

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 15, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Commissioner
	Clint Bolick	Commissioner
	Andrew Wade	Acting Director
	Valli Goss	Acting Legal Counsel
	Karen Axsom	Labor Director
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Chris Brandon	Compliance Officer
	Mitch Baird	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Stuart Glenn, Jason Weber of Snell & Wilmer, and Jenny Mandeville and new Arizona Division of Occupational Safety and Health (ADOSH) employees.

Approval of Minutes of September 17, 2015 and October 6, 2015 Regular Meeting and October 6, 2015 Executive Session.

The Commission unanimously approved the Minutes of the September 17, 2015 Regular meeting and October 6, 2015 Regular Meeting and October 6, 2015 Executive Session on motion of Commissioner Bolick, second of Commission Hennelly.

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. 2C15/16-0070 Anything Upholstery, L.L.C.
2. 2C14/15-1371 Fauxoneone LLC, dba Artefino Surface Design
3. 2C15/16-0144 Gila Bend Cactus-N-Stuff, LLC
4. 2C14/15-0485 Jack Gilmore and Bianca Gilmore, h/w, dba Casa Maia ALH, L.L.C.
5. 2C15/16-0135 Gorge Diaz Rojas, a single man, dba Big Boy's Pizza
6. 2C15/16-0780 Lightwave Technologies, L.L.C.

7. 2C14/15-2163 Maximum Transportation, L.L.C.
8. 2C14/15-0843 Philip Nathanson and Kimberly Nathanson, h/w, dba The Nathanson Law Firm
9. 2C14/15-2168 P.J. Hussey & Associates, Inc.
10. 2C14/15-2409 Razor's Edge Barber Shop, L.L.C.
11. 2C15/16-0709 Robert Denovan & Linda Denovan, h/w, dba The Linda Denovan Group
12. 2C15/16-0779 ROI Improvements, L.L.C.
13. 2C13/14-2348 Spidy Trucking, L.L.C.
14. 2C14/15-1823 The Chelsea Management Group, L.L.C.
15. 2C14/15-1811 The JNC Companies, L.L.C.
16. 2C15/16-0778 Truck Max, Inc.
17. 2CSP15/16-0073 William Morris Investment Services, L.L.C.

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

1. Arizona Municipal Risk Retention Pool
2. Central Arizona Water Conservation District
3. Pilot Travel Centers LLC
4. QuikTrip Corporation
5. TMC Healthcare
6. Walmart Associates, Inc.
7. Young Electric Sign Company

Chairman Schultz stated that agenda item 3.a.5. and a.9., would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Hennelly, second of Commissioner Bolick.

Valli Goss advised that 3.a.5. Gorge Diaz Rojas, a single man, dba Big Boy's Pizza and 3.a.9. P.J. Hussey & Associates, Inc., have obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00 against each employer, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against each employer on motion of Commissioner Bolick, second of Commissioner Hennelly.

Discussion and Action regarding Arizona Minimum Wage Rate for 2016.

Ms. Axsom explained that A.R.S. § 23-363(B) directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. She provided a computation of the proposed increase in the Arizona minimum wage to become effective January 1, 2016. Ms. Axsom explained that the Consumer Price Index as of August 2015 was 0.2 percent higher compared to August 2014. She explained that this results in an increase of \$0.016 per hour and the statute directs the wage increase be rounded to the nearest multiple of five cents which means the rate will remain the same as 2015 - \$8.05 per hour. In accordance with the requirements of the statute, she stated

that the Labor Department recommends the Commission approve the rate of \$8.05 per hour effective January 1, 2016 as the Arizona minimum wage.

Commissioner Bolick explained that the Commission is merely performing a ministerial action and setting the Arizona minimum wage does not reflect any policy judgment on the part of the Commission.

The Commission unanimously approved the Arizona minimum wage of \$8.05 effective January 1, 2016 for calendar year 2016 on motion of Commissioner Hennelly, second of Commissioner Bolick.

Mr. Wade stated that unless there are any changes, Ms. Axsom will issue a press release this afternoon. Chairman Schultz asked if the Commissioners had any comments regarding the press release. Commissioner Bolick suggested that a press release be sent out on the setting of assessments as well.

Discussion and Action regarding Re-Appointment of Employment Advisory Council Members.

Karen Axsom summarized the appointment process for the Arizona Employment Advisory Council and she recommended two current members of the Council be reappointed: Martha A. Rockwell and Dani Green. She noted that each of these individuals are active members of the council and have been for a number of years. She described the Council's functions and explained if these two members are reappointed, each of these council members will have a term running from January 1, 2016 through December 31, 2018.

Commissioner Bolick asked for some details regarding the licensing of employment agencies. Ms. Axsom described the process and explained how the licensing applies only to those agencies that charge the applicant a fee and those agencies that charge the employer a fee are not required to be licensed through the Commission. Chairman Schutz noted there are relatively few licensed employment agencies and suspected the original rationale had to do with protecting the people who are in desperate need of a job from being manipulated and perhaps abused financially. Ms. Axsom stated that currently there are 44 licensed employment agencies and the State Labor Department is reviewing two new applications.

Commissioner Bolick noted that it was the Legislature that made the policy judgment regarding regulating employment agencies. He added that he is unaware of the reasons supporting the regulation of these agencies or why the Industrial Commission possesses unique knowledge or expertise in terms of regulating them and he expressed a desire that the regulation of these agencies be reconsidered. He explained that to the extent the Commission is regulating these entities, it is useful to have outside advice and he supports the reappointment of these volunteers. Chairman Schultz asked if he could accept that as a motion. Commissioner Bolick replied yes, that would be his motion. Commissioner Hennelly seconded the motion. The Commission unanimously reappointed Ms. Rockwell and Ms. Green.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2016.

Ms. Simpson noted the Commission has the authority to levy assessments under A.R.S. §§ 23-961(G), 23-1065(A) and 23-1065(F). She described the assessments and the purpose for each

assessment. She provided the Commissioners with a cash flow analysis for the administrative fund and explained that under A.R.S. § 23-961(G) the Commission may assess a maximum 3.0% premium tax for the administrative fund. She reviewed her analysis and explained the basis for her recommendation that the Commission establish a rate of 1.50% for calendar year 2016. In fiscal year 2015 the total assessment revenues for the administrative fund were \$18.5 million.

Ms. Simpson then described the financial condition of the Special Fund, the projected future liabilities for the Special Fund, and the funding that is required to meet the projected liabilities. She explained that the maximum assessments under the two statutes are 1.0% under § 23-1065(A) for general Special Fund liabilities and 0.5% under § 23-1065(F) for apportionment / second injury liabilities for a total of 1.5%. In fiscal year 2015 the total assessment revenues for the Special Fund were \$14.6 million.

Commission Bolick commented on the presence of a cash balance in the administrative fund and how having a fund balance may increase the risk of a fund sweep. Ms. Simpson commented on some prior fund sweep practices. Commissioner Bolick commented on how such a fund sweep effectively uses the tax on workers' compensation insurance premiums to make additional contributions to the State's general fund. Ms. Simpson commented on the decision to keep additional cash in the administrative fund because of the transfer to a new accounting system and the impact this change had on how federal grant monies are handled. She explained the options for the Special Fund assessments and provided some additional details regarding the current fund balance.

Commissioner Bolick asked if the Special Fund were to run a deficit, could the Special Fund obtain funds from the administrative fund. Ms. Simpson explained the circumstance where a surplus in the administrative fund could be transferred to the Special Fund. Commissioner Bolick asked for more details regarding the payors of the tax and assessments. Ms. Simpson replied that the administrative fund tax and the Special Fund assessments are assessed on workers' compensation insurance premiums, in lieu of all other taxes on workers' compensation premiums, and the self-insured employers pay the same tax and assessments.

Commissioner Bolick commended Ms. Simpson for her excellent work and complimented the Special Fund's investment advisors. Ms. Simpson noted that the Special Fund Investment Committee meets once each month. Chairman Schultz stated if either of the Commissioners would like to call in or attend the Investment Committee meetings, he would appreciate the support. Chairman Schultz commented on the Special Fund's balance and the impact that market conditions may have on the balance. He noted the unfavorable conditions in 2008 and the abnormal increase in frequency and severity in 2010. He referred to the recent reports from the National Council on Compensation Insurance (NCCI) regarding rate-setting for Arizona and how the NCCI is proposing a 2.2% rate decrease and how a reduction in premium volume reduces the revenue from the assessments. He added that there is an incredibly complex set of facts that have to be considered in deciding the amount of the tax and assessments.

Commission Hennelly referred to Exhibit B and asked about the asset statement reflecting the funds that were ultimately transferred to the Guaranty Fund. Ms. Simpson commented on the transfer. Commissioner Hennelly also asked to clarify that the Commission's administrative fund, which pays for the operating costs of the Commission, is funded from the assessment on workers' compensation premiums and not from penalties that are imposed on employers. Ms. Simpson explained that all of the civil penalties assessed against uninsured employers and the ADOSH penalties go straight to the State's general fund, there is no financial benefit to the Commission.

such as fluorescent lights, ventilation fans, and paint mixing equipment, which is not in accordance with the manufacturer's specifications. (29 CFR 1910.304(f)(1)(viii)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
TOTAL PENALTY - \$2,700.00	TOTAL FORMULA AMT. - \$2,700.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz asked for details concerning the circuit breaker panel. Mr. Brandon explained how the employees used the breaker panel. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,700.00 on motion of Commissioner Bolick, second of Commissioner Hennelly.

Diversified Roofing Corporation
2015 Mountain View Rd.
Phoenix, AZ 85021

Planned
Years in Business: 26
Empl. Covered by inspection: 3

Site Location: 275 E. Rivulon Blvd
Gilbert, AZ 85299
Inspection No: T9350-1077783
Inspection Date: 07/13/2015

SERIOUS – Citation 1 - Item 1 – Roof: Three employees were not protected from falling through an open roof hatch which was 30 inches by 54 inches and was not protected by a guardrail system, personal fall arrest, or by closing the hatch to cover the hole. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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SERIOUS – Citation 1 - Item 2 –

- a) Roof, north half of building: A polyethylene line was not flagged at 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) Roof, west side of roof: A polyethylene line was rigged in such a way that its lowest point was 18 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) Roof, northeast corner of building: A polyethylene line, which was used as a warning line, did not have the minimum tensile strength of 500 pounds as required by the standard. (29 CFR 1926.502(f)(2)(iv)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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SERIOUS – Citation 1 - Item 3 –

- a) Roof, north side of building: One employee was utilizing an 8 foot fiberglass A-frame step ladder, manufacturer and model unknown, to access the upper portion of a metal panel, 12 feet 2 inches above the ground below, in a purpose for which the ladder was not designed for. (29 CFR 1926.1053(b)(4)).
- b) Roof, Northside of Building: One employee was using the top step of an 8 foot A-frame fiberglass ladder, manufacturer and model unknown, to access the upper portion of a metal panel 12 feet 2 inches above the ground below. (29 CFR 1926.1053(b)(13)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$6,000.00	TOTAL FORMULA AMT. - \$6,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz referred to the electrical panel with what appeared to be one uncovered slot, the penalty is \$750, and compared this to the circumstances and penalty of a previous matter. Mr. Warren described the differences and explained how the compliance officer analyzed the circumstances. Chairman Schultz asked for some details regarding eyewash stations. Mr. Warren commented on employee access and training. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,450.00 on motion of Commissioner Bolick, second of Commissioner Hennelly.

Nietos Framing, Inc.	Planned	
30266 N Emily Dr	Years in Business:	8
<u>Queen Creek, AZ 85142</u>	Empl. Covered by inspection:	11
Site Location:	7085 W Ivanhoe St	
	Chandler, AZ 85226	
Inspection No:	S8089-1071735	
Inspection Date:	06/18/2015	

WILLFUL-SERIOUS – Citation 1 - Item 1 – Unit 60-61 2nd Floor: Five employees working on the 2nd floor were not protected from falling 9 feet, 7 inches to the lower level by guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

There was one other instance of this violation.

Nietos Framing, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(13), which was contained in OSHA inspection number 1043597, citation number 1, item number 1a and was affirmed as a final order on May 15 2015, with respect to a workplace located at 4762 E Red Oak Ln Gilbert AZ, 85233.

Div. Proposal - \$33,000.00	Formula Amt. - \$33,000.00
TOTAL PENALTY - \$33,000.00	TOTAL FORMULA AMT. - \$33,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Bolick commented on the amount of the penalty and explained why he thought the penalty was disproportionate. Mr. Warren explained how the employer had intentionally removed fall protection equipment from the crew to use at another jobsite. Commissioner Bolick replied that he appreciated the additional explanation and explained why he originally thought that ADOSH was simply implying willfulness because the employer had previously been cited for the same violation but where you have an employer who has made a conscious choice to deprive safety equipment from workers knowing that it is required, there is no question it is a willful violation. Commissioner Hennelly stated he initially had the same concern with the classification and penalty but the explanation addressed his concern. Chairman Schultz complimented the compliance officer on the inspection and documentation. He commented on how for a tenth of the amount of the penalty the employer could have provided appropriate fall protection for both jobsites and the employer should have stopped work until the employer provided the appropriate equipment. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$33,000.00 on motion of Commissioner Hennelly, second of Commissioner Bolick.

Richard & Richard Construction Co., Inc.	Planned	
234 Venture St Ste 100	Years in Business:	26
<u>San Marcos, CA 92078</u>	Empl. Covered by inspection:	1

Chairman Schultz referred to Commission Policy 97-01 and noted the section that states that Commissioners shall be prepared to perform their statutory responsibilities which would generally require a two day per week commitment at the direction of the Commission or its Chairman, explains how expenditures incurred by Commissioners shall be for state business only, and that guidance as to the applicability of any Commissioner's activity pursuant to the policy shall be directed to the Chairman. He added how the policy provided for questions concerning the Commissioners activities to be decided at the discretion of the majority of Commissioner present and voting at any public meeting. Chairman Schultz explained that this means that it is expected that the Commissioners will work two days each meeting week and this would be the normal practice and anything beyond two days each meeting week will be referred to him for approval or to the Commission as a whole for discussion and action. He added that he would like the Commissioners to address some criteria or general guidelines at a future meeting that may assist him or the Commission as a whole in approving additional activities under the policy.

Commissioner Hennelly commented that he was pleased to see the policy and even though he had not been provided a copy of the policy previously, the policy is sensible, and he has been operating as provided for in the policy. He added that establishing some specific criteria to apply to requests will allow for a principled response.

Chairman Schultz added that some topics to include in the future discussion may include travel beyond a certain distance, or accounting for additional hours devoted to Commission duties. He noted that there is still the potential that the Legislature will take some action and the Commission will comply with whatever the Legislature adopts. He thanked Commissioner Hennelly and Commissioner Bolick for being very judicious. He commented on the existence of some confusion about per diem and noted that the statute clearly identifies the compensation as salary as does the policy.

Commissioner Bolick commented that the payment of salary is a policy decision that was made by the Legislature and when he agreed to serve on the Commission he had no idea that there was a salary. He explained that the salary was certainly not an inducement but to the contrary, his reaction upon being presented with the forms he needed to fill out was to question how this could possibly be worth it, but little did he know what was about to follow. Commissioner Bolick added that the statute is not clear and he thought it was very unfortunate that the Commission lost two very able Commissioners who he thinks read the policy and the statute in good faith and the statute certainly admits of multiple interpretations and thinks that it is the Legislature's responsibility to express its will clearly and hopes that it will do so. He noted that he agreed with Chairman Schultz' comment that the Commissioners will happily follow what the Legislature decides but until then it falls to the Commission to interpret that vague statutory mandate as best they can. He explained that Policy 97-01 is a very appropriate response to the vague statutory mandate and he also agrees that it would be useful to have more definitive guidelines to follow. He added that it is a shame that the Commission is in this situation but thinks that the Commissioners should do everything they can to rectify it.

Chairman Schultz thanked him for his comments and thanked them for all that they do for the right reasons.

Discussion of the 101st Annual Convention of the International Association of Industrial Accident Boards and Commissions.

Chairman Schultz suggested that this item be deferred for a future date until such time as they have new Commissioners so they can all benefit from Commissioner Hennelly's report. Commissioner Hennelly and Commissioner Bolick agreed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren announced that there is a Safety Summit scheduled for November 4 and 5, 2015 at the Thunderbird School of Global Management in Glendale, and he commented on some aspects of the Summit.

Chairman Schultz announced that Solar One has qualified for the Voluntary Protection Program and he will attend the presentation for Solar One. Mr. Warren added that the employer has gone above and beyond the standards and has a world class safety management system. Chairman Schultz said it is one of the new green industries and how positive it is for the employer to not only be involved in protecting the environment but also protecting its employees.

The Commission reviewed the meeting schedule through December.

Public Comment.

Chairman Schultz asked if there was any member of the public that would like to address the Commission. Stuart Glenn asked when the next meeting was scheduled. Chairman Schultz stated it was Wednesday, October 21. Mr. Glenn asked about the loss of two Commissioners and asked the timeframe for Commissioners to be on the board. Chairman Schultz responded that Commissioners are appointed for terms of five years. Mr. Glenn asked if their terms expire at the end of the year, or they are not going to be here anymore, or what was the story. Mr. Wade interrupted and stated that there is a very limited dialog that can take place during the public comments, and noted that this is an opportunity for Mr. Glenn to address the Commission but not to discuss something not on the agenda.

Commissioner Schultz asked Mr. Glenn if there was any statement he would like to make. Mr. Glenn responded that there were a lot of statements that he would like to make and he explained why he wanted to wait until the next meeting.

Chairman Schultz asked if there was a motion to adjourn. Commissioner Bolick moved to adjourn and Commissioner Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Andrew Wade
Andrew Wade, Acting Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary