



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1120 20th Street, N.W., Ninth Floor
 Washington, DC 20036-3419

Office of
 Executive Secretary

Phone: (202) 606-5100
 Fax: (202) 606-5050

SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket No. 94-1586
	:	
CONAGRA POULTRY COMPANY,	:	
	:	
Respondent,	:	
	:	
UNITED FOOD & COMMERCIAL WORKERS	:	
UNION, LOCAL 2008,	:	
	:	
Authorized Employee	:	
Representative.	:	

ORDER

This matter is before the Commission on a direction for review entered by Chairman Stuart E. Weisberg on November 20, 1995, after the authorized employee representative filed an opposition to a settlement agreement. A new settlement agreement has been filed and the authorized employee representative has withdrawn its objection.

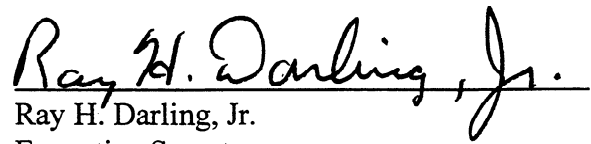
Having reviewed the record, and based upon the representations appearing in the new settlement agreement, we conclude that this case raises no matters warranting further review by the Commission. The terms of the new settlement agreement do not appear to be contrary to the purposes

of the Occupational Safety and Health Act and are in compliance with the Commission's Rules of Procedure.

Accordingly, we incorporate the terms of the new settlement agreement into this order, and we set aside the Administrative Law Judge's decision and order to the extent that it is inconsistent with the new settlement agreement. This is the final order of the Commission in this case. *See* 29 U.S.C. §§ 659(c), 660(a), and (b).

BY DIRECTION OF THE COMMISSION

Date: March 8, 1996


Ray H. Darling, Jr.
Executive Secretary

94-1586

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Roger J. Miller, Esq.
McGrath, North, Mullin & Kratz, P.C.
One Central Park Plaza, Suite 1400
222 S. 15th Street
Omaha, NE 68102

Deborah E. Berkowitz, Director
Office of Occupational Safety and Health
Field Service Dept.
UFCW International Union
1775 K Street, N.W.
Washington, D.C. 20006-1598



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

Phone: (202) 606-5400
Fax: (202) 606-5050

SECRETARY OF LABOR
Complainant,

v.

CONAGRA BROILER COMPANY,
Respondent,

**UNITED FOOD & COMMERCIAL WORKERS
UNION, LOCAL 2008,**
Authorized Employee
Representative.

**OSHRC DOCKET
NO. 94-1586**

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on October 26, 1995. The decision of the Judge will become a final order of the Commission on November 27, 1995 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before November 15, 1995 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

DOCKET NO. 94-1586

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION



Ray H. Darling, Jr.
Executive Secretary

Date: October 26, 1995

DOCKET NO. 94-1586

NOTICE IS GIVEN TO THE FOLLOWING:

James E. White, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
525 Griffin Square Bldg., Suite 501
Griffin & Young Streets
Dallas, TX 75202

Roger J. Miller, Esq.
McGrath, North, Mullin & Kratz, P.C
One Central Park Plaza, Suite 1400
222 S. 15th St.
Omaha, NE 68102

Mr. Cecil W. Casey, President
UFCW Local 2008
7924 Interstate 30, Suite A
Little Rock, AR 72209 2969

Ms. Deborah E. Berkowitz, Director
Office of Occupational Safety and
Health
Field Service Dept.
UFCW International Union
1775 K Street, N.W.
Washington, DC 20006 1598

DOCKET NO. 94-1586

NOTICE IS GIVEN TO THE FOLLOWING:

Paul L. Brady
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 240
1365 Peachtree Street, N.E.
Atlanta, GA 30309 3119

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ROBERT B. REICH,
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

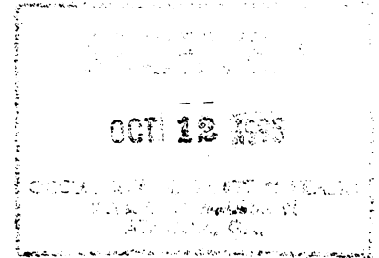
Complainant,

v.

CONAGRA BROILER COMPANY,
AND ITS SUCCESSORS,

Respondent.

)
) OSHRC DOCKET NO. 94-1586
)
) REGION IV
)
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)



SETTLEMENT AGREEMENT

The parties have settled the dispute herein and stipulate and agree as follows:

1). Complainant hereby amends Citation 2, Item 1 of the Notification of Failure to Abate Alleged Violation issued herein on April 11, 1994, and so much of the Complaint which is based thereon, so that the alleged violation is amended to allege as follows:

- a). Delete
- b). Delete
- c). Delete
- d). Delete
- e). Delete
- f). Delete
- g). The employer did not provide OSHA with sufficient documentation to verify that the Company had developed and implemented a plan for documenting the degree to which the engineering controls significantly reduced or eliminated the identified ergonomic stressors.
- h). Delete

- i). OSHA was not provided documentation to indicate that an ergonomic analysis of all jobs into which employees could be rotated had been completed. OSHA was not provided documentation to indicate that any job to which an employee could be rotated possessed decreased and/or different ergonomic stressors from those of the employee's regular job. There was not analysis onsite to indicate that the physical procedures used in the performance of each job, including lifting requirements, posters, hand grips, and the frequency or repetitive motion were analyzed to assure similar physical demands on the same muscle/tendon/nerve groups were not made as employees were rotated.
- j). Delete
- k). Delete
- l). Delete
- m). For those abatement methods not implemented, the Company did not provide OSHA with the required documentation from the consultant which explained or described the reason or reasons for not implementing a particular abatement method.
- n). Delete
- o). Delete
- p). Delete
- q). Delete
- r). Respondent did not make available documentation to support its light duty job analysis protected employees from further injury to the same muscle/tendon/nerve groups.

2). Respondent states that the conditions described in Item No. 1 of Citation No. 2 as amended have been corrected.

3). Respondent will include in future quarterly reports required by CSA a description of actions taken to comply with the terms of this settlement.

4). Respondent will make available for review by representatives of the Complainant documents in Respondent's possession which have been maintained by Respondent pursuant to

CAG's Ergonomic and Recordkeeping Agreement (CSA) executed on the 29th day January, 1992. Following that review, the Complainant may advise, in writing, of any recommendations the Complainant has for improving the manner in which Respondent reports or records matters required by the CSA. Respondent and the Complainant may, by mutual agreement, agree upon the manner in which information is reported or recorded after the date hereof, however, nothing done as a result of this Settlement Agreement shall amend or modify, or be deemed to amend or modify, in any fashion, Respondent's stated obligations under the CSA. Respondent will continue to observe the terms of the CSA for its duration.

5). The parties acknowledge that in any future monitoring inspections, Respondent's Corporate Director of Safety will be notified by Respondent that Complainant intends to conduct a monitoring inspection under the CSA. In the event representatives of Complainant desire to review documents or records required to be kept under the terms of the CSA, a written request for same will be delivered to Respondent, with a copy to Respondent's Corporate Safety Director. Respondent shall have a reasonable period of time to provide such information or otherwise respond, in writing, to the request.

6). Respondent has agreed to pay a penalty in the total amount of ten thousand (\$10,000.00) dollars.

7). In exchange for the agreements made herein, Respondent hereby withdraws its Notice of Contest concerning the Notification of Failure to Abate and proposed penalty.

8). Neither this settlement agreement nor Respondent's consent to entry of a final order by the Commission pursuant to this agreement, constitutes any admission by Respondent of a violation of the Occupational Safety and Health Act or regulations or standards promulgated

thereunder. Neither this settlement agreement nor any order of the Commission entered pursuant to this agreement shall be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal other than proceedings before OSHA. Respondent is entering into said agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before this Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation, the citation as amended, or the Complaint do not violate the Occupational Safety and Health Act or any standard promulgated thereunder. By entering into this Agreement Respondent does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged conduct or any of the conclusions set forth in the Citation or Amended Citations issued in this matter.

9). Respondent promises to continue its good-faith efforts to comply with the Occupational Safety and Health Act.

10). Affected employees are represented by Local 2008 of the United Food and Commercial Workers (UFCW), which has no objection to this Settlement Agreement. Respondent certifies that on 10/10/95 notice of this Settlement Agreement was given to employees by posting a true copy of hereof, in accordance with Commission Rule 7(g), 29 C.F.R. § 2200.7(g), and by mailing an additional copy of this document to UFCW Local 2008.

11). The Secretary certifies that service of the fully executed settlement agreement was made on each authorized employee representative by first class mail on October 10, 1995.

12). Each party agrees to bear its own costs, fees (including attorney fees) and other expenses incurred by such party in connection with any stage of this proceeding.

ACCORDINGLY, the parties jointly move the Commission for an Order approving this Settlement Agreement and the entry of an Order for final disposition of this matter in accordance with the terms of this Settlement Agreement.

EXECUTED by the parties this 12th day of August 1995.

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

CONAGRA BROILER COMPANY

JACK OSTRANDER
Counsel for Safety and Health

By:



ROGER J. MILLER
Attorney

By:



ERNEST A. BURFORD
Attorney

Signed this 7th day of
August, 1995.

McGrath, North, Mullin
& Kratz, P.C.
Suite 1400 One Central
Park Plaza
222 South Fifteenth Street
Omaha, Nebraska 68102

Attorney for Respondent.

OSHA Inspection No. 110350808
RSOL Case No. 95-00980

Signed this 12th day of
August, 1995.

U.S. Department Of Labor
Office of the Solicitor
525 Griffin Street
Dallas, Texas 75202

Attorneys for Complainant.

NOTICE TO AFFECTED EMPLOYEES NOT
REPRESENTED BY A LABOR ORGANIZATION

EACH AFFECTED EMPLOYEE WHO IS NOT REPRESENTED BY A LABOR ORGANIZATION HEREBY IS GIVEN NOTICE THAT ANY OBJECTIONS TO THE ENTRY OF AN ORDER APPROVING THIS SETTLEMENT AGREEMENT MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE THAT THIS SETTLEMENT AGREEMENT IS POSTED. SUCH OBJECTIONS MUST BE SET FORTH IN WRITING AND MAILED TO HONORABLE PAUL L. BRADY, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 1365 PEACHTREE STREET, N.E., SUITE 240, ATLANTA, GEORGIA 30309-3119, WITH COPIES TO COMPLAINANT AND RESPONDENT.

NOTICE TO AUTHORIZED EMPLOYEE REPRESENTATIVES
OF AFFECTED EMPLOYEES

EACH AUTHORIZED EMPLOYEE REPRESENTATIVE OF AFFECTED EMPLOYEES IS HEREBY GIVEN NOTICE THAT ANY OBJECTION TO THE ENTRY OF AN ORDER APPROVING THE SETTLEMENT AGREEMENT MUST BE FILED WITHIN TEN (10) DAYS OF THE DATE OF SERVICE OF THE SETTLEMENT AGREEMENT ON THEM, BY SETTING FORTH SUCH OBJECTIONS IN WRITING AND MAILING THEM TO HONORABLE PAUL L. BRADY, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, 1365 PEACHTREE STREET, N.E., SUITE 240, ATLANTA, GEORGIA 30309-3119, WITH COPIES TO COMPLAINANT AND RESPONDENT.



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1365 Peachtree Street, N.E., Suite 240
 Atlanta, Georgia 30309-3119

Phone: (404) 347-4197

Fax: (404) 347-0113

SECRETARY OF LABOR,
 Complainant,

v.

OSHRC Docket No. 94-1586

CONAGRA BROILER COMPANY,
 Respondent,

UNITED FOOD & COMMERCIAL WORKERS
 UNION, LOCAL 2008,
 Authorized Employee Representative.

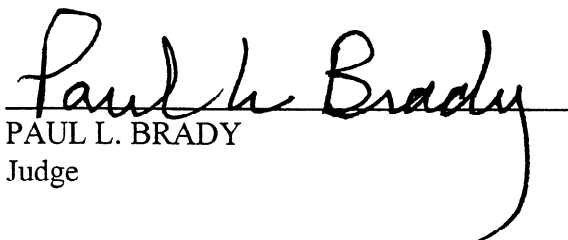
ORDER APPROVING SETTLEMENT

A settlement agreement was filed in this case which adequately resolves the issues pending before the Commission. The agreement provides for the amendment of Citation No. 2 of the notification of failure to abate alleged violation issued April 11, 1994, and the proposed penalty and allows Respondent to withdraw its notice of contest.

Respondent represents that the alleged violations have been abated; that it will pay the proposed penalty, as amended; and that it has conformed with the applicable posting and service requirements as fixed by the rules of the Commission.

Therefore, it is ORDERED:

1. The agreement of the parties is hereby approved and incorporated as part of this order.
2. The notice of contest is hereby dismissed.
3. The citation is affirmed and a penalty in the amount of \$10,000 is hereby assessed.


 PAUL L. BRADY
 Judge

Date: October 20, 1995

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Secretary of Labor,)	
)	
Complainant,)	
)	OSHRC Docket
v.)	
)	No. 94-1586
CONAGRA BROILER COMPANY,)	
AND ITS SUCCESSORS,)	
)	
Respondent.)	

AMENDED SETTLEMENT AGREEMENT

The parties have settled the dispute herein and stipulate and agree as follows:

1. Complainant hereby amends Citation 2, Item No. 1 of the Notification of Failure to Abate Alleged Violation issued herein on April 11, 1994, and so much of the Complaint which is based thereon, so that the alleged violation is amended to allege as follows:

- (a) Delete
- (b) Delete
- (c) Delete
- (d) Delete
- (e) Delete
- (f) Delete
- (g) The employer did not provide OSHA with sufficient documentation to verify that the company had developed and implemented a plan for documenting the degree to which the engineering controls significantly reduced or eliminated the identified ergonomic stressors.

- (h) Delete
- (i) OSHA was not provided documentation to indicate that an ergonomic analysis of all jobs into which employees could be rotated had been completed. OSHA was not provided documentation to indicate that any job to which an employee could be rotated possessed decreased and/or different ergonomic stressors from those of the employee's regular job. There was no analysis onsite to indicate that the physical procedures used in the performance of each job, including lifting requirements, postures, hand grips, and the frequency or repetitive motion were analyzed to assure similar physical demands on the same muscle/tendon/nerve groups were not made as employees were rotated.
- (j) Delete
- (k) Delete
- (l) Delete
- (m) For those abatement methods not implemented, the Company did not provide OSHA with the required documentation from the consultant which explained or described the reason or reasons for not implementing a particular abatement method.
- (n) Delete
- (o) Delete
- (p) Delete
- (q) Delete
- (r) Respondent did not make available documentation to support its light duty job analysis protected employees from further injury to the same muscle/tendon/nerve groups.

2. Respondent states that the conditions described in Item No. 1 of Citation No. 2 as amended have been corrected.

3. Respondent will include in future quarterly reports required by CSA a description of actions taken to comply with the terms of this settlement.

4. Respondent will make available for review by representatives of the Complainant documents in Respondent's possession which have been maintained by Respondent pursuant to CAG's Ergonomic and Recordkeeping Agreement (CSA) executed on the 29th day January, 1992. Following that review, the Complainant may advise, in writing, of any recommendations the Complainant has for improving the manner in which Respondent reports or records matters required by the CSA. Respondent and the Complainant may, by mutual agreement, agree upon the manner in which information is reported or recorded after the date hereof, however, nothing done as a result of this Settlement Agreement shall amend or modify, or be deemed to amend or modify, in any fashion, Respondent's stated obligations under the CSA. Respondent will continue to observe the terms of the CSA for its duration.

5. The parties acknowledge that in any future monitoring inspections, Respondent's representatives shall, no later than upon arrival at a facility of respondent, notify respondent's Corporate Director of Safety and that Complainant intends to conduct a monitoring inspection under CSA. In the event representatives of Complainant desire to review documents or records required to be kept under the terms of the CSA, a written request for same may be delivered to respondent, with a copy to

Respondent's Corporate Safety Director. Respondent shall have a reasonable period of time to provide such information or otherwise respond, in writing, to the request.

6. Respondent has agreed to pay a penalty in the total amount of ten thousand (\$10,000.00) dollars.

7. In exchange for the agreements made herein, Respondent hereby withdraws its Notice of Contest concerning the Notification of Failure to Abate and proposed penalty.

8. Neither this settlement agreement nor Respondent's consent to entry of a final order by the Commission pursuant to this agreement, constitutes any admission by Respondent of violation of the Occupational Safety and Health Act or regulations or standards promulgated thereunder. Neither this settlement agreement nor any order of the Commission entered pursuant to this agreement shall be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal other than proceedings before OSHA. Respondent is entering into said agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before this Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation, the citation as amended or the complaint do not violate the Occupational Safety and Health Act or any standard promulgated thereunder. By entering into this Agreement Respondent does not admit the truth of any alleged facts, any of

the characterizations of Respondent's alleged conduct or any of the conclusions set forth in the citation or amended citations issued in this matter.

9. Respondent promises to continue its good-faith efforts to comply with the Occupational Safety and Health Act.

10. Affected employees are represented by Local 2008 of the United Food and Commercial Workers (UFCW). Respondent certifies that on 2/9/96 notice of this Settlement Stipulation was given to employees by posting a true copy of hereof, in accordance with Commission Rule 7(g), 29 C.F.R. § 2200.7(g), and by mailing an additional copy of this document to UFCW Local 2008.

11. The Secretary certifies that service of the fully executed settlement agreement was made on each authorized employee representative by first class mail on -
February 16, 1996.

12. Each party agrees to bear its own fees (including attorney fees) and other expenses incurred by such party in connection with any stage of this proceeding.

ACCORDINGLY, the parties jointly move the Commission for an Order approving this Settlement Stipulation and the entry of an

Order for final disposition of this matter in accordance with the terms of this Settlement Agreement.


THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

CONAGRA BROILER COMPANY

JACK F. OSTRANDER
Counsel for Safety and Health

By:



ROGER J. MILLER
Attorney

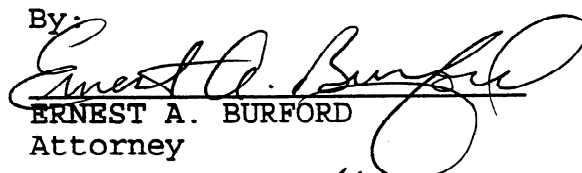
Signed this 9th day of
February, 1996.

McGrath, North, Mullin
& Kratz, P.C.
Suite 1400 One Central
Park Plaza
222 South Fifteenth Street
Omaha, Nebraska 68102

Attorney for Respondent.

OSHA Inspection No. 110350808
RSOL Case No. 95-00980

By:



ERNEST A. BURFORD
Attorney

Signed this 16th day of
February, 1996.

U. S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202

Attorneys for Complainant.

NOTICE TO AFFECTED EMPLOYEES NOT
REPRESENTED BY A LABOR ORGANIZATION

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