

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96CVS1924

FRIDAY TEMPORARY SERVICES, INC.

OSHANC NO. 93-2651

Petitioner,

ORDER

v.

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Respondent.

THIS MATTER came on for hearing before the undersigned Superior Court Judge of Buncombe County Superior Court upon Petition for Judicial Review filed by Petitioner pursuant to G.S. § 150B-45 seeking review of a final administrative agency decision entered April 3, 1996 by the Safety and Health Review Board of North Carolina. The Court, after careful consideration of the entire record, including the Petition For Review, the Decision of the Review Board, the transcript of evidence and the briefs of counsel and amici, finds the following:

1. This case was initiated by a Citation issued March 19, 1993, to Petitioner by the Commissioner of Labor pursuant to G.S. § 95-137. The Citation was issued for violation of a specific safety regulation contained in 29 CFR 1926, the construction standards. Petitioner timely contested the Citations and proposed penalties.
2. On October 21, 1993, a hearing was held before Hearing Examiner Charles R. Brewer.
3. On December 10, 1993, the National Association of Temporary Services, Inc. and the North Carolina Association of Temporary Services served on the parties a Petition to Intervene along with an Amicus Curiae Brief in support of the Petitioner.
4. By an Order dated December 15, 1993, and served on the Complainant on December 23, 1993, Judge Brewer granted the Petition to Intervene for the limited purpose of filing an amicus curiae brief. All briefs were duly filed.
5. On February 16, 1994, Judge Brewer issued an order in which he dismissed the citation and the proposed penalty .
6. Respondent appealed the decision to the Safety and Health Review Board in a petition for review filed on April 4, 1994.
7. A hearing was held before the full Board on September 13, 1994, at which both sides presented oral argument.
8. On April 8, 1996, the Review Board reversed the decision of the Hearing Examiner and affirmed the citation as a serious violation and reinstated the penalty of \$4,200.00.
9. Petitioner timely appealed for judicial review, excepting to Findings of Fact umbers 13, 27, 32, and 33 and Conclusions of Law Numbers 3 and 4.
10. This court has conducted a whole record test and from the matters of record concludes:
 - (a) There is substantial and ample evidence, upon review of the entire record, to support the Review Board's finding and conclusion that Respondent violated the specific 29 CFR 1926 Standard for which it was cited .

(b) There is sufficient competent evidence of record to support the Review Board's findings of fact including those facts found by the Hearing Examiner which were adopted by the Review Board;

(c) Based upon such findings of fact the Review Board made correct and proper conclusions of law with regard to these violations:

(d) There was no violation of any statutory or constitutional right of the Petitioner and the Review Board did not act in excess of its statutory authority or jurisdiction;

(e) The Review Board's decision was not made upon improper procedure and was not affected by any error of law;

(f) The Review Board's decision is supported by substantial competent evidence in view of the entire record as a whole; and, as such,

(g) The Review Board' s decision is not arbitrary or capricious.

11. This decision is rendered in Chambers and out of session by the consent of the parties given through their counsel.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED, that the Decision of the Review Board is affirmed in all respects.

This the 10th day of January, 1997.

Signature Indecipherable

JUDGE PRESIDING