

STATE OF MINNESOTA

OCCUPATIONAL SAFETY AND HEALTH
REVIEW BOARD

Ken Peterson, Commissioner,
Department of Labor and Industry,

Complainant-Appellant,

and

Local 638, United Brotherhood of Teamsters,
Intervenor,

v.

United Parcel Service, Inc.,

Respondent.

DECISION

**OAH Docket No. 4-901-21382-2 and
4-901-21383-2**

MN OSH Docket No. 10137 and 10138

The above-entitled matter came before the Minnesota Occupational Safety and Health Review Board (Board) on November 27, 2012.

Jackson Evans, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127 appeared on behalf of the Commissioner of the Department of Labor and Industry (Complainant-Appellant). Timothy J. Louris and Roger A. Jensen, Miller, O'Brien and Cummins, PLLP, 1 Financial Plaza, Suite 2400, 120 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of Local 638, United Brotherhood of Teamsters (Intervenor). Carla J. Gunnin, Constangy, Brooks and Smith, LLP, 230 Peachtree Street Northwest, Suite 2400, Atlanta, Georgia 30333 appeared on behalf of United Parcel Service, Inc. (Respondent). Bernard E. Johnson, Assistant Attorney General, Suite 1800, 445 Minnesota Street, St. Paul, Minnesota 55101-2127 was present as legal advisor to the Board.

FACTS AND PROCEDURAL HISTORY

This matter came before the Board pursuant to an appeal of the Commissioner of the Minnesota Department of Labor and Industry from a decision of Administrative Law Judge Kathleen Sheehy dismissing two citations against United Parcel Service (UPS). The Department of Labor and Industry (Department) issued citations to UPS for violations of Minn. R. 5205.0110 for failure to maintain a minimum temperature of 60 degrees in the UPS facilities in Minneapolis and Maple Grove. Administrative Law Judge Sheehy concluded that the indoor workroom rules contained in Minn. R. 5205.0110 subp. 3 did not apply to the UPS facilities because the garage ventilation standards contained in Minn. R. 5205.0200 did not contain a workplace temperature requirement.

ISSUE

The issue in this appeal is whether the UPS facilities in Minneapolis and in Maple Grove are governed by the indoor workroom temperature requirements of Minn. R. 5205.0110, subp. 3.

Based on the files, records and proceedings herein, the Board hereby makes the following:

ORDER

IT IS HEREBY ORDERED that the Order issued in this matter by Administrative Law Judge Kathleen D. Sheehy on June 20, 2012 is REVERSED and that CITATIONS issued by the Department are UPHELD.

Dated this 20th day of December, 2012



Patricia Solheid, Board Chair

DISCUSSION

The issue in this matter is whether the indoor workroom temperature requirements of Minn. R. 5205.0110, subp. 3 apply to the UPS facilities in Minneapolis and Maple Grove. The Administrative Law Judge in her Findings of Fact, Conclusions of Law and Order describes the facilities in both cities. UPS uses these facilities for the arrival, sorting, and disbursal of packages to its customers. Trucks enter the facilities, have their contents unloaded, sorted, redirected, and reloaded onto trucks, which leave both facilities.

There were no complaints about the temperatures at both facilities until UPS issued a memo setting temperature settings at 45 degrees at the facilities. Subject to complaints, the Department was notified and citations were issued to UPS for violation of the indoor workroom temperature standards contained in Minn. R. 5205.0110, subp. 3.

The Board consists of three members. By a vote of 2 to 1, the Board determined that the temperature requirements of Minn. R. 5205.0110, subp. 3 apply to the UPS facilities. Board Members Robert Sogla and Leonard Price did not see a differentiation in the standards of indoor workroom ventilation and temperature requirements under Minn. R. 5205.0110, and the garage ventilation standards under Minn. R. 5205.0200. Both Board Members Sogla and Price determined that both rules do not stand alone.

The garage ventilation standards of Minn. R. 5205.0200 do not contain a minimum workplace temperature requirement; however, unlike the Administrative Law Judge who determined that because the garage ventilation standards contained in Minn. R. 5205.0200 do not contain a temperature requirement, thus making the temperature requirements of Minn. R. 5205.0110, subp. 3 inapplicable; the Board determines that the requirements of Minn.

R. 5205.0110 and 5205.0200 are stand-alone requirements, and that both standards apply to the UPS facilities in question.

Board Member Patricia Solheid believes that the indoor temperature requirements need to be applied to the differences in workplaces. The UPS facilities where trucks come and go through garage doors should be treated differently than enclosed workplaces where strenuous work is performed. She believes that the Department was being “used” to resolve a labor issue between UPS and its employees. This is evidenced by the fact that there were no complaints until UPS, as an energy saving measure, directed thermostats at both facilities to be set at 45 degrees. She believed that this matter was not a safety issue, but a technical one, and that the Department is being asked to resolve a labor dispute between UPS and its employees, who are represented by Local 638 of United Brotherhood of Teamsters.

The Board determines that the temperature standards of Minn. R. 5205.0110 do apply to the UPS facilities; however, all Board members believe that this issue needs to be further addressed by either the Commissioner of Labor and Industry or the Minnesota Legislature. Minn. R. 5205.0110 needs to be further defined by the Commissioner as to which facilities this rule should specifically apply. Barring action by the Commissioner, the Board believes that the Minnesota Legislature should address this issue to protect the interests of both employees and employers.