MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, November 2, 2023 - 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic)

D. Alan Everett

Commissioner

Maria Cecilia Valdez

Commissioner

Gaetano J. Testini

Director

Afshan Peimani

Chief Legal Counsel

Lisa Padgett

Deputy Director Chief Financial Officer

Sylvia Simpson Mark Norton

ADOSH Director

Phil Murphy

Assistant ADOSH Director

Anna Maria Stonerock

ADOSH Admin

Kara Dimas

Commission Secretary

Yvonne Borunda

Acting Commission Secretary

Chairman Kavanaugh convened the meeting at 1:02 p.m. In attendance, confirmed by roll call Anne Ryman (ABC15); Paige Millan and Stephanie Hefner (Snell and Wilmer); and Patricia Altamirano (Horse Chipout Pool, LLC).

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

Commissioner Everett moved to approve the Minutes of the October 26, 2023 regular session meeting and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2024.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. $\S\S 23-961(G)$, 23-1065(A), and 23-1065(F) and set forth the maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2023 is 2.0%. In fiscal year 2023 the total assessment revenue for the Administrative Fund was \$19.3 million and total expenses were \$21.5 million resulting in a change to the operating cash balance of \$2.2 million. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy assessments to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and 1/2% under 1065(F) for Apportionment for a combined maximum rate of 1.5%. For calendar year 2023 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2024 of 2%, 1%, no change and decrease of 1% from the current 2.0% in premium projections along with the cash balance, operating budget and expenditures. Ms. Simpson noted the current headcount of full time employees, the additional responsibilities for several of the division in the Agency and the request for additional full time employees to fill vacant positions from the hiring freeze and the need for increased funding of \$2.2 million dollars and the need to increase revenue. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account from Tax revenues on a quarterly basis, which is a goal and not a rule, Ms. Simpson recommends increasing the CY24 assessment rate by .25% bringing the rate to 2.25%. This would provide sufficient funds and an operating cushion and cover the increased additional full time employees.

Chairman Kavanaugh noted they talked about efforts to bolster vocational rehabilitation training assistance through the Special Fund, he noted the Fund is sound enough and sufficient revenues to address any additional retraining needs for injured workers.

Ms. Simpson reviewed the options for 2024 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2023 with a healthy unrestricted balance. Ms. Simpson recommended maintaining the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2024.

Chairman Kavanaugh asked if there were any comments.

Commissioner Everett noted on Exhibit "C" the insolvent employers, he asked if they will go away over time.

Ms. Simpson noted everything is the life of the claim, so as some of these are very old, the claim would remain open for the life of the claimant, she was not sure of the ages of some of the claims, and they will fall off over time, but during the life of the claimant they can reopen a claim.

Commissioner Valdez moved to increase the assessment rate under § 23-961(G) to 2.25%; under § 23-1065(A) at 0%; and under § 23-1065(F) 0% for CY 2024. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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 Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Complaint

Years in Business:

Empl. Covered by Inspection:

45

17

Fabco Enterprises, Inc.

DBA Family Auto Body & Refinishing

3340 E Mossman Rd

Tucson, AZ 85706

Site Location:

Inspection No:

Inspection Date:

3340 E Mossman Rd

Tucson, AZ 85706

August 18, 2023

CP-2023-MB431-0013

2

SERIOUS – Citation 1 - Item 1 –

a) 3340 E Mossman Rd, Tucson, AZ 85706: A hazard assessment had not been performed for two employees conducting tasks such as cleaning rodent nests from customer vehicles, and automotive repairs in the shop area. 29 CFR 1910.132(d)(2)

Div. Proposal - \$3,572.00

Formula Amt. - \$3,572.00

SERIOUS – Citation 1 - Item 2 –

a) Mechanics bay southeast corner: Two employees used a Gibraltar, 2-post automotive lift, model and serial number unknown, which was not effectively tagged "out of service" due to faulty locking mechanisms. 29 CFR 1910.145(f)(3)

Div. Proposal - \$3,572.00

Formula Amt. - \$3,572.00

SERIOUS – Citation 1 - Item 3 –

- a) Mechanics bay, northwest corner: Two employees Serviced a Gibraltar, model and serial number unknown, 2-post automotive lift without a written lockout tagout procedure in place..
- b) Mechanics bay, northeast corner: Two employees serviced a Quality Lifts, 9000AS, serial number 00002907, 2-post automotive lift without a written lockout program in place.
- c) Mechanics bay, southwest corner: Two employees serviced a Gibraltar, model and serial number unknown, 2-post automotive lift without a written lockout tagout program in place.
- d) Mechanics bay, southeast corner: Two employees serviced a 2-post automotive lift, make, model and serial number unknown without a written lockout tagout program in place. 29 CFR 1910.147(c)(1)

Div. Proposal - \$3,572.00

Formula Amt. - \$3,572.00

SERIOUS – Citation 1 - Item 4 –

- a) Mechanics bay: Two employees plugged in a pedestal fan, make, model, and serial number unknown that had a damaged outer jacket with exposed live electrical parts.
- b) Paint area: Two employees plugged in a pedestal fan, make, model, and serial number unknown that had a damaged outer jacket. 29 CFR 1910.334(a)(2)(ii)

Div. Proposal - \$3,572.00

Formula Amt. - \$3,572.00

TOTAL PENALTY - \$14,288.00

TOTAL FORMULA AMT. - \$14,288.00

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

Chairman Kavanaugh checked if anyone would like to comment.

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

Horse Chipout Pool, LLC 216 W Cody Dr, Apt T4,

Unprogrammed Related Years in Business:

1

Phoenix, AZ 85041

Empl. Covered by Inspection:

Site Location:

2449 W Pampa Cir

Mesa, AZ 85202

Inspection No:

UR-2023-JW184-0026

Inspection Date:

May 26, 2023

SERIOUS – Citation 1 - Item 1a –

a) Backyard pool: Two employees were required to wear 3M half face respirators model # and serial # unknown while removing old pool plaster without a written respiratory protection program in place. 29 CFR 1910.134(c)(1)

Div. Proposal - \$3,349.00

Formula Amt. - \$3,349.00

SERIOUS – Citation 1 - Item 1b –

a) Backyard pool: Two employees were required to wear 3M half face respirators model # and serial # unknown while removing old pool plaster without having received medical evaluations. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$2,009.00

<u>SERIOUS</u> – Citation 1 - Item 1c –

a) Backyard pool: Two employees were required to wear 3M half face respirators model # and serial # unknown while removing old pool plaster without having been fit tested. 29 CFR 1910.134(f)(2)

Div. Proposal - \$0.00

Formula Amt. - \$2,009.00

SERIOUS – Citation 1 - Item 2 –

a) Backyard: Two employees were required to wear 3M half face respirator model # and serial # unknown while using impact hammers to remove old plaster from inside a pool without having received respirator training. 29 CFR 1910.134(k)(3)

Div. Proposal - \$2,009.00

Formula Amt. - \$2,009.00

TOTAL PENALTY - \$5

\$5,358.00

TOTAL FORMULA AMT. - \$9,376.00

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

Ms. Altamirano note she and her husband have a small company and have been in business less than a year, and everything is new for them. They try to provide the employees with everything they need but sometimes they are not at the job with them and make sure they use them or have them. She is working on it and will take crew members to get checked out and make sure they wear the masks.

Chairman Kavanaugh noted the Commission appreciates her comments and understands there is a learning curve for a new but these inspections are an opportunity to learn and reduce the risk of injury to employees by providing a safe workplace. Commissioner Valdez moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

MiTek Inc.

Referral-Employer Reported

7890 W Lincoln St

Years in Business:

11 180

Tolleson, AZ 85353

7890 W Lincoln St

Empl. Covered by Inspection:

Site Location:

7890 W Lincol

Tolleson, AZ 85353

Inspection No:

RF-2023-VM508-0007

Inspection Date:

August 29, 2023

<u>SERIOUS</u> – Citation 1 - Item 1a –

a) West Side of Main Office Building: Employer's specific procedural steps for the Wyard EZY, model #EZY-03 and serial #111340M, did not mention lockout tagout for relieving stored energy and the responsibility of lockout devices or tagout devices. 29 CFR 1910.147(c)(4)(ii)(C)

Div. Proposal - \$11,162.00

Formula Amt. - \$11,162.00

SERIOUS – Citation 1 - Item 1b –

a) 7890 W Lincoln St, Tolleson, AZ 85353: Employer did not conduct annual inspections of entire energy control procedures, including the specific procedural steps for the Wyard EZY, model #EZY-03 and serial #111340M, that one employee was required to perform maintenance on. 29 CFR 1910.147(c)(6)(i)

Div. Proposal - \$0.00

Formula Amt. - \$11,162.00

TOTAL PENALTY - \$11,162.00

TOTAL FORMULA AMT. - \$22,324.00

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

Chairman Kavanaugh and Mr. Norton discussed that there were no adjustment factors applied to the formula.

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

Rooftop Solar LLC

Complaint

515 N. Beaver St.

Years in Business

11

Flagstaff, AZ 86001

515 N. Beaver St.

Empl. Covered by Inspection:

n: 26

Site Location:

515 IV. Deaver St.

Flagstaff, AZ 86001

Inspection No:

CP-2023-EG419-0013

Inspection Date:

September 26, 2023

SERIOUS - Citation 1 - Item 1 -

a) Corner of Rocking Horse Ln and Needles St: Two employees had conducted solar panel installation on a steep roof of a residential home without the use of fall protection equipment. 29 CFR 1926.501(b)(13)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2 –

a) Corner of Rocking Horse Ln and Needles St: An employee had conducted solar panel installations on a roof without receiving training by a competent person. 29 CFR 1926.503(a)(2)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

TOTAL PENALTY - \$15,626.00

TOTAL FORMULA AMT. - \$15,626.00

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

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

Discussion and Action Revising Reasonable Rates for Attorney Fee Petitions Pursuant to Arizona Revised Statutes (A.R.S) § 23-1069.

Chairman Kavanaugh noted that with the resent Attorney Fee Petitions brought before the Commission and had asked the Legal Division Staff to update their recommendations from 2013 to the current time based on current market.

Ms. Peimani noted the Legal Division provides recommendations for Attorney Fee Petitions under A.R.S. § 23-1069. In 2013 the reasonable rate for a specialist in workers' compensation was \$185 per hour and for a non-specialist \$165 per hour. She discussed the evaluation process to determine new proposed hourly rates. The Legal Divisions recommended the hourly rate for attorneys be increased given that the market rates have changed over 10 years and that the new hourly rate for a specialist in workers' compensation should be \$290 per hour and non-specialist should be \$250 per hour.

Vice Chair Hennelly moved to approve revising the reasonable rate for Attorney Fee Petitions. Commissioner Valdez seconded the motion.

Chairman Kavanaugh commented that he appreciated the variety and detail of the work to update the figures to arrive at more of a fair market value.

Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Kavanaugh confirmed Commission meeting dates through December 2023 are posted.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:56 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

Gaetano J. Testini, Director

ATTEST:

Kara Dimas, Commission Secretary