MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, July 9, 2015 – 1:00 p.m.

Present:

Dale L. Schultz

David M. Parker

Michael G. Sanders

Joseph M. Hennelly, Jr.

Clint Bolick

Chairman

Commissioner

Commissioner

Commissioner

Laura McGrory
Andrew Wade
William Warren
Bruce Hanna
Glenn Saavedra
Kathleen McLeod
Director
Chief Counsel
ADOSH Director
Compliance Officer
Compliance Officer
Claims Manager

Jacqueline Kurth Claims Molly Jones Claims

Valli Goss Assistant Chief Counsel

Yvonne Borunda Legal

Kara Dimas Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Jason Weber of Snell & Wilmer.

Approval of Minutes of July 1, 2015 Regular Session Minutes.

Andrew Wade explained that the Agenda did not include an item for the July 1, 2015 Executive Session Minutes and those Minutes may be addressed at the next meeting. The Commission unanimously approved the Minutes of the July 1, 2015 Regular Session meeting on motion of Commissioner Parker, second of Commissioner Sanders.

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. 2C14/15-2947 Arizona Auto Shippers, L.L.C.
- 2. 2C14/15-1830 Erna Arnold, a single woman, dba Elder Care Geriatric Services

2C13/14-2310 Flower's Assisted Living, Inc., dba Flower's Assisted 3. Living Home

Chairman Schultz asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Commissioner Bolick, second of Commissioner Hennelly.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Laura McGrory advised that she submitted a request to the Office of the Arizona Governor this week seeking approval to proceed with rulemaking related to the newly issued federal standard regarding confined spaces in construction and the request is pending.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaint.

15-3633-14 - James Weime vs. Center for Academic Success - William Warren presented a summary of Mr. Weime's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit. Commissioner Sanders commented on the timing of the termination with respect to health insurance and the reported safety issue. Chairman Schultz noted the timing of the complaint, the investigation, and presentation to the Commission and asked about the delay in presenting the matter to the Commission. Mr. Warren explained the review process and responded to questions from the Commissioners. The Commission unanimously voted not to pursue the complaint on motion of Commissioner Sanders, second of Commissioner Bolick.

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

Flambeau, Inc.

Referral

3301 W Vernon Ave

Years in Business:

68 15

Phoenix, AZ 85009

3301 W Vernon Ave

Empl. Covered by inspection:

Phoenix, AZ 85009

Inspection No:

Site Location:

L3419-1050811

Inspection Date:

04/02/2015

WILLFUL SERIOUS - Citation 1 - Item 1 - Blow mold department: Press #71 (Cincinnati Milacron CAMAC 486C, MODEL F90-1-10, serial #872A0100002) was not adequately guarded below the point of operation to prevent employees from reaching under the safety door into the mold cavity to remove plastic parts. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$70,000.00

Formula Amt. - \$70,000.00

WILLFUL SERIOUS – Citation 1 - Item 2 –

1. The employee injury resulting in permanent disability or death was caused by the violation for which the employer is assessed a penalty under section 23-418, subsection A;

2. Compensation benefits are paid under chapter 6 of this title either:

(a) To the injured employee.

- (b) In the event of death, To the employee's dependents. The requirement of this subdivision is satisfied if an employee did not have any dependents for which compensation benefits would have otherwise been paid under chapter 6 of this title.
- 3. The violation for which the employer is assessed a penalty under section 23-418, subsection A did not result from the injured or deceased employee's disobedience to specific instructions given to the employee regarding the job condition causing the employee's injury or death or relating to the safety standards applicable to that job condition.

a) Flambeau, Inc.: On March 31, 2015 at approximately 1535 hours, Press Operator Miguel Anguiano's right hand was crushed as the result of a willful violation of 29 CFR

1910.212(a)(1). (A.R.S. 23-418.01).

Div. Proposal - \$25,000.00 TOTAL PENALTY - \$95,000.00 Formula Amt. - \$25,000.00

TOTAL FORMULA AMT. - \$95,000.00

Planned

Years in Business:

Empl. Covered by inspection:

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker commented on Item 2 and explained the language and elements of the A.R.S. § 23-418(A) provision, which is unique to Arizona's OSHA program. Mr. Hanna and Mr. Warren explained the evidence supporting the citation, including the elements of the additional penalty under A.R.S. § 23-418(A). Ms. McGrory summarized the elements of a willful classification. Commissioner Parker noted the prior citations for lockout/tagout and machine guarding. Mr. Hanna commented on those citations. Commissioner Parker explained why he views the willful serious classification as correct. Commissioner Parker recommended that when the motion is made that the Commission make specific findings for the A.R.S. § 23-418.01 additional penalty. Commissioner Sanders noted that he had similar questions and his questions have been answered. Following discussion, Commissioner Parker moved that Citation 1, Item 1 be a willful serious violation with a penalty of \$70,000.00 and under Item 2, that the Commission has found that there is a willful serious resulting in permanent disability, workers' compensation benefits have been paid to the employee for this injury, and that the injury did not result from the employee violating a specific safety or work instruction causing the injury and, therefore, the penalty of \$25,000.00 shall be added, for a total penalty of \$95,000.00. Commissioner Sanders seconded the motion. Commissioner Schultz called for a vote and the vote was five in favor and no votes against the motion.

Holderness Building Materials, Inc.

dba Holderness Supplies 450 E. Irvington Road

Tucson, AZ 85714

Site Location:

450 E. Irvington Road

Tucson, AZ 85714

Inspection No:

T3633-1064126

05/18/2015

Inspection Date:

SERIOUS - Citation 1 - Item 1 - 450 E. Irvington Road, Tucson: Employees did maintenance work on machines, including changing blades on the Alpine brand component saws, and the employer had not established lockout/tagout procedures and trained employees to ensure that the equipment would be isolated and rendered inoperative prior to any work where the unexpected energizing or start up could occur and cause injury. (29 CFR 1910.147(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

80

31

SERIOUS - Citation 1 - Item 2 -

- a) East of the truss fabrication tables: A Hyster brand forklift, model 50, serial number H177B40709A, did not have the emergency brake adjusted so that it would prevent the forklift from moving, and the horn did not work. (29 CFR 1910.178(p)(1)).
- b) 450 E. Irvington Road, Tucson: Industrial trucks (forklifts) used to move wood and wood products did not have adequate daily examinations prior to being put into service. (29 CFR 1910.178(q)(7)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

<u>SERIOUS</u> – Citation 1 - Item 3 – East truss table: The Mitek Industries brand roller, unknown model and serial number did not stop its movement in either direction when the emergency stop bars were pushed. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

<u>SERIOUS</u> — Citation 1 - Item 4 — Mill area: Employees used a Dario brand band saw, Matr. #0407382, to cut corbels, and the unused portion of the blade between the guide wheels and the upper wheel guard was not guarded. (29 CFR 1910.213(i)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citations and proposed penalty as listed. Commissioner Parker commented on mounted photographs numbers 11 and 12 which show the bypass of safety devices. He also commented on the frequency of forklift violations and employer complacency. He suggested ADOSH may want to consider an information campaign with the trades on the forklift safety. Chairman Schultz commented on other employer modifications. Mr. Warren responded that he would work with Assistance Director Atencio on an outreach program regarding forklift safety. Commissioner Sanders referred to mounted photograph number 12 and asked for details regarding who defeated the safety device and whether management directed the modification. Chairman Schultz added regardless of whether management directed the modification, management certainly allowed it to happen.

Chairman Schultz asked Commissioner Sanders if he had enough concern to move this item to a subsequent agenda to allow ADOSH time to obtain and/or supply the Commission with more information. Commissioner Sanders commented on the importance of the information. Chairman Schultz asked if there was a motion. The Commission unanimously approved moving this item to a subsequent agenda, on motion of Commissioner Sanders, second of Commissioner Hennelly. Ms. McGrory asked Mr. Warren to ensure that the review of ADOSH included whether the citation should be classified as willful.

Clyde P. Little & Patricia K. Little, husband & wife, individually & on behalf of their marital community dba Geronimo Enterprises 25200 S. Rittenhouse Road

Complaint

Years in Business:

12

Empl. Covered by inspection:

5

Queen Creek, AZ 85242

Site Location:

25200 S. Rittenhouse Road Queen Creek, AZ 85242

Inspection No:

B7667-1020212

Inspection Date:

1/21/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – Farm Field, 25200 S. Rittenhouse Road, Queen Creek, AZ: An employee had his left arm amputated while cleaning cotton debris from the picker head of a John Deere Cotton Harvester, Model #9900 and Serial Number unknown. (29 CFR 1928.57(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Farm Fields, 25200 S. Rittenhouse Road, Queen Creek, Az: Four employees operated John Deere Cotton Harvesters, Model 9900 and Serial number unknown, without training. (29 CFR 1928.57(a)(6)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$6,500.00

TOTAL FORMULA AMT. - \$6,500.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner Sanders asked for clarification regarding the extent of the injury. Mr. Warren and Mr. Saavedra responded to the question. Commissioner Bolick requested clarification on the adjustment factors. Mr. Warren responded to the question and Commissioner Parker explained that the Field Operations Manual (FOM) contains the penalty policy and possible penalty reductions.

Commissioner Hennelly asked for additional details regarding the equipment added to the cotton harvester. Mr. Warren and Mr. Saavedra responded and described ADOSH's efforts to learn more about the modifications and who may have made the modifications. Commissioner Parker explained that the agriculture standards are found in 29 CFR 1928, instead of CFR 1910, which is for general industry or CFR 1926, which is for construction. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$6,500.00 on motion of Commissioner Hennelly, second of Commissioner Bolick.

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 anyone wanted to move into executive session, and hearing none, he asked Ms. McLeod to proceed.

Randy K. Spencer – Kathleen McLeod presented this lump sum petition with a recommendation for approval. Ms. McLeod and Ms. Kurth responded to questions. The Commission unanimously approved the lump sum commutation on motion of Commissioner Sanders, second of Commissioner Bolick.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory announced that the Arizona State Bar Workers' Compensation Seminar has been scheduled for October 7th, 8th and 9th and invited the Commissioners to let Ms. Dimas know if they would be interest in attending.

The Commission reviewed the meeting schedule through September.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Sanders moved to adjourn and Commissioner Bolick seconded the

motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 1:51 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura McGrory, Director

Kara Dimas, Commission Secretary