

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC NO. 2840-96

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

SMITHERS SIGN COMPANY

RESPONDENT

* * * * *

DECISION AND ORDER
OF THIS REVIEW COMMISSION

This case comes to us following respondent Smithers Sign Company's petition for discretionary review (PDR) which we granted on February 5, 1997.¹ Complainant submitted first an objection to review by this commission and then a brief. Smithers relied upon its PDR.

The company makes signs, neon and electric, and then installs them for customers. Following an occupational safety and health inspection by a compliance officer, the secretary of labor, the enforcer of KRS chapter 338, issued citations to respondent Smithers. In all, the secretary issued a serious citation with eight items and proposed penalties totaling \$4,650. He also issued an other than serious citation with thirteen items but no penalties. Smithers did not contest all citations; those not contested became final orders of the commission fifteen days after their issuance. KRS 338.141 (1). Following a trial, our hearing

¹ Section 48 (1) of our rules of procedure (ROP) enacted as section 48 (1), 803 KAR 50:010.

officer wrote a recommended order upholding all contested citations and then affirmed the proposed penalty of \$4,650.

We ordinarily hire hearing officers to conduct a hearing and issue a recommended order. KRS 338.081 (1) and ROP 47 (1). But the ultimate statutory authority to hear and rule on appeals from citations rests with this commission. KRS 338.071 (4), ROP 47 and 48. We may sustain or modify citations and penalties. KRS 338.081 (3).

After reviewing the record in this case and the submissions of the parties to us, we conclude the hearing officer properly affirmed all contested citations. Perhaps the only issue was whether his employees had access to the Craftsman table saw. Our hearing officer found there was "substantial saw dust on the machine itself as well as on the floor." He found when the compliance officer asked Mr. Smithers about the frequency of use, he was told "'just occasionally...every one or two weeks.'" Then he found the power cord plugged into an extension cord (which was not plugged in). Neither Mr. Smithers nor his wife made any claim during the closing conferences the saw was not in service. We find the saw was in use by employees who had access to it.

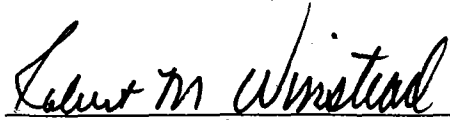
In its petition to us, Smithers complains about the "fines imposed." He argues he has had no injuries. He says the company is "not a large corporation." He said the proposed penalties put a "severe hardship on my company." He says he spent \$15,000 abating violations.

We affirm all contested citations but reduce the collective

penalties, under our authority contained in KRS 338.081 (3) and 338.991 (6), to \$2,375.

It is so ordered.

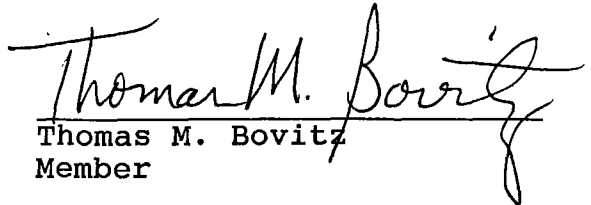
Entered May 6, 1997.



Robert M. Winstead
Chairman



Donald A. Butler
Member



Thomas M. Bovitz
Member

Copy of the foregoing Order has been served upon the following by
Messenger Mail:

HON JOHN D PARSONS
COUNSEL
LABOR CABINET
OFFICE OF GENERAL COUNSEL
1047 U S 127 S STE 4
FRANKFORT KY 40601

and by First Class Mail, postage prepaid, upon:

MR ROBERT SMITHERS
SMITHERS SIGN CO INC
1413 VERSAILLES RD
LEXINGTON KY 40504

This 12th day of May, 1997.



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