

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 17, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Steven J. Krenzel	Commissioner (Telephonic)
	Jason M. Porter	Acting Director
	Stacey Rogan	Acting Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Steven Welker	Labor Director
	Jessie Atencio	ADOSH Interim 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 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, noting that the Commission had published a Notice of Public Hearing on April 18, 2018. He stated that public comments would be accepted through the conclusion of the public hearing. Chairman Schultz indicated that a written report regarding the assessment under A.R.S. § 23-1065(F) had been submitted into the record by staff.

Ms. Simpson summarized the written report and discussed § 23-1065(F), the Commission's prior assessment history, and whether current circumstances would permit an assessment under § 23-1065(F) for calendar year 2019.

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 Darren VandeVoorde and Cristy Zarate with Bashas'/Food City; Joe Valenzuela and Ruby Williams with American Furniture; Cheryl Carrasco and Phillip Cundiff with the City of Avondale; and Michael Fassett with Snell & Wilmer.

Approval of Minutes of April 26, 2018 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the April 26, 2018 regular session meeting and Commissioner Krenzel 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. 2C17/18-0758 – JDD Enterprises, LLC, dba Rancho Verde Care Home
 2. 2C17/18-0759 – Luv Biz Chicago, Inc., dba Meet the Matchmakers
 3. 2C17/18-0760 – Transportes Mary L.L.C.
 4. 2CRP17/18-0067 – Gilbert Roofing, Inc.
 5. 2CRP17/18-0175 – Tapia’s Tuff Roofs, LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Honeywell International, Inc.
 2. The Home Depot, Inc.

- c. Discussion and Action of Application for Self-Insurance Authority.
 1. American Furniture Warehouse Co., Inc.
 2. City of Avondale

Chairman Schultz reviewed the Consent Agenda and commented on Honeywell International’s impressive experience modification factor, noting that it demonstrates Honeywell’s commitment to workplace safety. Chairman Schultz moved the self-insurance applications for American Furniture Warehouse Co. (Item (c)(1)) and City of Avondale (Item (c)(2)) to the regular agenda. Mr. Porter removed Tapia’s Tuff Roofs, LLC (Item (a)(5)) from the agenda.

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

Discussion and Action of Application for Self-Insurance Authority.

1. American Furniture Warehouse Co., Inc.

Ms. Pastor discussed her analysis of American Furniture Warehouse Co.’s application for self-insurance authority. She noted that the company has been doing business in Arizona for less than five years and discussed the company’s prior experience modification factor (while with CopperPoint), the absence of ADOSH inspections, and the required deposit. Staff recommended approving the application and waiver of the five-year requirement in R20-5-1107(B)(1).

Vice Chair Hennelly, Mr. Porter, Ms. Pastor, and Chairman Schultz discussed whether the Commission has authority to waive the five-year requirement in R20-5-1107(B)(1).

Commissioner Krenzel moved to approve American Furniture Warehouse Co.'s application for self-insurance authority and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Mr. Valenzuela discussed the company's safety program. Ms. Pastor discussed the company's workers' compensation practices in Colorado. Chairman Schultz offered Mr. Valenzuela assistance from the Consultation Division of ADOSH.

2. City of Avondale

Ms. Pastor discussed her analysis of the City of Avondale's application for self-insurance authority, noting the company's experience modification factor, the absence of ADOSH inspections, and the City's plans to establish a self-insurance trust fund. Staff recommended approving the application.

Chairman Schultz and Ms. Carrasco discussed the City's 2017 experience modification factor, the City's interest in participating in the PEPP program, and the benefits of the PEPP program.

Vice Chair Hennelly moved to approve the City of Avondale's application for self-insurance authority and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz and Ms. Carrasco discussed the City's participation in the Arizona Self-Insurers Association.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL1718-0073 – 1 Stop Signs, Inc.

Mr. Welker summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-231(a)(5). Mr. Welker recommended that the Commission approve issuance of a Civil Penalty in the amount of \$600.00.

Chairman Schultz and Mr. Welker discussed the age of the subject youth, the discovery of a second underage youth employed by the company, the owner's lack of familiarity with the applicable legal restrictions on youth employment, and the purpose of the legal restrictions.

Vice Chair Hennelly commended the Labor Department on the thorough investigation.

Vice Chair Hennelly moved to approve issuance of a Civil Penalty in the amount of \$600.00 to 1 Stop Signs, Inc. Commissioner Krenzel 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.

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

Vice Chair Hennelly noted the information provided was very thorough.

Chairman Schultz and Mr. Porter discussed the number of public comments received regarding the proposed rulemaking and the opportunities afforded the public regarding the issues in 2017.

Commissioner Krenzel moved to direct the Legal Division to proceed with final rulemaking and 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/or Action regarding Approval of Substantive Policy Statement: Accepting Medical Only Claims.

Mr. Porter provided background information regarding compensable “medical only” claims. He discussed the two ways that a payer can currently accept “medical only” claims: (1) by using a 104 Notice of Claim Status form, and (2) by returning the notification list to the Commission with an indication of which claims are accepted as “medical only.” He discussed the development of a Substantive Policy Statement that would require payers to use 104 Notices of Claim Status to accept “medical only claims,” the Commission’s legal authority under A.R.S. § 23-1061 to issue such a policy, and the reasons for the new policy. He recommended the Commission approve the Substantive Policy Statement with an effective date of August 20, 2018.

Vice Chair Hennelly and Mr. Porter discussed the proposed requirement to use the 104 form to accept “medical only” claims and the fact that most payers are already using the 104 form to accept “medical only” claims. Mr. Porter discussed the need for payers to notify injured workers regarding determinations made on claims and explained that the method of using the 104 form better ensures that injured workers’ are being properly notified when claims are accepted as “medical only.”

Vice Chair Hennelly and Mr. Porter discussed the potential consequences if a payer does not use the 104 form to accept a 104 form. Mr. Porter discussed the process of publishing the Substantive Policy Statement in the Arizona Administrative Register and Commission plans to notify the regulated community about the change, including during the Claims Seminar in August.

Chairman Schultz and Mr. Porter discussed the selection of August 20, 2018 as the effective date for the Substantive Policy Statement.

Chairman Schultz, Vice-Chair Hennelly, and Mr. Porter discussed whether out-of-state adjusters are using the notification-list method for accepting “medical only” claims.

Chairman Schultz and Mr. Porter discussed costs and benefits of the proposed Substantive Policy Statement to the Commission and the regulated community. Mr. Porter noted that the proposed policy change is the best practice for payers and will streamline the process for accepting all workers’ compensation claims.

Chairman Schultz and Mr. Porter discussed the technological advancements of the new Claims system and the status of the project.

Vice Chair Hennelly moved to direct the Legal Division to issue the proposed Substantive Policy Statement related to acceptance of “medical only” claims. Commissioner Krenzel seconded the

motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through June 2018.

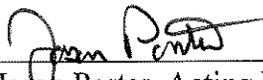
Mr. Atencio noted the next ADOSH training will be August 14-15 in Prescott, Arizona.

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 2:02 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
Jason Porter, Acting Director

ATTEST:

 _____
Kara Dimas, Commission Secretary