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 Ginggrass 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.

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.
Discussion & Action regarding Proposed Youth Employment Penalty.

Chairman Schultz announced that this item is being removed from the agenda.

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

Guaranteed Door Service, Inc.  
5861 N 55th Ave  
Glendale, AZ 85301  

<table>
<thead>
<tr>
<th>Site Location</th>
<th>Planned Years in Business</th>
<th>Empl. Covered by inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>5861 N 55th Ave Glendale, AZ 85301</td>
<td>30</td>
<td>15</td>
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SERIOUS – Citation 1 - Item 1 – First Bay Area: One stairway, more than 44 inches wide but less than 88 inches wide did not have a handrail for employee use. (29 CFR 1910.23(d)(1)(iv)).  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 – 5861 N 55th Ave Glendale AZ: Two employees were not trained in the safe operation of Hyster Forklift model 540XL, serial number A187V16614L. (29 CFR 1910.178(l)(1)(i)).  
Div. Proposal - $1,250.00  
Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 – Third Bay Loft: One 125-volt fluorescent light assembly, located overhead approximately 6 feet above the floor, had exposed energized wires extending from the light assembly, thereby exposing employees to contact with live electrical parts. (29 CFR 1910.305(j)(1)(i)).  
Div. Proposal - $1,250.00  
Formula Amt. - $1,250.00

TOTAL PENALTY - $3,500.00  
TOTAL FORMULA AMT. - $3,500.00

William Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr asked about items depicted in mounted photographs number 1 and 2 Mr. Warren responded to the question.

Commissioner Bolick moved to approve the citation and penalty and Commissioner Orchard seconded the motion. Commissioner LeMarr explained that if information about abatement is included, it would be helpful to include information regarding when the employer abated the hazards. Mr. Warren responded that he will ask the compliance officers to include the dates on abatement photographs.

Commissioner Orchard asked Mr. Warren about his review of the investigation file before the matter is presented to the Commission. Mr. Warren responded to the question.

Andrew Wade commented on the quick fix discount. Commissioner Bolick stated he would be interested in considering adoption of the quick fix discount. Mr. Wade added additional details regarding the quick fix discount. Commissioner Bolick asked Mr. Ashley to explore the matter and to return with a recommendation. Mr. Ashley replied that he would be happy to look into the matter.
Chairman Schultz asked if adoption of a quick fix discount would require rulemaking or if it would be included as part of the process of review and consideration at the Commission level, and, if so, the information that the Commission would need. Commissioner LeMarr commented on consistency with federal OSHA practices. Mr. Wade commented on the Field Operations Manual (FOM) and explained how ADOSH identifies differences between the Arizona practices and federal OSHA practices. Commissioner Bolick asked how the quick fix discount differs from the good faith adjustment and when the good faith adjustment applies. Mr. Warren replied that the quick fix adjustment is a separate adjustment from good faith. Mr. Wade read the explanation from the FOM regarding the good faith reduction. Commissioner Bolick commented on his preference that the adjustment be included as a formal part of the process and he explained why.

Chairman Schultz asked if there was any further discussion, hearing none. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,500.00.

Headlee Roofing Co., Inc.      Complaint
951 W 1st Ave                  Years in Business:  28
Mesa, AZ 85210                 Empl. Covered by inspection:  4

Site Location:  20677 E Maya Rd
                Queen Creek, AZ 85142
Inspection No:  H9685-1085817
Inspection Date: 08/18/2015

SERIOUS – Citation 1 - Item 1 – Northwest and West Side of Roof: Two employees engaged commercial roofing activities were not protected from falling by guardrail systems, safety net systems, or personal fall arrest systems while exposed to fall over 8 feet to the ground below.  (29 CFR 1926.501(b)(10)).
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – Northwest and Southwest Side of Roof: Two employees using personal fall arrest system, to potentially stop a fall, were not rigged such that the employees could not contact a lower level.  (29 CFR 1926.502(d)(16)(iii)).
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3 – Northwest and Southwest Side of Roof: Two employees using personal fall arrest systems, to potentially stop a fall, were not trained in the correct use and operation of their personal fall arrest equipment.  (29 CFR 1926.503(a)(2)(iii)).
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 4 – East Side of Building: A multifunction aluminum ladder, manufacture and model unknown, was used on the east side of the building for access to the roof and the ladder side rails did not extend at least 3 feet above the roof to which the ladder was used to gain access.  (29 CFR 1926.1053(b)(1)).
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00
TOTAL PENALTY - $6,000.00  TOTAL FORMULA AMT. - $6,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Bolick asked about the ladder abatement photographs and noted that he has expressed concerns about the application of the size adjustment factor in situations where the employer has a previous serious
citation for a similar violation. He explained why he was inclined to not apply the adjustment factor for size noting that this employer has previous citations for both fall protection and ladder violations and it is simply inexcusable to not train employees in fall protection. Mr. Warren explained why the recommendation includes the adjustment factors and noted that the citations are not considered repeat violations.

Commission LeMarr asked about employees wearing fall protection harnesses but not being tied off. Mr. Warren responded to the question. Mr. Wade commented on the availability of a Legal Division review regarding the potential for a willful designation. Commissioner LeMarr commented on the similarity with a prior matter. Mr. Wade commented on the evidence. Commissioner Bolick stated he would be inclined to either remove the adjustment factors or to remand it for further willful review. Chairman Schultz noted he shared Commissioner Bolick’s concerns, explained that this inspection covered four employees, and commented on the other 56 employees working elsewhere. He added that it seems the employer does not appreciate the requirements and noted supporting a willful designation is more difficult. He commented on a higher penalty amount. Commissioner LeMarr commented on a total penalty of $10,000.00 with no adjustments.

Chairman Schultz asked for a motion. Commissioner LeMarr moved that citations 1, 2, 3, and 4 be at the gravity based penalty $2,500.00 each for a total penalty of $10,000.00. Commissioner Bolick seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of $10,000.00.

<table>
<thead>
<tr>
<th>J-3 Construction LLC</th>
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<tr>
<td>2085 E Fry Blvd</td>
<td>Years in Business: 20</td>
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<tr>
<td>Sierra Vista, AZ 85635</td>
<td>Empl. Covered by inspection: 3</td>
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Site Location: 2085 E Fry Blvd
Sierra Vista, AZ 85635

Inspection No: F3875-1082497
Inspection Date: 07/30/2015

SERIOUS – Citation 1 - Item 1 – Southside of building: A written Hazard Communication Program had not been developed for employees who were exposed in the workplace to hazardous materials such as the Hardie Backer, The Ultimate Cement Backerboard that contained 40-50% crystalline silica. (29 CFR 1910.1200(e)(1)).
Div. Proposal - $750.00
Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 2 – South side of building: One employee was observed operating a 4-1/2 inch right angle grinder (unknown model and serial number) without a guard. (29 CFR 1926.300(b)(1)).
Div. Proposal - $750.00
Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 3 – North side of Building: Two employees were observed operating an RSG Aerial Lift (Model #288638) at a height of 15 feet above the lower level and were not using any type of fall protection. (29 CFR 1926.453(b)(2)(v)).
Div. Proposal - $750.00
Formula Amt. - $750.00
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 ADOSSH 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.

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<tr>
<th>Div. Proposal</th>
<th>$4,000.00</th>
<th>Formula Amt.</th>
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<td>TOTAL PENALTY</td>
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<td>TOTAL FORMULA AMT.</td>
<td>$4,000.00</td>
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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.
3326 N. Winsted Blvd
Tucson, AZ. 85716

| Site Location | 2555 N. Stone Avenue
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<tr>
<td>Tucson, AZ. 85705</td>
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<tr>
<td>Inspection No</td>
<td>E5149-1079172</td>
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<tr>
<td>Inspection Date</td>
<td>07/21/2015</td>
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Complaint

Years in Business: 25
Empl. Covered by inspection: 3

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)).

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<thead>
<tr>
<th>Div. Proposal</th>
<th>$1,500.00</th>
<th>Formula Amt.</th>
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<tr>
<td>TOTAL PENALTY</td>
<td>$3,000.00</td>
<td>TOTAL FORMULA AMT.</td>
<td>$3,000.00</td>
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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
responded to the question. Commissioner LeMarr commented on the violations relating to the same subject matter. Mr. Warren explained the differences. Commissioner Bolick commented on how the prior training citation provided the employer with notice of the requirement. Mr. Warren replied that he did not know the circumstances of the prior citation.

Commissioner Orchard moved to issue the citation with a $3,000.00 penalty. Commissioner LeMarr seconded the motion.

Commissioner Orchard asked about the 2013 citation that was deleted and Mr. Warren responded to the question. Mr. Wade commented on other circumstances that may result in a citation being deleted.

The Commission unanimously approved the motion.

Michael L. Riddle Painting, Inc.  Planned
dba Riddle Painting & Coatings  Years in Business: 33
5922 N Black Canyon Hwy  Empl. Covered by inspection: 10
Phoenix, AZ 85017

Site Location: 12425 W Bell Rd
Surprise, AZ 85378
Inspection No: H9685-1086766
Inspection Date: 08/20/2015

SERIOUS – Citation 1 - Item 1 – Northwest Side of Building: One employee, who was power washing paint off of a vertical wall from on top of a building's roof, was not protected from falling 9 feet 5 inches to the ground below by the use of guardrail systems, safety net systems, or a personal fall arrest system. (29 CFR 1926.501(b)(1)).
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – East Side of Courtyard: One employee stepped on the top step and cap of an 8 foot Louisville Step Ladder Model L-3111-07 to access a building's roof. (29 CFR 1926.1053(b)(4)).
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 LeMarr asked Mr. Warren about the use of the man lift and the step ladder. Mr. Warren responded to the question.

Chairman Schultz asked if there were any further questions or a motion to approve staff recommendations. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,000.00 on motion of Commissioner Bolick, second of Commissioner LeMarr.

Discussion and/or Action regarding the Consideration of Candidates, salary, and the appointment of administrative law judge(s). 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 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 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 3rd 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