

1 NEVADA OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW BOARD

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4 CHIEF ADMINISTRATIVE OFFICER
5 OF THE OCCUPATIONAL SAFETY
6 AND HEALTH ADMINISTRATION OF
7 THE DIVISION OF INDUSTRIAL
8 RELATIONS OF THE DEPARTMENT
9 OF BUSINESS AND INDUSTRY, STATE
10 OF NEVADA,

11 Complainant,

12 vs.

13 UNIFIED CONTAINER, LLC,

14 Respondent.

Docket No. LV 24-2304

Inspection No. 1728744

FILED
April 14, 2026
OSH REVIEW BOARD
By: K Kennedy

15 **DECISION OF THE BOARD, FINDINGS OF FACT,**
16 **CONCLUSIONS OF LAW AND FINAL ORDER**

17 On February 16, 2024, the State inspected the Unified Container, LLC (Unified
18 Container or the Respondent or the Employer) facility located at 1300 Las Vegas Boulevard
19 North, Las Vegas, Nevada. *See*, State's Ex. 1, p. C10. Unified Container is a domestic limited
20 liability company, *see*, State's Exhibit 1, p. C4, owned and managed by Hadado Management.
21 *See*, State's Exhibit 1, pp. C10, C56. The Respondent's facility manufactures plastic bottles for
22 the exclusive use of Golden Wheat Distributing also known as Anderson Dairy, one of Hadado
23 Management's subsidiaries. *See, Id.* Unified Container shares the facility with Anderson Dairy.
24 During the inspection, certain deficiencies were noted, resulting in the issuance of six citations.
25 *See*, State's Exhibit 1, pp. C30-C57.

26 The matter came on for hearing before the Nevada Occupational Safety and Health Board
27 of Review (Board) on March 12, 2025. The hearing was conducted in furtherance of a notice,
28 duly provided according to law. *See*, Notice of Hearing dated December 17, 2024. In attendance
for the Board at the March 12, 2025, hearing were Board Chairman, Jorge Macias, Board
Secretary William Spielberg and Board Members, Tyson Hollis, Gled Bautista and Scott

1 Fullerton. *See*, 1Tr., p. 3;5-14.¹ All five members of the Board being present to hear this matter,
2 a quorum was present to conduct the business of the Board.

3 After the parties had rested their respective cases, the Board continued the case until
4 November 12, 2025, so that further deliberations could occur. *See*, 1Tr., pp. 209;2-25, 210;1-18.
5 In attendance at the November 12, 2025, hearing were Board Chairman, Jorge Macias, Board
6 Members, Tyson Hollis, Gled Bautista and Shannon Chambers. *See*, 2Tr., p. 2;14-16. Ms.
7 Chambers abstained from voting because she was not present for the presentation on the 12th of
8 March. *See*, 2Tr., p. 9;10-13. There being three members of the Board present to deliberate on
9 the matter, a quorum was present to participate in the continued deliberation and to conduct the
10 business of the Board.

11 On both the March 12, 2025 and the November 12, 2025 hearings, Charles R. Zeh, Esq.,
12 The law Offices of Charles R. Zeh, Esq., was present as legal counsel to the Board. *See*, 1Tr., p.
13 7;24-25, 2Tr., p. 1;5-16. Salli Ortiz, Esq., appeared on behalf of the Complainant, Chief
14 Administrative Officer of the Occupational Safety and Health Administration, Division of
15 Industrial Relations (the State) at the March 12, 2025, hearing. *See*, 1Tr., p. 8;4-26. Russell
16 Peterson, a lay person representative, appeared on behalf of Unified Container. *See*, 1Tr., p. 9;3-
17 9. Mr. Peterson and Doug Kuehn, a second lay person representative, were present for the
18 Respondent at the November 12, 2025, continuation of the hearing. *See*, 2Tr., p. 2;17-25.

19 On November 27, 2023, a Citation and Notification of Penalty (Citation) was issued to
20 the Respondent alleging violations of federal regulations. Citation 1, Item 1, charged a serious
21 violation of 29 CFR 1910.23(d)(2), as stated below:

22 29 CFR 1910.23(d)(2): Fixed ladders. The employer must ensure: The minimum
23 perpendicular distance from the centerline of the steps or rungs, or grab bars, or
24 both, to the nearest permanent object in back of the ladder is 7 inches (18 cm),
except for elevator pit ladders, which have a minimum perpendicular distance of
4.5 inches (11 cm).

25 The State assessed a fine of \$2,350 for the alleged violation of 29 CFR 1910.23(d)(2).

27 ¹ “1Tr.” stands for the transcript of the hearings conducted on March 12, 2025, followed by the
28 page and line number where the matter cited can be found. “2Tr.” stands for the transcript of the
deliberations conducted on November 12, 2025, followed by the page and line number where the matter
cited can be found.

1 Citation 1, Item 2, alleged a serious violation of 29 CFR 1910.28(b)(1)(i), as stated below:

2 Unprotected sides and edges. Except as provided elsewhere in this section, the
3 employer must ensure that each employee on a walking-working surface with an
unprotected side or edge that is 4 feet (1.2 m) or more above a lower level is
protected from falling by one or more of the following:

4 Guardrail systems; [1910.28(b)(1)(i)(A)]

5 Safety net systems; or [1910.28(b)(1)(i)(B)]

6 Personal fall protection systems, such as personal fall arrest, travel restraint, or
positioning systems. [1910.28(b)(1)(i)(C)]

7 The State assessed a fine of \$6,452 for the alleged violation of 29 CFR 1910.28(b)(1)(i).

8 Citation 1, Item 3, alleged a serious violation of 29 CFR 1910.28(b)(3)(v), as stated below:

9 Each employee is protected from falling through a hatchway and chute-floor hole
10 by: A hinged floor-holecover that meets the criteria in §1910.29 and a fixed
guardrail system that leaves only one exposed side. When the hole is not in use,
11 the employer must ensure the cover is closed or a removable guardrail system is
provided on the exposed sides [1910.28(b)(3)(v)(A)]; A removable guardrail
12 system and toeboards on not more than two sides of the hole and a fixed guardrail
system on all other exposed sides. The employer must ensure the removable
guardrail system is kept in place when the hole is not in use; or
13 [1910.28(b)(3)(v)(B)]; A guardrail system or a travel restraint system when a
work operation necessitates passing material through a hatchway or chute floor
14 hole [1910.28(b)(3)(v)(C)].

15 The State assessed a fine of \$3,918 for the alleged violation of 29 CFR 1910.28(b)(3)(v).

16 Citation 1, Item 4, alleged a serious violation of 29 CFR 1910.147(c)(4)(i), as stated below:

17 Procedures shall be developed, documented and utilized for the control of
18 potentially hazardous energy when employees are engaged in the activities
covered by this section.

19 Note: Exception: The employer need not document the required procedure for a
particular machine or equipment, when all of the following elements exist: (1) The
20 machine or equipment has no potential for stored or residual energy or
reaccumulation of stored energy after shut down which could endanger
21 employees; (2) the machine or equipment has a single energy source which can be
readily identified and isolated; (3) the isolation and locking out of that energy
22 source will completely deenergize and deactivate the machine or equipment; (4)
the machine or equipment is isolated from that energy source and locked out
23 during servicing or maintenance; (5) a single lockout device will achieve a locked-
out condition; (6) the lockout device is under the exclusive control of the
24 authorized employee performing the servicing or maintenance;(7) the servicing or
maintenance does not create hazards for other employees; and (8) the employer, in
25 utilizing this exception, has had no accidents involving the unexpected activation
or reenergization of the machine or equipment during servicing or maintenance.

26 The State assessed a fine of \$6,452 for the alleged violation of 29 CFR 1910.147(c)(4)(i).

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1 Citation 1, Item 5, alleged a serious violation of 29 CFR 1910.147(c)(7)(i)(A), as stated below:

2 Each authorized employee shall receive training in the recognition of applicable
3 hazardous energy sources, the type and magnitude of the energy available in the
workplace, and the methods and means necessary for energy isolation and control.

4 The State assessed a fine of \$6,452 for the alleged violation of 29 CFR
5 1910.147(c)(7)(i)(A).

6 Citation 1, Item 6, alleged a serious violation of 29 CFR 1910.212(a)(1), as stated below:

7 One or more methods of machine guarding shall be provided to protect the
8 operator and other employees in the machine area from hazards such as those
9 created by point of operation, ingoing nip points, rotating parts, flying chips and
sparks. Examples of guarding methods are - barrier guards, two-hand tripping
devices, electronic safety devices, etc.

10 The State assessed a fine of \$6,452 for the alleged violation of 29 CFR 1910.212(a)(1).

11 On May 31, 2024, the Respondent notified the State that it intended to contest the Citation.

12 *See*, State's Ex. 1, p. C74. On June 21, 2024, the State served its Complaint on the Respondent.

13 *See*, State's Ex. 1, pp. C75-C85. On or about June 25, 2024, Doug Coon, a non-attorney
14 representative for the Respondent, answered the Complaint for the Respondent. *See*, State's Ex. 1,
15 pp. C86-C91.

16 At the March 12, 2025, hearing, the State offered for admission its exhibits, numbered 1
17 and 2, consisting of a total of 326 pages. *See*, 1Tr., pp. 8;24-25, 9;1. The Respondent did not
18 object to the admission of the State's exhibits. *See*, 1Tr., pp. 9;10-17. The Respondent offered for
19 admission its Exhibit 1 consisting of nine pages of material numbered as pages R8 through and
20 including R17. *See*, 1Tr., p. 10;3-9. The State objected to the Respondent's documents on
21 relevance grounds because the material was abatement information. *See*, 1Tr., p. 10;12-17. The
22 objection was noted but implicitly overruled. Both the State's and the Respondent's exhibit
23 evidence were admitted into evidence. *See*, 1Tr., pp. 10;23-24, 11;1-4.

24 During the March 12th hearing, the State called the following witnesses, Jacob Hammack.
25 NV OSHA Inspector, A.T. Courtney, Operations Manager, Howard Webb, Plant Manager, Lyle
26 Galeener, Maintenance Supervisor, and Russell Carnahan, Equipment Operator. For its part, the
27 Respondent called no witnesses. *See*, 1Tr., 149;9-12. No witnesses were called during on

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1 November 12, 2025, because the hearing was for deliberations only. Jurisdiction in this matter
2 was conferred in accordance with Chapter 618 of the Nevada Revised Statutes.

3 **FINDINGS OF FACT**

4 On February 16, 2024, the State conducted a Programed Planned Inspection of the Unified
5 Container facility. *See*, State’s Exhibit 1, p. C10. Unified Container shares the facility with
6 Anderson Dairy. *See*, 1Tr., p. 66;4-8, 62;12-17. However, the Anderson Dairy facility was not the
7 subject of inspection and none of the violative conditions found at the Unified Container site were
8 attributed to or assessed against Anderson Dairy. *See*, 1Tr., pp. 155;21-25, 156;1-5. During the
9 site inspection two or more of the production areas, the roof and the loading dock were examined.

10 The following conditions were noted in the gallon container production area:

11 1. The door to the primary production machine had three deliberately disabled safety
12 devices, *i.e.*, three door interlocks were bypassed. *See*, Ex.1 p. C135 -C137, C145, C146. This
13 condition allowed the Respondent’s employees to stand next to the open door to unjam gallon
14 containers while the machine was in operation. *See*, Ex.1 pp. 16, C116 - C120, C154, C155, *see*
15 *also*, 1Tr., p. 18;1-8.

16 2. Additionally, there was an approximate 4-inch gap between the machine's barrier
17 guard behind the control panel. This condition resulted in employee exposure to moving
18 components of that machine. *See* State’s Ex. 1, pp. C159, C160.

19 3. A warning placard regarding the potential for crushed hands or fingers was clearly
20 displayed on the gallon production machine. *See*, State’s Ex. 1, p. C161,

21 4. The gallon production room contained a fixed ladder allowing access to the roof.
22 The fixed metal ladder was located next to a structural wall which was approximately 4 ft. ½ in.
23 behind the ladder. *See*, State’s Ex. 1, pp. C93-C96.

24 The following conditions were noted in the pint/quart container production area:

25 1. The door to the tab and bottom cutter stations had two deliberately disabled safety
26 devices, *i.e.*, two door interlocks were bypassed. *See*, State’s Ex.1, pp. C126, C127. This
27 condition allowed the Respondent’s employees to make adjustments to products on the conveyor

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1 belt while the machine was operating. *See*, State's Ex. 1, pp. C14, C122 - C127, *see also* 1Tr., p.
2 16;6-9.

3 2. A placard was displayed warning employees not to operate the machine while the
4 gate guard is open because there was the possibility of a crushing injury or death. *See*, State's Ex.
5 1, p. C125.

6 3. Subsequent to the walk around inspection, it was also discovered that there were
7 no instructions to "lock out tag out" in the case of jams on the machine. *See*, State's Ex. 1, p. C23,
8 *see also*, 1Tr., p. 23;12-15.

9 The following conditions were noted on the loading dock:

10 1. The loading dock was approximately 4 ft. 3 inches above the next lower level.
11 However, no method of fall protection was provided to prevent employees from falling off the
12 dock when no trucks were present. *See*, State's Ex.1, pp. C97, C98, C99.

13 2. A platform located next to the plastic regrinding machine was approximately 4 ft.
14 ½ in. above the next lower level. This platform contained a single rail guardrail. *See*, State's Ex.
15 1, pp. C100 - C103.

16 3. An unprotected 7 inch opening was found on the right side of the regrind machine.
17 The machine's moving components were exposed through this hole. *See*, State's Ex. 1, p. C100.

18 4. It was subsequently discovered that the regrind machine was unjammed without
19 the application of "lock out tag out" procedures. *See*, State's Ex. 1, pp. C15, C24, C132, C164 -
20 C166, *see also*, 1Tr., pp. 20;20-24. 23;24-25, 24;4-9.

21 5. The feed hopper to the regrind machine was not secured by any substantial means,
22 *i.e.*, it was not bolted down. This enabled the Respondent's employees to open the machine while
23 it was in operation and potentially expose them to the rotating plastic grinder components. *See*,
24 State's Ex. 1, pp. C133, C170. It was subsequently discovered that the Respondent's employees
25 used this opening to unjam the machine while it was in operation. *See*, 1Tr., p. 113;5-17.

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1 The following conditions were noted on the roof:

2 1. The west edge of the building's roof was approximately 9 feet above the next
3 lower level. No fall protection was provided from the west edge of the building to the next lower
4 level. *See, State's Ex. 1, pp. C105 - C108.*

5 2. Further, there were no guardrails or other fall protection devices available to
6 prevent employees from falling into the roof access hatch. A fall through the hatch would
7 potentially expose employees to an approximate 10 foot drop to the next lower level. *See, State's*
8 *Ex. 1, pp. C105, C112.*

9 In addition to the physical inspection, the State interviewed some of the Respondent's
10 managers and employees. The plant manager, A. T. Courtney was interviewed on the day of the
11 inspection. *See, State's Ex. 1 p. C13.* Mr. Courtney had been employed by one or more of Hadado
12 Management's subsidiaries for 11 years. However, he had only been with Unified Container for
13 six weeks at the time of the inspection. *See, Id.*

14 Mr. Courtney failed to notice that the door to the gallon container production machine was
15 often left open, even though he was in that area weekly. *See, State's Ex. 1, p. C13.* Mr. Courtney
16 stated that the door was left open so that employees could clear jammed containers out of the
17 machine. *See, Id.* Mr. Courtney acknowledged that accessing the gallon container production
18 machine during operations presented a risk to the employees but he believed that the risk was
19 minimal. *See, 1Tr, p. 15;23-25.* Regardless of Mr. Courtney's casual, view of the work conditions,
20 Mr. Courtney knew the plexiglass barrier was there to protect employees. *See, 1Tr., p. 16;13-15.*

21 Mr. Courtney said he knew that the height from the dock to the lower level was in excess
22 of four feet. *See, State's Ex. 1 p. C14.* To the best of Mr. Courtney's knowledge, there had never
23 been a chain or a guardrail at the top of the loading dock to protect employees from falling to the
24 next lower level. *See, Id.*

25 Mr. Courtney also discussed conditions on the roof. *See, State's Ex. 1, p. C15.* He had
26 personally been on the roof on a number of occasions. *See, State's Ex. 1, p. C15, see also, 1Tr., p.*
27 *17;2-4.* Further, he was aware that a number of employees accessed the roof over the span of a

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1 year. *See, Id.* However, Unified Container did not require its employees to wear fall protection on
2 the roof. *See, 1Tr., p. 17;8-9.*

3 Howard Webb, the production manager, was also interviewed on the date of the
4 inspection. *See, State's Ex. 1, p. C16, see also, 1Tr., p. 72;21-22.* Mr. Webb had been employed
5 by Unified Container for two years and nine months. *See, 1Tr., p. 72;17-19.* Mr. Webb told the
6 inspector that there had been recent issues with the gallon jug production machine. *See, State's*
7 *Ex. 1, p. C16.* The newly produced jugs were getting stuck in the pinchers and rollers. *See, 1Tr.,*
8 *p. 74;20-23.* The employees used sticks to knock defective products off of the conveyer belt. *See,*
9 *Id.* Mr. Webb had personally knocked jugs off of the line. *See, State's Ex. 1, p. C17.* Regarding
10 the loading dock, Mr. Webb said that there had never been a chain or a guardrail at the top of the
11 loading dock. *See, State's Ex. 1, p. C17.*

12 Turning to the pint and quart production area, Mr. Webb stated that he visits that area
13 daily. *See, State's Ex. 1, p. C18.* During these inspections, the plexiglass door to the machine is
14 always open. *See, State's Ex. 1, p. C18.* Mr. Webb was unsure why this door remained perpetually
15 open. *See, 1Tr., p. 19;23-25, 20;1.* Mr. Webb knew that the purpose of the plexiglass door was to
16 allow employees to view the machine's activities from a safe distance. *See, 1Tr., p. 19;19-21.*

17 Mr. Webb discussed the roof and the regrind area. *See, State's Ex.1, pp. C15-C19.*
18 Therein, Mr. Webb stated that approximately four Unified Container employees accessed the roof
19 as part of their duties. *See, Id.* Mr. Webb stated that the hole in the side of the regrind machine
20 had been present for the entire time of his employment. *See, Id.* However, Mr. Webb believed that
21 employees did not clear jams in the regrind machine unless it was "locked out and tagged out".
22 *See, Id.* However, production employees were not given "lock out tag out" training. Such
23 training was only given to managers and maintenance employees. *See, Id.* Mr. Webb informed the
24 inspector that the rail was placed on the regrind machine after an employee had fallen off the
25 platform. *See, State's Ex. 1, p. C20.*

26 On February 29, 2024, the inspector interviewed Lyle Galeener, Unified Container's chief
27 engineer. *See, State's Ex. 1, p. C21.* Mr. Galeener indicated that there were no guardrails around
28 the roof and that fall protective systems were not provided to employees who go on the roof. *See,*

1 *Id.* Unified Container's employees were only required to wear fall protection when they were on
2 the silo. *See, Id.*

3 The inspector interviewed Russell Carnahan, a machine operator. *See, State's Ex. 1, pp.*
4 *C22, C23.* Mr. Carnahan stated that some of the jams in the pint/quart production machine were
5 cleared by hand while the machine was in operation. *See, State's Ex. 1, p. C23.* The machine was
6 only shut down when a "really bad" jam occurred. *See, Id.* Mr. Carnahan had never been
7 instructed to perform a "lock out tag out" for the purpose of clearing a jam. *See, Id.*

8 The inspector interviewed Trevor Schafer, a machine operator. *See, State's Ex. 1, p. C24.*
9 Part of Mr. Schafer's job was to throw scrap material into the regrind machine. *See, Id.* He did
10 this at least once a day. *See, Id.* Mr. Schafer told the inspector that the regrind machine did not
11 often jam. However, when it was necessary to clear the machine, he would use a crowbar or a
12 shovel. *See, Id.* Presumably, the shovel Mr. Schafer referred to is the one photographed by the
13 inspector. *See, State's Ex. 1, p. C132.* During this procedure, Mr. Schafer would turn off the
14 regrinder, using the main cutoff switch. *See, State's Ex. 1, pp. C24, C129.*

15 The inspector interviewed Mark Lewis, an employee in the maintenance department. *See,*
16 *State's Ex. 1, p. C29.* Mr. Lewis performs tasks on the roof on occasion. *See, Id.* Unified
17 Container possesses fall protection harnesses, however, it does not provide them for use on the
18 roof. *See, Id.* Further, Mr. Lewis has been involved in clearing jams from the regrind machine.
19 *See, Id.* He says that a "lock out tag out" procedure is rarely used. *See, Id.* The rest of the time, the
20 machine is deactivated some other way. *See, Id.*

21 Subsequent to the initial inspection, Unified Container undertook significant abatement
22 efforts. *See, Respondent's Ex. 1, pp. R8-R17.* As Mr. Webb explained, Unified Container
23 immediately abated those hazards which could be dealt with at the time. The items which required
24 a longer time period were abated by the hearing date.

25 Mr. Peterson: [] At the time of the OSHA inspection... was there an effort at that
26 time to immediately address the issues that we're dealing with here today?

27 Mr. Webb: Yes, sir. Everything that we were cited for was corrected.

28 Mr. Peterson: Okay. Were some of those items taken care of immediately, even
that day?

1 Mr. Webb: Yes, sir.

2 Mr. Peterson: And was there money spent and expenditures made an effort put
3 forth to be able to address all of the items that were listed in the citations?

4 Mr. Webb: Yes, sir. *See*, 1Tr., p. 77;1-13.

5 Unified Container expended a significant sum of money abating the cited violations, an
6 amount in excess of \$18,000. *See*, 1Tr., pp. 166;18-25, 167;1-9. Further, the Respondent's
7 management and staff spent many hours training and planning to make the facility a safer place to
8 work. *See, Id.* Moreover, Unified Container brought in outside people to correct some of the
9 deficiencies and create better policies and procedures. *See, Id.*

10 At the March 12, 2025, hearing, Mr. Hammack provided testimony regarding the amount
11 of the penalties assessed against Unified Container. Citation 1, Item 1, was determined to be a
12 serious violation of 29 CFR 1910.23(d)(2). *See*, State's Ex. 1, p. C30. The gravity based penalty
13 to be assessed was \$6,913. The penalty amount was discounted as a result of the size of the
14 employer and its history with OSHA. *See, Id.* After these discounts were applied, the final amount
15 of the assessed penalty was \$2,350. *See, Id.*

16 Citation 1, Item 2, was alleged to be a serious violation of 29 CFR 1910.28(b)(1)(i). *See*,
17 State's Ex. 1, p. C34. The gravity based penalty was assessed at \$16,131. The amount of the
18 penalty was discounted as a result of the size of the employer. *See*, State's Ex. 1, p. C35. After
19 this discount, the final amount of the assessed penalty was \$6,452. *See, Id.*

20 Citation 1, Item 3, was alleged to be a serious violation of 29 CFR 1910.28(b)(3)(v). *See*,
21 State's Ex. 1, p. C39. The gravity based penalty was assessed at \$11,524. *See*, State's Exhibit 1,
22 p. C40. The penalty amount was discounted as a result of the size of the employer and its history
23 with OSHA. *See, Id.* After these discounts, the final amount of the assessed penalty was \$3,918.
24 *See, Id.*

25 Citation 1, Item 4, was alleged to be a serious violation of 29 CFR 1910.147(c)(4)(i). *See*,
26 State's Ex. 1, p. C43. The gravity based penalty was assessed at \$16,131. The amount of the
27 penalty was discounted as a result of the size of the employer. *See*, State's Ex. 1, p. C35. After
28 this discount, the final amount of the assessed penalty was \$6,452. *See, Id.*

1 Citation 1, Item 5, was alleged to be a serious violation of 29 CFR 1910.147(c)(7)(i)(A).
2 *See*, State's Ex. 1, p. C48. The gravity based penalty was assessed at \$11,524. *See*, State's Ex. 1,
3 p. C49. The penalty amount was discounted as a result of the size of the employer. *See, Id.* After
4 this discount, the final amount of the assessed penalty was \$6,452. *See, Id.*

5 Citation 1, Item 6, was alleged to be a serious violation of 29 CFR 1910.212(a)(1). *See*,
6 State's Ex. 1, p. C53. The gravity based penalty was assessed to be \$16,131. However, the amount
7 of the penalty was discounted as a result of the size of the employer. *See*, State's Ex. 1, p. C54.
8 After this discount, the final amount of the assessed penalty was \$6,452. *See, Id.* Unified
9 Container did not object to any of the testimony regarding the calculation of the penalties or offer
10 any affirmative defenses applicable to gravity rating of the penalties or the amounts.

11 It should be noted that a quick fix discount was not applied to any of the fines because
12 little or none of the abatement occurred within 24 hours of the inspection. *See*, 1Tr., pp. 117;6-15,
13 118;1-12. Further, the documentation of the abated conditions was not provided to the State on a
14 timely basis. *See*, 1Tr., pp. 117;6-25, 118;1-12.

15 CONCLUSIONS OF LAW

16 To the extent that any of the Findings of Fact constitute Conclusions of Law, they are
17 incorporated herein.

18 The State is obligated to demonstrate the alleged violation by a preponderance of the
19 reliable evidence in the record. Findings must be based upon the kind of the evidence which
20 responsible persons are accustomed to rely in serious affairs. *William B. Hopke Co., Inc.* 1982
21 OSHARC LEXIS 302 * 15, 10 BNA OSHC 1479 (No. 81-206, 19820 (ALJ)). The Board's
22 decision must be based on consideration of the whole record and shall state all facts officially
23 noticed and relied upon. 29 CFR 1905.27(b). *Armor Elevator Co.*, 1 OSHA 1409, 1973-1974
24 OHSD ¶ 16, 958 (1973). *Olin Construction Inc. v. OSHARC and Peter J Brennan, Secretary of*
25 *Labor*, 525 F. 2d 464 (1975).

26 The burden is on the State to prove by a preponderance of the evidence, a *prima facie* case
27 for each of the aforementioned citations. *See*, NAC 618.788(1), *see also, Original Roofing*
28 *Company LLC v Chief Administrative Officer of the Nevada OSHA*, 442 P.3d 146, 149 (Nev.

1 2019). Thus, the State must establish: (1) the applicability of a standard being charged; (2) the
2 presence of a non-complying condition; (3) employee exposure or access to the non-complying
3 condition; and, (4) the actual or constructive knowledge of the employer's violative conduct. *See,*
4 *Id.* at 149, *see also, American Wrecking Corp. v. Secretary of Labor*, 351 F.3d 1254, 1261 (D.C.
5 Cir., 2003).

6 It should be noticed, here, that the respondent did not challenge the State's proof of a
7 *prima facie* case. Rather, Respondent sought a discount of the fines being assessed due to the
8 amount of funds Respondent spent on abatements. *See* 1Tr., p. 166;13-22. Respondent
9 essentially stipulated to liability's and sought a discount on the fines imposed.

10 In its *prima facie* case for citation 1, Item 1, the State has shown that the standard of 29
11 CFR 1910.23(d)(2) applied because the fixed metal ladder in the gallon production room had less
12 than 7 inches of horizontal clearance between it and the wall behind it. *See,* State's Ex. 1, pp.
13 C95-C96. The standard was violated because the ladder had structural wall clearance of
14 approximately 4-1/2 inches behind it. *See, Id.* The Respondent's employees were exposed
15 because they accessed the roof using the fixed metal ladder. *See,* State's Ex. 1, pp. C15, C29.
16 Employer knowledge was shown because Messrs. Courtney and Webb knew that the fixed metal
17 ladder was in close proximity to the wall and that employees used it to access the roof. *See,*
18 State's Ex. 1, p. C15. *See, Original Roofing Company LLC, supra* at 149.

19 In its *prima facie* case for citation 1, Item 2, the State showed that the standard for 29 CFR
20 1910.28(b)(1)(i) applied to three separate areas. In the loading dock area, the dock edge was
21 approximately 4 feet 3 inches above the next lower level and no guardrails or other kinds of fall
22 protection were provided. *See,* State's Ex. 1, pp. C101, C102. In the exterior regrind area,
23 employees used metal a platform to access the regrind machine. This platform was approximately
24 4 ft. ½ inches. above the next lower level and the guardrail lacked a midrail. *See,* State's Ex. 1, pp.
25 C100, C103. The roof was accessed via the fixed ladder and roof hatch. *See,* State's Ex. 1, pp.
26 C95, C104. The west edge of the roof was approximately 9 feet above the next lower level. No
27 fall protection was provided for employees on the roof. *See,* State's Ex. 1, pp. C21, C29, *see also,*
28 1Tr., p. 90;4-14.

1 The standard was violated in each of these instances because these conditions existed in
2 each of the three aforementioned places. The State interviewed employees who admitted that they
3 worked on each of the platforms. *See*, State's Ex. 1, pp. C21, C22, C24. Employees were shown
4 to have been exposed to the hazards based upon their individual interviews. *See, Id.* Employer
5 knowledge was evidenced by the testimony of Mr. Courtney (*See*, State's Ex.1, p, C13) and Mr.
6 Webb (*See*, State's Ex.1, pp, C16-C20). *See Original Roofing Company LLC, supra* at 149.

7 In its *prima facie* case for Citation 1, Item 2, the State showed that the standard of 29 CFR
8 1910.28(b)(3)(v) applied because fixed hatch access to the roof lacked fall protection. *See*, State's
9 Ex1., pp. C104, C107, C108. That standard was violated because the unprotected hatch was
10 approximately 9 feet above the next lower level. *See*, State's Ex. 1, pp. C104, C105, C112, C113.
11 Employee exposure was shown because Lyle Galeener admits to accessing the roof through that
12 hatch without fall protective equipment. *See*, State's Ex.1, p, C21.

13 Employer knowledge was also shown. Mr. Courtney indicated he was in the gallon
14 container production area weekly and was aware employees went on the roof. *See*, 1Tr., p. 17;1-4.
15 Mr. Webb indicated he was in the gallon jug production area daily. *See*, State's Ex.1, p, C16.
16 Further, Mr. Webb said he was personally up on the roof the week prior to the inspection. Mr.
17 Webb told the investigator that the ladder and hatch had been the same since he started working
18 for Unified Container. *See*, State's Ex. 1, p. C15. Mr. Webb indicated he was aware that about 2
19 production employees and 2 engineers would go on the roof, but fall protection was not provided
20 to any of these employees. *See, Id.* These were high placed officials of the Respondent who,
21 themselves spent large amounts of time on the production floor. They conceded seeing the
22 breaching conditions that gave rise to the citations being pursued. Their knowledge of the defects
23 in the plant throughout was actual or condition they should have known. In either case, their
24 knowledge may be readily imputed to the Respondent. *See, Original Roofing Company LLC,*
25 *supra* at 148, 149. *Original Roofing*, is the seminal knowledge case for OSHA proceedings and is
26 relied upon below to establish the knowledge element of the *prima facie case* the State is required
27 to show. This analysis of knowledge need not repeat. This same analysis of knowledge applies
28 throughout, below.

1 In its *prima facie* case for citation 1, Item 4, the State showed that the standard of 29 CFR
2 1910.147(c)(4)(i) applied because the Respondent did not possess or utilize procedures for the
3 control of potentially hazardous energy in three areas of its facility, the gallon container
4 production area, the quart and pint production area and the regrind machine access area. When the
5 State requested copies of these procedures, the Respondent replied that they did not exist.
6 Eventually the Respondent provided a general plan, that did not contain any site specific or
7 machine specific requirements or procedures. *See*, 1Tr., p. 44;1-18. The same facts show that the
8 standard was violated.

9 Employees were exposed in all three of the aforementioned areas. In the gallon production
10 area, employees used a metal pole to unjam gallon jugs from the reciprocating arm and fingers of
11 the blow mold machine. *See*, State's Ex.1, p, C13. The machine's three door interlocks were
12 bypassed allowing the machine to remain energized during unjamming. Employees were
13 potentially exposed to the unexpected energization of the rotating screw and reciprocating arm.
14 *See*, State's Ex.1, pp, C25, C26. In the quart/pint production area, one or more employees cleared
15 jammed plastic containers by hand from the tab and top cutter stations while the machine was in
16 operation. The employees were able to do this because station's door interlocks were bypassed.
17 *See, Id.* This allowed the conveyor to remain energized during the process. The employees were
18 potentially exposed to the unexpected energization of the conveyor, which could push an
19 employee's hand onto the trimming blades. *See, Id.* In the exterior regrind area, Trevor Shaffer
20 unjammed waste plastic from the regrind machine. *See*, State's Ex.1, p, C24. The machine was
21 deenergized from a knife switch located nearby, however, the risk of energization existed because
22 no procedures were utilized to prevent the machine from being reenergized. *See, Id.*

23 Employer knowledge of each of the volatile conditions is shown through the Respondent's
24 managers. Mr. Courtney was in the gallon production area weekly but failed to notice the open
25 door. *See*, State's Ex.1, p, C13. When questioned, Mr. Courtney explained that he believed the
26 door had been left open out of convenience to employees. *See, Id.* Regardless, Mr. Courtney was
27 aware of some of the hazards poised by this machine. *See, Id.* Additionally, Mr. Webb was at the
28 production area at least daily. *See*, State's Ex.1, p. C16. He had noticed the open door over the last

1 week. *See, Id.* Further, he was aware employees were unjamming gallon jugs with a metal tool
2 with the machine running. *See, Id.* Additionally, the gallon container production machine
3 displayed a placard regarding potential to crush hands or fingers on machine *See, State's Ex. 1, p.*
4 C161. Respondent had active knowledge of these conditions. *See, Original Roofing Company*
5 *LLC, supra* at 148, 149.

6 Mr. Webb was also in the quart/pint production area daily. *See, State's Ex. 1, p. C17.* He
7 had witnessed the open doors. Further, Mr. Webb understood why the employees worked with the
8 machine in that condition. However, he did not know whether the production employees would
9 "lock out tag out" the machine for the procedure. *See, Id.* The quart/pint production machine also
10 displayed a warning placard which indicated risk to hands and fingers. *See, State's Ex. 1 p. C125.*
11 Mr. Webb visited the regrind area daily. *See, State's Ex. 1, p. C15.* However, he failed to notice
12 that the machine's feed chute was not secured by bolts.² *See, Id.* Mr. Webb said that "lock out"
13 training is only given to maintenance and managers. Mr. Webb believed employees called
14 maintenance for unjamming the regrind machine. *See, Id.* However, employees admitted to
15 unjamming the machine without using a lockout tagout procedure. *See, State's Ex. 1, p. C23.*

16 In its *prima facie* case for citation 1, Item 5, the State showed the standard of 29 CFR
17 1910.147(c)(7)(i)(A) applied because the employer did not ensure that the production area
18 employees had received training on the recognition of applicable hazardous energy sources, the
19 type and magnitude of the energy available in the workplace, and the methods and means
20 necessary for energy isolation and control.

21 The following instances show that the standard was violated. In the gallon production
22 area, employees used a metal pole to unjam gallon jugs from the reciprocating arm and fingers of
23 the blow mold machine. *See, State's Ex.1, p, C13.* However, the machine's three door interlocks
24 were bypassed, which allowed the machine to remain energized during the times that the
25

26 ²The fact is, upper management were hands on managers, frequently on the production floor
27 when the plant was in operation. They were present so frequently and in some cases used the equipment
28 the source of the violation, *i.e.*, the ladder to the roof. Upper management clearly knew or should have
known of the defects in plant operations. Management cannot turn a blind eye to operations. Hence,
knowledge of substandard conditions were either actually known or are conditions that should have been
known. *See, Original Roofing, supra* at 148, 149.

1 employees unjammed the machine. *See*, State's Ex.1, p, C118. In the quart/pint production area,
2 jammed plastic containers were cleared by hand from the tab and top cutter stations. This
3 occurred while the station's door was opened because the interlocks were bypassed, allowing the
4 conveyor to remain energized during the unjamming effort. *See*, State's Ex.1, pp. C126, C127. In
5 the exterior regrind area, employees unjammed waste plastic from a blue regrind machine. The
6 machine was deenergized from a knife switch located nearby. No "lock out tag out" procedure
7 was utilized. *See*, State's Ex. 1, pp. C24, C129. Employees were exposed to the hazards because,
8 in each instance, they used metal or plastic rods or even their bare hands to clear jammed
9 machines while the machines were operating or, in the case of the regrind machine, was capable
10 of being energized.

11 The employer knew or should have known of these conditions. Mr. Courtney was in the
12 gallon production area weekly but failed to notice the open door. *See*, State's Ex. 1, p. C13.
13 When questioned, Mr. Courtney explained that he believed the door had been left open out of
14 convenience to employees. *See, Id.* Regardless, Mr. Courtney was aware of the hazards poised by
15 this machine. *See, Id.* Additionally, Mr. Webb was at the production area at least daily. *See*,
16 State's Ex. 1, p. C18. Further, Mr. Webb was aware employees were unjamming gallon jugs with
17 a metal tool while the machine was running. *See*, State's Ex. 1, p. C16. Mr. Webb was also in the
18 quart/pint production area daily. *See*, State's Ex. 1, p. C18. He had witnessed the open doors and
19 understood why the employees were worked with the machine in that condition. However, he did
20 not know whether the employees would "lock out tag out" the machine for the procedure. *See*,
21 State's Ex. 1, p. C17.

22 Mr. Webb, was around the regrind area daily. *See*, State's Ex. 1, p. C18. However, he
23 failed to notice that the machine's feed chute was not secured by bolts. *See*, State's Ex. 1, p.
24 C168. This lack of security allowed employees to open and unjam the machine. Mr. Webb said
25 that "lock out" training is only given to maintenance and managers, and that he believed
26 employees called maintenance for unjamming the regrind machine. *See*, State's Ex. 1, p. C15.
27 However, employees admitted to unjamming the machine without using a "lock out tag out"
28 procedure. *See*, State's Ex. 1, p. C23.

1 In its *prima facie* case for citation 1, Item 6, the State showed the standard of 29 CFR
2 1910.212(a)(1) applied because the Respondent did not ensure that one or more methods of
3 machine guarding were provided to protect employees from hazards such as created by rotating or
4 moving parts. The standard was violated in several areas. In the gallon production area,
5 employees walked past and used a control panel on a blow mold machine. *See* State's Ex. 1, pp.
6 C159, C160. The door to the machine's rotating screw and reciprocating arm area operated
7 without guarding because its three door interlocks were bypassed. *See*, State's Ex. 1, p. C118.
8 Additionally, behind the control panel was an approximate 14-inch gap between the machine's
9 barrier guarding and frame, which exposed additional moving components. *See*, State's Ex. 1, p.
10 C138. In the exterior regrind area, employees threw waste plastic into a blue regrind machine. The
11 right side of the machine had an approximate 7-inch circular hole exposing moving components.
12 Additionally the bolts securing the feed hopper were not secured by substantial means which
13 would enable employees to open the machine and be potentially exposed to the rotating plastic
14 grinder components. *See*, State's Ex. 1, p C170. The same facts show that the Respondent's
15 employees were exposed to the violative condition.

16 Employer knowledge was shown by management statements. Mr. Courtney was in the
17 gallon production area weekly but hadn't noticed the open door. Mr. Courtney explained that now
18 seeing the hazard, he believed the door had been left open out of convenience to employees. *See*,
19 State's Ex. 1, p. C13. Mr. Courtney was aware of the hazards of the machine. In regard to regrind
20 machine, Mr. Courtney had never noticed the exposed hole on the machine's side. *See, Id.*

21 Mr. Webb, Plant Manager, indicated he was at the production area at least daily, and had
22 noticed the open door over the last week, and was aware employees were unjamming gallon jugs
23 with a metal tool with the machine running. *See*, State's Ex. 1, pp. C16-C19. Mr. Webb indicated
24 he did not know the hazards of the machine and had no concerns with the door being open. *See*,
25 *Id.*

26 Mr. Webb indicated he was outside of the regrind machine area daily and that any gallon
27 production employee could use the regrind machine. *See, Id.* Mr. Webb indicated he was outside
28 near regrind daily. However, he had not noticed the 7 inch hole that was in unobstructed plain

1 view. *See*, State's Ex. 1, p C100. Further, Mr. Webb alleged that he had failed to notice the
2 unbolted feed chute into the regrind machine. *See*, State's Ex. 1, p C170. This feature would have
3 been in unobstructed plain view.

4 Additionally, Unified Container LLC is owned by Hadado Management. Hadado
5 Management's managing members are David G Coon and J Douglas Coon. Anderson Dairy's
6 managing members are David G. Coon and J. Douglas Coon. Unified Container produces gallon
7 containers specifically for Anderson Dairy, and conveys the produced containers directly into the
8 Anderson Dairy facility, located directly adjacent to Unified Container. Following Anderson
9 Dairy's 2018 inspection, citations were proposed and subsequently made final for a machine
10 hazard. A reasonably diligent employer would share OSHA citation information between
11 potentially related companies in order to protect employees from machine hazards. *See*, State's
12 Ex.1, p. C56.

13 In this case, the Respondent failed to negate any of the proofs of the elements of the
14 State's *prima facie* cases for each violation. Further, the Respondent did not posit any affirmative
15 defenses. Accordingly, the State proved a *prima facie* that was unopposed for each of the
16 purported violations. Additionally, the State had provided sufficient evidence to show that each
17 the violations merited the rating of Serious and that the proposed penalty amount of \$32,076 was
18 appropriate.

19 In closing arguments, the Respondent's representative reiterated that all of the violations
20 had been promptly abated at a significant expense to the company, in both dollars, time and effort.
21 *See*, 1Tr., pp.166;18-25, 167;1-6. As the result of the Respondent's efforts to improve its
22 employee safety, it requested leniency regarding the amount of the penalties. *See*, 1Tr., p.167;6-9.

23 Mr. Peterson: And so as you deliberate, we pray that... the board would weigh that
24 into the balance and...please come up with something that finds that middle ground
25 so to speak the ability to help us so that we can continue to be a viable company
26 without hardship and still gives homage to the purpose for the inspections and...
27 the reason that we're here today. *See*, 1Tr., p. 174;14-20

26 The Board looked favorably on this request because they found that the employer had
27 behaved admirably in its efforts to promptly and effectively abate the hazards.

28 ///

1 Hollis: I think it's great that... the employer went back and did so much hard work
2 to get it there. I think they're almost there and I think there's a lesson learned here,
3 and I wish that it wasn't what it was, but there's just nothing to validate a, you
4 know, reduction or....to throw out in my mind any of the penalties individually.
5 *See*, 1Tr., p. 185;15-22.

6 Board Member Bautista agreed with Mr. Hollis' assessment regarding management's
7 commitment to resolving the issues. *See*, 1Tr., p. 187;5-8. Further, Mr. Hollis had calculated that
8 the employer incurred expenses of \$18,025.16 in hard costs to abate the violations. *See*, 1Tr., p.
9 187;8-13. Mr. Bautista then made a second request of the Board.

10 I want to bring it to the board... if there's a way we can look at the good faith and
11 look at that reduction and just go by citation and kind of talk about it with.....us and
12 just see, you know, what percent we could give. Because if you look....at the
13 evidence packet... I don't know the timeframe of what they fixed or what -- when,
14 you know, how long it took them to fix it, but they spent \$18,000... trying to fix
15 this citation. You know, they may not have the knowledge, but they're doing their
16 best and due diligence of getting it corrected. *See*, 1Tr., pp. 187;24-25, 188;1-10.

17 Mr. Zeh then provided the Board the options of voting immediately or continuing the
18 matter in order to obtain more insight regarding a reasonable reduction in the fine. The Board
19 chose the option of continuing the matter until after they had received and reviewed the transcript
20 of the March 12th hearing. *See*, 1Tr., p. 209;9-10, 210;5-17.

21 The Board reconvened to hear the matter on November 12, 2025. At that date, a new
22 Board Member was present, Shannon Chambers. As Ms. Chambers was not present at the March
23 12th meeting, she was required to abstain from voting.

24 Mr. Bautista moved to approve a discount of \$18,000 from the total fine of \$32,000. *See*,
25 2Tr., pp. 8;23-25, 9;1-4. Member Hollis seconded the motion. *See*, 2Tr., p. 9;7-9. The Board vote
26 was tallied at 3-0-1. *See*, 2Tr., p. 9;10-15. Three votes were in favor of the motion, none in
27 opposition to it and one member abstaining. 2Tr., p. 9;16-18. Accordingly, all of the citations
28 were upheld. The total fine assessed was \$13,980. *See, Id.*

Service of the findings of fact and conclusions of law signed by the Chairman of the
Nevada Occupational Safety and Health Review Board shall constitute the Final Order of the
Board.

On April 8, 2026 the Board convened to consider adoption of this decision, as written or
as modified by the Board, as the decision of the Board.

1 Those present and eligible to vote on this question consisted of 4current members of the
2 Board, eligible to vote on this matter, namely, to-wit, Chairman Jorge Macias, Secretary Tyson
3 Hollis and Members Gled Bautista and Shannon Chambers. Upon a motion by Gled Bautista,
4 seconded by Shannon Chambers, the Board voted 4-0 to approve this Decision of the Board as the
5 action of the Board and to authorize Chairman Macias, after any grammatical or typographical
6 errors are corrected, to execute, without further Board review, this Decision on behalf of the
7 Nevada Occupational Safety and Health Review Board. Each Board Member voting in favor of
8 the motion attended the hearing on the merits and had in his possession the entire record before
9 the Board upon which the decision was based.

10 Dated this 14th day of April, 2026.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

11
12
13 By: /s/ Jorge Macias
Jorge Macias, Chairman

14
15 NOTICE: Pursuant to NRS 233B.130, any party aggrieved by this Final Order of the Nevada
16 Occupational Safety and Health Review Board may file a petition for judicial review to the
District Court within thirty (30) days after service of this order.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Decision of the Board, Findings of Fact, Conclusions of Law and Final Order*, on those parties identified below by placing an original or true copy thereof in a sealed envelope, certified mail/return receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:

Salli Ortiz, Esq.
Division of Industrial Relations
1886 College Parkway, Suite 110
Carson City, Nevada 89706

Doug Coon, Member
Unified Container, LLC
1300 Las Vegas Boulevard North
Las Vegas, NV 89101

Dated this 14th day of April, 2026.

/s/ Karen Kennedy
Employee of
The Law Offices of Charles R. Zeh, Esq.

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