

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 25, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Darren VandeVoorde, Jim Buhr and Paul Murray (Bashas’); Jorge Ainza and Ramiro Ortega (Agri-Packing Supply, Inc.); and Scot Butler (Undisclosed).

Approval of Minutes of July 11, 2019 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the July 11, 2019 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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. Extreme Imaginations LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Bashas' Inc.
 2. Macy's, Inc.
 3. Marriott International, Inc.
 4. Mayo Clinic
 5. Pinnacle West Capital Corporation
 6. Prudential Overall Supply, Inc.
 7. Van Tuy! Group, LLC dba Berkshire Hathaway Automotive, Inc.
 8. Wal-Mart Associates, Inc.

Vice Chair Hennelly requested that b.2 (Macy's, Inc.) be removed from the Consent Agenda to be heard separately.

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

Macy's, Inc. - Vice Chair Hennelly was surprised by the high employee count in Arizona, but concerned that the experience modification is moving in the wrong direction. Ms. Pastor explained that Macy's Inc. injury totals are going down but there are more expensive injuries on the backend of the experience modification, she conceded they have consistently had a high experience modification, but have agreed to utilize ADOSH consultation to be scheduled in September.

Chairman Schultz confirmed that they will be using ADOSH consultation services.

Commissioner Krenzel moved to approve the self-insurance renewal for Macy's Inc. with the provision that they work with ADOSH consultation to improve their loss performance. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly 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.

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

Run'em Again Electric Motors LLC	Fatality/Accident	
5126 W Luke Ave	Years in Business:	27
Glendale, AZ 85301	Empl. Covered by Inspection:	4
Site Location:	5126 W Luke Ave	
	Glendale, AZ 85301	
Inspection No:	U9805 -1389868	
Inspection Date:	04/02/2019	

SERIOUS – Citation 1 - Item 1 –

a) 5126 W Luke Ave, Glendale, AZ: A Clark Forklift (model unknown, S/N: 4635620) was jacked up with a 3.5 ton Napa hydraulic jack and cribbing or blocking was not placed prior to work commencing exposing employees to crushed-by hazards. 29 CFR 1910.244(a)(2)(iii)

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$2,000.00	TOTAL FORMULA AMT. - \$2,000.00

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

Vice Chair Hennelly and Mr. Atencio discussed why no citation was issued for either training or absence of a forklift program.

Commissioner Krenzel and Mr. Atencio discussed whether the seat being removed from the jack during repair had any relation to a citation for fatality under the general duty cause.

Vice Chair Hennelly and Mr. Atencio discussed the employee not being trained by this employer but were relying on training at a different or prior place of employment, and a supervisor knew about that. Mr. Atencio explained that OSHA requires training every three years therefore it is not necessary to have duplicated certifications.

There was discussion to possibly remand the file back to ADOSH for further consideration, Vice Chair Hennelly noted he would forgo remand based of Mr. Atencio's representation.

Mr. Ortega commented that he knew the victim for about 40 years and the victim worked in the industry for about 40 years, starting at age 16.

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

Chairman Schultz apologized that he was not present to meet Agri-Packing Supply, Inc. representatives in person and appreciates them coming to the meeting to be present during the discussions on this fatality.

Mr. Testini requested to go back to the Macy's, Inc. Self-Insurance Renewal.

Approval of Requests for Renewal of Self-Insurance Authority

Macy's, Inc. - Mr. Testini noted there was a contingency that Macy's Inc. utilize ADOSH consultation, and it was his understanding that is something that is not allowed to be added on. Macy's Inc. have an agreement to use consultation but cannot make renewal contingent upon use of consultation. He asked for an amendment to reflect that their self-insurance renewal be approved without the contingency.

Commissioner Krenzel moved to amend the proposal on Macy's, Inc. self-insurance and that the Commission approve Macy's, Inc. self-insurance request as presented. Vice Chair Hennelly seconded the motion. Chairman Schultz commented that he would like to talk about the Commission's authority to put contingencies on approval of self-insurance authority. Chairman Schultz, Vice Chair Hennelly 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 2019. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted on Friday Federal OSHA will withdraw their proposed reconsideration of the proposed Arizona State Plan final approval status to reflect that "Arizona has adopted OSHA's residential construction fall protection standard 29 Code of Federal Regulations, Part 1926, Subpart M, Federal OSHA has monitored this issue closely and finds that Arizona has also successfully implemented this standard."

Mr. Ashley stated the pneumatic elevator rulemaking will be on the GRRC agenda for August 6, 2019 with an immediate effective date, allowing the installation of residential pneumatic elevators. Mr. Ashley noted the ADOSH elevator inspectors have been trained in the installation, construction, maintenance, and monitoring of pneumatic elevators.

Mr. Ashley discussed the Claims Seminar program. The Commission meeting will be Friday, August 9, 2019 and one item added to the agenda will be the selection of two ALJ Vice Chief Judges. The meeting will start at 2:00pm to allow the Commissioners the opportunity to be there for the presentation by Mr. Testini and three attorneys from the community on court decisions, recent legislation and important case law. The live audience polling will be conducted again this year by Mr. Laky.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through September 2019.

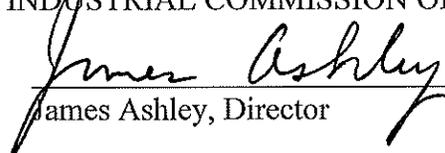
Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary