

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

**CITY OF LOS ANGELES DEPARTMENT OF
PUBLIC WORKS BUREAU OF SANITATION**
11050 Pendleton Street
Sun Valley, California 91352

Employer

DOCKET 14-R4D3-1717

DECISION

STATEMENT OF THE CASE

The City of Los Angeles, Department of Public Works Bureau of Sanitation (Employer) operates the city's sanitation systems. On December 23, 2013, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Rami Delos Reyes (Reyes) conducted an accident inspection at a place of employment maintained by Employer at 14100 Dorrington Place, Panorama City, California. On May 13, 2014, the Division cited Employer for failing to protect employees from fall hazards from the top of a refuse collection truck; failing to have a moveable guard that is interlocked with the packing cycle¹ to close off the refuse body area of the truck; and for failure to de-energize or disengage the power source while attempting to clean debris from the truck's equipment.²

Employer filed an appeal contesting the existence of the violation of the safety orders, classifications, abatement and the reasonableness of the proposed penalties. Employer pleaded affirmative defenses as indicated in Employer's Appeal filed with the Occupational Safety and Health Appeals Board (Exhibit 1).

¹ Packing cycle – The cycle in which the hydraulics use the blade to compress garbage tossed into the hopper.

² The following alleged violation of the occupational safety and health standards and orders found in California Code of Regulations, title 8

The matter came on regularly for hearing before Clara Hill-Williams, administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Van Nuys, California on September 23, 2015. Employer was represented by Attorney James Dufour. The Division was represented by Staff Counsel William Cregar. The ALJ extended the submission date to February 10, 2016.

ISSUES

1. Where guardrail requirements were impracticable, did Employer provide an alternate means of protecting employees from falling from the top of an Amrep brand automated curb-side dual blade refuse collection unit truck?
2. Did Employer fail to provide point-of-operation protection for an automated curb-side dual blade refuse collection unit during the packing cycle?
3. Did Employer fail to implement lockout procedure before cleaning, repairing, servicing or adjusting an automated curb-side dual blade refuse collection unit?
4. Did Employer establish that James Wilson's (Wilson) actions were an independent act of an employee with regards to Citation 1, Item 3?

FINDINGS OF FACT

1. James Wilson (Wilson), Employer's truck operator, with over 20 years of experience as a truck operator, climbed upon the platform of an Amrep brand automated curb-side dual blade refuse collection unit (truck) to clear debris in the hopper³ portion of the truck without turning the power off, which violated Employer's safety policies and procedures.
2. The parties stipulated that the accident occurred on Employer's Amrep automated refuse collection unit truck and not in a building, making section 3210, subdivision (a) inapplicable.
3. The parties stipulated that the requirements of section 3210, subdivision (b) were impractical given Wilson's height of six feet, four inches, and the distance between the platform's hand holds and the hopper.
4. Wilson was trained on 37 occasions since beginning his employment with Employer in 2002, 12 times within the last three years and tailgate meetings with drivers on an approximate biweekly basis.⁴

³ Hopper – The part of a truck where waste is emptied into before it is compacted inside the container.

⁴ Documented by Wilson's attendance records at safety meetings. See Exhibit M.

5. Wilson did not turn the power off before he cleared the debris to test the slow down bar⁵ to make sure the packer blade was operating, which he knew violated Employer's policies and procedures.
6. After clearing some debris off the packer blade⁶ in the hopper, and without turning the power off, Wilson tested the slow down bar, which appeared to be stuck in the "up" position (Photo Exhibit 4H), violating Employer's policies and procedures.
7. In further violation of policies and procedures Wilson used a "clean-up tool" and tried to grab the slow down bar but could not reach it. He then knocked off more debris and tried to move the slow down bar forward and back to see if the packer blade was operating, which caused the truck to rock, resulting in Wilson losing his balance and falling into the hopper (bed) of the truck, smashing his leg against the packer blade that was in operation.
8. The parties stipulated that the Amrep truck's power could be deactivated in three ways: 1. Pushing the stop button in the cab of the truck; 2. Removing the ignition key; and 3. Pulling the ladder lever. On the day of the accident, these three methods were bypassed by Wilson, a trained operator.
9. Wilson failed to follow Employer's safety procedures by using Employer's retractable ladder with a rail/hand hold leading to the platform of the Amrep truck, which would have automatically turned the power off to safely allow him to inspect the hopper area.
10. Before the day of the accident, Wilson had on previous occasions cleared jams without shutting down the power to the packer blade because it saved time and avoided taking the vehicle to the yard or waiting for a mechanic, which Wilson knew was in violation of Employer's policies and procedures.
11. Employer enforced its safety procedures as shown by: warning signs were placed on the truck (Exhibit D) for operators and included in the truck's operation manual (Exhibit 3); hazard identification and evaluations; tailgate (safety) meetings; conducting performance observations of the truck operators to insure compliance with the safety orders (Exhibit H); and unannounced inspections to enforce Employer's work practice requirements.⁷

⁵ Slow down bar –The packer blade is connected to the slow down bar device, which regulates the speed of the blade.

⁶ Packer blade – Made of steel and powered by the garbage truck's hydraulic system. Used to compress/compact garbage thrown into the hopper to create additional space for more refuse. refusetrucks.scrantonmfg.com

⁷ See testimony of Case Spencer, Employer's Environmental Engineer.

12. Employer was not required to guard the point of operation because the automatic side-loader has only one point of operation, which is inside the vehicle. The operator controls the feeding of material into the vehicle from within the cab that is isolated from exposure to a safety hazard.
13. Manual side-loading trucks are loaded from the outside by an operator or helper directly into the loading hopper, where there is a point of operation hazard to an operator on foot loading refuse into its hopper due to the packer blade control devices outside of the vehicle.⁸
14. Employer's investigation determined that Wilson intentionally violated Employer's safety rules which caused the accident. Wilson was assessed a 15-working day suspension after he returned to work from the injuries he sustained as a result of the accident (Exhibit O).

ANALYSIS

- 1. Where guardrail requirements were impracticable, did Employer provide an alternate means of protecting employees from falling from the top of an Amrep brand automated curb-side dual blade refuse collection unit?**

Section 3210, subdivision (c) provides:

Where the guardrail requirements of subsections (a) and (b)⁹ are impracticable due to machinery requirements or work processes, an alternative means of protecting employees from falling, such as personal fall protection systems, shall be used.

⁸ See Footnote 6.

⁹ Section 3210, subdivision (a) states:

(a) Buildings. Guardrails shall be provided on all open sides of unenclosed elevated work locations, such as: roof openings, open and glazed sides of landings, balconies or porches, platforms, runways, ramps, or working levels more than 30 inches above the floor, ground, or other working areas of a building as defined in Section 3207 of the General Industry Safety Orders. Where overhead clearance prohibits installation of a 42-inch guardrail, a lower rail or rails shall be installed. The railing shall be provided with a toeboard where the platform, runway, or ramp is 6 feet or more above places where employees normally work or pass and the lack of a toeboard could create a hazard from falling tools, material, or equipment.

(b) Other Elevated Locations. The unprotected sides of elevated work locations that are not buildings or building structures where an employee is exposed to a fall of 4 feet or more shall be provided with guardrails. Where overhead clearance prohibits installation of a 42-inch guardrail, a lower rail or rails shall be installed. The railing shall be provided with a toeboard where the platform, runway, or ramp is 6 feet or more above places where employees normally work or pass and the lack of a toeboard could create a hazard from falling tools, material, or equipment.

The Division alleged:

On 11/14/13, employee accessed the top of an Amrep brand automated curb-side dual blade refuse collection unit, license plate 1279728 Truck #36960. The employee was not protected against fall hazards from the top of the truck.

The Division has the burden of proving every element of its case, including the applicability of the cited safety orders, by a preponderance of the evidence. (*Cambrio Manufacturing Co.*, Cal/OSHA App. 84-923, Decision After Reconsideration (Dec. 31, 1986); *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).)

In determining whether Employer failed to provide an alternate means of protecting employees from falling, the Division must: 1) establish that the guardrail requirements of subsections (a) and (b) were impracticable due to machinery requirements or work processes (See Footnote 2); and, 2) that Employer failed to provide an alternate means of protecting employees from falling, such as personal fall protection systems.

The parties stipulated that the accident occurred on Employer's Amrep automated refuse collection unit truck and not in a building, making subdivision (a), which applies only to buildings inapplicable to the circumstances here, which involved a refuse truck. The parties also stipulated that the requirements of subdivision (b) were impractical given Wilson's height and the distance between the platform's hand holds and the hopper.

Here, both the Division and Employer stipulated that there were three ways to turn off the power to de-activate the blades in the hopper: 1) Push the stop button in the cab of the truck; 2) Remove the ignition key; and, 3) Pull the ladder lever, which also turns off the truck. The Division and Employer further agreed that these three methods were bypassed by Wilson on the day of the accident.

Because subdivisions (a) and (b) were impracticable and inapplicable, the Division asserted section 3210, subdivision (c) was applicable, which required Employer to provide an alternative means of protecting employees from falling, such as personal fall protection systems. Reyes asserted that Employer failed to provide an alternative means of protecting employees from falling as required by subdivision (c). Reyes testified that Employer should have provided a means to guard the blade or provide fall protection for the operators. Wilson testified that Employer was aware that other operators on occasion cleared jams (similar to Wilson's attempt on the day of the accident) without shutting down the power to the packer blade. Reyes testified that fall protection would have prevented Wilson from falling into the hopper and sustaining a serious injury.

Employer's expert, Eric Mattson¹⁰ (Mattson), Vice-President and General Manager of Amrep Incorporated, the manufacturer of the refuse trucks used by Employer stated Employer's retractable ladder with a rail/hand hold leading to the platform of the Amrep automatic truck would safely allow an operator to inspect the hopper area (Exhibit 4, B, C and D). Mattson explained that when the retractable ladder was activated the power to the truck and the blades was automatically de-activated.

Employer also asserts that the Board has noted that a specific provision takes precedence over a more general one. (*Tutor-Saliba Corporation*, Cal/OSHA App. 99-3388 Decision After Reconsideration (Mar 26, 2002).) Given the Board's ruling in *Tutor-Saliba, supra*, Employer asserts using the retractable ladder is more specific than section 3210, subdivision (c) provisions of "personal fall protection systems" and thus controls.

At the hearing Mattson described the fall protection features of the truck driven by Wilson on the day of the accident. Mattson stated that once the ladder is pulled down the power in the lift arm and packing blade in the hopper is disengaged (Exhibit 4-B). Mattson explained that if the ladder is in the up position the hydraulic functions of the truck are operating. When the ladder is lowered it shuts down the hydraulic system. Mattson also stated that the design of the refuse trucks is in conformity with the ANSI (American National Standard Institute)¹¹ standards, section 24.1, which was in place at the time the vehicle was manufactured.

In weighing the evidence, Mattson's testimony regarding the retractable ladder available to Wilson on the day of the accident cannot be ignored. Wilson's use of the ladder would have prevented the accident because lowering the ladder would have shut down the hydraulic system of the truck and would have allowed him to test the equipment, which jammed due to the debris in the blades of the hopper. In addition to Employer's policies and procedures requiring use of the ladder, warning signs for truck operators were depicted on the truck (Exhibit D) for operators and included in the truck's operation manual (Exhibit 3), which states "Stop engine and remove ignition key before entering body" and to "Stop engine and remove ignition key before climbing on body" as stipulated to by the parties above.

Thus, the Division did not meet its burden in establishing ~~that~~ section 3210, subdivision (c) is applicable in showing ~~that~~ Employer failed to provide an alternate means of protecting employees from falling, such as personal fall

¹⁰ Pursuant to Evidence Code section 801, ALJ Hill-Williams qualified Eric Mattson as an expert with knowledge of Amrep vehicles, having worked for Amrep for 25 years.

¹¹ ANSI Standards - The Institute oversees the creation, promulgation and use of thousands of norms and guidelines that directly impact businesses in nearly every sector: from acoustical devices to construction equipment, from dairy and livestock production to energy distribution, and many more. ANSI is also actively engaged in accreditation - assessing the competence of organizations determining conformance to standards. -www.ansi.org.

protection. The Division's scant evidence in generalizing fall protection and failure to explain how a light guard or inner guard was more effective than the guarding methods utilized by Employer. Here, Employer established that the retractable ladder is an alternative means of protecting employees, which meets the requirements of subdivision (c). The Division did not establish a violation of section 3210, subdivision (c). Thus Citation 1, Item 1 is vacated and the proposed penalty is dismissed.

2. Did Employer fail to provide point-of-operation protection for an automated curb-side dual blade refuse collection unit during the packing cycle?

Section 4354, subdivision (b) Mobile Compaction Equipment provides:

On rear and side-loaders, point-of-operation protection shall be provided during the packing cycle by one of the following means:

(2) A movable guard that is interlocked with the packing cycle so that it is in place before the packer panel is within six inches of all pinch points, and in itself does not create a shearing or crushing hazard.

The Division alleged:

On 11/14/13, an Amrep brand automated curb-side dual blade refuse collection unit, license plate 1279728 Truck #36960 did not have a moveable guard that is interlocked with the packing cycle to close off the refuse body area.

To establish a violation of this safety order, the Division must show Employer failed to provide point-of-operation protection during the packing cycle by failing to (1) provide a movable guard that was interlocked with the packing cycle so that it was in place before the packer panel is within six inches of all pinch points and (2) the movable guard does not create a shearing or crushing hazard.

To establish that Employer failed to provide a point-of-operation protection during the packing cycle, the Division must show Employer failed to provide a movable guard that was interlocked with the packing cycle within six inches of the pinch points. Reyes described a movable guard as a mechanism that acts like a gate. Some effort is necessary to remove the gate as a barrier for the point of operation. Reyes testified that the point of operation is where the refuse/trash makes contact with the moveable blade (pinch points). Reyes further testified that Employer failed to provide a movable guarding device that was interlocked with the packing cycle of the truck so that it was in place before the packer panel, which contains the blades, is within six inches of the

pinch points to avoid contact. Reyes testified that Employer did not have an “inner guard” or movable guard to protect Wilson from the cycling of the packer blade when Wilson fell into the hopper. If there had been an inner guard, Wilson’s legs would not have made contact with the blade. Reyes explained that a removable guard would not be burdensome for the truck operators and explained that a light curtain¹² could accomplish this purpose as well.

Mattson testified that the bin at the top of the automated side-loader is not the point-of-operation¹³. Mattson stated that an automated loader in this case has only one point of operation, while a manual side loader may have more than one point of operation. Mattson explained that manual and semi-automatic side loaders are loaded from the side of the vehicle manually by the operator or helper directly into the loading hopper. Both manual and semi-automatic side loaders also typically have packer control devices outside of the vehicle near the loading hopper for the driver to activate the packing process. In contrast, automated side loaders are operated from inside the vehicle by operating a “dump cycle selector switch” located on the control console that operates the dump cycles that will occur prior to the packer cycle being activated (See Exhibit 3).¹⁴ Employer asserts that while the Division alleged “A machine may have more than one point of operation”, the Amrep automated side loader only has one point of operation. Mattson further explained that the “potential pinch points” on a manual side-loading truck and an automated side loader are different. All operating controls for the automatic side loader are located inside the cab and the operator controls the “feeding of material” into the hopper from within the cab, which is isolated from any exposure to a hazard the safety order was intended to regulate.

The Division did not produce persuasive evidence to establish a violation of the safety order. Reyes identified a hazard with the vehicle lacking an inner guard, moveable guard or a light curtain, which could guard the point of operation, where the refuse comes in contact with the packer blade in the hopper. The Division did not produce sufficient evidence to show how an inner guard, movable guard or light curtain would operate in conjunction with an operating packer blade, other than creating a barrier difficult to remove by the truck operator. On the other hand, Employer has shown through the credited testimony of Mattson. The automatic side-loader has only one point of operation, which is inside the vehicle that is controlled by the operator feeding the material into the vehicle by operating switches on the console within the cab, which is isolated from the safety hazard. Thus a violation was not established.

¹² Light curtains are opto-electronic presence sensing safety devices that detect the presence of an object.

¹³ Exhibit E - ANSI Z2245.1-2012. Pages 18 and 19

¹⁴ Operation Manual - AMREP p.22

3. Did Employer fail to implement lockout procedure before cleaning, repairing, servicing or adjusting an automated curb-side dual blade refuse collection unit?

Section 4355, subdivision (c)(5) Operating Rules for Compaction Equipment provides:

- (c) Mobile Collection/Compaction Equipment.
- (5) Before cleaning, repairing, servicing or adjusting collection equipment, a lockout procedure complying with Section 3314 shall be established and shall be followed.

The Division alleged:

On 11/14/13, an Amrep brand automated curb-side dual blade refuse collection unit, license plate 1279728 Truck #36960, was not stopped and the power source was not de-energized or disengaged resulting in injury to an employee after being caught with the Packard blade inside the refuse body area while he was attempting to clean debris from the equipment.

The Division must show Employer failed to establish and follow a lockout procedure before cleaning, repairing, servicing or adjusting collection equipment in establishing a violation of section 4355, subdivision (c)(5). Reyes testified that during his inspection at the work site, he interviewed seven employees and discovered that while some employees used the ladder, it was not unusual for other operators to go up on the platform and attempt to unjam the blade without using a ladder or turning the power off, in order to save time and avoid taking the truck back to the yard or waiting for a mechanic. This practice of some operators was confirmed by Wilson and Yarber's testimonies at the hearing.

Employer described Wilson's actions as "testing" which does not require a lockout tagout procedure, required for "cleaning, repairing, servicing or adjusting" collection equipment under section 3314. Here, Employer points to Wilson's testimony at the hearing, where he described his actions as "testing" or "checking" the packer blade after the debris was cleared. Wilson testified that he did not turn the power off because after he cleared the debris he wanted to test the slow down bar to make sure the packer blade was operating. Thus, Employer asserts that even if Wilson had de-energized the equipment in removing the debris, he would have re-energized the power in order to test the collection equipment. Employer acknowledges that while Wilson violated other policies and procedures, the intent of section 3314, subdivision (a), to prevent "inadvertent movement during cleaning, servicing, or adjusting operations", is not applicable here.

In *Dade Behring, Inc.*, Cal/OSHA App 05-2203, Decision After Reconsideration (Dec. 30, 2008), there was a dispute over whether the activities performed by employee Zakharnev were covered by section 3314, subdivision (b). Specifically, Employer disputed whether Zakharnev was "unjamming" the machine at the time of the accident. In *Dade Behring, supra*, the Board recognized that "...it is always dangerous to work around energized machinery" and "[t]his danger is present however the activity around the energized machine is characterized." (*Stockton Steel Corporation, supra*, citing *Tri-Valley Growers*, Cal/OSHA App. 93-1971, DAR (Sep. 12, 1994).) According to Zakharnev, he needed to have the inoculator machine running because he was trying to diagnose the problem in order to prevent a jam before the injury accident occurred. As in *Dade Behring, supra*, here, where the power was intentionally not de-activated, the issue is whether the actions performed by Wilson are covered under the safety order.

The Board has previously looked to the specific task being performed in the context of the assignment which gave rise to it. (*Lights of America*, Cal/OSHA App. 89-400, DAR (Feb. 19, 1991).) Thus, even where an employee was not performing work on the machine or its parts at the moment he was injured, the activity is covered if he was doing a necessary part of a covered activity. (*Id.*) The Board has recognized that it is always dangerous to work around energized machinery" and "this danger is present however the activity around the energized machine is characterized." (*Stockton Steel Corporation, supra*, citing *Tri-Valley Growers*, Cal/OSHA App. 93-1971, DAR (Sep. 12, 1994).) Thus, although Wilson's specific action was not "cleaning, repairing, servicing or adjusting" the collection equipment it was nonetheless apart of the process of cleaning debris and un-jamming the equipment. In applying the Board's holding in *Dade Behring, supra*, Wilson's actions are covered under the safety order. Therefore, Wilson's actions violated the safety order.

4. Did Employer establish that Wilson's actions were an independent act of an employee regarding Citation 1, Item 3?

Employer raised the independent employee action defense (IEAD) set forth in *Mercury Service, Inc.*, Cal/OSHA App. 77-1133, Decision After Reconsideration (Oct. 16, 1980). Failure to prove any one of the elements negates the independent employee action defense in its entirety. (*Ferro Union, Inc.*, Cal/OSHA App. 96-1445, Decision After Reconsideration (Sept. 13, 2000).)

The Division asserts the IEAD is not applicable here because guarding is required. However, safety order section 4355(c) is related to Employer's lockout procedure in complying with section 3314 and does not involve guarding.

According to *Mercury Service, supra*, Employer has the burden of proof to show:

- 1) The employee was experienced in the job being performed.
- 2) The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments.
- 3) The employer effectively enforces the safety program.
- 4) The employer has a policy of sanctions against employees who violate the safety program.
- 5) The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.

In considering the first element of whether the employee was experienced in the job being performed, Employer referenced Wilson's testimony of 20 years of experience as a truck operator. Wilson had extensive experience working in residential route assignments, thus demonstrating experience meeting the standard of sufficient knowledge of his work assignment as a truck operator.

The second element of IEAD requires Employer to have a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments. Employer pointed to its IIPP and its supplemental Memorandum of Understanding for IIPP Implementation, authenticated by Case Spencer (Spencer), Employer's Environmental Engineer (Exhibits P and Q)¹⁵, which includes all of the substantive elements required by section 3203. Spencer testified that Employer's response to Wilson's accident was a thorough review of policies, procedures, and training material on Hazardous Energy Control (Lockout/Tagout) and Climbing on vehicles. Richard Veiga (Veiga), employed with Employer for 28 years, presently supervising six districts, testified describing on-site training by Amrep representatives for collection operators identifying potential problems or hazards and establishment and communication of controls or improved work practices. Employer produced records, which indicated Wilson was trained on 37 occasions since beginning his employment in 2002 with Employer and 12 times within the last three years (Exhibit M). Employer submitted

¹⁵ The Division objected to admitting Exhibits P and Q at the hearing. The Division argued that Exhibits P and Q were not the true copies of the IIPP and MOU (Memorandum of Understanding) at the time of the accident. Employer explained that "despite the cover date of April 2012, printed on the document copies due to computer auto-dating on January 2013, when the IIPP was requested by the Division. A true copy of the initially signed and dated April 2012 IIPP and MOU was attached to a motion requesting admission into evidence filed with ALJ Hill-Williams on September 29, 2015. Good cause is found to grant the motion and admit the documents into evidence with April 2012 as the date the documents were signed.

documentation of Wilson's attendance at tailgate meetings with drivers on an approximate biweekly basis. The weight of the evidence supports a finding that the second element was met.

The third element concerns whether Employer effectively enforces the safety program. Veiga testified that Employer's hazard identification and evaluation included tailgate meetings and conducting performance observations of the truck operators to insure compliance with the safety orders. Veiga also described periodic scheduled inspections and preventative maintenance among hundreds of collection vehicles and produced a spreadsheet showing a one-month history of Wilson's vehicle's inspections at the time of the accident (Exhibit H). Spencer testified that Employer conducted unannounced inspections to enforce Employer's work practice requirement. The weight of the evidence supports a finding that the third element was met.

In considering the fourth element of whether Employer has a policy of sanctions against employees who violate the safety program, Veiga testified that after the investigation of Wilson's accident, and upon determining he had violated safety rules as well as union work rules in causing his own accident, severe discipline was recommended against Wilson. Employer requested Wilson's termination but as a result of union negotiations, Wilson was assessed a 15-working day suspension after returning to work from the injuries he sustained as a result of the accident (Exhibit O). Veiga stated that additional unrelated incidents in 2006 and 2001 were also shown in Wilson's records, which demonstrate Employer's continuing effort to enforce its "safety and employee conduct rules".

Regarding the fifth element of whether the employee caused a safety infraction which he or she knew was contra to the employer's safety requirements", there is substantial evidence to demonstrate Wilson was experienced and had operated automatic side-loader vehicles for several years and had attended specific Amrep operator training. Wilson's testimony showed awareness and intent to commit an unsafe act. Wilson admitted he left the cab without turning the truck off and removing the key. He stated he did not call the mechanic because he could unjam the slow down bar himself; calling a mechanic was a waste of time; he said it was easy for him to climb up without the ladder because he was tall. The evidence demonstrates Wilson was aware that Employer's safety rules were violated by his conduct.

In reviewing the evidence, Employer has established the five elements of the IEAD. The first element is met with Wilson's 20 years' experience as a truck operator. The second element is met because Wilson received documented extensive training. The third element is met by Employer's periodic scheduled and unannounced inspections among the collection vehicles. The fourth element is met on a result of Employer's disciplinary action, suspending Wilson for 15 days because he violated Employer's safety rules. The fifth element is established in showing Wilson caused a safety

infraction which he knew was contra to the Employer's safety rules. For the foregoing reasons, the IEAD is established. Citation 1, Item 3 is vacated and the proposed penalty is dismissed.

Conclusion

The Division did not meet its burden in establishing that section 3210, subdivision (c) is applicable to show Employer failed to provide an alternate means of protecting employees from falling, such as personal fall protection. The weight of the evidence established that Employer's retractable ladder met the requirements of section 3210, subdivision (c) is not applicable. The Division did not establish a violation of section 4355, subdivision (c)(5) in the context of Employer failing to provide point-of-operation protection for the automated curb-side dual blade refuse collection unit during the packing cycle. Employer presented credible evidence showing the safety order is not applicable to the facts of this case because the operator feeds the material into the vehicle from within the cab, which is isolated from the safety hazard. Finally, while the Division established that Employer failed to implement a lockout procedure before cleaning, repairing, servicing or adjusting an automated curb-side dual blade refuse collection unit. However, Employer established that Wilson's conduct met all five elements of IEAD. Thus, Citation 1, Item 3 is vacated and the proposed penalty is dismissed.

Order

It is hereby ordered that Citation 1, Items 1, 2 and 3 are dismissed, as indicated above and as set forth in the attached Summary Table.

Dated: March 10, 2016
CHW:ml

CLARA HILL-WILLIAMS
Administrative Law Judge

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

CITY OF LOS ANGELES DEPT. OF PUBLIC WORKS BUREAU OF
SANITATION
Dockets 14-R4D3-1717

Date of Hearing:
September 23, 2015

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional Documents	X
2	Penalty Worksheet	X
3	AMREP "DUAL BLADE" REFUSE COLLECTION UNIT OPERATION MANUAL	X
4A – 4J	Photos - AMREP Refuse Collection Unit	X

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Photo - AMREP Hopper	X
B	Photo - AMREP Hopper	X
C	Photo - AMREP Hopper	X
D	AMREP –STANDARD BODY SPECIFICATIONS BROCHURE	X
E	AMERICAN NATIONAL STANDARD (ANSI) National Waste Association	X
F	Photo AMREP Replacement Parts Sign	X

G	Letter from Eric Mattson VP, Amrep Inc. August 12, 2015 Unit Detail History Report Legend	X
H	Tailgate Roster Meetings	X
I	Tailgate Agenda 11/11/13	X
J	Hydraulic Packing Systems Lockout/Blockout Program	X
K	Operator's Vehicle Tag Out Procedure	X
L	James Wilson - LOTO Tailgate Sign-ins	X
M	LOTO Attendance Roster 1/31/12	X
N	Counseling Record of James Wilson	X
O	Injury Illness Prevention Program April 2012	X
P	Memorandum of Understanding April 2012	X
Q	MOU on Roles and Responsibilities (IIPP)	X
R	Guide to Employee Discipline	X

Witnesses Testifying at Hearing

1. James Wilson
2. Joseph Yarber
3. Rami Delos Reyes
4. Richard Veiga
5. Eric Mattson
6. Case Spencer

CERTIFICATION OF RECORDING

I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.

Signature

Date

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**CITY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS BUREAU OF
SANITATION
Docket 14-R4D3-1717**

Abbreviation Key: Reg=Regulatory	
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division
Ee=Employee	
A/R=Accident Related	

IMIS No. 316672286

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING or STATUS CONF.	FINAL PENALTY ASSESSED BY BOARD
14-R4D3-1717	1	1	3210(c)	G	ALJ vacates citation		X	\$420	\$420	\$0
		2	4354(b)	G	ALJ vacates citation		X	\$560	\$560	\$0
		3	4355(c)(5)	G	ALJ vacates citation		X	\$935	\$935	\$0
								\$1,915	\$1,915	\$0

\$0

NOTE: Please do not send payments to the Appeals Board. **All penalty payments must be made to:**

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

(INCLUDES APPEALED CITATIONS ONLY)

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: CHW/ml
POS: 03/09/2016