

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, October 8, 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)
	Jason M. Porter	Deputy Director (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)
	Anna Maria Stonerock	ADOSH (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 or participation were Chi Nguyen (Albertsons Companies); Bill Hughes, Joey Belnap and Oscar Roether (Pacific NW LLC, dba Hilton Cabinets); Jeff Nordstrand (Alliance Safety LLC); Richard Owen, Barry Robertson, Mike Wallace, and Kris Kline (CoreCivic of Tennessee LLC dba Florence Correctional Complex); Ashley Brightwell (representing United Parcel Service); Gina Famoso, Donna Mc Naughton, and Debbie Morris; Anthony Hannan and Charles Keller (representing Schuff Steel Company); and Shanlie Blair (Snell & Wilmer).

Approval of Minutes of October 1, 2020 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the October 1, 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. 2CC19/20-0132 Arizona's Heating & Cooling Doctors LLC - \$1,000
2. 2CLP20/21-0046 Choyal Landscaping LLC - \$1,000

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

1. Albertsons Companies, Inc.

Commissioner LeMarr moved to approve the items on the Consent Agenda 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.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL-1920-0327 Mortimer Farms, Inc.

Ms. Padgett summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-233(A)(3). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$100.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of \$100.00 to Mortimer Farms, Inc. 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 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.

CoreCivic of Tennessee, LLC dba CoreCivic –
Central Arizona Florence Correctional Complex
115 N Pinal Pkwy
Florence, AZ 85132

Fatality/Accident
Years in Business: 26
Empl. Covered by Inspection: 872

Site Location: 115 N Pinal Pkwy
 Florence, AZ 85132
Inspection No: T3633 -1488969
Inspection Date: 08/19/2020

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for CoreCivic of Tennessee, LLC dba CoreCivic – Central Arizona Florence Correctional Complex.

Vice Chair Hennelly and Mr. Atencio discussed that the General Duty Clause and other applicable standards, such as PPE and respiratory standards are used to investigate COVID cases. In this particular case the general duty clause and PPE standards applied, but not the respiratory standards. The employer instituted a mask requirement around March 2020. Mr. Atencio provided the four criteria of a General Duty Clause investigation, and how those criteria were met in this specific case. Additionally, Mr. Atencio explained that the Safety officer report was for notification purposes, and the CoreCivic investigation report was more thorough.

Vice Chair Hennelly and Mr. Atencio further discussed how the General Duty Clause with the CDC guidelines and Arizona Department of Health Services guidelines with respect to COVID 19 in this kind of facility and also how they are applying safety protocols to this situation. Mr. Atencio explained the four parts to the General Duty Clause to recognize the hazard and their safety steps taken to prevent exposure.

Vice Chair Hennelly and Mr. Atencio further discussed the synopsis of the citation and the details of the investigation which included employer investigation conducted by the Safety Officer and the report conducted by CoreCivic.

Vice Chair Hennelly noted that it is tough to determine whether COVID was contracted at work, but Mr. Atencio noted that Federal OSHA has been clear and all states have been on the same guidance, that whenever there is a case, it is not always easy to conduct because it come down to where was this person and tracking a person every minute of the day outside of work.

Vice Chair Hennelly noted the employer complied with the General Duty Clause, putting aside the specific ones that might apply to some to certain areas of the facility, that the employer complied with the General Duty provision overall and even though it might seem likely to some people that more likely than other possibilities that the person probably got it there, we cannot reach the standard to determine that he actually contracted the illness in the facility and if he did, they had implemented the protocols that were appropriate. Mr. Atencio agreed.

Chairman Schultz and Mr. Atencio reviewed the form that CoreCivic used to determine work relatedness and reviewed the nine questions on the form to narrow down the exposure.

Mr. Atencio noted CoreCivic has a policy and procedure for single point of contact process document and will be using it whenever they do their investigation which is very exhaustive and goes into leave, when people are notified, what to do, how to start the document, confirmed cases in the area and more information, and they have a lot of programs in place to ensure as much as possible that COVID is not in the workplace during the regular work shift. It included the mandatory use of masks, how to clean them, and updated safety and health policy.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Kline, the complex warden for CoreCivic Central Arizona Facility noted they had no questions or comments and thanked those who came out and gave a fair inspection.

Mr. Robertson, from the corporate office of CoreCivic, stated they implemented many programs and processes for CoreCivic throughout the country starting back in February/March for preventive measures. They have tried to be very proactive in their stance, and included about 40 people in the corporate office who have been instrumental and tracked COVID in the company, and are not perfect but the staff and facilities nationwide with the tools and support they need to get through this very difficult situation in the prison and correctional facilities.

There were no other comments.

Chairman Schultz asked the Commissioners if anyone disagreed with the recommendation from ADOSH to not issue any citations as they did not violate any OSHA Standards or the General Duty Clause.

Hearing none, the Commission took no action.

Schuff Steel Company
3003 N Central Ave Ste #700
Phoenix, AZ 85012

Fatality/Accident
Years in Business: 43
Empl. Covered by Inspection: 8

Site Location: 580 S 143rd Ave
Goodyear, AZ 85338
Inspection No: B8139 -1472843
Inspection Date: 04/20/2020

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for Schuff Steel Company.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Keller noted he had no questions or comments, and noted that Mr. Hannan may have a comment.

Mr. Hannan noted this was a tragic accident and a great loss, he knew the individual for 16 years when they started building the Cardinals Stadium. It is not something that happens every day. He wanted to thank the Commission for their time and Mr. Atencio and his staff for the professionalism, the human part of it dealing with this situation.

There were no other comments.

Chairman Schultz asked the Commissioners had any comments with the recommendation from ADOSH to not issue a citation or penalty. They will provide a letter of recommendation to Schuff Steel Company.

Hearing none, the Commission took no action.

United Parcel Service, Inc.
3002 E Old Tower Rd #500
Phoenix, AZ 85034

Fatality/Accident
Years in Business: 113
Empl. Covered by Inspection: 160

Site Location: 3002 E Old Tower Rd #500
Phoenix, AZ 85034
Inspection No: V0936 -1484590
Inspection Date: 07/22/2020

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for United Parcel Service, Inc.

Vice Chair Hennelly and Mr. Atencio discussed backup indicators on the vehicles, which they did not have and were not required to have them.

Chairman Schultz noted he had a similar question and noted that the driver was using his side mirrors and the yellow strips to guide his way back into the bay, and his question was similar, if they had back up cameras to visualize what was behind you when backing up. Mr. Atencio noted from time to time they enact a spotter and have a program on how to use a spotter, but only when they have multiple trucks backing up and coming in and out. At the time there was not that many based on the

information that was received, and did not have to necessarily use a spotter and it was not a full requirement. It would be used to help out the drivers in and out if it was necessary.

Chairman Schultz noted the time was 5:12 a.m. on July 22, assumed it was already light out by that time and should not have been an issue with visibility for either the victim or the driver. Mr. Atencio noted it was and referred to photograph number 1 and noted the dock was an open area with pneumatic tables that lift up and down.

Chairman Schultz noted the picture depicts only a couple of units and asked how many bays and the activity level at this time. Mr. Atencio did not have that information readily available and would search for the information. He noted that the Compliance Officer asked if it was typical and did not elaborate how many or if it was a heavy load, it was just normal routine.

Chairman Schultz noted he was continuing off his comment of using a spotter in high volume operations and if there would have been a reason to have a spotter.

Chairman Schultz asked if there were other questions from the Commissioners.

Ms. McNaughton stated she was a family member. She stated that based on what was just said, she asked if OSHA reviewed any of the police reports in the course of their investigation.

Mr. Atencio noted he would have to check, but traditionally they do look at police reports from time to time based on the activity and if there is one or not.

Ms. McNaughton noted that based upon the police reports and some interviews and as far as the activity level, Scott's truck was in five and another guy interviewed was in seven and he indicated that it was quite busy and the driver that backed into Scott was interviewed and was going back and forth and there were 20 trucks they were doing in the morning and there were trucks waiting and was quite busy and did not know about the spotter thing, but it certainly was busier than ADOSH thinks. It would be good if ADOSH would read the police reports and see the two guys on top of the deck, after the fact that it happened and saw him pinned. The police interviewed the driver, and driver in bay seven who was not moving but ready to go and asked if he was good to go and was told there was trouble in six. The police report might give a little more information on the level of activity and other stuff.

Ms. McNaughton asked if there was any video in the area at the airport or the company has, like any security video. Mr. Atencio noted ADOSH did not obtain any video.

Ms. McNaughton asked about the back-up system and asked about the standard. Mr. Atencio noted the standard for this type of industry is 29CFR1910 and consider the general industry standards exactly like Federal OSHA and adopted by Arizona.

Ms. McNaughton noted the family is trying to gather information to understand what happened and was hoping for video, and there is no video. She asked if ADOSH knew where Scott was standing in bay 6 and how close to bay 5, the middle, to the right? Mr. Atencio noted that ADOSH did not know that. Ms. McNaughton asked if the bay 6 driver was actually in his lines when he backed up. They are trying to put it together, what happened, when and how

Chairman Schultz noted she can probably get much more information from the police report because that investigation would have been done as close to the time of the incident as possible, our

investigation is done after the fact and we would not know exactly where he was standing or exactly who else was around, and have to rely upon the interviews that our safety officers conduct. He noted it was not terribly helpful but wanted her to understand that it is different than when we are there doing our investigation and trying to determine whether standards have been violated verses what the police who are investigating it at the time of death.

Ms. McNaughton noted the police do not have any supervisor interviews and no information and she is trying to find out what supervisors were on, who was assigned to unload the truck, was he there and how does she find that information out if it is not in the police report.

Mr. Testini confirmed with Mr. Atencio that the policy is for ADOSH to send a copy of the report when it is finished to the widow. Mr. Atencio noted to Ms. Morris that there is a letter will be sent out at the closure of the commission meeting and will let her know how to get a copy of the report and the file. If there are additional questions, that they can generally answer, the supervisor and compliance office will try to help as best they can.

Ms. Famoso, noted she is the daughter and had a question regarding the spotter situation. UPS said that they did not need a spotter due to the inactivity or the slow pace of what was going on, is that something based off of their own internal of what they are doing and an agreement between the airport and safety and something that needs to be looked into the airport that there is a standard that UPS needs to meet in regards to having a spotter there or whether there was one truck or twenty trucks. Is there some way to get some sort of agreement between the airport and UPS? The airport standards are for UPS working on their premise? Mr. Atencio noted they could go to the City of Phoenix and request that from them, ADOSH does not have anything in the report that resembles that.

Ms. McNaughton asked about the report that Ms. Morris is going to get if it was basically the proposed report or something different. Mr. Atencio noted it was the entire file and will be different.

Ms. McNaughton asked if there would be transcripts of interviews with the supervisors. Mr. Atencio noted that interviews will be provided unless considered sensitive by OSHA.

Ms. McNaughton asked if the interviews would include any information on the who, what, where, when and why of the moment. Mr. Atencio noted she would have to wait for the report.

Chairman Schultz noted that after they receive the report, if they have questions to get those questions to Mr. Atencio, they will answer whatever questions that they can answer within confidentiality issues and the OSHA regulations. He noted that the Commission appreciated their joining and very much want to help and know how tragic this situation is and why we work to do as thorough an investigation as we can, but the investigation is limited to whether or not there are violations of OSHA standards and not beyond that, and try to assist where we can.

Ms. Famoso asked if the Commission Meeting is recorded.

Mr. Testini noted that when we are done with these public meetings, there will be minutes produced and they can submit a public records request and receive copies of the Minutes as the official transcript of today's meeting. Mr. Porter noted they can also request a copy of the audio if they would like and would need to submit a public records request.

Ms. McNaughton asked for Mr. Atencio's contact information. Mr. Atencio noted the information will be included with the report.

Chairman Schultz also noted that Ms. Brightwell, attorney for UPS, was on the call and if she had any comments. Ms. Brightwell noted she did not have any questions or anything to add and expressed her condolences to Mr. Morris' family and thanked everyone for their time today.

There were no other comments.

Chairman Schultz asked the Commissioners if they had any comments or questions concerning the ADOSH recommendation that there were no violations of Arizona safety laws observed or documented, no citation and no proposed penalty.

Hearing none, the Commission took no action.

Pacific NW, LLC dba Hilton Cabinets	Complaint
518 SW11 St	Years in Business: 9
Phoenix, AZ 85034	Empl. Covered by Inspection: 58
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Site Location:	518 S 16th St Phoenix, AZ 85034
Inspection No:	K6582 - 1475641
Inspection Date:	05/18/2020

SERIOUS – Citation 1 - Item 1 –

- a) 518 S 16th St., Phoenix, AZ 85034: A 4"x4" 120 volt electrical junction box was damaged and had an open face with energized wires near a walkway. 29 CFR 1910.305(b)(2)(i)
Div. Proposal - \$1,040.00 Formula Amt. - \$1,040.00

SERIOUS – Citation 1 - Item 2 –

- a) Northwest shop area: No machine specific de-energizing procedures were implemented or established for employees who service or maintenance on the Delta UNISA W 1 O" tilting arbor saw, serial numbers unknown.
- b) Shop area: No machine specific de-energizing procedures were implemented or established for employees who service or maintenance on the Delta UNISA W 1 O" tilting arbor saw, serial numbers unknown. 29 CFR 1910.147(c)(4)(i)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 –

- a) Warehouse: One employee operating the Yale brand forklift, model number unknown and serial #A875B03527W, had a damaged load rest.
 - b) Warehouse: One employee operating the Yale brand forklift, model number unknown and serial #A875B03527W, was missing a seatbelt. 29 CFR 1910.178(q)(l)
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00
- TOTAL PENALTY - \$4,560.00 TOTAL FORMULA AMT. - \$4,560.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Atencio corrected the penalty amount for Item 1 to \$1,040. He also noted there was a duplicate entry for Item 3 so there were only two instances instead of three, but the penalty amount would remain the same.

Commissioner LeMarr asked about the quick fix adjustment in the calculation for Item 3 and noted the photographs number 8, 9, and 10 would indicate that the forklift had been repaired and/or seat belt added. Mr. Atencio noted it should have been added. Commissioner LeMarr noted that when a motion is made, he will correct it.

Mr. Nordstrand asked Mr. Atencio whether the gravity based penalty for the forklift was based on three items and if it made a difference now that there are only two items. Mr. Atencio answered that taking one item off still leaves it at as a "lower lesser" not a "high lesser" or "high gravity". Mr. Nordstrand appreciated everything, it is a safe company and brought in Alliance Safety because of a disgruntled employee and they did find some items that they had the ability to improve themselves and moving forward they will all address it together with ADOSH as a team.

Commissioner LeMarr moved to amend the citation and proposed penalties. Items 1 and 2 would remain as proposed and Item 3 would be amended to include a 15% Quick Fix Discount for a total penalty of \$4,015.00. 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.

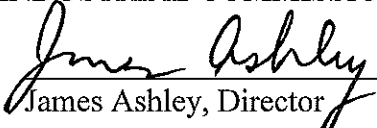
Ms. Dimas confirmed Commission meeting dates through December 2020.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly 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 2:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:

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Kara Dimas, Commission Secretary