

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 20, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Annalee Humphrey	Compliance Officer
	Mara Martinez	Compliance Officer
	Roberto Velasco	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also present were Fernando Parra and Mayra Zuniga (Nogales USD) (Telephonic), and Michael Fassett (Snell & Wilmer).

Approval of Minutes of September 13, 2018 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the September 13, 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. 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. 2C17/18-0769 - My Tree Guy, LLC
- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. TMC Healthcare

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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.

Case Foundation Company 1325 W. Lake St., <u>Roselle, IL 60172</u>	Fatality/Accident	
Site Location: 2750 E. Buckeye Rd., Phoenix, AZ 85034	Years in Business:	24
Inspection No: K4950 - 1317846	Empl. Covered by inspection:	6
Inspection Date: 05/21/2018		

SERIOUS – Citation 1 - Item 1 –

a) Drill shaft #50A: The operator of an IMT drill rig, model #AF300 and serial #6AR02622, was not utilizing the supplied seatbelt while operating the rig. 29 CFR 1926.28(a)

Div. Proposal - \$7,000.00	Formula Amt. - \$1,750.00
TOTAL PENALTY - \$7,000.00	TOTAL FORMULA AMT. - \$1,750.00

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

Commissioner LeMarr, Mr. Atencio and Chairman Schultz discussed the cause of the accident, the possible protective barriers, the use of seatbelts and the positioning of the door to the cab.

Chairman Schultz and Ms. Humphry discussed the photographs and that the door of the rig was on a hinge.

Commissioner LeMarr and Mr. Atencio discussed if the general contractor was to be cited and the safety program that the general contractor had in place.

Mr. Atencio noted that everything has been abated and the company has additional training and ways for control for the operator to remind them to wear a seatbelt.

Vice Chair Hennelly and Mr. Atencio discussed the use of seatbelts not being enforced.

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

Stephen Douglas Petetit, a single man, dba SDP Home Repair 53 N. Mountain Rd., Lot 59 <u>Apache Junction, AZ 85120</u>	Fatality/Accident	
Site Location: 400 W. Plaza Dr., Lot 301 Apache Junction, AZ 85120	Years in Business:	5
Inspection No: S8089 - 1303434	Empl. Covered by inspection:	2
Inspection Date: 03/21/2018		

Mr. Atencio summarized ADOSH's fatality investigation and reviewed the file. He noted that ADOSH was not recommending any citation.

Chairman Schultz and Mr. Atencio discussed the energy companies doing high voltage work, if the property owner would be cited, the age of the victim and if the victim had workers' compensation coverage as a sole proprietor.

The Commission took no action.

Nogales Unified School District #1,
Desert Shadows Middle School
310 W. Plum St.
Nogales, AZ 85621

Fatality/Accident
Years in Business: 100+
Empl. Covered by inspection: 54

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

SERIOUS -- Citation 1 - Item 1 --

- b) 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)

Div. Proposal - \$7,000.00	Formula Amt. - \$2,500.00
TOTAL PENALTY - \$7,000.00	TOTAL FORMULA AMT. - \$2,250.00

Mr. Atencio noted this matter was remanded to ADOSH for further review at the last meeting. After review with the supervisor, he stated he would be withdrawing the citation in this matter since the recommended citation did not line up with the actual work being done or the hazard. He discussed the American National Standards Institute (ANSI) review and general duty and noted this was not a commercial grade shelf and that anyone could purchase it from a home improvement store. He noted the OSHA standard to be for items to be stacked and organized in a way that they do not fall over. Mr. Atencio noted there will not be a citation but a letter of recommendation will be provided to the school district on two issues: 1. Follow the CDC and NIOSH School Safety Inspection Checklist for stacking and organizing material. 2. Create an SOP or job duty for taking down the structures when necessary. Mr. Atencio also noted that Mr. Parra will be communicating this information to the schools in their district as well as to the Trust and build policies and procedures around this type of work. Mr. Atencio also discussed abatement.

Commissioner LeMarr and Mr. Atencio discussed that there is not a specific ordinance for which to cite, the condition still exists that is less than optimal for storage for the books, and there remains a possibility of a similar incident happening again. Mr. Atencio noted the need for the school district to set policy and procedures and have them in place for future adjustments of the shelving units.

Vice Chair Hennelly noted the standard cited in the report relates to situations not involving these kinds of shelving units, just stacking situations and other standards are for commercial grade shelving units and this is just an odd spot where it is not covered. Mr. Atencio noted OSHA's intent with the general duty, in the absence of a standard they will cite the general duty but would be able to do so by demonstrating a consensus standard and the industry recognizes the hazard and implemented a control that is at OSHA level or beyond.

Vice Chair Hennelly and Mr. Atencio discussed the remediation for the school district to create a protocol with respect to this kind of storage.

Director Ashley noted the flaw in the ANSI Standard since it only applies to commercial grade shelving, not non-commercial grade shelving used in commercial or public facilities. Mr. Atencio agreed that ANSI standards will look to the industry and what they are using and what is used most, the problem is trying to use that standard to fit in this case and it does not match.

Chairman Schultz noted he appreciated the efforts of Mr. Parra and Ms. Zuniga to communicate this issue throughout the district and to the Trust. He noted there had just been a safety inspection by the trust and wondered why it would not have been addressed then. He noted there is an element of common sense and if the shelving units were either secured to the wall or secured to each other they would have much more stability.

Chairman Schultz thanked Mr. Parra and Ms. Zuniga for attending by telephone.

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 noted staff had a meeting with the new Office of Strategic Planning and Budgeting (OSP) Budget Analyst Yan Gao with a brief Gemba walk of the Accounting division.

Mr. Ashley noted he would like to schedule Commissioner Gemba Walks and would like to divide the walk into two parts and will be looking at dates starting on October 11.

Mr. Ashley also noted the annual Commission Stakeholder meeting will be on October 11.

Mr. Ashley and the Commissioners discussed future out of town Commission trips.

Mr. Laky noted a proposal submitted for a legislative change. It would allow the Industrial Commission to become the beneficiary of an excess insurance policy if a self-insured employer becomes insolvent. It is a way to keep the special fund solvent and to keep the assessment rate down for small businesses across Arizona.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2018. Vice Chair Hennelly noted he would not be available on December 13 or 20.

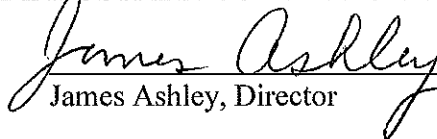
Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr, voted in favor of the motion and the meeting was adjourned at 1:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary