

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, May 7, 2020 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Jessie Atencio	ADOSH Director (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 Scott Raymond, Roy Simpson, Andrea Weiser and John Gutting (District Photo, Inc.); and Darrin Galbreath (Magnum Engineering, Inc.).

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

Commissioner LeMarr moved to approve the Minutes of the April 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. 2CSP19/20-0116 Express Medical Transportation LLC \$1,000.00

Vice Chair Hennelly moved to approve 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.

District Photo, Inc.
2500 E Chambers St.
Phoenix, AZ 85040

Complaint
Years in Business: 5
Empl. Covered by Inspection: 185

Site Location: 2500 E Chambers St.
Phoenix, AZ 85040
Inspection No: K6582 -1451524
Inspection Date: 12/12/19

SERIOUS – Citation 1 - Item 1 –

- a) 2500 E Chambers St., Phoenix, AZ 85040: One employee was not provided an evaluation of training to ensure proper understanding and procedures were followed when performing Lockout-Tagout on machinery or equipment. 29 CFR 1910.147(c)(6)(ii)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 2500 E Chambers St., Phoenix, AZ 85040: Two employee working on a Cyra 3 printing machine (model and serial number unknown) was exposed to a rotating belt and pulleys. 29 CFR 1910.219(a)(2)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00
TOTAL PENALTY - \$4,000.00 TOTAL FORMULA AMT. - \$4,000.00

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

Commissioner LeMarr stated that in photograph no. 1 it appears that a plexiglass guard is in front of the nip-point belt; Mr. Atencio confirmed that there was no plexiglass.

Chairman Schultz agreed that it does appear that the actual pinch points are within the frame of the printer, which could act as an engineering control for those pinch points. Mr. Atencio stated that for the frame to be a distancing control the employer would need to have an administrative program regarding the frame.

Chairman Schultz commented that the half face respirators look to be well maintained and relatively new and was pleasantly surprised at the condition of the respirators.

Commissioner LeMarr reiterated the photograph would certainly indicate from his perspective that there is a plexiglass shield in front of the rotating mechanism. It is clear and could be an optical illusion and look forward to hearing what representatives of the company say.

Chairman Schultz noted several representatives on the phone from District Photo.

Scott Raymond, General Manager for District Photo in Phoenix stated they strive to have a safe environment and put the programs in place to the best of their ability, and try to enforce them as best they can. He was surprised at some of the findings and did not agree with them and will address them later with ADOSH directly.

Div. Proposal - \$0.00

Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 3c –

- a) 2439 S 49th Ave., Phoenix, AZ 85043: The employer did not require fit testing for two employees required to use tight-fitting half-mask respirators. 29 CFR 1910.134(f)(2)
Div. Proposal - \$0.00 Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 3d –

- a) 2439 S 49th Ave., Phoenix, AZ 85043: Training was not provided to two employees required to use an Elipse brand, model and serial numbers unknown, tight-fitting half-mask respirator. 29 CFR 1910.134(k)(1)
Div. Proposal - \$0.00 Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 4 –

- a) 2439 S 49th Ave., Phoenix, AZ 85043: Employees were exposed to hazardous chemicals such as Acetone and Sun/Steel paint primer without receiving training. 29 CFR 1910.1200(h)(1)
Div. Proposal - \$900.00 Formula Amt. - \$900.00
TOTAL PENALTY - \$3,600.00 TOTAL FORMULA AMT. - \$8,100.00

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

Chairman Schultz noted there was a representative on the phone and asked if he would like to make a comment.

Darrin Galbreath wanted to say thank you and noted the investigation has shed light on a couple of different things. He clarified that the heater was not being used to heat paint, but rather it was used to heat the material because it was a hand rubbed finish and it would not apply to cold steel; nonetheless, it is wrong and they have eliminated the heater. They have since implemented respiratory training, medical evaluations, fit tests, and hazard communications, and have hired a third party to help stay safe in the future.

Chairman Schultz noted it sounds like they have made significant progress and that is terrific to hear. He noted one of the more concerning issues is the lack of fire extinguishing equipment in the paint booth and asked if there were plans to do anything about that. Mr. Galbreath noted that currently they have eliminated anything that is flammable. They do have several fire extinguishers in the area, but not an actual system within the booth.

Mr. Atencio stated that at the end of the process Mr. Galbreath is welcome to contact ADOSH consultation; there are a lot of industrial hygienists, and consultation is free to use and as often as needed to bring that spray paint booth up to compliance. Consultation cannot help with abatement.

Chairman Schultz thanked Mr. Galbreath for joining us and displaying his commitment to provide a safe work place for his employees.

Commissioner LeMarr moved to amend the proposed Citation by applying a 20% reduction for good faith and abatement activity reducing the penalty to \$2,880.00. Vice Chair Hennelly seconded

the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Petersen-Dean Inc. 2224 W Shangri La Rd. <u>Phoenix, AZ 85029</u>	Planned Years in Business: 10+ Covered by Inspection: 3
Site Location: 16489 N Hubbard St. Casa Grande, AZ 85122	
Inspection No: R3180 - 1454966	
Inspection Date: 1/9/20	

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Lot 9: Two employees engaged in roofing work 10 feet above the ground were not protected from falling by a fall protection system.
- b) Lot 10: One employee engaged in roofing work 10 feet above the ground level was not protected from falling by a fall protection system. 29 CFR 1926.501(b)(10)
Div. Proposal - \$12,500.00 Formula Amt. - \$12,500.00

Petersen-Dean Inc., was previously cited for a violation of this occupational safety and health standard or its equivalent Standard 29 CFR 1926.501(b)(10) which was contained in ADOSH Inspection Number 1244271, Citation 1, Item Number 1 and was affirmed as final order on November 11, 2017 and abated on July 7, 2017 with respect to a workplace located at 3257 E Indigo Bay Ct, Gilbert, AZ 85234.

SERIOUS – Citation 2 - Item 1 –

- a) Lot 9: Three employees were not protected from stepping into roof holes with covers. 29 CFR 1926.501(b)(4)(ii)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 2 –

- a) Lot 9: Employees used a ladder to access the roof of a residential home that was 10' above the ground without the ladder's side rails extending at least 3' above the roof. 29 CFR 1926.1053(b)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00
- TOTAL PENALTY - \$16,500.00 TOTAL FORMULA AMT. - \$16,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Commissioner LeMarr noted it would have been helpful to have a tape measure next to the ladder, when looking at Photograph No. 7 because there is a fairly significant amount of the extension ladder sticking up above the roof line making it difficult to determine if it is 36".

Chairman Schultz and Mr. Atencio confirmed that the repeat designation in the FOM is for 3 years for repeat-serious.

Chairman Schultz checked if anyone from Petersen-Dean joined the call or if there is anyone on the phone who would like to comment. There were no comments.

Commissioner LeMarr moved to amend by remanding Citation 2, Item 2 back to ADOSH for further investigation into whether there was an extension of 3 feet of the ladder above the roof. He proposed Citation 1, Item 1 for \$12,500 and Citation 2, Item 1 for \$2,000 for a total penalty of \$14,500. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through June 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 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary