



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1924 Building - Room 2R90, 100 Alabama Street, S.W.
Atlanta, Georgia 30303-3104
atlantaoshrcjudges@oshrc.gov

Secretary of Labor,
Complainant

v.

United Rental North America, Inc., d/b/a
United Rentals Pump Solutions Division,
Respondent.

OSHRC Docket No. **15-2178**

Order Denying Robert Pinkston's Motion to Intervene

This action is before the Commission pursuant to § 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S. C. §§ 651-678 (Act) for a determination regarding the Citation and Notification of Penalty (Citation) issued to United Rentals North America, Inc. d/b/a United Rentals Pump Solutions Division (Respondent), as a result of the Occupational Safety and Health Administration's (OSHA) inspection of Respondent's worksite located at 8813 Highway 41, Riverview, Florida. Respondent was under contract with Mosaic Fertilizer, LLC (Mosaic) to pump the cooler tanks in Mosaic's manufacturing plant (Opposition, p. 2). The inspection was initiated due to an accident which occurred on the worksite on April 22, 2015, during which Robert Pinkston was injured when he fell inside a cooler tank (Citation; Opposition, p. 2). Pinkston was an employee of Mosaic at the time of the accident.

Currently before the Court is Injured Employee Robert Pinkston's Motion for Intervention Pursuant to OSCH [sic] Rule §2200.21, wherein Pinkston contends he has a personal interest in the OSHRC proceedings and would like to be available to observe and if needed to provide a first-hand account of the practical application of the regulations cited. He also seeks to share his experiences on the historical application of the regulations at his workplace.

No responsive pleading to the motion to intervene was filed by the Secretary of Labor (Secretary); however during a March 24, 2016, conference call convened by the Court regarding the motion to intervene, the Secretary advised he had no objection to the granting of the motion.

Respondent filed an Opposition to the motion asserting Pinkston's participation in the case will not assist the Court in determining the issues in question, and therefore the motion fails

to meet the requirements necessary to intervene set forth in Commission Rule §2200.21. During the March 24th conference call, Respondent restated its objections including those relating to Pinkston's efforts to seek information in the OSHRC proceeding for the benefit of his civil lawsuit filed against Respondent.

The Court convened the conference call on March 24, 2016, for further information on the parties' and Pinkston's positions on the motion to intervene. Counsel for the Secretary, Respondent and Pinkston were present during the conference call, at which time each reiterated and elaborated on the contentions contained in their pleadings, and raised additional concerns relating to Pinkston's participation in any dispositions taken during the OSHRC proceedings in this matter.

During the conference call, the Court asked Pinkston's counsel how Pinkston's participation in the OSHRC proceedings would assist in determining the issues. Counsel essentially advised Pinkston could provide factual information regarding application of the regulations and their impact on employee safety. Pinkston primarily seeks an opportunity to present his version of the facts, which he asserts will contradict those presented by Respondent. Counsel also advised that Pinkston seeks to observe during depositions and at the hearing, and to be available to testify if necessary. Pinkston does not plan to examine any witnesses, but would like to be available to hear the testimony to contradict it if necessary. When pressed further by the Court regarding the specific issues to which Pinkston could assist the Court, counsel only responded "issues relating to the citation."

Commission Rule § 2200.21 provides for **Intervention; appearance by non-parties**. The requirements are set forth in paragraph (b) which provides:

(b) *Requirements of petition.* The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unduly delay the proceeding.

The evidence presented to the Court regarding the "interest" requirement of Commission Rule § 2200.21, shows Pinkston was injured in the accident which resulted in the issuance of the citation in this matter. At the time of the accident Pinkston was a supervisor for Mosaic on the worksite. Further, as a result of the injuries he sustained during the accident, Pinkston filed a

civil lawsuit against Respondent. It cannot be disputed Pinkston has an interest in the OSHRC proceeding and therefore meets that requirement of Commission Rule § 2200.21.

Regarding the “delay” requirement, Pinkston asserts he will not unduly delay the OSHRC proceedings because he will primarily observe, does not intend to question any deponent during depositions, and will participate in the hearing only to the extent determined necessary. The Court concludes that the participation as outlined by Pinkston is not likely to unduly delay the OSHRC proceedings, thereby meeting this element of Commission Rule § 2200.21.

However, the “assist in the determination of the issues in question” requirement of Commission Rule § 2200.21, critically important here, has not been established by Pinkston. Although Pinkston asserts he can provide factual information, no proffer of that factual information was provided to the Court. The Court anticipates the parties will provide factual evidence supporting and disputing the citation. Pinkston has not established the alleged factual information he could provide would not be presented to the Court by witnesses or documents presented at the hearing by the parties.

Although the Court appreciates Pinkston’s desire to be of assistance in the OSHRC proceedings, intervention, for the reasons set forth by Pinkston, is not the vehicle for providing such assistance. Further, as the Court noted during the conference call, the motion is premature in that interviews of potential witnesses and decisions regarding who will testify and what other evidence will be presented have not been made by the Secretary’s litigation team, and possibly not by Respondent. Once the case is further developed for trial, should Pinkston’s factual information be necessary, the parties or the Court may call Pinkston as a witness to testify if necessary. If once the case is further developed, Pinkston concludes his factual information will not be presented to the Court, since the hearing in this matter is scheduled for May 20, 2016, Pinkston should have sufficient time to timely refile his motion to intervene, if necessary.

It should be noted however, that as the OSHRC proceedings are open to the public, unless sequestered because he is a witness at the hearing, Pinkston would be permitted to observe the hearing. Even if sequestered, once he testifies and is excused as a witness he would be able to observe the remaining portion of hearing. Likewise, unless a protective order is issued precluding Pinkston’s presence during a deposition, pursuant to Fed.R.Civ.P. 26(c)(1)(E) he would be able to observe any depositions which take place in this case.

Having considered the positions and arguments of the parties and Robert Pinkston, Pinkston's motion to intervene fails to meet the requirements of Commission Rule § 2200.21. Accordingly, for the reasons set forth herein, Robert Pinkston's motion to intervene is hereby **DENIED.**

SO ORDERED.

Date: March 29, 2016

/s/

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