

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, September 29, 2022 – 1:00 p.m.

Present: Dale L. Schultz	Chairman
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner
D. Alan Everett	Commissioner
James Ashley	Director
Afshan Peimani	Assistant Chief Legal Counsel
Trevor Laky	Legislative Affairs Chief/Public Information Officer
Renee Pastor	Self Insurance
Jessie Atencio	ADOSH Director
Andrew Dimas	ADOSH Compliance
Anna Maria Stonerock	ADOSH Admin
Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Lance Keller, Jeff Popour, Brandon Glenn and Carl Blachut (United Southwest Components, LLC); Estefania Soto-Andreina Ramirez, and Rosalba Cabrera (Next of Kin); Susan Jewell (Patterson Construction Company); Jarvell George (Impact Performance); Anne Ryman (Arizona Republic); and Kaila Hopkins (Snell & Wilmer).

Approval of Minutes of September 15, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the September 15, 2022 regular session meeting 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.

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. 2CLP22/23-0003 520 Landscape, LLC \$1,000
2. 2CNP21/22-0768 Melody Care Home, LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Concrete Reinforcements Inc.
2. DG Retail, LLC
3. Federal Express Corporation DBA FedEx Express
4. FedEx Freight, Inc.
5. FedEx Ground Package System, Inc.

Chairman Schultz commended Concrete Reinforcements Inc for their enviable safety record demonstrated by an experience modification factor of .4. He also noted the excellent safety record for the FedEx Express companies.

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.

United Southwest Components LLC	Fatality	
1700 S Kachina Dr	Years in Business:	2
<u>Tempe, AZ 85281</u>	Empl. Covered by Inspection:	90
Site Location:	1700 S Kachina Dr	
	Tucson, AZ 85281	
Inspection No:	FC-2022-T3633-0046	
Inspection Date:	June 16, 2022	

Mr. Atencio noted the Compliance Officer was not available. Mr. Atencio discussed ADOSH's inspection and reviewed the photographs. ADOSH was not recommending a citation for United Southwest Components LLC.

Chairman Schultz checked if anyone from United Southwest Components would like to comment. Mr. Keller noted they were there to answer questions and had no input at this time.

Chairman Schultz extended condolences to Ms. Ramirez and Ms. Cabrera, and explained the Commission is here to try to reduce injuries and prevent fatalities and every fatality is looked at very carefully and this kind of tragedy is devastating on everybody and he appreciates them coming to the meeting. Chairman Schultz checked to see if Ms. Ramirez or Ms. Cabrera would like to make any comments.

Ms. Ramirez noted they did not have comments.

Mr. Atencio noted another letter will be sent out with additional information for the file.

Chairman Schultz checked if anyone else on the phone would like to comment. There was no comment.

The Commission took no further action.

Mr. Atencio noted the Compliance Officer on this file was not available and he would answer any questions. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr asked for clarification noting the report indicated that Patterson Construction maintained written and verbal safety and health programs for employees and potentially being cited for a lack of that.

Mr. Atencio noted while there is a program in place for fall protection there was nothing for silica which is why the citation is being recommended.

Chairman Schultz noted he had the same issue and the background indicated they did not have fall protection training documentation and indicates there is a record of the training.

Chairman Schultz checked if anyone would like to comment.

Mr. George noted that Patterson Construction Company reach out to him in May after the inspection and they have done a safety audit of the company. He has partnered with Patterson Construction to make sure they are following all compliance, fall protection and workplace safety standards. He has documentation in regards to training they are doing and they do provide fall protection training at orientation as well as equipment before they get to the job site. They are currently working on the recommended process, they have a policy in place and if it is not being followed there are repercussions and a detailed reprimand program which they have been enforcing. They have hired another operations manager and are also doing spot inspections for all projects twice a week so they do not run into this issue again.

Commissioner LeMarr noted abatement photos wearing fall protection based on the time and date stamp, it appears it was immediate or during the inspection, and the workers had fall protection readily available and looks like the employees elected not to follow the protocol.

Chairman Schultz noted there is a legal principal *res ipsa loquitur*, basically if it looks like it, it must be, and the pictures show these folks working on the roof, cutting the tile and performing the work without their fall protection on and while you cannot be there every minute of every day to be watching you need to have some sort of monitoring process to check and make sure that instructions and work is being done in accordance with your safety policies. He appreciates what they are doing to try to improve their situation and the difficulty in trying to get that accomplished.

Mr. George noted in the report there was an incorrect address. Mr. Atencio noted it was a typo and will correct it.

Ms. Jewell asked for clarification on sheeting a roof, noting that they are roofers and do not put sheeting down on the roof. Underlayment, battens, tile they do and wanted to make sure it was correct.

Mr. Atencio noted that is the way the compliance officer had it written.

Commissioner LeMarr moved to amend the citation and proposed penalties. Because the employer is taking a pretty robust approach in improving their safety and because they do have fall protection and immediately abated that on the job site Commissioner LeMarr proposed 25% Good Faith Discount for a total of \$3,750.00. Commissioner Everett seconded the motion. Chairman

Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley provided the Commissioners the recent Arizona Management System scorecard metrics for the Accounting Division and ADOSH. Mr. Ashley noted this week the ICA hosted the leadership team from the state of New Mexico Workers' Compensation Agency. They were interested in learning about the Industrial Commission's performance success and transformation with the Salesforce deployment starting with Claims, and ALJ divisions and the Legal Division and then Labor Department with the replacement of the antiquated systems followed by Special Fund and the Accounting Division and the benefits of enhanced efficiency and customer service as a result of the deployment.

Chairman Schultz added it is the principle and goal of the Industrial Commission to do government at the speed and efficiency of business. We believe in and have adopted the Arizona Lean Management System and under that system, with the objectives established in every area of operation of the Commission, set goals and glidepaths to monitor those goals to improve performance. It is important for the Commission to perform like a business and have improved in virtually every area of our operation including revising the systems to make everyone able to do business with the Industrial Commission remotely and made significant improvements and will continue to make those improvements.

Mr. Ashley noted there is a saying in Lean Management regarding tracking initial performance at the beginning of a glide path "to embrace the red" which raises the bar and challenges team members to really excel. It is achievable, but it is not easy and takes a significant effort and much work to see great results and persistence to sustain successes and not backtrack.

Chairman Schultz stated that employee involvement and empowerment improves employee engagement, and the Commission engagement is amongst the highest of all state agencies, consistently within the upper 10% which is the result of involving people and allowing them to make decisions about how to do their job more efficiently and effectively to better serve all of the state of Arizona.

Mr. Ashley noted the Arizona Management System is not about employees working longer and harder but working more efficiently and effectively. He reviewed the two metrics for the Accounting Division and several for the ADOSH Division with comments from Mr. Atencio.

Mr. Ashley noted that the month of October is Domestic Violence Awareness Month with the kickoff on October 4th and we will be lighting the building purple in recognition of this important awareness. The Governor will hold a kickoff and will talk about the many resources and different agencies folks can turn to for assistance.

Ms. Dimas confirmed Commission meeting dates through December 2022.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Commissioner LeMarr 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 2:02 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary