UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD, ROOM 250
DENVER, COLORADO 80204-3582

SECRETARY OF LABOR, Complainant, v. QUEBECOR WORLD - SALEM DIVISION, and its successors Respondent, --- LOCAL 554-M, Graphic Communications International Union, Authorized Employee Representative.	OSHRC DOCKET NO. 01-0031

APPEARANCES:

For the Complainant:
Helen Schuitmaker, Esq., U.S. Department of Labor, Office of the Solicitor, Chicago, Illinois

For the Respondent:
Brent I. Clark, Esq., Seyfarth and Shaw, Chicago, Illinois

Before: Administrative Law Judge: James H. Barkley

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Quebecor World - Salem Division, and its successors (Quebecor), at all times relevant to this action maintained a place of business at 3935 Selmaville Road, Salem, Illinois, where it was engaged in commercial printing and related activities. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

Between June 5 and October 5, 2000, the Occupational Safety and Health Administration (OSHA) conducted an inspection of Quebecor's Salem plant. As a result of that inspection, Quebecor was issued citations alleging violations of the lockout/tagout standards at §1910.147 *et seq.* of the Act, together with proposed penalties. By filing a timely notice of contest Quebecor brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On June 5, 2001, a hearing was held in St. Louis, Missouri. The time allotted for submission of briefs has elapsed. Respondent has submitted its brief. Counsel for the Secretary has not submitted a

brief; however, as this judge does not believe briefs are necessary in this case, this matter is ready for disposition.

Alleged Violations

Serious citation 1, item 1 alleges:

29 CFR 1910.147(c)(5)(i): Locks, tags, chains, wedges, key blocks, adapter pins, self-locking fasteners, or other hardware were not provided by the employer for isolating, securing, or blocking of machines or equipment from energy sources:

> At the Bindery Department, the employer failed to provide suitable lockout/tagout hardware for operators of the Spiral Grip 8150 Strapper/Wrapper Machine.

Serious citation 1, item 2 alleges:

29 CFR 1910.147(c)(7)(i): The employer did not provide adequate training to ensure that employees required (sic) the knowledge and skills required for the safe application, usage and removal of energy control devices:

> At the Bindery Department, the employer failed to provide operators of the Spiral Grip 8150 Strapper/Wrapper Machine with adequate training in lockout/tagout. These operators are not knowledgeable of the methods and means necessary for the energy isolation and control for this machine.

Serious citation 1, item 3 alleges:

29 CFR 1910.147(d)(3): All energy isolating devices that were needed to control the energy to the machine or equipment was not physically located and operated in such a manner as to isolate the machine or equipment from the energy source:

> At the Bindery Department, operators required to clear unexpected jams or to replace plastic-wrap belonging to the Spiral Grip 8150 Strapper/Wrapper were not locating and disconnecting electrical and pneumatic energy sources prior to by-passing barrier guards and entering the danger zone of the machine.

Facts

The 8150 Strapper/Wrapper machine which is the subject of this citation is designed to place plastic strips around a pallet of magazine paper. The pallet is subsequently moved, via a conveyor belt, into the wrapper cage (Tr. 12, 18, 22; Exh. C-1). The wrapper portion of the machine consists of an overhead arm, which locks the pallet of paper into place, and a robotic arm that holds a roll of plastic film wrap (Tr. 18, 22, 166). When photoelectric cells in the wrapper cage detect a pallet in position, the arms engage; the wrapper arm rotates around the pallet, encasing the magazine paper in plastic wrap for shipping.

During the regular operation of the machine, its operator must routinely enter the cage to insert a new roll of plastic wrap [three or four times per 8 hour shift], or to re-thread the wrapper arm after the wrap has broken [up to 20 times per shift](Tr. 103-04, 169). Before entering the cage, the operator first moves a toggle switch on the control panel to switch the wrapper from auto to manual mode (Tr. 105). The wrapper assembly returns to its "home position" in front of the cage's gate (Tr. 122). Indicator lights on the control panel denote the machine's mode, and the operator hears the release of the pneumatics on the wrapper head assembly (Tr. 105, 154-55). The operator then presses the start/pause button, which drops the power to the arm's 1 horsepower drive motor (Tr. 155-56). In the manual mode, power continues to flow to a fractional horsepower motor that is used to drive the rollers in the arm assembly; the rollers can be operated independently by using a "jog" button on the wrapper head (Tr. 109, 156; R-11).

After pausing the wrapper, the operator goes to the gate and raises a pin which holds the gate in place. The gate swings out, breaking contact between a reflector on the gate and a photoelectric eye placed on the opposing side of the cage (Tr. 157-58). The wrapper will not operate if the photoelectric eye cannot "see" itself in the reflector (Tr. 114, 157-59). The operator changes the wrapper roll, if necessary. After changing the roll, or in the event of a break, the operator pulls out three or four feet of plastic (Tr. 108). The operator rolls the plastic film into a tail, feeds it into the wrapper head assembly and presses the jog button to advance the wrap through the rollers (Tr. 108-11). The operator exits the cage, locks the gate to align the photoelectric interlock, and returns the toggle switch to the automatic mode (Tr. 118). After he hears the pneumatics re-engage, the operator presses the start button (Tr. 118-19). An audible alarm sounds, and the wrapper arm engages, slowly gaining speed (Tr. 120, 141).

Kevin Clark, a wrapper operator for Quebecor (Tr. 101-03), testified that the gate cannot be closed while the operator is changing a roll, as the operator must stand in the doorway of the cage (Tr. 123-24, 126). The operator does step approximately four feet into the cage to feed the wrap through the rollers; however, it takes less than a minute to re-load the film (Tr. 123-24). Clark testified that there is no way for the gate, which is six to seven feet tall and six to seven feet wide, to swing shut accidentally while the operator is in the cage (Tr. 126). The gate must be lifted, moved, and placed back into the closed position (Tr. 126).

Paul McDaniels, Quebecor's director of engineering (Tr. 149), testified that it is standard practice to change the film roll between pallets (Tr. 173). If photoelectric eyes in the cage do not detect a pallet in place, the wrapper arm will not engage (Tr. 121). Moreover, there is a U shaped PVC bumper on the front of the wrapper arm intended to detect obstructions in the cage. Should the bumper

come in contact with an employee in the cage, it would be deflected, breaking the beam between a photoelectric eye mounted inside the bumper, the "downright eye," and shutting the wrapper down (Tr. 143, 164-67; Exh. R-11). Finally, if any of the photoelectric eyes should fail, the wrapper will not work (Tr. 162).

Discussion

The lockout/tagout standard at §1910.147 *et seq.* provides:

> (a) *Scope, application and purpose*–(1) *Scope.* (i) This standard covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.. . .
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> * * *
>
> (2) *Application.* (i) This standard applies to the control of energy during servicing and /or maintenance of machines and equipment.
>
> (ii) Normal production operations are not covered by this standard (See subpart O of this part). Servicing and/or maintenance which takes place during normal production operations is covered by this standard only if;:
>
> (A) An employee is required to remove or bypass a guard or other safety device;. . .

Complainant maintains that an operator must bypass the interlock on the wrapper cage to change the roll of plastic or to rethread broken wrap. According to Complainant's Compliance Officer (CO), Leland Darrow, once in the cage, the operator is in danger of being struck by the rotating arm of the wrapper (Tr. 25-26). Quebecor argues that, given the configuration of the wrapper cage, and the proximity and complexity of its controls, there is no possibility of the wrapper being unexpectedly energized while the operator is in the cage. CO Darrow admitted that in order for the wrapper to become reenergized, the gate to the wrapper cage would have to be closed, and an employee other than the operator would have to deliberately restart the machine (Tr. 33, 170). Darrow further admitted that this scenario was "far fetched" (Tr. 76).

The record amply demonstrates that there could be no *unexpected* activation of the wrapper mechanism while the operator is inside the wrapper cage changing a roll or rethreading wrap. The evidence establishes that the wrapper could only be reactivated by a second employee deliberately taking the machine out of its "manual" mode and restarting it. No one could complete the multi-step start up procedure, without closing the cage's gate, located only a few feet from the operator servicing the wrapper. The closing of the gate, the start of the pneumatics, and the audible alarm would, of necessity, alert the operator to the wrapper's impending start-up. Because the operator would inevitably become aware of this activity, the machine's startup would not be unexpected. *See, General*

Motors Corp., Delco Chassis Division, 17 BNA OSHC 1217, 1995 CCH OSHD ¶30,793 (Nos. 91-2973, 91-3116 & 91-3117, 1995).

In addition, Quebecor asserts that replacing rolls of plastic wrap, and addressing wrap breaks, fall under an exception to ¶(a)(2)(ii) for minor servicing, and are not subject to the lockout/tagout standard. The cited exception states:

> NOTE: *Exception to paragraph (a)(2)(ii):* Minor tool changes and adjustments, and other minor servicing activities, which take place during normal production operations, are not covered by this standard if they are routine, repetitive, and integral to the use of the equipment for production, provided that the work is performed using alternative measures which provide effective protection (See subpart O of this part).

The Commission has held that, in order to show that an operation falls within the exception to ¶(a)(2)(ii), the employer must demonstrate that the disputed adjustments are minor, that they take place during normal production operations, and that effective alternative protection is provided during the operation. *Westvaco Corporation*, 16 BNA OSHC 1374, 1993 CCH OSHD ¶30,201 (No. 90-1341, 1993).

The record shows that changing rolls of film wrap, and rethreading film into the wrapper rollers are routine adjustments, which the wrapper operator must perform during normal production to ensure the proper operation of the machine. Such adjustments involve no tools, and take up only moments of the operator's time. They clearly constitute "minor" servicing. The evidence also establishes that the multiple photo-electric eyes in the wrapper cage provide effective alternative protection by detecting the presence of the operator in the cage, and preventing the start up of the wrapper.

Quebecor has established not only that the lockout/tagout provisions of §1910.147 *et seq.* are inapplicable here, but that, even if regulated under the lockout/tagout standard, the cited operations fall under the exception to ¶(a)(2)(ii). The citation in this matter will be vacated.

ORDER

1. Citation 1, items 1, 2 and 3, alleging violation of §1910.147 *et seq.* are VACATED.

/s/
James H. Barkley
Judge, OSHRC

Dated: August 1, 2001