

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Auditorium and Conference Room 308

Phoenix, Arizona 85007

Thursday, November 12, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Commissioner
	Scott P. LeMarr	Commissioner
	Andrew Wade	Acting Director
	Valli Goss	Assistant Chief Counsel
	William Warren	ADOSH Director
	Chris Brandon	Compliance Officer
	Billie Gingrass	Compliance Officer
	Melinda Poppe	Chief Administrative Law Judge
	Kelly LeFavre	Human Resource Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Bolick was excused from the meeting. Chairman Schultz explained that the Commission meeting will be recessed after the Legislative Stakeholders' Meeting and the Commission meeting will move to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. A list of attendees who chose to sign in for the Legislative Stakeholders' Meeting is attached. Present for the Commission meeting were Charles Keller and Matt Rynearson for Pinal Energy and Jason Weber of Snell & Wilmer.

Legislative Stakeholders' Meeting.

Chairman Schultz welcomed interested parties to the Commission's 2015 Stakeholders' Meeting and advised that at this time the Commission has not taken any action to have legislation introduced on its behalf in the upcoming legislative session. He explained the purpose of the meeting is to provide stakeholders with an additional opportunity to comment on issues or to recommend the introduction of legislation regarding any aspect of the Industrial Commission's operations. Chairman Schultz explained the process for those who wished to speak. He added that the Commission also encourages suggestions by letter or email and that it is helpful to submit the information before the start of the legislative session.

The following individuals addressed the Commission: David Selden as a member of National Federation of Independent Business Leadership Council for the Arizona Chapter; James Stabler, Chief Counsel for CopperPoint Mutual Insurance Companies.

Chairman Schultz asked if there were any other comments and there were no further requests to speak. Chairman Schultz explained that the Industrial Commission is complete with the appointment of Scott P. LeMarr and Robin S. Orchard as Commissioners and the Commission has appointed James Ashley as the Executive Director of the Industrial Commission. He noted that the Commission has reduced the assessment on workers' compensation premiums to 1.5%, compared to the prior year's rate 2.25%. Chairman Schultz explained that the rate of 1.5% is the lowest since 1996 and only the fourth time since 1985 that the assessment has been lower than 2%. He added

that the rate for 2016 is the fourth year in a row with a reduced rate. He also noted that Arizona has a lower rate of recordable injury claims than the national average, lower days lost, lower days of restricted duty, and a lower number of lost time claims than the national average. He added that there is one area that needs some concentrated effort and that is work-related fatalities as the rate of fatalities is approximately 10% higher than the national average and medical costs continue to be a little higher than national averages. Chairman Schultz commented on the Arizona Division of Occupational Safety and Health (ADOSH), noting that ADOSH conducted over 1,100 inspections in fiscal year 2015, that the average penalty assessed per citation is 55% lower than the average for federal OSHA citations, and less than 5% of citations are protested. He explained that there has been and will continue to be an emphasis on ADOSH's consultation program, noting that ADOSH conducted 345 consultations with employers in 2015 and answered over 10,000 safety-related questions for employees and employers. He closed his comments by noting that the Commission is proceeding with rulemaking related to the use of evidence based medicine treatment guidelines, initially for treatment of chronic pain and the use of opiates, and how the use of the guidelines will be a step forward.

Chairman Schultz thanked everyone for attending and thanked Mr. Selden and Mr. Stabler for sharing their thoughts.

At 1:32 p.m., Chairman Schultz recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 1:38 p.m. in Conference Room 308.

Approval of Minutes of November 5, 2015 Regular Meeting.

The Commission unanimously approved the Minutes of the November 5, 2015 meeting on motion of Commissioner LeMarr, second of Commissioner Hennelly.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 1. 2C14/15-2949 Bannan Springs Ranch Christian Health Care, Inc.
 2. 2C15/16-0256 Durable Metals, L.L.C.
 3. 2C15/16-0274 Rhino's Med. Trans., L.L.C.
 4. 2C14/15-1300 Secure Estate Management Insurance Services, Inc.
 5. 2C15/16-0152 Wade MacNeille, a single man, dba Pine Country Cabinets, Inc. (a dissolved corporation)

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Federal Express Corporation dba FedEx Express
 2. FedEx Freight, Inc.
 3. FedEx Ground Package System, Inc.

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 Hennelly, second of Commissioner LeMarr.

Discussion and/or Action regarding Legislation. This agenda item may include discussion and/or action regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

Chairman Schultz commented on the stakeholders' meeting and it was encouraging to have interested parties attend and offer their thoughts. He added that there was nothing new to report on legislation or the Sunset Review.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL-1516-0148: BBO Subs, L.L.C. dba Subway #12846 – Karen Axsom summarized the Labor Department's investigation following the receipt of a work injury report stating that a 15 year old youth was injured while working at a restaurant. The investigation did not produce evidence that the youth was working in any prohibited employment. She explained the findings regarding numerous violations of Arizona law regarding hours that the youth can work, both for when school was in session and for when school was not in session. Ms. Axsom recommended a penalty of \$300.00. The Commission assessed the proposed penalty of \$300.00 on motion of Commissioner Hennelly, second of Commissioner LeMarr.

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

Mr. Warren requested that Pinal Energy be taken out of order. Chairman Schultz agreed.

Pinal Energy, LLC	Referral
38585 W Cowtown Rd	Years in Business: 8
Maricopa, AZ 85138	Empl. Covered by inspection: 17
Site Location: 38585 W Cowtown Rd	
	Maricopa, AZ 85138
Inspection No: J7272-1067435	
Inspection Date: 06/01/2015	

SERIOUS – Citation 1 - Item 1 – Cooling tower: An employee was performing removal of a recirculation pump, and was not provided appropriate personal protective equipment (PPE) such as a NIOSH approved respirator with an acid gas cartridge, chemical goggles, chemical gloves, chemically resistant apron, or chemically resistant boots to prevent contact with a spill/release of chlorine dioxide saturated water solution. (29 CFR 1910.132(a)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 – Cooling tower: A hazard assessment for maintenance repairs to the chlorine dioxide generation system with a written certification was not completed to verify the selection and use of required personal protective equipment (PPE) to ensure the correct types of PPE were being used based on the chemical hazards for the tasks performed. (29 CFR 1910.132(d)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3 – Cooling tower: An employee was exposed to an airborne concentration of chlorine dioxide in excess of the 8-hour time weighted average concentration of 0.1 ppm when replacing a recirculation pump on the chlorine dioxide generation system. (29 CFR 1910.1000(a)(2)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 4 – Cooling tower: The employer did not furnish information and training to employees who were exposed in the workplace to hazardous chemicals such as chlorine dioxide, sodium chlorite, and sodium chloride. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$15,000.00

William Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for clarification on the background and connection for Pinal Energy and Integrated Water Treatment and the equipment being used. Mr. Warren responded to the questions. Commissioner LeMarr asked about the adjustment factors and Mr. Warren referred to the Field Operations Manual (FOM) and explained why penalty amounts may differ. Mr. Brandon provided additional details regarding an injury to an employee.

Chairman Schultz asked Charles Keller if he would like to make any comments. Mr. Keller responded to the question. Commissioner Hennelly moved to approve staff recommendations for the citation and penalties. Commissioner LeMarr seconded the motion. The Commission unanimously approved issuing the citations with a total penalty of \$15,000.00.

Abeyta Painting, LLC
4729 E. Sunrise Dr.
Tucson, AZ 85718

Complaint

Years in Business: 15

Empl. Covered by inspection: 2

Site Location: 2800 W. Ina Rd
Tucson, AZ 85716
Inspection No: B7667-1072555
Inspection Date: 06/12/2015

SERIOUS – Citation 1 - Item 1 – 2800 W. Ina Rd., Tucson, Arizona: Two employees worked on the ledge of a church tower approximately 30' above the ground level without utilizing a fall protection system. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – 2800 W. Ina Rd., Tucson, Arizona: Two employees worked on the ledge of a church tower approximately 30' above the ground level and were not trained in fall protection and in procedures to control and eliminate those fall hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – 2800 E. Ina Rd., Tucson, Arizona: Two employees used a 24' extension ladder that was missing it's cleats. (29 CFR 1926.1053(b)(16)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked about the use of fall protection in the painting trades. Mr. Warren responded to the question. Commissioner Hennelly referred to the ladder shown in mounted photograph number one and asked for more details concerning the use of ladders on the jobsite. Mr. Warren responded to the question.

Chairman Schultz asked if there were any other questions of a motion. Commissioner LeMarr moved to approve staff recommendations for the citation and penalties. Commissioner

Hennelly seconded the motion. The Commission unanimously approved issuing the citations with a total penalty of \$3,750.00.

AMAZON.COM.AZDC LLC

4750 W Mohave St
Phoenix, AZ 85037

Site Location: 4750 W Mohave St
 Phoenix, AZ 85037
 Inspection No: W0250-1080830
 Inspection Date: 07/28/2015

Complaint

Years in Business: 4
 Empl. Covered by inspection: 3088

SERIOUS – Citation 1- Item 1 – 4750 W Mohave St Phoenix, AZ 85043: Employees removing items from shelves and storage bins were exposed to hazards created by falling objects or items in motion while employees remove items from the shelves and bins. (29 CFR 1910.176(b)).

Div. Proposal - \$3,150.00	Formula Amt. - \$3,150.00
TOTAL PENALTY - \$3,150.00	TOTAL FORMULA AMT. - \$3,150.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked if this complaint involved an injury and Mr. Warren provided details concerning the two complaints.

Chairman Schultz asked if there was a motion to approve the citation as presented with a total penalty of \$3,150.00. The Commission unanimously approved issuing the citation with a penalty of \$3,150.00, on motion of Commissioner LeMarr, second of Commissioner Hennelly.

Haven Construction, Inc.
 2305 S. Higley
Gilbert, AZ 85297

Site Location: 2496 W. Gunnison Ct.
 Flagstaff, AZ 86001
 Inspection No: A3807-1097500
 Inspection Date: 10/02/2015

Unprogrammed Related

Years in Business: 6
 Empl. Covered by inspection: 1

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Building 15: Three Subcontractor employees of Diamond L Construction, Inc. were framing a 3 story, 3-plex town house structure without the use of a guardrail system, safety net system, or personal fall arrest system to prevent a fall of up to 29 feet. (29 CFR 1926.501(b)(13)).
- b) Building 15: Three Subcontractor employees working near multiple wall openings where the bottom edge of the wall openings were exceeding 6 feet above a lower level and the inside bottom of the wall opening was 36 inches above the walking/working surface, was not protected from falling by the use of a guardrail system, a safety net system or a personal fall arrest system. (29 CFR 1926.501(b)(14)).

Haven Construction, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard A.R.S. 23-492.03(I)(1) which was contained in OSHA inspection number 999063, citation number 1, item number 1 and was affirmed as a

final order on January 8, 2015, with respect to a workplace located at 2459 W Pikes Peak Dr., Flagstaff, AZ 86001.
Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 2 - Item 1 - Building 15: Three Subcontractor employees of Diamond L Construction, Inc. were framing a 3 story, 3-plex town house structure without the use of a guardrail system, safety net system, or personal fall arrest system to prevent a fall of up to 29 feet. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$2,000.00
TOTAL PENALTY - \$6,000.00

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

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for more details about the size adjustment. Mr. Warren explained how the penalty for a repeated violation is calculated. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$6,000.00 on motion of Commissioner Hennelly, second of Commissioner LeMarr. Chairman Schultz commented on the excellent photographs and investigation.

Janus International Group, LLC
13374 W Peoria Ave
Surprise, AZ 85379

Planned
Years in Business: 13
Empl. Covered by inspection: 127

Site Location: 13374 W Peoria Ave
Surprise, AZ 85379

Inspection No: W0250-1086961
Inspection Date: 08/24/2015

SERIOUS – Citation 1 - Item 1 – Warehouse Area: One employee was not trained in the safe operation of a Raymond Lift Truck Forklift (Electric Pallet Jack), model number 102T F45L, serial number unknown. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – One employee was not trained in the safe operation of the Mechanical Punch Press that was being operated. (29 CFR 1910.217(h)(13)(i)).

Div. Proposal - \$2,250.00
TOTAL PENALTY - \$4,500.00

Formula Amt. - \$2,250.00
TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for more details regarding the forklift training citation and Mr. Warren responded to the question. There was discussion concerning training records for the forklift and the punch press. Commissioner LeMarr moved to approve the citations and penalties. Commissioner Hennelly seconded the motion. The Commission unanimously approved issuing the citation with a total penalty of \$4,500.00.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge position, discussion regarding interview questions, selection for second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates, the interview questions, and the salary.

Chairman Schultz asked if the Commission would like to move into executive session to discuss the candidates for the Administrative Law judge position. Commissioner LeMarr stated that since this is a personnel matter he moved the Commission enter into executive session. Commissioner Hennelly seconded the motion. The Commission unanimously voted in favor of the motion. Chairman Schultz announced the Commission would move into executive session.

The Commission returned to regular session at 2:29 p.m.

Chairman Schultz stated this item will be on next week's agenda.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Schultz announced that the new Commissioner, Robin S. Orchard, should be able to attend the Commission meeting next week.

Chairman Schultz suggested the Commissioners address scheduling meetings for the first quarter of 2016 at the next meeting.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Andrew Wade, Acting Director

ATTEST:



Kara Dimas, Commission Secretary