MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at Flagstaff City Hall, Council Chambers
211 W. Aspen Avenue, Flagstaff, Arizona 86001
Thursday, February 13, 2020 – 2:30 p.m.

Present: Dale L. Schultz Chairman
Joseph M. Hennelly, Jr. Vice Chair
Scott P. LeMarr Commissioner
James Ashley Director
Gaetano Testini Chief Legal Counsel
Trevor Laky Legislative Affairs Chief / Public Information Officer
Jessie Atencio ADOSH Director
Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 2:49 p.m. Chairman Schultz apologized for the late start due to technical difficulties with the Flagstaff council chamber phone system. In attendance were Pat Fletcher, Dave Shea and Don Barton (Block Partners LLC dba Master Block and Pavers).

Approval of Minutes of January 30, 2020 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the January 30, 2020 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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. 2CRP19/20-0037 Top Notch Roofing LLC $1,000
2. 2CMO19/20-0029 Classic Delivery Inc dba Classic Delivery & Moving $1,000
3. 2CRP19/20-0043 Camelback Roofing LLC $1,000
4. 2CLP19/20-0112 Joel Herrera Garcia dba Noel’s Landscaping $1,000
5. 2CNP19/20-0200 A New Hope Behavioral Health Home PLLC $1,000
6. 2CMO19/20-0009 Robert Vaughn dba H & R Moves You $1,000
7. 2CNP19/20-0217 Flying Eagle Framing LLC $1,000

Mr. Testini requested to remove Item a.7. (Flying Eagle Framing LLC) from the Consent Agenda.
Vice Chair Hennelly moved to approve the remaining items on the Consent Agenda and 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 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.

Direks Moving & Logistics
4340 W Mohave St
Phoenix, AZ 85043

Site Location: 860 S. 83rd Ave Ste 115
Phoenix, AZ 85043

Inspection No: I2479-1437705
Inspection Date: 10/11/2019

Fatality/Accident
Years in Business: 29
Empl. Covered by Inspection: 6

SERIOUS – Citation 1 - Item 1 –

a) 860 S. 83rd Ave, Tolleson, AZ, 85353: Two employees operated a Crown SC 4000 forklift, model #55F-SS-A173 and serial #A142199, without receiving training. 29 CFR 1910.178(l)(6)
Div. Proposal - $2,000.00
TOTAL PENALTY - $2,000.00
Formula Amt. - $2,000.00
TOTAL FORMULA AMT. - $2,000.00

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

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

Block Partners LLC dba Master Block and Pavers
12620 W Butler Dr.
El Mirage, AZ 85335

Site Location: 12620 W Butler Dr.
El Mirage, AZ 85335

Inspection No: Y8817-1439297
Inspection Date: 10/22/19

Referral
Years in Business: 10
Empl. Covered by Inspection: 10

SERIOUS – Citation 1 - Item 1a –

a) Production Line 1: A Columbia band cement mixer, model #80 and serial numbers unknown, lacked signage for permit required confined space. 29 CFR 1910.146(c)(2)
Div. Proposal - $1,000.00
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 1b –
a) Production Line 1: Five employees were cleaning the inside of a Columbia brand cement mixer, model #80 and serial numbers unknown, without documenting all hazards in a permit space had been eliminated. 29 CFR 1910.146(c)(7)(iii) 
Div. Proposal - $0.00 
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2a –

a) 12620 W Butler Dr, El Mirage, AZ 85335: A Lock Out Tag Out program consisting of energy control procedures, training, and periodic inspection was not developed for employees conducting repairs and maintenance of equipment. 29 CFR 1910.147(c)(1) 
Div. Proposal - $2,000.00 
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2b –

a) 12620 W Butler Dr, El Mirage, AZ 85335: Procedures were not developed for control of hazardous energy while employees were engaged in cleaning activities inside a Columbia brand cement mixer, model #80 and serial numbers unknown. 29 CFR 1910.147(c)(4)(i) 
Div. Proposal - $0.00 
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2c –

a) 1260 W Butler Dr, El Mirage, AZ 85335: Five employees were not provide with adequate training to control unexpected release of control energy. 29 CFR 1910.147(c)(7)(i) 
Div. Proposal - $0.00 
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 3 –

a) 12620 W Butler Dr, El Mirage, AZ 85335: An employee operated a Doosan brand forklift, model D3SC-7 and serial FD401-1930-D0045, without receiving training. 29 CFR 1910.178(l)(1)(ii) 
Div. Proposal - $1,000.00 
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 12620 W. Butler Dr, El Mirage, AZ 85335: An employee used Performance Plus motor oil and Master Pro Moly EP grease without receiving hazard communication training. 29 CFR 1910.1200(h)(1) 
Div. Proposal - $1,000.00 
Formula Amt. - $1,000.00

TOTAL PENALTY - $5,000.00
TOTAL FORMULA AMT. - $10,000.00

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

Commissioner LeMarr noted that motor oil and grease applicators are standard materials which you can buy at any auto parts store without a hazardous material information sheet. Mr. Atencio noted that based on the information discovered, and to be consistent, any time an employer uses these greases and oils it is hazardous based on a Safety Data Sheet (SDS). Here, ADOSH did not receive information that the employer had an SDS which is required because these materials meet the definition of hazardous chemicals.
Vice Chair Hennelly and Mr. Atencio discussed that the lock out tag out program had not been modified or updated for approximately 10 years, training and different locking systems that could help.

Mr. Barton, the Operations Manager stated they have completely changed their safety culture and it will take time to get everybody completely 100% onboard. He noted this is a life changing event for them and changed people that were affected. They have changed all of their procedures, and the person who is in control of the machine is in control of his own lock. They now only allow certain trained people to perform this function. They have also changed the time of day they conduct these activities utilizing a multi-person lock out routine with a lock out lead which prevents the equipment from starting with a person in the mixer. They are developing a safety culture with an onboarding package, training, and a mentorship program that places new employees with another employee to make sure they behave safely. It is a process that is going to make Master Block a much better company in the future.

Chairman Schultz noted it sounds like there is abatement for most of the other issues and requested the employer document their abatement efforts and submit them to ADOSH.

Commissioner LeMarr moved to amend the proposed penalty by proposing a 20% reduction for good faith, for a total penalty of $4,000.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Builders Investment Group, L.L.C
15333 N Pima Rd, Ste 305
Phoenix, AZ 85022

Site Location: 200 E Coral Gables, Apt 202-206
Phoenix, AZ 85022
Inspection No: V4364 -1425114
Inspection Date: 8/20/2019

SERIOUS – Citation 1 - Item 1 –

a) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: Two employees erected, moved, and dismantled a fabricated frame scaffold while installing stucco netting around second floor windows and applying stucco on the building's exterior walls without the supervision and direction of a qualified competent person of scaffolding. 29 CFR 1926.451(f)(7)
Div. Proposal - $1,000.00
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: Two employees were working from a light-duty fabricated frame scaffold without receiving scaffolding training. 29 CFR 1926.454(a)
Div. Proposal - $1,000.00
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: One employee was standing on the first roof of a multi-family building 9 ½’ high, stuccoing a wall, without fall protection.
b) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: Two employees were standing on the second roof of a multi-family building 9 ½' high, stuccoing a wall, wall without fall protection. 29 CFR 1926.501(b)(1)
Div. Proposal - $1,000.00  Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: Three employees were working on a roof, 9 ½' above the ground, without receiving fall protection training. 29 CFR 1926.503(a)(1)
Div. Proposal - $1,000.00  Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 5 –

a) 200 E Coral Gables, APT # 202-206, Phoenix, AZ, 85022: Three employees were using a Werner brand aluminum extension ladder, model and serial numbers unknown, without receiving training. 29 CFR 1926.1060(a)
Div. Proposal - $1,000.00  Formula Amt. - $1,000.00
TOTAL PENALTY - $5,000.00  TOTAL FORMULA AMT. - $5,000.00

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

Commissioner LeMarr commented on abatement photograph 5 for Citation 1, Item 1 noting there were several things that were wrong with the scaffolding. There were not enough cross braces and no toe guard. Mr. Atencio noted he will let the compliance officer know and also the employer that they need further abatement.

Vice Chair Hennelly found the description of the company’s business really puzzling given that they are described as basically investment banking, yet are out there stuccoing. Mr. Atencio noted he did not get any other information. Mr. Atencio will let the employer know, but they do have a program in place and just did not follow it.

Commissioner LeMarr and Mr. Atencio discussed if the compliance officer asks about a contractor’s license and noted they have a general contractor’s license in this matter, if they did not they would provide that information to the Registrar of Contactors.

Chairman Schultz and Mr. Atencio discussed photographs 8 and 9 where the employees were not wearing personal protective equipment and the bucket in the photo containing stucco material; the compliance officer felt training on hazardous material was sufficient. Chairman Schultz noted he was surprised about the lack of general safety awareness that their training would have been adequate in that area and they are not part of the Roofer’s Alliance. Mr. Atencio noted a few employees, not all, did go to a certified on-line training on fall protection and hazardous communication training about two months prior.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.
Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2020. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted the Attorney General has approved all of the rulemaking for the final Federal OSHA standards adoption package to maintain the state plan in good standing.

Mr. Ashley discussed the Governor’s budget.

Mr. Ashley stated that Ms. Locke completed the 5S quarterly audit and the division scores are between 79% and 90% towards completion.

Mr. Ashley advised that there is a Safety Gemba for the Commissioners on February 27.

Mr. Ashley also announced that Charles Carpenter will be the new Medical Resource Office Manager.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through March 2020.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 3:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary