

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

DEC - 8 2017

*NC Occupational Safety
& Health Commission*

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2016 - 5845
)	
)	INSPECTION
)	NO: 318032398
Complainant,)	
)	CSHO ID: X2161
v.)	
NC STATE UNIVERSITY FINANCE & BUSINESS and its successors)	<u>FINAL ORDER</u>
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on December 8, 2017 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Rory Agan, Associate Attorney General appeared as counsel for the Complainant, and Jay M. Wilkerson, Attorney, Conner Gwyn Schenck, PLLC, Raleigh, North Carolina, appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation and Respondent’s Notice of Contest, it appears that no injuries were sustained and that: Respondent was issued two citations; the first citation (“Citation 1”) was designated Willful Serious and alleged a violation of 29 CFR 1910.269(1)(8)(v) for failure to ensure that each employee exposed to hazards from electric arcs

wore protective clothing and other protective equipment with an arc rating greater than or equal the heat energy estimated under paragraph (1)(8)(ii) of this section whenever the estimate exceeds 2.0cal/cm², with a proposed penalty of \$70,000; the second citation (“Citation 2”) was designated Serious and alleged a violation of 29 CFR 1910.335(a)(1)(i) for failure provide employees working in areas where there were potential electrical hazards with electrical protective equipment that was appropriate for the specific parts of the body that needed to be protected and for the work being performed, with a proposed penalty of \$7,000; Respondent denied such allegations.

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 was created pursuant to statute and is operated as part of the University of North Carolina. Respondent is an instrumentality of the State of North Carolina and maintains within its organizational structure the Finance and Administration division, formerly known as Finance and Business. Respondent maintains employees on its campus in Raleigh, North Carolina. Respondent is an “employer” as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10). Respondent maintains a Power Systems Engineering unit within its Finance and Administration division, and this unit’s purpose includes operating, maintaining, and repairing the Respondent’s electrical system at certain of Respondent’s facilities. The Power Systems Engineering unit is responsible for performing inspection services on Respondent’s electrical system equipment and facilities and preventative maintenance.
3. During the period between February 4, 2016 and July 21, 2016, Compliance Safety and Health Officer Jeff McClaren, employed by the North Carolina Department of Labor, inspected Respondent’s worksite (the “Inspection”); the worksite was located at Holladay Hall, NCSU Campus, in Raleigh, North Carolina. Ken Kretchman, Director of Environmental Safety and Health (“ESH”) of Respondent, consented to the Inspection. Mr. McClaren interviewed employees of Respondent’s Power Systems Engineering unit among other employees.
4. As a result of the Inspection, on July 22, 2016, Complainant issued Citation 1 and Citation 2 (collectively the “Original Citation”).
5. Respondent submitted a timely Notice of Contest dated September 8, 2016.

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, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.

9. Respondent agrees that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.

10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.

12. Respondent agrees

- * that all linemen employed by Respondent shall be provided an 8 cal/cm² suit and shall be required to wear such suit when working; such suit will be cleaned in accordance with manufacturer's recommendation;

- * each piece of high voltage equipment will be labeled indicating the hazard risk category and the PPE required including arc flash protective clothing;

- * all facility maintenance technicians assigned to work on an energized electrical circuit that presents an arc flash hazard will be provided a base uniform of non-flammable material and appropriate PPE;

- * to pay the penalty of \$10,000 assessed in this matter within 45 business days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318032398) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

13. 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.

14. Complainant and Respondent agree that provided the respective Motions of each party are granted there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions 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 amended pursuant to Complainant's Motion. The parties further agree that (i) the modification 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 amended 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 made solely for the purpose of resolving this matter economically and amicably without further 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”):

Group Item 01 of Citation 2 with Citation 1, re-designating Citation 1 Item 001 as “Citation 1 Item 001a, and re-designating Citation 2 Item 001 as “Citation 1 Item 001b”; the type of violation is classified as ‘Serious’ with a penalty of \$10,000. Citation 2 is deleted in its entirety; Complainant recommends that Respondent investigate potential exposure of facility maintenance technicians to arc flash hazards;

except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant’s Motion.

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”), and Respondent confirmed that the violations alleged in the Original Citation as amended have been abated:

*to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.

Complainant did not object to Respondent’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:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 8th day of December, 2017.




R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:



Rory Agan, Associate Attorney General
Attorney for Complainant



Jay M. Wilkerson, Conner Gwyn Schenck, PLLC
Attorney for Respondent

CERTIFICATE OF SERVICE

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

JAY WILKERSON
CONNER GWYN SCHENCK, PLLC
P O BOX 30933
RALEIGH, NC 27622

RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629


by depositing a copy of the same in the United States Mail, First Class;

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 13 DAY OF December 2017.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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