

MINUTES OF MEETING

Wage and Hour Commission

Thursday, March 25, 2004, 11:00 AM
10th Floor, Portland State Office Building
Room 1004
800 NE Oregon Street
Portland, Oregon

1. CALL TO ORDER

Commission Chair Jeff Anderson called the meeting to order at 11:00 AM.

2. ROLL CALL

Members Present:

Jeff Anderson, Chair
Gary Lockwood
Kathy Nishimoto

Staff Present:

Christie Hammond, Administrator, Wage and Hour Division (WHD)
Marge Phelps, Operations Support Manager, WHD
Karen Gernhart, Administrative Specialist, Child Labor Unit, WHD

3. FOR THE GOOD OF THE ORDER:

a. Consent Agenda

The minutes of the previous meeting of January 15, 2004 were unanimously approved as presented.

Staff summarized the temporary actions taken by staff since the commission's last meeting, which were unanimously approved.

c. Correspondence

Electronic communications dated January 20 and February 5, 2004 between Roy C. Kroker and Christie Hammond pertaining to the on-going review of the cannon-related accident which resulted in the death of Mr. Kroker's son.

Letters to and from Wal-Mart Stores, Inc. regarding BOLI's request for information relating to a 2000 internal audit which reportedly found rest/meal period and child labor violations. (See Reports.)

Letters dated February 29, 2004 and March 19, 2004 between Gerald and Vickie Hoff and Christie Hammond relating to the Hoff's request for an exception for their son to be employed by a cabinetmaker to operate power-driven woodworking machinery. (This issue had been discussed at a previous commission meeting.) Ms. Hammond advised the Hoff's that it appears that neither of the exceptions provided under the law apply to their son and there is currently no provision under state or federal law to make an exception as requested.

4. REPORTS

a. Child Labor Statistics

Staff reported that the Child Labor Unit issued a total of 555 annual Employment Certificates ("EC's") in January, 2004 (compared to 332 issued in January, 2003) and 311 EC's in February, 2004 (compared to 373 issued in February, 2003). The total number of EC's issued year-to-date (2,892) is 96% the number issued during this same period of time last year (3,017).

b. Workers' Compensation Injury Report

Staff reported that the December, 2003 and January, 2004 Workers' Compensation Division injury reports of "Claimants Under 18 Years of Age" had been reviewed since the last meeting. Although no occupational violations appeared to have occurred, several minors were employed without the employer first obtaining an employment certificate as required. Staff has followed up on these and the employers have either obtained an employment certificate and/or indicated that they no longer employ minors.

c. Significant Cases

Christie Hammond reported that the Boy Scouts of America had paid \$10,000 in civil penalties assessed by OR-OSHA as a result of violations determined by OR-OSHA's investigation into the fatal cannon explosion at Boy Scout camp, Camp Meriwether. Ms. Hammond informed the commission that no further action or regulatory changes were contemplated by OR-OSHA, but that Commissioner Gardner was considering proposing a rule which would go further than the current regulations pertaining to the use of explosives by minors.

Commissioner Lockwood suggestion that any proposed rule not focus narrowly on the use of cannons by minors.

The commissioners also suggested publicizing the cannon explosion fatality along with providing other child labor information, emphasizing permissible occupations for minors.

Christie Hammond also reported on the status of the division's investigation of Wal-Mart, specifically relating to minors employed. Ms. Hammond advised the commission that Wal-Mart had been requested to provide a list of minors employed in Oregon and that the division intended to follow up by interviewing minors employed to verify whether they were receiving rest and meal periods as required.

Christie Hammond further reported that a civil penalty of \$1,000 had been assessed against and paid by Bible Teaching, Inc., for the unlawful employment of a minor who was injured while using a saw at a bible camp and failure to obtain an Employment Certificate.

5. OLD BUSINESS

None.

6. NEW BUSINESS

a. Policy Relating to Maximum Number of Days/Week Minors May Work in Agriculture Under Special Overtime Permits

Staff reminded the commission members that under state law, minors 16 and 17 years of age employed in agriculture may work any number of hours (and may be employed seven days/week) UNLESS they are employed to operate, assist in the operation of or ride in or on power-driven farm machinery, in which case the number of *hours* they may work is restricted (but not the number of *days* they may work).

Staff advised the commission that in issuing Special Overtime Permits for Minors Employed in Agriculture, the commission MAY, as a condition of authorizing additional work hours for 16 and 17 year-olds, limit the number of days 16/17 year-old's may work to six.

The current language in the Special Overtime Permit says, "Minors may not be employed to work more than six days/week" (which may be read to apply to ALL minors, including those not operating power-driven farm machinery). Staff told the commission members that since 16 and 17 year olds may work any number of hours and seven days/week (unless they are operating power-driven farm machinery), this language may be misleading.

Staff asked the commission to review this issue and provide policy direction regarding the maximum number of hours/days it intended to authorize minors who are operating power-driven farm machinery to work under the terms of the Special Overtime Permits issued by the commission.

Action:

The commission members discussed the issue and agreed that in issuing Special Overtime Permits for Minors Employed in Agriculture, as a condition of authorizing additional work hours for 16 and 17 year-olds who are operating power-driven farm machinery, the number of days of work should be limited to no more than six days/week.

Christie Hammond presented the members with revised language to clarify this in the Special Overtime Permit, which was unanimously approved by the commission.

7. OTHER

Staff presented information received from the USDOL regarding an amendment to the FLSA, originally known as “the Amish exemption,” which provides a limited exemption from certain child labor provisions for minors 14 to 18 years of age employed by businesses that use machinery to process wood products. Since it appears that this exemption will rarely, if ever, apply in Oregon, the commission agreed with staff that no formal action on its part to address the federal exemption in state rules appeared necessary at this time.

8. NEXT MEETING DATE

The commission’s next meeting was scheduled for Thursday, May 20, 2004 at 11:00 AM.

9. ADJOURNMENT

Chair Jeff Anderson adjourned the meeting at approximately 12:00.