

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #1062

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

JACK NELSON COMPANY

RESPONDENT

DECISION AND ORDER
OF REVIEW COMMISSION

A recommended order of Hearing Officer John Fowler is before this Commission for review pursuant to a petition filed by the Complainant Secretary of Labor.

COBB, Chairman; and BRADEN, Commissioner.

As a result of an inspection conducted by a Labor Cabinet Occupational Safety Compliance Officer on May 9, 10, 20 and 23, 1983, the Respondent, Jack Nelson Company, was cited for a violation of 29 CFR 1926.451(d)(10) (as adopted by 803 KAR 2:030).

The citation alleged that:

Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than ten (10) feet above the ground or floor.

(a) Rear wall of main theater stage; scaffold approximately 70 feet long and 75 feet high with current working level 18 feet above the floor, without standard guardrails on open side and ends.

The citation was designated as serious and a penalty of \$300 was assessed against the Respondent. The Respondent filed a Notice of Contest and the matter was heard before a Kentucky Occupational Safety and Health (KOSH) Review Commission hearing officer on October 13, 1983. On March 22, 1984, the hearing officer issued his Findings of Fact, Conclusions of Law and Recommended Order. The hearing officer vacated the citation and ordered the complaint dismissed. Even though he found that the scaffold in question violated the standard as alleged, as the basis for his decision he stated that ". . . there was no direct proof that the compliance officer witnessed employees of the Respondent company working at a 16 foot level . . ." on the day of the inspection. (Emphasis in original.) (Recommended Order, p. 9.)

Pursuant to KOSH Review Commission Rules of Procedure, 803 KAR 50:010, Section 48, the Secretary of Labor petitioned this Commission for a review of the hearing officer's decision. The Secretary of Labor requested review of the following issues:

1) Whether the Complainant is required to establish the identities of employees in order to sustain its burden of proof with respect to employee exposure;

2) Whether the Hearing Officer should have dismissed the Complaint on the basis that employee exposure was not proved;

3) Whether the Hearing Officer erred as a matter of law in his conclusion at page 10 of the Recommended Order that where a contractor "owns" a scaffold, the presence of other subcontractors on location will exonerate him from liability under the Act.

(Complainant's Petition for Discretionary Review, pp. 1-2)

On April 23, 1984, this Commission granted the petition for review of these issues. For the reasons stated below we reverse the decision of the hearing officer.

As part of his proof of a violation of a safety standard, the Secretary of Labor is required to prove exposure of employees to a hazard. In this case, the hearing officer vacated the citation for the failure of the Complainant to prove the actual exposure of Respondent's employees to the hazard created by the absence of guardrails. However, proof of actual exposure, i.e., actually seeing and identifying Respondent's employees, is not required even though this record, taken as a whole, proves actual exposure of Respondent's employees to the hazard. If such proof was required, an employer could simply call employees away from a hazard until a compliance officer left the premises, especially in the case of large worksites such as the one here. The alternative, having an OSH compliance officer present at a site continuously in order to "catch" an exposed employee, is clearly impractical and not one an employer would relish.

The Secretary is merely required to prove Respondent's employees access to the zone of danger, in this case the 30-36 inch wide platform approximately 16-18 feet above the concrete floor depicted in Complainant's Exhibits A & B, and which consists of three (3) boards, each approximately 2 inches thick and 10-12 inches wide, laid horizontally side-by-side on the "outrigger" portion of the scaffold just below the uncovered structural steel beam that runs parallel to and just above the platform. In deciding that proof of

access is required, we are persuaded by the ruling in Brennan v. OSHRC & Underhill Construction Corporation, 513 F2d 1032, 1974-75 OSHD ¶19,401 (CA-2 1974), wherein the court stated:

In a situation where, as here, an employer is in control of an area, and responsible for its maintenance, we hold that to prove a violation of OSHA, the Secretary of Labor need only show that a hazard has been committed and that the area of the hazard was accessible to the employees of the cited employer or those of other employers engaged in a common undertaking. (Emphasis added.)

In so holding, the court overruled the federal Review Commission's "actual exposure" rule as it had been applied by that Commission. Also, had the allegation been properly made in the Complaint here, Underhill would have required a ruling for the Complainant on the third issue raised in the Secretary's petition for review; that is, Respondents in control of a noncomplying scaffold are liable for the exposure of workers not its employees when engaged in a common undertaking as in the case of a multi-employer worksite.

"Access" to the hazard is shown by proof " . . . that employees either while in the course of their assigned working duties, their personal comfort activities while on the job, or their normal means of ingress-egress their assigned workplaces, will be, are, or have been in a zone of danger." Secretary of Labor v. Gilles & Cotting, Inc. 1975-76 OSHD ¶20,448 (1976).

The Secretary presented evidence of access and actual exposure, and sustained his burden of proof. The citation was issued for a violation of the standard at the work level approximately 16 feet above the floor. At the time of the inspection there were four (4) employees working on that level and were preparing to or engaged in the spray-on application of insulating material to a structural steel beam, clearly the type of work in which Respondent is engaged. Indeed, Mr. Nelson stated that his employees were on the scaffold in the presence of the compliance officer possibly "revamping" the scaffold or preparing to spray. This is consistent with the compliance officer's testimony and with the photograph depicting the yet to be sprayed beam at the level described above. In addition, the compliance officer's testimony with respect to the two employees, Jones and Cooler, demonstrates, at the very least, their access to the hazard. Both were Respondent's employees and had assigned job duties on the scaffold. Jones was a laborer responsible for cleaning up the scaffold, and Cooler had assigned duties requiring his presence on the scaffold for equipment maintenance purposes. These descriptions were provided by Mr. Nelson. This evidence, we believe, supports a finding that the Complainant met its burden of proof with respect to employee exposure to the hazard created by the unguarded scaffold.

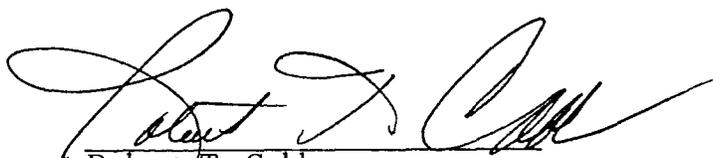
Respondent's contention that the Secretary's case was based on the uncorroborated testimony of the compliance officer is without merit. In the first place, his testimony was corroborated in many respects by the testimony of Mr. Nelson, and it otherwise appears reliable in light of the photographic exhibits which support it. Secondly, hearsay testimony is admissible in administrative

proceedings, and in any event, Respondent made no timely objection to its admission at the hearing.

We agree with that portion of the hearing officer's decision finding the scaffold in question in violation of 29 CFR 1926.451(d)(10) (as adopted by 803 KAR 2:030) for not being guarded with toprail, midrail and toeboard. Furthermore, we find that the Secretary of Labor sustained his burden of proof of the alleged violation in all other respects. The evidence in the record supports the designation of the citation as serious, and the assessed penalty is reasonable in light of the circumstances.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the recommended order dismissing the complaint is reversed. It is further ordered that the citation and complaint alleging a serious violation of 29 CFR 1926.451(d)(10) (as adopted by 803 KAR 2:030) and the penalty of \$300 is affirmed. The penalty shall be paid without delay, but no later than forty-five days from the date this decision is issued.



Robert T. Cobb
Chairman



Charles E. Braden
Commissioner

RUH, Commissioner, dissenting:

~~I do not agree with the majority and hence file this~~
dissenting opinion.

The majority decision cited the case and ruling in Brennan v. OSHRC and Underhill Construction Corporation 513 F2d 1032 (CA-2 1974) as a basis for its decision. It is my opinion that this case is not germane and within the continuity to the facts and issues of the case before the commission. The Underhill case is the correct statement of the law in that case, but it has always been held that "matters of law shall not be put into the mouths of the jurors." This case set a precedent of law. In the case before the commission we are only required to interpret the law based only on the solid facts, transcripts and testimony before the hearing officer.

The conclusion of reason is the lack of proof the compliance officer gave. He testified "that he believed he observed" and during his testimony he stated that "he assumed one worker was an employee." Also, he could not give a definite statement that Jones and Cooler had been working on the scaffold.

Was the scaffold at the time the compliance officer made the inspection and took the photos being revamped? Mr. Jack Nelson said that he used plywood over the base planks.

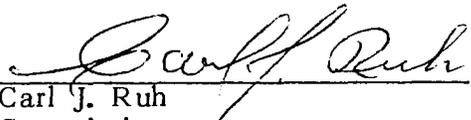
It is this commissioner's opinion and finding in this particular case that the proof of actual exposure or an immediate view by the compliance officer at the worksite was not apparent. I agree that a compliance officer visiting a worksite is not acting as

a law enforcement officer and trying to catch someone in violation,
~~but his duties are to convince by testimony at the hearing an~~
exposure to a hazard with more pronounced and determinable
wording than "that he believed he observed" or that, "he assumed
one worker was an employee of Jack Nelson Company."

The opinion of the majority states that at "the very least"
Mr. Nelson and his employees had "access to the zone of danger."
However, throughout the transcript the issue of employees or
workers in the area was not established as their relationship with
the Jack Nelson Company.

The vague testimony of the compliance officer was not
sound and affirmative evidence to overrule the hearing officer's
opinion.

Therefore, the recommended order dismissing the complaint
should be affirmed. This commission cannot and should not
speculate as to facts and then make rulings thereon. Evidence must
be carefully weighed in order to prevent a miscarriage of justice.


Carl J. Ruh
Commissioner

DATE: July 25, 1984
Frankfort, KY

DECISION NO. 1318

Copy of this Order has been served on the following parties in the
manner indicated:

Hon. Rose Ashcraft
Assistant Counsel
Labor Cabinet
Office of General Counsel
U. S. 127 South
Frankfort, KY 40601

(Messenger Mail)

Hon. Jerrold Perchik
Goldberg & Simpson
2800 First National Tower
Louisville, KY 40202

(Cert. Mail #P529 307 329)

Mr. Jack E. Nelson, Owner
Jack Nelson Company
2118 Reno Avenue
New Albany, IN 47150

(First Class Mail)

This 25th day of July, 1984.



Kenneth Lee Collova
Executive Director
KOSH REVIEW COMMISSION
Airport Bldg., Louisville Road
Frankfort, KY 40601
PH: (502) 564-6892

4-16-84
5-1-84

FV



Martha Layne Collins

~~XXXXXXXXXX~~
GOVERNOR

KENNETH LEE COLLOVA
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

AIRPORT BLDG., LOUISVILLE RD., (U.S. 60-West)

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

ROBERT T. COBB
CHAIRMAN

CARL J. RUM
MEMBER

CHARLES E. BRADEN
MEMBER

March 22, 1984

KOSHRC # 1062

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

JACK E. NELSON COMPANY

RESPONDENT

NOTICE OF RECEIPT OF
RECOMMENDED ORDER, AND
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law, and Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may submit a petition for discretionary review by this Commission. The petition must be received by the Commission in its offices in Frankfort on or before the 25th day following the date of this notice. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission, and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following parties:

Hon. Rose Ashcraft (Messenger Mail)
Assistant Counsel
Labor Cabinet
U. S. 127 South
Frankfort, KY 40601

Hon. Jerrold Perchik (Cert. Mail #P529 307 256)
Goldberg & Simpson
2800 First National Tower
Louisville, KY 40202

Mr. Jack E. Nelson, Owner (First Class Mail)
Jack E. Nelson Company
2118 Reno Avenue
New Albany, IN 47150

This 22nd day of March, 1984.


Kenneth Lee Collova
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC NO. 1062

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

JACK NELSON COMPANY

RESPONDENT

* * * * *

Appearances:

Rose Ashcraft, Assistant Counsel, Department of Labor, U.S. 127 South,
Frankfort, KY 40601, for the Complainant

Jerrold Perchik, c/o Goldberg & Simpson, 2800 First National Tower,
Louisville, KY 40202, for the Respondent

JOHN T. FOWLER, III, Hearing Officer

* * * * *

This action involves two citations alleging one serious and one other than serious violations of the Act and Standards of the Kentucky Occupational Safety and Health Standards and Act. A Complaint has been brought pursuant to the provisions of Chapter 338 of the Kentucky Revised Statutes alleging that an inspection was conducted at the Respondent's place of employment in Louisville, Jefferson County, Kentucky where construction of the Kentucky Center for Fine Arts was being conducted by and under the direction and control of the Respondent, Jack Nelson Company, a sole proprietorship duly authorized to do business in the state of Kentucky. The Respondent was issued two (2) citations of the Act and Standards. The particular violations

in questions allege as follows:

(a) Violation of 29 CFR 1926.451 (d)(10) in that:

Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than (10) feet above the ground or floor.

(a) Rear wall of main theater stage; scaffold approximately 70 feet long and 75 high with current working level 18 feet above the floor, without standard guardrails on open side and ends.

(b) Violation of 29 CFR 1926.401 (c) in that:

The path from circuits, equipment, structures, conduit or enclosures to ground was not permanent and continuous:

(a) Left front exit of main theater; a drill with no identification equipped with a mixing attachment, had a 2 prong attachment plug and was not grounded.

The aforementioned hearing is held under the provisions of KRS 338.071(4), one of the provisions for the safety and health of employees which authorizes the Review Commission to hear and rule on appeals and citations, notifications and variances issued under the provisions of this chapter, and to adopt, promulgate rules and regulations with respect to procedural aspects of the hearing. Under the provisions of KRS 338.081, a hearing was authorized and this hearing officer was appointed by the Review Commission to serve in its place. After this hearing, the Review Commission may sustain, modify or dismiss a citation or penalty.

The important procedural information is as follows:

1. An inspection was conducted on May 9, 10, 20 and 23, 1983.
2. The citation, alleging one (1) serious and one (1)

non-serious violation and a proposed penalty of \$300.00 was issued on June 9, 1983.

3. Notice of Contest to the citation and penalty proposed was received by the Department of Labor on June 27, 1983.

4. Notice of Contest was transmitted to the Review Commission on or about June 29, 1983.

5. The Complaint was filed on July 18, 1983.

6. The case was assigned to hearing officer, John T. Fowler, III and a hearing date of October 13, 1983 was established.

7. The Transcript of Testimony of the hearing was received and notification mailed on or about November 13, 1983 and a briefing schedule was established. A Brief was filed by the Complainant and the Respondent in accordance with this schedule.

DISCUSSION OF THE CASE

On May 20 and May 23, 1983 John R. Duncan, a supervisor for the Occupational Safety and Health program conducted a regularly scheduled inspection at the Respondent's place of employment at 6th and Main, where the construction site for the Kentucky Center for the Arts was located. Mr. Duncan testified that a search warrant was required by the prime contractor but not by Mr. Nelson, president of the Respondent's company. Mr. Duncan further testified that he was assisted in his walk around inspection of the Arts Center by two (2) union stewards who were representing the craftsmen working at this art center. One of these individuals was Mr. Joe Reinstedler, who was the chief superintendent at this site and was acting in behalf of most of the sub-contractors at the Center for the Arts. Mr. Duncan's total walk

around inspection of the entire site took at least two (2) days in view of the fact that some fifteen (15) sub-contractors were involved.

Mr. Duncan stated that the citation which resulted from his inspection concerned a scaffold located against a rear wall of the main stage of the Kentucky Center For the Arts. On June 9, 1983 a citation was issued to the Respondent's company which alleged a violation of 29 CFR 1926.451 (d)(10) which states:

"Standard guardrails and toeboards were not installed at all open sides and ends of tubular welded frame scaffold more than (10) feet above the ground or floor."

It was further noted in the description of the violation:

"the rear wall of the main theater stage; scaffold approximately 70 feet long and 70 feet high, with current working level 18 feet above the floor, without standard guardrails on the open side and ends." Mr. Duncan stated that he believed that the standard was violated at the worksite by the Respondent on the date of his inspection because in discussing the violation with Mr. Nelson, it was noted that Mr. Nelson believed cross-bracing, which is a part of the scaffold, was unsuitable as a fall protection device. (T.E. 11-12) Mr. Duncan also stated that he observed four (4) workers on the scaffold platform at the time he arrived in that area accompanied by Mr. Nelson. (T.E. p. 14, lines 6 thru 10) Mr. Duncan testified that an employer should have complied with the Code of Federal Regulations Standard by the use of wooden guardrails and midrails. Mr. Duncan stated that scaffold members which are designed for that purpose can also be used in lieu of wood. Mr. Duncan explained in some detail why he believed cross-bracing was not

in compliance with the aforementioned standard. (T.E., p. 15, lines 11 thru 16). Mr. Duncan related that it was determined to be a serious violation in that a person could fall more than 10 feet to a hard surface and the resulting injury would require a doctor's treatment and/or hospitalization. Mr. Duncan then went into some detail concerning the manner in which the penalty of \$300.00 was assessed in compliance with the probability severity quotient ratios and penalty adjustment factors.

The Complainant also called as a witness, David J. Wolfe, who works for the Justice Cabinet in the Medical Examiner program. Mr. Wolfe's occupation involves the investigation of deaths that occur within the Commonwealth of Kentucky that are defined in the statutes as being coroner's cases. Mr. Wolfe testified that he has had an opportunity to review many coroner's reports and that it is his professional opinion that a fall from approximately 18 or 20 feet or less, in that neighborhood, can result in death. (T.E., p. 73). Mr. Wolfe also testified that because of the structure of the adult male human body, a railing approximately 42 inches from the surface of a work area would substantially reduce the probability of serious injury and/or death in a fall from approximately 18 feet to a hard surface floor. (T.E., p. 85, lines 6 thru 10).

The Respondent called as witnesses Mr. Jack Nelson and Kenneth Troutman. The latter witness testified that he had worked for the Kentucky Department of Health as an industrial hygienist and was there for approximately one (1) month at which time the Occupational

Safety and Health Administration program started in Kentucky and Mr. Troutman was made a compliance officer. He worked there for approximately three (3) years in that capacity and attended OSHA Institute of Chicago, compliance officer training school. After a foundation had been laid for an expert opinion, Mr. Troutman stated that based on the information he had received in reviewing this file, if he had been the compliance officer he probably would have issued a non-serious violation. There was, of course, extensive cross-examination of all of the witnesses previously mentioned but this hearing officer does not believe that it is necessary to go into an in depth discussion of this cross-examination in view of the hearing officer's findings.

FINDINGS OF FACT

This hearing officer must note at the outset that if this case would have been considered only on the direct proof presented by the Complainant, without consideration of the Respondent's cross-examination and/or redirect, a dismissal would have been mandated on the failure of the Complainant to prove a prima facie case. The only proof brought out on direct examination was that John Duncan, a compliance officer, made an inspection at the Respondent's place of employment at 6th and Main in Louisville, Kentucky and that as a result of this inspection a citation was issued. In answering the question why the compliance officer believed a standard had been violated, the following question was asked and the following response given:

Q. 45 John, why do you believe that this standard was violated at the worksite of the Respondent on the date of your inspection?

A. Mr. Nelson, in discussing the violation with him, felt the cross-bracing, which is part of the scaffold was suitable for -- against fall protection, or was a suitable fall protection device. (T.E. 11-12)

The compliance officer testified that he saw four (4) people working approximately 16 feet upon a platform (T.E. p. 13, lines 22-25; p. 14, lines 1-9) and that a penalty was assessed in the amount of \$300.00.

The direct testimony of Mr. Wolfe reflected only that it was his professional opinion in that a fall from a height of 16 feet would cause serious bodily injury and/or death. There was no proof introduced on direct testimony that the employees which Mr. Duncan saw on the scaffold were employees of the Respondent company. There was no proof concerning what these employees were doing on the scaffold or the nature of the work performed.

Additional proof to bolster the Complainant's case was inexplicably provided by the Respondent's cross-examination which in an administrative hearing must be considered as direct proof. It was established only on cross-examination that the compliance officer, John Duncan, had talked to two (2) employees of the Respondent company and that these employees admitted that they were laborers for the Respondent company and that they had worked on a scaffold. (T.E. 36, lines 20-24; p. 37, lines 15-19). The Respondent argues that the statement made by Mr. Don Jones that he was an employee of the Respondent's company and that he had been on the scaffold should be excluded as uncorroborated hearsay testimony. The rule in administrative hearings of this type is

very clear, however, and any and all hearsay testimony can and will be considered by this hearing officer.

It is the opinion of this hearing officer that the compliance officer has testified that he saw four (4) employees working on a platform approximately 16 feet in the air. However, the compliance officer admitted on cross-examination that the employees he talked to may not in fact have been same individuals who were on the platform at the time of his visit. The only connection to show that the employees on the platform were employees of the Respondent was the fact that Jack Nelson apparently requested one of them to assist in taking measurements. (T.E. p. 36, lines 1-6)

There was also testimony that the compliance officer talked to a Don Jones who admitted that he is a laborer employee of the Respondent company and that he had been on a platform at that level but did not specify what he was doing on the platform or scaffold. (T.E. p. 37, lines 18-25) It is also important to note that while the Respondent admitted that he had employees on the platform that day, (T.E. p. 112, lines 4-6) he made no indication at what level these employees had been working.

The hearing officer has also taken note that there is direct testimony that Mr. Don Jones position in the labor union would have precluded him from working on the scaffold as a laborer. (T.E. p. 103, lines 14-16)

This hearing officer after having considered and reviewed the entire transcript of record and all briefs filed has concluded that

this action must be dismissed because the Complainant has not sustained its burden of proof. This record is completely devoid of any direct proof that the compliance officer witnessed employees of the Respondent company working at a 16 foot level on the day of his visit. The fact that Mr. Nelson asked one of the unnamed men on the platform to assist in a measurement for Mr. Duncan is completely meaningless. Anyone working on the platform may have volunteered to assist in such a measurement and this is no direct proof of employment. The Complaint brought by the Commissioner of Labor alleges that the compliance officer personally observed means, manner, and practices of employment at the Respondent's place of employment which subjected the Respondent's employees to illness, injury and/or death. This hearing officer concludes that there has been insufficient evidence to prove that the individuals which the compliance officer saw on the scaffold were employees of the Respondent company.

This hearing officer further concludes that the hearsay testimony previously referred to of the employees of the Respondent company cannot salvage a prima facie case for the Complainant. One of the employees, Don Jones, was apparently allowed only to work pursuant to his labor union contract on the construction of the scaffolding and the other unnamed individual interviewed by Mr. Duncan, never stated at what level he was working on the scaffold. The hearing officer cannot guess at what level this individual was working because the platform was admittedly multi-tiered (T.E. p. 34, lines 13-19).

The Complainant's position that the employees which the

compliance officer witnessed on the platform were inaccessible is not logical or acceptable. If these same persons on the platform could have and did assist in a measurement it would have been an elementary task for the compliance officer to ask that individual's name and more importantly who he worked for.

The hearing officer also takes note that it is uncontroverted that the scaffold did not comply with the requirement of 1926.451 (d) (10) and that the scaffold was not guarded with toprail, midrail and toeboard. This fact, however, does not excuse the Complainant from establishing that the individuals who were exposed on the scaffold at the time of the compliance officer's investigation were, in fact, employees of the Respondent company. This hearing officer has also taken into account that although the scaffolding was admittedly owned by the Respondent company, there were numerous subcontractors working at that location.

CONCLUSIONS OF LAW

This hearing officer concludes that the Complainant has not sustained its burden of proof in the above-styled action for the reasons previously stated and the Complaint be and is hereby dismissed.

RECOMMENDED ORDER

This hearing officer recommends to the Review Commission that the above-styled action be dismissed for the reasons previously stated in the Findings of Fact and Conclusions of Law.

DATED: March 22, 1984
Frankfort, KY

DECISION NO. 1286



JOHN T. FOWLER, III
Hearing Officer