

# **SAFETY AWARENESS BOARD**

## **Minutes**

**Wednesday, March 9, 2005**

**9:00 a.m.**

**In attendance: Joseph Sabitoni**

**Ed Ladouceur**

**Robin Coia**

**Wayne Coulombe**

**Nick Giardino**

**Eric Anderson**

**James Jackson**

**Bernard Trembl**

**Chairperson, Joseph Sabitoni called the meeting to order at 9:00 a.m.**

**There is a quorum. All members were in attendance for today's meeting with the exception of Daniel Jones.**

**The first order of business today is acceptance of minutes of the Wednesday, February 9, 2005 meeting. Everyone had an opportunity to review the minutes. Mr. Nick Giardino made motion to approve the minutes as submitted. Mr. Bernard Trembl seconded the motion. All members voted in favor.**

**The next order of business is appeal hearings. There are four (4)**

appeal hearings on the agenda, for which there is a court reporter. Mr. Sabitoni explained the Board's procedures for conducting appeal hearings. Mr. Karl Swanson, Prevailing Wage Examiner, was sworn in by the court reporter.

#### **APPEAL HEARING:**

The first and second appeals on the agenda pertain to John Strafach & Sons, Inc. and Mr. Dale H. Walker. Mr. Jeffrey Augeri was in attendance on behalf of John Strafach & Sons, Inc. and Mr. Dale H. Walker was in attendance representing himself. Both Mr. Augeri and Mr. Walker were sworn in by the court reporter.

Mr. Swanson read both violations. On January 4, 2005, Investigator, Karl Swanson visited the Westerly Middle School Project, Route #1, Westerly, RI 02891, and found Mr. Dale Walker, an employee of John Strafach & Sons, Inc. working on the project without OSHA 10-hour certification. This individual was advised of the alleged violation, as was the Project Manager, Mr. Mark Libutti. Gilbane Building Company is the general contractor on this project. John Strafach & Sons, Inc. is a sub-contractor to Gilbane Building Company. John Strafach & Sons, Inc. was assessed a fine in the amount of \$500 and Mr. Dale H. Walker was assessed a fine of \$250.

Mr. Augeri asked the Board why he was singled out on the job site on the day the violations were found. There were several companies

there who were given warnings. Mr. Walker was sent home and did not return to the job site the next day. He was trained immediately, and then returned to the project after his training was completed. Mr. Augeri brought documentation confirming that Mr. Walker has attended the OSHA 10-hour training, and received his card.

In response to Mr. Augeri's question as to why John Strafach & Sons, Inc., was singled, Mr. Swanson informed him that his company was not singled out. Those employees on the job site working for other contractors were given warnings because they informed Mr. Swanson that they had attended the training and had OSHA 10-hour cards, but they did not have the card on their person. Those individuals were given 24 hours to produce the cards, and they all did. Mr. Swanson also sent several individuals to their cars to retrieve their OSHA 10-hour cards.

Mr. Augeri said he thought the OSHA 10-hour training requirement was a general contractor's responsibility. Over the last ten (10) years, the majority of their work was done in Connecticut. They have just been getting busy in Rhode Island, and this was the first prevailing wage job they did in Rhode Island in a while. When the violation was issued, John Strafach & Sons, Inc. sent all of their employees to be trained. Mr. Augeri stated that he did not know if there was any language in the contract that specifically addressed the OSHA 10-hour requirement.

Mr. Walker stated that three (3) years ago his union, Local #94, advised everyone that they were going to be setting up OSHA 10-hour

training, and informed them that this was going to be required as part of the law. At the time, Mr. Walker had been out of work for an entire summer with a back surgery. It was at that time that everyone attended the OSHA 10-hour training. When he returned to work, Mr. Walker forgot about it, and the issue never arose until this incident occurred. In fact, Mr. Walker said he never even gave it a thought.

Ms. Robin Coia made a motion that based on the testimony provided, a finding of fact is made that John Strafach & Sons, Inc. was in violation of RIGL 37-23 for having an employee, Mr. Dale H. Walker working on the Westerly Middle School Project on January 4, 2005 without OSHA 10-hour certification, and that a recommendation be made to the Director that the \$500 fine be upheld. Mr. Ed Ladouceur seconded the motion. All members voted in favor.

In regards to Mr. Dale H. Walker, Mr. Wayne Coulombe made a motion that although a finding of fact was made that Mr. Walker was in violation of RIGL 37-23 while working at the Westerly Middle School Project on January 4, 2005, he did attend OSHA 10-hour training immediately, and received his OSHA 10-hour certification, and recommends to the Director that the \$250 fine issued to Mr. Walker be suspended for a 12-month period pending any further violations. Mr. Eric Anderson seconded the motion. All members voted in favor.

Mr. Ladouceur made a clarification that even though a contract may require the sub-contractor to abide by all OSHA rules and regulations, that is not the same as it stating that they must be in compliance with the OSHA 10-hour training requirement for all employees working on the project.

**The third hearing on the agenda pertains to S & F Concrete Contractors, Inc. Attorney James F. Grosso was in attendance on behalf of S & F Concrete Contractors, Inc. Mr. Grosso stated that Mr. John Figoritto was supposed to be in attendance with him as a witness, however, he was stuck in very bad traffic due to a turnover on Route 495, which caused the highway to be closed. Mr. Grosso asked that he be permitted to continue with the hearing today, however.**

**Mr. Swanson read the violation. On December 30, 2004, Investigators, Karl Swanson and Lisa Tirocchi visited the Newport Heights Housing Project, Maple Street, Newport, RI, and found six (6) employees of S & F Concrete working on the project without OSHA 10-hour certification. Those individuals identified themselves as Mr. Sergio P. Freitas, Mr. Roger Melo, Mr. Antonio**

**M. Silva, Mr. Domingos M. DaSilva, Mr. Paulo C. Alves, and Mr. Carlos A. Silva. These individuals were advised of the alleged violation, as was the Project Superintendent, Mr. David Croce. Dimeo Construction is the general contractor on this project. S & F Concrete is a sub-contractor to Dimeo Construction. S & F Concrete was issued fines in the amount of \$950 for each of six (6) violations, for a total of \$5,700. Each individual employee was issued a fine in the amount of \$250.**

**Mr. Swanson stated that he never received appeals from the six (6) individuals who were also issued violations and fines. Mr. Grosso**

stated that he was not in attendance on behalf of those employees, however, he will be sure to inform them of their rights to an appeal, and letters will be sent to the Department requesting an appeal on their behalf for next month's meeting.

Mr. Grosso stated that S & F Concrete is a finishing concrete contractor from Hudson, MA. This company has a collective bargaining agreement with the Laborer's Union, the Operating Engineers Union and the Iron Workers Union. In several of the collective bargaining agreements, it says the employees were supposed to receive OSHA 10-hour training prior to the law going into effect. For this particular job at the Newport Heights Housing Project, there were two (2) phases. During the first phase of the project S & F Concrete was not in violation. This incident occurred during the second phase of the project. Mr. Grosso also informed the Board that Sergio Freitas, one of the individuals cited, did have his OSHA 10-hour card since 1999, but he did not have it on him on the day the violation occurred. Mr. Grosso produced a copy of the card for the Board's records. Mr. Grosso stated that the other five (5) individuals did not have their OSHA 10-hour card, and they were removed from the project and replaced with individuals who did possess the OSHA 10-hour certification.

Mr. Grosso stated that this is the first public project S & F Concrete has done since the law was passed, and it is their first offense. Mr. Grosso remarked that the law has a minimum penalty of \$250 for each offense with a maximum penalty of \$950 for each offense. Mr. Grosso requested that since this is a first offense by S & F Concrete, and all

employees were brought into compliance, could the fine against Mr. Freitas be dismissed (since he did have his OSHA 10-hour certification at the time this incident occurred) and the fine against the company for each of the remaining five (5) employees be reduced to the minimum fine of \$250 for each offense. These individuals all still work for S & F Concrete, and have worked for this company for some time.

Mr. Ladouceur made a motion that based on the testimony provided, a finding of fact is made that S & F Concrete was in violation of RIGL 37-23 at the Newport Heights Housing Project on December 30, 2004, however, since it is a first offense and all employees have been brought into compliance, a recommendation be made to the Director to reduce the \$950 fine for each of five (5) violations to \$250 for each of five (5) violations for a total of \$1,250, and the sixth (6th) violation against Mr. Sergio Freitas be dismissed since Mr. Freitas was properly trained at the time of the incidence. Mr. Coulombe seconded the motion. All members voted in favor.

The last hearing on the agenda pertains to Pezzuco Construction, Inc.

Mr. Richard Pezzuco was sworn in by the court reporter. Mr. Pezzuco was in attendance at the February 9, 2005 meeting of the Safety Awareness Board for an appeal hearing. At that hearing, a motion was made that if Mr. Pezzuco can produce a contract with South County Concrete Foundations, Inc. that says the OSHA 10-hour certification is required for all employees on the project, then the fines will be suspended for a 12 month period pending any further violations. However, if there was no adequate language stating this

requirement, then the fine would be upheld. This request was made because

South County Concrete Foundations testified in the January 12, 2005 meeting of the Safety Awareness Board, that there was no language in the contract informing them of the OSHA 10-hour certification, which was required for all employees on the project.

Mr. Pezzuco provided the contract to Mr. Swanson, however, Mr. Swanson felt compelled to bring the document before the Safety Awareness Board for them to make a decision as to the language in the contract.

Mr. Swanson read the section of the contract from Pezzuco that addresses OSHA rules and regulations. It states, "OSHA REQUIREMENTS: The Sub-Contractor shall be responsible to the General Contractor for compliance with all safety rules and regulations during this project and shall abide by the provisions of the Occupational Safety & Health Act of 1970. Sub-Contractor shall indemnify the General Contractor for any and all expenses incurred by the General Contractor for fines, penalties and corrective measures that result from acts or omission or to comply with such safety rules and regulations." After a brief discussion by the Board, it was agreed upon that the language above does not address the OSHA 10-hour certification requirement for all employees on the job site.

In addition, South County Concrete Foundations signed this contract on February 10, 2005, which was long after the project started and the violation occurred, which was December 30, 2004. Mr. Pezzuco

stated that after the last meeting, he returned to his office to look for a copy of the contract, and could not find one. He contacted South County Concrete Foundations, and they said they never gave him the contract, that they had been driving around with it in their truck for the last six (6) months. When he talked to the owner of South County Concrete Foundations, he asked him to date it that day, which was February 10, 2005. He did this so that the Board would not think he was faking documents. In fact, he also made copies of the signed document and provided Mr. Swanson with the original, which was clearly wrinkled.

Mr. Pezzuco stated that prior to the start of this project, he sent out information to all sub-contractors informing them of all classes which were going to be held by RIBA. Mr. Pezzuco is a first time offender, and the Board agreed that he did a good job correcting this problem. Mr. Pezzuco informed the Board that there would be an addendum to his contract, which will specifically state that all individuals working on the project must possess OSHA 10-hour certification.

Mr. Giardino made a motion that based on the evidence and testimony provided, a finding of fact is made that a violation of RIGL 37-23 did occur at the New Riverside Library, East Providence, RI on November 17, 2004, however this company has done the due diligence, and a recommendation is made to the Director to reduce the \$500 fine for each of four (4) violations to \$250 for each of four (4) violations, for a total of \$1,000. Ms. Coia seconded the motion. Mr. Ladouceur made an amendment to the motion to suspend the reduced fine of \$1,000 for a 12 month period pending any further

**violations. Mr. Anderson seconded the motion. All members voted in favor, with the exception of Robin Coia, who voted in opposition.**

**This concluded the hearings. There was no further business before the Board. Mr. Anderson made a motion to adjourn at 9:50 a.m. Mr. Ladouceur seconded the motion. All members voted in favor. The next meeting of the Board of Safety Awareness is scheduled for Wednesday, April 13, 2005 at 9:00 a.m. in Building 70 of the RI Department of Labor & Training, Second Floor Conference Room, 1511 Pontiac Avenue, Cranston, RI 02920.**