

2. Respondent is a North Carolina limited liability company, 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 Garner, North Carolina. Respondent is in the business of processing turkeys. 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 September 20, 2017 and March 15, 2018, Julie Martin, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 1628 Garner Chapel Road in Mount Olive, North Carolina (the “Inspection”). Charles Phillips, Complex Manager- Safety/Security/Emergency Services of Respondent, consented to the Inspection.

4. As a result of the Inspection, on March 15, 2018, Complainant issued two citations carrying proposed abatement dates and penalties follows (collectively the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.137(b)(2)(ii)	March 23, 2018	\$ 7,000.00
002	29 CFR 1910.147(c)(4)(i)	March 23, 2018	\$ 7,000.00
	Or, in the alternative		
002	29 CFR 1910.333(b)(2)	March 23, 2018	\$ 7,000.00
003	29 CFR 1910.333(a)(1)	March 23, 2018	\$ 7,000.00
004	29 CFR 1910.335(a)(1)(i)	March 23, 2018	\$ 7,000.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.22(a)(3)	Corrected During Inspection	\$ 0.00

5. Respondent submitted a timely Notice of Contest dated April 12, 2018 with respect to Citation 01, Items 001, 002, 003, and 004; Respondent did not contest Citation 02, Item 001.

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 Original Citation as amended pursuant to Complainant's Motion have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act")

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**

* **develop, document, and implement LOTO procedures for the removal and replacement of fluorescent light apparatus both with and without emergency ballasts;**

* **train/retrain its maintenance employees on documented LOTO procedures when removing and replacing fluorescent light apparatus both with and without emergency ballasts, and electrical PPE requirements; and**

* **to pay the penalty of \$14,000.00 assessed in this matter within 10 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. 318118353) 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 Final 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 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"):

***amend Citation 01, Item 001 to cite 29 CFR 1910.137(c)(2)(ii); the penalty of \$7000,00 is unchanged;**

*** delete Citation 01, Item 002 in its entirety;**

*** delete Citation 01, Item 003 in its entirety;**

*** reclassify Citation 01, Item 004 from Serious to NonSerious; the penalty of \$7,000.00 is unchanged;**

except as set forth in this motion, the Original Citation shall remain unmodified or amended. Citation 02, Item 001 was not contested and therefore is not modified by this Final Order.

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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Final 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 Final 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 17th day of December, 2019.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Attorney for Complainant

Victoria Voight, Special Deputy Attorney General

Attorney for Respondent

**Raymond Perez, II, Pro Hac Vice Submitted, Attorney at Law
Jackson Lewis, Atlanta, Georgia**

and

**Paul S. Holscher, Attorney at Law
Jackson Lewis, Raleigh, North Carolina**

Butterball, LLC OSHANC 2018-5999

CONSENTED TO:

Attorney for Complainant

Victoria Voight
Victoria Voight, Special Deputy Attorney General

Attorney for Respondent

Raymond Patez, II
Raymond Patez, II, Pro Hac Vice Submitted, Attorney at Law
Jackson Lewis, Atlanta, Georgia

and

Paul S. Holscher by S.O.M
Paul S. Holscher, Attorney at Law
Jackson Lewis, Raleigh, North Carolina

CERTIFICATE OF SERVICE

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

RAYMOND PEREZ
JACKSON LEWIS P.C.
171 17YJ ST., NW
SUITE 1200
ATANTA, GA 30363

PAUL S. HOLSCHER
ACKSON LEWIS P.C.
3737 GLENWOOD AVE
SUITE 450
RALEIGH, NC 27612

VICTORIA VOIGHT
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, 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 2nd DAY OF January ~~2019~~ ²⁰²⁰.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss

Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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