

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Concord, North Carolina. Respondent is in the business of construction. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).
3. During the period of June 6, 2014 through June 26, 2014 an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at on Ruben Linker Road in Concord, North Carolina (the "Inspection").
4. As a result of the Inspection, on July 14, 2014, Complainant issued a citation alleging a violation of 29 CFR 1904.7(b)(4), classified as nonserious, with a proposed penalty of \$650.00 (herein sometimes referred to as "Citation 1" or the "Original Citation").
5. Respondent submitted a timely Notice of Contest.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter.
9. **Respondent agrees as follows:**

* Respondent will provide on or about June 5, 2015, January 5, 2016, June 5, 2016, and January 5, 2017, its OSHA 300 logs to Paul Sullivan or his successor to review the information for any corrections and clarifications. NCOSHA will give Respondent an opportunity to correct any

deficiencies with the OSHA 300 Logs submitted as part of this agreement prior to initiating an inspection resulting from review of those logs.

* Respondent will provide a form to employees through January 5, 2017 who have an OSH recordable injury to provide to the medical care provider to complete. The form will seek information regarding whether the employee can return to work with or without restrictions. If the employee refuses to provide such information, Respondent will ask employee to provide a written statement regarding whether employee has any restrictions. If employee refuses to provide a written statement, Respondent will engage in reasonable efforts to determine whether employee has recordable restrictions from his or her job duties. Nothing in this agreement, however, requires Respondent to engage in any actions that would violate applicable law.

10. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

11. Complainant and Respondent agree that provided Complainant's Motion is granted there are no other matters that remain to be decided, and that other than a ruling with respect to the Motion no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as modified pursuant to Complainant's Motion. The parties further agree that (i) the dismissal of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as modified or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

***withdraw and dismiss the Original Citation and associated penalty in its entirety.**

Respondent did not object to Complainant's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

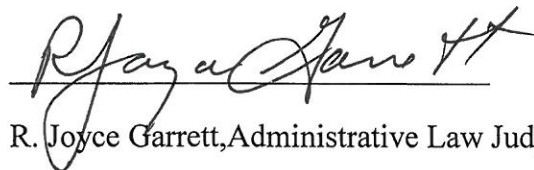
1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Complainant's Motion is hereby **GRANTED**.

This the 28th day of January, 2015


R. Joyce Garrett, Administrative Law Judge

CONSENTED TO:



Melissa H. Taylor, Assistant Attorney General
Attorney for Complainant



Kevin Dalton, Attorney At Law
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing FINAL ORDER upon:

KEVIN DALTON
FISHER & PHILLIPS LLP
227 W TRADE STREET
SUITE 2020
CHARLOTTE NC 28202

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 29th DAY OF January 2015.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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