

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 25, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Karen Axsom	Labor Director
	Larry Gast	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Christopher Brandon	Compliance Officer
	Steven Ripple	Discrimination Investigator
	Jesse Perez	Discrimination Investigator
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Ellen McKitterick of Mountain State's Employers Council representing Sun Valley Solar, Ray Byrne and Bill Cooper representing America Roofing LLC, Lydia Terrazas, Commission Intern, and Jason Weber of Snell & Wilmer

Approval of Minutes of February 11, 2016 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the February 11, 2016 meeting on motion of Vice Chair Hennelly, second of Commissioner LeMarr.

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. 2C15/16-1399 A.S.I. Med Trans, L.L.C.
 2. 2C15/16-1247 Iron Horse Welding Work, L.L.C.

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 LeMarr, second of Commissioner Orchard.

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.

Mr. Charles commented on SB 1500 and explained that the bill is scheduled to be heard in the Senate Committee of the Whole today, and he summarized recent adopted amendments and proposed amendments. He noted that the Boiler Advisory Board and Boiler Act Statutes have been extended to 2024 and the Industrial Commission will no longer be responsible for or conducting inspections. He added that the Commission will be responsible for assuring that private-sector boiler inspectors are properly certified and the bill has an effective date of July 1, 2017. Mr. Charles explained why there is a delayed effective date and noted that the Boiler Advisory Board will have five members, instead of twelve, with staggered terms.

Mr. Ashley added that the boiler-related provisions have moved forward with the involvement of the Boiler Advisory Board and the Chairman of the Boiler Advisory Board agrees with the provisions. Commissioner LeMarr asked about cost savings and Mr. Ashley replied that the cost savings to the Commission would be between \$200,000 to \$250,000 per year.

Mr. Charles commented on other bills of interest to the Commission and added there is a slim possibility that there will be further amendments to SB 1500 in the House

Chairman Schultz asked about the Bill that includes provisions related to Commissioner salary and appointment of the Director. Mr. Charles replied that the bill has passed the Senate and now moves to the House.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles announced the scheduling of the Industrial Commission Day at the Capitol for March 14, 2016 and described efforts underway to ensure a successful event.

Discussion & Action regarding Proposed Youth Employment Penalty.

CL – 1516-0253: Material Delivery, Inc., dba MDI Rock – Karen Axsom summarized the Labor Department's investigation following the receipt of a work injury report stating that a 17 year old youth was injured while lifting a hydraulic tank using a power-driven hoist. The investigation produced evidence that the youth was working in a prohibited employment. She explained the findings regarding numerous violations of Arizona law regarding A.R.S. § 23-231(a)(7). Ms. Axsom recommended a penalty of \$600.00. Commissioner Orchard asked if the employer knew the worker was 17 and Ms. Axsom responded to the question. The Commission assessed the proposed penalty of \$600.00 on motion of Commissioner Orchard, second of Vice Chair Hennelly.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-19 - Sun Valley Solar Solutions, LLC

Larry Gast presented a summary of the complaint, the employer's response, and the results of the ADOSH investigation. Mr. Gast recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit.

Commissioner Orchard asked for clarification for the date the complaint was filed. Mr. Gast provided additional details regarding receipt of the complaint.

Chairman Schultz acknowledged that Ellen McKitterick had requested the opportunity to speak and invited her to address the Commission. Ms. McKitterick stated she was with the Mountain States Employers Council and represents Sun Valley Solar. She presented a brief summary of the employer's position.

Chairman Schultz asked if there were questions for Ms. McKitterick, Mr. Gast, or Mr. Ripple. There were no questions. Commissioner Orchard moved the Commission not pursue the complaint further and Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-19 - Sun Valley Solar Solutions, LLC

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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

America Roofing LLC
1005 S 30th Ave
Surprise, AZ 85374

Planned
Years in Business: 16
Empl. Covered by inspection: 4

Site Location: 26157 N 96th Dr
Peoria, AZ 85383
Inspection No: A3807-1104816
Inspection Date: 11/10/2015

REPEAT-SERIOUS – Citation 1 - Item 1 – Lot 6: Four employees were installing roof materials on a low slope 4:12 pitch roof at a height of up to 18 feet 6 inches above lower levels and were not protected from falling by guardrail systems, safety nets or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

America Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard ARS 23-492(05)(a) which was contained in OSHA inspection number 317820116, citation number 1, item number 1 and was affirmed as a final order on 2/03/2015, with respect to a workplace located at 19800 N 7th St, Phoenix, AZ 85024.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 2 - Item 1 – Lot 6: One employee did not receive fall protection retraining when the employee demonstrated inadequacies in knowledge and skill in that the employee believed it acceptable to work on a roof without fall protection if positioned 6 feet or more from the roof's edge. (29 CFR 1926.503(c)(3)).

Div. Proposal - \$1,250.00
TOTAL PENALTY - \$4,250.00

Formula Amt. - \$1,250.00
TOTAL FORMULA AMT. - \$4,250.00

Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr asked for additional details regarding the circumstances that prompted the inspection. Mr. Gast responded to the question. Commissioner LeMarr referred to the prior history report and commented on the inspection history. Mr. Gast explained how a worksite may be selected for an inspection. Commissioner Orchard asked why the results of the November inspection were not on the prior history list. Mr. Gast and Ms. Gingrass explained the citation related to that inspection was probably still in contest. Mr. Cooper stated the willful citation is being contested and there were also two other files that will be coming to the Commissioners and Mr. Byrne stated there was a pre-hearing scheduled for the next day.

Mr. Byrne described improvements he is implementing and summarized some of the costs incurred with training and inspections that the employer performs. He also mentioned challenges encountered in ensuring employee compliance. Chairman Schultz asked Mr. Byrne to elaborate on the root problem noting the piece work method of compensation and the disincentive that may provide to employees to comply with safety requirements. Mr. Byrne summarized financial incentives he has implemented to encourage compliance with the requirements. Chairman Schultz noted that the fall protection emphasis program addresses fall protection and does not single out the roofing trades. He added the emphasis program is a result of very significant injuries and fatalities from falls and the implementation and enforcement is extremely important.

Commissioner Orchard complemented Mr. Byrne for his efforts to improve compliance. She asked Mr. Gast if ADOSH consultation services are available to an employer with open cases. Mr. Gast summarized the role of the compliance officer in an open matter.

Vice Chair Hennelly followed up on the consultation question and noted that other trades such as framers and painters have the same fall protection issues. He commented on the shortage of labor in some skilled trades, noted that he appreciates the challenges in ensuring compliance, and added that there is still an issue with employees on the roof without fall protection. Vice Chair Hennelly asked for additional details concerning the employer's safety program and the presence of unidentified employees on the roof. Mr. Byrne provided additional details and explained that he was going to investigate the unidentified employees. Vice Chair Hennelly asked for more details regarding the circumstances related to ADOSH being notified about the employees working on the roof without fall protection and Ms. Gingrass explained how ADOSH was notified of workers exposed to a potential fall hazard on the subject worksite. Vice Chair Hennelly asked if there were signs on the worksite that referred to America Roofing performing work on the roof and Ms. Gingrass explained that she did not see any such sign.

Commissioner LeMarr asked about the employer's process in testing employees regarding their knowledge of the requirements and Mr. Byrne described the process.

acid. Commissioner Orchard commented on the grouping and common sense approach to the investigation.

Commissioner LeMarr moved to issue Citation 1, Item 1 with a \$1,250.00 penalty, not issue Citation 1, Item 2, issue Citation 1, Item 3 with a \$1,250.00 penalty, and issue Citation 1, Item 4 with a \$500.00 penalty. Commissioner Orchard seconded the motion. Chairman Schultz commented that the compliance officer performed an excellent inspection and given the number of employees and years the employer has been in business cuts both ways, noting that the employer has been doing this type of work long enough that the hazards encountered in the work should be well understood and it did not appear that the employees are informed as to the hazards that they are presented with in their daily work, or that appropriate training is being conducted. He explained that the motion is satisfactory but this employer needs a wake-up call and, with hope, will learn from this process and will do a better job protecting their employees. Vice Chair Hennelly concurred with Chairman Schultz. Commissioner LeMarr added that the \$3,000.00 penalty resulting from one small pool remodel is going to get the employer's attention. The Commission unanimously approved the motion with a total penalty of \$3,000.00.

Safeway Inc.

17049 W Bell Rd

Surprise, AZ 85374

Site Location: 10773 N Scottsdale Rd
Scottsdale, AZ 85284

Inspection No: W0250-1104341

Inspection Date: 1/06/2015

Complaint

Years in Business: 89

Empl. Covered by inspection: 102

SERIOUS – Citation 1 - Item 1 – Warehouse area, Southeast Corner: The mezzanine over the Fresh Produce Prep area was used for storage and the area was not marked with the floor's rated capacity. (29 CFR 1910.22(d)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Produce Area: An employee was lifted with a Yale model number MSW025SEN24TVO72 Serial number A895NO2007E Electric Pallet Jack and the employee was not protected from falling by standard railings or an equivalent means to prevent a fall to the floor below. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3 –

a) Warehouse: The means of access to an exit route path between the warehouse manager's office and the stored goods area was partially blocked by boxes. (29 CFR 1910.37(a)(3)).

b) Warehouse area: Employees needed to travel by a charging station for two electric pallet jacks to exit the building. (29 CFR 1910.37(a)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 4 – Produce Area: Certification of training was not provided for one employee who operated a Yale model #MSW025SEN24TVO72 Serial # A895NO2007E Electric Pallet Jack, to load and unload goods from delivery trucks, and stack commodities in the warehouse. (29 CFR 1910.178(l)(6)).

Div. Proposal - \$1,500.00
TOTAL PENALTY - \$7,500.00

Formula Amt. - \$1,500.00
TOTAL FORMULA AMT. - \$7,500.00

Mr. Gast summarized the citations and proposed penalties. Commissioner LeMarr asked for details regarding the original complaint and Mr. Gast responded to the question. Commissioner Orchard commented on the employer's prompt abatement. Commissioner Orchard moved to issue the citations as recommended with each penalty at 50% of the recommended penalty amount for each Item. She explained that the reduced penalties results from the employer's prompt abatement efforts and the total penalty would be \$3,750.00. Commissioner LeMarr seconded the motion. The Commission unanimously approved issuing the citations and assessed the penalties with a total of \$3,750.00.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Ms. Poppe presented an update of the draft Score Card and Performance Indicators and she summarized recent coordination with the Government Transformation Office. Ms. Poppe described the components of the Score Card and summarized Commission goals. She added that there are three metrics that apply to all state agencies and she described those metrics.

She commented on the Industrial Commission Day at the Capitol scheduled for March 14, 2016 from 11:00 a.m. to 12:00 p.m.

Ms. Poppe presented an update regarding the claims system, and noted that the scope of work has been provided to vendors.

Presentation and Discussion regarding the operations of the Industrial Commission's Management Information Systems (MIS) Division.

Chairman Schultz announced that this item will be rescheduled to a future meeting.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced that the Senate Committee of the Whole had just approved SB1500 and he explained that the bill will now move to the House and he summarized the process. He commented on an upcoming tour that is part of the Commission's corporate business outreach program.

Ms. Dimas presented the Commission with two retirement resolutions: Cathryne Happel with 14 years of State service and David Sosa with 31 years of State service.

The Commission reviewed the meeting schedule through May.

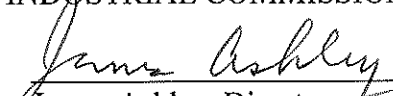
Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 3:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary