

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, September 1, 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
	Jonathan Hauer	Assistant Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Jacqueline Kurth	Medical Resource Office
	Renee Englen	Medical Resource Office
	William Warren	ADOSH Director
	Steve Black	Compliance Officer
	Brian Downen	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Don Kunzler, Wayne Dorres, and Tom Eslick with Sturgeon Electric Company; Victor Dominguez with Valley Pallet; Don Cookston and Jill Brugman with United Dairymen of Arizona; Julie Pace representing United Dairymen of Arizona; and Christina Jutzi with Snell & Wilmer.

Approval of Minutes of August 12, 2016 and August 18, 2016 Regular Meetings.

Commissioner Orchard moved to approve the Minutes of the August 12, 2016 Regular Session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Vice Chair Hennelly moved to approve the Minutes of the August 18, 2016 Regular Session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

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.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C15/16-1436 M & K Health Services, LLC

Vice Chair Hennelly moved to approve the Consent Agenda and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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 discussed the VPPA conference and the purpose of the conference. He discussed plans to invite state and local officials to participate in state certifications and recertifications.

Mr. Charles reported that the Commission submitted ten pieces of proposed legislation for the Governor's review.

Mr. Charles discussed media inquiries concerning the Official Disability Guidelines and last year's shooting instructor fatality.

Commissioner LeMarr asked about the proposed silica rule. Mr. Ashley noted that the proposed rule has been filed with the Secretary of State and will be reviewed by the Office of the Attorney General. Chairman Schultz asked for Commissioner LeMarr's assistance in creating a workgroup of stakeholders to assist in implementing the proposed silica rule.

Chairman Schultz, Mr. Kunzler, Mr. Dorres, Ms. Pace, Mr. Ashley, Mr. Charles, and Mr. Warren discussed the Voluntary Protection Partners ("VPP") program, the SHARP program, and the Public Entity Partnership Program ("PEPP"). Chairman Schultz invited meeting attendees to participate in the programs and noted that subcontractors can take part.

Chairman Schultz commented on the upcoming legislative session, the Commission's proactive posture, and solicited stakeholder input.

Discussion and/or Action to Discuss the Fee Schedule Issue of Adoption of the 2016 Physician's Assistant at Surgery.

Chairman Schultz, Commissioner Orchard, and Ms. Kurth discussed the Arizona Physicians and Pharmaceutical Fee Schedule. She noted that Cathy Vines, on behalf of CopperPoint Insurance Company, suggested that the Commission consider adopting the "2016 Physician's as Assistants at Surgery" publication. A copy of the "2016 Physicians as Assistants at Surgery" was provided for review. Ms. Kurth recommended that the issue be presented for public consideration in March 2017. Chairman Schultz stated that he supported the recommendation. The Commissioners agreed.

Discussion and Action of Resolution Appointing Custodians of Records.

Mr. Ashley presented a resolution on behalf of the Special Fund Division. He explained that the proposed resolution would appoint two employees (Terry Apodaca and Carmen Santeyan) as custodians of records for the Special Fund Division.

Commissioner LeMarr moved to approve the appointments and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

### Citation and Penalty Procedure Discussion.

Chairman Schultz and Mr. Warren discussed how ADOSH makes determinations regarding citations and proposed penalties. Commissioner Orchard asked for a laminated summarization of the information provided.

Chairman Schultz asked about Arizona's size categories and Mr. Warren noted that Arizona had adopted the federal Field Operations Manual ("FOM") with few differences. Chairman Schultz asked how ADOSH defined serious injury and Mr. Warren responded. Commissioner Orchard asked whether a serious citation determined penalty reductions. Mr. Warren responded that it did not.

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

#### 16-3633-18 - Little vs. Farwest Pump Company

Mr. Warren presented a summary of Mr. Little's complaint, Farwest Pump Company's response, and the findings of the ADOSH investigation. Mr. Warren recommended that the Commission pursue the matter because the investigation identified sufficient evidence to support a violation of A.R.S. § 23-425(B).

Commissioner LeMarr, Mr. Black, and Mr. Warren discussed aspects of the investigation report. Chairman Schultz thanked Mr. Black for his timely investigation and Commissioner LeMarr noted that the investigation was thorough.

Mr. Warren explained the discrimination inspection process. Chairman Schultz noted that ADOSH had requested payroll records, but that Farwest did not provide them.

Commissioner Orchard asked if there was any indication that Mr. Little went to Farwest first with his safety concerns prior to calling OSHA. Mr. Black did not know. Commissioner Orchard discussed whether failure to follow an internal reporting policy rendered Mr. Little's complaint unprotected. Mr. Warren stated that a complaint reported to OSHA is protected activity.

Vice Chair Hennelly and Mr. Black discussed Mr. Little's employment status and Farwest's inconsistent reasons for not currently using Mr. Little's services.

Commissioner LeMarr and Mr. Black discussed the roles that individuals in the investigation played with Farwest.

Commissioner LeMarr moved to adopt the recommendation of ADOSH to pursue Mr. Little's complaint. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

### 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.

#### 16-3633-18 - Little vs. Farwest Pump Company





Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed procedures for repairing valves and the various valve types. Mr. Downen noted that the subject injury was common when repairing the subject valve.

Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed photographs depicting the exit route.

Commissioner Orchard and Mr. Downen discussed the differences between Items 1(a) and 2.

Chairman Schultz invited representatives of United Dairymen to address the Commission. Ms. Pace introduced Don Cookston, Safety Manager, and Jill Brugman, HR Manager. Ms. Pace addressed the Commission. She indicated that the barbecue equipment was in place for one day only. Ms. Pace acknowledged the subject injury but stated that it was the first time the accident had occurred at the business.

Commissioner LeMarr and Mr. Downen discussed support data concerning equipment training and safety. Mr. Downen noted that the citation for Item 3(b) concerned retraining. Chairman Schultz and Mr. Downen discussed the subject valve types and prior injuries.

Chairman Schultz, Ms. Pace, and Mr. Cookston discussed changes made and the processes implemented by the company. Vice Chair Hennelly, Chairman Schultz, Mr. Cookston, and Ms. Pace discussed new safety procedures and retraining. Commissioner LeMarr and Mr. Downen discussed the company's safety program and OSHA 300A posting requirements.

Chairman Schultz discussed the serious and permanent nature of the injury.

Ms. Pace asked Mr. Warren to review the citation and proposed penalties and Mr. Warren responded.

Commissioner LeMarr asked about reduction factors and Mr. Warren and Mr. Downen responded.

Chairman Schultz and Mr. Cookston discussed the company's exit route issues and options for abatement.

Commissioner Orchard commented that the employee noted that he wished he had received training for the subject valve. Ms. Pace offered the employee's training records. Mr. Warren noted that the response was at the time of the investigation. Mr. Cookston described the training and the different valves. Mr. Downen explained what he learned during the interview process.

Chairman Schultz and Mr. Cookston discussed the company's experience modification factor.

Commissioner Orchard moved to amend the citation and proposed penalties as follows: (1) Citation 1, Items 1 and 2 be reclassified as Non-Serious with penalties of \$100.00 each; (2) Citation 1, Item 3 be reduced to \$4,000.00, for a total penalty of \$4,200.00. Commissioner Orchard noted that ADOSH had done a wonderful job on the investigation. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Valley Pallet, Inc.  
5707 West Buckeye Rd  
Phoenix, AZ 85043

Site Location: 5707 West Buckeye Rd  
Phoenix, AZ 85043  
Inspection No: D4452-1137858  
Inspection Date: 04/06/2016

Referral  
Years in Business: 30  
Empl. Covered by inspection: 13

SERIOUS – Citation 1 - Item 1 –

- a) Pallet dismantling department: One custom fabricated band saw table, manufacturer, model and serial number unknown, was being operated by employees without special hand tools to prevent the operator from placing hands in the danger zone. (29 CFR 1910.212(a)(3)(iii)).
- b) Pallet dismantling department: One custom fabricated band saw table, manufacturer, model and serial number unknown, had nonworking portions of the band saw blade that were not enclosed or guarded. (29 CFR 1910.213(i)(1)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Vice Chair Hennelly and Mr. Warren discussed the details of the amputation. Commissioner Orchard and Mr. Warren discussed abatement. Chairman Schultz and Mr. Warren discussed the pallet dismantling process.

Mr. Dominguez, the regional manager of Valley Pallet, addressed the Commission. He stated that the subject injury was due to operator error. Chairman Schultz and Mr. Dominguez discussed the injured employee's medical treatment and return to work.

Mr. Dominguez discussed abatement and provided photographs that evidenced procedural changes. Commissioner Orchard and Mr. Dominguez discussed the equipment used.

Mr. Dominguez stated that he has been with Valley Pallet for three and a half years and this was his first accident.

Commissioner LeMarr and Mr. Dominguez discussed the purpose of dismantling a pallet for recycling and the processes involved. Commissioner Orchard and Mr. Dominguez discussed safety procedures. Mr. Warren noted that there were no training violations found.

Commissioner Orchard asked about prior injuries. Mr. Warren noted that there were four injuries in 2015, 20 injuries in 2014, and 66 injuries in 2013. Chairman Schultz asked if these injuries were companywide or just the subject location. Mr. Warren said that the OSHA 300 appeared to concern only the subject location.

Commissioner Orchard and Mr. Warren discussed abatement.

Chairman Schultz noted the reduction in the number of injuries over the years.

Commissioner LeMarr and Mr. Dominguez discussed the subject employee's return to work.

Commissioner Orchard moved to amend the proposed penalty as follows: Citation 1, Item 1 be reduced to \$4,000.00 as a result of comprehensive training program in place as well as abatement. Commissioner LeMarr seconded. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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 discussed ongoing Arizona Management System training.

Mr. Ashley and Chairman Schultz discussed Goal Council 4, Goal Council 5, and related goals.

Mr. Ashley noted there was a potential tenant for a portion of the sixth floor.

Mr. Ashley discussed the Predictive Index program and its benefit in hiring, coaching, training, and succession planning processes.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed upcoming stakeholder presentations. The September 15 meeting will feature a presentation from the Arizona Chamber of Commerce. The September 29 meeting will feature a presentation from the Arizona Sub-Contractors Association.

Mr. Warren discussed the 2016 Safety Summit.

Ms. Dimas confirmed meeting dates through November 2016. Commissioner Orchard and Mr. Ashley discussed the October 20 minimum wage meeting. Chairman Schultz and Vice Chair Hennelly discussed the October 6 and October 13 meetings.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:50 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary