MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 9, 2020 – 1:00 p.m.

Present: Dale L. Schultz Chairman (Telephonic)
Joseph M. Hennelly, Jr. Vice Chair (Telephonic)
Scott P. LeMarr Commissioner (Telephonic)
Steven J. Krenzel Commissioner (Telephonic)
James Ashley Director (Telephonic)
Gaetano Testini Chief Legal Counsel (Telephonic)
Trevor Laky Legislative Affairs Chief/Public Information Officer (Telephonic)
Renee Pastor Self Insurance (Telephonic)
Lisa Padgett Labor Director (Telephonic)
Victoria Kamm Labor Supervisor (Telephonic)
Jessie Atencio ADOSH Director (Telephonic)
Christian Teudan ADOSH Compliance Officer (Telephonic)
Kara Dimas Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Sandy Chavez, Brittney Chavez and Alicia Ozta (family members of Robert Chavez (deceased)); Shamlie Blair (Snell & Wilmer).

Approval of Minutes of March 26, 2020 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the March 26, 2020 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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. 2CNP19/20-0314 Adolfo Mancillas dba Julioberto’s Mexican Food - $1,000
2. 2CNP19/20-0398 Sir Moves Alot LLC - $5,000
3. 2CSP19/20-0120 Tommy’s BCH LLC dba True Grit Tavern - $5,000
4. 2CMO19/20-0046 Robert Vaughn dba H & R Moves You - $5,000
b. Approval of Requests for Renewal of Self-Insurance Authority.


Vice Chair Hennelly moved to approve the Consent Agenda as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL-1819-0292       Sofrita LLC

Ms. Padgett summarized the Labor Department’s investigation, which included findings of violations of A.R.S. §§ 23-232(a)(8)(b) and 23-233. Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of $1,000.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of $1,000.00 to Sofrita LLC. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petition and the reasonable hourly rates used in analyzing fee petition.

Weston Montrose / Edd – Mr. Testini discussed the history of this matter and the work performed and his analysis of the Petition for Attorney Fees submitted by Mr. Montrose and his representation of Mr. Edd. Since Mr. Edd was already paid benefits and the claim is now closed with no remaining temporary benefits owed or permanent benefits being awarded, the Commission cannot direct Special Fund to withhold and remit payments to Petitioner Montrose from any existing award. However, there is a possibility that the claim is subsequently reopened at some point in the future with a new award of benefits. In this case, the Special Fund could direct portions of those future benefit payments to Petitioner Montrose. Thus, it is recommended that Petitioner Montrose be awarded attorney fees in the sum of $3,442.67 to be paid from any future award to which Applicant may become entitled at a rate of 25% of each benefit payment until the amount of $3,442.67 is paid or until ten years from the date of the award, whichever occurs first. This recommendation complies with the statutory requirements set forth in A.R.S. § 23-1069. Mr. Testini requested that the Commissioners allow for electronic signatures on the Findings and Award.

Commissioner LeMarr and Mr. Testini discussed that there was no other representation of Mr. Edd in this matter.

Chairman Schultz and Mr. Testini discussed that payment be assessed only if the claim is reopened until the amount is fully recovered or 10 years have elapsed from the date of the Award of benefits.

Vice Chair Hennelly moved to approve staff’s recommendation and allow electronic signatures. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.
Chairman Schultz discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

National Machine Company dba NMG Aerospace
2223 S Wilson St.
Tempe, AZ 85282

Site Location: 2223 S Wilson St.
Tempe, AZ 85282
Inspection No: K6582-1449010
Inspection Date: 12/05/2019

Fatality/Accident
Years in Business: 33
Empl. Covered by Inspection: 155

WILLFUL SERIOUS – Citation 1 - Item 1 –

a) 2223 S Wilson St, Tempe, AZ 85282: Six employees were exposed to a rotating CNC lathe chuck due to bypassed or inoperable machine inter-lock system when using the Doosan Puma GT 2600LM serial number MLO261-000043.

b) 2223 S Wilson St, Tempe, AZ 85282: Six employees were exposed to a rotating CNC lathe chuck due to bypassed or inoperable machine inter-lock system using the Doosan Puma GT 2600LM serial number MLO261-0000129.

c) 2223 S Wilson St, Tempe, AZ 85282: Five employees were exposed to a rotating CNC lathe chuck due to bypassed or inoperable machine inter-lock system when using the #23 Hyundai HIT-15F serial number unknown.

d) 2223 S Wilson St, Tempe, AZ 85282: Five employees were exposed to a rotating CNC lathe chuck due to bypassed or inoperable machine inter-lock system when using the #24 Hyundai HIT-15F serial numbers unknown.

e) 2223 S Wilson St, Tempe, AZ 85282: Five employees were exposed to a rotating CNC lathe chuck due to bypassed or inoperable machine inter-lock system when using the #25 Hyundai HIT-15F serial numbers unknown. 29 CFR 1910.212(a)(1)

Div. Proposal - $70,000.00  
Formula Amt. - $70,000.00

TOTAL PENALTY - $70,000.00  
TOTAL FORMULA AMT - $70,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr, Mr. Atencio and Mr. Teudan discussed that ADOSH has not been provided any abatement information or information that the mechanism has been repaired.

Mr. Atencio added additional information regarding the employer’s knowledge that the interlock devices and equipment were modified.

Vice Chair Hennelly and Mr. Atencio discussed that there were five instances that the safety feature was disabled or removed demonstrating this is not just an off-hand mistake but rather an affirmative action by somebody to disable the safety features of the machine.
Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Sunburst Transportation, LLC  
2109 W Monte Vista Rd.  
Phoenix, AZ 85009

Fatality/Accident

Years in Business: 17
Empl. Covered by Inspection: 4

Site Location: 3849 W Clarendon Ave.  
Phoenix, AZ 85009

Inspection No: E0782-1443209
Inspection Date: 11/6/2019

SERIOUS – Citation 1 - Item 1 –

a) 3849 W Clarendon Ave, Phoenix, AZ 85009: Thirteen fuel drivers delivered fuel to various locations without electrically interconnecting their trucks to the tanks they were transferring into. 29 CFR 1910.106(e)(ii)
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2 –

a) 2109 W Monte Vista Rd, Phoenix, AZ 85009: An assessment for personal protective equipment was not performed for employees. 29 CFR 1910.132(d)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 2109 W Monte Vista Rd, Phoenix, AZ 85009: A Kenworth fuel truck, model #T880 and serial numbers unknown, lacked an evaluation for a confined space. 29 CFR 1910.146(c)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 3849 W Clarendon Ave, Phoenix, AZ 85009: Thirteen fuel drivers delivered fuel to various locations without flashlights that were intrinsically safe. 29 CFR 1910.307(c)(2)(i)
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 5 –

a) 2109 W Monte Vista Rd, Phoenix, AZ 85009: A written hazard communication program was not developed for employees who worked with gasoline or other fuel burning material. 29 CFR 1910.1200(e)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00
SERIOUS – Citation 1 - Item 6 –

a) 2109 W Monte Vista Rd, Phoenix, AZ 85009: A written hazard communication training was not provided to thirteen drivers who transported gasoline and other fuel burning material. 29 CFR 1910.1200(h)(3)(iii)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00  
TOTAL PENALTY - $8,000.00  
TOTAL FORMULA AMT. - $8,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz commented that the pictures are horrific, and demonstrated an incredible explosion, and he was surprised the compartmentalization seems to work well for containing it.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner Krenzel moved to approve the citation and proposed penalty as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Community Bridges, Inc.
675 E Cottonwood Ln.
Casa Grande, AZ 85122

Complaint

Years in Business:  37
Empl. Covered by Inspection:  24

Site Location: 675 E Cottonwood Ln.
Casa Grande, AZ 85122

Inspection No: R3180-1439179
Inspection Date: 10/21/2019

Mr. Atencio removed this item from the agenda for further review with the compliance officer.

Chairman Schultz and Mr. Atencio discussed if there was a time deadline for this item and it will be scheduled for the April 16, 2020 meeting.

T & K Feeds, Inc.
42330 W Hwy 84
Stanfield, AZ 85172

Referral

Years in Business:  24
Empl. Covered by Inspection:  9

Site Location: 42330 W Hwy 84
Stanfield, AZ 85172

Inspection No: E7721-1438338
Inspection Date: 10/16/2019

SERIOUS – Citation 1 - Item 1 –

a) 42330 W Highway 84, Stanfield, Arizona: An in-patient hospitalization of an employee was not reported within 24 hours. 29 CFR 1904.39(a)(2)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00
a) 42330 W Highway 84, Stanfield, Arizona: A written energy control program was not developed and implemented for employee performing routine service and maintenance on equipment. 29 CFR 1910.147(c)(1)
Div. Proposal - $2,500.00  Formula Amt. - $2,500.00

TOTAL PENALTY - $5,000.00  TOTAL FORMULA AMT. - $7,500.00

Mr. Atencio discussed ADOSH’s investigation, made corrections to the location listed on the report, and to Citation 1, Item 1 which should be a Non-Serious Citation and listed as Item 2 with a penalty amount of $1,000.00. He summarized the citation and proposed penalties. He also noted that Citation 1, Item 2a and b should be 1a and 1b with the penalty as listed for a total Formula Penalty of $6,000 and Division Proposal of 3,500. Mr. Atencio reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Vice Chair Hennelly moved to approve the amended citation and proposed changes to the penalties and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.


Mr. Testini summarized the proposed rulemaking to bring the rule into compliance with the statutory language on the Labor Department’s jurisdictional limits. Currently the Statute allows for a jurisdictional limit of $5,000 and the Rule only allows for a jurisdictional limit of $2,500. Mr. Testini stated he was looking for a resolution to request an exemption on the Governor’s rulemaking moratorium and to start the rulemaking process.

Commissioner LeMarr moved to approve and authorize the Legal Division to file the necessary notices to promulgate the proposed rulemaking by filing a request with the Governor’s Office for an exemption from the rulemaking moratorium and start the rulemaking process. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel, voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through May 2020.
Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary