

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, January 7, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief/Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Karen Axsom	Labor Director
	Molly Jones	Claims
	William Warren	ADOSH Director
	Larry Gast	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Scott Huckfeldt	Compliance Officer
	Kara Dimas	Commission Secretary

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

Approval of Minutes of December 10, 2015 and December 17, 2015 Regular Meetings.

The Commission tabled the Regular Minutes for December 10, 2015 and December 17, 2015 for lack of a quorum.

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. 2C15/16-0623 Cat and Sons Transportation, L.L.C.
2. 2C15/16-0137 Cervantes, Inc., dba Los Armando's Mexican Food
3. 2C13/14-1041 Euro Fine Finishes, L.L.C.
4. 2C14/15-2403 Mariscos Bobby's, L.L.C.
5. 2CSP15/16-0087 Mile High Interior Partitions, L.L.C.
6. 2C14/15-1721 The Eaglewatch Behavioral Health Services, L.L.C.

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

1. DG Retail, LLC
2. The Procter Gamble Company
3. Valley Schools Workers' Compensation Pool

Chairman Schultz stated that agenda item b.3., would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Vice Chair Hennelly, second of Commissioner Orchard.

Valley Schools Workers' Compensation Pool – Chairman Schultz referred to staff's report and noted that the amount of the security deposit and the amount of the unpaid liabilities were transposed. Renee Pastor confirmed the correct amounts. He also noted the employer's high experience modification factor and suggested the employer avail itself of the services offered by the Division of Occupational Safety and Health's (ADOSH) consultation program. William Warren, Renee Pastor, and Andrew Wade commented on the consultation and self-insurance programs. Vice Chair Hennelly noted that the rate is high and he would be in favor of some dialog with the employer regarding the rate and the availability of consultation services. Chairman Shultz explained his intent to explore whether the Commission could assist the employer with its loss experience and to continue the Commission's efforts to expand the number of partners in the Public Entity Partnership Program.

Commissioner Orchard moved to renew the self-insurance authority for the Valley Schools Workers' Compensation Pool with a recommendation that the Pool work with the ADOSH consultation program. Vice Chair Hennelly seconded the motion. The Commission unanimously approved the motion.

Discussion and/or Action regarding application for Private Employment Agent license under A.R.S. § 23-521 *et. seq.* regarding Sketch Media Design, LLC.

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Vice Chair Hennelly moved to accept the Employment Advisory Council's recommendation and deny the employment agent license application for Sketch Media Design. Commissioner Orchard seconded the motion. Commissioner Orchard asked if there have been other applications denied for similar circumstances such as financial instability and Karen Axsom responded to the question. The Commission unanimously voted in favor of the motion.

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 provided an update regarding meetings that he has had and will be scheduling with various Legislators, Legislative staff, other agency directors and stakeholders. Mr. Ashley introduced Bob Charles.

Chairman Schultz commented on the role of the meetings as part of the overall approach regarding the Sunset Review and making sure that the Commission is communicating with all stakeholders and promoting awareness of the important functions the Commission performs every day.

Mr. Ashley added that it all comes down to having a voice and dialog and being at the table with the policy makers, stakeholders and legislative community.

Commissioner Orchard stated she appreciated their efforts.

Presentation and discussion regarding Industrial Commission's Legislative Affairs Chief / Public Information Officer.

Bob Charles, the Industrial Commission's new Legislative Affairs Chief/Public Information Officer, described his background, and presented a brief overview of his immediate plans for the Commission. He noted that bills have already been posted at the Legislature and explained how he will be tracking all legislation and will identify legislation that may have a potential impact on the Commission.

Commissioner Orchard asked how to follow the Commission on Twitter. Mr. Ashley stated it is @INDCOMMAZ. Vice Chair Hennelly welcomed Mr. Charles and asked if he planned on presenting a legislative update every meeting. Mr. Charles stated he would for every meeting during the legislative session.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Cruz & Associates, P.C. vs. G. Carrillo - Mr. Wade referred to the Petition for Attorney's Fees and explained staff's recommendation.

Vice Chair Hennelly stated the analysis was very thorough, noted the use of the rate of \$160.00 an hour, and asked if the use of that rate was because Ms. Rios was not a certified specialist. Mr. Wade referred to the Commission's determination regarding reasonable hourly rates. Commissioner Orchard noted that they have seen this attorney before. Chairman Schultz commented on the provision in the fee contract that provides for arbitration and Mr. Wade explained why the Commission has jurisdiction over the Petition for Attorneys' fees notwithstanding that provision.

Chairman Schultz referred to staff's recommendation and Mr. Wade replied that staff is recommending fees based on the hours as submitted by the attorney for her time and for her legal assistant's time but adjusted to the rates established by the Commission to use for evaluating these petitions which is \$160.00 for an attorney who is not a certified specialist and using the rate of \$85.00 per hour for legal assistant's time. He added that the total amount awarded would be \$2,099.75 and he explained that the statute does not include any authorization to award costs. Chairman Schultz asked about a time limit and Mr. Wade suggested that there be a time limit and he explained why.

Vice Chair Hennelly moved to award Ms. Rios 25% of any average monthly wage adjustment dating from the date of injury through February 25, 2015 (resulting from the increase in the average monthly wage that she secured) as well as any temporary or permanent compensation benefits that may be awarded for the period subsequent to February 25, 2015, up to a total amount of \$2,099.75, and to comply with the statute, these payments would need to occur within ten years from the date of the Commission's award. Commissioner Orchard seconded the motion. Mr. Wade

asked if the motion could include authorizing staff to type in the signatures so the Findings and Award can be issued sooner. Vice Chair Hennelly and Commissioner Orchard agreed with including that authorization in the motion. The Commission unanimously approved the motion.

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

WAG Services, Inc. 8121 W Harrison St Tolleson, AZ 85353	Fatality/Accident Years in Business: 4 Empl. Covered by inspection: 4
Site Location:	Harquahala Valley Rd and Camelback Rd Tonopah, AZ 85354
Inspection No:	H0333-1091531
Inspection Date:	09/10/2015

Mr. Warren summarized ADOSH's investigation into a fatal accident and noted that the investigation did not identify any violations and ADOSH was not recommending any citations. He added that Compliance Officer Scott Huckfeldt was available if there were questions.

Vice Chair Hennelly asked if there was any way the company could have foreseen the circumstances that led to the fatality. Mr. Huckfeldt responded to the question.

Chairman Schultz commented on the accident. Chairman Schultz added that there was no citation and no Commission action is required. He thanked Mr. Huckfeldt for his extensive review, explained that fatalities are very much on the Commission's radar, and is an area where every opportunity to attempt to reduce fatalities needs to be explored.

Central Arizona Block, Inc. dba Central Arizona Block Company 6030 S. Mann Avenue Tucson, AZ 85706	Planned Years in Business: 14 Empl. Covered by inspection: 25
Site Location:	6030 S. Mann Tucson, AZ 85706
Inspection No:	T3633-1106712
Inspection Date:	11/19/2015

SERIOUS – Citation 1 - Item 1 –

- a) 6030 S. Mann Avenue, Tucson: Employees did maintenance work on the Columbia-brand block making and palletizing machines (various model and serial numbers) and other equipment associated with the block making process, and the employer had not conducted a periodic inspection of the energy control procedure during the last year. (29 CFR 1910.147(c)(6)(i)).
- b) 6030 S. Mann Avenue, Tucson: Employees did maintenance work on the Columbia brand block making and palletizing machines (various model and serial numbers) and other equipment associated with the block making process, and training on the energy control (lockout/tagout) program was not adequate in that the company had trained employees at or near the time the facility opened in 2001, and retraining to reestablish employee proficiency

had not been done as necessary. Employees hired since 2001 had not been trained concerning lockout/tagout. (29 CFR 1910.147(c)(7)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

a) North side of main plant building: The #1 Columbia brand block machine, unknown model and serial number, did not have guards to protect employees from point of operation hazards including the movement of the brick pallets. (29 CFR 1910.212(a)(1)).

b) North side of main plant building: The block conveyor which ran between the #1 Columbia brand block machine, unknown model and serial number, and the rack loader had sprocket wheels and chains which were not enclosed. (29 CFR 1910.219(f)(3)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

NON-SERIOUS – Citation 2 - Item 1 – 6030 S. Mann Avenue, Tucson: The employer did not keep injury and illness records (OSHA 300 and 300A forms) for the year 2014. (29 CFR 1904.1(A)(2)).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner Orchard asked about the missing log and if the employer ever produced the log. Mr. Warren responded to the question. Chairman Schultz commented on the grouping of violation instances and that ADOSH's approach is a reasonable approach and identifies the areas that need to be corrected. He noted that automation can be an effective method to reduce employee exposure to hazards but when there is interface with humans and machinery, it becomes more critical that employers employ measures to control hazards with energizing equipment, "lock out tag outs," as well as appropriate guarding when the interactions do occur. Chairman Schultz also commented on the non-serious citations.

Commissioner Orchard moved to approve the citations and penalty as recommended and Vice Chair Hennelly seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of \$4,050.00.

Marvin Yazzie, A Single Man dba Marvin Construction  
P.O. Box 143  
Cameron, AZ 86020

Planned  
Years in Business: 14  
Empl. Covered by inspection: 4

Site Location: 5824 Switchback  
Flagstaff, AZ 86004  
Inspection No: H1793-1094188  
Inspection Date: 09/24/2015

SERIOUS – Citation 1 - Item 1 –

a) West side of jobsite: Two employees were working below two employees that were standing on a sheeted roof-top nailing fascia boards and the employees on the ground were not wearing protective helmets. (29 CFR 1926.100(a)).





change-over had on some of the data. Chairman Schultz and Mr. Warren commented on higher hazard industries.

Chairman Schultz suggested that the ability to collect more data from workers' compensation claims be explored when upgrading the claims' system and how this data may enable ADOSH to better allocate resources. Mr. Ashley agreed and stated it would be a good link and comparable approach for other divisions is key. Mr. Warren also commented on the consultation and volunteer protection programs. Commissioner Orchard asked about the ADOSH outreach program and Mr. Warren responded to the question. Commissioner Orchard also asked about objective data pertaining to the impact of the program. Mr. Warren commented on the ability to measure some aspects of the new program. Chairman Schultz asked about the Mobile Workplace for the SHARP program. Mr. Warren stated it is currently in draft and commented on developing the program.

Ms. Gingrass described efforts the compliance officers make during closing conferences and communications after a citation is issued to provide information to employers regarding the consultation program, the ADOSH Advocate, and information on the ADOSH website. Chairman Schultz asked Mr. Gast about staffing and Mr. Gast responded to the question. Commissioner Orchard stated that she would like more details about the process ADOSH follows in notifying the employer of the citation and Mr. Warren presented a brief summary. Mr. Ashley added that staff could provide a more detailed explanation of the process at a future Commission meeting.

Chairman Schultz thanked the ADOSH staff for the presentation and stated it was helpful.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced that the Arizona Food Marketing Alliance is holding a legislative reception on January 13, 2016 and asked if any Commissioners had time to attend to let him know.

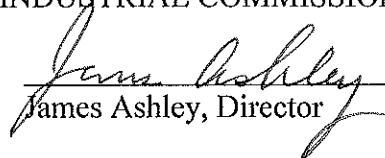
Kara Dimas confirmed the calendar through February. The Commission discussed scheduling a meeting to coincide with the ADOSH Safety Summit.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Vice Chair Hennelly moved to adjourn and Commissioner Orchard seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary