# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 18, 2021 – 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)

James Ashley Director (Telephonic)

Gaetano Testini Chief Legal Counsel (Telephonic)
Jason M. Porter Deputy Director (Telephonic)

Trevor Laky Legislative Affairs Chief/Public Information Officer (Telephonic)

Renee Pastor
Jessie Atencio
Steven Black
Miguel Castillo
Karen Schomburg
Randy Smith
Anna Maria Stonerock

Self Insurance (Telephonic)
ADOSH Director (Telephonic)
ADOSH Compliance (Telephonic)
ADOSH Compliance (Telephonic)
ADOSH Compliance (Telephonic)
ADOSH Compliance (Telephonic)

Vara Dimag

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 Nathan Fraley (The Kroger Co.); Mary Wiggins and Lisa Olson (Sedgwick); Teresa Flores (AG Trucking); Luis Gonzalez (next of kin); Ryan Toomey (Zinda Law Group representing next of kin in the AG Trucking matter); Matthew Mullins (Guardtop); Greg Narsh (Troutman Pepper representing Guardtop); and Savannah Scharnhorst (Snell & Wilmer).

### Approval of Minutes of November 4, 2021 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the November 4, 2021 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly 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 Proposed Civil Penalties Against Uninsured Employers.
  - 1. 2CNP20/21-0786 George & Sons Roofing & Repairs LLC \$1,000

- 2. 2CNP21/22-0113 Rist Building Services LLC \$1,000
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - The Kroger Co.

Commissioner LeMarr moved to approve the items on the Consent Agenda as presented 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 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.

AG Trucking LLC 1261 W Miracle Mile Rd Fatality/Accident Years in Business:

20

Tucson, AZ 85705

1525 W Miracle Mile Rd

Covered by Inspection:

Inspection No:

Site Location:

Tucson, AZ 85705 T3633 - 1552630

Inspection Date:

9/9/2021

Mr. Atencio and the Compliance Officer, Mr. Black, were available for questions. Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH is recommending a non-serious citation for AG Trucking LLC.

Chairman Schultz and Mr. Black discussed the inspection of the truck and whether there were any problems with the truck equipment including the mirrors. Mr. Black was told the driver could not see the right side of the truck because the truck was turned to the left, away from the trailer which was consistent with the direction he would be turned to go to the pile to be loaded making it so he could not see down the right side of the trailer.

Chairman Schultz checked if Ms. Flores would like to comment. She did not.

Chairman Schultz noted he cannot imagine his feelings about this happening at work. The Commission takes its responsibilities to try to keep employees safe very seriously and always hopes that people go to work safely and come home safely. Chairman Schultz expressed condolences on behalf of himself and the Commissioners. Mr. Gonzalez appreciated their condolences but did not have a comment.

The Commission took no action since there were no serious citations being issued.

LE Garden HB, LLC dba Midtown Garden Hotel

Fatality/Accident

3600 N. 2<sup>nd</sup> Ave.

Years in Business:

1 Empl. Covered by Inspection: 7

Phoenix, AZ 85013

3600 N. 2<sup>nd</sup> Ave.

Phoenix, AZ 85013

Inspection No:

Site Location:

V4364 - 1543326

Inspection Date:

7/20/2021

#### SERIOUS – Citation 1 - Item 1 –

a) 3600 N 2nd Ave, Room # 532, Phoenix, AZ 85013: A maintenance employees serviced/changed out Packaged Terminal Air Conditioner (PTAC) units without a written energy control program implemented. 29 CFR 1910. 147(c)(1)

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

#### SERIOUS – Citation 1 - Item 2 –

a) 3600 N 2nd Ave, Phoenix, AZ 85013: An employee was exposed to hazardous chemical such as LA's Totally Awesome Cleaner with Bleach without a written hazard communication program developed. 29 CFR 1910. 1200(e)(1)

Div. Proposal - \$900.00

Formula Amt. - \$900.00

TOTAL PENALTY - \$3,900.00

TOTAL FORMULA AMT. - \$3,900.00

Mr. Atencio and the Compliance Officer, Mr. Castillo, were available for questions. Mr. Atencio summarized ADOSH's investigation, citation and proposed penalties, and reviewed the photographs.

Commissioner Everett moved to approve the citation and proposed penalties as presented 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.

GuardTop, LLC.

Referral

1048 W. Maricopa Fwy

Years in Business:

Empl. Covered by Inspection:

18 10

Phoenix, AZ 85007 Site Location:

1048 W. Maricopa Fwy

Phoenix, AZ 85007

Inspection No:

F9669 -1542149

Inspection Date:

07/9/2021

Mr. Atencio and the Compliance Officer, Ms. Schomburg, were available for questions. Mr. Atencio summarized the citation and proposed penalties, and following some discussion requested to have the file remanded back to ADOSH for further investigation into the confined space issue.

Commissioner LeMarr moved to remand this citation back to ADOSH for further review 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.

## Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal yearto-date. He reviewed the metrics for the Administrative Law Judge Division: Awards, Approved Settlements; Cases Referred to Mediation/Settlement Conferences and Cases Settled Due to Mediation/Settlement Conferences.

Chairman Schultz commented that this shows the power of the Arizona Management System that even things like litigation, can be measured and you can set goals and can hold people accountable. We want to continue to improve our performance, our service is incredibly valuable to the employees and employers of the State of Arizona and continuous process improvements needs to be how we view each and every day.

Mr. Ashley announced that the Arizona Food Marketing Alliance is holding their annual reception on January 12, 2022, and the Commission will resume the annual ICA Day at the Capitol Lawn on Monday April 11, 2022 and will share more information at a later date.

Ms. Dimas confirmed Commission meeting dates through January 2022. Commissioner LeMarr will not be available for the December 2, 2021 meeting.

#### Public Comment.

There was no other 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 2:17 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

ames Ashley, Director

ATTEST.

Kara Dimas, Commission Secretary