (2) the employees were not performing “servicing and maintenance” work on the fans when the accident occurred. The court agrees with Action that the cited LOTO standard did not apply under the circumstances in this case.

Application of LOTO

The scope of the LOTO standards provides that “[t]his standard covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or startup of the machines or equipment, or release of stored energy could cause injury to employees.” 29 C.F.R. § 1910.147(a)(1)(i). There is no dispute that servicing and maintenance work on the fans would require compliance with LOTO. The issue is whether the LOTO requirements apply to the counterweights if the servicing and maintenance work is only on the fans.

The application of the LOTO standards as described in § 1910.147(a)(2) provides, in part:

- (i) This standard applies to the control of energy during servicing and/or maintenance of machines and equipment.

It is the Secretary's position that under the application of the LOTO standards, all the machines and equipment in the cooling bed including the counterweights and fans constituted an operating system that posed a hazard during servicing and maintenance work. The Secretary argues that the fans and counterweights functioned together to move and cool the heated metal on the cooling bed before conveyed to the straightener. In order to safely replace the fans, the other machines and equipment including the counterweights, needed to be locked out to prevent the unexpected energization, startup, or release of stored energy from the machines and equipment around the fans and within the zone of danger of the work. The mill's lockout procedures required locking out all the machines and equipment under the cooling bed before servicing and maintenance work was to be performed in the basement (Exh. C-12A; Tr. 247). As described by the technician responsible for implementing the lockout procedure, "[T]he equipment overlaps in so many different ways with the fans. You have chains that overlap with the fans, brakes. Basically the equipment acts as one, and if you were to go in and try to work on the fan, you would be directly in harm's way by several different pinch points" (Tr. 276).

1. OSHA's LOTO Applied Only To The Fans

The cooling bed consists of various machines and equipment such as rakes, chains, counterweights, drive shafts, motors, pulleys and fans which function separately to move and cool the heated metal across the bed. The cooling bed is not itself a machine or piece of equipment. It is a process that contains separate and distinct machines and equipment. The cooling bed is a system of rakes which move the heated metal by counterweights, drive shafts, motors, and chains (Tr. 288). The rakes are jagged so that the metal is caught inside the grooves, picked up and moved over the bed (Tr. 81). The rakes are powered by a system of gear boxes, chains, drive motors, walking beams, and counterweights (Tr. 83).

The counterweights rotate on drive shafts and are powered by drive motors which move the rakes up and down and move the heated metal across the cooling bed (Tr. 230). The counterweights are in three rows approximately every 15 feet in a north/south direction. At least one row of counterweights is near the row of fans.

The function and purpose of the fans is independent of the counterweights. The fans are not fixed nor permanently attached to the counterweights and rakes. The fans provide air movement to assist in cooling the heated metal as it moves across the bed. The fans are bolted to

a beam or rail running the length of the bed below the rakes, approximately 8 feet above the basement floor (Tr. 120, 252). There are four disconnects that control the electric power to all one hundred ten fans (Tr. 276, 285).

The mill's written cooling bed lockout procedure shows that the various machines and equipment need to be separately locked out. The written procedure in place at the time of the accident did not include locking out the fans, which was the only equipment Action was authorized to work on and the only equipment Action could lockout when replacing/repairing the fans (Exh. C-12A; Tr. 392).³ The omission of the fans from the written lockout procedures underscores the fact the fans operated independently of the cooling bed.

The record shows that the counterweights and fans are not connected or attached. The rakes, counterweights, drive shaft, drive motors, and chains were not the subject of Action's servicing and maintenance work nor were the fans a component of or secured to the rakes and counterweights. The fans and counterweights serve different purposes and function differently, although part of the cooling bed process. The fans and counterweights are not interconnected components and have separate lockouts.

According to the steel mill technician, there is no interconnection or sensor to make the fans operate when the counterweights are operating. There are no electrical connections between the fans and drive chains that tells the fans to turn on when the chain drives are on (Tr. 287). The fans are not part of a single integrated system such as the counterweights, drive shafts, drive motors, and chains which move the cooling bed up and down and the heated metal across the bed. The fans operated independently of the counterweights.

Despite the Secretary's attempt to characterize the cooling bed as one system, it is not "material" based on the language in OSHA's directive CPL 02-00-147 (November 11, 2008) (Exh. R-5). As shown by the directive, the LOTO standards do not apply to the counterweights because it was not the subject of Action's servicing of the fans and it functioned independently from and was not a sub-system of the fans being serviced. Chapter 1, IX. BB (p. 1-10) of the CPL

³ The steel mill written procedure showing the lockout of the fans was rejected at the hearing because it could not be authenticated. The date of the document was after the accident and the technician could not remember seeing or using the document (Exh. C-21B; Tr. 277, 327).

which cites *The Timken Company*, 20 BNA OSHC 1070 (No. 97-0970, 2003) as a reference,⁴ provides that:

the LOTO standard does not apply to equipment or machinery that is not the subject of the servicing and maintenance activity and that functions independently from, and is not a sub-system of, the machine/equipment being serviced or maintained. If authorized employees are exposed hazardous energy associated with such an adjacent machine/piece of equipment while performing servicing/maintenance work on an independent, unrelated machine/piece of equipment, an employer's obligations are established by Section 5(a)(1) of the OSH Act or other relevant standards, such as the Machine guarding (Subpart O) requirements" (Exh. R-5).

By its own language, OSHA's CPL limits the application of LOTO to a "subsystem of, the machine/equipment being serviced or maintained." The counterweights were not a sub-system of the fans. The fans were not an operating component of the counterweights.

In the *Timken* case, an employee was repairing a drive bar on the teeming car in a slot adjacent to the traverser pit. *Timken Co.*, 1998 CCH OSHD 31,688, p. 43,956-43,957 (No. 97-0970, 1998, ALJ). The traverser and the teeming car were designed to transport the steel from points in the plant. The employee was injured while servicing the teeming car when the traverser car, an independent motorized unit that assisted in moving the teeming car, moved past the slot in which the employee was working and amputated his feet. The teeming car was locked out but the traverser car was not. The ALJ found that LOTO did not apply because the traverser was not a component of the teeming car. They were not interconnected or appurtenant components of a machine or equipment. They functioned independently; the traverser only moved the teeming cars, which held the ingot molds, from station to station for various processes. Once the traverser had moved the teeming car into a slot, it moved on to another assignment. In the case at issue, the fans also functioned independently of the counterweights.

Also, it is noted that the Secretary in the LOTO standards uses the prepositions "on" or "of" when addressing the application of servicing and maintenance. See *i.e.* § 1910.147(a) and § 1910.147(c). The standard at issue, § 1910.147(f)(3)(ii)(D), prohibits employees from "working on the machine or equipment being serviced or maintained" before putting their locks on

⁴ The Review Commissioners disagreed on the appropriate disposition of the case and vacated the direction for review, allowing the ALJ decision to become a final order with no precedential value as an un-reviewed ALJ decision. *Timken Co.*, 20 BNA OSHC 1070, 1072 (No. 97-0970, 2003).

the gang lockbox. The use of such prepositions connote “belonging to or connected with” and “in contact with” the machine and equipment. The Secretary’s definition of “servicing and maintenance” and her language throughout the LOTO standards make it clear that the equipment must be connected with, or in contact with, the machine and equipment being serviced and maintained.

The preamble to the LOTO standard identifies seven typical accidents/hazards covered by LOTO and also shows the Secretary’s intent in applying LOTO. 54 FR 36644, 36,646 (September 1, 1989). The examples used by the Secretary are distinguishable from the circumstances in this case. For example, the conveyor in #2 was an operating component of the hogger upon which the work was being performed *i.e.* the adjacent conveyor fed the hogger during its operation. The hogger had been shut down, but the conveyor feeding the hogger had not been when the accident occurred. Similarly, the other examples show the servicing and maintenance work being performed on the machine and equipment when it was unexpectedly energized or started up. In the Secretary’s examples, the machines and equipment were more permanently interconnected in a single, integrated system distinctly different from the independently functioning fans and counterweights in this case.

The injury here resulted from an unguarded, adjacent counterweight and does not support a LOTO citation. The fans and counterweights operated separately with separate lockouts procedures. Action’s servicing and maintenance work was only on the fans, not the counterweights. The release of stored energy hazard from the counterweight may be covered, but was not alleged, by § 5(a)(1) of the Occupational Safety and Health Act (Act) or the machine guarding standards at 29 C.F.R. § 1910.211 *et seq.*

2. The Employees Were Not Servicing the Fans

It is undisputed that the Action employees were in the basement visually observing the fans to be replaced and discussing the work to be performed (Tr. 374, 397). The employees were no closer to the fans than 8 feet. The leadman testified that visual observation was an important part of replacing the fans (Tr. 416). The two employees were not working on or touching the fans. They were not exposed to the hazard of an unexpected energization, startup, or release of stored energy from the fans.

The Secretary argues that the Action employees were working. Their discussion about the fans to be replaced was “servicing and maintenance” work. OSHA defines “servicing and/or maintenance” in § 1910.147(b) as:

Workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the *unexpected* energization or startup of the equipment or release of hazardous energy.

Viewing a machine and equipment such as a fan may be considered an inspecting or setting up activity contemplated by the definition of “servicing and/or maintenance.” Such activities encompass preparation work. “Setting up” is defined as “any work performed to prepare a machine or equipment to perform its normal production operation.” § 1910.147(b). “Inspecting” is not defined by OSHA and, therefore, reference to a common definition is appropriate. Action does not dispute that its employees were authorized employees and replacing the fans is servicing and maintenance for the purpose of LOTO.

However, the critical part of the activity contemplated by OSHA’s definition of “servicing and/or maintenance” is whether the employee is exposed to an “unexpected energization, start up or equipment release of hazardous energy” from the machine and equipment. In this case, the Action employees were not in contact with the fans or within 8 feet of the fans. There is no showing that the leadman and apprentice were exposed to the unexpected energization or release of hazardous energy from the fans while engaged in their viewing and discussing activities.

Therefore, the two Action employees were not engaged in servicing and maintenance work when in the basement discussing their replacement work on the fans.

3. Action’s Claim that the Steel Mill Violated LOTO

According to steel mill procedure, only the steel mill technician had the authority to lock out the machines and equipment for the cooling bed. He was the LOTO authorized employee. The OSHA standard on group lockout procedure requires the authorized employee to “ascertain the exposure status of individual group members with regard to the lockout or tagout of the machine or equipment.” § 1910.147(f)(3)(ii)(B). The technician testified that when he initiated the mill lockout procedure, he did not know where the Action employees were located (Tr. 294-295).

Although the mill technician should not have locked out the counterweight without verifying the location of the employees, it was clearly his understanding that no employees would be in the basement in a zone of danger. Regardless, Action is not relieved of its responsibility to ensure its employees were safe from hazard. The leadman should not have gone into the basement without ensuring the cooling bed was locked out in accordance with the mills' procedures.

The Secretary failed to prove the applicability of the cited LOTO standard to the facts in this case. Even if the fans had been properly locked out before the accident occurred, it would not have prevented the counterweight's release of stored energy that fatally injured the apprentice. Although the court agrees that the Action employees were exposed to hazardous energy associated with the counterweight, the Secretary did not allege a violation under § 5(a)(1) of the Act or the machine guarding standards at 29 C.F.R. § 1910.211 *et seq.* Action's violation of §1910.147(f)(3)(ii)(D) is not established.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

ORDER

Based upon the foregoing decision, it is hereby ORDERED:

1. Citation No. 1, Item 1, alleged serious violation of § 1910.147(c)(7)(i), is withdrawn by the Secretary; and
2. Citation No. 1, Item 2, alleged serious violation of § 1910.147(f)(3)(ii)(D), is vacated and no penalty is assessed.

Date: May 10, 2013
Atlanta, Georgia

/s/ Ken S. Welsch
KEN S. WELSCH
Judge