

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 19, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Stacey Rogan	Assistant Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Michael Mosesso	Chief Administrative Law Judge
	Marilyn Carter	Human Resources Manager
	Jessie Atencio	ADOSH Interim Director
	Steven Black	Compliance Officer (Telephonic)
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Melanie Pate representing Alcor Energy, LLC; Brian Flanagan and Jim Bryan with Cerrudo Services, Inc.; Jason Hendrix with Coastal Wire Co.; and Michael Fassett with Snell & Wilmer.

Approval of Minutes of May 17, 2018, June 7, 2018, and June 28, 2018 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the May 17, 2018 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the June 7, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Krenzel abstained. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the June 28, 2018 regular session meeting 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.

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. Banner Health
2. Dole Food Co., Inc.
3. Heartland Express, Inc.
4. Hyatt Corporation
5. Kiewit Corporation
6. Knight Transportation, Inc.
7. Marriott International, Inc.
8. Purcell Tire & Rubber Company
9. Scottsdale Healthcare Hospitals dba Honor Health
10. Southwest Gas Corporation
11. Swift Transportation Co., LLC
12. Truly Nolen of America, Inc.

Chairman Schultz noted the strong experience modification factor for Dole Food Co., Inc.; Kiewit Corporation; Marriott International, Inc.; Scottsdale Healthcare Hospitals dba Honor Health; Southwest Gas Corporation; Swift Transportation Co., LLC; and Truly Nolen of America, Inc. He commended the companies for their focus on workplace safety. He removed Item (a)(3) (Heartland Express, Inc.) from the Consent Agenda.

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

Approval of Requests for Renewal of Self-Insurance Authority.

Heartland Express, Inc. – Chairman Schultz discussed his concerns with Heartland’s increased experience modification factor.

Chairman Schultz, Commissioner LeMarr, and Ms. Pastor discussed Heartland’s low denial rate, potential causes for the increased experience modification factor, Heartland’s decrease in losses, and the factors that the Commission considers in reviewing a request for self-insurance authority (safety experience, claims handling, and financial security).

Chairman Schultz noted staff’s recommendation to approve the request for renewal of self-insurance authority and that the Commission will be watching for improvement.

Commissioner LeMarr moved to approve the request for renewal of self-insurance authority for Heartland Express, Inc., 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 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.

Coastal Wire Company, Inc.
1108 W. Gila Bend Highway,
Casa Grande, AZ 85122

Complaint
Years in Business: 1.5
Empl. Covered by inspection: 26

Site Location: 1108 W. Gila Bend Highway,
Casa Grande, AZ 85122
Inspection No: T3633 - 1308248
Inspection Date: 04/12/2018

SERIOUS – Citation 1 - Item 1a –

a) Galvanizing tank: The employer did not adequately assess the hazards of the workplace and provide personal protective equipment (PPE) for employees working with the galvanized line. 29 CFR 1910.132(d)(1)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 1b –

a) Galvanizing tank: Employees added zinc ingots and removed dross from the molten zinc tank without face and eye protection from the molten zinc splashes. 29 CFR 1910.133(a)(1)

Div. Proposal - \$0.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

a) Wire drawing area: The Mekosan brand wire drawing machine, model MK8 and serial number 380083, had one section of the dead block guard removed. 29 CFR 1910.212(a)(1)

b) Wire drawing area: The Mekosan brand wire drawing machine, model MK8 and serial number 380083, had the barrier guard at the back of the machine removed. 29 CFR 1910.212(a)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3a –

a) Building A, north truck gate: A propeller axial fan, unknown manufacturer, modal and serial numbers, with a blade diameter of approximately four feet, did not have the blades guarded. 29 FR 1910.212(a)(5)

b) Building A, wire line: A propeller axial fan, unknown manufacturer, model and serial numbers, with a blade diameter of approximately four feet, lacked a guard on the front portion of the fan. 29 FR 1910.212(a)(5)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3b –

a) Building A, north truck gate: A propeller axial fan, unknown manufacturer, modal and serial numbers, with a blade diameter of approximately four feet, did not have the vertical belts and pulleys guarded. 29 CFR 1910.219(e)(3)(i)

Div. Proposal - \$0.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 –

a) 1108 W. Gila Bend Highway, Casa Grande: An employee was not provided lockout/tagout training who was assigned to perform maintenance work on machines and equipment. 29 CFR 1910.147(c)(7)(i)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 –

a) 1108 W. Gila Bend Highway, Casa Grande: One employee operated a Hyster forklift, model #120 and serial number unknown, without training or evaluation. 29 CFR 1910.178(l)(1)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,750.00

TOTAL FORMULA AMT. - \$8,250.00

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

Chairman Schultz and Mr. Atencio discussed the gravity based penalty analysis for Citation 1, Item 1b, and the need for a safe area or barrier to resolve the violation proposed in Citation 1, Item 2.

Commissioner LeMarr and Mr. Black discussed follow-up inspections conducted by ADOSH, zinc sampling that was performed, abatement measures employed by the company, and the absence of abatement related to the guarding violations. Mr. Atencio discussed the results of the zinc sampling and noted that no violation was found.

Chairman Schultz commended Mr. Black on his thorough, diligent inspection and the grouping of violations.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Alcor Energy, LLC
7754 E. Velocity Way Suite #101,
Mesa, AZ 85212

Referral
Years in Business: 9
Empl. Covered by inspection: 3

Site Location: 7754 E. Velocity Way Suite #101

Mesa, AZ 85212

Inspection No: U9805 - 1294066

Inspection Date: 02/07/2018

SERIOUS – Citation 1 - Item 1 –

a) Turbine Testing Area: A 30-gallon portable tank containing methane did not have a relief valve installed to prevent the failure of an explosion. 29 CFR 1910.101(c)

Div. Proposal - \$5,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$2,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, discussed applicable letters of interpretation, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed the relief value PSI rating and whether the consultant tested the valve.

Mr. Atencio discussed the company's active safety and health program and the various types of safety training provided by the company.

Chairman Schultz and Mr. Atencio discussed the scope of the inspection.

Vice Chair Hennelly and Mr. Atencio discussed the length of time the company had been using the tank and relief valve.

Vice Chair Hennelly moved to approve the citation and proposed penalty as presented 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.

Cerrudo Services, Inc. 3582 S. Randolph Ave., Tucson, AZ 85713	Referral Years in Business: 23 Empl. Covered by inspection: 4
Site Location: 3582 S. Randolph Ave., Tucson, AZ 85713	
Inspection No: W6968 - 1289344	
Inspection Date: 01/23/2018	

SERIOUS – Citation 1 - Item 1 –

a) King's Highway Border Patrol Station: Three employees were operating a JLG aerial lift, model #400S and serial number unknown, without training on how to operate the lift. 29 CFR 1926.21(b)(2)

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

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, reviewed the photographs, and discussed abatement performed by the company.

Chairman Schultz, Commissioner LeMarr, and Mr. Atencio discussed the HercRentals rental process, including available training regarding use of the equipment.

Commissioner LeMarr and Mr. Atencio discussed abatement efforts and training provided related to use of the aerial lift.

Mr. Flanagan discussed the background of Cerrudo Services, Inc., the company's exemplary safety record and experience modification factor (.53), the company's commitment to workplace safety, safety programs the company has implemented and designed over the years, the company's significant investment in training, and the absence of prior similar incidents. He discussed the safety stand down following the incident, the company's lockout/tagout policies, and the independent investigation and recreation of the incident performed by the company.

Commissioner LeMarr complimented Mr. Flanagan on the company's rigorous safety program and commitment to workplace safety. Commissioner LeMarr and Mr. Flanagan discussed the circumstances leading to the subject incident.

Vice Chair Hennelly and Mr. Flanagan discussed the status of the injured employee.

Based upon the company's robust safety program, renewed emphasis on workplace safety, good faith, and aggressive abatement, Commissioner LeMarr moved to reduce the proposed penalty for Citation 1, Item 1 by 25%, from \$5,000.00 to \$3,750.00. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge Position, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Judge Mosesso noted there were 12 applicants for the vacant ALJ position. He discussed the interview process, the evaluation of the top candidates, the analysis of the Predictive Index results, and the ranking/qualifications of the candidates. He recommended that the Commission offer the position to Candidate #5, with Candidate #4 serving as a backup.

Chairman Schultz stated that he was impressed with the top candidates, pointing to the Predictive Index results, the strong resumes, and the candidate's writing skills.

Commissioner LeMarr and Ms. Carter discussed whether the candidates were still interested in the position.

Commissioner LeMarr, Chairman Schultz, Mr. Ashley, and Judge Mosesso discussed the applicants' familiarity with the Official Disability Guidelines or other evidence-based treatment guidelines.

Commissioner LeMarr commended Judge Mosesso on his strong hiring assessments and noted that he would defer to his recommendation.

Vice Chair Hennelly, Judge Mosesso, and Ms. Carter discussed the background check that is completed after the interview process.

Judge Mosesso noted that one candidate has an inactive Arizona attorney license.

Vice Chair Hennelly and Judge Mosesso discussed the benefit of having the Commission approve an alternative candidate.

Commissioner LeMarr moved to authorize Judge Mosesso to offer the vacant ALJ position to Candidate #5, and, if unavailable, to Candidate #4. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Judge Mosesso thanked the Commissioners and Director for their consideration and willingness to hire staff when needed.

Discussion and/or action regarding the consideration of appointment of Director of the Arizona Division of Occupational Safety and Health. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1).

Mr. Ashley discussed the importance of the position for the agency and the State. He discussed the extensive knowledge and skills needed in an ADOSH Director. He recommended that Jessie Atencio be appointed as the ADOSH Director.

Commissioner Krenzel moved to approve the appointment of Jessie Atencio as Director of Arizona Division of Occupational Safety and Health 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.

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 that a press release would be issued to announce the appointment of Mr. Atencio as ADOSH Director.

Mr. Ashley discussed plans to have live polling at the Claims Seminar. He noted that the managers had tested the polling technology during a business review meeting. Chairman Schultz discussed the polling technology. Mr. Ashley noted that the keynote speaker on Friday morning will be Senator Karen Fann.

Mr. Ashley discussed efforts to highlight various agency functions within the ADOSH Advocate. He noted that the next edition will highlight the ALJ Division.

Mr. Ashley noted that Henry Darwin, the former Chief of Operations for Governor Ducey, has advanced within the Environmental Protection Agency and is now the Acting Deputy Administrator.

Mr. Ashley and Ms. Carter discussed the Industrial Commission Employee Association ("ICEA") activity. Chairman Schultz noted that it has been a terrific year for the ICEA. Ms. Carter highlighted some past ICEA events and discussed future plans. Chairman Schultz, Mr. Ashley, and Ms. Carter discussed the purpose of the ICEA and how funds raised will be used to benefit employees. Chairman Schultz noted that the ICEA promotes team building and engagement. Mr. Ashley and Chairman Schultz discussed employee participation in the State's charitable contribution campaign. Ms. Carter discussed the current ICEA "Jail and Bail" fundraiser.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the upcoming departure of Michael Hempel, the Manager of MIS.

Ms. Dimas confirmed Commission meeting dates through September 2018. The Commissioners discussed their availability for future meetings.

Ms. Dimas confirmed Commissioner attendance at the Claims Seminar, noting it will be at the Camelback Inn this year.

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 2:43 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary