

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 6, 2017 – 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
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self-Insured
	Molly Jones	Claims Manager
	Steven Welker	Labor Director
	Jonathan Hauer	Assistant Chief Legal Counsel
	William Warren	ADOSH Director
	Brian Downen	Compliance Officer
	Michelle Rassi	Compliance Officer
	Michael Mosesso	Chief Administrative Law Judge
	Jamie Stacy	HR Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Terry Fox with Arizona Association Lawyers for Injured Workers (“AALIW”); Brandon Dodds and Kerry Leib with the City of Scottsdale; Brian Carmichael and Edith Paltieriez with the City of Surprise; Stephanie Coulter with the Cavanagh Law Firm; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of March 31, 2017 Regular Meetings Minutes.

Commissioner Orchard moved to approve the Minutes of the March 31, 2017 regular session meeting 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.

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. 2C16/17-0605 Arizona Cheer & Dance Academy, LLC
2. 2C16/17-1228 Carla Vista Sober Living, LLC

3. 2C16/17-1879 Daniel Sexton, a single man, dba Arizona RV Salvage
4. 2C15/16-1117 Euro Moving and Storage LLC
5. 2C16/17-0926 Nowell Tree Farms, LLC
6. 2C16/17-1100 Save On Services, dba Affordable Garage Door

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

1. City of Tucson

Chairman Schultz discussed the large number of employees left uncovered by employers on the Consent Agenda who had not secured workers' compensation insurance and noted that one uninsured employer was brought to the Commission's attention following a fatality.

Commissioner LeMarr moved to approve the items on the Consent Agenda 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.

Discussion and Action of Application for Self-Insurance Authority.

1. City of Surprise

Chairman Schultz discussed the City's application for self-insurance authority.

Brian Carmichael discussed his background with self-insurance programs, the City's planned self-insurance program, and the importance of a self-insured, self-administered model. Chairman Schultz noted that Mr. Carmichael had been effective in testifying on behalf of legislation that would allow public entities to direct medical care. Chairman Schultz discussed how directing care improves treatment of injured workers.

Ms. Pastor discussed the speed, quality, and efficiency with which the City assembled its application.

Commissioner LeMarr moved to grant self-insurance authority to the City of Surprise 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.

Ms. Pastor discussed the City's experience modification rating.

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 media coverage concerning a Town of Paradise Valley inspection.

Mr. Charles offered thoughts on the Commission's Day at the Capitol event, including honoring Senator Steve Smith as a Legislative Champion.

Mr. Charles provided legislative updates concerning Senate Bills 1332, 1407, and 1478. Mr. Charles discussed the process for passing SB 1478 and the substance of the legislation. Chairman Schultz discussed the impact of SB 1478 and thanked Mr. Charles for his efforts. He noted that Arizona would be only the second state in the nation to codify the Voluntary Protection Program ("VPP").

Discussion and Action of Resolution Appointing Custodian of Records.

Ms. Jones proposed that the Commission appoint Laverne JAMES as a Custodian of Records and explained the basis for her proposal.

Vice Chair Hennelly moved to approve the appointment of Ms. JAMES as a Custodian of Records and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

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

Commissioner Orchard recused herself from the City of Scottsdale agenda items.

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

City of Scottsdale – Chaparral Water Treatment Plant	Planned	
8111 E McDonald Dr	Years in Business:	41
Scottsdale, AZ 85250	Empl. Covered by inspection:	12
Site Location:	8111 E McDonald Dr	
	Scottsdale, AZ 85250	
Inspection No:	H9685-1203305	
Inspection Date:	01/13/2017	

SERIOUS – Citation 1 - Item 1 – GAC Building Basement South Side: Employees who worked on the basement level were not protected from falling approximately 15 feet to the ground below through two ladderway openings by a swinging gate or by offsetting the opening to the ladderway. (29 CFR 1910.23(a)(2)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

- a) GAC Building South Stairs: The exit stairs that served three different levels of the GAC building which lead from the second story to the first story and then to the basement level were not interrupted at the first story level on which the exit discharge was located by doors, partitions, or other effective means that clearly indicated the direction of travel leading to the exit discharge. (29 CFR 1910.36(c)(3)).
- b) MF Building: A marked exit door that lead from the MF portion of the building into the administration building's exit route was locked with a keyed door handle. (29 CFR 1910.36(d)(1)).
- c) Administration Hallway: The ceiling of an exit route reached a point less than six feet eight inches from the floor as an HVAC duct projected into the exit route which created a point that measured 5 feet 6-1/2 inches tall. (29 CFR 1910.36(g)(1)).

SERIOUS – Citation 1 - Item 7 – Train Shed: The direction of travel to the nearest exit was not immediately apparent and exit signs were not posted along the exit access to indicate to employees the direction of travel in the southern portion of the building. (29 CFR 1910.37(b)(4)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 8 –

- a) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from contact with the unused portion of the saw blade on a W.F. Wells and Sons horizontal band saw, model A-7 and serial number 745337. (29 CFR 1910.212(a)(1)).
- b) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on an Acratum model 17 x 55 lathe, model LS-430 and serial number 817058. (29 CFR 1910.212(a)(1)).
- c) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on an Enco model lathe, model 110-1340 and serial number 931770. (29 CFR 1910.212(a)(1)).
- d) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on a 12 speed Enco milling and drilling machine, model 105-1100 and serial number 1070. (29 CFR 1910.212(a)(1)).
- e) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the rotating chuck on a Craftsman drill press, model and serial number unknown. (29 CFR 1910.212(a)(1)).
- f) Train Shed: One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from accidental contact with the exposed and rotating nut and spindle ends on a custom fabricated wire wheel machine, model and serial number unknown. (29 CFR 1910.212(a)(1)).
- g) Train Shed Machine Shop: A Patton brand wall mounted fan where the periphery of the blades were located 5 feet 7 inches from the floor did not have blade guards smaller than ½ inch as the openings were approximately 1-3/4 inches wide. (29 CFR 1910.212(a)(5)).
- h) Train Shed Entrance: A Dayton fan forced heater where the periphery of the blades were located approximately 5 feet 5 inches from the floor did not have blade guards smaller than ½ inch as the openings were approximately 7/8 inches wide. (29 CFR 1910.212(a)(5)).
- i) Train Shed: Employees were exposed to the hazardous rotating spindle end, nut, and flange projections while operating an MSC 6 inch Carbide Grinder, model 09011602 and serial number unknown, without safety guards. (29 CFR 1910.215(a)(2)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 9 – Bunkhouse: Listed and labelled equipment which consisted of approximately 16 power taps and 16 extension cords were not being used or installed in accordance

with any instructions included in the listing or labelling as they were all serially connected to one another to power miniature displays. (29 CFR 1910.303(b)(2)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 10 – Railroad Museum Train: Two employees who were engaged in decorating a train with holiday lights were not protected from falling approximately 14 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$20,700.00

TOTAL FORMULA AMT. - \$20,700.00

Mr. Warren and Mr. Downen summarized the citations and proposed penalties and reviewed the photographs.

Chairman Schultz, Mr. Downen, and Commissioner LeMarr discussed combustibles, flammables, and the use of sprinklers.

Chairman Schultz and Mr. Downen discussed the narrow hallway in the bunkhouse.

Vice Chair Hennelly and Mr. Downen discussed the birthday party car, its use, the car's exits, photographs 7, 10, 15, and 16, and Citation 1, Items 2 and 7.

Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed violation classification due to a lack of an exit sign and reviewed photograph 5.

Vice Chair Hennelly and Mr. Downen discussed abatement.

Mr. Dodds noted some additional items had been abated and indicated that he would discuss them at the informal conference.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and voiced concerns about the aggregated penalties.

Commissioner LeMarr seconded the motion, echoed Vice Chair Hennelly's sentiments, encouraged the City of Scottsdale to abate the subject issues, and requested that ADOSH take abatement costs into consideration during settlement conferences. Chairman Schultz complimented ADOSH on the inspection and called attention to the impact of penalties. Commissioner LeMarr discussed issues related to abatement.

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

City of Scottsdale – McDowell Mountain Ranch
Park & Aquatic Center
15525 N Thompson Peak Pkwy
Scottsdale, AZ 85260

Planned
Years in Business: 10
Empl. Covered by inspection: 6

Site Location: 15525 N Thompson Peak Pkwy
Scottsdale, AZ 85260
Inspection No: Q6169-1203434
Inspection Date: 01/09/2017

Commissioner Orchard moved to approve the citations and proposed penalties as presented 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.

Mr. Warren stated that he appreciated Mr. Downen and Mr. Levy's professionalism during the subject inspection. Chairman Schultz commended Mr. Downen on his de-escalation skills.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-602 to adopt the revised Federal Occupational Safety and Health standards included in Final Rule titled "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)."

Chairman Schultz and Mr. Warren discussed postponing this matter to a future agenda. The Commissioners agreed to postpone the matter.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code relating to the Fair Wages and Healthy Families Act (Proposition 206), including proposed rulemaking to R20-5-1201; 20-5-1202; R20-5-1205; R20-5-1206; R20-5-1208; R20-5-1209; R20-5-1210; R20-5-1211; R20-5-1213; and R20-5-1218.

Mr. Welker summarized the proposed rulemaking related to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code arising out of the Fair Wages and Healthy Families Act (Proposition 206) and requested that the Commissioners permit the Labor Department to proceed with proposed rulemaking.

Commissioner LeMarr, Mr. Porter, and Mr. Hauer discussed the proposed rulemaking, earned paid sick time, and the rulemaking process.

Commissioner LeMarr, Mr. Ashley, Mr. Welker, and Mr. Hauer discussed inquiries from employers, frequently asked questions about Proposition 206, and the nature of the proposed rulemaking.

Chairman Schultz commended the staff on getting the rules together in an expedient manner.

Vice Chair Hennelly, Mr. Ashley, and Mr. Hauer discussed Rule 1208(B)'s definition of a small employer.

Commissioner LeMarr moved to authorize the Labor Division to proceed with the proposed rulemaking to Title 20, Chapter 5, Article 12 of the Arizona Administrative Code 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.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge position, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Commissioner Orchard moved to enter executive session. 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. Chairman Schultz announced the Commission would move into executive session.

The Commission returned to regular session at 3:18 p.m.

Chairman Schultz thanked the attendees for their patience and noted the importance of the work being performed in the Commission's ALJ Division.

Commissioner LeMarr moved to accept the recommendation of Judge Mosesso to extend offers to the top three candidates interviewed. Vice Chair Hennelly and Commissioner Orchard seconded. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Judge Mosesso thanked the Commissioners for their consideration and participation in the hiring process.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed attending and giving opening remarks to the College of Workers' Compensation Conference, and congratulated Melinda Poppe for becoming a new member of the fellowship. Chairman Schultz congratulated Ms. Poppe.

Mr. Ashley provided an update regarding pending federal regulations and noted recent legislation concerning the Volks Rule.

Mr. Ashley discussed a planned Commission meeting in Sierra Vista on May 25 and noted that Jenny Mandeville will be hosting a Safety Summit on May 24.

Chairman Schultz, Mr. Ashley, and Mr. Porter discussed Arizona Management System progress.

Chairman Schultz discussed the Region 9 VPP Conference and noted a compliment concerning the Industrial Commission's efficiency and customer service. He discussed SHARP and VPP program applicants and compared Arizona's application completion time (within six months) to those who apply under Federal jurisdictions and have been waiting two to three years for completion.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Judge Anthony Halas for 18 years of service and Judge Deborah Nye for 15 years of service in the Administrative Law Judge Division. Judge Mosesso stated that both are experienced judges and will be missed.

Ms. Dimas confirmed meeting dates through May 2017, the April 27 Fee Schedule Hearing, the May 11 Assessment Hearing, and the May 25 meeting in Sierra Vista. Chairman Schultz and Commissioner Orchard discussed the proposed Fee Schedule.

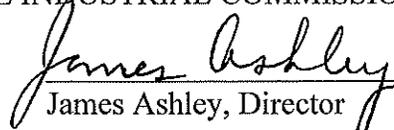
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly 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 3:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary