

1 NEVADA OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW BOARD
3

4 CHIEF ADMINISTRATIVE OFFICER
5 OF THE OCCUPATIONAL SAFETY AND
6 HEALTH ADMINISTRATION, DIVISION
7 OF INDUSTRIAL RELATIONS OF THE
8 DEPARTMENT OF BUSINESS AND
9 INDUSTRY,

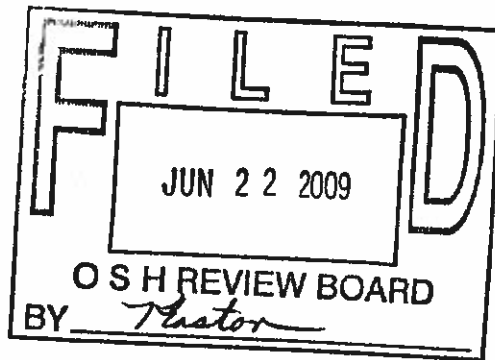
Docket No. LV 09-1361

Complainant,

vs.

10 HANSEN MECHANICAL CONTRACTORS, INC.,

11 Respondent.



12
13 DECISION

14 This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND**
15 **HEALTH REVIEW BOARD** at a hearing commenced on the 13th day of May, 2009,
16 in furtherance of notice duly provided according to law, MR. JOHN WILES,
17 ESQ., counsel appearing on behalf of the Complainant, **Chief**
18 **Administrative Officer of the Occupational Safety and Health**
19 **Administration, Division of Industrial Relations (OSHA)**; and MR. JOHN
20 LAVERY, ESQ., appearing on behalf of Respondent, **Hansen Mechanical**
21 **Contractors, Inc.**; the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW**
22 **BOARD** finds as follows:

23 Jurisdiction in this matter has been conferred in accordance with
24 Nevada Revised Statute 618.315.

25 The complaint filed by the OSHA sets forth allegations of violation
26 of Nevada Revised Statutes as referenced in Exhibit "A," attached
27 thereto.

28 Counsel for the parties stipulated to admissibility of the evidence

1 in Complainant's Exhibits A and B, and Respondent's Exhibit 1.

2 Citation 1, Item 1(a) charges a violation of 29 CFR 1926.102(a)(1).
3 Complainant alleges the respondent employer failed to provide
4 appropriate eye protection equipment at a work site in Las Vegas,
5 Nevada. Employees in the immediate vicinity and helping with arc
6 welding operations wore only safety glasses with clear lenses. The
7 violation was classified as serious due to the potential for serious eye
8 injury to three employees working in the vicinity of welding arc rays
9 and cutting operations. The violation was cited as a "Repeat/Serious"
10 violation based upon a previous violation for employee exposure to
11 similar hazard conditions. The proposed penalty for the Repeat/Serious
12 violation is in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS
13 (\$7,500.00).

14 Citation 2, Item 1 charges a violation of 29 CFR 1926.403(b)(2).
15 Complainant alleges respondent employer failed to ensure equipment was
16 installed and used in accordance with listing and labeling. Extension
17 cord wire with the connective end components removed was "hardwired" to
18 supply electrical power. The violation was classified as "Other" due
19 to the degree of potential injury from exposure to electrical hazards
20 in the event of failure of the equipment utilized contrary to the
21 listing/labeling restrictions. The violation was cited as "Repeat" due
22 to a previous violation for exposure to similar hazards. The proposed
23 penalty for the Repeat/Other violation is in the amount of TWO HUNDRED
24 DOLLARS (\$200.00).

25 Citation 3, Item 1(a) charges a violation of 29 CFR 1926.351(b)(4).
26 Complainant alleges damaged electrical cables with exposed bare
27 conductors were used in the course of welding operations in violation
28 of the standard. The violation was classified as "Serious" due to the

1 exposure to possible serious injuries or death. The proposed penalty
2 for the Serious violation is in the amount of ONE THOUSAND TWO-HUNDRED
3 SEVENTY-FIVE DOLLARS (\$1,275.00).

4 Citation 3, Item 1(b) charges a violation of 29 CFR 1926.351(e).
5 Complainant alleges the employer failed to shield arc welding and
6 cutting operations to protect employees and other persons working in the
7 vicinity of the direct arc rays whenever practicable. The violation was
8 classified as Serious based upon at least two employees exposed to the
9 potential for eye injury from the unshielded operations. The proposed
10 penalty was grouped and included with that set forth at Citation 3, Item
11 1(a).

12 Citation 4, Item 1 charges a violation of 29 CFR 1926.300(a).
13 Complainant alleges the respondent employer failed to ensure power tools
14 were maintained in a safe condition. A band saw was missing the ground
15 pin. An employee was exposed to possible injuries in the event of
16 potential use of the improperly maintained tool. The violation was
17 classified as "Other" and the proposed penalty grouped with additional
18 violations set forth at Citation 4.

19 Citation 4, Item 2(a) charges a violation of 29 CFR
20 1926.405(a)(2)(ii)(1). Complainant alleges the respondent employer
21 failed to ensure flexible extension cords were protected from damage.
22 An extension cord was wired to supply power between outlet boxes and
23 pass through an opening from the upper to the lower sections of the job
24 box without any protection provided. Further, an extension cord used
25 to supply power to a heavy duty portable outlet for charging batteries,
26 passed through an opening from the upper to lower sections of the job
27 box without any protection provided. The violation was classified as
28 "Other" based on exposure to potential serious injuries from electrical

1 shock hazards. The grouped penalty was assessed at EIGHT HUNDRED FIFTY
2 DOLLARS (\$850.00).

3 Citation 4, Item 2(b) charges a violation of 29 CFR 1926.405(b)(2).
4 Complainant alleges the employer respondent failed to insure an
5 electrical outlet box mounted to the side of a foreman's job box was
6 covered in accordance with the standard. The employee was exposed to
7 possible electrical shock hazards. The violation was classified as
8 "Other" and the penalty grouped with that set forth at Citation 4, Item
9 2(a).

10 Citation 4, Item 2(c) charges a violation of 29 CFR
11 1926.405(g)(2)(iv). Complainant alleges the employer failed to ensure
12 flexible electrical extension cords were equipped with appropriate
13 strain relief. The violation was classified as "Other" due to the
14 potential exposure to injury. The proposed penalty was grouped with
15 that set forth at Citation 4, Item 2(a).

16 Citation 4, Item 2(d) charges a violation of 29 CFR 1926.416(e)(1).
17 Complainant alleges the employer failed to prevent the use of worn or
18 frayed electrical cords at the work site. Damaged cords were found in
19 use in three instances; two to job boxes in use on the site and one to
20 power a DeWalt drill. The violation was classified as "Other." Two
21 employees and two foremen were exposed to potential electrical shock
22 hazards by utilizing equipment which included the cord with damaged
23 sheathing. The proposed penalty was grouped with that set forth at
24 Citation 4, Item 2(a).

25 Counsel for Chief Administrative Officer presented evidence and
26 testimony with regard to the alleged violations. Safety and Health
27 Representative (SHR) Nicholas LaFronz testified that he conducted a
28 comprehensive inspection of the respondent work site at the Cosmopolitan

1 Hotel project located in Las Vegas, Nevada commencing on or about July
2 8, 2008. Respondent is a Nevada employer engaged in plumbing, heating
3 and air conditioning work. The SHR testified he observed an employee
4 of respondent engaged in welding approximately eight feet above floor
5 level using an arc welder and assisted by two other employees working
6 in proximity. The welder was equipped with an appropriate safety hood
7 device; however, the helping employees wore only safety glasses with
8 clear lenses. Mr. LaFronz determined the helper employees eye
9 protection to be inappropriate for protection from the work conditions
10 observed. The SHR inquired of the helper employees whether they were
11 provided with more protective eye protection equipment on site in
12 furtherance of the requirements of the standard. He testified the
13 employees could not immediately locate the appropriate protective eye
14 wear until same were produced later by the company safety representative
15 from a company job box. The SHR testified he saw two instances of
16 violation; the first occurring on July 9, 2008 and then on approximately
17 July 17, 2008. He classified the violation as a Repeat offense after
18 finding a previous violation occurred in March of 2008 involving
19 exposure to similar hazardous conditions.

20 Mr. LaFronz identified various documentary and photographic
21 exhibits from complainant's Exhibits A and B. He described the type of
22 glasses he determined to be required in accordance with the tables
23 referenced at Exhibit A, pages 33 and 34. Mr. LaFronz testified the
24 penalty calculation was based upon the exposure to be less than life
25 threatening, but sufficient to result in serious injury to vision. No
26 credits were applied to the penalty proposed due to the classification
27 as a "Repeat" offense.

28 Respondent counsel conducted cross-examination. SHR LaFronz

1 testified the welder and a helper employee wore adequate eye protection
2 but two assisting employees were not wearing that which he determined
3 appropriate for the subject work. Mr. LaFronz relied upon Exhibit A,
4 pages 35 through 39 as well as his understanding of the hazardous risk
5 exposure in determining the violations to be serious. Counsel directed
6 Mr. LaFronz to complainant's Exhibit A, page 38 which referenced eye
7 protection for persons in the vicinity of welding operations, including
8 welder helpers who have an open line of sight. Mr. LaFronz acknowledged
9 the reference at page 38 and counsel's identification of the provision
10 which provided that persons in the vicinity should consider wearing
11 appropriate safety equipment, such as "safety glasses . . ." Counsel
12 further directed Mr. LaFronz to the exhibit reference for momentary
13 viewing of arc welding, which does not exceed retinal exposure dangers,
14 unless staring at an open arc occurs. The SHR acknowledged both exhibit
15 references and responded that the totality of work site facts and
16 circumstances must be considered in determining compliance. He
17 reaffirmed his finding there to be a violation of the standard based
18 upon the use of only clear lens safety glasses by the helper employees.
19 Mr. LaFronz acknowledged there was appropriate eye protection equipment
20 on the work site as required by the standard but not immediately located
21 by the employees when he questioned them. He testified the eye
22 protection equipment he requested could not be produced until
23 approximately one hour which was forty minutes from the time of his
24 request.

25 Counsel for the complainant presented further evidence and
26 testimony from SHR LaFronz with regard to Citation 2, Item 1, involving
27 the alleged "hardwiring" of extension cords and the use of a relocatable
28 power tap (computer strip) in violation of the standard. He identified

1 photographic evidence depicting the alleged violations. Mr. LaFronz
2 testified that both coupler ends of the extension cord had been removed
3 and the wire portion then "hardwired" in place contrary to labeling and
4 listing under the standard. He classified the violation as "Other" and
5 assessed a penalty in the amount of Two Hundred Dollars (\$200.00). No
6 credits were applied based upon same being further classified as a
7 "Repeat" due to a previous similar violation.

8 On cross-examination, Mr. LaFronz testified in response to counsel
9 that it would be non violative if an extension cord male and female ends
10 were clipped off and wire of a proper gauge used for hardwiring
11 purposes. Mr. LaFronz admitted he was unable to confirm any test lab
12 or other indications for the wire utilized and he did not test the wire
13 for load capacity or find any labeling or listing indications on same.

14 At Citation 3, Item 1(a), Mr. LaFronz testified he observed an
15 employee working from a step ladder while near a damaged electrical
16 cable and exposed conductors. He referenced photographic Exhibit B,
17 page 60, depicting the exposure and potential for serious injury should
18 the employee come in contact with the damaged electrical cables. He
19 notified foreman Randy Book of the hazardous conditions. Mr. Book
20 indicated that to him someone must have run over those this morning.
21 Mr. LaFronz classified the violation as "Serious" due to the potential
22 for serious injury or death from electrical shock.

23 Complainant presented further testimony by Mr. LaFronz regarding
24 Citation 3, Item 1(b). The SHR determined that welding operations were
25 not shielded properly in accordance with the standard. He observed a
26 respondent employee welder working from a ladder approximately eight
27 feet above grade level, without protection to others from arc welding
28 exposure. The shield screening was only approximately six feet high.

1 He testified there were no shields on site to protect other employees
2 in the area. He further testified that he considered "practicability"
3 of use based upon the terms of the standard, but determined different
4 types of shields were readily available in the industry. Mr. LaFronz
5 testified there was a general foreman on the site to establish employer
6 notice of the improper use of the six foot shielding and hazard exposure
7 accordingly.

8 At Citation 4, respondent counsel stipulated to violations at Items
9 1, 2(a), 2(c) and 2(d). Counsel for complainant presented evidence and
10 testimony with regard to Citation 4, Item 2(b). SHR LaFronz testified
11 he cited the employer for failure to ensure that an outlet box was
12 equipped with a cover as required by the standard. He noted an
13 electrical outlet mounted to the side of a foreman's job box which did
14 not bear a cover. The outlet box was depicted in a photograph at
15 complainant's Exhibit B. On cross-examination, SHR LaFronz testified
16 that the electrical outlet did bear a face plate but no cover over the
17 receptacle as demonstrated at Exhibit B, page 51. He testified that the
18 penalties assessed at Citation 4 were grouped and classified as "Other,"
19 due principally to the lack of severity for each violation.

20 Counsel for respondent presented evidence and testimony through two
21 witnesses. Ms. Merilee Burton identified herself as the mechanical
22 safety manager for the respondent and present during the inspection.
23 She testified as to Citation 1, Item 1 that all of the respondent
24 employees were provided appropriate eye protection the welder was
25 equipped with a hood, and the helper employees wore appropriate safety
26 glasses. She testified that responsible job foremen tour the various
27 work projects but do not remain on a particular job site for more than
28 20 or 30 minutes per day. Ms. Burton testified the company provides

1 appropriate eye protection for all employees and locates the equipment
2 in "gang boxes" on each of the ten floors of the construction site. Ms.
3 Burton testified that she accompanied SHR LaFronz in his inspection of
4 each of the gang boxes. She testified that the delay in helper
5 employees finding the particular type welding goggles required by the
6 SHR during the time of the inspection was due to the welding foreman not
7 being immediately available. Ms. Burton testified that actual location
8 of the eye protection provided by the employer as required by the SHR
9 did not take as long as the SHR testified (one hour). She further
10 testified that the eye wear required by Mr. LaFronz was on site in the
11 gang boxes and located in a reasonable time. She further testified
12 there was no violation at Citation 1, Item 1. The standard permitted
13 use of the safety glasses worn as determined appropriate by the trained
14 union employees. Other eye protection, including that required by the
15 SHR was observed by she and the SHR in the employee gang boxes located
16 on each floor of the construction site. She also testified that the
17 gang boxes on each floor included a list on the lid of everything in the
18 box so all employees could readily find what was included in the gang
19 box.

20 Ms. Burton testified as to Citation 2, Item 1 regarding hard wiring
21 of extension cord wire sections. She stated the wiring work had been
22 performed by licensed electricians who work for Dyna Electric, a company
23 associated with that of the respondent.

24 Ms. Burton testified as to Citation 3, Item 1(a) that the
25 identified damaged electrical cables could have resulted from drywall
26 and other materials being hauled by pallet jacks moving about the work
27 area, as well as a flat car on the floor which was heavily loaded.

28 On cross-examination Ms. Burton testified that the potential for

1 employee exposure depicted in the photographs at complainant's Exhibit
2 B, pages 14 and 15, did not require shielding because employees were not
3 ". . . in eye shot of the welding operations . . ." She further
4 testified that respondent employees are trained to not look directly at
5 arc flashes so safety glasses are sufficient unless employees are
6 actually working on the welding operations and required to look at the
7 point of arc contact. She further responded that the damaged cable
8 issue at Citation 3, Item 1(a) must have occurred earlier that morning
9 because employees are required to inspect the cables daily or every time
10 they commence working with them.

11 Respondent presented further testimony from Ms. Sheila Beddinger,
12 the safety director of respondent. Ms. Beddinger testified that after
13 having received an "Other" citation in March for a different standard
14 but based on eye exposure, special additional training and assurances
15 were effectuated. She stated that training occurred for use of color
16 cards to establish appropriate conditions for eye protection in
17 particular situations and included in each employee gang box. Ms.
18 Beddinger further testified that all employees are job safety oriented,
19 their training is reviewed and each is tested to assure full
20 understanding. Ms. Beddinger responded to questions with regard to
21 assurance of employee background training and understanding of the
22 exposure to hazards involved in welding operations. She testified that
23 all of the employees subject of the citations, including the helpers
24 were qualified as certified welders, and trained through the union
25 program.

26 At the conclusion of the hearing counsel for complainant and
27 respondent presented closing arguments.

28 The complainant argued the facts established a violation at

1 Citation 1, Item 1 and classification as a Repeat/Serious violation.
2 He directed reference to Exhibit B, page 14, to establish the facts of
3 violation through the photograph depicting lack of shielding screens in
4 place and employees exposed to the potential for eye injury. Counsel
5 argued that use of safety glasses with #5 lenses even though employees
6 may be trained to look away or cover their eyes, does not constitute
7 compliance with the cited standard. Counsel further argued that at
8 Citation 2, Item 1 an extension cord was proven to be in use although
9 modified by cutting off the male and female ends but still prohibited
10 by the standard. He asserted that the standard did not intend to allow
11 soft covered extension cords to be used for hardwire application.

12 At Citation 3, Item 1(a) counsel argued that frayed conductor
13 cables present a serious danger, particularly when connected to a
14 welding machine of high voltage. The damaged cable lead near the ladder
15 as depicted in the exhibit was egregious and constituted a condition
16 very easy for the respondent to have observed and corrected to avoid
17 employee exposure to electrocution. Employer knowledge was imputed by
18 the involvement of the foreman in the subject violation.

19 At Citation 3, Item 1(b) counsel argued that respondent could not
20 ignore a standard simply because height of the welding point was over
21 six feet which is a standard size for manufactured shielding. He argued
22 there was no evidence of impossibility of compliance or lack of
23 practicability.

24 At Citation 4, Item 2(b) counsel argued the admitted photographic
25 evidence clearly identifies the violation and speaks for itself.

26 Respondent counsel argued that every employee on the job site
27 involved in the citations was safety trained as a union certified
28 welder. He emphasized that the employer was cited for not **providing**

1 adequate eye protection as opposed to same not being worn on the job
2 site. He argued the SHR and respondent safety representative both
3 confirmed that the eye wear required by the SHR was on the job site in
4 the gang boxes. He asserted that trained union employees wore safety
5 glasses because they knew when to use those as opposed to a hood or
6 other eye protection. He further argued that all employees performing
7 welding wore appropriate welding hoods.

8 At Citation 2 counsel argued there is nothing in the standard that
9 prevents use of an extension type cord if the ends are clipped off and
10 only the wire remains. It is no longer an "extension cord" so there can
11 be no violation of the standard. There was no evidence of testing or
12 labeling on the subject wire submitted by the SHR to establish the
13 capacity of the wire or listings printed on same which prevented use in
14 a hardwiring condition.

15 At Citation 3, Item 1(a) counsel argued that two employees
16 testified the cable was okay in the morning but as soon as deficiencies
17 discovered, work was stopped and same were repaired. He further argued
18 the employer had no notice of the deficiency, but when it did, same was
19 promptly corrected.

20 At Citation 3, Item 1(b) counsel argued the evidence showed the
21 subject welding work at an eight-foot height made it impractical for the
22 shields on site to fully cover the operations. He noted respondent's
23 witness, Ms. Beddinger, testified that while she personally would have
24 put up the shields, no exposure to employees occurred under the
25 circumstances because of surrounding walls on two sides and only trained
26 welder employees passing by who knew how to shield their eyes but chose
27 to wear plain safety glasses as opposed to going to the gang box and
28 obtaining the lenses provided by the employer. He further argued that

1 the safety glasses worn by the employees subject of citation are
2 recognized as acceptable eye protection in complainant's Exhibit A, page
3 38.

4 The board reviewed the evidence, testimony, standards cited,
5 working conditions, and noted particularly the exhibits presented by
6 both counsel.

7 At Citation 1, Item 1, the employer was cited for a violation of
8 29 CFR 1926.102(a)(1). The standard provides:

9 "Employees shall be **provided** with eye and face
10 protection equipment when machines or operations
11 present potential eye or face injury from physical,
12 chemical, or radiation agents." (emphasis added)

13 Respondent witnesses testified the eye wear requested by the SHR
14 was provided in the employee gang boxes by the employer on each of the
15 floors of the construction project site. The testimonial evidence from
16 both the SHR and employer safety representative was that the requested
17 appropriate eye protection was in the gang box. Affected employees were
18 union welders trained to understand eye hazards. The employer was not
19 cited for maintaining other than an adequate safety program. All
20 welders were observed by the SHR wearing protective hoods during welding
21 operations. The helpers, who were also certified union welders, wore
22 safety glasses at the time of the citation. OSHA did not cite the
23 respondent for a violation of 29 CFR 1910.252 or related standard for
24 any failure to **wear** appropriate personal protective equipment.

25 At Citation 2, Item 1, the facts and evidence did not demonstrate
26 that actual "extension cords" were utilized in violation of the standard
27 as cited. The undisputed facts and evidence established there were no
28 male or female connection receptacles on the ends of the wire which was
"hardwired" into the foreman job boxes as referenced in the citation at

1 sub-items 1 and 2. Further there were no facts of violation with regard
2 to the power tap. The SHR did not testify, nor was there any evidence
3 produced, to establish the lack of suitability of the wire sections to
4 support the capacity for the applied use. The wire was no longer an
5 "extension cord" once the ends were removed and wire sections then
6 hardwired in place. There was no evidence or testimony of any "listing
7 or labeling" on the wire to establish lack of load capacity,
8 restrictions, or prohibited use of the wire without the end receptacles
9 attached.

10 At Citation 3, Item 1(a), the facts and photographic exhibits
11 clearly demonstrate a bare conductor in close proximity of a ladder
12 utilized by an employee of respondent. There was no sworn testimony
13 that the cord was inspected in the morning to support a purported
14 foreman's comment that the damaged cord must have been recently "run
15 over" and damaged in the morning after an inspection. The evidence
16 further demonstrated that pallet jacks and/or other heavy equipment that
17 might have been the cause of damage to the cords were not in use at the
18 vicinity of the cited damaged cord, but rather operated in a different
19 section of the work site.

20 At Citation 3, Item 1(b), the standard cited provides in pertinent
21 part:

22 "Shielding. **Whenever practicable**, all arc welding
23 and cutting operations shall be shielded by
24 noncombustible or flameproof screens which will
25 protect employees and other persons working in the
26 vicinity from the direct rays of the arc."
27 (emphasis added)

28 From the photographs in evidence, testimony describing the work
tasks, and the non steel erection nature of the business conducted by
the respondent employer, it appeared the welding portion of the employee

1 work involved less time devoted to welding than hanging and installation
2 of metal pipe. The SHR testimony was speculative that special sized
3 shielding could be located on the internet and readily purchased. The
4 testimony was that any shields on site were a height of six feet but the
5 work underway required welding a particular pipe in place at a height
6 of over six feet. Pictorial evidence and credible testimony reflected
7 six foot shielding was on the work site. The photographic depiction of
8 the cited work performed by trained certified welder employees
9 demonstrated the welder using a hood, and helpers wearing safety glasses
10 and/or using their hand to avoid the arc rays. Complainant's Exhibit
11 A, page 38, confirmed that the helper employees could be sufficiently
12 protected by safety glasses under appropriate circumstances. The
13 photographs depicted a work site and task reasonably showing a lack of
14 **practicability** to erecting specialty shielding in a configuration where
15 actual welding work may have been brief or secondary to the overall work
16 task.

17 At Citation 4, the board confirmed the stipulation of counsel for
18 admission of violations of Items 1, 2(a), 2(c) and 2(d). The board in
19 examining the pictorial exhibit as to Citation 4, Item 2(b), found
20 insufficient facts to support violation of the cited standard. The
21 electrical box depicted in the photographs was **covered** with a "face
22 plate" to prevent contact with any bare wiring around the receptacle.
23 The lack of a cover over the electrical box and face plate is not
24 violative of the standard.

25 In all proceedings commenced by the filing of a
26 notice of contest, the burden of proof rests with
the Administrator. N.A.C. 618.788(1).

27 All facts forming the basis of a complaint must be
28 proved by a preponderance of the evidence. Armor
Elevator Co., 1 OSHC 1409, 1973-1974 OSHD ¶16,958

1 (1973).

2 To prove a violation of a standard, the Secretary
3 must establish (1) the applicability of the
4 standard, (2) the existence of noncomplying
5 conditions, (3) employee exposure or access, and
6 (4) that the employer knew or with the exercise of the
7 reasonable diligence could have known of the
8 violative condition. See Belger Cartage Service,
9 Inc., 79 OSAHRC 16/B4, 7 BNA OSHC 1233, 1235, 1979
10 CCH OSHD ¶23,400, p.28,373 (No. 76-1948, 1979);
11 Harvey Workover, Inc., 79 OSAHRC 72/D5, 7 BNA OSHC
12 1687, 1688-90, 1979 CCH OSHD 23,830, pp. 28,908-10
13 (No. 76-1408, 1979); American Wrecking Corp. v.
14 Secretary of Labor, 351 F.3d 1254, 1261 (D.C. Cir.
15 2003).

16 A respondent may rebut allegations by showing:

- 17 1. That the standard was inapplicable to the
18 situation at issue;
- 19 2. That the situation was in compliance; or lack
20 of access to a hazard. See, Anning-Johnson
21 Co., 4 OSHC 1193, 1975-1976 OSHD ¶ 20,690
22 (1976).

23 A "serious" violation is established in accordance with NRS
24 618.625(2) which provides in pertinent part:

25 . . . a serious violation exists in a place of
26 employment if there is a substantial probability
27 that death or serious physical harm could result
28 from a condition which exists or from one or more
practices, means, methods, operations or processes
which have been adopted or are in use at that place
of employment unless the employer did not and could
not, with the exercise of reasonable diligence,
know the presence of the violation.

29 Based upon the above and foregoing, it is the decision of the
30 **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** that no violation of
31 Nevada Revised Statutes did occur as to Citation 1, Item 1, Citation 2,
32 Item 2, Citation 3, Item 1(b) and Citation 4, Item 2(b). The violations
33 charged are hereby dismissed and the assessed penalties associated with
34 same denied.

35 It is the further decision of the Board that violations did occur

1 as to Citation 3, Item 1(a) and Citation 4, Item 1, 2(a), 2(b), 2(c) and
2 2(d). The assessed grouped penalty in the total amount of TWO THOUSAND
3 ONE HUNDRED TWENTY FIVE DOLLARS (\$2,125.00) is confirmed.

4 The Board directs counsel for the Respondent to submit proposed
5 Findings of Fact and Conclusions of Law to the **NEVADA OCCUPATIONAL**
6 **SAFETY AND HEALTH REVIEW BOARD** and serve copies on opposing counsel
7 within twenty (20) days from date of decision. After five (5) days time
8 for filing any objection, the final Findings of Fact and Conclusions of
9 Law shall be submitted to the **NEVADA OCCUPATIONAL SAFETY AND**
10 **HEALTH REVIEW BOARD** by prevailing counsel. Service of the Findings of
11 Fact and Conclusions of Law signed by the Chairman of the **NEVADA**
12 **OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** shall constitute the Final
13 Order of the **BOARD**.

14 DATED: This 22nd day of June, 2009.

15 NEVADA OCCUPATIONAL SAFETY AND HEALTH
16 REVIEW BOARD

17 By /s/
18 JOHN SEYMOUR, Chairman