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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
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H. L. STOWERS
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MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 20

COMMISSIONER OF LABOR OF KENTUCKY

COMPLAINANT

vs DECISION OF REVIEW COMMISSION

LINKER BROS. BAKING CO., INC.

RESPONDENT

Before H. L. Stowers, Chairman, Merle Stanton and
Charles B. Upton, Commissioners:

This matter is before the Commission on Joint

) Motion to Enter Order, together with proposed order, wherein
complainant and respondent move the Commission for a proper
order.

The Commission, in session March 8, 1974, reviewed
the file before it in this matter and found that notice of the
receipt of contest had been issued on February 6, 1974, contest
notice being received by the complainant on February 4, 1974.
No further pleadings, notices, letters or other communications
had been received by the Commission up to the time of review.
The Commission thereupon directed dismissal for lack of
prosecution, since under Rules of Procedure of this Commission,
Section 18 (a) (1) it is provided:

) "The Commissioner shall file a complaint with the
) Commission no later than 20 days after his receipt of notice of

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contest." (Emphasis ours)

Complaint in this matter was due February 25, 1974. No such complaint has been received. Parties to this action in their motion state there "has been much confusion about the citation, which confusion is now cleared up to the satisfaction of both parties." We were not informed as to the basis of any confusion and the only confusion evident was an amended citation, issued on January 30, 1974, on a November 14, 1973 inspection, the amended citation giving a new abatement date of February 8, 1974, instead of December 28, 1973. However, the date of the notice of contest from the employer was dated January 31, 1974, received Division of Compliance February 4, 1974. If there were other elements of confusion, this Commission was not and still has not been advised, but if such existed beyond the due date of the complaint, complainant had an ample time to save its right to complain, since the complaint was not due until February 25, 1974.

Parties further ask this Commission to find in its order that a "Notice of Non-contest" to the Department of Labor was received by it on February 12, 1974. Yet parties have failed to furnish such Notice to this Commission and this Commission can not and will not find facts which it has not been made aware of or have not been shown even to exist.

Further, once jurisdiction rests in this Commission, it can be divested of it only by approval or final order issued by the Commission and we have been shown no basis for such a

suggested order as submitted. No proof was offered Respondent had submitted such a notice (none has yet been filed with the Commission); no proof that the Department of Labor accepted this notice of no contest (no showing of this has been made); no allegation or showing that this was the basis of not filing of a complaint; and further there has been no stipulation or agreement that the parties agree there is no issue; and no agreement or stipulation relative to the issues submitted to the Commission for its approval. This Commission is at a loss to understand how it can be asked to issue such an order, when no basis for such suggested findings has been laid and the Commission has not been given the benefit of any proof of these suggestions.

Before this Commission will approve withdrawal of a contest, the Commission will require an affirmative showing that abatement of the bases for the citations has been made, that all penalties have been paid, that all employees have been advised of such contest and also of the withdrawal request, and that the employer has agreed to future compliance with the Act.

First, in this matter presently before the Commission the only affirmative statement that abatement has been effected is in the letter of Respondent dated January 31, 1974.

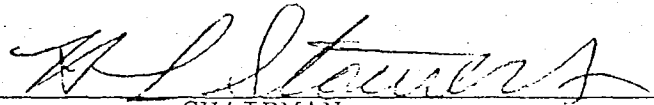
Secondly, there has been no showing of penalties paid, and there was a penalty of \$37.00 assessed by the Department in its citation.

Thirdly, there is no showing that the employees have in any way, been properly advised as to this case.. The

respondent has failed to certify that the Notice of Employees of contest was properly posted as required by this Commission and there is no showing that the employees are even aware of this contest having been filed or pending.

Lastly, the respondent-employer has made no affirmation of future continuing compliance with the Kentucky Occupational Safety and Health Act, its standards and requirements.

IT IS ORDERED that Joint Motion to Enter Order is hereby overruled and that the proposed order is defective for reasons stated. FURTHER IT IS ORDERED that the Commission order dismissing this matter for lack of prosecution of March 12, 1974 is a proper order and is hereby affirmed as of its original date.



CHAIRMAN

Dissenting:

Concurring:

Merle H. Stanton

Charles B. Upton