

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 25, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	William Warren	ADOSH Director
	Steven Black	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Jennifer Ward with Employers Council (representing Arizona Institute of Urology); Anya Cameron with Arizona Grain, Inc.; John Miller, Brian Gafford, and Bret Harris with Milling Machinery, Inc.; Dave Howard and Martha Yamudio with Premiere Risk Management; Janell Youtsey with Arizona Association Lawyers for Injured Workers (“ALIW”); and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of January 18, 2018 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the January 18, 2018 regular session meeting. Commissioner Orchard and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, 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 Requests for Renewal of Self-Insurance Authority.

1. City of Scottsdale

Commissioner LeMarr moved Consent Agenda Item (a)(1) (City of Scottsdale) forward to the regular agenda. There were no remaining items on the Consent Agenda.

Discussion and Action regarding Requests for Renewal of Self-Insurance Authority.

1. City of Scottsdale

Mr. Miller (with Milling Machinery) indicated that he, Mr. Gafford, and Mr. Harris could answer questions.

Commissioner Orchard, Mr. Gafford, Mr. Harris, and Commissioner LeMarr discussed Milling Machinery's abatement efforts, including development and implementation of a new computer-based safety training system and a cloud-based solution that will contain all safety related policies, procedures, and safety-related documentation.

Chairman Schultz and Mr. Harris discussed Milling Machinery's lockout/tagout procedure for the equipment. Mr. Harris noted the lockout/tagout procedure had previously been implemented, but was not followed.

Commissioner Orchard and Mr. Gafford discussed the status of the injured employee.

Commissioner Krenzel, Mr. Gafford, and Ms. Cameron discussed whether the machinery had been altered or if safety equipment had been removed.

Mr. Miller discussed Milling Machinery's use of Arizona Grain's facility and the circumstances leading to the incident.

Commissioner Orchard and Mr. Porter discussed whether the Arizona Field Operations Manual ("FOM") permits reductions for violations involving a fatality or serious injury and whether the injury was a "serious" injury. Mr. Warren noted that the meaning of "serious" injury under the Arizona FOM included amputations. Commissioner Orchard requested clarification regarding the extent of the amputation. Mr. Gafford discussed the extent of the injury.

Commissioner Krenzel and Mr. Gafford discussed the costs of the new safety solutions implemented by Milling Machinery.

Mr. Warren, Chairman Schultz, and Commissioner Orchard discussed the Commission's role in setting penalties and how the proposed penalty would be different under the OSHA FOM.

Based on Milling Machinery's abatement efforts and good faith (including implementation of a comprehensive training program), Commissioner Orchard moved to reduce the proposed penalty for Citation 1, Item 1 from \$5,000.00 to \$4,000.00, for a total proposed penalty of \$4,800.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Mr. Warren and Mr. Gafford discussed the costs of the new safety solutions implemented by Milling Machinery.

Arizona Grain, Inc.
601 E. Main Avenue
Casa Grande, AZ 85130

Site Location: 38501 W Cowtown Rd.
Maricopa, AZ 85138
Inspection No: B7667-1254918
Inspection Date: 08/25/2017

Referral
Years in Business: 25
Covered by inspection: 2

SERIOUS – Citation 1 - Item 1 – a) Grain Elevator, Flow Passage Transition Segment: Two subcontractor employees performed maintenance work on a grain elevator without fully implementing lockout/tagout procedures with no specific procedures developed for the grain elevator that would have prevented the unexpected release of energy thus amputating an employee's finger-tip. (29 CFR 1910.147(c)(4)(i))

Div. Proposal - \$5,000.00	Formula Amt. - \$1,250.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$1,250.00

Mr. Warren summarized the citation and proposed penalty and discussed application of the multi-employer citation policy.

Commissioner LeMarr asked Ms. Cameron about Arizona Grain's abatement efforts. Ms. Cameron reserved her right to object to the citation and penalty, alleged that the Compliance Officer had not conducted a closing conference, and expressed concern with the inability of Arizona Grain to provide feedback regarding the proposed citation and penalty in advance of the Commission meeting. Ms. Cameron discussed Arizona Grain's relationship with Milling Machinery, knowledge regarding heavy machinery possessed by Arizona Grain's employees, and the company's lockout/tagout program.

Mr. Warren discussed the closing conference conducted by the Compliance Officer.

Commissioner Krenzel, Mr. Porter, and Mr. Warren discussed whether another closing conference could be conducted, the deadline for issuance of a citation, and the typical inspection process.

Chairman Schultz and Ms. Cameron discussed whether Arizona Grain was responsible for maintenance of the machinery.

Mr. Warren discussed the involvement of Arizona Grain's facilities manager at the time of the incident and his responsibility for overseeing the maintenance. Mr. Porter discussed the multi-employer citation policy and the criteria applicable to a "controlling employer."

Commissioner Orchard discussed the typical inspection process, including the Commission's involvement.

Commissioner LeMarr stated his preference for remanding the matter to ADOSH for further consideration, but noted the imminent deadline for issuance. Based on Arizona Grain's abatement efforts and good faith, Commissioner LeMarr moved to reduce the proposed penalty for Citation 1, Item 1 from \$5,000.00 to \$4,000.00, for a total proposed penalty of \$4,000.00. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

16-3633-29 - Snyder vs. Arizona Institute of Urology, PLLC

Mr. Warren presented a summary of Ms. Snyder's complaint, Arizona Institute of Urology's response, and the findings of the ADOSH investigation. Mr. Warren 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).

Commissioner LeMarr, Mr. Black, and Mr. Warren discussed ADOSH's consideration of the proximity between the date of the actionable safety complaint and the date of termination and evidence supporting the belief that the complaint was not a substantial reason for the termination.

Mr. Porter reviewed the required elements for a violation of A.R.S. § 123-425.

Chairman Schultz and Mr. Warren discussed the outcome of ADOSH's partial inspection of Arizona Institute of Urology.

Chairman Schultz, Commissioner Orchard, and Commissioner LeMarr commended Mr. Black on his work.

Ms. Ward noted that she agreed with ADOSH's recommendation and stated her appreciation for the work of Mr. Black.

Commissioner LeMarr moved to accept the recommendation of ADOSH to not pursue Ms. Snyder's discrimination complaint. Commissioner Krenznel seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

16-3633-29 - Snyder vs. Arizona Institute of Urology, PLLC

This agenda item was provisional. There was no need for an executive session.

Commissioner Orchard and Mr. Warren left the meeting.

Discussion and/or action regarding funding of agency positions in the event of a U.S. Government shutdown impacting the Commission's ability to utilize Federal funds.

Mr. Ashley discussed efforts to ensure continued agency operations in the event of a Federal government shutdown, the duration and impact of the recent three-day shutdown, and his expectation that OSHA will reimburse the Commission for amounts paid during the shutdown that would otherwise have been the paid by Federal funds. Mr. Ashley discussed the agency's willingness to cover the Federal portion of applicable employee salaries, for at least three weeks, in the event of a future shutdown this fiscal year.

Commissioner LeMarr, Mr. Ashley, Mr. Porter, and Chairman Schultz discussed action that the Commission could take regarding the issue, including a statement of support.

Commissioner LeMarr moved to issue a vote of support for Mr. Ashley's efforts to ensure continued agency operations in the event of Federal government shutdown. Commissioner Krenznel seconded. Chairman Schultz noted that the citizens of Arizona expect the Commission to continue operations in the event of a Federal shutdown and commended Mr. Ashley on his strong leadership.

Chairman Schultz, Commissioner LeMarr, and Commissioner Krenznel 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 a Benchmark Gemba Walk at the Commission that included staff from the Arizona Department of Gaming, the Office of Strategic Planning and Budgeting, the Governor's Office of Youth, Faith and Families, the Arizona Department of Game and Fish, and the Arizona Department of Revenue. Chairman Schultz and Mr. Ashley discussed the outstanding work performed by Commission staff and the many accomplishments seen over the last 18 months. Mr. Ashley noted that the Governor's Transformation Office had been advised that the agency is happy to host staff from other state agencies on a monthly basis.

Mr. Ashley, Mr. Laky, Chairman Schultz, and Commissioner LeMarr discussed the progress of House Bill 2047, including an amendment to address closely-held corporations.

Mr. Ashley and Mr. Laky discussed press coverage that quoted Chairman Schultz related to the City of Peoria's PEPP certification. Mr. Laky discussed his efforts to reach out to the business community and news organizations regarding the good work of the Commission.

Mr. Ashley and Ms. Dimas discussed current and upcoming activities planned by the Industrial Commission Employee Association.

Mr. Ashley discussed Commissioner Krenzel's upcoming Senate Hearing before the Senate – Commerce and Public Safety Committee.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through March 2018.

Mr. Ashley discussed Commissioner availability for the March 2018 trip to Lake Havasu City.

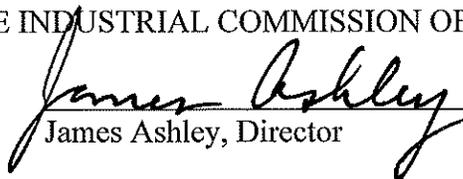
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:10 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary