

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, June 15, 2023 – 1:00 p.m.

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

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Arturo Carranza and Carlos Carranza (APC Pallets, Inc.); Pat Olstad, Justin Serfass and Shawn Puckett (Funko, LLC); Michael Varone (The Countertop Factory Southwest, LLC); Ryan Wurm (Thrive Climbing LLC); Anne Ryman (ABC15); and Lea Bartynski (Snell & Wilmer). Also in attendance on the telephone, confirmed by roll call was Suzy Braden (Encompass Health).

Approval of Minutes of June 1, 2023 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the June 1, 2023 regular session meeting and Chairman Kavanaugh seconded the motion. Chairman Kavanaugh, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed. Vice Chair Hennelly abstained.

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. 2CNP22/23-1598 The Healthy Chef LLC \$1,000

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

1. Encompass Health Corporation

TOTAL PENALTY - \$8,929.00

TOTAL FORMULA AMT. - \$8,929.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh checked if Funko would like to comment.

Mr. Serfass thanked the Commission for the opportunity to comment on their inspection. He noted a discrepancy, , they only have 14 shrink wrap machines and only 12 operational during the visit. Funko is now doing in-house training going forward and have records of every employee that is currently trained and pivoted to all full-time employees on forklift equipment.

Mr. Serfass had some concerns about aspects of the inspection. The shrink wrap machines are an industry standard and were installed by the manufacturer. They have over 10,000 of those machines in Arizona and have installed them all without guard rails. He referenced the photographs that show tape around the machines and also you start the machine after you get away, so the machine is not running while you are next to it. You tie the shrink wrap to the pallet and get away and then go to the machine that also has an e-stop. They are not in any other place or separated or different railing around them, and most places you do not even see the tape on the floor, but they have done that.

Mr. Serfass commented that they come in good faith, safety is their top priority. They have collaborated very well with the department from the first and second visit and after to make sure they have cleaned up their training and put some guardrails in place so the training materials cannot get deleted or stolen.

Commissioner LeMarr asked about the manufacturer's specifications to safety, especially around the cutting blade.

Mr. Olstead responded noting they reached out to the manufacturer, and they stated the designation they have for safety when they applied for their patent was acceptable and need to have it notated, but because the moving part seals itself into a hidden slot it was not deemed to require any guarding around that, and that is why none have guards unless there is a conveyor attached to it with moving parts.

Mr. Atencio, Chairman Kavanaugh, Vice-Chair Hennely and Commissioner LeMarr discussed the various concerns raised by Funko.

Commissioner LeMarr moved to remand back to ADOSH for further review and Vice Chair Hennely seconded the motion. Chairman Kavanaugh, Vice Chair Hennely and Commissioner LeMarr voted in favor of the motion. The motion passed.

Kingman Airline Services Inc.
9900 Flightline Dr
Kingman, AZ 86401

Site Location: 9900 Flightline Dr
Kingman, AZ 86401
Inspection No: CP-2023-T3633-0097
Inspection Date: April 12, 2023

Complaint
Years in Business: 23
Empl. Covered by Inspection: 5

SERIOUS – Citation 1 - Item 1a –

- a) 900 Flightline Dr, Kingman: The spray finishing area was partitioned off with draft curtains which were made of six-mil polyethylene sheeting, which did not meet the provisions of non-combustible draft curtains specified in Section 205 of NFPA No. 33-1969. 29 CFR 1910.94(c)(2)
Div. Proposal - \$4,465.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 1b –

- a) Cleaning solvent transfer area: Employees transferred Grow Automotive brand 1501 Premium Wash Thinner from a 55-gallon drum to containers for use, and the transfer area was approximately six feet from the six-mil polyethylene partition from the paint spraying area.
- b) Cleaning solvent transfer area: Employees transferred Grow Automotive brand 1501 Premium Wash Thinner from a 55-gallon drum to containers for use, and drainage or other means was not provided to control spills. 29 CFR 1910.106(e)(2)(iii)
Div. Proposal - \$0.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 1c –

- a) Cleaning bench: A spray painting gun was soaking in a container of solvent which was not covered. 29 CFR 1910.106(e)(2)(iv)(a)
Div. Proposal - \$0.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 1d –

- a) Cleaning solvent transfer area: Employees transferred Grow Automotive brand 1501 Premium Wash Thinner from a 55-gallon drum to containers for use, and the new solvent drum and the waste solvent drum were not grounded to prevent ignition from static sparks. 29 CFR 1910.106(e)(6)(i)
Div. Proposal - \$0.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 1e –

- a) Spray area: Two portable light stands with LED lights, brand, model and serial numbers unknown, were used in the spray area and were not approved for hazardous Class I locations. 29 CFR 1910.107(c)(8)
Div. Proposal - \$0.00 Formula Amt. - \$4,465.00
- TOTAL PENALTY - \$4,465.00 TOTAL FORMULA AMT. - \$22,325.00

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

Chairman Kavanaugh checked if there were any questions.

Mr. Ashley noted that Commissioner Everett was still having technical issues with the phone and left the call, but a quorum of the Commissioners remained.

Site Location: 2717 W Southern Ave
Tempe, AZ 85282
Inspection No: CP-2023-A7576-0028
Inspection Date: April 27, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Sanding Room: Two employees used tight-fitting full face 3M brand respirator while sanding rock climbing handholds without a written respiratory protection program.
- b) Sanding Room: Two employees used tight-fitting half mask 3M brand respirators while sanding rock climbing handholds without a written respiratory protection program. 29 CFR 1910.134(c)(1)
Div. Proposal - \$2,679.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 2a –

- a) Sanding Room: Two employees were exposed to a rotating moving abrasive belt sander, make, model, and serial number unknown, approximately 7 7/8" wide that was unguarded at an ingoing nip point.
- b) Sanding Room: Two employees were exposed to a rotating moving abrasive belt sander, make, model, and serial number unknown, approximately 23 1/2" wide that was unguarded at an ingoing nip point. 29 CFR 1910.212(a)(1)
Div. Proposal - \$2,679.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 2b –

- a) Sanding Room: Two employees were exposed to the unused portion of a rotating moving abrasive belt sander, make, model, and serial number unknown, approximately 7 7/8" wide that lacked guarding.
- b) Sanding Room: Two employees were exposed to the unused portion of a rotating moving abrasive belt sander, make, model, and serial number unknown, approximately 23 1/2" wide that lacked guarding. 29 CFR 1910.212(a)(3)(ii)
Div. Proposal - \$0.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 2c –

- a) Sanding Room: Two employees were exposed to a projecting and rotating shaft end on a belt sander, make, model, and serial number unknown that was not guarded. 29 CFR 1910.219(c)(4)(i)
Div. Proposal - \$0.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 2d –

- a) Sanding Room: Two employees were exposed to the rotating pulleys of a drive belt on an approximately 7 7/8" wide belt sander, make, model, and serial number unknown that lacked guarding. 29 CFR 1910.219(d)(1)
Div. Proposal - \$0.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 2e –

- a) Sanding Room: Two employees were exposed to the rotating moving drive belt, that measured approximately 18" from pulley to pulley, on an approximately 7 7/8" wide belt sander, make, model, and serial number unknown, that lacked guarding. 29 CFR 1910.219(e)(1)(i)

Div. Proposal - \$0.00

Formula Amt. - \$2,679.00

TOTAL PENALTY - \$5,358.00

TOTAL FORMULA AMT. - \$16,074.00

Mr. Atencio noted the Mr. Wurm did not have any employees at the time of the inspection but did have at least one employee during the six months prior to inspection. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties.

Mr. Wurm requested to speak. He provided some background on his company. He noted the learning process of the investigation and the specialized equipment that did not have guarding. He shut everything down for about two weeks and focused on fabricating guarding and making sure everything is safe. He provided ADOSH pictures of the fixes for the new wiring and fabricated guards.

Chairman Kavanaugh thanked Mr. Wurm for his comments and the work to take corrective action.

Vice Chair Hennelly thanked Mr. Wurm for coming down and asked from his perspective were all of the concerns been abated. Mr. Wurm noted there was only one item, which he is still addressing.

Vice Chair Hennelly thanked Mr. Wurm and noted it sounded like he was well on his way.

Commissioner LeMarr moved to amend the citation and proposed penalties. Because of the very strong effort to abate the issues, noting this Commission really cares about abating job site hazards and appreciate that, he suggested at 25% Good Faith Discount for the abatement efforts for a total of \$4,018.00. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Mr. Atencio noted this was a unique inspection since there are no longer employees the employer did not have to abate anything but he abated the safety concerns nonetheless.

Chairman Kavanaugh noted the Commission appreciates his efforts.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Kavanaugh commented on his virtual attendance at the IAIABC Alternate Dispute Resolution Committee meeting and are looking for Judges for Zehmer Moot Court Competition on July 28th; Ombudsman's Training Session on August 10th; and October 11th is their Dispute Resolution Committee Meeting which may be an interest to the ALJ Division; and there will be a Mediator College Program to start around January 2024.

Chairman Kavanaugh and Mr. Ashley noted that they appreciated Ms. Braden sending the additional information about their company's safety week and other efforts and the information has been distributed.

Mr. Ashley updated the Commissioners on the heat stress awareness campaign for this year and the importance of recognizing heat stress and efforts for employers and employees to take to alleviate the hazard and shared the new public service announcement videos that will be running through the summer.

Ms. Dimas confirmed Commission meeting dates through August 2023.

Mr. Ashley noted August 11th is the traditional meeting on the second day of the two-day Claims Seminar. Chairman Kavanaugh noted he will be in Tucson that day and could probably participate by telephone.

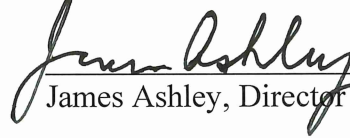
Public Comment.

There was no other public comment.

The meeting was adjourned at 2:06 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary