## MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, February 5, 2015 - 1:00 p.m.

Present:

David M. Parker Chairman Susan Strickler Vice Chair Member Michael G. Sanders

Joseph M. Hennelly, Jr.

Member (telephonic)

Director Laura McGrory Andrew Wade Chief Counsel William Warren **ADOSH Director** Renee Pastor Accounting

Compliance Officer Steven Black Compliance Officer Phillip Murphy Compliance Officer Mitch Baird

Chief Administrative Law Judge Melinda Poppe Kelly Lefevre Human Resource Manager Kara Dimas Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, Commission lobbyist, and Jason Weber of Snell & Wilmer.

#### Approval of Minutes of January 22, 2015 Meeting.

Mr. Sanders moved for approval of the Minutes of the January 22, 2015 Regular Session and Chairman Parker seconded the motion. Mr. Sanders, Chairman Parker, and Mr. Hennelly voted in favor of the motion. There were no votes against the motion. Vice Chair Strickler did not vote because she was not present for the January 22, 2015 Commission meeting.

#### Consent Agenda:

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

1.	2C14/15-0154	AG West Logistics, LLC
2.	2C13/14-2292	Copper Miners Restaurant & Lounge, LLC dba Copper
		Miner Kitchen
3.	2C14/15-0093	Elwood Recycle, LLC
4.	2C14/15-0198	Grace's Place, LLC dba Grace's Place Assisted Living
		Home
5.	2C14/15-0481	Luz Social Services, Inc. dba Adalberto M. Guerrero Middle School
6.	2C14/15-0042	M & M General Contracting, Inc.

- Revival Scottsdale, GP, Inc., dba Revival Scottsdale, 7. 2C14/15-1418 LLLP aka Jaxon's
- SDM Truck & Trailer Repair, L.L.C. 8. 2C14/15-0725
- 9. 2C14/15-1558 Sicily AZ, L.L.C. dba Little Sicily

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

- 1. Carondelet Health Network
- 2. Arizona Counties Workers' Compensation Pool

Chairman Parker stated that agenda item a. 1., a. 4., a. 7. and b. 2. 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 Strickler, second of Mr. Sanders.

Andrew Wade advised that a. 1. AG West Logistics, LLC, a. 4. Grace's Place, LLC dba Grace's Place Assisted Living Home and a. 7. Revival Scottsdale, GP, Inc., dba Revival Scottsdale, LLLP aka Jaxon's have obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 for each employer, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against AG West Logistics, LLC, Grace's Place, LLC dba Grace's Place Assisted Living Home and Revival Scottsdale, GP, Inc., dba Revival Scottsdale, LLLP aka Jaxon's on motion of Mr. Sanders, second of Vice Chair Strickler.

Vice Chair Strickler recused herself from consideration of the Arizona Counties Workers' Compensation Pool request for renewal of its self-insurance authority. The Commission approved renewal of self-insurance authority on motion of Chairman Parker, second of Mr. Sanders with a vote of three in favor. There was no discussion and Vice Chair Strickler did not participate in the vote.

# Discussion and Action of Application for Self-Insurance Authority.

Heartland Express, Inc. – Renee Pastor presented staff's report. Chairman Parker asked about the tax plan and whether the selected plan will show the employer's experience rating. Ms. Pastor explained that the tax plan selected by the employer does not require this information. Chairman Parker suggested that this employer be asked to explain their losses at the next few renewals. Ms. Pastor commented on some aspects of the employer's safety program and noted the employer has a risk manager and safety manager. Chairman Parker noted that an employer's experience modification, or e-mod, is driven more by frequency than severity, unless the employer has a lot of severe claims. He asked Ms. Pastor to obtain information from the employer for the next two or three renewals about the employer's efforts to reduce frequency and control losses. Ms. Pastor explained that staff can calculate an experience rating based on the information provided which could be presented as part of the renewal process. Chairman Parker agreed to require that analysis for the next two or three years, and that Heartland be asked to comment on that analysis. Ms. Pastor explained that Administration is recommending approval of Heartland's application for self-insurance authority due to its stable financial condition, a clean audit report, and acceptable bond and credit ratings, with a deposit in the amount of \$718,773.00. Chairman Parker noted that Heartland is moving from a large deductible plan to being self-insured and Sedgwick will function as the third party administrator The Commission unanimously granted self-insurance authority with an e-mod analysis performed for the new two or three renewals on motion of Mr. Sanders, second of Vice Chair Strickler.

Discussion and/or Action regarding Legislation.

Scott Butler summarized recent activity at the Legislature, described the deadlines for introducing bills, and stated that approximately 450 Bills and Resolutions had been posted in the Senate and 600 so far in the House. He reported on items of interest to the Commission and Mr. Butler and Ms. McGrory responded to questions from the Commissioners.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated that Federal OSHA has posted a Notice of Final Decision Rejecting the State Plan Supplement, which means that federal OSHA rejects the Arizona State-specific residential fall protection standards as not being "at least as effective" as the federal standards, known as Subpart M. He explained that the Notice is only posted today but will be published tomorrow, Friday, February 6, 2015. He added that the Commission's legal counsel has studied the Notice and has re-reviewed the conditional repeal language in Senate Bill 1307. It is counsel's opinion that when the Notice is published tomorrow, the conditional repeal language will be triggered, which means that A.R.S. §§ 23-492 through 492.09 are repealed by operation of law, and starting 0:01 Saturday morning, Arizona employers will be required to comply with Subpart M, the federal residential fall protection standards. He explained that Arizona OSHA will begin enforcing Subpart M on Saturday. Mr. Wade described the plans in place to inform stakeholders and those in the construction community. Chairman Parker noted that ADOSH has been providing fall protection classes on a regular basis, and ADOSH will continue to offer training for a while. He added that many in the construction industry expected federal OSHA to reject the state-specific standards, and they are prepared to comply with Subpart M. Chairman Parker commented on federal OSHA deferring the decision to reconsider Arizona's exclusive authority with an announced intent to follow whether ADOSH enforces Subpart M. He reinforced that ADOSH will enforce Subpart M beginning at midnight Saturday morning. Chairman Parker noted that the Commission has provided information to the Governor's office and will notify the Director of Legislative Council. There were no other questions or comments.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH)

Discrimination Complaints

Chairman Parker noted that the two matters are from the same location and asked if it would be helpful to begin with an overview and then address each matter separately. Mr. Warren explained that he would begin with an overview and the separate nuances of both cases could be addressed. He summarized the workplace issues and described the reported reasons for termination. Chairman Parker commented on the length of employment and what appeared to be a change in the work environment. He noted the employer's training on working together in a dental office and the timing of that training. Mr. Sanders asked if Ms. Diaz and Ms. Noraqus knew each other prior to Ms. Diaz being hired and Mr. Black responded to the question.

14-3633-20 - <u>Patricia Diaz vs. Saeid Badie, D.D.S., P.C.</u> William Warren presented a summary of Ms. Diaz's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to establish the necessary elements necessary to pursue in court. Mr. Warren responded to questions from the Commissioners. The Commission

unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Vice Chair Strickler.

14-3633-21 - Sheanelle Noragus vs. Saeid Badie, D.D.S., P.C. William Warren presented a summary of Ms. Noragus' complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to establish the necessary elements necessary to pursue in court. Chairman Parker asked about protected activity and Mr. Warren responded to the question. The Commission unanimously voted not to pursue the complaint on motion of Vice Chair Strickler, second of Mr. Sanders.

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

Fatality/Accident Years in Business:

Fatality/Accident

Years in Business:

Empl. Covered by inspection:

Empl. Covered by inspection:

80

3

1 Yr., 9 Mos.

Baboquivari Unified School District

P.O. Box 248

Sells, AZ 85634

Site Location:

M.P. 115.5

Sells, AZ 85634

Inspection No:

N7988-317857019

Inspection Date:

8/15/2014

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.

R & S Firearms, Inc. dba Sam's Shooters Emporium II

2183 McCulloch Blvd

Lake Havasu City, AZ 86403

Site Location:

20606 N US Hwy 93 Unit B

White Hills, AZ 86445

Inspection No:

06169-317857316

Inspection Date:

8/27/2014

Mr. Warren summarized ADOSH's investigation into a fatal accident. He commented on the employer's business operation and described how the accident occurred. He explained that the investigation regarding the accident did not identify any citable serious violations and ADOSH was not recommending any serious citations but did find five non-serious violations related to other issues on the premises. Mr. Sanders stated that he has seen the video of the accident and asked if the instructor had demonstrated the weapon prior to the incident. Mr. Warren responded that there was a test mode and the customer did fire a shell. Mr. Sanders clarified that he meant the instructor. Mr. Murphy responded that the instructor did not demonstrate the firing of the weapon. Mr. Sanders commented that he thought that was irresponsible, and added that training with firearms needs to include training on stance and dealing with recoil. He explained that this was a tragic accident and noted that this particular type of weapon can get out of control and the instructor was standing on the wrong side. Mr. Murphy explained that the instructors do instruct on stance and how to hold the weapon, but they themselves do not give a demonstration. Chairman Parker commented that he agrees it was irresponsible and explained that he did not mean a child firing a firearm is irresponsible. Proper education in early years is actually a good thing and leads to safe handling of weapons. He stated that the issue is giving a short barrel machine pistol to someone that young with a full clip, no way to limit it to a short burst, and how a

weapon like that is difficult to control. Chairman Parker noted that another instructor declined to instruct the customer and the decedent volunteered to take the assignment. He explained that this is not a gun rights issue, but the problem is with supplying a firearm, that can easily get out of control, to a small child. Mr. Sanders added that the focus seemed more on recreation rather than safety. Mr. Warren summarized some changes the employer has implemented since the accident to improve safety.

Solar Industries, Inc.

Planned

P.O. Box 27337

Years in Business:

38 119

Tucson, AZ 85726

4960 Alvernon Way

Empl. Covered by inspection:

Site Location:

Tucson, AZ 85706

Inspection No:

T3633-1011366

Inspection Date:

12/03/2014

<u>SERIOUS</u> – Citation 1 - Item 1 – Building 7: A Jet brand vertical band saw used for cutting steel did not have a guard covering the unused portion of the blade above the guide wheels. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Building 3, maintenance area: A Central Machinery brand eight inch bench grinder did not have a work rest. (29 CFR 1910.215(a)(4)).

Div. Proposal - \$100.00

Formula Amt. - \$2,250.00

## SERIOUS - Citation 1 - Item 3 -

- a) Building 8: A Benchmaster brand press, machine #W171, had a pedal guard which was bent so that it did not adequately protect the pedal from unintended operation. (29 CFR 1910.217(b)(4)(i)).
- b) Building 8: A Benchmaster brand press, machine #W171, was not adequately guarded in that the opening in the point of operation guard was four by eight inches and was large enough to allow both the part and the employee's hand to enter the die area at the same time. (29 CFR 1910.217(c)(1)(i)).
- c) Buildings 2 and 8: Power presses were not regularly inspected, including records of the inspections. (29 CFR 1910.217(e)(1)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

<u>SERIOUS</u> – Citation 1 - Item 4 – Building 2: Gears on the right-handed spring winding machine were not guarded. (29 CFR 1910.219(f)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$9,100.00

TOTAL FORMULA AMT. - \$11,250.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Parker asked about the \$100.00 penalty for a guard out of adjustment as opposed to a guard that is missing and commented that if there was no guard he thought the regular penalty policy would apply. Mr. Warren responded to the question. Ms. McGrory suggested a method to verify the penalty policy. Mr. Black explained why he recommended a \$100.00 penalty. Chairman Parker suggested that ADOSH consider what is appropriate for these types of circumstances. He explained some differences with the hazards of an out-of-adjustment work rest versus a missing

work rest. Chairman Parker also asked about Item 1 described as higher greater instead of the typical higher lesser. Mr. Black responded that there were five different instances not just one. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$9,100.00 on motion of Mr. Sanders, second of Vice Chair Strickler. Mr. Warren clarified the direction on the work rest penalty policy and Chairman Parker asked ADOSH to review the penalty policy and discuss with Ms. McGrory whether to place the matter on a future agenda.

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Renee Pastor stated that the Commission is required to establish the discount rate each year for use in calculating the present value of an award that is commuted to a lump sum under A.R.S. § 23-1067. She explained the process under A.A.C. R20-5-121(B) and identified the applicable 3-month Treasury bill rates reported on December 31 of 2014 and for the prior four years. Based on the rates and the formula in A.A.C. R20-5-121(B), the Administrative Division is recommending that the discount rate be set at 0.06% for calculating fixed period and permanent lump sum settlements. The 0.06% discount rate, if adopted, will replace the current discount rate of 0.064% as of today and will be in effect until the Commission calculates a new rate. Following discussion, the Commission unanimously approved the discount rate of 0.06% on motion of Vice Chair Strickler, second of Mr. Sanders.

Chairman Parker asked Mr. Hennelly if he was still on line. There was no response. A few moments later Mr. Hennelly announced his call had been dropped. Mr. Hennelly stated his call was dropped at the beginning of the discussion of Item 9, the lump sum discount rate. Chairman Parker asked if he concurred with the motion to approve the discount rate of 0.06% and Mr. Hennelly replied that he was in favor of the motion.

Discussion and Action regarding requests to the Governor's Office for approval under Executive Order 2015-01 to proceed with rulemaking. This agenda item will include discussion of referral of rulemaking considered under A.R.S. § 23-1062.03 (evidence based medical treatment guidelines) and referral of rulemaking required to adopt occupational safety and health standards, regulations or rules.

Ms. McGrory referred to Executive Order 2015-01 and explained that the Commission is required to obtain approval from the Governor's Office before initiating informal or formal rulemaking. She described the circumstance where an agency's request to initiate rulemaking will be approved including a rulemaking that meets the criteria set forth in the Order and is consistent with the priorities and principles set forth in the Order. She added that the Governor's Office has communicated that rulemaking required to fulfill a statutory mandate will also be considered for approval. She requested Commission direction on one specific proposed rulemaking and one class of rulemaking.

Ms. McGrory stated the specific proposed rulemaking is to implement the Advisory Committee recommendations regarding the implementation of a process for the use of treatment guidelines. She noted that these recommendations were adopted by the Commission on December 18, 2014 and, if the Governor's Office approves proceeding with a rulemaking, these recommendations would be incorporated into a Notice of Proposed Rulemaking and brought back before the Commissioners for discussion and action. Ms. McGrory explained that she is requesting direction from the Commission to submit a request with the Governor's Office seeking

approval to initiate this rulemaking. She explained why the proposed rulemaking is consistent with the priorities and principles of the Order. Ms. McGrory summarized the anticipated process and explained that if the Commission directs staff to submit a request with the Governor's Office, and if the Governor's Office approves moving forward with consideration of the rulemaking, staff will present a Notice of Proposed Rulemaking to the Commission for discussion and action.

Mr. Sanders asked if the Governor's Office can direct the agency contrary to a legislative mandate. Ms. McGrory responded that her understanding is the Governor's Office recognizes that rulemaking may be justified to fulfill a statutory mandate, and the letter submitted to the Governor's Office would identify the statutory mandate. She explained what this letter would say. Mr. Sander asked what would happen if the Governor's Office does not approve moving forward with rulemaking. Ms. McGrory explained that this issue would be brought back to the Commission for discussion.

Vice Chair Strickler expressed some concerns with requesting approval to proceed with rulemaking without having seen the proposed rules. Ms. McGrory stated that the Executive Order prohibits both informal and formal rulemaking and she explained what this means. that the letter to the Governor's Office will only request approval to move forward with the initiation of rulemaking to address the implementation of a process that addresses treatment guidelines and the Commissioners will still review the draft of the proposed rules and decide how to proceed. She explained that based on the work performed by staff prior to the Executive Order, the draft of proposed rulemaking tracks the recommendations of the advisory committee that the Commission adopted in December, but that the request to the Governor's Office is simply a request to allow the Commission to move forward with this discussion. Vice Chair Strickler explained why she did not feel comfortable requesting approval at this time stating that she would feel more comfortable if she had an idea of what the rules were going to say and an opportunity to discuss whether rules were necessary. Ms. McGrory explained the challenges of having those kinds of discussions in view of the language of the Executive Order. Mr. Sanders noted the Commission is directed by statute to implement a process and asked how the Commission could comply with the legislative mandate without moving forward with rulemaking. Chairman Parker described three types of rulemaking that the Commission would proceed with in light of the Executive Order: amendments to federal safety standards that ADOSH is required to adopt, legislative mandates, such as the evidence based medical treatment guidelines, and then rulemaking that meets one of the criteria identified in the Executive Order. He explained his thoughts on the timing of obtaining approval from the Governor's Office. He stated that for state OSHA rulemaking, staff should immediately submit a request to the Governor's office before coming to the Commission with a rulemaking package. For legislative mandates, such as the treatment guidelines, the Commission needs to have an idea of what it wants to do based on that mandate before it goes to the Governor's Office. He stated that he believes that is where the Commission is at with respect to the treatment guidelines. Ms. McGrory added that the Governor's Regulatory Review Counsel staff has advised that they cannot discuss certain rulemaking topics with Commission staff until the Commission has obtained approval from the Governor's Office to initiate rulemaking activities on a particular subject. Vice Chair Stickler stated that the Arizona Self-Insured's Association would prefer not to have rulemaking on the evidence based Medical treatment guidelines until the process was first implemented as a pilot program so any issues or problems could be addressed before a process is implemented through rulemaking. Ms. McGrory explained that staff is only requesting approval from the Governor's Office to initiate informal and/or formal rulemaking activities, and the Commission will still have the ability to discuss whether rulemaking is appropriate and take action as it decides. explained her opinion as to whether rulemaking is required to implement the process adopted by

the Commissioners last December and that the Commission can have this discussion if a Notice of Proposed rulemaking is placed before them. Chairman Parker asked if there was a way to start a pilot program on a fully voluntary basis from all parties, the Commission might be able to avoid rulemaking, but if the process is going to include provisions for any party to trigger the process and then require the process, then it would appear rulemaking is necessary. He suggested that Vice Chair Strickler could initiate discussions with staff about a pilot program. In response to a question from Vice Chair Strickler, Ms. McGrory explained what information would be included in a letter to the Governor's Office. Chairman Parker recommended specifically directing Ms. McGrory to request approval from the Governor's Office to move forward with consideration of rulemaking for evidence based medical treatment guidelines consistent with the Commissions prior action. After further discussion, Mr. Sanders said he would make that motion, and Mr. Hennelly seconded the motion. Chairman Parker stated this motion is to direct staff request authorization from the Governor's Office to consider rulemaking for the evidence based medical treatment guidelines. The motion carried with Chairman Parker, Mr. Sanders, and Mr. Hennelly voting in favor of the motion. Vice Chair Strickler voted against the motion.

Ms. McGrory explained that ADOSH is required to adopt certain federal amendments to standards and regulations and must adopt those amendments to ensure that Arizona's state plan is as effective as Federal OSHA. She requested direction from the Commission that permits staff to submit requests for approval directly to the Governor's Office to proceed with this type of rulemaking. Upon approval from the Governor's Office, proposed rulemaking will be presented to the Commission for discussion and action. She noted that staff will also request approval to continue with such rulemakings that the Commission has already taken action on. Ms. McGrory added that she has already submitted one request to the Governor's Office for approval to continue with a proposed rulemaking that the Commission addressed last fall regarding Cranes, Derricks and Power Transmission lines. Ms. McGrory explained that she anticipated submitting a request with the Governor's Office regarding the proposed rulemaking regarding the adoption of the Federal recordkeeping standard that the Commission has already approved. She noted that the process will essentially be the same, once the Governor's Office has approved proceeding with rulemaking activities, staff will supply the Commissioners with information concerning the proposed rulemaking, the Commission will maintain the ability to discuss the proposed rulemaking, as well as the ability to take action regarding that proposed rulemaking. Chairman Parker and Ms. McGrory explained the time frames and that authorizing staff to submit a request to the Governor's Office for approval to proceed as soon as federal OSHA notifies ADOSH of required amendments will help meet the six-month deadline. Chairman Parker directed staff to include as part of the announcements portion of Commission meetings when staff has submitted such a request to the Governor's Office. Mr. Sanders moved to authorize staff to submit requests to the Governor's Office for required ADOSH rulemaking, to include informing the Commission of any such submittals, and Vice Chair Strickler seconded the motion. The Commission unanimously voted in favor of the motion.

Ms. McGrory stated she will provide all of the Commissioners with a copy of the letter that is sent to the Governor's office regarding the evidence based medical treatment guidelines.

Chairman Parker asked if there was anything related to the next agenda item to discuss in open session before any motion to move into executive session. Ms. McGrory responded that there was a need for open session before executive session.

Chairman Parker called for a short recess at 2:35 p.m.

Chairman Parker reconvened the meeting at 2:43 p.m.

Discussion and Action regarding the Selection of Candidates for Interviews for Administrative Law Judge Positions. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1) and (A)(3) to Discuss Selection of Candidates.

Laura McGrory explained that a hiring freeze has been instituted and before addressing the selection of candidates to be considered for a screening interview for the administrative law judge (ALJ) positions, the Commissioners, as the appointing authority, need to address whether these positions are mission critical and should be filled within the process implemented by the Arizona Department of Administration (ADOA). She noted the hiring freeze applies to any position that is vacant or becomes vacant after Februrary1, 2015 except those that are, vital to and directly involved in the providing for the health or safety of the public or state employees, directly involved in the collection or investment of state revenue, or otherwise deemed mission critical.

Ms. McGrory explained how certain positions/classifications are excluded from the hiring freeze, having already been determined by ADOA to meet one or more of these criteria, but most of the Commission's positions have not been included on this exemption list, including the Commission's ALJ positions. She explained the impact this has on filling vacancies and provided a summary of the process that must be followed to fill a position as mission critical. She added that ADOA will be monitoring agency recruitment activities and sending reports to the Governor on a bi-weekly basis and the expectation is that agencies will restrict their hiring and maintain at recruitment at a 60% filled/40% not filled rate. She explained why the Commission must proceed through the justification process to determine whether a position may be filled under the hiring freeze guidelines. She added that Commission staff considers the administrative law judge positions critical to the agency's health and safely mission because the positions adjudicate disputes that arise under the Arizona Workers' Compensation Act, the Arizona Occupational Safety and Health Act, and the Arizona Minimum Wage Act. Ms. McGrory noted that the Commissioners, as the appointing authority by statute, must make this determination before moving forward with this recruitment and if the Commissioners believe that these positions are not mission critical and should not be filled under the hiring freeze, then this recruitment should be terminated.

Chairman Parker stated the ALJ's are critical to the process of insuring that workers' compensation benefits are provided both in terms of medical and indemnity benefits as well as the other types of hearings that they hear, including include minimum wage claims, ADOSH citations, and civil penalties. He described the impact of delays in the adjudication process could have on the parties and the Arizona's workers' compensation system, which is one of the critical components employers consider when deciding where to locate. He described these positions as mission critical recognizing that this may also mean that there are other positions that the Commission may not be able to fill because of the 40% expectation. Ms. McGrory explained the additional oversight role of ADOA with respect to Grade 25 positions and higher, but that ADOA has communicated to her that they will defer to an agency's determinations as to whether such positions are mission critical. They will, however, be tracking hiring and still expect agencies to stay within the 60/40 guideline to the extent possible.

Chairman Parker stated that the Commission should first decide whether these positions are mission critical. Ms. McGrory stated that a motion would be appropriate and she can provide a suggested motion if needed. Chairman Parker noted that the Commission will have five vacant

ALJ positions by March if some positions are not filled. Ms. McGrory explained why three of those positions have been held vacant.

Chairman Parker ask Ms. McGrory for the suggested motion and she replied that the Commission could move to designate the filling of two vacant ALJ positions as mission critical and vital to and directly involved in providing for the health or safety of the public. Vice Chair Strickler moved the suggested motion and Mr. Sanders seconded the motion. The Commission unanimously voted in favor of the motion.

Chairman Parker asked if there was anything else to discuss on this agenda item in open session. There being none, the Commission unanimously voted to go into Executive Session to discuss the candidates for the administrative law judge positions on motion of Mr. Sanders, second of Vice Chair Strickler. Executive Session Minutes are kept separately.

Upon return to General Session, Chairman Parker moved that Ms. Poppe perform screening interviews with Candidates 1, 2, 4, 5, 6, 8, and 10 and supply the Commission with a summary and her recommendations. Mr. Sanders seconded the motion and the motion passed unanimously. Chairman Parker asked if there were any other candidates, by number, that any Commissioner would like to see included for a screening interview. Hearing none, Chairman Parker asked Ms. Poppe to attempt to have the results of the screening interviews to the Commissioners no later than February 19, 2015 and the Commission can then decide which candidates to schedule for an interview before the full Commission.

## Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Parker confirmed the Commission meeting dates already scheduled and explained that with the number of potential interviews for the administrative law judge positions that both the afternoon of March 3 and all day March 4 will remain on the schedule for interviews. He noted that if there were any other matters for the Commission to address, a general session could be scheduled for March 4, 2015.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura L. McGrory, Director

ATTEST:

Kara Dimas, Commission Secretary