

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007
Thursday, May 11, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	William Warren	ADOSH Director
	Larry Gast	Assistant ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m.

Public Hearing to accept comments and other information regarding the one-half percent assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

Chairman Schultz introduced the agenda item. He noted that the Commission had published a Notice of Hearing on April 4, 2017, inviting public comment regarding the one-half percent assessment under A.R.S. § 23-1065(F). He stated that public comment would be accepted through the conclusion of the meeting.

Chairman Schultz indicated that a written report regarding the one-half percent assessment under § 1065(F) had been submitted into the record by staff. Ms. Simpson addressed the Commission and summarized the report. She discussed § 23-1065(F), the Commission's prior assessment history, and whether current circumstances justify assessment under § 23-1065(F) for calendar year 2018.

Chairman Schultz and Ms. Simpson discussed the current fiscal strength of the Special Fund.

Chairman Schultz invited questions and/or public comment. No public questions or comments were received.

Chairman Schultz temporarily recessed the meeting at 1:04 p.m.

The meeting reconvened at 1:11 p.m. in Conference Room 308. Also present was Dave and Allison Hayden with American Retail Contractors, and Clawson Williams with Snell & Wilmer.

Approval of Minutes of April 27, 2017 and May 4, 2017 Regular Meeting Minutes.

Commissioner Orchard moved to approve the Minutes of the April 27, 2017 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the May 4, 2017 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, 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. 2C16/17-1158 Janet Sotomayor, a single woman, dba Superstition Skies Restaurant & Bar
2. 2C16/17-1609 KAJ-DAJ, Inc., dba Happy's Dream Ranch
3. 2C16/17-0944 Pinholster Enterprises, LLC, dba Tanning Bare
4. 2C16/17-1417 R Bar and Grill, LLC
5. 2C16/17-0715 Woodard Construction, LLC

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

Discussion of Voluntary Protection Program use of Special Government Employees.

Chairman Schultz tabled this agenda item for a subsequent meeting.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

American Retail Contractors LLC
20634 N 28th St Unit 110
Phoenix, AZ 85050

Site Location: 17097 N 73rd Ave
Glendale, AZ 85308
Inspection No: T1999-1207148
Inspection Date: 02/01/2017

Unprogrammed Related
Years in Business: 6
Empl. Covered by inspection: 1

SERIOUS – Citation 1 - Item 1 –

a) South side of building: Canopy Roof: One subcontractor employee from Magnum Steel, LLC was wearing a personal fall arrest system that was rigged in such a way that the employee could contact the ground in the event of a fall as the total estimated fall distance did not exceed the fall arrest distance of the lanyard and the employee's personal fall arrest system. (29 CFR 1926.502(d)(16)(iii)).

b) South side of building: Canopy roof: One subcontractor employee from Magnum Steel, LLC was exposed to a fall of 15 feet 5 inches while connected to the positioning ring located on the side of the body harness at waist height. (29 CFR 1926.502(d)(17)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast discussed the legal name of the employer and noted that the employer was a general contractor on a multi-employer worksite. Mr. Gast summarized the citation and proposed penalty and reviewed the photographs.

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

Commissioner LeMarr and Mr. Gast discussed the concept of employer knowledge and the nature of the violations.

Commissioner Krenznel and Mr. Gast discussed the interview with the injured employee and the employee's misuse of the fall arrest system.

Commissioner LeMarr and Mr. Gast discussed the employer's retention of the roofing subcontractor.

Mr. Hayden discussed the subcontractor's use of fall protection, the nature of the violations, the company's safety program and accident/injury record, and the cause of the injury.

Mr. Gast discussed the timing of the photographs.

Commissioner Krenznel and Mr. Hayden discussed the tie-off location and the circumstances leading to the injury.

Commissioner Orchard and Mr. Hayden discussed the company's safety program, the company's practice of walking job sites, and the company's accident/injury record.

Chairman Schultz noted that no violation had been proposed for an inadequate safety or training program. Mr. Gast discussed training opportunities for the company.

Vice Chair Hennelly and Mr. Gast discussed the tie off in photographs 7 and 8.

The Commission took no action on the citation and proposed penalty.

Carlos Lara and Leticia Pena, Husband and Wife
1747 N. Alma School Rd #5A
Mesa, AZ 85201

Complaint
Years in Business: 5
Empl. Covered by inspection: 2

Hennelly, Commissioner LeMarr, Commissioner Orchard, 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 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed ADOT's recent AMS visit to the Commission. Chairman Schutz noted that he did a Gemba walk in the Tucson office and commented on the good progress being made by Commission staff in Tucson. Mr. Ashley noted his plan to conduct a Gemba walk in the Tucson office.

Mr. Ashley provided an update on public usage of the Interested Parties Portal and the Commission's online forms.

Mr. Ashley discussed preliminary results from the State's employee engagement survey. He commended Commission staff and indicated that the Commission should receive complete results from ADOA by June 1.

Chairman Schultz discussed a recent opportunity to collaborate with the City of Goodyear on one of the City's huddle boards. Mr. Ashley and Mr. LeMarr discussed Commission opportunities to mentor another state agency on the implementation of AMS.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed the Commission Meeting scheduled for May 25 in Sierra Vista.

Ms. Dimas presented a retirement resolution for Larry Gast for 24 years of service. Mr. Warren and Chairman Schultz stated that Mr. Gast will be missed.

Chairman Schultz and Mr. Porter discussed whether public comment could take place before executive session.

Public Comment.

There was no public comment.

Chairman Schultz recessed the meeting at 2:02 p.m. for a Commissioner photograph.

The meeting reconvened at 2:09 p.m. in Conference Room 308 (without Commissioner Orchard).

Executive Session under A.R.S. § 38-431.03(A)(3) to obtain legal advice regarding December 9, 2016 OSHA Inquiry.

Mr. Porter advised the Commission that it may discuss and consider only the matter identified in the Agenda.

The Commission returned to regular session at 2:52 p.m.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenznel voted in favor of the motion and the meeting was adjourned at 2:52 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary