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.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair Commissioner

Scott P. LeMarr 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. <u>Approval of Proposed Civil Penalties Against Uninsured Employers.</u>
 - 1. JMR Express LLC
 - 2. International Transportation Service LLC
- b. <u>Approval of Requests for Renewal of Self-Insurance Authority</u>.
 - 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.

America Roofing LLC

1005 S 30th Ave

Phoenix, AZ 85009 Site Location:

18413 W Roma Ave

Goodyear, AZ 85395 on No: W0250-1102438

Inspection No: Inspection Date:

10/29/2015

line system and safety monitoring system. (29 CFR 1926.501(b)(10)).

<u>WILLFUL-SERIOUS</u> – 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 eve 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

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.

Div. Proposal - \$44,000.00

Formula Amt. - \$44,000.00

TOTAL PENALTY - \$44,000.00

TOTAL FORMULA AMT. - \$44,000.00

Planned

Years in Business:

Empl. Covered by inspection:

15

2

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, and asked about the willful designation. Mr. Warren provided additional details and described his analysis of the willful designation.

Vice Chair Hennelly asked if the general contractor has been cited. Mr. Warren replied that the general contractor has been cited. Commissioner LeMarr asked if the citation was designated as a willful and Mr. Warren responded to the question. Commissioner Orchard commented on Commissioner LeMarr's comments and holding the employer, who has documented extensive safety policies and practices in place, liable for choices made by an employee. Mr. Warren summarized the requirements of the standards. Commissioner LeMarr moved to issue the citation as a Serious with a \$7,000.00 penalty. Commissioner Orchard seconded the motion.

Vice Chair Hennelly explained that the employer has appeared before the Commission on prior occasions and the employer has been cited for similar activity. He noted that the employer has presented a strong case for its remedial efforts, including hiring a safety manager and implementing a bonus type incentive system to encourage employee compliance. He added that the circumstances in the Phoenix residential construction market has created a great demand for roofers and some employers have found it very difficult to implement the requirements because some employees may view the fall protection standards as difficult standards to work under which may mean that the employees quit and go to work for an employer that might not require compliance. Vice Chair Hennelly commented that America Roofing is operating under a very difficult environment and seems to be trying to take the requirements seriously as do the Commissioners.

Chairman Schultz asked Mr. Warren to schedule another meeting with the owner to discuss the safety program and obtain personal assurances that he understands the gravity of this citation, the gravity of the penalties, and the need to come into compliance with the standards.

The Commission unanimously approved the motion to issue the citation as a Serious with a \$7,000.00 penalty.

Carlos Alberto Elias Paquoda, a single man

4625 W. Thomas Rd.

Phoenix, AZ 85031

Site Location:

3855 E. Speedway Blvd.

Tucson, AZ 85716

Inspection No:

N7988-1123964

Inspection Date:

1/5/2016

 $\underline{SERIOUS}$ – Citation 1 - Item 1 – Roof: Six employees were observed engaged in roofing activities without utilizing a fall protection system at a height that was approximately 31 feet above ground level and the roof went from a 5/12 to a 6/12 pitch. (29 CFR 1926.501(b)(11)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

Complaint

Years in Business:

Empl. Covered by inspection:

1 7

<u>SERIOUS</u> – Citation 1 - Item 2 – Roof: Six employees who were observed engaged in roofing activities at a height that was approximately 31 feet above the ground level without the use of a fall protection system, nor had they received fall protection training from the employer. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

- a) Roof: The 28 ft. aluminum extension ladder used by employees to access the roof did not extend at least 3 ft. above the landing surface. (29 CFR 1926.1053(b)(1)).
- b) Roof: Employees were utilizing a 6 ft. step ladder in a manner that it was not designed for. (29 CFR 1926.1053(b)(4)).
- c) Roof: Six employees who were observed utilizing ladders in an unsafe manner had not been trained in procedures to be followed to minimize hazards related to ladders. (29 CFR 1926.1060(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> – Citation 1 - Item 4 - 3855 E. Speedway Blvd., Tucson: Before work subject to 29 CFR 1926.1101 began, the subcontractor did not determine the presence, location and quantity of asbestos containing materials (ACM) and/or presumed asbestos containing materials (PACM) at the worksite. (29 CFR 1926.1101(k)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Gryphon Companies Inc. dba

Unprogrammed Related

Gryphon Roofing & Remodeling

Years in Business:

18 1

2128 E Cedar St

Empl. Covered by inspection:

Tempe, AZ 85281

Site Location: 385

3855 E. Speedway Blvd.

Tucson, AZ 85716

Inspection No:

N7988-1117114

Inspection Date:

1/5/2016

<u>SERIOUS</u> – Citation 1 - Item 1 – Roof of the Hotel: Six employees were observed engaged in roofing activities without utilizing a fall protection system on a roof that was approximately 31 feet above ground level and went from a 5/12 to a 6/12 pitch. (29 CFR 1926.501(b)(11)).

Gryphon Roofing & Remodeling was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(11) which was contained in the ADOSH inspection number 1059363, citation number 02, item number 001, issued on 06/08/15, with respect to a workplace located at 5943 E. Calle del Sud in Phoenix, AZ.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citations and proposed penalties as listed for both employers, Carlos Alberto Elias Paquoda and Gryphon Companies Inc. Commissioner LeMarr asked for additional details related to Mr. Paquoda and Mr. De Echavarri and Mr. Warren provided additional details regarding the inspection and the contract between the parties.

Commissioner Orchard referred to mounted photograph number 8 and asked about the requirements of the standard. Mr. Warren summarized the ladder violation and described proper use of that type of ladder. Commissioner Orchard commented on grouping of the instances and asked if ADOSH verifies that an employer has workers' compensation insurance. Mr. Warren summarized the process relating to verifying coverage.

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.

Loftco, Inc.

Planned

1832 E. Deer Valley Rd

Years in Business:

25 6

Phoenix, AZ 85024

16368 W Moreland St

Empl. Covered by inspection:

Site Location:

Goodyear, AZ 85338

Inspection No: Inspection Date: Y8817-1108331 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.

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.

O'Rielly Chevrolet, Inc.

Complaint

6160 E. Broadway Blvd

Years in Business:

90

Tucson, AZ 85711

6160 E. Broadway Blvd

Empl. Covered by inspection:

200

Site Location:

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

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. Ashely 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, Director

ATTEST:

Kara Dimas, Commission Secretary