

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, March 16, 2023 – 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
Jessie Atencio	ADOSH Director
Anna Maria Stonerock	ADOSH Admin
Yvonne Borunda	Legal Admin
Ruby Tate	Claims Manager
Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Lea Bartynski (Snell & Wilmer); and Anne Ryman (ABC 15).

Approval of Minutes of March 9, 2023 Regular Meeting Minutes.

Approval of the Minutes of the March 9, 2023 regular session meeting was moved to the agenda of the next regular session meeting.

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. 2CNP22/23-1316 About Integrity Movers LLC \$1,000

Commissioner LeMarr moved to approve the items on the Consent Agenda 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 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.

B&M Roofing LLC
1627 N Swan Rd Ste 101
Tucson, AZ 85712

Programmed Planned
Years in Business: 5
Empl. Covered by Inspection: 5

Site Location: 2626 E Broadway Rd
Tucson, AZ 85716
Inspection No: PP-2023-RS480-0046
Inspection Date: February 15, 2023

REPEAT - SERIOUS – Citation 1 - Item 1 –

- a) 2626 E Broadway Tucson, AZ 85716: Five employees were removing underlayment and concrete roof tiles approximately 9' above the ground level without fall protection. 29 CFR 1926.501(b)(11)

B&M ROOFING LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, NO FALL PROTECTION, WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1549577, CITATION NUMBER 01, ITEM NUMBER 01, WHICH WAS ISSUED ON 01/05/2022 AND WAS AFFIRMED AS A FINAL ORDER ON 02/22/2022 WITH RESPECT TO A WORKPLACE AT 1110 E 9TH STREET TUCSON, AZ 85712.

Div. Proposal - \$15,627.00

Formula Amt. - \$15,627.00

REPEAT - SERIOUS – Citation 1 - Item 2 –

- a) 2626 E Broadway Tucson, AZ 85716: Five employees were performing roofing work on a roof with a height of nine feet to the ground and did not have fall protection training. 29 CFR 1926.503(b)(1)

B&M ROOFING LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, NO WRITTEN CERTIFICATION OF FALL PROTECTION TRAINING, WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1549577, CITATION NUMBER 01, ITEM NUMBER 02, WHICH WAS ISSUED ON 01/05/2022 AND WAS AFFIRMED AS FINAL ORDER ON 02/22/2022 WITH RESPECT TO A WORKPLACE AT 1110 E 9TH STREET TUCSON, AZ 85712.

Div. Proposal - \$15,627.00

Formula Amt. - \$15,627.00

TOTAL PENALTY - \$31,254.00

TOTAL FORMULA AMT. - \$31,254.00

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

Chairman Schultz and Mr. Atencio discussed ladder safety for access to and from the roof which was not an issue in this case.

Chairman Schultz and Mr. Atencio also discussed that PPE was not available on site.

TOTAL PENALTY - \$15,626.00

TOTAL FORMULA AMT. - \$31,252.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs and described the wet room for chemicals.

Chairman Schultz inquired about the different chemicals and chemical reaction with each other. Mr. Atencio noted the chemicals were appropriately labeled and in different areas.

Chairman Schultz and Mr. Atencio discussed the location of the bump shower shown in photograph #2 and that there was an unobstructed walkway to get to it. Mr. Atencio also explained the PPE worn by the employees.

Chairman Schultz asked about the respiratory program and Mr. Atencio noted it was lacking a couple of the required elements.

Chairman Schultz questioned whether a company this size with the potential chemical exposure would have a full-time safety person or a contract person. Mr. Atencio checked the notes but it was not mentioned, however, based on his experience some companies will hire a safety person, but others will hire a company to get a baseline and annual reviews, or their insurance company will often supplement safety and health and have an Industrial Hygienist ("IH") or safety person for an independent audit to help the employer. The standard does not require them to have a safety professional on staff. Chairman Schultz was surprised and would expect the insurance carrier to strongly recommend it and suggested a letter of recommendation be sent to include the importance of a safety professional. Mr. Atencio also noted any of these companies that have corrosive chemicals are required by ADEQ and some counties to contact their local fire department and have a walk through of the facility. Mr. Atencio noted in the letter of recommendation they can encourage them to contact their insurance carrier and have an industrial hygienist walk through the facility and help out with program development and to contact their local fire department to schedule a visit to make sure everything is good.

Commissioner Everett moved to approve the citation and proposed penalties as presented 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that the Special Government Employee ("SGE") training the ICA hosted in the auditorium to assist with the Voluntary Protection Program concluded today. Of two dozen participants, many were from out of state throughout Federal OSHA's Region IX. Arizona has one of the largest SGE programs in the nation. For reference, Arizona has 70 trained SGEs while California has 72.

Chairman Schultz commented we have 70 experts available to us at no cost to the state, because we have these collaborative programs with employers giving us the highly trained professionals. One amazing feature is they work with their competitors to help improve their programs because they are so dedicated to workplace safety.

Mr. Ashley welcomed and introduced the ICA Claims Division leadership and staff and highlighted multiple successes in the division and reviewed several accomplishments for the Awards, Wage, Compliance, No Match, Insurance, File Room, and Data Entry teams as well as the

Auditing/Compliance/Training team and out-of-state adjuster training program. Mr. Ashley presented the Golden Hard Hat to Claims' Average Monthly Wage ("AMW") team for the month of March for their work on new wage solicit processes.

Chairman Schultz commented on the work that is performed by the division to take care of injured workers in Arizona.

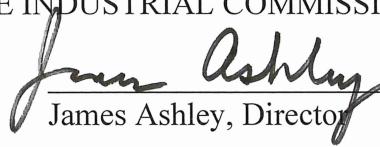
Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett 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 1:56 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary