

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held in Salon 5 of the JW Marriott Scottsdale Camelback Inn  
5402 E Lincoln Drive  
Scottsdale, Arizona 85253  
Friday, August 10, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Stacey Rogan	Assistant Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Michael Mosesso	Chief Administrative Law Judge
	Gaetano Testini	Administrative Law Judge
	Michael Durso	Investigations Supervisor
	Michelle Rassi	Investigator
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Pablo Valverde with Argot Safety; Wayne Carroll and Khalliduh Simon with Fondomonte; Dave Skierkowski, Jose Soto and Mayra Rivas with Eagle Roofing; and Michael Fassett with Snell & Wilmer.

Approval of Minutes of July 26, 2018 Regular Meeting.

The minutes were tabled until the next meeting.

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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CRP-17/18-0224 Centrik Roofing, LLC
2. 2C-17/18-0826 Dulceria Albertos
3. 2C-17/18-0831 The Shutter Source LLC

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

1. Arizona Municipal Pool Risk

2. Walmart Associates, Inc.

Chairman Schultz reviewed the Consent Agenda and requested (a)(3) The Shutter Source LLC and (b)(2) Walmart Associates, Inc. be moved to the regular agenda.

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

Approval of Proposed Civil Penalties Against Uninsured Employers.

The Shutter Source LLC - Chairman Schultz noted that The Shutter Source has a proposed penalty of \$1,000. He noted the significant number of employees at risk by the employer's failure to provide workers' compensation insurance which is a violation putting many employees at risk.

Commissioner LeMarr, Chairman Schultz and Ms. Rogan discussed what the Legal Division will do regarding follow up for an employer of this size.

Commissioner LeMarr moved to approve the Civil Penalty for The Shutter Source LLC and Commissioner Krenzle seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzle voted in favor of the motion. The motion passed.

Discussion and Action of Application for Self-Insurance Authority.

Walmart Associates, Inc. - Chairman Schultz noted the current experience modification for Walmart is higher than the Commission would like see. Generally the self-insured employers are expected to be exemplary in the protection of the employees. He noted that their experience modification factor has been dropping each year and is on a positive trend. He wanted to communicate to Walmart that they are still on the radar and he expects continued improvement.

Commissioner Krenzle moved to approve Walmart Associates, Inc.'s application for self-insurance authority and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzle 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.

Mr. Atencio started with the discrimination matter. Mr. Ashley noted that we would have to note an Agenda change to go out of sequence. Chairman Shultz requested we start with the citations and penalties. Mr. Atencio presented the citations beginning with True-Built Construction.

True-Built Construction LLC  
6148 S Reseda St.,  
Gilbert, AZ 85207

Site Location: 7517 E Hobart St.  
Mesa, AZ 85207

Complaint  
Years in Business: 10  
Empl. Covered by inspection: 3







DES appeal case for unemployment benefits and that West Abrazo Hospital used a subjective attendance policy. Mr. Atencio noted the statute for DES does not apply to the Retaliation Statute under A.R.S. § 23-425. Mr. Atencio noted that it was not within OSHA's safety and health and that ADOSH does not find anything that shows that safety and health have been compromised. Mr. Atencio and Ms. Rassi noted the several attempts to reach the complainant to get more information.

Mr. Atencio summarized the investigation report regarding handling of safety concerns and employment records. Ms. Rassi added that Mr. Walikainen did not follow company directives.

Mr. Atencio recommended that based on the ADOSH ROI that ADOSH's original decision to dismiss the case on the merits be upheld.

Chairman Schultz noted that the only issues to consider are the issues on the appeal. The issues relative to the board were heard and there was ample documentation of the employer's work to resolve those issues, as well as all of the information about the attendance and the process. All that is needed to address is whether or not there is sufficient, new and additional evidence presented to cause a reconsideration of the original decision. He noted that the report does an appropriate job at addressing each one of the new issues and reinforces the original decision.

Commissioner LeMarr concurred and could not find anything that would sustain a reopening of this process.

Commissioner LeMarr moved to deny the request for appeal of ADOSH case 16-2865-12. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

#### 16-2865-12 - Walikainen vs. West Abrazo Hospital

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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.

Judge Mosesso noted that he has had another opening in the ALJ Division and would like to fill it with one of the candidates from the recent, previously compiled list. He noted the information that was provided is the same and that candidate #5 was offered the position and has accepted. For the new open position he would like to offer candidate #4 the other position and if candidate #4 is not available he would like to be able to offer candidate #3 the position.

Commissioner LeMarr moved to authorize Judge Mosesso to offer the vacant ALJ position to Candidate #4, and, if unavailable, to Candidate #3. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

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Mr. Ashley discussed the success of this year's Claims seminar and the addition of an interactive polling feature that was producing high participation and helpful results.

Mr. Ashley noted that the 4<sup>th</sup> Annual Day at the Capitol has just been set and will be held on March 27, 2019.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through September 2018. Commissioner Krenznel noted he may need to call in for the September 20<sup>th</sup> meeting.

Mr. Atencio noted the new VPP Brasfield & Gorrie celebration will be held on September 10<sup>th</sup> in Tucson.

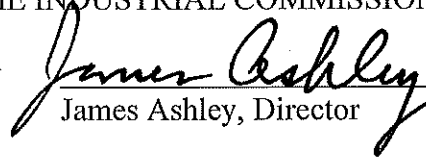
Public Comment.

There was no public comment.

Commissioner Krenznel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenznel voted in favor of the motion and the meeting was adjourned at 2:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary