

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, March 15, 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
	Stephen Ball	Acting Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Interim Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Jordan Chavez with Snell & Wilmer and Weston Montrose.

Approval of Minutes of March 1, 2018 Regular Meeting Minutes and February 15, 2018 Executive Session Minutes.

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

Commissioner Orchard moved to approve the minutes of the February 15, 2018 executive 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. 2CSP-17/18-0159 Alan Dale Robinson and Andrea Lynn Robinson, husband and wife, dba Alpine Clock Shop
2. 2C-17/18-0376 EZ-Erectors, Inc.
3. 2C-17/18-0327 Gaxiola Flooring, LLC

4. 2C-17/18-0313 L.B. Contracting, LLC
5. 2CSP-17/18-0120 Le Tutor Language Services LLC

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

1. City of Phoenix
2. City of Yuma
3. Maricopa County Community College District
4. Maricopa County
5. Roman Catholic Church Diocese of Tucson

Chairman Schultz noted Maricopa County Community College District's improving experience modification factor.

Commissioner Orchard recused herself from Consent Agenda items b.3 (Maricopa County Community College District), b.4 (Maricopa County), and b.5 (Roman Catholic Church Diocese of Tucson). Commission LeMarr and Mr. Ball discussed whether Commissioner LeMarr should recuse himself from Consent Agenda items b.3 (Maricopa County Community College District). Commissioner LeMarr recused himself from Consent Agenda items b.3 (Maricopa County Community College District) and b.4 (Maricopa County). Chairman Schultz recused himself from Consent Agenda item b.1 (City of Phoenix).

Chairman Schultz moved Consent Agenda items b.2 (City of Yuma) and b.3 (Maricopa County Community College District) to the regular agenda.

Commissioner LeMarr, Chairman Schultz, and Ms. Pastor discussed postponing consideration of the Consent Agenda. Consideration of the Consent Agenda was postponed pending potential participation by Commissioner Krenzel.

Discussion and Action of Request for Lump Sum Commutation. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(2) and (A)(3) to discuss or consider records exempt by law from public inspection or to consult with its attorneys for legal advice.

Robert Ervington – Mr. Ball discussed Mr. Ervington's lump sum commutation petition and staff's recommendation for approval.

Chairman Schultz recused himself from this agenda item based on his relationship with the employer.

Commissioner Orchard moved to approve the proposed lump sum commutation and Commissioner LeMarr seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Sandy Ceballos-Bailon – Mr. Ball discussed Ms. Ceballos-Bailon's lump sum commutation petition and staff's recommendation for approval.

Vice Chair Hennelly and Mr. Ball discussed the nature of Ms. Ceballos-Bailon's expenses.

Commissioner LeMarr moved to approve the proposed lump sum commutation 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 Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

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

Trujillo Trucking LLC	Fatality/Accident	
7509 W. Georgia Ave	Years in Business:	4
<u>Glendale, AZ 85303</u>	Empl. Covered by inspection:	2
Site Location:	8501 N. 75 <sup>th</sup> Ave	
	Peoria, AZ 85345	
Inspection No:	Y8817 - 1277725	
Inspection Date:	11/14/2017	

NON-SERIOUS – Citation 1 - Item 1 – a) 7509 W Georgia Ave, Glendale, AZ, 85303: ADOSH was not notified of the work-related incident where an employee suffered fatal injuries at the company's yard and during business hours. 29 CFR 1904.39(a)(5)

Div. Proposal - \$1,000.00	Formula Amt. - \$300.00
TOTAL PENALTY - \$1,000.00	TOTAL FORMULA AMT. - \$300.00

Mr. Atencio summarized ADOSH's inspection and the citation and proposed penalty.

Commissioner LeMarr and Mr. Atencio discussed the manner in which the truck could have slipped out of gear and moved.

Commissioner Orchard and Mr. Atencio discussed elements of the company's safety program.

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

Commissioner Orchard and Mr. Ashley discussed the creation of standard work related to the philanthropic Kid's Chance scholarships.

Day Break Electric, Inc.	Fatality/Accident	
4855 N. Shamrock Pl	Years in Business:	30
<u>Tucson, AZ 85705</u>	Empl. Covered by inspection:	4
Site Location:	4811 E. Grant Rd. #150	
	Tucson, AZ 85712	
Inspection No:	W6968 - 1266320	
Inspection Date:	09/25/2017	

Mr. Atencio summarized ADOSH's fatality investigation and reviewed the file. Mr. Atencio stated that ADOSH did not recommend any citations.

Commissioner LeMarr and Mr. Atencio discussed Photograph # 1 and whether hard hats were worn on a regular basis.

Chairman Schultz and Mr. Atencio discussed the appropriate use of the ladder depicted in Photograph # 1.

Commissioner LeMarr commended Mr. Atencio on his thorough presentation.

The Commission took no action.

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 provided an update on House Bill 2047, including the proposed enactment date and next steps. Chairman Schultz and Mr. Ashley discussed the reasons for the delayed enactment date.

Mr. Ashley discussed Senate Concurrent Resolution 1016 and House Concurrent Resolution 2028 – both related to the Fair Wages and Healthy Families Act. He discussed the current status of both resolutions. Chairman Schultz and Mr. Ashley discussed the presumption of retaliation currently in the Fair Wages and Healthy Families Act. Chairman Schultz and Mr. Ashley discussed the vote requirement to pass the resolutions.

Mr. Ashley announced that the 3<sup>rd</sup> Annual ICA Day at the Capitol will be on April 12, 2018 from 11:00 a.m. to 12:00 p.m. He invited the Commissioners to participate in the event. Commissioner LeMarr and Mr. Ashley discussed the format for the event.

Mr. Ashley discussed the upcoming Commission trip to Lake Havasu City on March 28-29, 2018.

Mr. Ashley recognized Mr. Ball on his election as President of the State OSHA Litigators Organization (“SOLO”). Mr. Ball discussed the duties of the office.

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2. City of Yuma
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4. Maricopa County
5. Roman Catholic Church Diocese of Tucson

Commissioner Krenzel was unable to join the meeting. Chairman Schultz, Vice-Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard discussed how to proceed with the Consent Agenda. The Commission decided to take the Consent Agenda items separately.

Approval of Proposed Civil Penalties Against Uninsured Employers.

Commissioner LeMarr moved to approve Consent Agenda items a.1 through a.5. 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.

Approval of Requests for Renewal of Self-Insurance Authority.

City of Phoenix - Commissioner LeMarr moved to approve the renewal of self-insurance authority and the security exemption for the City of Phoenix. Commissioner Orchard seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Chairman Schultz recused himself from the matter and abstained from the vote. The motion passed.

City of Yuma - Commissioner LeMarr moved to approve the renewal of self-insurance authority for the City of Yuma. Commissioner Orchard seconded the motion. Chairman Schultz noted the City's increasing experience modification factor. Chairman Schultz, Ms. Pastor, and Mr. Atencio discussed how ADOSH Consultation could assist the City in reducing injuries. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Roman Catholic Church Diocese of Tucson - Commissioner LeMarr moved to approve the renewal of self-insurance authority for the Roman Catholic Church Diocese of Tucson. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard recused herself and abstained from the vote. The motion passed.

Maricopa County Community College District & Maricopa County - Commissioner LeMarr and Ms. Pastor discussed timing requirements for a vote on Consent Agenda Items b.3 (Maricopa County Community College District) and b.4 (Maricopa County). As a quorum was lacking, the Commission postponed consideration of Consent Agenda Items b.3 (Maricopa County Community College District) and b.4 (Maricopa County) to a future meeting.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Margaret Ramos, Customer Service Representative in the Claims Division. She noted Ms. Ramos' eleven years of state service.

Ms. Dimas presented a retirement resolution for Judy Nelson, Customer Service Representative in the ALJ Division. She noted Ms. Nelson's thirteen years of state service.

Ms. Dimas confirmed Commission meeting dates through April 2018.

Chairman Schultz read a resolution prepared for Commissioner Orchard and thanked her for her outstanding and dedicated service to the Commission.

Public Comment.

There was no public comment.

Commissioner Orchard moved to adjourn and Commissioner LeMarr 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 1:43 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary