

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 27, 2017 – 12:30 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	William Warren	ADOSH Director
	Phillip Murphy	ADOSH Assistant Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 12:32 p.m.

Executive Session under A.R.S. § 38-431.03(A)(3) to obtain legal advice regarding December 9, 2016 OSHA Inquiry.

Commissioner LeMarr moved to go into executive session and Vice Chair Hennelly seconded the motion. The Commission went into executive session at 12:33 pm.

The Commission returned to regular session at 12:58 p.m.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The meeting adjourned at 12:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 27, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director
	Jonathan Hauer	Assistant Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	William Warren	ADOSH Director
	Phillip Murphy	ADOSH Assistant Director
	Brian Downen	Compliance Officer
	Gregg Morgan	Assistant Claims Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:01 p.m. Also in attendance were Todd Coyle with Rockabye Toys, Inc.; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of July 20, 2017 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the July 20, 2017 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. Commissioner Orchard abstained. 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. 2C-16/17-2083 Ahsigma, LLC
2. 2C-16/17-2081 AZ Move For Less LLC, dba Arizona Move For Less
3. 2C-17/18-0056 Hair J's Barber Shop
4. 2C-16/17-2086 H & M Remodeling, LLC
5. 2C-16/17-2088 Jalap Inc., dba Menuderia Guanajuato Restaurant
6. 2C-15/16-1252 Mavera Custom, LLC

guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems. (29 CFR 1926.760(a)(1)).

BMB Arizona Steel Incorporated was previously cited for a violation of this occupational safety and health standard 1926.760(a)(1), which was contained in OSHA inspection number 1102941, citation number 1, item number 1 and was affirmed as a final order on 8/29/2016, with respect to a workplace located at 1800 W Watkins St, Phoenix, AZ 85007.

BMB Arizona Steel Incorporated was previously cited for a violation of this occupational safety and health standard 1926.760(a)(1), which was contained in OSHA inspection number 1104045, citation number 1, item number 3 and was affirmed as a final order on 8/29/2016, with respect to a workplace located at 1305 N 27th Ave, Phoenix, AZ 85009.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 1 – 3723 N 75th St, Scottsdale, AZ 85251: One employee who operated a JLG SkyTrak Telehandler, Model 10042, Serial Number 0160023385, and Identification Number XA7E94 was not evaluated at least once every three years. (29 CFR 1910.178(l)(4)(iii)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 - Item 2 – 3723 N 75th St, Scottsdale, AZ 85251: Two employees used the top step of a 5-foot Werner fiberglass ladder, model 56460-02, to access the roof a building and then again to get down from the roof. (29 CFR 1926.1053(b)(13)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Warren summarized the citations and proposed penalties, discussed the company's prior inspection history, and reviewed the photographs.

Commissioner Orchard and Mr. Downen discussed the closing conference and the presence of the foreman during the inspection.

Commissioner LeMarr, Mr. Downen, and Mr. Warren discussed the employees' usage of harnesses, as depicted in Photograph 6.

Commissioner Orchard, Mr. Warren, and Mr. Downen discussed the availability of fall protection equipment and the presence of management at the worksite.

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

Rockabye Toys, Inc. a California Corporation
3636 W Buckeye Rd
Phoenix, AZ 85009

Complaint
Years in Business: 12
Empl. Covered by inspection: 15

Site Location: 3636 W Buckeye Rd
Phoenix, AZ 85009
Inspection No: H9685-1228780
Inspection Date: 04/26/2017

number unknown, which exposed the operator and other employees in the area to the hazardous rotating belt, pulleys, and shaft. (29 CFR 1910.213(a)(9)).

- a) Sanding Area: A guard was not installed to protect the operator and other employees in the area from the hazardous rotating spindle nut located on top of the sanding drum on a Grizzly Industrial Oscillating Spindle Sander, model G1071 and serial number 1343831. (29 CFR 1910.213(p)(2)).
- b) Sanding Area: A guard was not installed to protect the operator and other employees in the area from the hazardous rotating spindle nut located on top of the sanding drum on a Grizzly Industrial Oscillating Spindle Sander, model G1071 and serial number 1332277. (29 CFR 1910.213(p)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 –

- a) CNC Room: Compressed air that was used for cleaning CNC production equipment and work tables during the wood cutting was not reduced to less than 30 P.S.I. as the air being used was set at approximately 85 P.S.I. and the air gun outlet was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).
- b) Assembly Area: Compressed air that was used for cleaning toys during the assembly process was not reduced to less than 30 P.S.I. as the air being used was set at approximately 40 P.S.I. and the air gun outlet was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 7 –

- a) East Wall Sanding Area: A General Electric circuit breaker panelboard, catalog number AEF3422MB, was not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).
- b) East Wall Sanding Area: A General Electric circuit breaker panelboard, catalog number unknown, was not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).

- a) East Wall Sanding Area: The door to a General Electric circuit breaker panelboard, catalog number AEF3422MB, was not closed exposing employees in the area to contact with live parts operating at 480 volts. (29 CFR 1910.303(g)(2)(i)).
- b) East Wall Sanding Area: The door to a General Electric circuit breaker panelboard, catalog number unknown, was not closed exposing employees in the area to contact with live parts operating at over 240 volts. (29 CFR 1910.303(g)(2)(i)).

- a) East Wall Sanding Area: Two unused openings identified as circuit breaker openings 24 and 26, located inside a General Electric circuit breaker panelboard catalog number AEF3422MB, were concealed behind a strip of Dottie brand pipe wrap adhesive tape in lieu of the installation of approved filler plates. (29 CFR 1910.305(b)(1)(ii)).
- b) CNC Room: A knockout was missing on the side of a wall mounted outlet box which exposed employees to live electrical parts and a fire hazard from the wood dust that surrounded the box. (29 CFR 1910.305(b)(1)(ii)).

- c) East Wall Sanding Area: A knockout was missing on the side of a wall mounted outlet box which exposed employees to live electrical parts and a fire hazard from the wood dust that surrounded the box. (29 CFR 1910.305(b)(1)(ii)).
- d) East Wall Sanding Area: A knockout was missing on the top of a wall mounted outlet box which exposed employees to live electrical parts and a fire hazard from the wood dust that surrounded the box. (29 CFR 1910.305(b)(1)(ii)).

East Wall Sanding Area: An electrical junction box located on the wall in the sanding area was missing the front cover which exposed employees to live electrical parts and a fire hazard from the wood dust that had accumulated inside and on top of the box. (29 CFR 1910.305(b)(2)(i)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
TOTAL PENALTY - \$6,450.00	TOTAL FORMULA AMT. - \$6,450.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Chairman Schultz and Commissioner Orchard commended Mr. Downen on his investigation. Chairman Schultz, Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed completed and ongoing abatement efforts.

Vice Chair Hennelly commented on citation groupings.

Mr. Ashley and Mr. Downen discussed the abatement depicted in Photographs 55 and 56.

Mr. Coyle discussed the company's interest in creating a safer workplace, completed and ongoing abatement efforts, the operation of the drill press, and the company's efforts to install appropriate machine guarding. He inquired about the process.

Chairman Schultz discussed the informal and formal settlement process and the Commission's interest in hearing from employers. Chairman Schultz and Mr. Coyle discussed the size of the company. Mr. Coyle discussed the company's interest in creating jobs and supporting businesses in the United States and the circumstances leading to Citation 1, Items 1(a) and 1(b).

Chairman Schultz discussed the Commission's role in assessing penalties and the evidence of good faith and abatement.

Mr. Coyle discussed the origin of, and inaccuracies in, the complaint. Chairman Schultz noted the Commission's interest in ensuring that all items in a complaint are adequately inspected and addressed. Mr. Warren noted the Commission could not divulge information related to the complainant. Mr. Warren and Chairman Schultz discussed the citation groupings.

Mr. Coyle further discussed the company's abatement efforts and the costs incurred. He noted the difficulty of running a small business.

Vice Chair Hennelly and Mr. Coyle discussed company's policy related to the clean-up of wood chips.

Commissioner Orchard noted her understanding of the frustrations of operating a small business. She commended Mr. Coyle for the company's quick abatement and cooperation. She noted that the abatement efforts would potentially prevent a serious injury. Mr. Coyle noted his

interest in workplace safety, the education he has acquired as a result of the inspection, and the benefits that have come from the inspection.

Commissioner LeMarr discussed the citation groupings, the company's dedication to improving workplace safety, and the company's abatement efforts. Based on the company's good faith, he moved to reduce the proposed penalties by 25%, as follows: (1) Citation 1, Item 1 – reduced from \$450 to \$337.50; (2) Citation 1, Item 2 – reduced from \$1,500 to \$1,125; (3) Citation 1, Item 3 – reduced from \$1,500 to \$1,125; (4) Citation 1, Item 4 – reduced from \$750 to \$562.50; (5) Citation 1, Item 5 – reduced from \$750 to \$562.50; (6) Citation 1, Item 6 – reduced from \$750 to \$562.50; and (7) Citation 1, Item 7 – reduced from \$750 to \$562.50, for a total penalty of \$4,837.50. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Request for Lump Sum Commutation. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(2) and (A)(3) to discuss or consider records exempt by law from public inspection or to consult with its attorneys for legal advice.

Chairman Schultz asked if any Commissioner desired to move into executive session. No motion to move into executive session was made.

Gregg Morgan discussed the lump sum petition and staff's recommendation for approval. Chairman Schultz and Vice Chair Hennelly commended Mr. Morgan on the memorandum and supporting information. Vice Chair Hennelly and Commissioner Krenzel discussed their agreement with the recommendation.

Vice Chair Hennelly moved to approve the lump sum commutation, with Commissioners Krenzel and Orchard signing the approval electronically. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, 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 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley welcomed Trevor Laky as the new Legislative Affairs Chief/ Public Information Officer.

Mr. Ashley noted that the Governor had reappointed: (1) Gary Lasham and Stephen Healey to the OSHA Review Board; and (2) Ray Zimmerman to the Special Fund Investment Committee.

Mr. Ashley discussed an Arizona Management System ("AMS") Science Fair that will be held in the Tucson ICA office in September. He noted that the Science Fair would be a great opportunity for state government employees working in Tucson to learn about AMS best practices. He noted that the Science Fair would include the Commission's ADOSH and ALJ Huddle Boards.

Chairman Schultz discussed his recent visits around the State and noted that people are excited about state government adoption of lean management principles and the Commission's improvements and accomplishments. Mr. Ashley discussed the use of lean management in

government and how Arizona is leading the way. Chairman Schultz and Mr. Ashley discussed plans for another Commissioner Gemba Walk.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through September 2017.

Chairman Schultz and Mr. Warren discussed the annual Roofers Meeting in Flagstaff on September 29.

Commissioner LeMarr and Mr. Ashley discussed a planned tour of a manufacturing facility during the Commission's upcoming visit to Payson.

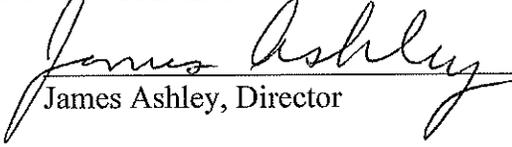
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The meeting adjourned at 1:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary