

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, February 9, 2023 – 1:00 p.m.

Present: Dale L. Schultz	Chairman
Joseph M. Hennelly, Jr.	Vice Chair
Scott P. LeMarr	Commissioner
D. Alan Everett	Commissioner
James Ashley	Director
Gaetano Testini	Chief Legal Counsel
Renee Pastor	Self Insurance (Telephonic)
Jessie Atencio	ADOSH Director
John Randolph	ADOSH Investigator
Brandt Smith	ADOSH Whistleblower Supervisor
Pete Johnston	ADOSH Investigator
Ernesto Delgado	ADOSH Investigator
Anna Maria Stonerock	ADOSH Admin
Yvonne Borunda	Legal Admin
Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Katarina Paganik (AJP Electric, Inc.); Tyler Johnson (Johnson Roofing, LLC); Kim Nikolaev (Sculpture Arts Atelier, LLC); Lisa Hogle (ASU OTI EdCenter); Anne Ryman (ABC15 Arizona); Adriana DeLaRosa (Kathy Hanson Interpreter); Kaila Hopkins (Snell & Wilmer). Also in attendance on the telephone, confirmed by roll call were Susan Strickler and Joe Zingaro (Arizona Counties Workers' Compensation Pool); Samantha Wright and Christopher Brandon (Maricopa County); Shawn Irula (Town of Gilbert); Robert Duffy (City of Yuma); Jared Salveson (Next of Kin); Scott Mattivi (Pathology Watch PLLC); and Jennifer Woodard (Toys By Daphne Inc. DBA Daphne's Headcovers).

Approval of Minutes of January 26, 2023 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the January 26, 2023 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. 2CSP22/23-0152 J.G. Sheet Metal and Roofing Pro LLC \$1,000
2. 2CSP22/23-0139 LeakStopper's LLC dba LeakStopper's Roofing \$1,000

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

1. Arizona Counties Workers' Compensation Pool
2. City of Yuma
3. Maricopa County
4. Town of Gilbert

Chairman Schultz removed the City of Yuma at the request of Ms. Pastor and LeakStopper's LLC dba LeakStopper's Roofing which now has an active workers' compensation policy. Commissioner LeMarr sits on the Board of Trustees for Maricopa County and therefore recused himself. Chairman Schultz requested that Maricopa County be removed from the Consent Agenda for further questions.

Commissioner Everett moved to approve the remaining 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.

Approval of Requests for Renewal of Self-Insurance Authority.

Maricopa County

Chairman Schultz moved Maricopa County to the regular agenda to inquire why there was no request for a security waiver, given the strong financial position.

Ms. Pastor noted the County has a cash flow reduction and the fund is not funded completely yet. The new rule, 1525, states that they have to maintain a positive fund balance at all times to cover actuarial liability and they have not quite met that yet but are moving towards that.

Ms. Wright agreed and commented that the County general fund is good but it is not in the self-insured trust fund.

Chairman Schultz thanked them for the comments and looks forward to the future when perhaps funds are moved to the trust and a waiver can be obtained.

Vice Chair Hennelly moved to approve the request for self-insurance authority renewal for Maricopa County and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and/or Action of Request for Reconsideration of Arizona Division of Occupational Safety and Health Discrimination Complaint.

Chairman Schultz discussed the purpose of and process for the Commission's consideration for request for reconsideration of ADOSH matters.

1. WB-20-3853-24 Beatitudes Campus v Friedrich

Mr. Atencio reviewed points from the Report of Investigation.

Chairman Schultz checked if Mr. Friedrich was on the phone and would like to comment and share any additional information for their consideration. Hearing no response, the Commission will assume that Mr. Friedrich had no additional information to add to their deliberation.

Commissioner LeMarr moved to deny the request for reconsideration by Mr. Friedrich 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.

2. WB-20-R1689-47 United Parcel Service v Mendivil

Mr. Atencio reviewed points from the investigation.

Chairman Schultz checked if Mr. Mendivil was on the phone and would like to comment and share any additional information for their consideration. Mr. Atencio asked in Spanish. Hearing no response, the Commission will assume that Mr. Mendivil had no additional information to add to their deliberation.

Commissioner Everett moved to deny the request for reconsideration by Mr. Mendivil 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.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

1. WB-20-3853-24 Beatitudes Campus v Friedrich
2. WB-20-R1689-47 United Parcel Service v Mendivil

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and/or Action of Request for Reconsideration of Arizona Division of Occupational Safety and Health Inspection Findings.

1. CP-2022-F9669-0008 Southwest Airlines Co.

Mr. Atencio reviewed the Findings which determined there was not a violation of the OSHA standards.

Chairman Schultz checked if anyone in person or on the phone would like to comment or share any additional information relative to this request for reconsideration. Hearing no response.

Vice Chair Hennelly moved to deny the request for reconsideration 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.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Inspection Findings.

1. CP-2022-F9669-0008 Southwest Airlines Co.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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.

AJP Electric, Inc.	Fatality/Catastrophe	
1920 W Cheryl Dr	Years in Business:	35
<u>Phoenix, AZ 85021</u>	Empl. Covered by Inspection:	60
Site Location:	Intersection S Miller Rd & W Broadway Rd	
	Buckeye, AZ 85326	
Inspection No:	FC-2023-F9669-0029	
Inspection Date:	October 14, 2022	

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for AJP Electric, Inc.

Commissioner LeMarr confirmed with Mr. Atencio that the deceased and driver were employees of AJP Electric and that the truck belonged to AJP Electric, Inc.

Chairman Schultz confirmed if the picker dislodged one signal knocking it into the other thereby knocking it off the truck. Mr. Atencio explained how the signal signs were loaded on the truck and what happened to make one move. Mr. Atencio also described the equipment and the purpose of the straps.

Chairman Schultz checked if Mr. Salveson would like to comment.

Mr. Salveson questioned why the guy with the picker did not stop when he saw the straps missing. Mr. Atencio explained that while it would probably be a good thing to stop it is not required by OSHA. Mr. Salveson commented that the picker made it fall and knocked it onto the deceased.

Chairman Schultz noted that we are here to determine if there were any violations of any safety standard. As Mr. Atencio said, if the safety procedures had been followed the straps would still have been in place and it would have been impossible for this piece of equipment to have become dislodged and fall. Chairman Schultz expressed condolences to Mr. Salveson and explained that each fatality that occurs is taken extremely seriously.

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

The Commission took no action.

Mr. Atencio stated he was removing Black Rock Coffee Holdings, LLC from today's Agenda for further evaluation.

Commissioner LeMarr moved to amend the citation and proposed penalties based on the abatement which has been made, he proposed a 25% Good Faith Discount for a total of \$10,878.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Sculpture Arts Atelier, LLC
 227 S Rockford Dr
 Tempe, AZ 85281

Complaint
 Years in Business: 40
 Empl. Covered by Inspection: 28

Site Location: 227 S Rockford Dr
 Tempe, AZ 85281
 Inspection No: CP-2023-T3633-0059
 Inspection Date: November 2, 2022

SERIOUS – Citation 1 - Item 1a –

- a) 227 S Rockford Dr, Tempe: Employees were required to use respirators including half face, full face, and supplied air respirators, and a respiratory protection program was not established and implemented. 29 CFR 1910.134(c)(1)
 Div. Proposal - \$7,252.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 1b –

- a) Abrasive blasting area: A supplied air breathing system, unknown brand, model, and serial number, which was used by employees in the abrasive blasting area, did not have the filters maintained and replaced periodically. 29 CFR 1910.134(i)(5)(iii)
 Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 1c –

- a) Abrasive blasting area: A supplied air breathing system, unknown brand, model, and serial number, which was used by employees in the abrasive blasting area, did not have a system to monitor carbon monoxide levels. 29 CFR 1910.134(i)(7)
 Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 2a –

- a) Pouring area: Employees who operated the Nissan brand forklift, model 60 and serial number E728243, had not been provided training by the employer that was certified. 29 CFR 1910.178(l)(1)(ii)
 Div. Proposal - \$7,252.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 2b –

- a) Pouring area: The Nissan brand forklift, model 60 and serial number E728243, was not examined by an operator at least daily. 29 CFR 1910.178(q)(7)
 Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 3a –

- a) Mold storage room: One Burr King brand belt sander, model and serial number unknown, did not have a guard to protect the operator from the ingoing nip points between the sanding belt and the roller wheels. 29 CFR 1910.212(a)(1)
Div. Proposal - \$7,252.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 3b –

- a) Mold storage room: A Bauer brand eight inch bench grinder, unknown model and serial # 35413-2122, did not have a work rest on the right side which was equipped with a grinding wheel. 29 CFR 1910.215(a)(4)
Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 3c –

- a) Mold storage room: A Bauer brand eight-inch bench grinder, unknown model and serial number 35413-2122, did not have a peripheral guard (tongue guard). 29 CFR 1910.215(b)(9)
Div. Proposal - \$0.00 Formula Amt. - \$7,252.00
TOTAL PENALTY - \$21,756.00 TOTAL FORMULA AMT. - \$58,016.00

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

Chairman Schultz noted he was surprised with the requirements around the compressor for the carbon monoxide monitoring, after seeing inspections in hundreds of places he did not recall seeing a citation for carbon monoxide monitoring.

Mr. Atencio noted most people do not use an over-the-head hood when they are doing this and what is being done whenever you do sand blasting. He had not seen too many inspections where they have gone out and seen the hazard but it does exist. When the filters begin to get clogged, those employees can tell because the air is not coming through fast enough. In this case, it is a lack of following the manufacturer's recommendations, and limitations when it comes to preventative maintenance to change the filters routinely.

Chairman Schultz appreciated Mr. Atencio's thoughts on the abatement effort they made by replacing the grinding equipment and the in-helmet carbon monoxide sensing device.

Mr. Atencio reviewed which items were abated: Citation 1, Item 3a – abated, Item 3b – not abated, Item 3c – abated, Item 1a – not abated, Item 1b – abated, Item 1c – abated, Item 2a – abated, Item 2b – abated. Two items were not abated and it took approximately 30 days to do the abatements.

Chairman Schultz checked if Ms. Nikolaev would like to comment.

Ms. Nikolaev wanted to clarify that abatement started November 2 to December 1 and they started immediate action to change everything that was brought to their attention. They made changes to their respirator program, certification and carbon monoxide filtration. They took pictures and Mr. Black made a second visit and they gave him documentation and evidence of those, so the comment would be incorrect that it was not abated.

Chairman Schultz thanked her for her comments and noted he is constantly amazed at the number of small to medium size businesses that we have in Arizona and how long she has been in business and what an interesting operation. He was very pleased that they corrected quite a few of the things before getting the citation and those items will be considered.

Mr. Atencio noted they were not quick fix abatements done within 24 hours.

Commissioner Everett moved to amend the citation and proposed penalties with a 25% Good Faith Discount based on the abatement for a total of \$16,317.00. 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.

Toys By Daphne Inc. DBA Daphne's Headcovers 337 W Melinda Ln <u>Phoenix, AZ 85027</u>	Programmed Planned Years in Business: 40 Empl. Covered by Inspection: 12
Site Location: 337 W Melinda Ln Phoenix, AZ 85027	
Inspection No: PP-2023-A5598-0027	
Inspection Date: November 28, 2022	

SERIOUS – Citation 1 - Item 1 –

a) 337 W Melinda Lane, Phoenix AZ: One employee was operating a Toyota forklift, model #7FGU15 and serial numbers unknown, without training. 29 CFR 1910.178(l)(6)
Div. Proposal - \$7,252.00 Formula Amt. - \$7,252.00
TOTAL PENALTY - \$7,252.00 TOTAL FORMULA AMT. - \$7,252.00

Mr. Atencio noted a correction based on the calculation of the penalty amount and corrected it to \$7,252.00. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz noted this was another small fascinating business, all these hidden gems that we have. He was pleased with all of the hazards that were not there for manufacturing. Mr. Atencio noted they do manufacturing there and are on their programmed planed inspections and discussed some of the equipment being used.

Chairman Schultz checked if Ms. Woodard would like to comment.

Ms. Woodard thanked the Chairman for his comments, they take safety seriously. She noted that when the compliance officer came in, they had the employee scheduled for training on December 2 and the employee is currently certified.

Chairman Schultz thanked her for her comments and for operating their business here in Arizona.

Ms. Woodard confirmed the amount of the citation. Mr. Atencio explained the change was because of the size discount clarification.

Commissioner LeMarr moved to amend the citation and proposed penalties since the training was scheduled he suggested at 25% Good Faith Discount for a total of \$5,439.00. 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.

Discussion and Action regarding ADOSH Advisory Committee Appointment pursuant to A.R.S. §23-409.

Steve Rank
Amber Pappas

Mr. Atencio requested appointment for a couple of new ADOSH Advisory Committee candidates that were submitted by the ADOSH Advisory Committee from their meeting last week.

Mr. Atencio discussed Ms. Pappas who was recommended for the Agricultural Industry position and provided her resume with background and support.

Commissioner Everett moved to approve the appointment of Ms. Pappas to the ADOSH Advisory Board 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.

Mr. Atencio discussed Mr. Rank who was recommended for the Union position and discussed his resume with background and support, noting the Committee has been looking for a Labor Union representative for a long time.

Commissioner LeMarr moved to approve the appointment of Mr. Rank to the ADOSH Advisory Board 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the recent hiring success in ADOSH for two Compliance Officers, three Industrial Hygienist Technicians, one Industrial Hygienist, an additional elevator inspector, and an Administrative Assistant. Mr. Ashley also announced a New Chief Administrative Law Judge, a new Vice Chief Administrative Law Judge, and Administrative Law Judge for Tucson and that the Commission is hiring a new ALJ for Phoenix. In the Claims Division there is a new Customer Service Manager, two Customer Service Representatives, and two Workers' Compensation Insurance Claims Specialists. In the MIS Division there is a new Service Desk Analyst and a new Administrative Assistant in the Special Fund Division.

Chairman Schultz commented that was wonderful considering the recent labor market.

Mr. Ashley noted that based on previous visits to Yuma and meetings with stakeholders one of the recurring concerns referenced the growing season and vehicle safety awareness for Agriculture equipment. The Commission will be running public service announcements starting Monday in Yuma County to raise and promote safety awareness and Mr. Ashley played the English and Spanish version of the PSAs.

Mr. Duffy expressed his appreciation and invited the Commission to Yuma again and offered city facilities to host another Commission meeting.

Chairman Schultz thanked him for the invite, the Commission likes to take business to the workers, the pandemic has kept the Commission from traveling but are about ready to start again.

Mr. Ashley noted the invitation to the Arizona Chapter of the Associated General Contractors annual Capitol lunch on February 16, 2023.

Mr. Ashley stated there is a very light agenda for February 16th and recommended moving the items to the 23rd.

Ms. Dimas confirmed Commission meeting dates through April 2023.

Public Comment.

There was no 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 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary