

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, May 20, 2021 – 1:00 p.m.

Present: Dale L. Schultz Chairman (Telephonic)
Joseph M. Hennelly, Jr. Vice Chair (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)
Jessie Atencio ADOSH Director (Telephonic)
Phil Murphy ADOSH Assistant Director (Telephonic)
Anna Maria Stonerock ADOSH Admin (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 Tracy Foss, Roshell Lee, Garrett Mahoney and Lori Jundt (Ashton Tiffany for Securis Insurance Pool); Sarah McCoy and Barbara Sprungl (Salt River Project); Lonnie Hawkins (RV Renovations, Inc.); and Savannah Scharnhorst (Snell & Wilmer);

Approval of Minutes of May 6, 2021 Regular Meeting Minutes and April 29, 2021 Executive Session.

Vice Chair Hennelly moved to approve the Minutes of the May 6, 2021 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel moved to approve the Executive Session Minutes of the April 29, 2021 and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly 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. 2CNP20/21-0420 E-Staff Inc dba E-Staff Security \$1,000

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

Update Regarding Securis Insurance Pool, Inc.'s Experience Modification and Discussion of Security Requirements.

Ms. Pastor explained that Securis Insurance Pool ("Securis") is doing well and their deposit increased. Ms. Pastor provided a brief overview of the Securis claims.

Chairman Schultz asked if Ms. Pastor had any concerns regarding the increase in administrative expenses. Mr. Pastor was not concerned, it was a loss expense and that is going to happen as claims develop.

Chairman Schultz asked if Ashton Tiffany would like to make any comments. Ms. Foss thanked Ms. Pastor for her assistance in monitoring their program.

Chairman Schultz thanked Ms. Pastor for making sure that the new program is staying on track which is crucial for all new self-insurers. He also noted that they are providing a needed protection for some first responders and throughout the state with a variety of participants in this particular fund.

Commissioner Krenzel moved to approve the increased security deposit from Securis and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel 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 petitions and the reasonable hourly rates used in analyzing fee petitions.

Matt Fendon and E. Contreras – Mr. Testini noted this was a request for attorney's fees pursuant to §23-1069 and discussed the analysis of the Petition for Attorney Fees submitted by Mr. Fendon regarding his representation of Mr. Contreras. Mr. Testini discussed the benefits resulting from the representation of Mr. Fendon.

Chairman Schultz commented that when he first read the summary, he was concerned about the change in attorneys and the rates, but since the award is actually a percentage of the benefits the attorney rate became irrelevant.

Vice Chair Hennelly agreed with the recommendation after reviewing the thorough packet.

Chairman Schultz agreed that Ms. Peimani's workup was excellent and included everything they needed.

Vice Chair Hennelly moved to adopt the Findings and Award granting attorney's fee and to allow electronic signatures of the Award and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

SERIOUS – Citation 1 - Item 1b –

- a) 2145 E Main St, Mesa, AZ 85213: One employee was working in a Global Finishing Solutions spray booth Model #CP152334 Serial #78568 that did not have a fire suppression system in it. 29 CFR 1910.107(h)(12)
Div. Proposal - \$0.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 2a –

- a) 2145 E Main St, Mesa, AZ 85213: Two employees were wearing 3M 07193 half face tight fitting respirators for required use while painting with no respiratory protection program. 29 CFR 1910.134(c)(1)
Div. Proposal - \$800.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 2b –

- a) 2145 E Main St, Mesa, AZ 85213: Two employees were wearing 3M 07193 half face tight fitting respirators for required use without being provided with a respiratory medical evaluation. 29 CFR 1910.134(e)(1)
Div. Proposal - \$0.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 2c –

- a) 2145 E Main St, Mesa, AZ 85213: Two employees were wearing 3M 07193 half face tight fitting respirators for required use while painting without being fit tested prior to initial use. 29 CFR 1910.134 (f)(1)
Div. Proposal - \$0.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 3 –

- a) 2145 E Main St, Mesa, AZ 85213: Two employees were wearing 3M 07193 half face tight fitting respirators for required use while painting with no training. 29 CFR 1910.134 (k)
Div. Proposal - \$800.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 4 –

- a) 2145 E Main St, Mesa, AZ 85213: One employee was exposed to corrosive chemicals such as Bonderite C-IC 33 Aero with no working eye wash stations. 29 CFR 1910.151(c)
Div. Proposal - \$600.00 Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 5 –

- a) 2145 E Main St, Mesa, AZ 85213: One employee was using a SCMI SL15 F table saw model number unknown serial number AB.1118 with no guard on it. 29 CFR 1910.213(d)(1)
Div. Proposal - \$800.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 6 –

- a) 145 E Main St, Mesa, AZ 85213: Two employees were exposed to hazardous chemicals such

as Woodsong II WS2S122 and Bonderite C-IC 33 Aero without developing or implementing a written hazard communication program. 29 CFR 1910.1200(e)(1)
Div. Proposal - \$800.00 Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 7 –

a) 2145 E Main St, Mesa, AZ 85213: Two employees were exposed to hazardous chemicals such as Woodsong II WS2S122 and Bonderite C-IC 33 Aero with no hazard communication training. 29 CFR 1910.1200(h)(1)
Div. Proposal - \$800.00 Formula Amt. - \$800.00
TOTAL PENALTY - \$5,400.00 TOTAL FORMULA AMT. - \$7,800.00

Mr. Murphy discussed ADOSH's investigation, summarized the citation and proposed penalties.

Commissioner Krenzel asked if photographs 1 and 3 of the spray booths showed exposed insulation. Mr. Hawkins explained that what is shown are air filters and not insulation and are replaced regularly with the booth is in use.

Chairman Schultz referenced photograph 14 of the eyewash station with significant corrosion and rust, and asked if it was complexly inoperable. Mr. Murphy noted the compliance officer stated that it was.

Chairman Schultz asked Mr. Hawkins if it was inoperable. Mr. Hawkins noted they discovered that the waterline was clogged but have replaced the waterline source and it is now operable and has been cleaned. In addition, they have supplied three additional portable eyewash stations in three different locations that have been mounted in key areas so they do not require plumbing and something that can be purchased and added to the locations for convenience to the employees.

Chairman Schultz checked if Mr. Hawkins would like to make any comments or answer questions.

Mr. Hawkins noted he would be happy to answer any question and do his best to answer, and at the end make a comment.

Chairman Schultz noted the report indicated that there was no abatement documentation submitted and Mr. Hawkins' comments about the eyewash station. He asked about abatement of other issues.

Mr. Hawkins apologized for not submitting the abatement information using the proper process. Pictures of the completed abatement eyewash station were sent to the inspector with a list of abatement efforts that they have been working on. Most of the issues have been resolved and have a plan in place for the other issues.

Chairman Schultz thanked Mr. Hawkins and noted that the Commission is focused on making sure a place of employment is safe going forward and not only is abatement important, but also the investment you make in providing a safer workplace. Chairman Schultz directed Mr.

Hawkins to include the information on the portable eyewashes and any other investments made in safety to ADOSH because it will be considered favorably.

Commissioner Krenzel asked about the guarding on the table saw and fire suppression system.

Mr. Hawkins addressed the fire suppression system noting the booths are used for storage and most of the painting is done outside with water based nonflammable paint. Spot repair on vehicles which are large motorhomes which do not fit in the booth. The Maricopa County Environmental Safety office recently visited and they have provided the specifics and instruction for painting with the nonflammable paint and coatings that they use and the location outside the booth and approved their operation and certified by them as being compliant. The fire suppression had a recent visit and approval and compliance from the Mesa City Fire Marshall because the booths are not used in any capacity for spraying flammable materials and concluded they are not required.

Mr. Hawkins addressed the guarding of the table saw, he noted it has a guard and it was not on the table at the time of inspection, the senior shop cabinet maker had been using it and showed the inspector the size of wood they use and according to the cabinet maker it did not work with the guard on it. There is a guard and he has been told to put it back on and they are practicing safety and procedures on that now.

Commissioner Krenzel wanted to highlight that since the Commission had recently seen an amputation for a similar situation.

Mr. Hawkins stated that have been visited by Maricopa County and by the City of Mesa, there was one recommendation for change which they immediately adopted and complied and certified with both of those entities. He noted one thing they have not addressed nor was it something that he was aware of, was the covering for the lights in the painting room. They will install those as soon as they are available. They have adopted a written plan of communication and did not have a computer terminal available to the employees where that information was stored and made available from the supplier of chemical and products, it was not available to the employees and they did not know that. They have fixed that and implemented a training program. They have also contracted with a mobile nursing facility to bring in and do the medical fit for the respirators. There are only two seasoned, experienced painters and they know how to use those things and perhaps they were slack in not doing an annual training for the two that have been there over 10 years and they were the only employees painting. The written programs have been adopted and the books are in place and added the training processes and all that they could to comply with the recommendations of the inspector. He thanked the Commission for their consideration, and RV Renovators, Inc. are using this opportunity to improve services to their customers and employees.

Commissioner Krenzel moved to amend the citation and proposed penalties. In light of the abatement efforts, the fire suppression system, the eyewash stations, the installed guard on the table saw, and the new training programs, , he moved to amend the penalties to include as 25% Good Faith Discount for a total penalty of \$4,050.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Hawkins for joining and his diligence for improving safety in the workplace.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date. Due to the significant number of metrics, he will be reviewing a couple of divisions each meeting. He started with Accounting's three metrics: Assets Processed Complete and Accurate, Standard Work Publications and Payment Portal Transactions. He also reviewed the seven metrics for ADOSH: Average Compliance Lapse Time, Average Whistleblower Lapse Time, Outreach for Employees Impacted; Outreach for Employees Trained, Outreach for Hazards Abated; Outreach for Partnership Programs and Outreach for Safety Consultations for High Hazard Industries.

Chairman Schultz congratulated the entire team and the agency on how effectively it has implemented the Arizona Management System. It is truly a leading entity in the state.

Mr. Ashley added that it has been a great focus and mission when it comes to the team and the results because of everyone's hard work and dedication and commitment to the agency benchmark, and we've seen success on what the teams are doing, and, the last year, doing it virtually and staff is seeing results.

Mr. Ashley reviewed a couple of results from the employee engagement survey. The participation rate which is deemed a level of engagement in the first place was 92% which is about 20% above the state average and higher than previously recorded, so it is the highest for the agency. Among the responses that are up from last year are job satisfaction and how employees view the importance of their work which is up to 95%.

Chairman Schultz noted it was an amazing accomplishment in light of COVID.

Ms. Dimas confirmed Commission meeting dates through June 2021.

Mr. Ashley updated the Commissioners on the change in mask policy based on the recent guidance from the CDC and ADHS. Fully vaccinated individuals will not be required to wear masks, if not vaccinated you would still need to wear a mask. Security and cleaning staff will still continue to wear masks, all other safety and health protections will continue.

Ms. Dimas presented three retirement resolutions for the Tucson Administrative Law Division. Lynda Johnson for 14 years of service as a Legal Secretary; Luann Haley for 21 years of service as an Administrative Law Judge and Gary Israel for 30 years of service as Vice Chief Administrative Law Judge.

Chairman Schultz noted he received a nice note from one of the attorneys who works with the Commission a lot, Robert Wisniewski, regarding Judge Haley, and she is going to be missed.

Commissioner Krenzel requested the Commission meeting dates through July and noted he would not be available for the July 1 date.

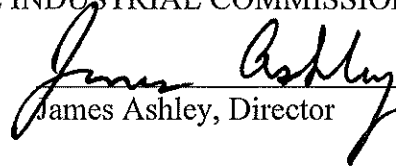
Public Comment.

There was no other public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary