

MINUTES OF THE NC DEPARTMENT OF LABOR
ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

May 2, 2023

The NC Department of Labor Advisory Council on Occupational Safety and Health met in person in Raleigh, NC at the OSH Lake Boone Trail office on Tuesday, May 2, 2023.

The following Council Members were in attendance: Linda Andrews, Robert Carruth, Jessica Foster, Ron Ingerick, Debbie Rogers-Lowery, Brian Polk, and Roger Richards. Russell McCue participated via Lifesize. The following Council Members were absent from the meeting, Gloria Bone-Gunther, Corey Hill, and David Leonardi.

NCDOL staff in attendance were: Commissioner Josh Dobson, Chief of Staff Scott Mabry, OSH Director/Deputy Commissioner Jennifer Haigwood, Assistant OSH Director Paul Sullivan, West Compliance Bureau Chief Lee Peacock, ETTA Bureau Chief Wanda Lagoe, Consultative Services Bureau Chief Kevin O'Barr, ASH Bureau Chief Beth Rodman, Director of Governmental Affairs Julie Ryan, General Counsel Jill Cramer, Director of Communication Erin Wilson, Executive Assistant Susan Mullins, OSH Executive Assistant Betty Morgan.

The meeting began at 10:00 a.m., and Chair Debbie Rogers-Lowery welcomed everyone and turned the meeting over to OSH Director, Jennifer Haigwood. Jennifer noted that since Julie Ryan and Scott Mabry needed to leave the meeting early, she would turn the floor over to Julie to discuss the agency bill currently in legislation.

Julie began by discussing Senate Bill 542—the NCDOL Omnibus Agency Bill, which had been passed by the Senate 48-0 the previous evening. She stated that there were eight sections in the bill but would focus on the two sections which center specifically on OSH. The first section she discussed was section 6.1 (G.S. 95-137, Issuance of citations) which includes modernizing the statute to provide an electronic option to issue citations and for employers to file responses and communicate with the OSH Division.

Normally communication is strictly in writing and mailed through the postal service or certified mail delivery relying on green cards, which has become increasingly unreliable. The electronic option, with the employer's approval, allows communication via email, in lieu of or in addition to sending notifications through the postal service. The second section 8.1 repeals Article 22, Chapter 95, the Safety and Health Programs and Committees Act, which is a program under the OSH Consultative Services Bureau. The statute was enacted in 1992 after the Hamlet fire, and it requires employers with 11 or more employees with a workers' compensation experience rate modifier (ERM) of 1.5 or greater, to provide the establishment of a safety and health committee. The ERM is a workers' compensation rate number. It is an actuarial number and not a good indicator of health and safety. NCDOL would like to remove that statute and is looking at different metrics that more accurately measure health and safety issues, such as the ITA (Injury and Tracking Applications – OSH 300 logs), and the NCDOL Strategic Plan, which identifies high

hazard industries. Lastly, Julie discussed a joint venture with Communications and Governmental Affairs to provide industry outreach. The group met with the Chamber of Commerce, the NFIB, the Manufacturers Alliance and the Home Builder's Association and provided them with information on our Consultative Services Bureau. The members were receptive, and many agreed to send out the information in their external newsletters. Julie also discussed the agency budget request, in which there were two items specific to the OSH Division. She reported that the department is asking for a 20% raise for compliance officers. Since there is a current vacancy rate of 27% for OSH compliance staff, we are hopeful that the salary increase will offset this trend. The other is an OSH legal services funding increase to restore one attorney position that was removed from the labor section of the Attorney General's office in 2017. The House budget came out in early April and there was an across-the-board legislative salary increase for all state employees of 7 ½% over two years, which would be 4.25 for the first year and then 3.25 for the second year. A separate bill was filed to add 25 new safety and health compliance officer positions. Debbie questioned why if OSH has a 27% vacancy rate, was there a request to add 25 new compliance positions? Julie replied that NCDOL is not asking for the positions, it was a bill that was proposed by several legislators. NCDOL is only asking for a 20% salary increase for compliance staff. Debbie said she feels badly for the existing Compliance staff trying to keep up with all the cases with the current vacancy rate.

Jennifer went over housekeeping issues for the meeting and asked everyone to introduce themselves, beginning with the council members followed by NCDOL staff.

Commissioner Dobson began by saying he appreciates the members' time and service to the council. He next mentioned the House budget had a proposed increase of 7- 1/2% for all state employees. However, it is his intuition, after spending eight years in the General Assembly and Labor, that 7 ½ % will be the floor and the Senate budget will be better than that for state employees. His hope is the Senate will get to 10%. He thinks that if NCDOL can get to 10% there will be movement towards getting some of the vacancies filled, and then some additional positions can be added. He believes that a 10% increase would be the baseline for moving the needle forward to recruit and retain the best candidates. The Commissioner and some of his staff participated in the Workers Memorial Day service on the capitol grounds. He said that he is proud of the way the NCDOL team has tried to show a good faith effort to both the business and the advocate communities to find common ground.

He is very appreciative and honored to work with all 360 employees at NCDOL who go to work each day with little fanfare to keep North Carolina safe. The Commissioner went on to share his reasons for not running for reelection in 2024. He stated that he began his career in government politics in 2010 when he ran for county commissioner. He thinks that politics are very different now and as a result, some of the men and women that he most admired have become outcasts in both the democrat and republican parties. He stated that he doesn't have the sharp elbows to run for a higher office, nor does he have the inclination to do so. He said he would rather spend the next two years of his leadership making improvements and fulfilling the commitments to the stakeholders and NCDOL instead of campaigning for reelection. He looks

forward to the next 20 months and the good work to be done with the council and the department.

Debbie reported that the Toys for Tots event for 2022 was the most successful EVER despite rough economic times. 1,078 toys, and \$4,300 in monetary donations were collected! Debbie also shared that she has had the opportunity to attend several safety award banquets that are held throughout the state and the Commissioner always commends the NCDOL staff during his remarks. She also credits him for doing a great job despite beginning his leadership role at the beginning of the pandemic when he likely couldn't see the faces of his staff due to masking mandates. She also shared a personal anecdote about an interaction she had with an employer who she conducts inspections for each year. Debbie had watched his son grow up and graduate from high school, and when she saw him again recently, she asked him which college his son was going to attend, and he seemed a bit embarrassed and said his son was choosing to be a welder instead of attending a 4-year college. Debbie regretted the assumption she had made about him attending a traditional college, as she knows that a welder can go on to have a successful career and make a great salary with his welding rig. She said she saw a segment on the news recently promoting community colleges and hands-on trades, but unfortunately, the news segment ended by saying that getting a 4-year degree is always best. Debbie then turned the meeting over to Commissioner Dobson to talk about the proposed heat stress standard.

The Commissioner began by thanking the committee, chaired by Julie and Jennifer. He said that Paul, Wanda, and several others had put in a lot of work and time to research a potential heat stress standard. He said the feedback concerning the proposed standard has been interesting with some people in favor of and some against. There were those on the advocacy side who were appreciative of the work, and other advocates who felt it should be stronger and wanted to wait for the federal government and follow their lead. On the business side, some thought it was terrible, and others felt that NCDOL should get out front of the federal government and work on it from the state standpoint. So, the feedback has been varied and currently it is in a holding pattern and guidance and additional feedback is still being collected. The federal government is working on developing one as well and it will likely be much more substantial than a simple advisory or recommendation.

Wanda Lagoie presented the OSH update for the end of the second quarter (see attachment). After the presentation Jennifer commented that there was an earlier slide concerning podcasts and she wanted to have Jessica Foster talk a bit about the podcasts she took part in concerning women in construction. Jessica said the podcast platform was offered to her during an earlier conversation and she felt it was a good way to share different perspectives and encourage females, and those of different origins, and upbringings to enter into safety and trade careers in North Carolina. One of the podcasts interviewed four women in construction: an electrician, a finisher, a project manager, and a business manager. The conversation was fluid, and they were able to talk about some of their challenges as well as their victories.

Jennifer thanked Wanda for always putting together her presentations and praised ETTA for the many roles they play in the OSH Division including standards, training & safety awards. She has learned a lot in the last eight months about the bureau that she had not previously known. Debbie says back in her 8th grade school days girls would take typing and shorthand because many times their opportunities were limited to secretarial work. She is thankful that it is different in today's world.

Lunch break

Paul Sullivan led into the introduction of a fatality investigation case, (see attachment.) He said that he likes to present a case at every meeting to give the council a glimpse of what NC OSH does and some of the challenges they face. This case was from 2019 in the Eastern Bureau and was settled in 2023. In his current role he had the opportunity to look at the case for the first time during the settlement negotiation and was impressed with the work that had been done by Nicole Brown's group. He said he would be talking a little about the accident details, the investigative activities, some possible violations and citations, post citation activities and finally some abatement activities.

After the presentation Paul said that the most important objective for compliance is to get the correct citation and make sure the abatement is complete, so it doesn't happen again. NC OSH has one of the longer lapse times from contestment to first order decision in the country. However, that's considering we do about 2,000 inspections a year with a small contestment rate of about 4-4 ½%. Jill Cramer stated that we just added a fifth attorney and are in the process of posting for another position that will hopefully be filled in a month or so. She said the legal team consistently has between 200-215 cases. Paul stated that many people have said that with the increase in penalties NC OSH will get a lot more contestments, but the administration has made it clear to the supervisors that the goal is to work with the companies when penalties are an issue, like offering a payment plan, or a reduced penalty.

Jessica asked Paul what the culture was like in the grain facility where the accident occurred. Paul said he wasn't involved in the investigative process. However, when reading through the informal conference notes from the supervisor, they were very complimentary of the employer and their attitude. The company had done extensive training with the fire department prior to the fatality concerning rescue procedures, but they didn't have any procedures to prevent the accidents from occurring. He stated that East Compliance did a great job on the case and when he got involved in the negotiation the details were in place and he was able to fight for everything that was already included in the file. Debbie asked what would put a company on the OSH radar for a recheck. Paul said that OSH has a fatality reinspection program, so that anyone who has had a fatality with a final order citation will have a reinspection. OSH is updating its program to mirror federal OSHA's Severe Violator Enforcement Program. OSH is not adopting the federal program verbatim however OSH is making changes that will be equivalent or better than federal OSHA.

Jennifer introduced the five-year strategic plan presentation. She stated that part of the cooperative grant agreement for federal OSHA is a five-year strategic plan which guides OSH programmed planned activities. Many of those goals are included in Wanda's presentations. The current plan expires on September 30, 2023, so the management team met in March to assess how the division performed in the previous five years; looking at the special emphasis areas and whether there were new areas that needed focus or if there were some on the list that had improved enough to be removed. She said that Paul would share an overview of the framework for the new five-year plan. Also, at the end of the presentation, they would share some creative ways that the division has been tackling the vacant positions. Paul presented the Five-Year Strategic Plan Goals.

Debbie opened the floor for council members to ask questions. Jessica asked if there were any scaffolding case fatalities that are closed that could be discussed. Paul said the Charlotte case is still active. Jennifer said there was one in Raleigh in 2015 and Paul said Scott would be able to talk in depth about that one at the next meeting. Jennifer said there is a lot of interest in the Charlotte fatality which happened four months ago, and that OSH needs to have any citations issued by the six-month mark. Lee had a meeting concerning the case and said that the compliance officer in charge was doing a great job looking at all the pieces of the puzzle. There will be an update meeting very soon to look at the ultimate cause, and if there will be citations issued. Jessica commented that right after the Charlotte fatality her group held a stand-down, and she thinks workers want some additional tangible guidance. Lee said the contestment will probably be a several year process internally, with the possibility of a third-party lawsuit. So, there may be a lot of legal issues and NCDOL will not be able to release a lot of that information until closer to that time. Paul stated that we regularly cite for scaffolding violations, in fact there have been several hundred over the past 3 or 4 years.

Linda shared that she attends the Gold Star Grower luncheon every February and each year it gets larger. She said the farmers always share their compliments of ASH and what Beth and her team are doing for them. She said it was exciting for them as an industry to see the program grow and all the activities and resources that are available to them. She gave a big shout out to Beth and her team and said she is very well respected by the farmers.

Jennifer said that we are happy to come up with the agenda for each meeting, but members should feel free to share any subject they may be interested in hearing about. Ron Ingerick said that a big problem he sees are employees who are afraid to speak up and make complaints about the safety of their workplaces. He asked if there was anything OSH could do to help ease employees' fears about speaking up concerning safety issues. How can the word get out to employees that they won't be fired, and that they are protected? Jennifer responded by saying the complaint process can be handled any number of ways and there is the retaliatory discrimination act which specifically covers these types of cases. He feels like this would be a good area to focus on to educate our work groups on the process of making a complaint and the retaliatory protection process. "Help us help you." Jessica asked if maybe an initiative or poster campaign would be appropriate. Paul said it is difficult too because OSH is inundated with complaints; they are getting about 3,500 complaints processed a year in addition to the

accidents and most of them are coming from people who are not current employees. For it to be a formal complaint to be assigned for inspection, the complaint needs to allege that an imminent danger or an OSHA violation has taken place. He said NCDOL is partnering with the National Black Workers Center, and they are going to meet with their constituents at different food manufacturing facilities and tell them about the process of contacting OSHA if they have any safety concerns. They will also reiterate that they are protected under REDA when making complaints. Wanda suggested doing a podcast. Ron said that podcasts are reaching a lot of people across the country, especially concerning derailments and bus assaults. Jennifer said we have different options for putting together some marketing materials and podcasts to address these issues and would be happy to work on them together. Kevin O'Barr said there are similar problems sometimes with getting employers to contact Consultative Services. He stated he recently visited a SHARP site who was initially very hesitant to call CSB and now they are very pleased with the results—everyone is healthy, and they have a low turnover rate. He stated that when OSH partnered with a general contractor it gives the consultants access to the second and third tier subs who would never call, so finding a partner to come in and give CSB access to the people has been fantastic.

There was an additional comment from Brian who said he really enjoys the presentations where applying a standard is discussed. Being a science and numbers-based person, he really enjoys seeing how that comes together.

Chair Rogers-Lowery adjourned the meeting at 1:05, and said she looks forward to seeing everyone on November 1st in Asheboro.