

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

FILED

FEB 17 2026

NC OSH Review Commission

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

Complainant,

v.

**PUBIX SUPER MARKETS INC.
and its successors**

Respondent.

) **DOCKET NO: 2025-6707**
)
) **INSPECTION**
) **NO: 318300035**
)
) **CSHO ID: X9104**
)
) **CONSENT ORDER**
)
)
)

THIS CAUSE coming on pursuant to the Notice of Pre-Hearing Conference (“Hearing Notice”) on February 17, 2026 at 10 a.m. before Hearing Examiner R. Joyce Garrett, via Lifesize teleconferencing platform. Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina appeared for Complainant. Michael D. McKnight and Rita Robertson, attorneys with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Raleigh, North Carolina 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. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

At the Hearing, Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) requested that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. 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”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent is a Florida corporation, which was authorized to do business in North Carolina on March 7, 2000. It is active and current and maintains a place of business in New Bern, North Carolina. Respondent is a retail grocery store. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).

4. On January 14, 2025, Compliance Safety and Health Officer Sheldon Joseph and CSHO in-training Shawn Foran, employed by the North Carolina Department of Labor, inspected Respondent’s worksite located at 2004 Glenburnie Rd, New Bern, NC 28562 (“the New Bern location”) (the “Inspection”). The Inspection was conducted pursuant to an assignment generated from the Targeting System, Grocery and Related Products Assignment with a run date of December 31, 2024, and was part of the Special Emphasis Program (SEP) for Warehousing and Storage and Related Product Distribution Industries. Mr. Kevin Green, Retail Safety Supervisor, consented to the Inspection on January 14, 2025.

5. As a result of the Inspection on February 18, 2025, Complainant issued a citation, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.28(b)(1)(i)	Immediately Upon Receipt	\$2,400.00
002	29 CFR 1910.212(a)(1)	Immediately Upon Receipt	\$8,000.00

TOTAL PROPOSED PENALTY \$10,400.00

6. Respondent submitted a timely Notice of Contest dated March 5, 2025. On or about March 28, 2025, Complainant received “Employer’s/Respondent’s Statement of Position” which requested that formal pleadings be served. Complainant’s Complaint was filed April 14, 2025. Respondent’s Answer And Affirmative Defenses To Complaint was filed May 29, 2025.

7. The Hearing in this matter was scheduled pursuant to the 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; both parties consent to the conduct of this Hearing by the Undersigned, and to entry of this Consent Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

9. Respondent posted the Original Citation and the Hearing Notice 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 time.

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

Complainant confirms that no additional documentation of abatement is required by Complainant.

11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for the Items designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for the Items designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees

a) To perform periodic audits of any bailing equipment in the New Bern location and maintain records of the audit for a period of two (2) years. These records will be made available to the OSH Division upon request.

b) To reemphasize with Associates in the New Bern location Respondent's requirement that, prior to operating any equipment, all necessary guarding must be in place.

c) To install gated guardrail protection systems on the docks at the New Bern location and at twenty-four (24) facilities with similar dock configurations in North Carolina.

d) To pay the penalty of \$ 8,000.00 assessed in this matter within 45 days of the date of this Consent Order.

In the event Respondent does not pay the penalty as stated above, all unpaid amount shall become immediately due and payable, and the Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant institutes 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. 318300035) and mailed to North Carolina Department of Labor

Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. Credit card payment may also be arranged.

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 Motion of each party is 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 an 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 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 a waiver of any defense, 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;

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 further 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"):

a) Delete Citation 1 Item 001.

b) Reclassify Citation 1, Item 002 from serious to non-serious and amend the cited standard and SAVE to state: 1910.212(a)(2): Guards shall be affixed to machines where possible and secured elsewhere if for any reason attachment to the machine is not possible.

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"):

- a) 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. 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.
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

1. 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.
2. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); Respondent's employees referred to in the Complaint are "employees" within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of law, **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 meet the requirements of Stipulation 12 as set out above; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations and in this Consent Order.

Effective February 17, 2026.

SO ORDERED

Signature: R. Joyce Garrett
R. Joyce Garrett (Feb 17, 2026 15:58:10 EST)

Email: rjg.rjg@aol.com

R. Joyce Garrett
Hearing Examiner

CONSENTED TO:

JEFF JACKSON, Attorney General

Signature: 
Jonathan Jones (Feb 17, 2026 16:31:32 EST)

Email: jdjones@ncdoj.gov

Jonathan D. Jones
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602
Tel. 919-716-0049
Email: jdjones@ncdoj.gov
Counsel for Complainant

Signature: Rita Beard Robertson
Rita Beard Robertson (Feb 17, 2026 15:29:49 EST)

Email: rita.robertson@ogletree.com

Michael D. McKnight
Rita Robertson
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
8529 Six Forks Road, Forum IV, Suite 600
Raleigh, NC 27615
Tel. 919-787-3159
Email: michael.mcknight@ogletree.com
Rita.robertson@ogletree.com
Counsel for Respondent

CERTIFICATE OF SERVICE

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

**MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
mmcknight@ogletree.con**

**JONATHAN JONES
NC DEPARTMENT OF JUSTICE
jjones@ncdoj.gov**

**NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION**

via email.

THIS THE 18 DAY OF February 2026.

**PAUL E. SMITH
CHAIRMAN**



**Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
422 N. Blount St., Raleigh, NC 27601
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov**