

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

Petition File No. 553

James F. Sherman, Area Steward, Communication Workers of America
(Local 9400)

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Date: April 20, 2016

Introduction

On December 31, 2016, the Occupational Safety and Health Standards Board (Board) received a petition from James Sherman, Area Steward for the Communication Workers of America (CWA) Local 9400 (Petitioner). The Petitioner requested that the Board amend the High-Voltage Electrical and Telecommunication Safety Orders to remove an exception to the use of fall protection during point to point travel on poles, towers, and similar structures, except where the employer demonstrates that such protection is infeasible or creates a greater hazard.

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

In April, 2015, federal OSHA published updated regulations for the operation and maintenance of electric power generation, control, transmission, and distribution lines and equipment. Prior to the updated rules, qualified employees in the industry were allowed to climb poles, towers, and similar structures without fall protection in some instances. After April 1, 2015, qualified employees must use fall protection unless doing so is infeasible or creates a greater hazard than climbing or changing location without it.

Reason for the Petition

The Petitioner points out that under current California regulations, qualified employees are allowed to “free climb”, or climb without any fall protection, during point to point travel on poles, towers, and similar structures, as long the worker has a “firm hand [and] foothold while traveling.” He states that since 1998, wooden pole climbing industries have worked with manufacturers to develop fall arrest equipment that will prevent a worker from falling more than two feet while ascending or descending poles.

He also points out that as of April 1, 2015, federal OSHA requires qualified climbers on poles, towers, and similar structures to use fall protection “unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing without it.”

The Petitioner requests that the Board remove the exceptions for qualified employees to “free climb” and require that fall protection be used in accordance with federal regulations.

National Consensus Standard

The American National Standards Institute is currently developing ANSI A10.48, which is expected to be published in 2016. The standard will address safety practices for the construction and maintenance of communication towers, though it is not available as of the date of this evaluation.

Two states currently have regulations governing communication tower construction and maintenance:

North Carolina's standard requires 100% fall protection systems when climbing towers above six feet. Such fall protection includes guardrails, positioning devices, ladders, fall arrest systems, and where such protection is infeasible or creates a greater hazard, fall protection plans (see North Carolina Administrative Code 13 NCAC 07F.0600 et seq.).

Michigan also has a standard, which is very similar to North Carolina's standard, including the requirement for a fall protection plan where other methods of fall protection are infeasible or create a greater hazard (see Michigan Administrative Code R 408.42901 et seq.). Both regulations apply only to communication towers, and not poles.

Federal OSHA Standards

As stated by the Petitioner, federal standards currently require fall protection for use on poles, towers, and similar structures under 1910.269 Electric Power Generation, Transmission, and Distribution, which includes the following requirements:

1910.269(g)(2)(iv)(C)(2)

Except as provided in paragraph (g)(2)(iv)(C)(3) of this section, each employee in elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, or similar structures shall use a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if the employer has not provided other fall protection meeting Subpart D of this part.

1910.269(g)(2)(iv)(C)(3)

Until March 31, 2015, a qualified employee climbing or changing location on poles, towers, or similar structures need not use fall protection equipment, unless conditions, such as, but not limited to, ice, high winds, the design of the structure (for example, no provision for holding on with hands), or the presence of contaminants on the structure, could cause the employee to lose his or her grip or footing. On and after April 1, 2015, each qualified employee climbing or changing location on poles, towers, or similar structures must use fall protection equipment unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

Note 1 to paragraphs (g)(2)(iv)(C)(2) and (g)(2)(iv)(C)(3): These paragraphs apply to structures that support overhead electric power transmission and distribution lines and equipment. They do not apply to portions of buildings, such as loading docks, or to electric equipment, such as transformers and capacitors. Subpart D of this part contains the duty to provide fall protection associated with walking and working surfaces.

Note 2 to paragraphs (g)(2)(iv)(C)(2) and (g)(2)(iv)(C)(3): Until the employer ensures that employees are proficient in climbing and the use of fall protection under paragraph (a)(2)(viii) of this section, the employees are not considered "qualified employees" for the purposes of paragraphs (g)(2)(iv)(C)(2) and (g)(2)(iv)(C)(3) of this section. These paragraphs require unqualified employees (including trainees) to use fall protection any time they are more than 1.2 meters (4 feet) above the ground.

Federal regulations addressing pole and tower climbing in telecommunications are found in 1910.268 Telecommunications, which provide the following in regard to working at elevation:

1910.268(g)

Personal climbing equipment --

1910.268(g)(1)

General. Safety belts and straps shall be provided and the employer shall ensure their use when work is performed at positions more than 4 feet above ground, on poles, and on towers, except as provided in paragraphs (n)(7) and (n)(8) of this section. No safety belts, safety straps or lanyards acquired after July 1, 1975 may be used unless they meet the tests set forth in paragraph (g)(2) of this section. The employer shall ensure that all safety belts and straps are inspected by a competent person prior to each day's use to determine that they are in safe working condition.

1910.268(n)(7)

Outside work platforms. Unless adequate railings are provided, safety straps and body belts shall be used while working on elevated work platforms such as aerial splicing platforms, pole platforms, ladder platforms and terminal balconies.

1910.268(n)(8)

Other elevated locations. Safety straps and body belts shall be worn when working at elevated positions on poles, towers or similar structures, which do not have adequately guarded work areas.

Division of Occupational Safety and Health (Division) Report

In an evaluation dated March 8, 2016, the Division explains the existing regulations for fall protection on poles, towers, and similar structures in the Electrical and Telecommunications Safety Orders for both the California and federal programs. Because of recent changes to federal electrical safety orders, the Division recommends amending the current California exceptions to fall protection in the Electrical and Telecommunications Safety Orders with the following:

Exception: Fall protection is not required where the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

Staff Evaluation

California Regulations

Current California regulations addressing fall protection for work on poles, towers, and similar structures are found in the High-Voltage Electrical Safety Orders (HV-ESO), Low-Voltage Electrical Safety Orders (LV-ESO) and the Telecommunication Safety Orders (TSO). All three safety orders read essentially as follows:

Fall Protection. When work is performed at elevated locations more than 4 feet (1.2 meters) above the ground on poles, towers or similar structures, the employer shall require the employees to use either fall arrest equipment, work positioning equipment, or travel restricting equipment, if other fall protection methods have not been provided (e.g., guardrails, safety nets, etc.). The use of body belts for fall arrest systems is prohibited.

Exception: Point to point travel by a qualified person, unless conditions such as ice, high winds, design of the structure, or other condition (e.g., chemical contaminants) prevents the employee from gaining a firm hand or foothold while traveling.

(See LV-ESO Section 2320.8(a), HV-ESO Section 2940.6(b), or TSO Section 8615(g) for specific language.)

Federal Regulations

Under federal regulations, work at elevated locations associated with electric power generation, transmission, or distribution requires employers to protect workers by employing a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if other fall protection methods have not been provided (e.g., guardrails, safety nets, etc.). Work at heights in the telecommunications industry requires only safety straps and body belts, which allow an employee to lean against the strap and “rest” while working on a tower, pole, or similar structure, but do not constitute personal fall arrest equipment. Neither regulation contains an exception for providing fall protection for “point to point travel by a qualified person.”

In April, 2014, federal OSHA published an update to its electrical orders, which included the requirements for fall protection described above. Board staff is currently working on updating California's LV-ESO and HV-ESO to incorporate the federal language, including the requirement to provide fall protection without an exception for point to point travel. Therefore, the process to remove the exception from the LV-ESO and HV-ESO as requested by the Petitioner has already begun.

The Petitioner's request to update the TSO, however, has not been evaluated by the Board. Because of the intermingled nature of electrical and telecommunications work, where high voltage transmission and distribution poles and towers often double as telecommunication towers, telecommunications employers are often subject to the provisions of both the Electrical and Telecommunication Safety Orders while performing the same job.

Although federal requirements for fall protection in the telecommunications industry do not require the use of personal fall protection equipment, California should require employees to be provided with such equipment to reduce the likelihood of a fall from a tower, pole, or similar structure, regardless of where the work falls within the scopes of the Electrical and Telecommunication Safety Orders. The nature of the fall hazard is identical.

Due to the availability of fall protection devices for work on towers, poles, and similar structures, employers now have options for protecting employees working at height that did not exist in the past. Federal regulations provide for an exception to personal fall protection when the use of such equipment is infeasible or creates a greater hazard to the climbing employee.

Recommendation

Based on the foregoing discussion, Board staff believes the Petitioners' request has merit and recommends that the Board grant the Petition. Board staff should be directed to prepare rulemaking documents to amend the exception in section 8615(g) of the Telecommunication Safety Orders with language commensurate with federal requirements for fall protection on poles, towers, and similar structures as developed for the Electrical Safety Orders. Board staff is currently working on proposed amendments to the HVESO section 2940.6(b) and LVESO section 2320.8 exceptions.