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. Suciu 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
   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 is 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
116 West Broadway Road
Mesa, AZ 85210

| Complaint | Years in Business: 63 |
| Empl. Covered by Inspection: 4 |

Site Location: 9421 E Main St
Mesa, AZ 85207

Inspection No: CP-2022-18877-0004
Inspection Date: February 3, 2022

SERIOUS – Citation 1 - Item 1 –
a) 9421 E Main St, Mesa, AZ 85207: Three employees who were working in a seven-foot deep, 29 inch wide, and approximately 600 feet long trench without training. 29 CFR 1926.21(b)(2)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 9421 E Main St, Mesa, AZ 85207: Two employees were working in a trench, 7 feet deep, 29 inches wide and approximately 600 feet long, without the spoil piles placed 2 feet or more away from the excavation edge. 29 CFR 1926.651(j)(2)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 9421 E Main St, Mesa, AZ 85207: Two employees working in a seven-foot deep, 29 inches wide, and approximately 600 feet long trench without a daily inspection being completed by a competent person. 29 CFR 1926.651(k)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 9421 E Main St, Mesa, AZ 85207: Two employees were working in a seven-foot deep, 29 inches wide, and approximately 600 feet long trench with no protective system in place. 29 CFR 1926.652(a)(1)
Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 5 –

a) 9421 E Main St, Mesa, AZ 85207: Two employees used an eight foot fiberglass Werner Co. A-frame ladder to access and egress an excavation that did not extend 3’ above the landing. 29 CFR 1926.1053(b)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

TOTAL PENALTY - $6,000.00  
TOTAL FORMULA AMT. - $6,000.00

Mr. Atencio and the Compliance Officer, Mr. Schmidt and his supervisor Mr. Pounds were available for questions. Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Mr. James discussed the steps the employer took with respect to providing a safe work site around the trench.

Commissioner LeMarr asked Mr. Atencio about remanding the file back to ADOSH, there might be some different conclusions based on what the Commission learned today. Mr. Atencio thought it was possible. Chairman Schultz confirmed that there were no time issues.

Commissioner LeMarr moved to remand this file back to ADOSH for further study. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.
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 [Signature]
James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary