

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
525 S. Griffin Street, Suite 501
Dallas, Texas 75202
(972) 850-3100
(972) 850-3101 Fax



John Bradley

12/08/2023

MEMORANDUM FOR: Area Director
San Antonio Area Office

FROM: JOHN RAINWATER
Regional Solicitor

SUBJECT: Closed File

Secretary v. BComm Construction LLC

Notice of Order and Report: 10/25/23

OSHA Inspection No: (1604112)(23-0089)

Penalty Amount: \$0.00

RSOL Case No. 0660-23-00301

Date Disposition Final: 12/11/23

Attached is a copy of the disposition of this case.

We are **CLOSING** our file.

Attachments:

Notice of Docketing
Notice of Order and Report
Joint Notice of Settlement
Settlement Agreement

ELECTRONIC FILE
 HARD COPY FILE



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

Phone: (202) 606-5400

Fax: (202) 606-5050

Secretary of Labor,
Complainant,

v.
BComm Constructors LLC.,

Respondent.

Region: 6
OSHRC Docket No. 23-0089
OSHA Inspection No. 1604112

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 11/09/2023. The decision of the Judge will become a final order of the Commission on 12/11/2023 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 must be received by the Executive Secretary on or before 11/29/2023 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 the Executive Secretary with a copy to the DOL Solicitor at the address below.

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

Louise M. Betts, Counsel for Appellate Litigation
Heather R. Phillips, Counsel for Appellate Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If directed for Review by the Commission, then the Counsel for Appellate Litigation will represent the Department of Labor. If you have questions, please contact the Executive Secretary's Office at (202) 606-5400.

John X. Cervený
Executive Secretary

Date: 11/09/2023

/s/
Kevin Rivera, Legal Clerk

This notice has been sent to:

John Rainwater, Regional Solicitor
Office of the Solicitor, U.S. DOL
525 S. Griffin Street, Suite 501
Dallas, TX 75202-5020
Attn: John Michael Bradley
Email: Bradley.john.m@dol.gov
Email: docket.dallas@dol.gov

James McCord Wilson , Esq.
Rader & Campbell, P.C.
Trinity Towers - Suite 1125, 2777 N. Stemmons Freeway
Dallas, TX 75202
Email: mwilson@radercampbell.com
Email: abeeler@radercampbell.com



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. Custom House
721 19th Street, Room 407
Denver, Colorado 80202

Phone: (303) 844-2284

Fax: (303) 844-3759

Notice of Order and Report

In Reference To:

Secretary of Labor v. BCOMM CONSTRUCTORS LLC

OSHRC Docket No. 23-0089

1. *Judge's report.* The enclosed Order Terminating Proceeding acknowledges that the parties have resolved certain contested citation items and proposed penalties and agreed to terminate the proceeding before the Commission in whole (or in part) by filing a Notification of Settlement (or a Notification of Partial Settlement) pursuant to Commission Rule 100, 29 C.F.R. § 2200.100. The Order Terminating Proceeding, together with all other items comprising the record, shall be sent promptly to the Commission's Executive Secretary for docketing, and shall constitute the report of this Administrative Law Judge pursuant to section 12(j) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. § 661(j).
2. *Commission final order.* The Order Terminating Proceeding shall become a final order of the Commission thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission member within that time. *See* section 12(j) of the Act; Commission Rule 90(f), 29 C.F.R. § 2200.90(f).
3. *Correction of errors in the Judge's report.* Requests to correct clerical errors arising through oversight or inadvertence in the Order Terminating Proceeding or in other parts of the Judge's report shall be filed, by motion, with the undersigned Judge, pursuant to Commission Rule 90(b)(4)(i), 29 C.F.R. § 2200.90(b)(4)(i). Motions shall conform to Commission Rule 40, 29 C.F.R. § 2200.40.
4. *Filing with Executive Secretary.* Except for motions filed to correct errors in the Judge's report, discussed in paragraph 3 above, on or after the date that the Executive Secretary docketed the Judge's report all items, including motions, shall be filed with the Executive Secretary at the address noted below. *See* Commission Rule 90(d), 29 C.F.R. § 2200.90(d).

**Executive Secretary
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street NW, Suite 980
Washington, D.C. 20036-3457**

Dated: October 25, 2023
Denver, Colorado

/s/ Christopher D. Helms

Christopher D. Helms
Administrative Law Judge, OSHRC



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. CUSTOM HOUSE
721 19TH STREET, ROOM 407
DENVER, COLORADO 80202-2517

SECRETARY OF LABOR,

Complainant,

v.

BCOMM CONSTRUCTORS LLC,

Respondent.

OSHRC DOCKET NO. 23-0089

ORDER TERMINATING PROCEEDING

The parties have filed a Joint Notification of Settlement acknowledging the parties have resolved all contested citation items and agreed to terminate the proceeding before the Commission.

IT IS ORDERED this proceeding is TERMINATED pursuant to Commission Rule 100(b)(3); 100(c).

This Order Terminating Proceeding shall become a final Order of the Commission thirty (30) days from the date of its docketing by the Executive Secretary, unless a Commission Member directs review of the order within that time. *See* 29 U.S.C. § 661(j); Commission Rule 90(f).

SO ORDERED.

Dated: October 25, 2023

/s/ Christopher D. Helms

Christopher D. Helms
Judge, OSHRC

CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice of Order and Report and the Order Terminating Proceedings was sent electronically to the parties listed below on October 25, 2023.

John M. Bradley, Esq.
U.S. Department of Labor
Office of the Solicitor
525 South Griffin Street, Suite 501
Dallas, Texas 75202
bradley.john.m@dol.gov
docket.dallas@dol.gov

McCord Wilson, Esq.
Rader & Campbell, A Professional Corporation
2777 N. Stemmons Freeway, Suite 1125
Dallas, Texas 75207
mwilson@radercampbell.com
abeeler@radercampbell.com

/s/ Kate Sydney

Kate Sydney, Legal Assistant
Post Office Address:
Judge Christopher D. Helms
U.S. Custom House
OSHRC
721 19th Street, Suite 407
Denver, Colorado 80202
(303) 844-2284 – Direct Dial
(303) 844-3759 – Facsimile
Email: ksydney@oshrc.gov

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

JULIE A. SU¹, Acting Secretary of)
Labor, United States Department of Labor)
)
Complainant,)
)
v.) OSHRC Docket No. 23-0089
)
BCOMM CONSTRUCTORS LLC) Inspection No. 1604112
and its Successors,)
)
Respondent.)

JOINT NOTIFICATION OF FULL SETTLEMENT

The parties respectfully notify the Court that the parties have fully settled the above captioned case and have executed a formal settlement agreement.

1. The parties certify that they have fully settled all citation items in this case. All settled citation items are set forth in the following chart.

Citation No.	Item No.	Resolution: Settled / Withdrawn
1	1	Withdrawn.

2. Respondent certifies that it has posted the settlement agreement to provide notice to the affected employees and that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: October 10, 2023. The settlement agreement shall remain posted for fourteen (14) days.

3. In the following chart, the parties certify the status of any citations, notifications, notices, or petitions, withdrawn in the settlement agreement, and certify whether the withdrawal was with or without prejudice.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Julie A. Su, Acting Secretary of Labor, is automatically substituted for former Secretary of Labor Martin Walsh.

List of Pleadings Withdrawn	Withdrawal – With or Without Prejudice
Citation 1, Item 1	Withdrawn with prejudice.
Notice of Contest	Withdrawn with prejudice.

4. The parties confirm that they have not incorporated the settlement agreement in, or append it to, this joint Notification of Settlement.

5. The parties confirm that they have filed, for execution by the Judge, a draft Order Terminating Proceeding, acknowledging that the parties have resolved contested citation items and agreed to terminate the proceeding before the Commission, pursuant to Commission Rules 100(b)(3) and 100(c).

Respectfully Submitted,

Respectfully Submitted,

SEEMA NANDA
Solicitor of Labor

JOHN RAINWATER
Regional Solicitor

BCOMM CONSTRUCTORS LLC

LINDSAY A. WOFFORD
Counsel for Occupational Safety & Health

by:

by:

/s/ McCord Wilson
MCCORD WILSON
Attorney

/s/ John M. Bradley
JOHN M. BRADLEY
Senior Trial Attorney

Signed this 10th day of

Signed this 10th day of

October 2023.

October 2023.

RADER & CAMPBELL, PC
2777 N. Stemmons Freeway
Suite 1125
Dallas, TX 75207
Telephone: (214) 630-4700

Attorneys for Complainant
U. S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202
Telephone: (202) 961-5148

CERTIFICATE OF SERVICE

I certify that on October 10, 2023, I served a true and correct copy of the Joint Notification of Full Settlement upon all parties via Email at the following address and by filing with the E-File System:

McCord Wilson
mwilson@radercampbell.com

/s/ John M. Bradley
Senior Trial Attorney

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

JULIE A. SU ¹ , Acting Secretary of Labor, United States Department of Labor)	
)	
Complainant,)	
)	
v.)	OSHRC Docket No. 23-0089
)	
BCOMM CONSTRUCTORS LLC and its Successors,)	Inspection No. 1604112
)	
Respondent.)	

SETTLEMENT AGREEMENT

Come now Complainant and Respondent and submit the following settlement agreement pursuant to Rule 2200.100 of the Commission's Rules of Procedure:

This settlement agreement specifies the terms of settlement as set out below for each contested item and disposes of all issues in the case.

Affected employees have not filed objections to the reasonableness of any abatement time.

1. Complainant amends the Citation as follows:

Citation No.	Item No.	Amendment	Original Penalty	Amended Penalty
1	1	Withdrawn.	\$13,052	\$0

The withdrawal of this item is not intended to affect the Secretary's interpretation of the standard, compliance with the standard, nor its application to this employer.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Julie A. Su, Acting Secretary of Labor, is automatically

2. In exchange for withdrawal of the citation, Respondent will add the following provisions to its current heat-stress program within 30 calendar days of the abatement date, which shall be the date of the last signature on this Agreement:

- a. Respondent will institute mandatory, built-in breaks commensurate with the temperature.
- b. Respondent will institute a buddy system to ensure employees are watching each other for signs of heat stress.
- c. Respondent will provide sufficient back-up water containers at all worksites where water is necessary.
- d. Respondent will train its managers on heat-stress recognition.

3. Respondent withdraws its notice of contest.

4. 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 there under. 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, except for proceedings and matters brought by the United States Government. 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 there under. By entering into this Agreement Respondent does not admit the truth

substituted for former Secretary of Labor Martin Walsh.

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.

5. The parties agree that the citations are amended by this Agreement to include the full terms of this Agreement including the abatement actions and dates stated herein. The parties further agree that the citations as amended and the specific abatement measures set forth in paragraph 3 of this Agreement, including all subparts therein, shall be considered required abatement of the cited conditions and that the failure to perform any measures required in the Agreement may be cited as failure to abate under Section 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. ("the Act"), 29 U.S.C. § 659(b), to the same extent as if these abatement measures had been set forth from the outset in the Citations issued in this matter.

6. Respondent promises to permit Complainant access to the workplace at issue herein subsequent to the date fixed for abatement for the specific and limited purpose of determining if the conditions described in the citations at issue herein have been corrected.

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

8. Respondent certifies that the affected employees in the above-style case are not represented by an authorized employee representative.

9. Respondent certifies that a copy of the executed settlement agreement has been served upon the unrepresented affected employees in the manner set forth in Rule 2200.100 of the Commission's Rules of Procedure, by posting same on the 10 day of October, 2023.

10. Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

11. The parties agree that this Agreement shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing to be issued by the Executive Secretary of the Commission.

Respectfully Submitted,

Respectfully Submitted,

SEEMA NANDA
Solicitor of Labor


JOHN RAINWATER
Regional Solicitor

BCOMM CONSTRUCTORS LLC


LINDSAY A. WOFFORD
Counsel for Occupational Safety & Health

by:

by:



MCCORD WILSON
Attorney



JOHN M. BRADLEY
Senior Trial Attorney

Signed this 10 day of
October, 2023.

Signed this 10th day of
October, 2023.

RADER & CAMPBELL, PC
2777 N. Stemmons Freeway
Suite 1125
Dallas, TX 75207
Telephone: (214) 630-4700

Attorneys for Complainant
U. S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202
Telephone: (202) 961-5148

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 FOURTEEN (14) DAYS FROM THE DATE THAT THIS SETTLEMENT AGREEMENT IS POSTED. SUCH OBJECTIONS MUST BE SET FORTH IN WRITING AND MAILED TO CHRISTOPHER D. HELMS, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, U.S. CUSTOM HOUSE, 721 19TH STREET, SUITE 407, DENVER, COLORADO, 80202 WITH COPIES TO COMPLAINANT AND RESPONDENT.