



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

PIKE ELECTRIC, INC.,

Respondent.

OSHRC Docket No. 08-1389

SUPPLEMENTAL BRIEFING NOTICE

The Commission hereby supplements its May 6, 2010 Briefing Notice to request that the parties brief the following additional issues:

- (1) Did the judge err in finding the Secretary established that Respondent had knowledge of the cited condition?
- (2) Did the judge err in finding that Respondent failed to establish its affirmative defense of unpreventable employee misconduct?
- (3) In addressing these questions, the parties are asked to discuss *L.R. Willson and Sons Inc.*, 18 BNA OSHC 1698, 1698-99 (No. 94-1546, 1999), *on remand from* 134 F.3d 1235 (4th Cir. 1998), *rev'g in pertinent part* 17 BNA OSHC 2059, 2063-64 (1997).

The parties are advised that when the merits or characterization of an item are before the Commission for review, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

Within 40 days of this supplemental notice, the Secretary shall file a Supplemental Brief. Until that time, Respondent's time for filing its Brief is tolled. Once the Secretary files her Supplemental Brief, Respondent shall have 30 days to file its Brief. Otherwise, all briefs are to be filed in accordance with Commission Rule 93.¹ A party who does not intend to file a brief must notify the Commission in writing setting forth the reason therefore within the applicable

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal articles and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.

time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: July 1, 2010

/s/

Ray H. Darling, Jr.
Executive Secretary