

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 15, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Interim Director
	Phil Murphy	ADOSH Assistant Director
	Steve Black	Compliance Officer
	Michelle Rassi	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Nathan Daily; Benjamin Naylor of Burns Barton LLP, representing United Parcel Service; Matt Fendon with Arizona Association of Lawyers for Injured Workers (“AALIW”); and Jordan Chavez with Snell & Wilmer. Appearing telephonically (on behalf of Mr. Daily) were Melinda Kidder with Columbia Investigations; Dr. Hildegard Staninger with Integrative Health Systems, LLC; Dr. Benjamin Colodzin; Michael B. Butler; and John Kingston with AAA Security.

Approval of Minutes of February 8, 2018 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the February 8, 2018 regular session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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. 2CRP-17/18-0015 Roofing48 LLC
2. 2C-17/18-0332 Red Mountain Legal Support Services dba, Strategic Security Group

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

1. Arizona Counties Workers' Compensation Pool
2. City of Chandler
3. City of Mesa
4. City of Peoria
5. Glendale Elementary School District No. 40
6. Pima County
7. Washington Elementary School District No. 6

Commissioner Orchard requested that items (b)(1) (Arizona Counties Workers' Compensation Pool) and (b)(6) (Pima County) be removed from the consent agenda.

Commissioner Orchard moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority for Arizona Counties Workers' Compensation Pool and Pima County.

Commissioner Orchard recused herself from these items.

Vice Chair Hennelly moved to approve the requests for renewal of self-insurance authority for Arizona Counties Workers' Compensation Pool and Pima County. 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 of Arizona Division of Occupational Safety and Health Discrimination Complaint.

17-3633-04 - Daily v. United Parcel Service, Inc. (UPS)

Chairman Schultz discussed the purpose of and process for the Commission's consideration of the ADOSH discrimination matter.

Mr. Atencio presented a summary of Mr. Daily's complaint, the employer's response, and ADOSH's findings. Mr. Atencio recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support a violation of A.R.S. § 23-425(B).

Mr. Daily discussed Mr. Atencio's summary of the complaint; his personal history; the nature of, and facts associated with, the subject complaint; the individuals appearing on his behalf by telephone; and subsequent medical treatment and findings. Mr. Daily indicated that he had provided all relevant evidence from the last two years to his employer and ADOSH.

Mr. Butler discussed his professional history, his relationship to Mr. Daily, and the nature of and facts associated with the subject safety complaint.

Chairman Schultz and Mr. Butler discussed whether there had been OSHA complaints from other UPS locations, the existence of other injuries resulting from the subject working conditions, the

cost of abating the subject working conditions, which entity developed a proposed abatement plan, and evidence of the employer's animus.

Dr. Colodzin discussed his interactions with Mr. Daily, his professional history, Mr. Daily's relationship with his employer, Mr. Daily's credibility, a complaint to human resources concerning a supervisor, examples of workplace harassment, a complaint to the Arizona Attorney General concerning "directed energy type effects," and surveillance of Mr. Daily and his dogs. Dr. Colodzin and Mr. Daily discussed a 2010 fitness for duty evaluation that took place in an emergency room.

John Kingston joined the call.

Mr. Daily discussed wooden planks at the worksite and a related injury.

Ms. Kidder discussed her professional history, her work for Mr. Daily, her examination of Mr. Daily, and the effect of electromagnetic and radio frequency fields on human health. Chairman Schultz and Ms. Kidder discussed Ms. Kidder's licensing and evidence concerning the surveillance devices (including who may have implanted the subject devices).

Dr. Staninger discussed Ms. Kidder's methodology; the results of Ms. Kidder's examination; and their relationship to Mr. Daily's employer, the alleged harassment, and the union. She stated that Mr. Daily had four sensors removed from the back of his ear and that the chemical found in the sensors contained a venom used to treat immunological disease. Dr. Staninger discussed the effect of these sensors on Mr. Daily's dogs, recent studies, and reports from Ms. Kidder and Mr. Kingston.

Mr. Kingston discussed his investigation and pending report.

Dr. Staninger and Mr. Kingston discussed the equipment that Mr. Kingston used to perform his testing, its usage history, and Mr. Daily's scan results.

Commissioner Orchard discussed ADOSH's role in discrimination matters and noted that offered examples of harassment predated the subject safety complaint.

Commissioner Orchard and Mr. Daily discussed Mr. Daily's allegation that the employer implanted devices to harass Mr. Daily in the wake of his safety complaint. Mr. Daily stated that he could not state that the implantation was directly related to the safety complaint. Commissioner Orchard explained that it is the Commissioners' role to determine whether there is sufficient evidence of a connection between the alleged harassment and the safety complaint.

Commissioner Orchard and Mr. Porter discussed whether the Commission has jurisdiction over harassment of an employee unrelated to a safety complaint. Mr. Porter recommended that Commission enter executive session to discuss the issue.

Mr. Naylor asked the Commission to view the information presented through the lens of A.R.S. § 23-425.

Commissioner LeMarr moved to go into Executive Session and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner LeMarr and Mr. Atencio discussed abatement and the availability of rebar caps.

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

Mountain View Custom Cabinets, Inc.
23306 N 15th Ave
Phoenix, AZ 85027

Complaint
Years in Business: 20
Empl. Covered by inspection: 9

Site Location: 23306 N 15th Ave
Phoenix, AZ 85027

Inspection No: H9685-1273098

Inspection Date: 10/26/2017

SERIOUS – Citation 1 - Item 1/a – a) 23306 N 15th Ave, Phoenix, AZ 85027: The employer did not develop and implement a written respiratory protection program that required worksite specific procedures and elements for four employees who were required to use a 3M brand half facepiece reusable respirators while exposed to paint vapors. 29 CFR 1910.134(c)(1):

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 1/b – a) 23306 N 15th Ave, Phoenix, AZ 85027: Medical evaluations were not provided for four employees who were required to wear 3M brand half facepiece reusable respirators. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 1/c – a) 23306 N 15th Ave, Phoenix, AZ 85027: Four employees who were required to wear 3M half facepiece tight-fitting respirators were not fit tested. 29 CFR 1910.134(f)(2)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 1/d – a) 23306 N 15th Ave, Phoenix, AZ 85027: One employee was not storing a 3M half facepiece reusable respirator, model 7502, to protect it from damage, contamination, dust, excessive moisture, or damaging chemicals as it was being stored loose on top of a workstation. 29 CFR 1910.134(h)(2)(i)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 1/e – a) 23306 N 15th Ave, Phoenix, AZ 85027: Training was not provided to four employees who were required to wear 3M tight-fitting half facepiece respirators before the respirators were used in the workplace. 29 CFR 1910.134(k)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – a) Finishing Room: Four employees were exposed to corrosive Sherwin-Williams brand Sher-Wood Vinyl Primer Surfacer and multiple colors of Sher-Wood Acrylic Conversion Coating when they mixed, sprayed, and applied the products to wood substrates and suitable facilities for quick drenching of the eyes and body were not in the work area for immediate emergency use. 29 CFR 1910.151(c)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – a) 23306 N 15th Ave, Phoenix, AZ 85027: Three employees who operated a Komatsu powered industrial truck, model number FC25ST-11 serial number 407437A, did not successfully complete training and evaluation specified in this paragraph (l). 29 CFR 1910.178(l)(1)(i)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4/a – a) 23306 N 15th Ave, Phoenix, AZ, 85027: One employee was directed to stand and ride on a wood pallet and hold down a container full of trash as it was transported to a dumpster approximately 200 feet away from the building by a Komatsu power industrial truck, model number FC25ST-11 and serial number 407437A. The employee also rode on the wood pallet 200 feet back to the building with the empty container after the trash was discarded. 29 CFR 1910.178(m)(3)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4/b – a) West end of shop: A Komatsu powered industrial truck, model FC25ST-11 and serial number 407437A, was not taken out of service after it was found with a defective seatbelt and unreliable horn. 29 CFR 1910.178(p)(1)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4/c – a) West end of shop: A Komatsu powered industrial truck, model number FC25ST-11 and serial number 407437A, was not inspected prior to use. 29 CFR 1910.178(q)(7)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5/a –

a) South Shop table saw: A Powermatic table saw, model number 66 and serial number 93661595, was not guarded by a hood to protect four employees from accidental contact with the blade while they ripped pieces of wood. 29 CFR 1910.213(c)(1)

b) North shop table saw: A Powermatic table saw, model number 66 and serial number 84661870, was not guarded with a hood to protect four employees from accidental contact with the blade while they ripped pieces of wood. 29 CFR 1910.213(c)(1)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5/b –

a) South Shop table saw: A spreader was not used on a Powermatic table saw, model number 66 and serial number 93661595, to protect four employees from struck-by hazards while they ripped pieces of wood. 29 CFR 1910.213(c)(2)

b) North shop table saw: A spreader was not used on a Powermatic table saw, model number 66 and serial number 84661870, to protect four employees from struck-by hazards while they ripped pieces of wood. 29 CFR 1910.213(c)(2)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5/c –

a) South Shop table saw: Non-kickback or dogs were not provided on a Powermatic table saw, model number 66 and serial number 93661595, to protect four employees from struck-by hazards while they ripped pieces of wood. 29 CFR 1910.213(c)(3)

b) North shop table saw: Non-kickback or dogs were not provided on a Powermatic table saw, model number 66 and serial number 84661870, to protect four employees from struck-by hazards while they ripped pieces of wood. 29 CFR 1910.213(c)(3)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6/a – a) 23306 N 15th Ave, Phoenix, AZ 85027: A written hazard communication program had not been developed or implemented at the workplace for employees who were exposed to hazardous chemicals such as Sher-Wood Vinyl Primer Surfacer and Sher-Wood Acrylic Conversion Coating. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6/b – a) 23306 N 15th Ave, Phoenix, AZ 85027: Copies of safety data sheets for hazardous chemicals such as Sher-Wood Vinyl Primer Surfacer and Sher-Wood Acrylic Conversion Coatings were not maintained in the workplace. 29 CFR 1910.1200(g)(8)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6/c – a) 23306 N 15th Ave, Phoenix, AZ 85027: Four employees who worked with hazardous chemicals such as Sher-Wood Vinyl Primer Surfacer and Sher-Wood Acrylic Conversion Coatings were not provided with information and training on the hazardous chemicals. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$12,000.00

Mr. Atencio summarized the citation and proposed penalties.

Chairman Schultz complimented the subject compliance officer, Brian Downen, on his approach to the inspection and the quality of the report.

Commissioner Orchard and Mr. Atencio discussed abatement.

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

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 13 of the Arizona Administrative Code, including proposed rulemaking to R20-5-106; R20-5-1301; R20-5-1302; R20-5-1303; R20-5-1309; R20-5-1310; R20-5-1311.

Mr. Porter summarized the proposed rulemaking and corresponding procedures.

Chairman Schultz and Mr. Porter discussed whether changes to the proposed rulemaking were substantive.

Commissioner Orchard discussed the need to emphasize consideration given to injured workers and the positive feedback received from physicians and stakeholders.

Commissioner LeMarr moved to authorize the Legal Division to file any notices necessary to promulgate the proposed rulemaking. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard, voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the Industrial Commission's inclusion in the Governor's press release concerning the elimination of over 600 regulations. He noted the website redtape.az.gov, which tracks regulation rollback, and which is prominently linked from the Commission's website homepage.

Mr. Ashley discussed the Governor's approval of the Commission's request to proceed with rulemaking.

Chairman Schultz, Commissioner LeMarr, and Mr. Ashley discussed a meeting with the Arizona Chapter of the Associated General Contractors regarding the Federal OSHA Silica standard and the group's preference for guidelines over regulations.

Chairman Schultz requested that Ms. Pastor calculate how many public entities have received waivers of security and the total number of waivers.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through April 2018.

Mr. Ashley discussed the March 2018 meeting in Lake Havasu City.

Public Comment.

Chairman Schultz, Commissioner LeMarr, Mr. Ashley, and Mr. Laky discussed an Arizona Republic article discussing proposed legislation relating to Proposition 206 and the requirements to put such a referendum on the ballot.

There was no other public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary