

FILED

SEP 25 2023

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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2020 - 6275
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 318183100
Complainant,)	
)	CSHO ID: 04121
v.)	
NC DEPT OF PUBLIC SAFETY)	
NEW HANOVER CORRECTIONAL)	
and its successors)	<u>ORDER</u>
)	
Respondent.)	
)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on September 21, 2023 at 10:30 a.m. via the Lifesize teleconferencing platform. Jonathan D. Jones, Assistant Attorney General, and Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Thomas L. Crosby, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for 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.

As a result of an Inspection on March 13, 2020, Complainant issued two citations, carrying the following proposed abatement dates and penalties (collectively herein referred to as the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.1001(j)(3)(1)	Corrected During Inspection	\$ 4,000.00
002	29 CFR 1910.1025(d)(2)	Corrected During Inspection	\$ 1,200.00
003	29 CFR 1910.1200(e)(1)	4/30/2020	\$ 4,000.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.25(c)(5)	Corrected During Inspection	\$ 0.00

At the Hearing Complainant gave notice that it is withdrawing the Original Citation ("Withdrawal"). NC Commission Rule .0401 provides that Complainant may withdraw a citation "[a]t any stage of a proceeding". The Supreme Court in *Cuyahoga Valley Railway Co. v United Transportation Union*, 474 U.S. 3, 7 (1985), held "the Secretary's decision to withdraw a citation against an employer under the Act is not reviewable by the Commission." Under Cuyahoga, the Undersigned does not have the authority to grant or deny Complainant's withdrawal of the Original Citation. The Withdrawal by Complainant is self-effectuating and terminates the case in and of itself; no order of the Undersigned is needed or required.

Therefore, the Undersigned issues this Order acknowledging Complainant's Withdrawal and the closing of this case; this action is a ministerial function only – not a substantive one. Immediate effect is given to Complainant's Withdrawal of the Original Citation.

Effective the 21st day of September 2023.

R. Joyce Garrett
R. Joyce Garrett (Sep 22, 2023 19:59 EDT)

R. Joyce Garrett
Hearing Examiner

CERTIFICATE OF SERVICE

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

THOMAS L. CROSBY
N.C. DEPARTMENT OF JUSTICE
PUBLIC SAFETY SECTION
PO BOX 629
RALEIGH, NC 27602-0629

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

JONATHAN JONES
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, first class, postage prepaid, at Raleigh, North Carolina, and upon:

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

By email to carla.rose@labor.nc.gov.

THIS THE 27 DAY OF September 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589