

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, March 9, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Michael Mosesso	Chief Administrative Law Judge
	Jamie Stacy	Human Resource Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Timothy Gonzales with Ladder Industries; Frank Moreno and Brandan Dodds with the City of Scottsdale; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of February 23, 2017 Regular Meeting and February 23, 2017 Executive Session.

Commissioner Orchard moved to approve the Minutes of the February 23, 2017 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Mr. Porter noted an error on the fifth line of the Executive Minutes – *i.e.*, the reference to A.R.S. § 38-431.03(A)(4). Commissioner Orchard moved to amend the minutes of the February 23, 2017 executive session meeting by striking the reference to A.R.S. § 38-431.03(A)(4) from the first paragraph. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly 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. 2C16/17-0255 Alberto Valenzuela & Maria Valenzuela, husband and wife, dba Tacos El Zamy
2. 2C16/17-0617 G.D. and Sons Construction LLC
3. 2C16/17-1567 Martin Chacon & Cindy Chacon, husband and wife, dba Llantera Hernandez Tire Shop
4. 2C15/16-2475 Myers Sandblasting & Painting LLC
5. 2C16/17-0743 Somos Dental, L.L.C.

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

1. City of Peoria
2. City of Phoenix
3. City of Tempe
4. Glendale Elementary School District No. 40
5. Mesa Unified School District No. 4
6. Roman Catholic Church - Diocese of Tucson

Chairman Schultz highlighted the improved safety performance of the Roman Catholic Church - Diocese of Tucson.

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 Orchard voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Commissioner Orchard recused herself from the City of Scottsdale agenda items.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

City of Scottsdale – Facilities North	Planned	
9191 E San Salvador Dr	Years in Business:	65
Scottsdale, AZ 85258	Empl. Covered by inspection:	30
Site Location:	9191 E San Salvador Dr	
	Scottsdale, AZ 85258	
Inspection No:	H9685-1191911	
Inspection Date:	11/15/2016	

SERIOUS – Citation 1 - Item 1 –

- a) Solid Waste Transfer Station Roof: One Employee was exposed to a fall approximately 30 feet to the ground below while working from the roof of a building performing evaporative cooler maintenance activities and standard railings or equivalent were not provided. (29 CFR 1910.23(c)(1)).
- b) Solid Waste Container Repair Roof: One Employee was exposed to a fall approximately 16 feet to the ground below while working from the roof of a building performing evaporative cooler

maintenance activities and standard railings or equivalent were not provided. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Carpentry Shop: One employee operated a Delta Model 20 Drill Press, catalogue number 70-390 and serial number 95A73002, without a guard in place to protect themselves and other employees in the area from the hazards created by the hazardous rotating chuck and flying chips while holes were drilled into metal stock. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

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

Commissioner LeMarr and Mr. Warren discussed various types of drill press guarding options and the presence of the guard in photograph 11.

Vice Chair Hennelly and Mr. Warren discussed the required height of a parapet wall, the difference between the general and construction standards, photographs 3, 4, 6 and 8, and fall protection options for maintenance work.

Mr. Dodds noted that photograph 12 depicts the plexi-glass guard that was in use. Commissioner LeMarr and Mr. Warren discussed whether the plexi-glass guard was adequate for a drill press. Commissioner LeMarr, Mr. Warren, and Mr. Dodds discussed the use and adequacy of the plexi-glass guard.

Commissioner LeMarr moved to amend the citation and proposed penalties, as follows: (1) delete Citation 1, Item 2 (due to the evidence depicting usage of a guard). Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

City of Scottsdale – Solid Waste North
9191 E San Salvador Dr
Scottsdale, AZ 85258

Planned
Years in Business: 65
Empl. Covered by inspection: 2

Inspection No: H9685-1192036
Inspection Date: 11/15/2016
Site Location: 9191 E San Salvador Dr
Scottsdale, AZ 85258

SERIOUS – Citation 1 - Item 1 –

- a) Container Repair: One or more methods of machine guarding was not provided on a Dvorak Iron Worker machine, model 879 and serial number 10211970, to protect the operator and other employees in the area from hazards created by the point of operation on the two shearing areas and the punch area. (29 CFR 1910.212(a)(1)).
- b) Container Repair: One or more methods of machine guarding was not provided on a Dayton Drill Press, model 3Z568 and serial number EA, to protect the operator and other employees in the area from the hazards created by the point of operation, rotating parts, and flying chips while holes were drilled in to metal stock. (29 CFR 1910.212(a)(1)).
Div. Proposal - \$2,250.00
Formula Amt. - \$2,250.00

- a) Warehouse: A written respiratory program was not established and implemented for one employee using a NIOSH 3M 6200 tight-fitting half mask cartridge respirator that included procedures, medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)).
 - b) Warehouse: A medical evaluation was not provided to determine an employee's ability to use a NIOSH 3M 6200 respirator. (29 CFR 1910.134(c)(1)(ii)).
 - c) Warehouse: One employee who was required to wear a NIOSH 3M 6200 respirator had not been properly fit tested. (29 CFR 1910.134(f)(1)).
 - d) Warehouse: Respiratory protection training was not provided for one employee who was required to wear a NIOSH 3M 6200 Respirator. (29 CFR 1910.134(k)).
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|----------------------------|---------------------------------|
| Div. Proposal - \$1,750.00 | Formula Amt. - \$1,750.00 |
| TOTAL PENALTY - \$7,000.00 | TOTAL FORMULA AMT. - \$7,000.00 |

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

Commissioner LeMarr and Mr. Warren discussed the adequacy of the chain and warning depicted in photograph 4 and usage of the machine.

Commissioner Orchard, Mr. Warren, and Mr. Porter discussed the spray booth depicted in photographs 1 and 2. Commissioner Orchard and Mr. Warren discussed the applicable standard.

Commissioner Orchard and Mr. Warren discussed abatement.

Mr. Gonzales discussed the company's abatement efforts, including hiring of a third-party safety consultant.

Commissioner LeMarr moved to amend the citation and proposed penalties, as follows: (1) the proposed penalties for Citation 1, Items 1-4 be reduced by 15% (*i.e.*, \$1,487.50 per item) as a result of prompt abatement, for a total penalty of \$5,950.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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, selection for 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, the interview questions, and the salary.

Commissioner LeMarr moved to enter executive session to discuss the agenda item and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed. Chairman Schultz announced the Commission would move into executive session.

The Commission returned to regular session at 1:54 p.m.

Commissioner LeMarr moved to direct Chief Judge Mosesso to conduct second interviews on the ALJ Division's top four candidates. Commissioner Orchard seconded the motion. Chairman

Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner LeMarr and Judge Mosesso discussed the broader pool of candidates who applied for the current ALJ positions.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the second annual ICA Day at the Capitol scheduled for March 27, 2017 from 11:00 a.m. to 12:00 p.m. Vice Chair Hennelly and Commissioner LeMarr indicated that they will be able to attend and present awards. Commissioner LeMarr and Mr. Ashley discussed the planned VPP presentation.

Mr. Ashley noted that Jenny Mandeville (from the ADOSH Consultation Division) will be hosting safety training in Sierra Vista on Wednesday, May 24, 2017. He discussed the possibility of scheduling a Commission trip and Commission meeting in Sierra Vista on May 24-25. Chairman Schultz and Mr. Warren discussed the planned training and hopes that it can be used as a model for further outreach and training.

Mr. Ashley discussed the Gemba Walk planned after the Commission Meeting.

Ms. Dimas confirmed Commission Meeting dates through April 2017. Commissioner Orchard noted that she may be unavailable for the April 27 meeting, but might be able to participate by phone.

Chairman Schultz and Mr. Ashley discussed the Commission's outreach plans for Cochise County.

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, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:02 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary