

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 29, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Karen Schomburg	ADOSH Supervisor (Telephonic)
	Miguel Castillo	ADOSH Compliance (Telephonic)
	Zak Marquez	ADOSH Compliance (Telephonic)
	Ron Mills	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Phillip Cundiff Sr. and Nikki Cross (City of Avondale); Ruby Williams and John Kralovec (Tristar Group); Stephen Baker (Jardine Baker Hickman & Houston); Dianne Shoemake and Lorena Sanchez (City of Glendale); Nitra Hawkins (City of Mesa); Jerry Suther (Heartland Express); Angie Cadiante and Lora Figgat (Intel Corporation); Lisa Laird and Sheri Swain (Maricopa County Community College District); Tana Pulles and Mary Kelso (Pima County); Vincent Rector (Desert Care Landscape Resources, LLC); Julie Pace (Gammage & Burnham); Hugo Alberto Lara Lova (Next of Kin); Steven Cohn (Cohn Law); Grant Quezada (John Hancock Barber Shop); Daniel Yamauchi (Law Office of Daniel Yamauchi); Rob Brandley and Nate Holiday (Thyssenkrupp Elevator Corporation); Paul Waters (Waters Law Group).

Approval of Minutes of April 8, 2021 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the April 8, 2021 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP20/21-0381 El Fenix Bakery LLC \$5,000
2. 2CSP20/21-0094 RV Life Enterprises Inc dba Dead Horse Diesel & RV \$5,000
3. 2CSP20/21-0095 Valley Hospice of Arizona Inc \$5,000

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

1. City of Avondale
2. City of Glendale
3. City of Mesa
4. City of Peoria
5. Empire Southwest, LLC
6. Heartland Express, Inc.
7. Intel Corporation
8. Maricopa County Community College District
9. Pima County
10. Roman Catholic Church Diocese of Tucson
11. Weyerhaeuser Company

Chairman Schultz reviewed the list noting the City of Avondale and City of Glendale requested their renewal and waiver of security deposit. Chairman Schultz commented on the increase in the experience modification of the City of Mesa and the City of Peoria. Chairman Schultz highlighted the very enviable experience modification factor of Empire Southwest, LLC and Intel Corporation. Chairman Schultz also commended Maricopa County Community College District for their good experience modification factor and noted Pima County has also requested a waiver of security deposit. Lastly, Chairman Schultz pointed out that the Roman Catholic Church Diocese of Tucson has been working very hard at improving their loss experience and have made progress in reducing it in a positive direction.

Vice Chair Hennelly requested that the City of Peoria and Maricopa County Community College District be moved to the regular agenda. Commissioner LeMarr requested that Pima County be moved to the regular agenda.

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

Approval of Requests for Renewal of Self-Insurance Authority.

4. City of Peoria

Vice Chair Hennelly noted the experience rating went up in 2019 and requested an explanation.

Ms. Pastor explained that large losses are driving the experience modification (“e-mod”), and for 2020 which is now complete, some of the larger losses have dropped off except one very large loss which is still driving the e-mod. Overall there is no security problem or frequency problem, just a couple large losses.

Chairman Schultz asked if there were concerns about the security. Ms. Pastor noted they are very well funded at a 100% confidence level.

Vice Chair Hennelly appreciated the explanation. Chairman Schultz asked about a desire for follow-up on their authorization. Vice Chair Hennelly commented that with Ms. Pastor's explanation of the large claim and a little fall off already, the commission should just keep an eye on the large claims and make sure they are not heading in the wrong direction again.

Ms. Pastor noted she reviewed the losses and looked at the drivers and the City of Peoria has been relatively calm, with the exception of the couple of losses.

Chairman Schultz commented that he had the same concern with the City and the new presumptions that experience could change very quickly and pleased to hear that they are funded to 100% of expected losses.

Vice Chair Hennelly moved to approve the self-insurance authority for the City of Peoria and waiver of security deposit. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

8. Maricopa County Community College District

Vice Chair Hennelly asked Ms. Pastor to address the low equity to liability ratio and point out what is missing in the revenue compared to expenditures column. Ms. Pastor noted that she shows flat revenues for the District, but if she included the non-operating revenues there would be a more flush number and it just shows the regular revenue. She watches to make sure they have a flush retainer and they do. She can include the non-operating revenue if it would be helpful. There was a decrease in total liabilities and a decline in revenues as tuition is probably down with COVID. It is still a healthy district with the nice flush retained earning balance.

Vice Chair Hennelly commented that the retained earnings looked good and asked to include the non-operating revenue. Ms. Pastor noted she will include it next year.

Ms. Pastor noted that the workers' comp liabilities went down compared to last year.

Vice Chair Hennelly moved to approve the self-insurance authority for Maricopa County Community College District. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

9. Pima County

Commissioner LeMarr wanted to discuss that the denial rate is twice that of the standard for City and County employees, and asked if there is a track record for previous years to determine if it was a one off situation for 2020.

Ms. Pastor noted that Pima County has been one of those who has exceeded the 12% denial rate. One of the primary reasons is the exposures which are higher for bloodborne pathogens in their claims history. They have a hospital and first responders that get exposed. She has tried working with municipals on logging and tracking exposures rather than filing a claim. If the testing proves they do in fact have a bloodborne pathogen then file a claim. The City of Tucson and Pima County have not yet followed that process. She noted that she looked at all of the claims when over the 12% standard, and while they will probably continue to hit over the 12% it does not mean it is necessarily bad once you examine the drivers.

Commissioner LeMarr thanked her for her explanation but noted that there are other counties that have hospitals as well that are not having denial rates at twice the standard rate but liked her suggestion to start to investigate these a little better.

Commissioner LeMarr moved to approve the self-insurance authority for Pima County and waiver of security deposit. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

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

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Desert Care Landscape Resources, LLC
6143 S. 32nd Street
Phoenix, AZ 85042

Fatality/Accident
Years in Business: 13
Empl. Covered by Inspection: 3

Site Location: 611 S. 80th Avenue
Tolleson, AZ 85353
Inspection No: V4361-1521535
Inspection Date: 03/11/2021

Mr. Atencio summarized ADOSH's fatal investigation and reviewed the file. Mr. Atencio noted that there are two additional files open for Sysco and New Freightliner companies which are still under investigation. Mr. Atencio also noted that Compliance Officer Miguel Castillo was available for questions. ADOSH was not recommending a citation for Desert Care Landscape Resources, LLC.

Chairman Schultz checked if anyone on the phone would like to comment.

Ms. Pace thanked ADOSH for the assistance in the inspection, it was cooperative, the families and the company are very close, so it has been quite a tragedy for Desert Care and she appreciates the report. She thanked Mr. Atencio and Mr. Castillo for the report.

Chairman Schultz commented that every time we see one of these is it so heart wrenching to know that the impact it has on the family and on the company too. It is very difficult to hear.

Chairman Schultz commented that he appreciated the representatives for the next of kin joining today and checked if they would like to comment.

Div. Proposal - \$1,000.00
TOTAL PENALTY - \$5,000.00

Formula Amt. - \$1,000.00
TOTAL FORMULA AMT. - \$7,000.00

Mr. Atencio noted that Zak Marquez was also available for questions. Mr. Atencio discussed ADOSH's complaint investigation, summarized the citations and proposed penalties.

Chairman Schultz thanked Mr. Atencio for including the photographs which make it clear what the issues are. He checked if anyone on the phone would like to comment.

Mr. Quezada noted they received a copy of the complaint at Noon and have not had a chance to review it. The only comment at this point is there is an overlap between the Barber Board requirements for training and the ADOSH requirements. The barbers are all licensed and certified and go through training that includes bloodborne pathogen training, chemical training and while he does not have that information to provide he is looking at the overlap and articulating the differences between which of those requirement may meet OSHA requirements, but cannot make too much of a comment at this point. However they did find a copy of the recommended bloodborne pathogens document online and will make sure it is incorporated as a company policy and all employees comply with that.

Chairman Schultz noted he appreciated the information about the overlap, the Commission is very interested in identifying any abatement efforts that have been made and let them know they definitely want to submit that information to Mr. Atencio or Mr. Marquez.

Mr. Quezada asked about when to submit that documentation. Mr. Atencio explained the process when the packet is received and when to submit, and let them know to submit any documents to Mr. Marquez so it could be part of the file. He also explained having a written program for hazard communication within their organization.

Chairman Schultz thanked Mr. Atencio for grouping the citations.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Thyssenkrupp Elevator Corporation
3259 E Harbour Dr, Suite 100
Phoenix, AZ 85034

Fatality/Accident
Years in Business 40
Empl. Covered by Inspection: 2

Site Location: 1033 N Parkside Dr
Tempe, AZ 85281
Inspection No: B5049 -1503400
Inspection Date: 11/19/2021

SERIOUS – Citation 1 - Item 1 –

- a) 1033 N. Parkside Dr. Tempe, AZ. 85281: The employer's Energy Control Program, Lockout/Tagout, did not adequately address hazards associated with employees working in an elevator pit where gravity was a hazard and procedures were not developed to prevent an employee from being exposed before work began. 29 CFR 1910.147(c)(1)

Div. Proposal - \$5,000.00
TOTAL PENALTY - \$5,000.00

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

Mr. Atencio noted that Ron Mills was also available for questions. Mr. Atencio discussed ADOSH's investigation, summarized the citation-and proposed penalty, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Waters thanked the Commission for the opportunity and ADOSH and Mr. Mills for their professionalism during the inspection. They disagree with the proposed citation and know this is not the forum to present a hearing on the merits of the citation. He disagreed with several statements made by ADOSH earlier and made in the summary of the agenda. First, as ADOSH acknowledged Thyssenkrupp does tell its employees when to use pipe stands which is why ADOSH did not recommend a citation for the incident. Page two of section A of the employee's handbook tells them to land the cars on pipe stands when working on the hydraulic pressure system or when working in the pit for extended periods of time and any work beyond routine maintenance requires pipe stands to be installed. They are simply round pipes that go into the buffer springs that you can see in photograph 1 and 2, the black springs in the pictures on the right and left sides of the pit. There is nothing complicated about using them, the employees clearly knew they should have been using them and they did not. That misconduct is why we are not getting a citation relating to the incident itself. They appreciate that acknowledgement but the citation for the program being deficient is not well taken because in this case the Lockout/Tagout standard, 1910.147 only applies if there is a hazard of unexpected release of energy. Here, he thought ADOSH was asserting that gravity based energy, clearly this car was wedged, and hung up in the hoist way far above the seven foot height of the pipe stands, in other words for 12 days approximately, it had been lodged up above the first floor landing unable to move entirely, it did not move until the mechanic had hung a hoist from it and attempted to do some work. That caused the car to move. The pipe stands should have been there before he did anything including putting up the ladder, including hanging the chains from the bottom of the elevator car. They do not believe that there is a risk of unexpected release of hazardous energy simply by being under the circumstances of this car, underneath the car, just for the purposes of installing pipe stands. He did not want to get into a full blown argument on the merits but hope that the Commissioners understand that they do believe they had a very robust and compliant section of mechanical stored energy which included the use of pipe stands under these circumstances. Employees were trained to protect themselves and these individuals were trained and know how to do it. He thanked the Commission for their time and will take advantage of the process going forward should there be a citation.

Chairman Schultz thank Mr. Waters and asked a couple of questions. Chairman Schultz noted there was a job hazard analysis that was completed before the work was started and if it was done with a formal form that is completed and signed. Mr. Waters responded yes, that Thyssenkrupp has a written process for a job hazard analysis, and it may be computerized but it is a formal process.

Chairman Schultz asked if any supervisory inspections are completed to make sure that the employees are following the appropriate processes. Mr. Waters responded that they do, all management members and the safety and health department are required to do a number of inspections monthly and annually. They have to get out in the field and watch their employees work and ensure they are doing it safely, and there are formal inspections that must be done in order for them to make their metrics. The safety and health department audits the branches to make sure that those individual branches are attaining those inspection requirements. They have a very robust inspection system.

Chairman Schultz was surprised that it would not be part of the normal process to just bring those pipe stands with you any time you are going to be going into a pit underneath the elevators, he would not go in there without knowing that there was some sort of support mechanism of the car. Mr. Waters responded that he could not agree with him more, they should have done that and they faced

consequences for not doing so. The mechanic claims that he was on his way to get them from the truck, they did have them in the truck, they are all equipped with them, but many of the sites have the pipe stands resting in the pit to be used just in case and save you from having to go to the truck. They have them both in the pit often and in the truck. He was not sure if they were in the pit here, but there are photos of them attached to the agenda, the pipe stands are in photographs 5 and 6, they were definitely in the truck and the mechanic claims he was getting them at the time of the incident. That should have been the first thing they did.

Chairman Schultz thanked Mr. Waters and appreciated the clarification.

Commissioner Krenzel thanked Mr. Atencio and his team for the write up, it was very well put together, and appreciated Mr. Waters' comments. He commented on an outside observation that Mr. Waters pointed out in photograph 1 that there are the two springs in the respective corners of the pit which those poles go into to support the elevator. He noted he is a visual person and curiosity got the better of him, reading the write-up and trying to understand how it all works and talking about holding the support poles in place so the car is lowered onto those, do those poles actually fit within the springs themselves or physically have to be under the car to hold the weight.

Mr. Waters noted that Commissioner Krenzel was correct, the poles actually fit into the springs themselves. You do not have to stand there while the car is being lowered. Some may have realized in this case the car could not be lowered. It was jammed up, and something called a relating cable became tangled up in the hoist way which caused the car to jam and become off center. There are rails on each side of the hoist way that the car runs up and down on, when you get off level that car jams up, so because the relating cable became tangled the car literally jammed up in the hoist way several feet above the first landing. In fact, had they installed the pipe stands, you still would have had probably another, as the narrative showed in the agenda, they installed a 10 foot ladder and the employee was standing on it and still hanging a chain fall from the bottom. The car was not going anywhere, the pipe stands would have been there while they were performing work down on the pit floor after they had hung the chain.

Commissioner Krenzel thanked Mr. Waters for taking the time to explain.

Chairman Schultz discussed with Mr. Testini about going into executive session to discuss some legal advice on the issue with a motion.

Commissioner LeMarr moved to go into executive session to consult with legal counsel and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

The Commission went into Executive Session at 2:22 p.m.

The Commission returned to regular session at 2:38 p.m.

Chairman Schultz confirmed a quorum, the Commissioners had returned to the call.

Mr. Testini confirmed the Commissioners were back in regular session.

Chairman Schultz checked if there were any other questions for Mr. Atencio or representatives from Thyssenkrupp.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz asked if the Town of Eager was participating in the PEPP Program. Mr. Atencio noted they were not at this time.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the Golden Hard Hat Award for April was presented to co-recipients Dennis Balagtas for his internal website design, working with the divisions on their webpages and refurbishing 25 internal pages with a significant amount of content and refreshing 18 internal pages so far in 2021; and Matthew DeBoer for his work on the ICA Payment Portal and payment security card standards to safely accept and process card holder data preventing fraud and data breaches.

Chairman Schultz commented that fits into the overall AMS process and people going above and beyond and being creative. He offered the Commissioners' congratulations.

Mr. Ashley noted that the Arizona Management System is about better serving the public that relies on your agency, under the Governor, every state agency is committed to that and continual improvement and identifying ways to serve the public better.

Ms. Dimas confirmed Commission meeting dates through June 2021. Vice Chair Hennelly noted he would not be available on June 10th and possibly the 17th.

Ms. Dimas presented a retirement resolution for Steve Marks, Physical Plant Supervisor 2 in the Special Services Division for 20 years of state service and Lori Porter, Customer Service Representative 2 in the Claims Division for 25 years of state service.

Chairman Schultz commented that is a mixed blessing. Happy to hear that they are going off to a new chapter in their lives, but to lose that kind of expertise is very hard to replace that kind of knowledge and experience. The Commissioners wish them well in their future endeavors.

Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:51 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary