

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 19, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Clint Bolick	Commissioner
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Billie Gingrass	Compliance Officer
	Melinda Poppe	Chief Administrative Law Judge
	Karen Axsom	Labor Director
	Kelly LeFevre	Human Resource Manager
	Michelle Toney	Human Resources
	Paula Rodriguez	Human Resources
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Joseph M. Hennelly, Jr. was excused. Also in attendance was Jason Weber of Snell & Wilmer.

Approval of Minutes of November 12, 2015 Regular Meeting and Executive Session.

Chairman Schultz tabled the minutes until Commissioner Hennelly is in attendance.

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.

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James Ashley updated the Commission regarding meetings that he will be scheduling with various Legislators and Legislative staff. He added that he and Chairman Schultz would like to invite Legislators and Legislative staff to attend some of the Commission meetings and he intends to extend specific invitations so they can see first-hand the work that is done during Commission meetings.

Chairman Schultz added that he has met with the Workforce Committee of the Greater Phoenix Chamber of Commerce and commented on the support for legislation that would be coming forth for the continuation of the Commission both individually as participants and as the Chamber. In addition, he attended the Southern Arizona Safety Council this week and he noted that Charles Keller from Snell & Wilmer had a presentation on OSHA related issues. He noted that Mr. Keller was complimentary of his interactions with the Commission and Mr. Keller had urged the participants to contact their Legislators to encourage support of any legislation that will be coming forward for the continuation of the Industrial Commission and to support maintaining the Arizona OSHA program at the state level as opposed to the federal level.







SERIOUS – Citation 1 - Item 4 – South side of Building: Two employees operating an RSG aerial lift at a height of 15 feet above the lower ground were not trained by a person qualified in the subject matter to recognize those hazards associated with aerial lifts. (29 CFR 1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

NON-SERIOUS – Citation 2 - Item 1 – Office: The log and summary of recordable work-related injuries and illnesses was not maintained for the establishment. (29 CFR 1904.1(a)(2)).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

TOTAL PENALTY - \$3,300.00

TOTAL FORMULA AMT. - \$3,300.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Orchard asked if the investigator determined that the employee had not been trained through interviews or documentation. Mr. Warren responded to the question. Commissioner Bolick asked about the monetary penalty for the non-serious violation and for more details concerning the violation. Mr. Warren summarized the non-serious penalty structure. Chairman Schultz asked about the fall protection requirements for aerial lifts. Mr. Warren explained the requirement.

Commissioner LeMarr asked if the label on the Backerboard satisfied the SDS requirement or written hazard communication program. Mr. Warren responded to the question. Commissioner LeMarr noted that ADOSH was reasonable with the employer and could have included other violations in the citation.

Mr. Ashley asked about mounted photograph numbers 3 and 4 and the comment that the Superintendent was blocking the compliance officer from photographing the violation. Mr. Warren responded to the questions.

Commissioner LeMarr moved to issue the citations and penalty as recommended. Commissioner Bolick seconded the motion.

Commissioner Orchard asked about abatement for a non-serious violation. Mr. Warren summarized the abatement process and the employer's obligation to certify abatement.

The Commission unanimously approved issuing the citation and assessed the penalty of \$3,300.00.

Loftco, Inc.  
1832 E. Deer Valley Rd  
Phoenix, AZ 85024

Site Location: 11138 E Tarragon Ave  
Mesa, AZ 85212  
Inspection No: Y8817-1083965  
Inspection Date: 08/10/2015

Planned  
Years in Business: 27  
Empl. Covered by inspection: 6

REPEAT SERIOUS – Citation 1 - Item 1 – 1832 E Tarragon Ave Mesa, 85212 Lot 5: The employer did not ensure that employees engaged in residential construction activities were protected from falling, from 11 feet 2 inches to the ground below, by guardrail systems, safety net systems, or personal fall arrest systems, nor was an alternative fall protection measure provided. (29 CFR 1926.501(b)(13)).

Loftco, Inc. 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 1052507, citation number 1, item number 1 and was affirmed as a final order on 7/01/2015, with respect to a workplace located at 10734 W Prickly Pear Trl Peoria, AZ, 85024.

Div. Proposal - \$4,000.00	Formula Amt. - \$4,000.00
TOTAL PENALTY - \$4,000.00	TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked about the prior violation and the history adjustment. Mr. Warren responded that the instant citation is a repeat violation. Commissioner Bolick commented on the Commission's practice to not include any adjustment for size in the context of a repeat serious violation, and that would be his recommendation here.

Chairman Schultz asked if there for a motion to amend or approve the citation as presented. Commissioner Bolick moved to issue the citation and assess a penalty in the amount of \$5,000.00. Commissioner LeMarr seconded the motion.

Commissioner LeMarr asked Mr. Warren a hypothetical. Mr. Warren responded. Chairman Schultz commented on the need for a safety culture and the role that compensating employees on a piece work basis may have in obtaining employee compliance. Commissioner LeMarr referred to the mounted photographs depicting compliance and explained that it would be helpful to note the date that an abatement photograph is taken. Mr. Warren responded about abatement. Commissioner LeMarr asked Mr. Wade about compliance officers returning to the jobsite and Mr. Wade responded to the question.

Chairman Schultz, Commissioner Bolick, and Commissioner LeMarr voted in favor of the motion. Commission Orchard voted against the motion.

Mark Wright Construction, Inc.	Complaint	
3326 N. Winsted Blvd	Years in Business:	25
Tucson, AZ 85716	Empl. Covered by inspection:	3
Site Location:	2555 N. Stone Avenue	
	Tucson, AZ 85705	
Inspection No:	E5149-1079172	
Inspection Date:	07/21/2015	

SERIOUS – Citation 1 - Item 1 – Northeast Area of Roof: Two employees were tearing off the roof of a building at a height that was 20 feet above the ground level and were not utilizing any fall protection. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$1,500.00	Formula Amt. - \$1,500.00
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SERIOUS – Citation 1 - Item 2 – Northeast Area of Roof: Two employees were tearing off the roof of a building at a height of 20 feet above ground level and had not been trained to recognize the hazards of falling and in procedures to minimize those fall hazards. (29 CFR 1926.503(a)(2)).

Div. Proposal - \$1,500.00	Formula Amt. - \$1,500.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Bolick asked Mr. Warren about a prior violation and the phrase "serious/deleted" and Mr. Warren



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 moved the Commission enter into executive session to discuss the candidates for the Administrative Law Judge position. Commissioner Orchard 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 2:12 p.m.

Chairman Schultz asked if there was a motion. Commissioner Bolick move to appoint and for staff to extend an offer to the candidate identified as number two in executive session, and to authorize staff to extend an offer to candidate number one should candidate number two decline the position. Commissioner LeMarr seconded the motion. The Commission unanimously approved the motion.

#### Presentation and discussion regarding the operations of the Human Resources Division.

Kelly LeFevre introduced Michelle Toney and Paula Rodriguez and summarized the operations of the Commission's Human Resources (HR) Division. Commissioner LeMarr asked about the actions processed data and Ms. LeFevre explained that the data includes personnel transactions and services performed. Commissioner LeMarr asked if the vacant position in HR is subject to the hiring freeze and Ms. LeFevre replied that it was subject to the freeze. Ms. LeFevre explained why the Commission's HR Division has more staff than might be seen with a similar organization in the private sector.

Commissioner Bolick asked about the equal opportunity and inclusion strategic plan. Ms. LeFevre summarized the process. Commissioner Bolick asked for a copy of the current plan. Commissioner LeMarr inquired about staffing and Ms. LeFevre described the headcount, explained how all employees are fulltime, and she commented on temporary placements. Chairman Schultz commented on the report. He asked about the personnel reform legislation and covered versus uncovered status. Ms. LeFevre summarized the changes from the personnel reform legislation and some of the circumstances where an employee status may change from covered to uncovered. Commissioner Bolick asked if all new employees were uncovered. Ms. LeFevre stated that they are. Chairman Schultz thanked her for the information and commented on the percentage of employees nearing retirement. He asked Ms. LeFevre if she had data at the manager-level, or above a certain grade level, and Ms. LeFevre replied that she did not have the information with her and will provide it.

Mr. Ashley commented on discussions regarding succession planning and he complimented the HR Division for working through specific industry issues. Commissioner Bolick asked if there was data addressing whether employees who reach retirement eligibility do in fact retire at that point. Ms. LeFevre stated there are approximately 30 employees who are eligible and could retire as of today. It is projected that approximately 20% of the Commission's workforce will be eligible by the end of fiscal year 2016.

Chairman Schultz commented on the turnover rate, noted the rate has increased several percent from 2014 to 2015, and offered potential reasons for the increase. Ms. LeFevre acknowledged that turnover exists for a variety of reasons and noted that compensation is not as competitive as the market and she is exploring measures that may reduce turnover. She added that

32 employees have separated from employment so far this year and the Arizona Department of Administration (ADOA) is tracking the average and salaries are 20% below market. Chairman Schultz commented on the Commission's average employee's salary given the high percentage of the workforce that are professional in nature and explained how that average would be expected to be higher. Commissioner LeMarr asked what the "SPS" average means and Ms. LeFevre stated that the SPS means State Personnel System and she explained that the Commission is part of the SPS with state-wide mandatory policies.

Commissioner Orchard asked about exit interviews and Ms. LeFevre explained the process. Chairman Schultz commented on incentive programs and how, given salary freezes, those programs may help retain employees. Ms. LeFevre commented on incentive programs that may be beneficial to the agency. Chairman Schultz commented on how the private sector seems to like to hire Commission employees, and the benefit with having former employees implementing programs. Ms. LeFevre commented on ADOA's recognition of the need for competitive salary and efforts to identify what the market is paying.

Chairman Schultz commented on the large number of personnel transactions and the high level of productivity among the HR staff. He explained how HR approaches their task with a human side, and he added how they are an important part of the Commission.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley expressed his appreciation to the Commissioners for the opportunity to serve the State of Arizona as Director of the Industrial Commission. He commented on the planned outreach to the Legislature and described some outreach efforts he has initiated in the business community. Commissioner Bolick commented on a key contact with the Arizona Home Builders Association, and the Commission's interest in feedback and understanding some of the sentiment that might exist related to legislation that may have not been previously been relayed directly to the Commission.

Mr. Ashley commented on scheduling a Commissioner group photo and suggested December 3<sup>rd</sup> might be a good day for a photograph.

Mr. Warren commented on the recent presentation of VPP flags to Honeywell Aerospace and Mesquite Solar. Mr. Warren also commented on the SHARP program.

Mr. Warren added that the next Safety Summit will be in Tucson and will likely be held in March or April and the Occupational Safety and Health State Plan Association nation-wide Conference is scheduled for February, here in Phoenix.

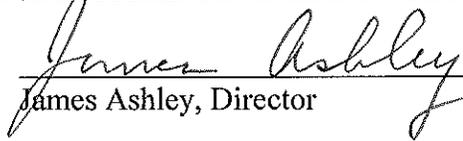
Chairman Schultz asked for input for future meetings and whether any particular day of the week is better for the meeting. Suggestions were made to schedule meetings on Thursdays, with Tuesdays a good alternative, both with start times at 1:00 p.m. Chairman Schultz asked about holding meetings in other locations within Arizona and there were positive comments about holding some meetings in other locations. Chairman Schultz explained that he will prepare a tentative schedule for the Commissioners to review. Commissioner LeMarr asked if there would normally be three meetings each month. Mr. Ashley noted that historically, there have been three meetings each month since 2008 and before that it was common for the Commission to meet every week. Commissioner Bolick stated that the agenda load is appropriate for meetings three times each month.

Public Comment.

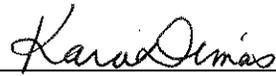
There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner LeMarr moved to adjourn and Commissioner Bolick seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary