MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 13, 2018 – 1:00 p.m.

Present: Dale L. Schultz  Chairman
Joseph M. Hennelly, Jr.  Vice Chair
Scott P. LeMarr  Commissioner
Steven J. Krenzel  Commissioner (Telephonic)

James Ashley  Director
Gaetano Testini  Chief Legal Counsel
Renee Pastor  Self Insurance
Jessie Atencio  ADOSH Director
Wendy McMillan  Compliance Officer
Yvonne Borunda  Acting Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also present were Darren VandeVoorde, and Ralph Woodward (Bashas’ Inc.); David Parker (Central Arizona Water Conservation District); Dave Howard and Brenda Pinegar (PRM); Fernando Parra, Mayra Zuniga, Adolmo Sandoval and Matthew Wright, Esq. (Nogales USD), and Michael Fassett (Snell & Wilmer).

Approval of Minutes of August 23, 2018 Regular Meeting.

Vice Chair Hennelly moved to approve the minutes of the August 23, 2018 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. 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-17/18-0885  MD Triage, LLC
2. 2C-17/18-0919 - Threadsley, Inc., dba Proven Collection, LLC
3. 2C-17/18-0936 - TNS Enterprises, LLC, dba Campbell's Car Wash
4. 2C-18/19-0080 - Llantera Hernandez, LLC
5. 2C-18/19-0137 - IFIXITUSA, LLC, dba Computers & Questions
6. 2CRP17/18-0186 - Valencia Quintana, LLC dba Piedralaja Builders

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

1. Bashas’ Inc.
2. Central Arizona Water Conservation District dba Central Arizona Project
3. Macy's, Inc.
5. Young Electric Sign Company

Chairman Schultz requested the removal of Item (b)(1) (Bashas' Inc.) and (b)(3) (Macy's, Inc.) from the Consent Agenda.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda 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.

Approval of Requests for Renewal of Self-Insurance Authority.

Bashas' Inc. - Chairman Schultz noted that while Bashas' experience modification factor is higher than average, there has been a significant improvement of Bashas' experience modification factor.

Ralph Woodward addressed the Commission and highlighted the changes that Bashas' Inc. has made, their commitment to safety and that their injury claims are down by 30%.

Darren VandeVoorde addressed the Commission and detailed that training procedures and written policies have been implemented.

Commissioner LeMarr addressed Bashas' multiple citations issued questioning what they have done to improve in those areas.

Mr. VandeVoorde described how they are addressing those citations. Mr. Woodward described procedures and processes in place. They now have a robust investigation process all the way through to the safety committee.

Mr. Woodward discussed additional procedures that have been implemented and provided examples of proactive training.

Chairman Schultz addressed Jessie Atencio, ADOSH Director regarding Bashas' cooperation with the consultation division. Mr. Atencio responded that Bashas' has been cooperative and receptive to any areas of improvement and completed them in a timely manner. They are considering the VPP program for a few of the stores.

Ms. Pastor discussed the reserves and reduction in their deposits. She also noted that they do not have very large claims.

Commissioner LeMarr moved to approve the renewal of self-insurance authority for Bashas'. 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.

Macy's, Inc. - Chairman Schultz discussed his concerns with the current experience modification factor, which is above where it should be. Ms. Pastor discussed the increase and anticipates it is due to an increase in temporary employees. Chairman Schultz noted that Macy's has not been in this situation before and wondered whether there were changes in culture or acquisition. Ms. Pastor noted that payroll has decreased.
Vice Chair Hennelly moved to approve the renewal of self-insurance authority for Macy’s. 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 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.

Arrow Roofing Inc.  
8991 E Valley Rd.,  
Prescott Valley, AZ 85314  
Site Location: 2365 Oakwood Dr.  
Prescott, AZ 85305  
Inspection No: W0250 - 1313334  
Inspection Date: 05/02/18

Fatality/Accident  
Years in Business: 8  
Empl. Covered by inspection: 6

SERIOUS – Citation 1 - Item 1 –

a) Six employees were re-roofing and installing asphalt shingles around five unprotected skylights without a fall protection system installed.  
29 CFR 1926.501(b)(4)  
Div. Proposal - $7,000.00  
Formula Amt. - $750.00

b) Six employees were installing asphalt shingles 27 feet about the ground level without a fall protection system installed.  
29 CFR 1926.501(b)(10)  
Div. Proposal - $0.00  
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 –

a) Six employees working at heights above 6 feet or more were not provided with fall protection training. 29 CFR 1926.503(a)(1)  
Div. Proposal - $1,500.00  
Formula Amt. - $1,500.00

TOTAL PENALTY - $8,500.00  
TOTAL FORMULA AMT. - $3,750.00

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

Commissioner LeMarr and Mr. Atencio discussed use of fall protection, reviewed the photographs and the difference in citation amounts.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented. 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.

Chairman Schultz, Commissioner LeMarr and Mr. Atencio further discussed the issues with an employer not having fall protection and abatement.
Nogales Unified School District #1,  
Desert Shadows Middle School  
310 W. Plum St.  
Nogales, AZ 85621

Site Location: 340 Blvd., Del Rey David  
Nogales, AZ. 85621
Inspection No: L8503 - 1305814
Inspection Date: 3/26/2018

SERIOUS – Citation 1 - Item 1 –

a) One employee replacing broken shelves on an unsecured five tier shelving unit, brand, model and serial numbers unknown, containing textbooks collapsed. 29 CFR 1910.176(b)

<table>
<thead>
<tr>
<th>Div. Proposal -</th>
<th>$7,000.00</th>
<th>Formula Amt. -</th>
<th>$2,500.00</th>
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</thead>
<tbody>
<tr>
<td>TOTAL PENALTY -</td>
<td>$7,000.00</td>
<td>TOTAL FORMULA AMT. -</td>
<td>$2,250.00</td>
</tr>
</tbody>
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Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Krenzel and Mr. Atencio discussed the photographs, citations, inspection conducted by ADOSH, training and possible remand back to ADOSH. Fernando Parra, Superintendent (NUSD) and Matthew Wright, Legal Counsel, provided the commission with a brief history of the events that transpired both before and after the fatality.

Commissioner Krenzel moved to remand the file back to ADOSH for further review. Commission LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Antonio Molina, a Single Man  
914 E. Burkett St.,  
Sahuarita, AZ 85629

Site Location: 51 Kipper St.,  
Rio Rico, AZ. 85648
Inspection No: E5149 - 1301763
Inspection Date: 03/13/2018

Mr. Atencio discussed ADOSH’s investigation, summarized the inspection and reviewed the photographs.

Chairman Schultz asked Mr. Atencio if the employer had workers’ compensation insurance, but it was determined that the deceased was a sole proprietor without workers’ compensation coverage. No further action was taken.

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.
Director Ashley stated that the yearly National Council on Compensation Insurance (NCCI) report is now available, and Jacqui Kurth will compare statistics from the last year and present the findings at a future meeting. He also noted that Trevor Laky will provide updates on legislative proposals at a future meeting.

Director Ashley discussed the upcoming Commission meeting and facility visits in Safford, Arizona on September 26th and 27th.

Chairman Schultz and Director Ashley discussed stakeholder outreach and upcoming Gemba walks as well as the positive responses of leadership from agencies whom have visited the Industrial Commission.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Borunda confirmed Commission meeting dates through October 2018.

ADOSH new employees, Charlie Preciado, Roberto Velasco, Mara Martinez, and Roman Linder introduced themselves and provided their backgrounds. Chairman Schultz made welcoming comments to the new employees. Mr. Atencio provided updates of current employers with VPP status.

Public Comment.

Commissioner LeMarr 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 2:26 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

ATTEST:

James Ashley, Director

Yvonne Borunda, Acting Commission Secretary