MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, August 11, 2022 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic)

D. Alan Everett

Commissioner

James Ashley

Director

Gaetano Testini

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Renee Pastor
Jessie Atencio
Anna Maria Stoperock

ADOSH Director ADOSH Admin

Self Insurance

Anna Maria Stonerock Jonathan Wright

ADOSH Compliance

Michael Mosesso Marilyn Carter Chief ALJ HR Manager

Yvonne Borunda

Acting Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance were Anne Ryman (Arizona Republic); Kaila Hopkins (Snell & Wilmer) Al Lundberg (Lundberg Industries, Inc DBA Alan Bradley Roofing); and Emily Rice (ASIA). Also in attendance on the telephone, confirmed by roll call were Susan Blythe and Scott Barber (City of Casa Grande-Animal Control and Adoption Center).

Approval of Minutes of July 28, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the July 28, 2022 regular session meeting. Chairman Schultz seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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. 2C21/22-0078

Arizona Community First LLC \$1,000

- 2. 2C21/22-0057
- Dipikaben Patel dba Travelers Motel \$1,000
- b. Approval of Requests for Renewal of Self-Insurance Authority.
 - 1. Young Electric Sign Company

Commissioner Everett moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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 <u>and</u> Penalties.

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

City of Casa Grande - Animal Control & Adoption Center Program Planned

510 E Florence Blvd

Years in Business:

140

Casa Grande, AZ 85122

Empl. Covered by Inspection:

6

Site Location:

202 E 1st Avenue

Casa Grande, AZ 85122

Inspection No:

PP-2022-T3633-0036

Inspection Date:

April 13, 2022

SERIOUS – Citation 1 - Item 1 –

a) Dog Kennel: Employees used sodium hypochlorite (bleach) to disinfect surfaces in the kennel and an eyewash was not provided. 29 CFR 1910.151(c)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2a –

a) 202 E First Ave, Casa Grande: Kennel Techs were anticipated to have Job Class II (minimal to moderate) exposure, and hepatitis B vaccinations had not been made available to one of the Kennel Techs. 29 CFR 1910.1030(f)(2)(i)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2b –

a) 202 E First Ave, Casa Grande: Kennel Techs were anticipated to have Job Class II (minimal to moderate) exposure, and an employee had not been trained concerning the requirements of the section. 29 CFR 1910.1030(g)(2)(i)

Div. Proposal - \$0.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

a) 202 E First Ave, Casa Grande: Employees worked with products including bleach and Rescue brand disinfectant, and employees had not been trained concerning the hazards of these chemicals. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$6,500.00

TOTAL FORMULA AMT. - \$5,000.00

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

Chairman Schultz checked if Mr. Barber and Ms. Blythe would like to comment. Mr. Barber inquired as to the process moving forward and Mr. Atencio outlined the process.

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

Lundberg Industries, Inc DBA Alan Bradley Roofing

Programed Planned

4151 E Columbia St

Years in Business: Empl. Covered by Inspection: 36 11

Tucson, AZ 85714

2875 E. 6th St.

Tucson, AZ 85716

Inspection No:

Site Location:

PP-2022-MN610-0002

Inspection Date:

June 7, 2022

SERIOUS - Citation 1 - Item 1 -

a) 2875 E Sixth St, Tucson, AZ: 11 employees working on the rooftop, were provided with a five-gallon Igloo water cooler and the common drinking cup was not prohibited. 29 CFR 1926.51(a)(4)

Div. Proposal - \$975.00

Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 2 –

a) 2875 E. 6th St, Tucson, AZ. 85716: Five employees removing old roofing material over 28 ft. above the ground without fall protection. 29 CFR 1926.501(b)(10)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

a) Rooftop, Southwest End: An employee was using an anchor point while removing old roofing materials and the anchor was attached to the ridge beam with only one screw in place on the metal strap. 29 CFR 1926.502(d)(15)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4 –

a) 2875 E. Sixth St, Tucson, AZ: Two employees were removing old roofing materials from the rooftop of the three-story apartment complex 28ft. above the ground and did not inspect their harnesses or remove them from service due to damage. 29 CFR 1926.502(d)(21)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5 –

a) Rooftop: 11 employees were working on a low slope roof with a pitch of 4:12 and a ground to eaves height of 28ft., and the employees had not been trained on fall protection. 29 CFR 1926.503(a)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6a –

a) Third Floor Landing East Side: 11 employees were accessing the rooftop using a 10 ft. aluminum ladder, set up on the walkway landing immediately outside of an apartment door, where it is subject to accidental displacement from traffic, and the ladder was not adequately secured.

b) Third Floor Landing West Side: 11 employees were accessing the rooftop using a 12 ft. fiberglass ladder, set up on the walkway landing immediately outside of an apartment door, where it is subject to accidental displacement from traffic, and the ladder was not secured. 29 CFR 1926.1053(b)(6)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6b –

a) Third Floor Landing East Side: The 10ft., aluminum extension ladder used to gain access to the rooftop was found with several bent rungs and was not inspected prior to use. 29 CFR 1926.1053(b)(15)

Div. Proposal - \$0.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6c –

a) 2875 E Sixth St, Tucson, AZ; An 8ft. fiberglass ladder section located on the materials trailer was noted to have damaged siderails, which had sections cut out and it was not tagged out of service, and was available for use.

b) Third Floor East Side of the Building: The 10ft. aluminum ladder used to gain access to the rooftop, on the West side of the apartment complex, was noted to have several bent rungs and was not tagged out of service. 29 CFR 1926.1053(b)(16)

Div. Proposal - \$0.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$8,475.00

TOTAL FORMULA AMT. - \$11,400.00

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

Mr. Lundberg wanted the Commission to know that he supplied safety equipment, individual water and ladders to the employees, but the roofing crew ended up using their own safety equipment, water and ladders.

Chairman Schultz encouraged Mr. Lundberg to provide abatement information to ADOSH.

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

Mobile Maintenance & Towing, L.L.C.

Complaint

2014 W Gardner Ln

Years in Business:

Empl. Covered by Inspection:

13 23

Tucson, AZ 85705

2014 W Gardner Ln

Tucson, AZ 85705

Inspection No:

Site Location:

CP-2022-A7576-0007

Inspection Date:

February 22, 2022

SERIOUS – Citation 1 - Item 1 –

a) Vehicle Maintenance bay: A 55-gallon barrel containing a flammable 3 liquid mixture for cleaning brake lines with a flash point lower than 100 degrees Fahrenheit, did not have a proper grounding system to prevent an electro static spark during liquid transfer. 29 CFR 1910.106(e)(6)(ii)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

a) Shop: A personal protective equipment assessment had not been performed to determine what PPE employees needed to protect themselves. 29 CFR 1910.132(d)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 2050 W Southern Ave, Phoenix, Bldg. 9: Three employees decked a new construction second-floor level multi-family building without fall protection training. 29 CFR 1926.503(a)(1) Div. Proposal - \$2,500.00 Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3a –

a) 2014 W Gardner Ln, Tucson, AZ, 85705: The employer did not develop or implement a written Lockout Tagout Program, for employees performing service and maintenance on customer's vehicles. 29 CFR 1910.147(a)(3)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3b –

a) Vehicle maintenance bay: A vehicle lift, brand, model and serial numbers unknown, was used by employees to raise and lift up a vehicle while tagged out of service. 29 CFR 1910.147(c)(7)(ii)(B)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 2014 W. Gardner Ln, Tucson, AZ 85705: Employees had not received training regarding hazardous energy sources, and the controls used when working on vehicles. 29 CFR 1910.147(c)(7)(i)(A)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5 –

a) 2014 W Gardner Ln, Tucson AZ 85705: The employer did not provide forklift driver safety or operations training for employees operating the Daewoo brand forklift, equipment #686308. 29 CFR 1910.178(l)(1)(ii)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 6a –

a) 2014 W Gardner Ln, Tucson, AZ 85705: The Daewoo forklift, Model D256-3, #686308 was hit by a car, damaging the load backrest extension and it was not repaired, nor was the forklift taken out of service. 29 CFR 1910.178(p)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 6b -

a) 2014 W Gardner Ln, Tucson, AZ 85705: Employees use a personnel work platform, fabricated in the shop and there was no manufacturer's written approval prior to use.

b) 2014 W Gardner Ln, Tucson, AZ 85705: The Daewoo forklift, Model D256-3, #686308 had a hole drilled into one tine, and no written approval for the modification was obtained from the manufacturer. 29 CFR 1910.178(q)(6)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 6c –

a) 2014 W Gardner Ln, Tucson, AZ 85705: The were no inspections being done on the Daewoo forklift, Model D256-3, #686308 used three to four times a day. 29 CFR 1910.178(q)(7) Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 7 –

a) Vehicle maintenance bay: The only drill press, unknown brand and serial number, did not have a guard on it to protect employees from the hazards of flying chips and rotating drill bits. 29 CFR 1910.212(a)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 8 -

a) Vehicle maintenance bay: The Ryobi, Model BG28G, bench grinder had the tool rests removed, exposing employees to the risk of having fingers caught in by the rotating wheel. 29 CFR 1910.215(a)(4)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 9 –

- a) Repair shop: An employee was using a 120 volt, 15 amp, Milwaukee 4 ½" right angle grinder, model and serial numbers unknown, without a guard installed.
- b) Repair shop: An employee was using a Black & Decker 7" right angle grinder, model number unknown and serial #001279, without a guard installed. 29 CFR 1910.243(c)(3)

 Div. Proposal \$1,000.00

 Formula Amt. \$1,000.00

SERIOUS – Citation 1 - Item 10a –

- a) Vehicle maintenance bay: Gas cylinders were laying down in various locations in the shop area, and not safely chained presenting a tripping hazard and danger of the valve assembly being damaged.
- b) Vehicle maintenance bay: Gas cylinders in various locations were standing up and not secured in place putting them in danger of the cylinder falling and damaging the valve assembly. 29 CFR 1910.253(b)(5)(ii)(O)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 10b –

a) Gas Cylinder Storage Area: An Acetylene cylinder was stored adjacent to three oxygen cylinders increasing the potential for a fire to spread rapidly. 29 1910.253(b)(4)(iii)
 Div. Proposal - \$0.00
 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 11a –

a) 2014 W Gardner Ln, Tucson, AZ 85705: Mobile Maintenance & Towing company had not developed a hazard communication program for employee use when working with a variety of hazardous chemicals in the shop area. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 – Item 11b –

a) Vehicle maintenance bay: The employer did not have any type of established labeling practices in place for containers of hazardous materials, as evidenced by over 20 different containers lacking any type of label, containing everything from hydraulic oils, to solvents and some unknown chemicals. 29 CFR 1910.1200(f)(6)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 11c –

a) 2014 W Gardner Ln, Tucson, AZ 85705: The employer did not keep on hand or have a means for employees to obtain safety data sheet information on chemicals they were using. 29 CFR 1910.1200(g)(8)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 12 –

a) 2014 W Gardner Ln, Tucson, AZ 85705: The employer did not train employees on the hazards of the chemicals they were working with. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$12,000.00

TOTAL FORMULA AMT. - \$18,000.00

Mr. Atencio and the Compliance Officer were available for questions. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed the safety hazards.

Chairman Schultz moved to amend the citation and proposed penalties to increase the penalty to the full formula amount of \$18,000.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Everett voted in favor of the motion. The motion passed.

Western Truss and Components, Inc.

Program Planned

7145 Leupp Rd

Years in Business:

43

Flagstaff, AZ 86004

Empl. Covered by Inspection:

Site Location:

7145 Leupp Rd

Flagstaff, AZ 86004

Inspection No:

PP-2022-T3633-0048

Inspection Date:

June 30, 2022

SERIOUS – Citation 1 - Item 1 –

a) Component saw area: Blades #2 and #3 on the Mitek Industries, Inc. brand component saw, model Cybersaw A/T and serial number 452, did not stop turning until more than 20 seconds after the saw was turned off, which was greater than the six seconds or less of stopping time specified by the manufacturer. A.R.S. 23-403.A

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2a -

a) Maintenance shop: A Husky brand air compressor, Pro model and unknown serial number, did not have the pulleys guarded. 29 CFR 1910.219(d)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2b –

a) Maintenance shop: A Husky brand air compressor, Pro model and unknown serial number, did not have the drive belt guarded. 29 CFR 1910.219(e)(1)(i)

Div. Proposal - \$0.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 3 -

a) Component saw area: The scrap conveyor from the Alpine Engineered Products Inc. brand component saw, Speed Cut Timber Mill model and unknown serial number, did not have a guard for the chain drive of the conveyor motor. 29 CFR 1910.219(f)(3)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$6,000.00

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

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

Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Article 2, SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621, Article 7 SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01, Article 11 SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS, and Article 15 WORKERS' COMPENSATION SELF-INSURANCE.

Mr. Testini requested authorization to move forward with the final rulemaking process.

Chairman Schultz moved to approve final rulemaking for Title 20, Chapter 5, Article 15: Workers' Compensation Self-Insurance. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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 the position to the candidates in that order.

Chairman Schultz noted both candidates were very good and presented a difficult choice with the approval to offer the position to the second candidate if the first candidate declines.

Commissioner Everett moved to accept Judge Mosesso's recommendation to extend an offer to the candidates in their ranked order. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Everett voted in favor of the motion. The motion passed.

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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners regarding a new addition to the Nucor Steel Kingman facility, which the Commissioners visited during their outreach trip to Mohave County, which will increase Nucor's number of employees at this location from 80 to 220.

Ms. Borunda confirmed Commission meeting dates through October 2022.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Bv

James Ashley, Director

ATTEST:

Yvonne Borunda, Acting Commission Secretary