

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, August 18, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	Melinda Poppe	Deputy Director
	Jonathan Hauer	Assistant Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Rogelio Martinez	Senior Data Analyst
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Manuel Saldana	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Zach Wilsterman with Profiles Tool & Engineering; Genaro Martinez Rodriguez and Maximiliano Fajordo with Genaro's Framing Construction; Rick Headlee with Headlee Roofing; and Jason Weber with Snell & Wilmer.

Approval of Minutes of August 12, 2016 Regular Meeting.

Chairman Schultz postponed approval of the August 12, 2016 Minutes to a later meeting.

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. 2C14/15-1367 Campbell Contracting LLC
  2. 2C16/17-0015 Precision Housing Distributor, LLC, dba T & A Cabaret
  3. 2C16/17-0021 Rigid Masonry, Inc.
  4. 2C16/17-0025 Transformation Remodeling Services LLC.
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Purcell Tire & Rubber Company
  2. Swift Transportation Co., LLC

3. Truly Nolen of America, Inc.

Chairman Shultz removed item (a)(4) from the Consent Agenda.

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

Mr. Hauer advised that Transformation Remodeling Services LLC. has obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00, instead of staff's previous recommendation of a \$1,000.00 civil penalty.

Vice Chair Hennelly moved to reduce penalty to \$500.00 and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles presented an outline of the Industrial Commission's accomplishments from the past year and asked for feedback.

Mr. Charles noted he is reviewing 18 proposals for legislative changes from within the Commission.

Mr. Charles noted the budget needs to be completed in the next two weeks.

Mr. Charles reported that the revised website is nearing soft launch.

Chairman Schultz asked Mr. Charles about recent tweets. Mr. Charles noted the Fall Safety Seminar for the morning.

Commissioner Orchard asked Mr. Charles about the accomplishment outline and Mr. Charles indicated that the list would ultimately be released to the legislature and the media.

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

Genaro's Framing Construction LLC  
9133 W Marshall Ave  
Glendale, AZ 85301

Referral  
Years in Business: 6  
Empl. Covered by inspection: 7

Site Location: 10833 E Crescent Ave  
Mesa, AZ 85208  
Inspection No: Y8817-1143363  
Inspection Date: 04/25/2016

REPEAT-SERIOUS – Citation 1 - Item 1 – CopperStone Development Lot 234: Three employees were working at a height of approximately 9 feet 6 inches above the ground below and where not

protected from falling by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(13)).

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1085599, citation number 1, item number 1 and was affirmed as a final order on (10-15-15), with respect to a workplace located at 22646 Duncan St Queen Creek AZ 85142.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1095980, citation number 1, item number 1 and was affirmed as a final order on (3-16-16), with respect to a workplace located at 9365 W Donald Dr Peoria, AZ, 85383.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1101130, citation number 1, item number 1 and was affirmed as a final order on (3-16-16), with respect to a workplace located at 26157 N 96th Dr Peoria, AZ, 85383.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1106889, citation number 1, item number 1 and was affirmed as a final order on (3-16-16), with respect to a workplace located at 20615 W Minnezona Buckeye, AZ, 85396.

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

Mr. Warren summarized the citations and proposed penalties as listed and reviewed the history. Commissioner Orchard noted she would like to hear from the employer. Vice Chair Hennelly asked about the cord in Photograph 1 and if it was the power supply. Mr. Warren responded that it was. Vice Chair Hennelly asked about the abatement photographs 5 and 6 and the anchor point. Mr. Warren described the photograph's contents.

Mr. Fajordo commented on his company's increased training for and supervision of employees. He has done the OSHA 30 so that he may better inspect sites and encourage employee compliance with the rules.

Commissioner Orchard asked about the company's OSHA training and noted the number of inspections the company had incurred. Mr. Fajordo indicated that his OSHA card was dated September 17, 2015.

Chairman Schultz asked how many jobs Genaro worked at any one time, how many crews the company is working, and if the business focused on residential or commercial framing. Mr. Rodriguez said it is mainly residential construction and that he may have as many as five five-person crews working at one time.

Vice Chair Hennelly asked about disciplinary actions taken for work safety violations. Messrs. Fajordo and Rodriguez answered that they have a write-up rule and will terminate employees on the third write-up.

Chairman Schultz asked if the employees would leave the company for another employer if disciplined and if there was a supervisor monitoring each job. Mr. Rodriguez stated that employees would leave if disciplined and that there was always someone in charge.

Commissioner Orchard asked if there was a formal written fall protection program. Mr. Rodriguez said yes that the company implemented a new written fall protection plan in May 2015. Mr. Warren noted that the compliance officer did not cite for the training violation because the crew understood the applicable standard.

Chairman Schultz asked what safety equipment the company offered its employees. Messrs. Fajordo and Rodriguez discuss the company's safety equipment.

Commissioner Orchard asked Mr. Warren if there were Spanish speakers available in the consultation division. Mr. Warren answered that there were. Commissioner Orchard asked how much the company had been fined. Mr. Warren responded that the company had been fined approximately four or five thousand dollars in the last three years.

Commissioner Orchard asked if Genaro's Framing was aware of how much it had been fined. Mr. Rodriguez responded that he did not recall.

Chairman Schultz asked why the company had not previously contacted the consultation division for assistance. Mr. Rodriguez answered that they had appeared at the Commission Meeting to learn what resources were available.

Commissioner Orchard moved to issue the citation as recommended and recommended that the company follow up with the consultation division. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Chairman Schultz recommended that the company join the Chairman's Workgroup with the Roofing Contractors to facilitate roofer training and certification.

Headlee Roofing Co., Inc.  
951 W First Ave  
Mesa, AZ 85210

Site Location: 10556 E Mendoza Ave  
Mesa, AZ 85209  
Inspection No: H1793-1149834  
Inspection Date: 05/24/2016

Referral  
Years in Business: 30  
Empl. Covered by inspection: 2

REPEAT-SERIOUS – Citation 1 - Item 1 – Jobsite roof: Two employees working on a 6/12 pitch roof of a two story house under construction were not protected from falling 20 feet to the ground level below by use of guardrail systems with toeboards, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Headlee Roofing Co., Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard (29 CFR 1926.501(b)(11)), which was contained in OSHA inspection number 1085817, citation number 01, item number 01, and was affirmed as a final order on 1/19/16, with respect to a workplace located at 20677 E Maya Rd Queen Creek AZ 85142.

Headlee Roofing Co., Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard (29 CFR 1926.501(b)(11), which was contained in OSHA inspection number 1108329, citation number 01, item number 01 and was affirmed as a final order on 02/18/2016, with respect to a workplace located at 10461 E Neville Mesa AZ 85209.

Headlee Roofing Co., Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard (29 CFR 1926.501(b)(11), which was contained in OSHA inspection number 1109177, citation number 01, item number 01/a and was affirmed as a final order on 2/26/2016, with respect to a workplace located at 2620 S Tobin Mesa AZ 85209.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 2 - Item 1 – Jobsite roof south side: Two employees used a scaffold cross brace to exit the roof of a two story house and to climb into a second story window. (29 CFR 1926.451(e)(9)(iv)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed. Vice Chair Hennelly noted that there was no citation for training. Mr. Warren responded regarding the training and equipment available.

Commissioner Orchard asked about abatement. Mr. Warren noted he did not have that information.

Chairman Schultz referred to pictures of the scaffold cross brace that was used to exit the roof and asked if it was used to access the roof. Mr. Warren responded.

Mr. Headlee, president of the company, commented on his company's attempts to comply with ADOSH standards. He also offered that he had difficulty obtaining a response from the consultation division.

Commissioner Orchard asked about a company employee who checked safety conditions at the company's worksites. Mr. Headlee discussed the employee and acknowledged that he was aware that his employees had not complied with ADOSH requirements on the subject date. Commissioner Orchard asked if Mr. Headlee was called after the inspection. Mr. Warren responded that the compliance officer usually waits for a management team member.

Mr. Headlee discussed abatement.

Vice Chair Hennelly asked about a training program and written plan. Mr. Headlee discussed the company's training and plans. Mr. Warren noted that there was no training violation.

Chairman Schultz asked about efforts to improve the safety culture. Mr. Headlee commented on his efforts and noted there is not a large enough workforce to draw from. Chairman Schultz referenced Chairman's Roofing Group. Chairman Schultz asked if Mr. Headlee paid by piece work. Mr. Headlee answered that they did, but not exclusively.

Vice Chair Hennelly moved to approve the citation and proposed penalty as presented. Commissioner Orchard seconded the motion.

Chairman Schultz noted concern about Mr. Headlee's difficulty communicating with consultation. Mr. Warren offered to follow up on this concern.

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

Profiles Tool & Engineering, Inc.  
2169 E 5<sup>th</sup> St  
Tempe, AZ 85281

Site Location: 10556 E Mendoza Ave  
Mesa, AZ 85209  
Inspection No: W0250-1142031  
Inspection Date: 04/22/2016

Referral  
Years in Business: 16  
Empl. Covered by inspection: 9

SERIOUS – Citation 1 - Item 1 –

- a) Warehouse: Training on operation and avoidance of unsafe conditions had not been provided for one employee who operated a Hass VF 5SS Vertical CNC machine, serial number 1116965 model number VF-5SS. (A.R.S. 23-403.A).
- b) Maintenance Shop: One a Hass VF 5SS Vertical CNC machine, serial number 1116965 model number VF-5SS, did not have a guard to prevent the tool changer arm from engaging while the operator's hands were inside the CNC Machine. (29 CFR 1910.212(a)(1)).

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

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Orchard asked if training was in place that would have prevented the subject injury. Mr. Warren responded. Commissioner Orchard asked about equipment guards and Mr. Warren discussed possible guarding methods for various types of machine.

Vice Chair Hennelly raised concern about a lack of default guards. Mr. Warren responded.

Commissioner Orchard asked about the reporting requirement. Mr. Warren explained.

Mr. Wilsterman, owner and president of Profiles Tool and Engineering, addressed the Commission. He acknowledged that the guard was not engaged at the time of the subject incident and noted that it has been since. He noted that he has shut down his business as of June 13.

Chairman Schultz, Commissioner Orchard, and Mr. Wilsterman discussed the company's dissolution.

Commissioner Orchard and Mr. Warren discussed the propriety of fining a company that is out of business. Mr. Warren noted that doing so has a deterrent effect and indicated that the penalty is communicated to other businesses.

Commissioner Orchard asked Mr. Wilsterman whether the people who took over his business were still using the piece of equipment and if it is guarded appropriately. Mr. Wilsterman stated he is working with the company and will make sure it is guarded.

Vice Chair Hennelly confirmed with Mr. Warren that the penalty without the injury would have been \$750.00 had it not been for the amputation.

Vice Chair Hennelly moved to approve a serious violation and reduce the penalty to \$750.00. Commissioner Orchard seconded. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed. Chairman Schultz suggested that Mr. Wilsterman contact the consultation division if he is still responsible for the subject equipment.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Ms. Poppe discussed the 2016 Claims Seminar. She noted there were 514 attendees, 47 of whom were staff, 110 surveys completed, and the program was well-received by attendees.

Ms. Poppe discussed the Arizona Management System. She said that the Commission is an early adopter and one of four small-to-medium agencies selected by the Governor's office to participate.

Ms. Poppe reviewed the agency's 2017 scorecard goals. She referenced the following breakthrough goals: shortening the amount of time it to issue loss of earning capacity determinations; and increasing voluntary Special Fund settlements. Chairman Schultz thanked the ALJ and Legal Divisions for their efforts.

Ms. Poppe and Chairman Schultz discussed the following metrics and their associated lead and lag measures: (1) the total number of work related injuries; (2) safety consultations; (3) SHARP, PEPP and VPP participants; (4) wage claim processing time; (5) the number of average monthly wage determinations; (6) time to make average monthly wage determinations; (7) ALJ award turnaround; (8) and Special Fund payment processing time.

Ms. Poppe commented on the following state-wide recording metrics: (1) full-time employee count; (2) regrettable attrition; (3) administrative rule improvement; (4) breakthrough goals achieved; and (5) online services.

Chairman Schultz and Ms. Poppe discussed the importance of being able to track these metrics.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren announced that the next Safety Summit will be held November 2 and 3, 2016 at the Salt River Project PERA Club. Chairman Schultz and Mr. Warren discussed including business leaders in panels, forums, and keynote speeches.

Ms. Dimas announced that the next meeting of the Commission will take place on September 1, 2016.

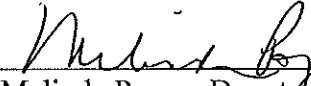
Ms. Poppe announced that former Commissioner and Vice Chair Kathleen Oster is retiring from the industry and will present a retirement resolution to her on the Commission's behalf.

Public Comment.

There was no public comment.

Commissioner Orchard moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:18 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  \_\_\_\_\_  
Melinda Poppe, Deputy Director

ATTEST:

 \_\_\_\_\_  
Kara Dimas, Commission Secretary