MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, April 30, 2020 – 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)  
Jason M. Porter  Deputy Director (Telephonic)  
Trevor Laky  Legislative Affairs Chief/Public Information Officer (Telephonic)  
Renee Pastor  Self Insurance (Telephonic)  
Lisa Padgett  Labor Director (Telephonic)  
Victoria Kamm  Labor Supervisor (Telephonic)  
Jennifer Krainski  Labor Investigator (Telephonic)  
Jessie Atencio  ADOSH Director (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 Allie Matthews, Emely Aguino, Sara Hussak, Maria Robinson, and Vince Tracey (City of Tucson); Casey Price and Chief Barry Rosak (Maricopa County Sheriff’s Office); Tim Little and Chris Brandon (Maricopa County Risk Management); and Christine Glover (Snell & Wilmer).

Approval of Minutes of April 21, 2020 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the April 21, 2020 regular session meeting 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.

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. 2C19/20-0114  Planet Sub  $5,000
2. 2CLP19/20-0111  Lucio Gonzalez DBA Gonzalez Lucio Landscaping  $1,000
3. 2CSP19/20-0104  Martin's Building Solutions LLC  $1,000
4. 2C19/20-0105  Noble Homes LLC  $1,000
5. 2CNP19/20-0398 Sir Moves A Lot LLC $5,000
6. 2CC19/20-0121 Pro Mechanical Services LLC DBA Climate Pro Care $1,000

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

1. City of Tucson
2. The Home Depot, Inc.

Commissioner Krenzel moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz expressed concern over the experience modification factor for the City of Tucson, but wanted to note that they are working with the Consultation Division of the Arizona Division of Occupational Safety and Health to improve their loss experience. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL1819-0296 Oregano's Pizza Bistro, Inc.

Ms. Padgett summarized the Labor Department’s investigation, which included findings of various violations of A.R.S. § 23-231(A)(10). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of $600.00.

Chairman Schultz thanked Ms. Padgett for the photographs with the investigation, it made it easy to understand the working conditions.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner LeMarr moved to approve issuance of a Civil Penalty in the amount of $600.00 to Oregano’s Pizza Bistro, Inc. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

CL1819-0304 Walmart, Inc.

Ms. Padgett summarized the Labor Department’s investigation, which included findings of various violations of A.R.S. § 23-231(A)(7) and (A)(11). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of $200.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of $200.00 to Walmart, Inc. Vice Chair Hennelly seconded the motion.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Ms. Padgett for the thorough investigations.
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.

Maricopa County Sheriff’s Office Lower Buckeye Jail  
3325 W Lower Buckeye Rd.  
Phoenix, AZ 85009  

Site Location: 3250 W Lower Buckeye Rd.  
Phoenix, AZ 85009  
Inspection No: T3633 -1442497  
Inspection Date: 11/04/2019

Fatality/Accident
Years in Business: 140
Empl. Covered by Inspection: 300

Mr. Atencio summarized ADOSH’s fatality investigation and reviewed the file and photographs, and noted that ADOSH was not recommending a citation.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

The Commission took no action.

Pave Your Way Construction, LLC  
8176 N Carefree Way  
Tucson, AZ 85743

Site Location: 4861 N Stone Ave.  
Tucson, AZ 85704  
Inspection No: B8139 -1443001  
Inspection Date: 11/05/2019

Fatality/Accident
Years in Business: 11
Empl. Covered by Inspection: 3

SERIOUS – Citation 1 - Item 1 –

a) Eastside Parking Lot: Two employee were working in a trench without a competent person on-site. 29 CFR 1926.651(k)(2)  
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2 –

a) Eastside Parking Lot: Two employees worked in a trench that was not approximately 9’ deep, 30” wide at the top, 30” wide at the base, and 40’ long without a protective system installed. 29 CFR 1926.652(a)(1)  
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

TOTAL PENALTY - $4,000.00
TOTAL FORMULA AMT. - $4,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly and Mr. Atencio discussed whether the company is still viable. Mr. Atencio explained that an inspection was done on Building Excellence, the general contractor, who
was found to have an extensive safety and health program. ADOSH also opened an inspection with the City of Tucson Fire Department following the third collapse that occurred with another employee being injured, to insure they evaluate the work place to prevent any type of exposure to their employees if they have to conduct a rescue.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion.

Chairman Schultz shared his thoughts that it seemed like it could be considered a willful violation but appreciated conducting discussions with the general contractor and the City of Tucson. He understands their desire to help, the firemen are incredible folks, however could have lost one in this situation.

Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 10: Wage Claims.

Mr. Testini noted the Legal Division and the Labor Department recommend rulemaking to: (1) modernize A.A.C. Title 20, Chapter 5, Article 10 (Wage Claims), including by allowing for service of documents by electronic means; (2) streamlining and eliminating redundancies in the wage claim investigation process to reduce burdens on claimant and employers involved in wage claim disputes and to accelerate processing of wage claims; and (3) bringing R20-5-1006(A)(3) into compliance with A.R.S. § 23-356 as discussed at the last meeting. He noted he would like a Resolution to authorize the Legal Division to proceed with the proposed rulemaking by filing a request with the Governor’s Office to file an exemption from the rulemaking moratorium and upon receipt of the exemption authority to file a notice of proposed rulemaking with the Secretary of State.

Chairman Schultz asked Ms. Padgett and if there were any comments. Chairman Schultz noted he was impressed with the thoroughness of the changes and the overall improvements, streamlining, and easing the processes, improving time frames and really appreciated the work done on this.

Commissioner Krenzel moved to authorize the Legal Division of the Industrial Commission of Arizona is directed to engage in rulemaking, consistent with the attached proposed amendments to A.A.C. Title 20, Chapter 5, Article 10, by seeking approval from the Office of the Arizona Governor pursuant to Executive Order 2020-02, and upon receipt of approval by the Governor, filing a Notice of Proposed Rulemaking with the Office of the Secretary of State in compliance with the provisions of the Administrative Procedure Act. 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented that this was the second meeting utilizing Google Hangouts and he is very pleased with the platform and will be using it going forward. Chairman Schultz agreed that it seems to be clear, everyone is understandable and very efficient with the ability to mute and unmute.
Ms. Dimas confirmed Commission meeting dates through June 2020. Commissioner Krenzel noted he will not be available on May 7th.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly 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 1:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary