

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

FILED

DEC 19 2025

NC OSH Review Commission

**COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA**

) **DOCKET NO.: OSHANC 2024-6664**
) **INSPECTION NUMBER: 318287083**
) **CSHO ID: A2132**

COMPLAINANT,

v.

CONSENT ORDER

MCLANE FOODSERVICE INC.,

and its successors,

RESPONDENT.

THIS CAUSE came on pursuant to the Notice of Pre-Hearing Conference ("Hearing Notice") on November 19, 2025 at 10:00 a.m., via Lifesize teleconferencing platform before the undersigned, Richard Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission. Sage A. Boyd, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Mark A. Lies II, Attorney with Seyfarth Shaw LLP, *pro hac vice*, and Adam R. Young, Attorney with Seyfarth Shaw LLP, *pro hac vice*, appeared for Respondent.

Pursuant to the Hearing Notice, 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 including considering such matters that may be necessary or advisable for the completion of the case, and if possible, to reach a resolution without the necessity of further hearing. 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. During the Hearing, the Hearing was continued to December 15, 2025 at 10:00 a.m., via the same Lifesize teleconferencing platform.

On December 15, 2025 at 10:00 a.m., the Hearing reconvened. Attorney Boyd appeared as counsel for Complainant and Attorneys Lies and Young appeared on behalf of Respondent. At the Hearing, Complainant and Respondent agreed upon and requested that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Consent 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").
2. The Review Commission has jurisdiction over the parties and the subject matter to this action.
3. On May 14, 2024, Compliance Safety and Health Officer (CSHO) George Thrower, employed by the North Carolina Department of Labor (NCDOL), accompanied by CSHO-in-training Lauren Kilby, also employed by NCDOL, inspected Respondent's worksite located at 55 Odell School Rd in Concord, North Carolina ("the Inspection").
4. Respondent, McLane Foodservice Inc., is a Texas corporation, which was authorized to do business in North Carolina on November 14, 2000. It is active and current and maintains a place of business in Concord, North Carolina. Respondent is in the business of warehousing. Respondent operates a distribution center that receives, stores, and ships dry, cold, and frozen goods using a fleet of company owned and operated tractor trailer trucks. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); and Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. §95-127(10).
5. As a result of the Inspection, on July 3, 2024, Complainant issued one serious citation carrying the following proposed abatement dates and penalties in the Citation and Notification of Penalty (hereafter referred to as the "Original Citation"):

CITATION NUMBER ONE (Serious)

| <u>Item No.</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|------------------------|------------------------|------------------------------|-----------------------|
| 1 | 29 CFR 1910.176(b) | Corrected during inspection | \$14,517.90 |

6. Respondent submitted a timely Notice of Contest dated August 1, 2024.
7. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; waive the making of a transcript; and consent to the conduct of this Hearing by the Undersigned and consent to entry of this Order.

9. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
10. 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.
11. Respondent confirms that the violation alleged in the Original Citation, as amended pursuant to Complainant's Motion have been abated.
12. **Within sixty (60) calendar days from the date of this Order, Respondent agrees to:**
 - a. **Develop and implement a process of organizing pallets for picking pizza boxes from the stacks at the ground level. This process shall be documented in writing and this process shall be periodically audited to ensure compliance; and**
 - b. **Train and (or) retrain of all selector employees on the process of organizing pallets for picking pizza boxes from the stacks at the ground level. Documentation of this training shall be provided to the NCDOL-OSH Division upon request.**
13. Respondent agrees to pay the total penalty of **\$14,517.90 within thirty (30) days of the date of this Order**. In the event Respondent does not pay the penalty as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to collection proceedings to collect the debt. Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. **318287083**) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
14. 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 Consent Order.
15. Complainant and Respondent agree that provided the respective Motions of each party are granted:
 - (a) 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 additional evidentiary hearing of this matter;
 - (b) this Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion;

- (c) 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;
- (d) 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 Consent Order brought directly under the Act by Complainant, this Consent Order shall have the full force and effect of a final order; and
- (e) 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 purposes 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"):

- 1. Reclassify Citation One, Item 1 from Serious to Non-Serious; and**
- 2. Amend Citation One, Item 1 to strike the reference to 29 CFR 1910.176(b) and amend the Standard Alleged Violation Elements (SAVE) and Alleged Violation Description to state as follows:**

N.C.G.S. 95-129(1) - Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees.

- a) On May 14, 2024, the employer failed to fully document its training of selector employees with regard to selecting pizza boxes from stacks sitting at ground level, and not cutting the banding from stacks or selecting boxes where the pizza boxes are stacked multiple stacks high.**

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"):

1. **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 record and the Stipulations at the time of the Hearing as memorialized herein, the Undersigned makes the following Findings of Fact:

1. 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 Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
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**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That Respondent shall pay the penalty of **\$14,517.90 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

This the 12/19/2025

Signature: Richard M. Koch

Richard M. Koch (Dec 19, 2025 10:22:10 EST)

Email: lawoffice@richardkochlaw.com

Richard Koch
Hearing Examiner

CONSENTED TO:

Signature: William W. Peek

William W. Peek (Dec 17, 2025 14:55:41 EST)

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Mr. Wes Peek
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William.Peek@McLaneFS.com

REPRESENTATIVE FOR RESPONDENT

Signature: Sage A. Boyd

Sage A. Boyd (Dec 19, 2025 17:23:07 EST)

Email: sboyd@ncdoj.gov

Sage A. Boyd
Special Deputy Attorney General
North Carolina Department of Justice

sboyd@ncdoj.gov

ATTORNEY FOR COMPLAINANT

Signature: /s/ Mark A. Lies, II

/s/ Mark A. Lies, II (Dec 19, 2025 15:17:07 CST)

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Signature: /s/ Adam R. Young

/s/ Adam R. Young (Dec 18, 2025 16:12:15 CST)

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MARK A. LIES II
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SAGE A. BOYD
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NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION

via email.

THIS THE 19 DAY OF December 2025.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
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Health Review Commission
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