

MINUTES OF MEETING

Wage and Hour Commission

Thursday, January 15, 2004, 11:00 AM
Room 1160 Portland State Office Building
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
Gary Lockwood

Members Absent:

Kathy Nishimoto

Staff Present:

Dan Gardner, Commissioner, Bureau of Labor and Industries
Christie Hammond, Administrator, Wage and Hour Division (WHD)
Marge Phelps, Operations Support Manager, WHD
Karen Gernhart, Administrative Specialist, Child Labor Unit, WHD

Guests Present:

Tim Nesbitt, President, Oregon, AFL-CIO
Roy C. Kroker, Parent of Deceased Minor

3. FOR THE GOOD OF THE ORDER:

a. Election of Chairperson for 2004

Gary Lockwood nominated Jeff Anderson to act as commission chair for 2004. Jeff Anderson seconded the nomination and was unanimously elected.

b. Consent Agenda

The minutes of the previous meeting of November 20, 2003 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

Letter dated December 3, 2003 from U.S. Senator Gordon H. Smith to Christine Iverson, Assistant Secretary for Congressional Affairs, U.S. Department of Labor, relating to a communication received by Senator Smith from Roy C. Kroker regarding the death of Mr. Kroker's son while employed to fire a cannon at Camp Meriwether, a Boy Scout camp. A copy of Senator Smith's letter was sent to Commissioner Dan Gardner, who responded to Senator Smith on December 8, 2003.

Letter dated December 24, 2003 to WHD Administrator Christie Hammond received from Lance S. Rosen, an attorney representing an out-of-state advertising agency that inadvertently employed three minors in the filming of a commercial without first obtaining work permits as required. The letter confirms a telephone conversation between Mr. Rosen and Christie Hammond regarding the employment, the circumstances of which apparently complied with the child labor laws (other than the failure to obtain work permits). The letter confirms that Ms. Hammond advised Mr. Rosen that since the minors appeared to be employed in compliance with other provisions of the child labor regulations, she believed it was unlikely that either the bureau or commission would take further action in the matter.

Letters dated January 14, 2004 to Commissioner Dan Gardner and WHD Administrator Christine Hammond, received from Tim Nesbitt, President of the Oregon AFL-CIO, requesting an investigation of employment practices by Wal-Mart Stores, Inc., to determine if the company has violated or is violating laws and rules pertaining to rest and meal periods and the employment of minors in Oregon. Mr. Nesbitt also provided a copy of an article published in the *New York Times* about an in-house audit conducted by Wal-Mart in which violations of rest and meal period regulations and child labor laws were reportedly determined.

4. REPORTS

a. Child Labor Statistics

Staff reported that the Child Labor Unit issued a total of 215 annual Employment Certificates ("EC's") in November, 2003 (compared to 246 issued in November, 2002) and 285 EC's in December, 2003 (compared to 262 issued in December, 2002). The total number of EC's issued year-to-date (2,298) is 99% the number issued during this same period of time last year (2,312).

b. Workers' Compensation Injury Report

Staff reported that the October and November, 2003 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 also reported that they followed up on those and the employers have either obtained an employment certificate and/or indicated that they will comply in the future.

Action: Commissioner Chair Jeff Anderson asked staff if it would be possible to send out information to the public informing all employers in the State of Oregon that they are required to obtain an annual employment certificate prior to hiring anyone under 18 years of age. Staff responded that it would issue a press release in the spring relating to youth employment and the requirement for EC's.

c. Significant Cases

Staff reported they looked into the matter of a 16 year-old minor who was fatally injured in a cannon explosion accident at a Boy Scout camp. Staff reported further to the commission at the meeting about application of the child labor regulations to this employment/incident and the investigation conducted by OROSHA (see New Business). Roy Kroker, the father of the deceased minor, was present at the commission meeting to discuss his concerns relating to his son's employment and the child labor laws.

5. OLD BUSINESS

None.

6. NEW BUSINESS

a. Cannon Explosion Fatality

Staff reported to the commission regarding application of state and federal child labor regulations to the employment of 16 year-old Christopher Kroker, who was fatally injured during the course of his employment with the Cascade Pacific Council, Boy Scouts of America, when a cannon he was attempting to fire exploded, causing severe injuries. A copy of OROSHA's summary investigative report was also provided and discussed.

Christopher Kroker's father, Roy Kroker, also attended the meeting to discuss his concerns relating to his son's employment and existing child labor regulations.

Mr. Kroker told the commission that he was unaware that his son was firing a cannon, and understood that no one under the age of 21 was permitted to use it at the Boy Scout camp. He explained his concerns relating to access to and handling of black powder at the camp. Although OROSHA regulations do not specifically address the operation of black powder cannons, Mr. Kroker said that he believed that the employer failed to provide a safe workplace, supervision was inadequate, and no one at the camp was familiar with the safe operation of cannons.

Mr. Kroker stated that he wanted to ensure that an accident of this type did not occur again and believed that minimum safety procedures should be required in connection with the handling of black powder and cannons and that the firing of certain types of cannons should be prohibited for minors.

Action: The commission members discussed the matter and agreed to consider at a later date the need for a rule amendment relating to the handling of explosives by minors.

Commissioner Gary Lockwood asked staff to monitor the resolution of OROSHA's investigation into the matter and report back to the commission.

Commissioner Dan Gardner expressed his sympathy to Mr. Kroker and said that he, too, would consider initiating a regulation pertaining to black powder/cannon use.

The commission and Commissioner Gardner agreed to discuss this issue further at the next meeting.

b. Special Work Hours Permit Applications

Staff reported that it had received special work hours permit applications for two minors employed by their parents; Wendell Brian Stadel, and Ashley Christine Strom, both 14 years of age. Although the Stadelis have previously obtained special work hours permits for their other children, the application for Wendell Stadel is for a first-time permit. The application requested that Wendell be allowed to work in the family's machine shop occasionally until 9:00 PM.

The special work hours renewal application for Ashley Strom requested that Ashley be allowed to work until 8:00 PM no more than three days per week at the sandwich shop owned by her parents.

Action: The commission members unanimously approved the special hours request for Wendell B. Stadel to work until 9:00 PM. They also approved the request for Ashley C. Strom to work until 8:00 PM, but requested staff to notify the parents of Ashley Strom that they will be required to provide the results of Ashley's official academic performance record in the spring when it is available.

7. OTHER

None.

8. NEXT MEETING DATE

The commission's next meeting was scheduled for Thursday, March 18, 2004 at 11:00 AM.

9. ADJOURNMENT

Chair Jeff Anderson adjourned the meeting at approximately 12:30.