

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 2675 East Broadway Boulevard
Conference Room
Tucson, Arizona 85716
Thursday, April 14, 2016 – 1:30 p.m.

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| 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 |
| | Bob Charles | Legislative Affairs Chief / Public Information Officer |
| | Renee Pastor | Accounting |
| | William Warren | ADOSH Director |
| | Jessie Atencio | Assistant ADOSH Director |
| | Javier De Echavarri | Compliance Officer |
| | Katherine Merems | Compliance Officer |
| | Kara Dimas | Commission Secretary |

Chairman Schultz convened the Commission meeting at 1:30 p.m. noting a quorum present. Also in attendance were Frances Bracamonte, Sara Marsh and Allie Matthews with the City of Tucson, Annette Henderson of Snell & Wilmer, Brian Clymer, attorney, and Wes Stewart.

Approval of Minutes of April 7, 2016 Regular Meeting.

The Commission unanimously approved the Minutes of the April 7, 2016 Regular Session meeting on motion of Commissioner LeMarr, second of Vice Chair Hennelly.

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. JMR Express LLC
 2. International Transportation Service LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. City of Tucson
 2. City of Yuma

3. Maricopa County
4. Maricopa County Community College District
5. Mesa Unified School District No. 4
6. Regis Corporation
7. The Arizona School Alliance for Workers' Compensation Pool

Chairman Schultz stated that agenda item b.1, b.2, b.3. and b.4., would be removed from the consent agenda and heard separately.

City of Tucson: Chairman Schultz noted that the City of Tucson has existed for 139 years and that the City's experience modification rating was high. He suggested that the City take advantage of the consultation services provided by ADOSH as part of an effort to help reduce injuries and improve the experience modifier. The Commission unanimously granted renewal of self-insurance authority on motion of Vice Chair Hennelly, second of Commissioner LeMarr.

City of Yuma: Chairman Schultz noted that the City of Yuma has existed for 103 years and that the City's experience modification rating was high. He suggested that the City take advantage of the consultation services provided by ADOSH as part of an effort to reduce injuries and to improve the experience modifier. The Commission unanimously granted renewal of self-insurance authority on motion of Commissioner LeMarr, second of Vice Chair Hennelly.

Maricopa County: Commissioner LeMarr recused himself from this agenda item. Chairman Schultz noted that Maricopa County has existed for 145 years, is a substantial employer, and that the County's experience modification rating is well below the average of 1.0. He added that the County has a positive safety record and could be a wonderful resource along with the ADOSH consultation services. Commissioner Orchard moved to grant renewal of self-insurance authority and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr did not vote.

Maricopa County Community College District: Chairman Schultz explained why he removed this item from the consent agenda and commented on the experience modification of 0.74. The Commission unanimously granted renewal of self-insurance authority on motion of Commissioner Orchard, second of Vice Chair Hennelly.

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. Ashley commented on ongoing efforts, that includes both stakeholders and Commission staff, to explore improvements to the Commission's operations that may require legislation.

Mr. Charles noted that most legislative activity is at a standstill while the state budget is addressed and he commented on the status of SB 1500. He added that Governor Ducey has signed 106 bills into law and there are 1219 bills still pending further action.

Mr. Ashley noted that SB 1500 provides for the full continuance of the Industrial Commission.

Consent Agenda:

Chairman Schultz announced that the Commission would now address the items that remained on the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner LeMarr, second of Vice Chair Hennelly.

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 commented on the visit to Tucson and tours with Raytheon, Johns Manville and CAID Industries. He noted that The Daily Courier published an article relating to ADOSH Director Bill Warren's presentation in Prescott on April 8 and he commented on inquiries from the Arizona Daily Star.

Mr. Ashley commented on meetings with the President and CEO of the Tucson Chamber of Commerce and with the City of Tucson. He noted the positive profile in the Arizona Multi-Housing Association's AMA Apartment News.

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

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| America Roofing LLC | Planned | |
| 1005 S 30 th Ave | Years in Business: | 15 |
| Phoenix, AZ 85009 | Empl. Covered by inspection: | 2 |
| Site Location: | 18413 W Roma Ave | |
| | Goodyear, AZ 85395 | |
| Inspection No: | W0250-1102438 | |
| Inspection Date: | 10/29/2015 | |

WILLFUL-SERIOUS – Citation 1 - Item 1 – 18413 W Roma Ave Goodyear, AZ: Two employees were installing tile roofing on a new one story residential home with a low sloped roof at an eave height above 13 feet and were not protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. (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 A.R.S. 23.0492(05)(A) which was contained in OSHA inspection number 317820116, citation number 01, item number 01 and was affirmed as a final order on 02/03/2015, with respect to a workplace located at 19800 N 7th St, Phoenix, AZ 85024.

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| Div. Proposal - \$44,000.00 | Formula Amt. - \$44,000.00 |
| TOTAL PENALTY - \$44,000.00 | TOTAL FORMULA AMT. - \$44,000.00 |

Mr. Warren noted that this item was tabled at the prior Commission meeting and he described the additional information supplied to the Commissioners. He summarized the citation and proposed penalty as listed. Chairman Schultz asked for details relating to the penalty amount and Mr. Warren explained how the penalty was calculated.

Commissioner LeMarr asked for additional details regarding the foreman, commented on the owner's prior comments on the culture and the employer's efforts towards safety compliance,

Vice Chair Hennelly commented on the potential that the employees were not clear on who they worked for, and whether Mr. Paquoda was under the impression that Gryphon's workers' compensation insurance covered all the workers. Mr. Warren and Mr. De Echavarri provided additional information regarding the investigation, the violations, and abatement. Vice Chair Hennelly summarized his concerns with potentially uncovered employees.

Commissioner LeMarr moved to issue the recommended citations against Carlos Alberto Elias Paguoda with penalties of \$750.00 for each violation for a total penalty of \$3,000.00 and to issue the recommended citation against Gryphon Companies Inc. as a Serious with a \$4,000.00 penalty. Commissioner Orchard seconded the motion. The Commission unanimously approved the motion.

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| Loftco, Inc. 1832 E. Deer Valley Rd <u>Phoenix, AZ 85024</u> | Planned Years in Business: 25 Empl. Covered by inspection: 6 |
| Site Location: 16368 W Moreland St Goodyear, AZ 85338 | |
| Inspection No: Y8817-1108331 | |
| Inspection Date: 11/25/2015 | |

REPEAT-SERIOUS – Citation 1 - Item 1 – 16368 W Moreland St Goodyear, AZ, 85338 Lot 73: Employees were installing trusses on a two-story single family home approximately 18 feet above the ground without the use of guardrail systems, safety net or personal fall arrest systems. (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 one, item number one and was affirmed as a final order on 7-1-2015, with respect to a workplace located at 10734 W Prickly Pear Trl Peoria, AZ 85383.

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

Mr. Warren stated this item was tabled at a prior meeting and he explained why. He summarized the citation and proposed penalty as listed. Commissioner Orchard commented on the employer's safety compliance efforts, prompt abatement, and the results from the 2013 inspection.

Commissioner Orchard moved to issue the citation as a Serious with a \$2,000.00 penalty. Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

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| O'Rielly Chevrolet, Inc. 6160 E. Broadway Blvd <u>Tucson, AZ 85711</u> | Complaint Years in Business: 90 Empl. Covered by inspection: 200 |
| Site Location: 6160 E. Broadway Blvd Tucson, AZ 85711 | |
| Inspection No: L8503-1122672 | |
| Inspection Date: 1/15/2016 | |

SERIOUS – Citation 1 - Item 1 – Shop area: A Globe in-ground single post automotive lift (Type #PFS10BS, Serial #GP11191-2) was not periodically inspected in accordance with the recommendations of the automotive lift manufacture, for the past 24 months. A.R.S. 23-403.A

Div. Proposal - \$2,750.00
TOTAL PENALTY - \$2,750.00

Formula Amt. - \$2,750.00
TOTAL FORMULA AMT. - \$2,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for additional details regarding the Doehrman Company inspection and Ms. Merems responded to the question. Chairman Schultz asked if the representatives from O'Reilly wanted to make any comment. One of the representatives replied that they had no comment at this time.

Commissioner LeMarr asked the O'Reilly representatives about abatement and one of the representatives responded that all the equipment has been repaired except for one lift that is still tagged as out of service. Commissioner Orchard asked if their practice is now to have annual inspections. One of the representatives replied that they are now inspecting once every six months.

Vice Chair Hennelly commended the employer for its efforts and having inspections every six months. He noted, though, that an employee was injured. Vice Chair Hennelly moved to issue the citation with a \$2,750.00 penalty and Commissioner LeMarr seconded the motion. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,750.00.

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.

Mr. Ashley presented an update related to the Key Performance Indicators (Scorecard) and the goals of responding faster, resolving faster, and deciding faster. He explained that for the goal of resolving faster, Commission staff have reduced the resolution time for all completed wage claims from 90 days to 85 days, and he anticipates further improvement to reach the goal of a 20% decrease. Mr. Ashley added that for the goal of responding faster, the Administrative Law Judge Division has decreased the initial hearing scheduling time from 90 days to 69 days. Chairman Schultz congratulated staff on their progress towards meeting the Scorecard targets. Mr. Ashley stated that staff is committed and has enthusiasm to improve efficiency. He provided an update regarding the Claims system and other technology updates.

Mr. Ashley commented on the rewarding experience in holding Commission meetings outside Phoenix. He added that the visits have been very informative and beneficial to stakeholders.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented that the vacant position of the OSHA Review Board has been filled by Seth Turken and he is looking forward to Mr. Turken's participation on the Review Board.

Ms. Dimas reminded the Commission that the next meeting will be April 28, 2016 and will start with the Physicians' Fee Schedule Hearing.

Public Comment.

Brian Clymer commented on issues with workers' compensation claims being processed by out-of-state claims representatives. Chairman Schultz thanked Mr. Clymer for his comments and added that the Commission is already in improvement mode and will discuss this issue and others during the summer in preparation for the next legislative session.

Wes Stewart commented that he was impressed and liked the common sense and style of the Commissioners and thanked them for coming to Tucson. Chairman Schultz thanked him for his comments.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary