

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**ANTELOPE VALLEY COLLEGE
3041 WEST AVENUE K
LANCASTER, CA 93536**

Employer

Inspection No.

1356645

DECISION

Statement of the Case

Antelope Valley College (Employer) is a public community college in Lancaster, California. On October 29, 2018, the Division of Occupational Safety and Health (the Division), through Safety Engineer Julie Acee (Acee), commenced an investigation at a place of employment located at 4555 West Avenue G, in Lancaster, California. On March 6, 2019 the Division sent Employer a Notice of Intent to Classify Citation as Serious (known as a 1BY form).

On March 25, 2019, the Division cited Employer for violations of California Code of Regulations, title 8.¹ The Division issued three citations: Citation 1, Item 1, a general violation alleging failure to have hazardous energy control procedures for an engine used in teaching compression checks, Citation 2, Item 1, a serious violation alleging failure to train employees on hazardous energy control procedures specific to the engine used in teaching compression checks, and Citation 3, Item 1, a serious and accident-related violation alleging failure to lock, block or de-energize movable parts on the engine used to teach compression checks.

On March 27, 2019, Employer filed a timely appeal of the citations on the grounds that the safety regulations were not violated, the classifications of the violations are incorrect, and the proposed penalties are unreasonable. Additionally, Employer asserted a series of affirmative defenses.²

This matter was heard by Autumn Gonzalez, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, in Van Nuys, California, on October 2, 2019 and January 23, 2020. Perry Poff, attorney at Donnell, Melgoza & Scates, LLP,

¹ All references are to California Code of Regulations, title 8, unless otherwise specified.

² Employer presented evidence in support of a number of affirmative defenses. Defenses not pursued at hearing are deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

represented Employer. Martha Casillas, Staff Counsel, represented the Division. The matter was submitted on July 6, 2020.³

Issues

- 1. Do Federal Aviation Administration regulations regarding the FAA AC 4313 pressure test procedure preempt section 3314 of the safety orders?**

Findings of Fact

1. On September 25, 2018, at approximately 10:30am, Tyrone Mettler (Mettler), an instructor at Antelope Valley College's Certified Aviation Maintenance Technician School, was injured by a Lycoming Aviation Engine Model O-320, #2318-27 propeller while performing a demonstration of a compression check on the aircraft engine for his students. The propeller struck Mettler in the face, causing traumatic head injury.
2. At the time of the accident, Mettler was teaching a class of approximately 25 airframe and powerplant maintenance students how to perform a compression check test on an engine used for student instruction. Instructors at Antelope Valley College regularly instruct students on the FAA AC 43.13 procedure.
3. Antelope Valley College is a certificate holder authorized by the FAA to conduct required curriculum for airframe and for powerplant maintenance activity.
4. Employer is required by the FAA to teach aspiring airframe and powerplant mechanics a procedure known as a compression test.
5. The use of extension tools, an engine cage, or other methods to protect employees from direct handling of the engine and the propeller would make the compression test impossible.
6. There cannot be concurrent operation of both the mandated FAA compression test procedure and the Cal/OSHA section 3314 lockout/tagout regulation.

³ The parties initially had an agreed-upon submission date of April 24, 2020. That date was extended to May 22, 2020, on the request of the parties. The date was again extended to July 3, 2020, on request of the parties, and to July 6, 2020.

Analysis

1. **Do Federal Aviation Administration regulations regarding the FAA AC 4313 pressure test procedure preempt section 3314 of the safety orders?**

All three citations issued by the Division allege violations of section 3314, which governs control of hazardous energy and lockout/tagout procedures. Citation 1 alleges a general violation of 3314, subdivision (g)⁴, Citation 2 alleges a serious violation of section 3314, subdivision (I)⁵, and Citation 3 alleges a serious and accident related violation of 3314, subdivision (c)⁶. Section 3314 states in relevant part:

(a) Application.

(1) This Section applies to the cleaning, repairing, servicing, setting-up and adjusting of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.

(2) For the purposes of this Section, cleaning, repairing, servicing and adjusting activities shall include unjamming prime movers, machinery and equipment.

(3) Requirements for working on energized electrical systems are prescribed in Sections 2320.1 through 2320.9 or 2940 through 2945.

[...]

(c) Cleaning, Servicing and Adjusting Operations.

Machinery or equipment capable of movement shall be stopped and the power source de-energized or disengaged, and, if necessary, the moveable parts shall be mechanically blocked or locked out to prevent inadvertent movement, or release of stored energy during cleaning, servicing and adjusting operations. Accident prevention signs or tags or both shall be placed on the controls of the power source of the machinery or equipment.

(1) If the machinery or equipment must be capable of movement during this period in order to perform the specific task, the employer shall minimize the hazard by providing and requiring the use of extension tools (eg., extended swabs, brushes, scrapers) or other methods or means to

⁴ The Division's alleged violative description for Citation 1 states:

Prior to and during the course of the inspection, including but not limited to, on September 25, 2018, the employer did not have specific energy control procedures for the Run Stand- Lycoming Aviation Engine Model O-320, #2318-27 when conducting compression checks on the engine.

⁵ The alleged violative description for citation 2:

Prior to and during the course of the inspection, including, but not limited to, on September 25, 2018, the employer did not train their employees on the hazardous energy control procedures specific to conducting compression checks on the Run Stand- Lycoming Aviation Engine Model O-320, #2318-27, including, but not limited to, de-energizing, blocking, or locking out movable parts.

⁶ The alleged violation description for citation 3 reads:

Prior to and during the course of the investigation, the moveable parts of the Run Stand- Lycoming Aviation Engine Model O-320, #2318-27 were not de-energized, blocked, or locked out when conducting compression checks on the engine. As a result, on or about 9/25/2018, an employee was seriously injured when the employee manually held onto the propeller while conducting the compression check on the engine.

protect employees from injury due to such movement. Employees shall be made familiar with the safe use and maintenance of such tools, methods or means, by thorough training.

[...]

(g) Hazardous Energy Control Procedures. A hazardous energy control procedure shall be developed and utilized by the employer when employees are engaged in the cleaning, repairing, servicing, setting-up or adjusting of prime movers, machinery and equipment.

(1) The procedure shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance, including but not limited to, the following:

(A) A statement of the intended use of the procedure;

(B) The procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;

(C) The procedural steps for the placement, removal and transfer of lockout devices and tagout devices and responsibilities; and,

(D) The requirements for testing a machine or equipment, to determine and verify the effectiveness of lockout devices, tagout devices and other hazardous energy control devices.

(2) The employer's hazardous energy control procedures shall be documented in writing.

(A) The employer's hazardous energy control procedure shall include separate procedural steps for the safe lockout/tagout of each machine or piece of equipment affected by the hazardous energy control procedure.

[...]

(I) Training.

(1) Authorized employees shall be trained on hazardous energy control procedures and on the hazards related to performing activities required for cleaning, repairing, servicing, setting-up and adjusting prime movers, machinery and equipment.

(2) Each affected employee shall be instructed in the purpose and use of the energy control procedure.

(3) All other employees whose work operations may be in an area where energy control procedures may be utilized, shall be instructed about the prohibition relating to attempts to restart or reenergize machines or equipment which are locked out or tagged out.

(4) Such training shall be documented as required by Section 3203.

Employer does not have a written procedure in place that meets the requirements of section 3314, as the Division's Citation 1 alleges. (Ex. 1, Jurisdictional Documents). Because no such document or procedure exists, Employer failed to train the teaching staff on the energy control procedures, as the Division alleges in Citation 2. Nor did the injured instructor mechanically block or lock out the equipment prior to beginning his lesson on performing a pressure check on September 25, 2018, as alleged in Citation 3. The discussion does not end here, though, as Employer asserts that the Division is preempted by FAA regulations from

enforcing these lockout/tagout provisions in the context of the FAA mandated compression test. The question of preemption is central to all three citations.

Employer is required by the FAA to teach aspiring airframe and powerplant mechanics a procedure known as a compression test⁷, pursuant to the curriculum requirements for certified airframe and powerplant educational programs, found in title 14, Code of Federal Regulations, part 147.⁸ Deviance from the federal standards would make it difficult or impossible for the students to pass the FAA certification examination, and could also lead to the school losing its FAA accreditation for failure to adhere to the mandated curriculum. (Ex. D.) Where such impossibility between state and federal regulation is demonstrated to exist, the state regulations must give way to the federal:

The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives. (*Florida Lime & Avocado Growers, Inc. v. Paul* (May 13, 1963) 373 U.S. 132, 142.)

Unlike in *United Air Lines v. Occupational Safety & Health Appeals Bd.*, 32 Cal. 3d. 762, the fact that FAA has chosen not to regulate the safety of ground maintenance workers and worker trainees is not dispositive here. The issue is whether the Cal/OSHA safety orders can be enforced concurrently with the FAA's requirements for airframe and powerplant technician curriculum. Testimony and evidence in the record leads to the conclusion that there cannot be concurrent operation of both the mandated FAA compression test procedure and the Cal/OSHA section 3314 lockout/tagout regulation.

Section 3314 of the safety regulations cannot be enforced without impairing the FAA's acknowledged supremacy in the area of inflight safety. (*United Air Lines v. Occupational Safety & Health Appeals Bd.*, 32 Cal. 3d. 762, 774.) Testimony adduced at hearing establishes that it would be impossible for Employer to teach students the compression test protocol while also following the mandates of section 3314. The FAA compression test requires manual handling of the airplane propeller to determine whether the engine's valves and rings are properly sealed, or are leaking. The test is multi-step, and requires the mechanic to use their vision and sense of touch to discover air leaks that may exist in the airplane engine. The test is a critical one for the safety of the aircraft. It would be impossible to lock, block, or de-energize the propeller, and still conduct the test.

⁷ The steps for compression testing of aircraft engine cylinders can be found at FAA Advisory Circular 43.13-1B, Section 8-14. (Exhibit A).

⁸ These requirements are discussed both in testimony at hearing, and in Employer's Exhibit E, Affidavit of FAA Inspector Salazar. The document was properly submitted pursuant to section 372.4, subdivision (b) of the Board's rules of practice and procedure. The declaration is admitted with the same effect as if the affiant had testified orally.

The use of extension tools, an engine cage, or other methods to protect employees from direct handling of the engine and the propeller would make the test impossible. Employer's witnesses included a number of highly experienced instructors and airplane mechanics, who were unable to posit any alternative means of engaging in the FAA pressure test while also either blocking the engine from movement, or keeping the mechanic at a distance from the equipment they are testing. The Division was similarly unable to propose a means of both complying with section 3314, and with the FAA's rules. Where such impossibility exists, the federal regulations will govern. Here, Federal Aviation Administration regulations regarding the FAA AC 4313 pressure test procedure preempt section 3314 of the safety orders. Accordingly, Citations 1, 2, and 3 are dismissed.

Conclusion

Citations 1, 2, and 3 are dismissed. The safety orders are preempted by FAA regulations.

Order

It is hereby ordered Citations 1, 2, and 3 and associated penalties are vacated.

Dated: 07/15/2020



Autumn Gonzalez
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**