

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #1260

FV

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

LEGGETT & PLATT, INC.

RESPONDENT

DECISION AND ORDER

The Recommended Order of the Hearing Officer in the above styled action is presently before this Commission for review pursuant to an Order of direction for review issued May 18, 1987, by the Commission in accordance with Section 47(3) of its Rules of Procedure. The issue on review was whether the Hearing Officer committed error in the application of the law to the facts; specifically, whether citation items 2(c) - (ww), for violation of 29 CFR 1910.212(a)(3)(ii), should be dismissed for lack of sufficient evidence of suitable means of abatement as set forth in Diebold, Inc. v. OSHRC, 585 F. 2d 1327, (6th Circuit, 1978), 1978 CCH OSHD \$23,124.

In his Recommended Order dated April 13, 1987, the Hearing Officer "found as a result of hearings held on two separate occasions, that there was no suitable means of abatement" for the above mentioned violations. Under Diebold, supra, when a general standard which does not suggest or specify the means of compliance is involved, the burden is on the Complainant to prove "an identifiable and practical means for guarding the specific uses to which the cited employer puts it." It is clear from the evidence of record that the Complainant failed to prove suitable abatement. The Commission therefore, ORDERS that citation items 2(c) - (ww) for violation of 29 CFR 1910.212(a)(3)(ii) are hereby DISMISSED. This Commission finds that a reasonable penalty for the remaining uncontested items, 2(a) & (b), is \$50.

At the hearing held September 18, 1985, the parties made motions resolving the other contested violations which have yet to be ruled upon. After reviewing the record, the Commission hereby GRANTS the Complainant's motion to DISMISS repeat citation #2, for the alleged violation of 29 CFR 1910.108(c)(2)(i), and other than serious citation item 13(b), for the alleged violation of 29 CFR 1910.108(g)(6)(iv). Any accompanying penalties are also DISMISSED.

The Commission GRANTS Respondent's motion to withdraw its Notice of Contest to other than serious item #3(a). Therefore, the citation for the violation of 29 CFR 1910.37(k)(2) is hereby AFFIRMED.

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Any penalties owed are due upon receipt of this ORDER.

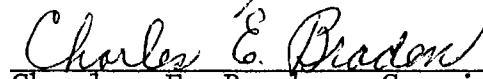
This is a final, appealable ORDER.



William H. Shields, Chairman



Carl J. Ruh, Commissioner



Charles E. Braden, Commissioner

DATED: July 28, 1987
DECISION NO. 1746

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

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

(Messenger Mail)

Hon. Roger A. Weber
Taft, Stettinius & Hollister
1800 First National Bank Center
Cincinnati, OH 45202

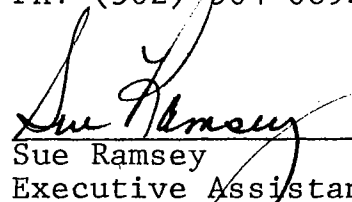
(Cert. Mail #P 337 117 117)

Mr. E. Glenn Roberts
Leggett & Platt, Inc.
211 Main Street
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Simpsonville, KY 40067

(First Class Mail)

This 28th day of July, 1987.

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Sue Ramsey
Executive Assistant