

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 8, 2018 – 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
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Gregg Morgan	Assistant Claims Manager
	Adella Sermenio	Claims Specialist
	William Warren	ADOSH Director
	Phil Murphy	Assistant ADOSH Director
	Wendi McMillan	Compliance Officer
	Afshan Peimani	Legal Division Staff Attorney
	Kara Dimas	Commission Secretary

Vice Chair Hennelly convened the meeting at 1:02 p.m. Also in attendance were Paul Timmons with New Wincup Holdings, Inc.; Nolan deGraaff and Omar Bahena with Ice Now, Inc.; Deb Baker with Valley Schools Workers' Compensation Pool; Christopher Hansen with the City of Tempe; Lauren Boutom with R Street Institute; and Jordan Chavez with Snell & Wilmer. Chairman Schultz was not present at the commencement of the meeting.

Approval of Minutes of February 1, 2018 Regular Meeting Minutes.

Vice Chair Hennelly stated that the agenda item would be revisited later in the 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C17/18-0448 Maven Transport LLC
2. 2C17/18-0333 Webb Hearing Centers

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

1. The Valley Schools Workers' Compensation Pool
2. City of Tempe

Vice Chair Hennelly removed item (b)(1) (The Valley Schools Workers' Compensation Pool) from the consent agenda to be heard later in the meeting.

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

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Mr. Morgan discussed Ms. Sermeno's employment history and recommended that she be appointed as Special Assistant to the Commission.

Commissioner LeMarr moved to appoint Ms. Sermeno as Special Assistant to the Industrial Commission of Arizona and Commissioner Orchard seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, 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.

Vice Chair Hennelly discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Ice Now, LLC	Referral
2440 W Lincoln St, Ste 140.	Years in Business: 8
Phoenix, AZ 85009	Empl. Covered by inspection: 17
Site Location: 2440 W Lincoln St, Ste 140	
	Phoenix, AZ 85009
Inspection No: A3807-1271489	
Inspection Date: 10/20/2017	

SERIOUS – Citation 1 - Item 1 – a) Production: One operator was not provided a method of machine guarding that would protect the operator in the machine area from hazards created by the point of operation and rotating parts of the ice making machinery and auger conveying system. 29 CFR 1910.212(a)(1)

Div. Proposal - \$5,000.00	Formula Amt. - \$750.00
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NON-SERIOUS – Citation 2- Item 1 – a) 2440 W Lincoln St, Ste 140 Phoenix, AZ 85009: The employer reported on October 19, 2017 the in-patient hospitalization of one employee who was injured on October 10, 2017 approximately 9 days after the date of the injury and not within twenty-four (24) hours as required. 29 CFR 1904.39(a)(2)

Div. Proposal - \$300.00	Formula Amt. - \$300.00
TOTAL PENALTY - \$5,300.00	TOTAL FORMULA AMT. - \$1,050.00

Mr. Murphy summarized the citations and proposed penalties and reviewed the photographs.

Commissioner LeMarr, Commissioner Orchard, Mr. Warren, Mr. Murphy, and Mr. Timmons discussed whether the operation of the machine fell under the routine servicing exemption.

Commissioner Orchard and Mr. Timmons discussed the employer's safety and training program.

Vice Chair Hennelly and Mr. Timmons discussed the training issue referenced in Citation 1, Item 1 and whether the employer now provides necessary training.

Commissioner Orchard and Mr. Timmons discussed the employee's injuries, employment status, and current condition.

Commissioner Orchard and Ms. McMillan discussed the employer's abatement efforts.

Commissioner Orchard and Mr. Timmons discussed improved machine guarding and the employer's lockout/tagout process.

Vice Chair Hennelly, Commissioner Orchard, Mr. Warren, Ms. McMillan, and Mr. Timmons discussed ADOSH consultation services.

Commissioner LeMarr discussed his impression that there is a high injury rate among temporary employees.

Citing the employer's organized facility, its strong commitment to employee safety, and its abatement efforts, Commissioner LeMarr moved to reduce the proposed penalties (by 15%), as follows: (1) the proposed penalty for Citation 1, Item 1 be reduced from \$5,000.00 to \$4,250.00; and (2) the proposed penalty for Citation 1, Item 2 be reduced from \$2,250.00 to \$1,912.50, for a total penalty of \$6,162.50. Commissioner Orchard seconded the motion and noted her concerns about the injury. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Approval of Minutes of February 1, 2018 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the February 1, 2018 regular session meeting and Chairman Schultz seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

The Valley Schools Workers' Compensation Pool - Vice Chair Hennelly discussed the Pool's progress in the reduction of its experience modification rating.

Commissioner Orchard recused herself from the agenda item.

Vice Chair Hennelly encouraged the Pool to work with the ADOSH Consultation Division on safety issues and commented on the improvement in the Pool's experience modification rating.

Chairman Schultz moved to approve the request for Renewal of Self-Insurance authority for The Valley Schools Worker's Compensation Pool and Commissioner LeMarr seconded the motion.

Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard did not vote. The motion passed.

Discussion and/or Action regarding delegation of authority to appoint an Interim Director of the Division of Occupational Safety and Health.

Mr. Ashley discussed the delegation of authority to appoint an Interim Director of the Division of Occupational Safety and Health.

Chairman Schultz and Mr. Ashley discussed the timeline for making the appointment.

Commissioner LeMarr moved to delegate authority to the Director of the Commission to appoint an Interim Director for ADOSH. Commissioner Orchard 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 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.

Mr. Ashley discussed his meeting with the Thai Consul General to discuss the Commission and its functions. He noted that the Thai Consulate General will be working with the Arizona Commerce Authority regarding operating a facility in Mesa.

Mr. Ashley provided an update on House Bill 2047, noting that it is now before the Senate.

Mr. Ashley discussed the possibility of a Federal government shutdown and an intent to maintain Commission operations as normal in the event of a shutdown.

Mr. Ashley discussed the Industrial Commission Employee Association's penny wars fundraiser and a food drive for St. Mary's Food Bank.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Jesus Cabrera, a Workers' Compensation Insurance Claims Program Supervisor in the Claims Division, who provided 31 years of state service.

Ms. Dimas confirmed Commission meeting dates through April 2018.

Mr. Ashley noted that the ICA Day on the Lawn at the Capitol will take place on April 12, 2018.

Public Comment.

Mr. Warren discussed his retirement from State service. He personally thanked the Commissioners, Director Ashley, and Mr. Porter for the opportunity (which he said was "the top" in his career); discussed the positive impact of the Arizona Management System on the Commission and ADOSH; and noted his support of the Commission and ADOSH's mission.

Vice Chair Hennelly thanked Mr. Warren for his professionalism and hard work.

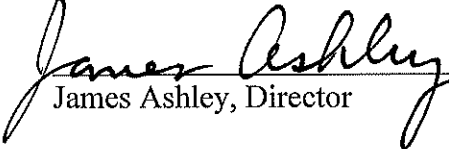
Ms. Pastor discussed the City of Tempe's self-insurance application, its experience modification rating, and the City's participation in the ADOSH consultation program.

There was no other public comment.

Chairman Schultz moved to adjourn and Commissioner Orchard 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 1:52 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary