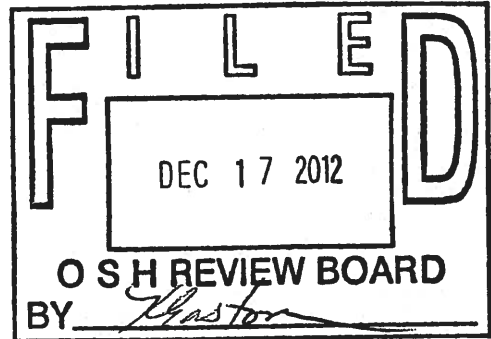


1 NEVADA OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW BOARD
3

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 13-1617



Complainant,

vs.

10 BERGELECTRIC CORP.,

Respondent.

11
12
13 **DECISION**

14 This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND**
15 **HEALTH REVIEW BOARD** at a hearing commenced on the 14th day of November,
16 2012, in furtherance of notice duly provided according to law, MR.
17 MICHAEL TANCHEK, ESQ., counsel appearing on behalf of the Complainant,
18 **Chief Administrative Officer of the Occupational Safety and Health**
19 **Administration, Division of Industrial Relations (OSHA)**; and MR. ROBERT
20 PETERSON, ESQ., appearing on behalf of Respondent, **BERGELECTRIC CORP**;
21 the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** finds as follows:

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

24 The complaint filed by the OSHA sets forth allegations of violation
25 of Nevada Revised Statutes as referenced in Exhibit "A", attached
26 thereto. The alleged serious violations in Citation 1, Items 1a through
27 1c reference, respectively, 29 CFR 1926.501(b)(4), 29 CFR 1926.501(c)(1)
28 and 29 CFR 1926.1053(b)(16). The complaint further sets forth a

1 regulatory violation at Citation 2, Item 1, NRS 618.376(1).

2 At Citation 1, Item 1a, the employer was charged with exposure of
3 employees to serious injury from a potential fall through an unguarded
4 hole cut in a roof deck. An extension ladder was positioned through the
5 hole for access to a decked roof level. The alleged violation was
6 classified as "Serious" and a grouped penalty proposed in the amount of
7 TWO THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS (\$2,275.00).

8 Citation 1, Item 1b, referenced 29 CFR 1926.501(c)(1). The
9 employer was charged with exposing employees to a serious injury from
10 rolling or falling objects. A 30x36 inch hole cut for access to a roof
11 deck level was not protected by use of toeboards, screens, guardrails,
12 or other preventative measures. Employees utilizing an extension ladder
13 or working below were exposed to injury from possible rolling or falling
14 objects. The violation was classified as "Serious" and a zero penalty
15 proposed based upon the grouped penalty at Item 1a.

16 Citation 1, Item 1c, referenced 29 CFR 1926.1053(b)(16). The
17 employer was charged with exposing employees to a fall hazard of
18 approximately 3.5 feet above the ground level from a damaged rung on an
19 extension ladder. The violation was classified as "Serious" with no
20 penalty proposed based upon the grouped penalty assessed at Item 1a.

21 Citation 2, Item 1, referenced NRS 618.376(1). The employer was
22 charged with failure to sign one of the documents submitted for review
23 during the comprehensive inspection. The violation was classified as
24 "Regulatory" and a zero penalty proposed based upon the grouped penalty
25 at Citation 1, Item 1a.

26 Complainant and respondent counsel stipulated to the admission in
27 evidence of complainant's Exhibits 1, 2, 3 and 4. Counsel for the
28 complainant introduced testimony and evidence from Certified Safety and

1 Health Officer (CSHO) Virginia Wicklund.

2 Ms. Wicklund identified the complainant evidence package at
3 Exhibits 1, 2, 3 and 4, and made reference to her narrative and
4 investigative reports at Exhibit 1. Ms. Wicklund testified that she
5 conducted a comprehensive worksite inspection on May 9, 2012. The
6 comprehensive inspection resulted in citations issued to the general
7 contractor M & H Enterprises, dba Martin Harris Construction, and two
8 subcontractors including respondent. The respondent here, Bergelectric
9 Corp., was an electrical subcontractor on the same project and cited for
10 exposing its employees to similar hazardous conditions as those found
11 in the M & H Enterprises case previously heard by this review board.

12 At Citation 1, Item 1a, CSHO Wicklund testified she observed an
13 unprotected opening or hole in the roof structure exposing employees to
14 a potential fall hazard. She determined respondent employees were
15 directly exposed to the observed hazardous conditions based upon her
16 interviews with respondent employees Mr. Aaron Barnum, the respondent
17 foreman, and Mr. Brandon Koss as reported at Exhibit 1. She testified
18 in support of her serious classification of the violation by describing
19 the kind of injuries that would occur from a fall through the roof hole
20 opening or off of the extension ladder utilized to access same. She
21 determined the height of a potential fall by counting the ladder rungs,
22 which are standard in nature, and similarly counted the cinder blocks
23 in the wall behind the ladder, which are also of an industry recognized
24 size. In response to questioning as to why the marking cones and tape
25 noted in photographic Exhibit 2 were not adequate to "protect the hole"
26 and avoid a citation, she testified the standard requires specific
27 protection, which includes a guardrail system or other recognized fall
28 arrest equipment, therefore the existing efforts were not sufficient to

1 satisfy the standard. Ms. Wicklund further testified the general
2 contractor and two subcontractors were cited for employee exposure based
3 upon the project constituting a **multi-employer worksite** as defined under
4 recognized occupational safety and health law. She found that the hole
5 penetrations were made by the general contractor who **created and**
6 **controlled** the hazardous condition; however respondent employees on the
7 common worksite were also exposed to the hazards. Ms. Wicklund
8 explained the penalty calculations as made in accordance with the
9 operations manual and included consideration at pages 8 and 9 of her
10 narrative report at Exhibit 1 of the severity ratings which constituted
11 a major basis for classifying the violation as serious. She testified
12 the probability calculations were rated at "Lesser" because of the
13 respondent's good history, effective safety program and "quick fix".

14 On cross-examination CSHO Wicklund confirmed the hole penetration
15 and placement of the ladder in the opening were all effectuated by the
16 general contractor, not the respondent subcontractor. She testified
17 that on the day of her inspection she found three violations and
18 proposed classification of Item 1a as Serious but the remaining
19 violations (1(b) and 1(c)) at Citation 1 as "Other than Serious". She
20 explained that her district manager made the final decision to also
21 classify Items 1b and 1c as Serious and group the penalties.

22 At Citation 1, Item 1b, Ms. Wicklund testified there was no
23 protection of the hole penetration to keep items from rolling or being
24 kicked through the opening thereby potentially falling onto employees
25 on or at the bottom of the ladder. She determined the general
26 contractor had a strict policy requiring all employees on the project
27 site to wear hard hats. CSHO Wicklund testified respondent's employees
28 were wearing hard hats at the time of her inspection. She explained her

1 initial determination that while employees were technically exposed to
2 being struck by items potentially falling through the hole during use
3 up and down the ladder, the area around the hole was free of debris and
4 the employees were wearing hard hats thereby minimizing exposure to
5 injuries.

6 On cross-examination Ms. Wicklund testified that she saw no
7 respondent employees on the ladder or with access to same on the day of
8 her inspection but determined exposure based upon her interviews with
9 the two employees who admitted actual use of the ladder, a description
10 of their work effort, and the date on which the general contractor cut
11 the opening in the hole and placed the ladder. Respondent's employees
12 were working on the date after the hole penetration work was completed
13 and exposed to the observed hazardous condition thereafter. She further
14 testified that the marking cones and tape barricade might have served
15 as a warning to employees but the standard is specific on how to protect
16 employees on the subject site and therefore issued her findings of
17 violation accordingly.

18 CSHO Wicklund identified photographic exhibits at Exhibit 2, number
19 2, to demonstrate a lack of any employee serious exposure to falling or
20 rolling objects because there were no tools or debris in the area,
21 except for a piece of iron, and not close to the opening.

22 At Citation 1, Item 1c, CSHO Wicklund cited the employer due to
23 employee use of a damaged ladder and lack of compliance for dealing with
24 the equipment as required by the standard. She testified that ladders
25 need to be marked as damaged and promptly removed from the job site to
26 satisfy the standard. She testified the observed ladder was damaged as
27 depicted in Exhibit 2, photograph 2, owned and placed by the general
28 contractor, Martin Harris, and used by the respondent and other

1 subcontractor employees. The respondent employees were exposed to the
2 hazard. She described the types of injuries to be encountered if an
3 employee stepped on the damaged rung which failed. Ms. Wicklund
4 initially determined the injury exposure level to be minimal because the
5 damaged ladder rung was located very low to the floor indicating a lack
6 of probability for any reasonable potential of serious injury.

7 Ms. Wicklund testified from Exhibit 3, identifying the statements
8 taken from respondent employees Barnum and Koss. At page 2 of Exhibit
9 3 Ms. Wicklund reported the ladder was utilized by Mr. Barnum between
10 April 24th and May 9th. She further testified from the reported
11 questions answered by Mr. Barnum that he utilized the ladder "probably
12 two or three times". He informed her in response to questions in the
13 statement that he noticed the damaged rung on the ladder but did not
14 inform anyone. Similarly at Exhibit 3 respondent employee Koss informed
15 CSHO Wicklund that he utilized the ladder ". . . perhaps four or five
16 times over a period of one and one-half to two hours . . ." Mr. Koss
17 also stated that he noticed the damaged rung but did not say anything
18 to anyone.

19 At Citation 2, Item 1, Ms. Wicklund cited the respondent for
20 failure to furnish a signed document during the inspection as required
21 under the regulatory section of Nevada Revised Statutes. She testified
22 the document must be signed by the employer and employee. She
23 referenced the form document at Exhibit 4 to support her basis for the
24 violation and classification as a regulatory violation. Ms. Wicklund
25 further testified that the employer promptly corrected the problem after
26 the issue was raised.

27 The complainant concluded and submitted its case. The respondent
28 rested without offering any evidence or testimony. Both counsel

1 presented closing argument.

2 Complaint argued that the statutory burden of proof had been met
3 based upon the unrebutted testimony of CSHO Wicklund and documentary
4 evidence admitted in the record. The roof hole opening was not
5 protected as required by the cited standard and there was no evidence
6 offered to rebut the testimony establishing the existence of a violative
7 condition at Item 1a. There was no recognized fall arrest system in use
8 as required under the standard.

9 Counsel further argued that objects could fall or roll into and
10 through the hole onto employees working on or below the ladder as
11 subject of CSHO testimony which met the burden of proof at Citation 1,
12 Item 1b. Counsel admitted the area was clean and the employees were
13 wearing hard hats but argued that merely affected the **probability** factor
14 and did not negate the potential of serious injury due to the
15 unprotected hazardous conditions. Counsel argued the entire purpose of
16 the standard is to ". . . protect employees from potential hazardous
17 conditions even if there is a low probability". Counsel asserted the
18 standard applies to the facts based upon the evidence and testimony.
19 He further referenced CSHO testimony and Exhibit 3 to prove exposure of
20 at least two respondent employees who admitted using the damaged ladder.
21 He further argued employer knowledge was in evidence and imputed to the
22 employer under recognized occupational safety and health law based upon
23 the foreman, Mr. Barnum, having utilized the ladder as admitted to CSHO
24 Wicklund at Exhibit 3.

25 At Citation 1, Item 1c, counsel referred to the photographic
26 evidence at Exhibit 2 demonstrating the damaged ladder; and employee
27 statements at Exhibit 3, showing that two employees of respondent
28 observed the broken step/rung but informed no one of the condition.

1 Counsel further argued that regardless of what the general contractor
2 did, or to what extent it was cited, the respondent had a duty as an
3 employer of employees at a multi-employer worksite to protect its own
4 employees from exposure created by others, but failed to do so.

5 Counsel concluded with reference to Citation 2, Item 1, arguing
6 that the evidence at Exhibit 4, together with the testimony of CSHO
7 Wicklund, proved the violation and appropriateness of the classification
8 under the regulatory section of Nevada Revised Statutes.

9 Respondent presented closing argument. Counsel asserted the case
10 depicts an overreaction by OSHA in issuing and classifying the citations
11 as **serious** and then grouping the penalties under the guise of fairness
12 to the employer. He argued the three alleged violations charged in
13 Citation 1 were clearly not within the statutory definition to satisfy
14 a **serious** classification and supported by the opinion of CSHO Wicklund
15 who reported her findings to the supervisor. Counsel argued that
16 contractors cannot bid jobs with many companies when they have extensive
17 serious violations confirmed; and OSHA should not "over cite"
18 respondents when they know there is insufficient supportive evidence
19 under any reasonable application of the law. He argued that general
20 contractor M & H cut the hole, placed the ladder in the opening, put up
21 the marking cones and cautionary tape, and created the hazardous
22 conditions; then told the respondent subcontractor to ". . . go up to
23 the roof and do your job . . .". Counsel asserted the subcontractor
24 respondent is now faced with three serious violations despite having an
25 excellent history and a first rate safety program. Counsel identified
26 various defenses to the exposure element but focused on the lack of
27 proof for classification of the violations as serious and argued there
28 was no evidence presented, either through testimony or documentation,

1 to satisfy the burden of proof to establish same. He argued that
2 general contractor M & H put up the barrier cones as demonstrated in the
3 photograph at Exhibit 2, so while there might be exposure to the
4 **potential** for a fall, the hole was **protected** through the barricades, the
5 tapes and the cones by warning well trained employees and should satisfy
6 the standard. He argued the violations may ". . . look like technical
7 violations but that's not enough to satisfy the burden of proof . . .
8 and there needs to be a reasonable interpretation of the standards
9 . . ." and finding that the employees were all warned and therefore
10 protected under an alternate means to sufficiently safeguard themselves.

11 The board in reviewing the facts, documents and testimony in
12 evidence must measure same against the established law developed under
13 the Occupational Safety & Health Act, Code of Federal Regulations (CFR)
14 and Nevada Revised Statutes (NRS).

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

17 All facts forming the basis of a complaint must be
18 proved by a preponderance of the evidence. Armor
Elevator Co., 1 OSHC 1409, 1973-1974 OSHD ¶16,958
19 (1973).

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

27 A respondent may rebut allegations by showing:

- 28 1. The standard was inapplicable to the situation
at issue;

1 2. The situation was in compliance; or lack of access to a
2 hazard. See Anning-Johnson Co., 4 OSHC 1193, 1975-1976
3 OSHD ¶ 20,690 (1976).

4 A "serious" violation is established upon a preponderance of
5 evidence in accordance with NRS 618.625(2) which provides in pertinent
6 part:

7 a serious violation exists in a place of
8 employment if there is a **substantial probability**
9 **that death or serious physical harm could result**
10 from a condition which exists or from one or more
11 practices, means, methods, operations or processes
12 which have been adopted or are in use at that place
13 of employment unless the employer did not and could
14 not, with the exercise of reasonable diligence,
15 know the presence of the violation. (emphasis
16 added)

17 The board finds the testimonial and documentary evidence presented
18 by and through CSHO Wicklund credible, unrebutted and established
19 violations at Citation 1, Items 1a, 1b and 1c as well as Citation 2,
20 Item 1. The testimony was corroborated by the photographs at Exhibit
21 2, employee statements at Exhibit 3 and the documentation at Exhibit 4.
22 However, notwithstanding the establishment of violative conditions in
23 satisfaction of the burden of proof by complainant at Citation 1, Items
24 1a, 1b and 1c, the board finds insufficient evidence to prove the
25 classifications of **serious**.

26 The respondent here was a subcontractor on a **multi-employer**
27 **worksite**. The general contractor was responsible for overall safety on
28 the project. The general contractor cut the hole penetration in the
29 roof structure and placed a ladder there to provide access for its own
30 employees and those of other subcontractors. The respondent neither
31 **created nor controlled** the hazardous conditions, although its employees
32 were in fact exposed to the hazards cited at Citation 1, Item 1a, 1b and
33 1c. Respondent employees admitted use of the defective ladder,

1 exercised their work efforts on the ladder or below the hole opening
2 subjecting themselves to potential harm from falling or rolling debris,
3 and performed other work efforts on the roof structure near the hole
4 opening without wearing personal fall arrest systems or using other
5 proscribed protective equipment.

6 Notwithstanding the foregoing, the respondent employees were
7 wearing hard hats which could protect them from falling or rolling
8 debris, utilized the ladder but with the damaged rung near the bottom
9 very close to the floor, and given reasonable warning of a dangerous
10 condition through the cones, tape and barricade erected by the general
11 contractor around the hole opening at the roof level. The CSHO found
12 the respondent employees adequately trained in the job safety. Despite
13 exposure to hazardous conditions, the **potential** and **probability** for
14 serious injury or harm was substantially mitigated by the foregoing
15 conditions, including but not limited to a) wearing of hard hats, b) use
16 of a ladder with a damaged rung but very close to the floor, and c) a
17 tape warning line and cone barricade at the hole site.

18 The board finds there is insufficient evidence to establish a
19 **substantial probability** for **serious injury or harm** from falling or
20 rolling objects, or slipping from the lower rung of the ladder from the
21 damaged rung near the bottom. The board further finds that exposure
22 from the lack of wearing personal fall arrest systems or other strict
23 compliance with the standard was mitigated by the barricades and warning
24 tape such to constitute an **adequate means of compliance** to safeguard the
25 employees from exposure to potential serious injury from a fall through
26 the opening in the roof structure.

27 Further, based upon CSHO Wicklund's narrative report at Exhibit 1,
28 page 8, information received during her inspection was evidence of some

1 degree of **compliance infeasibility**. Drilling holes in the roof
2 structure to erect a recognized safe barricade and/or only an
3 ineffective alternative for a barricade utilizing sandbags, were not
4 realistic options for an electrical subcontractor. The cones and tape
5 demonstrated a reasonable protective level for a **subcontractor** to
6 protect employees who were well trained under a company safety program.
7 There was evidence of **infeasibility** due to a lack of realistic authority
8 for a **subcontractor** to otherwise effectuate its work effort.

9 The board further finds that the respondent was neither the
10 **creating or controlling employer** at the job site. While exposure was
11 established, there was evidence of mitigation through the respondent
12 safety program, warning tapes and barricades in place, and hard hats
13 worn by the respondent employees. Further, there was evidence to
14 support the recognized defense of **infeasibility**. The respondent
15 employer, an electrical **subcontractor**, was without control or authority
16 to drill holes in the roof structure to erect effective barricades to
17 protect its employees. While the employer cannot be completely excused
18 from requiring its employees to wear proscribed personal protective fall
19 arrest systems, there was evidence of reasonable employee protection
20 through **alternate means of compliance**. The board finds insufficient
21 evidence of a **substantial probability for serious injury or harm** to
22 occur under the conditions and facts subject of evidence and testimony.

23 A citation will be vacated if the cited employer on
24 a **multi-employer** worksite:

25 1. Did not **create or control** the allegedly
26 violative condition (such that it could not
27 realistically correct the condition); and

28 2. Either:

a. Took **reasonable alternative protective
measures; . . .**

1 This defense has been accepted by several court's
2 of appeals.

3 *Dun-Par Engineered Form Co. V. Marshall*, 676 F.2d
4 1333, 10 OSH Cases 1561 (10th Cir. 1982); *Electric*
5 *Smith Inc. v. Secretary of Labor*, 666 F.2d 1267, 10
6 OSH Cases 1329 (9th Cir. 1982); *DeTrae Enters. Inc.*
7 *v. Secretary of Labor*, 645 F.2d 103, 9 OSH Cases
8 1425 (2d Cir. 1980); *Bratton Corp. v. OSHRC*, 590
9 F.2d 273, 7 OSH Cases 1004 (8th Cir. 1979).
10 Rabinowitz, Occupational Safety and Health Law,
11 2008, 2nd Ed., page 151, citing cases.

12 A citation may be vacated if the employer proves
13 that: (1) the means of compliance proscribed in the
14 applicable standard would have been **infeasible**
15 **under the circumstances** in that either (a) its
16 implementation would have been **technologically or**
17 **economically infeasible** or (b) necessary work
18 operations would have been technologically or
19 economically **infeasible** after its implementation;
20 and (2) either (a) an **alternative method** of
21 **protection** was used or (b) there was no feasible
22 alternative means of protection. (Emphasis added)

23 *Beaver Plant Operations Inc.*, OSH Cases 18 1972,
24 1977 (Rev. Comm'n 1999), rev'd on another ground,
25 223 F.3d 25, 19 OSH Cases 1053 (1st Cir. 2000);
26 *Gregory Cook Inc.*, 17 OSH Cases 1189, 1190 (Rev.
27 Comm'n 1995); *Seibel Modern Mfg. & Welding Corp.*,
28 15 OSH Cases 1218, 1228 (1991); *Mosser Constr. Co.*,
15 OSH Cases 1949 (1986), rev'd on another ground,
843 F.2d 1135, 13 OSH Cases 1652 (8th Cir. 1988).
Rabinowitz, Occupational Safety and Health Law,
2008, 2nd Ed., page 151, citing cases.

19 The board follows well established case law emanating from the
20 Federal courts and OSHRC which vests in the Commission (board) authority
21 to revise classifications based upon the evidence.

22 "The Commission . . . may reduce or eliminate a
23 penalty by **changing the citation classification** or
24 by amending the citation . . .". See Reich v.
OSCRC (Erie Coke Corp.), 998 F.2d 134, 16 OSH Cases
1241 (3d Cir. 1993) (emphasis added)

25 The board concludes, as a matter of fact and law, that complainant
26 met the statutory burden of proof and established violative conditions
27 at Citation 1, but failed to provide sufficient proof to support
28 classification of the violations as "Serious". The facts in evidence

1 do not demonstrate a "substantial probability" that serious injury or
2 harm could reasonably result from the working conditions and/or
3 operations subject of the cited conditions based upon evidence of
4 mitigating factors including alternate protective measures in place. And
5 infeasibility of realistic options for a subcontractor. However the
6 board finds substantial evidence for reclassification of the violations
7 at Citation 1 to "other than serious".

8 Where the Secretary alleges but fails to prove the
9 seriousness of a violation, a non-serious violation
10 generally will be found. *A.R.A. Mfg.*, 11 OSH Cases
11 1861, 1863-64 (Rev. Comm'n 1984). Rabinowitz,
12 Occupational Safety and Health Law, 2008, 2nd Ed.,
13 page 225, citing cases.

14 The board finds that complainant met the burden of proof as to
15 Citation 2, Item 1 classified as a regulatory violation.

16 It is the decision of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH**
17 **REVIEW BOARD** that violations of Nevada Revised Statutes did occur as to
18 Citation 1, Item 1a, 29 CFR 1926.501(b)(4), Citation 1, Item 1b, 29 CFR
19 1926.501(c)(1) and Citation 1, Item 1c, 29 CFR 1926.1053(b)(16). The
20 violations are reclassified as "Other than Serious" and the proposed
21 penalties in the amount of TWO THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS
22 (\$2,275.00) are confirmed and approved.

23 It is the further decision of the **NEVADA OCCUPATIONAL SAFETY AND**
24 **HEALTH REVIEW BOARD** that a violation of Nevada Revised Statutes did
25 occur as to Citation 2, Item 1, NRS 618.376(1), and the Regulatory
26 violation is confirmed together with a zero penalty.

27 The Board directs counsel for the complainant, **CHIEF ADMINISTRATIVE**
28 **OFFICER OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DIVISION**
29 **OF INDUSTRIAL RELATIONS**, to submit proposed Findings of Fact and
30 Conclusions of Law to the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW**

1 **BOARD** and serve copies on opposing counsel within twenty (20) days from
2 date of decision. After five (5) days time for filing any objection,
3 the final Findings of Fact and Conclusions of Law shall be submitted to
4 the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** by prevailing
5 counsel. Service of the Findings of Fact and Conclusions of Law signed
6 by the Chairman of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW**
7 **BOARD** shall constitute the Final Order of the **BOARD**.

8 DATED: This 17th day of December, 2012.

9 NEVADA OCCUPATIONAL SAFETY AND HEALTH
10 REVIEW BOARD

11 By /s/
12 JOE ADAMS, Chairman