# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, July 14, 2022 – 1:00 p.m.

Present: Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic) Commissioner (Telephonic)

Scott P. LeMarr

Commissioner (Telephor

D. Alan Everett

Commissioner

James Ashley

Director

Gaetano Testini

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Sylvia Simpson

Chief Financial Officer

Jessie Atencio

ADOSH Director

Michael Mosesso Marilyn Carter Chief Administrative Law Judge Human Resources Manager

Kara Dimas

**Commission Secretary** 

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman and Cheryl Evans (Arizona Republic). Also, in attendance on the telephone, confirmed by roll call was Ann Back (Macy's Inc.).

# Approval of Minutes of June 30, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the June 30, 2022 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

#### Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  - 1. 2CSP21/22-0068 Horsin Around, LLC dba Horsin Around Adventures \$1,000
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - 1. Macy's, Inc.
  - 2. Southwest Gas Corporation

Commissioner Everett moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Warehouse Equipment Solutions Tucson, LLC

Complaint

1963 E Benson Hwy

Years in Business:

8 7

Tucson, AZ 85714

1963 E Benson Hwy

Tucson, AZ 85714

Empl. Covered by Inspection:

Inspection No:

Site Location:

CP-2022-MN610-0001

Inspection Date:

May 3, 2022

# SERIOUS – Citation 1 - Item 1a –

a) Welding area: Six employees performing or assisting with welding operations, on galvanized metals, were provided with, and required to use, a Signature brand, half-face respirator and no written respirator program had been developed. 29 CFR 1910.134(c)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

#### SERIOUS – Citation 1 - Item 1b –

a) 1963 E Benson Hwy, Tucson, AZ, 85714: Six employees performing or assisting with welding operations, on galvanized metals, were provided with, and required to use, a Signature brand, half-face respirator and had not received any medical evaluation to determine their ability to use a respirator. 29 CFR 1910.134(e)(2)(i)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

#### SERIOUS – Citation 1 - Item 1c –

a) 1963 E Benson Hwy, Tucson, AZ, 85714: Six employees performing or assisting with welding operations, on galvanized metals, were provided with, and required to use, a Signature brand, half-face respirator and had not received any fit test to determine the size of the respirator that will be used. 29 CFR 1910.134(f)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

#### SERIOUS – Citation 1 - Item 2 –

a) 1963 E Benson Hwy, Tucson, AZ, 85714: Six employees performing or assisting with welding operations, on galvanized metals, were provided with, and required to use, a Signature brand, half-face respirator and had not received any training regarding respirator use. 29 CFR 1910.134(k)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

#### SERIOUS – Citation 1 - Item 3 –

a) Weld Shop, South end: The portable, stand mounted evaporative cooler, was lacking a guard over the 20" x 20" opening, exposing employees to contact with the rotating fan blade. 29 CFR 1910.212(a)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

# SERIOUS – Citation 1 - Item 4a –

a) Welding area: Welding operations were performed within 35ft of flammable and combustible materials, such as, lumber shelving throughout the welding area, pegboard wall racks, various containers of oil and carburetor cleaner, aerosol spray paint cans, cutting oils, and containers of denatured alcohol. 29 CFR 1910.252(a)(2)(vii)

Div. Proposal - \$975.00

Formula Amt. - \$800.00

# SERIOUS – Citation 1 - Item 4b –

a) Welding area: During welding operations employees observing or working in close proximity, were not protected from flash burns caused by welding rays, with a noncombustible screen or shield. 29 CFR 1910.252(b)(2)(iii)

Div. Proposal - \$0.00

Formula Amt. - \$800.00

# SERIOUS – Citation 1 - Item 5 –

a) Welding area, North wall: One orange, heavy duty 14 gauge, 120v., 100' extension cord was missing a ground prong.

b) Welding area, South Wall, grinding area: One yellow, heavy duty 14 gauge, 120v., 100'

extension cord with missing the ground prong.

c) Welding area, North Wall: The Thermal Arc Fabricator 131 welder SN: M06111501081 missing a ground prong on its 120v., power supply cord. 29 CFR 1910.304(g)(5) Div. Proposal - \$975.00 Formula Amt. - \$800.00

#### <u>SERIOUS</u> – Citation 1 - Item 6 –

a) 1963 E Benson Hwy, Tucson, AZ, Welding shop: One 100ft, 120v, yellow, heavy duty 12 gauge extension cord was found to be lacking strain relief at the receptacle end of the plug.

b) 1963 E Benson Hwy, Tucson, AZ, Welding shop: One 50ft yellow, 120v, heavy duty 16 gauge, three outlet extension cord was found to be lacking strain relief at the receptacle end of the plug.

c) 1963 E Benson Hwy, Tucson, AZ, Welding shop: One Weldmark 140 wire feed 25-140AMP, output 115 Volt Input welder was found to be lacking strain relief at the plug end of the cord.

d) 1963 E Benson Hwy, Tucson, AZ, Welding shop: One Hobart Welder Serial Number MA150454Y 115 Volt 20AMP was found to be lacking strain relief near the equipment side of the machine.

e) 1963 E Benson Hwy, Tucson, AZ, Welding shop: One 100ft, 120v, yellow heavy duty 16 gauge, extension cord was found to be lacking strain relief while plugged into the outlet. 29 CFR 1910.305(g)(2)(iii)

Div. Proposal - \$975.00

Formula Amt. - \$800.00

TOTAL PENALTY - \$5,925.00

TOTAL FORMULA AMT. - \$8,200.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz thanked the compliance officer for conducting a very thorough investigation which helps an employer provide a safe workplace by identifying all present safety issues. Even though it is about compliance, it is about leaving there and helping to make it a safer workplace.

Mr. Atencio agreed and noted the employer is exploring working with ADOSH consultation to update their programs, such as the respiratory program.

Chairman Schultz and Mr. Atencio discussed why the potential flash burn citation was classified as medium lesser.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and/or Action regarding the Consideration of Candidates for Appointment to the Position of Administrative Law Judge pursuant to A.R.S. § 23-108.02(A). The Commission may move into Executive Session for the purposes described in A.R.S. § 38-431.03(A)(1) and (A)(3).

Chairman Schultz asked the Commissioners if there was a need for an Executive Session for further discussion or if the Commissioners were comfortable with the recommendation from Judge Mosesso.

Judge Mosesso presented two candidates for the Commissions consideration and ranked Candidate #1 and Candidate #2 on the list with his recommendation that the Commission offer Candidate #1 the position.

Commissioner Everett moved to accept Judge Mosesso's recommendation to extend an offer to Candidate #1. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz noted both candidates were very good and presented a difficult choice.

Judge Mosesso thanked the Commission for allowing him to present the candidates informally with memoranda and other information about the candidates and for considering the staff recommendation.

Mr. Ashley thanked Judge Mosesso and Ms. Carter for their work on filling this position.

# Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the OSHA State Plan promoting awareness of different hazards, highlighting the Heat Stress Awareness campaign for July and August which includes a series of Public Service Announcements that are currently on the airways throughout the state in English and Spanish. Mr. Ashley played the spots and explained that various radio personalities will additionally

be making announcements about the Heat Stress Awareness campaign. Mr. Laky has revamped the webpage on Heat Stress Awareness as a repository for important resources.

Ms. Dimas confirmed Commission meeting dates through September 2022.

# Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 1:36 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

ATTEST: