

**RHODE ISLAND DEPARTMENT OF LABOR & TRAINING
DIVISION OF PROFESSIONAL REGULATION
HOISTING ENGINEERS EXAMINING BOARD
TUESDAY, JUNE 13, 2006
10:00 A.M.**

In attendance: David Rodrigues

Benjamin Anthony

Ellery Wood

Kathy Serrecchia

David Burnham

David Rodrigues, Chairperson, called the meeting to order at 10:00 a.m.

The above members were present for today's meeting. Members absent for today's meeting were John Shaw and the vacant board member. There was a quorum.

The first order of business is acceptance of the minutes of the Board of Examiners of Hoisting Engineers meeting held on Tuesday, April 11, 2006. Everyone had an opportunity to review the minutes. Mr. Benjamin Anthony made a motion to approve the minutes as submitted. Mr. Ellery Wood seconded the motion. All members voted in favor.

The next order of business is hearings. There are four (4) appeal hearings scheduled for today for which there is a court reporter. Mr. Rodrigues recused himself from voting on today's appeals since he was the investigator of these alleged violations. Mr. Rodrigues turned the Chair of the meeting over to Mr. David Burnham. Mr. Burnham explained the procedure the Board follows relating to the conduct of appeal hearings. All individuals present for today's hearing including Mr. Rodrigues were sworn in by the court reporter.

The first appeal hearing on the agenda pertains to Lamar Advertising. Mr. Doug Baer was in attendance on behalf of Lamar Advertising. Mr. Rodrigues read the violation. On Tuesday, March 14, 2006, Mr. David Rodrigues received a complaint that an unlicensed individual was operating a sign crane on an advertising sign board located on 2312 Pawtucket Avenue, East Providence. When Mr. Rodrigues arrived at the job site at approximately 1:10 p.m. on March 14th, he witnessed Mr. Daniel Evan Kling, an employee of J & G Industries, LLC, 90 Mimosa Drive, York, PA 17402 operating a hydraulic sign crane without a valid RI Hoisting Engineer's License. After further investigation, it was determined that J & G Industries, LLC was hired by Lamar Advertising. Mr. Kling and J & G Industries, LLC were both cited for this violation, and on May 11, 2006 both fines were paid. Mr. Rodrigues also informed the Board that the sign crane was improperly set up. The outriggers were improperly deployed, and if weight shifted, the crane could have easily tipped over.

Mr. Baer stated that J & G Industries, LLC represented themselves to Lamar Advertising as a properly licensed independent contractor with licensed employees in their independent contractor agreement, and because of that, Mr. Baer does not feel Lamar Advertising should be fined. Mr. Baer is requesting that the letter sent to the Department of Labor & Training from his attorney be submitted into evidence for the record.

Mr. Burnham explained to Mr. Baer that a recommendation will be made to the Director, and it is ultimately her decision that is final. Mr. Rodrigues informed the Board that this is Lamar Advertising's second violation. They were issued a violation in 2004 for having an unlicensed employee.

Mr. Anthony made a motion that based on the testimony provided, a recommendation be made to the Director to uphold the fine of \$1,150. This is the second violation. Lamar Advertising is aware of the requirement for operators of hoisting equipment to be properly licensed by the state, and he is also aware of a contractor's responsibility to insure that operators working on their job sites are properly licensed. Mr. Wood seconded the motion. All members voted in favor.

The second appeal hearing pertains to Konover Construction

Corporation. Mr. Mike Capazzi, Safety Director for Konover Construction Corporation was in attendance on behalf of Konover. There are actually three (3) violations against Konover Construction Corporation which were found on two (2) different days. Mr. Rodrigues explained that he visited the new construction of a Wal-Mart store located on 650 Centre of New England Boulevard, Coventry, RI 02816 on March 17, 2006. He met with Mr. Mark Hamilton to educate Konover Construction Corporation on Rhode Island's licensing requirements, and issued him a warning if there were unlicensed workers at that time. Mr. Rodrigues informed Mr. Hamilton that he would be returning to the jobsite in a week or so to follow up.

On Friday, March 24, 2006, Mr. Rodrigues visited the above mentioned Wal-Mart job site again, and witnessed Mr. Steven A. Dubois, President of Oceanside Plumbing & Heating, 181 Church Street, Bradford, RI 02808 operating a construction forklift without a valid RI Hoisting Engineer's License. Konover Construction Corporation sub-contracted with Oceanside Plumbing & Heating to perform work on this project. A fine of \$1,150 was issued to Konover Construction for this alleged violation since Mr. Rodrigues had been on the job site and had already issued a warning.

On the same day, Mr. Rodrigues also witnessed Mr. David J. Plante, an employee of B & B Environmental Construction Company operating a front-end loader without a valid RI Hoisting Engineer's

license at the above noted Wal-Mart job site. B & B Environmental Construction Company is also a sub-contractor of Konover Construction Corporation on this job site. A fine in the amount of \$1,150 was also issued to Konover Construction for this alleged violation.

Mr. Rodrigues informed the Board that on this same day Pinnacle Steer Erectors was also on-site. The forklift was running, and there were no licensed operators on site. There was a language barrier, however, Mr. Rodrigues did his best to explain Rhode Island's hoisting licensing requirements to them. He did not see any of these individuals operating the equipment.

On Wednesday, April 26, 2006, Mr. Rodrigues again visited the above job site (Wal-Mart) and witnessed Mr. Keith C. Young, an employee of M.P. Masonry, Inc. operating a construction forklift without a valid RI Hoisting Engineer's license. M.P. Masonry, Inc. is another sub-contractor of Konover Construction Corporation at this job site. A fine in the amount of \$1,150 was issued to Konover Construction for this alleged violation.

Violations were also issued to Mr. Steven Dubois of Oceanside Plumbing & Heating, Mr. David Plante, B & B Environmental Construction Company, Mr. Keith Young, and M.P. Masonry, Inc. With the exception of Mr. Plante and Mr. Young the remainder of fines have been paid.

Mr. Rodrigues stated that all of the individuals stopped operating the equipment and assured him this would not happen again.

Mr. Capazzi stated that after Mr. Rodrigues came to the job site on March 17th, the job site was closed down and he held a meeting with the supervisors of all of the sub-contractors on the job site and informed them that if they have individuals who are not properly licensed hoisting engineers, then those individuals are not to operate the hoisting equipment. At that time, they requested to see everyone's licenses, and sent anyone who did not have a license home. A letter was given to all sub-contractors at that time, and a copy was provided to the Board to be entered into the record as evidence.

Mr. Capazzi stated that on March 24, 2006 upon investigation by Mr. Rodrigues, two (2) individuals were found operating construction forklifts without valid RI hoisting licenses. These are employees who work for sub-contractors that were in the meeting, and they should have known better. A second meeting was then held to reinforce Konover's original mandate that if an individual is not licensed, they are not to operate the equipment. A second letter was sent out reaffirming this, and this letter was also provided to the Board to be entered into the record as evidence.

Then again on April 26, 2006, when Mr. Rodrigues visited the job site

a third time and found one individual operating a construction forklift without a valid RI hoisting engineer's license, a third letter was sent out which was provided to the Board to be entered into the record as evidence. This letter informed the sub-contractors that if their employees are found operating any hoisting equipment on the job site without a valid RI hoisting engineer's license, then they will be fined in their contracts by Konover Construction, in addition to the fines issued by the State of Rhode Island.

Mr. Capazzi stated that Konover Construction Corporation is contesting the amounts of the fines, not the fact that they were cited for the violations. They did practice due diligence as attested to by all of the letters and meetings that were held with sub-contractors. Mr. Capazzi understands a general contractor's responsibility; however, he does not think Konover Construction Corporation should be fine in the same category as the sub-contractors who are actually violating the law.

Mr. Burnham recommended to Mr. Capazzi that in the future he get copies of all licenses of all individuals who will be working on the job site.

With regard to the violation on March 24, 2006 concerning Steven A. Dubois of Oceanside Plumbing & Heating, Mr. Wood made a motion that based on the testimony presented that a recommendation be made to the Director to uphold the fine in the amount of \$1,150.

General Contractors need to be responsible for what happens on their job sites. If someone gets hurt, the liability will ultimately fall on the general contractor. Mr. Anthony seconded the motion. All members voted in favor.

With regard to the violation on March 24, 2006 concerning David J. Plante of B & B Environmental Construction Company, Mr. Anthony made a motion that for the same reasons as noted above, a recommendation be made to the Director to uphold the fine in the amount of \$1,150. Mr. Wood seconded the motion. All members voted in favor.

With regard to the third violation which occurred on April 26, 2006 concerning Keith C. Young of M.P. Masonry, Inc., Mr. Anthony made a motion that for the same reasons as noted above, a recommendation be made to the Director to uphold the fine in the amount of \$1,150. Mr. Wood seconded the motion. All members voted in favor. The total fines due equal \$3,450.

The third appeal hearing concerns Calson Construction Corporation. Mr. David Igliozzi was the attorney representing this company today. Individuals present to testify in regard to this alleged violation are Mr. George Calcagni, Mr. Steven Miller and Mr. Mike Miranda.

Mr. Rodrigues stated that on Monday, March 13, 2006, he spoke to Mr. Steven Miller of Pyramid Construction, one of the contractors on the job site and informed him of Rhode Island's licensing requirements after witnessing an unlicensed individual operating hoisting equipment. A warning was issued, and Mr. Miller was informed that Mr. Rodrigues would return to the job site in a week or so to follow up.

Mr. Rodrigues read the violation. On Tuesday, March 14, 2006, on a routine investigation of a new Brooks Drug in the Riverside Plaza, 1080 Willet Avenue, East Providence, RI, Mr. Rodrigues witnessed Mr. Todd A. Ottilige, an employee of Calson Construction Corporation, 34 Oakdale Avenue, Johnston, RI 02919, operating a dozer without a valid RI Hoisting Engineer's License at the above job site. Mr. Rodrigues stated that there was also a vibratory roller on the job site that Mr. Ottilige was going to use after he used the dozer. Mr. Rodrigues stated that everyone he spoke to had good attitudes.

Mr. Calcagni informed the Board that Calson Construction Corporation has a new policy that on every job site they have to be provided with copies of the licenses, and all copies of licenses are kept on file. This policy was implemented after this violation because Mr. Ottilige did inform Calson Construction Corporation that he was properly licensed, but he never provided a copy to them. Mr. Calcagni is requesting that the fine issued to them in the amount of \$600 be suspended for a 12 month period, since Riverside Associates

was given a \$600 fine suspended for 12 months for this same violation.

Mr. Igliazzi addressed the Board and explained that Pyramid Construction has no relationship to Calson Corporation. Mr. Igliazzi believes there was some confusion regarding this violation in that Mr. Rodrigues believed when he gave Pyramid Construction a warning that somehow that warning was also given to Calson Construction Corporation. However, Calson Construction Corporation is not a sub-contractor of Pyramid Construction and therefore Pyramid Construction did not inform Calson Construction Corporation of the warning that was issued on March 13, 2006. Mr. Igliazzi therefore feels that since Pyramid Construction was issued a warning for a first violation, the same consideration should be given to Calson Construction Corporation. This is also a first violation for Calson Construction Corporation.

Mr. Wood made a motion that based on the testimony presented a recommendation be made to the Director to suspend the fine of \$600 for a 12 month period pending any further violations. This recommendation is being made since this is a first violation and the original warning was not issued to Calson Construction Corporation. Mr. Anthony seconded the motion. All members voted in favor.

The last appeal hearing on the agenda pertains to E.W. Burman, Inc. Mr. Edward Burman was in attendance on behalf of this company.

Mr. Rodrigues read the violation. On Tuesday, March 21,

2006, Mr. Rodrigues witnessed Mr. Joseph Silva, Jr., an employee of Greenwich Northeast, Inc., P.O. Box 706, East Greenwich, RI 02818 operating a construction forklift without a valid RI hoisting engineer's license at the construction of a new chapel at the Swan Point Cemetery, 585 Blackstone Boulevard, Providence, RI. E.W. Burman, Inc. sub-contracted with Greenwich Northeast, Inc. to perform work on this job site. Mr. Rodrigues stated that he spoke to Mr. Billy Williamson on this job site to inform him of Rhode Island's licensing requirements. Mr. Silva stated that he would not operate the equipment again.

Mr. Burman stated that Greenwich Northeast sent a letter to the Department of Labor & Training after they received the violation notice stating that Mr. Joseph Silva, Jr. is a mechanic. He was not operating the forklift. He was fixing it. The individual who was operating the forklift is licensed, and had already left the job for the day. However, the Department has not yet received this letter. Greenwich Northeast did request an appeal, however, they did not mail it in time for June's meeting, so it will be scheduled for an appeal in July's meeting. Mr. Burman stated that he would provide a copy of the letter to the Board.

Mr. Burman stated that his company has been in business for 41 years, and have never been before the Board before. He is a general

contractor or a construction manager, and he does not employ operating engineers. Mr. Burman stated that he does not believe the law is fair, and he does not agree that fining the general contractor is in the spirit of the law. He understands the need to fine the violator, and he understands the need to fine the contractor of that violator. However, he does not agree or believe the law provides for the fining of a general contractor if they are not the direct employer of the violator. Mr. Burman stated that he will be addressing this issue through legislation.

After a brief discussion of this matter, Mr. Anthony made a motion to table this matter and revisit it for a vote at the next meeting since the Board is waiting for a copy of the letter from Greenwich Northeast. Mr. Wood seconded the motion. All members voted in favor.

This concluded today's appeal hearings. Mr. Burnham turned the Chair of the meeting back over to Mr. Rodrigues.

Mr. Rodrigues informed the Board that Senate Bill 06-S 2652 will be heard today.

Mr. Anthony stated that he spoke to Mr. Mark Mooney in Massachusetts. Mr. Mooney stated that the State of Massachusetts does not have any form of learner's permit. Upon further investigation, the states of New Hampshire and Maine also do not have any form of learner's permit. Mr. Burnham stated that it would

be worth looking into something that does not interfere with the apprenticeship program that will give someone legal experience, and provide revenue to the state, so that individuals can get licensed. Mr. Rodrigues asked Mr. Burnham if he would be willing to write something up, and he said that he would work on it.

There was no further business before the Board. A motion to adjourn was made by Mr. Wood at 11:30 a.m. and seconded by Mr. Anthony. All members voted in favor.

The next meeting of the Board of Examiners of Hoisting Engineers is scheduled for Tuesday, July 11, 2006 at 10:00 a.m. in Building #70 of the Department of Labor & Training, second floor conference room, 1511 Pontiac Avenue, Cranston, RI 02920.