

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, March 31, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	D. Alan Everett	Commissioner (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Lisa Padgett	Labor Director (Telephonic)
	Victoria Kamm	Labor Supervisor (Telephonic)
	Melissa Spurgeon	Labor Supervisor (Telephonic)
	David James	Labor Division (Telephonic)
	Christina Sanchez	Labor Division (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Brandt Smith	ADOSH Compliance (Telephonic)
	Ernesto Delgado	ADOSH Compliance (Telephonic)
	Steven Black	ADOSH Compliance (Telephonic)
	Hans Schmidt	ADOSH Compliance (Telephonic)
	Sam Pounds	ADOSH Compliance (Telephonic)
	Casey Ruyle	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Christy Thomas and Brian Thomas (BLT Companies, LLC); Barry Olsen (Law Offices of Larry W. Suci representing BLT Companies); Daniel Robles and Gracy Robles (Complainants); Rebecca “Becky” Dennison and Russell James; and Christine Glover (Snell & Wilmer).

Approval of Minutes of March 17, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the March 17, 2022 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett 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 Requests for Renewal of Self-Insurance Authority.

1. Empire Southwest, LLC
2. Honeywell International, Inc.
3. Intel Corporation

b. Approval of Proposed Youth Employment Penalty.

1. YL-2122-0042, YL-2122-0032 and YL-2122-0036 ADCORP, Inc. dba
McDonald's \$600
2. YL-2122-0043 Coyote Kitchen, Inc. \$1,000

Chairman Schultz commented on the impressive experience modification factors ("e-mods") for all of the self-insurance renewals in very tough industries, noting that Honeywell and Intel have over 10,000 employees and engage in manufacturing and that Honeywell must have the lowest e-mod with .31.

Ms. Pastor added that all three are all-stars and confirmed Honeywell has the lowest e-mod.

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

Discussion and/or Action of Arizona Division of Occupational Safety and Health
Discrimination Complaint.

WB-20-3633-05 Robles v BLT Companies, LLC

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Discrimination Complaints until the provisions of A.R.S. §23-425 have been violated.

Mr. Atencio reported this matter was administratively dismissed and noted that the Supervisor, Mr. Smith and Investigator, Mr. Black, were available for questions. The Commissioners were provided copies of a memorandum, the ADOSH Findings, the Complainants' Request for Appeal, and Report of Investigation (ROI) for their consideration prior to the Commission Meeting. Mr. Atencio summarized the ROI, noting the Complaint was filed timely, and provided analysis of the adverse action, nexus, protected activity, and employer knowledge. ADOSH was unable to establish that Mr. Robles' protected activity was the reason for the BLT Companies' discipline of Mr. Robles in the fall of 2019 and eventual termination on March 20, 2020.

Chairman Schultz discussed with Mr. Black if he was able to connect with Gustavo Andrade or Angel Aguirre. Mr. Black was not able.

Chairman Schultz checked if the representative for BLT would like to comment. Mr. Olsen commented that at this time BLT's only statement is that it agrees with the department's staff recommendation for dismissal and he and Mr. Thomas are available to answer questions.

Chairman Schultz checked if Mr. Robles or Ms. Robles would like to comment.

Mr. Robles commented that what was done by BLT was an injustice, discussed BLT's workforce and the experiences of other workers. He is speaking out today to seek help to deal with this problem in hopes that what happened to him will not keep happening to employees. He thanked the Commission for their time.

Chairman Schultz reminded everyone of the admonition, that he indicated that in fact discrimination related to race is not within the purview of the Industrial Commission. The purview of the Industrial Commission is limited to determining whether or not there was any discrimination related to reporting of a safety violation to OSHA, and that is the only issue that is before the Industrial Commission.

Ms. Robles provided her understanding of the circumstances that the complaint is based upon. She thanked the Commission.

Chairman Schultz thanked Ms. Robles for her input in this very difficult situation. The task before the Commission is to determine whether the investigation and the decision by the ADOSH staff was reasonably supported, and that is the decision before them as Commissioners. He asked if the Commissioners had any questions for the interested parties.

Commissioner LeMarr made a motion to affirm the decision rendered by ADOSH. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett 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.

WB-20-3633-05 Robles v BLT Companies, LLC

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 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.

Industrial Suites, LLC DBA Mesa Plumbing Company	Complaint
116 West Broadway Road	Years in Business: 63
<u>Mesa, AZ 85210</u>	Empl. Covered by Inspection: 4
Site Location: 9421 E Main St	
Mesa, AZ 85207	
Inspection No: CP-2022-I8877-0004	
Inspection Date: February 3, 2022	

SERIOUS – Citation 1 - Item 1 –

Chairman Schultz thanked Mr. James for joining the meeting today and noted that in the past employers were not invited to discuss these kinds of citations and penalties with the Commissioners or ADOSH staff. This Commission believes in complete transparency and it is just for this reason that you are invited to come and discuss it, and the Commission appreciates the efforts to make that job safe for the rest of the job and any future jobs, and have worked to emphasize even when the Commission makes compliance visits it's about education and trying to help employers understand where risks are and identify the risks and help with efforts to minimize the ongoing risks to employees.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Porter noted the project to streamline and consolidate the self-insurance rules, which are currently spread in three different Articles Title 20, Chapter 5, Article 2, Article 7 and Article 11 consisting of 99 Rules and will be finalizing a proposed new Article 15 which will eliminate all 99 rules and replace them with one updated set of rules that apply to all of the self-insurance programs with approximately 42 rules and streamline all the process for all self-insured stakeholders and make the process current, consistent and easier to navigate for both the Commission and stakeholders.

Chairman Schultz commented that anything to eliminate confusion and contradiction, simplify and reduce the number of rules is significant work and thanked Mr. Porter, Mr. Testini and Ms. Pastor for undertaking the project.

Ms. Dimas reminded the Commissioners about the ICA Day at the Capitol Lawn on April 11, 2022 at 11:00 a.m.

Ms. Dimas confirmed Commission meeting dates through June 2022.

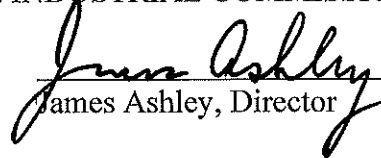
Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:24 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary