

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium and Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 30, 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. Krenznel	Commissioner (telephonic)
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Jacqueline Kurth	Medical Resource Office
	Renee Englen	Medical Resource Office
	William Warren	ADOSH Director
	Phillip Murphy	Assistant ADOSH Director
	Brian Downen	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Mitchel Lipton, M.D., with Hand Center P.C.; Brian Clymer; Ron Hartman; Joyce Capinjoca and Monique Carbary with Corvel Corporation; Francis Johnson with Optum; Franklin R. Marino with Phoenix Law Enforcement Association; Steve Weiss, representing himself and Arizona Association of Lawyers for Injured Workers (“AALIW”); Ken Eichler with ODG by MCG Health; Debbie Luera and Chris Garland with Integriion Group; Debra Runbeck, Art Gage, and Terry Fox representing AALIW; Tom Whitley; Mark Kendall, Tammy McCoy, and Becky Stingle with CopperPoint Insurance; Sue Schweppe with BBSI; Selma Cossto with El Super; Cathy Vines; Mike Murry with Environmental Stoneworks; Ken Crane with Phoenix Law Enforcement Association and Arizona Police Association; David Parker; Cheryl Roberts with Arizona Department of Administration Risk Management; Seema Lord with Freeport-McMoran; Chris Hansen with the City of Tempe; Weston Montrose; Marc Osborn with Property Casualty Insurers Association; Susan Strickler, Russell Smoldon and Emily Rice with Arizona Self Insurers Association; Debbie Baker with Valley Schools; Pat Krek with Arizona Department of Administration; and Brian Moore with United Phoenix Firefighters Association.

Public Hearing Under Arizona Administrative Code R20-5-1301(C) Regarding Expanding Applicability of the Official Disability Guidelines.

Chairman Schultz discussed the background, purpose of, and process for the Public Hearing under R20-5-1301(C). He welcomed public comment, noting that written comments could be submitted through the close of business.

Mitchel Lipton, M.D.; Brian Clymer; David Parker; Ken Crane; Brian Moore; Steve Weiss; Art Gage; Tammy McCoy; Weston Montrose; Debra Runbeck; Marc Osborn; Russell Smoldon; Chris Garland; Debbie Baker; and Ken Eichler addressed the Commission. A written transcript of the Public Hearing is attached hereto.

Chairman Schultz recessed the meeting at 2:34 p.m. The meeting reconvened at 2:45 p.m. in Conference Room 308. Also present were Charles Keller representing America Roofing; Raymond Byrne and James Lechuga Jr. with America Roofing; Michael Murray with Environmental Stoneworks; Ken Eichler with ODG by MCG Health; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of November 16, 2017 Regular Meeting Minutes and November 16, 2017 Executive Session Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 16, 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.

Commissioner Orchard moved to approve the Minutes of the November 16, 2017 executive 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.

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. 2C17/18-0299 Big Red Barn LLC
2. 2C17/18-0205 C.D.I. Express LLC
3. 2C17/18-0304 Cheetahs Movers LLC
4. 2C17/18-0199 Red Hot Roofing, Inc.
5. 2C17/18-0201 The Park Street Food Bar dba Yardstick Management, LLC
6. 2C17/18-0244 USW/CAT Construction & Restoration Experts Catastrophe Team Inc.
7. 2C17/18-0303 Yarda Castellanos USA, LLC

Commissioner LeMarr moved to approve the Consent Agenda and Commissioner Krenzel 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 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.

Professional 24HR Road Service LLC  
2101 S. 12<sup>th</sup> Ave.

Fatality/Accident  
Years in Business: 8



Commissioner Orchard and Mr. Warren discussed the distinction between “not using any form of fall protection” and “insufficient fall protection.” Commissioner Orchard asked Mr. Warren to look into whether it was necessary to use the former terminology in cases where an employer has provided fall protection equipment.

Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed Bill Cooper’s involvement in the opening conference, his absence during Mr. Lechuga’s interview, and whether Mr. Downen had asked Mr. Cooper who was in charge at the worksite.

Mr. Keller discussed ADOSH matters involving America Roofing since 2012 and the detrimental impact of having pending investigations listed on OSHA’s website. He discussed the questioning of Mr. Lechuga, noting his belief that the questioning was contrary to what members of the Chairman’s Roofing Alliance had been told. He indicated that, to the extent Mr. Lechuga is a member of management, he had a right to have a company representative present during the interview. He also noted that Mr. Lechuga had not received a copy of the interview transcript. He stated that Mr. Lechuga disagreed that he was a supervisor of America Roofing and stated his disagreement with ADOSH’s interpretation of the OSHA letter of interpretation concerning vendors that deliver roofing materials. He discussed the spirit of the OSHA letter of interpretation, arguing that it is applicable to the circumstances of the inspection.

Commissioner LeMarr and Mr. Byrne discussed the concept of “self-performing” vendor tasks. Commissioner LeMarr noted that the inspection photographs depicted three employees without tool belts carrying roofing material.

Mr. Warren discussed the OSHA letter of interpretation, the OIS system and file opening process, the interview process and the Chairman’s Roofing Alliance; and the interview transcript.

Chairman Schultz, Mr. Downen, and Mr. Byrne discussed the photographs; which employees were tied off; and the number of employees on the roof.

Commissioner Orchard moved to go into Executive Session 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.

The Commission went into Executive Session at 3:27 pm.

The Commission returned to regular session at 3:48 p.m.

Commissioner Orchard, Mr. Warren, and Mr. Downen discussed whether it is possible for a supervisor to reasonably assume that employees wearing fall protection equipment were properly tied off.

Vice Chair Hennelly moved to approve the proposed penalty as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr and Commissioner Orchard voted against. The motion passed.

Mr. Ashley left the meeting for a previously scheduled stakeholder meeting.



Commissioner LeMarr discussed the N95 respirator. Mr. Warren noted that the Consultation Section is working with groups on the issue of proper use of the N95 respirator.

Mr. Murray discussed silica exposure testing and indicated that tested employees were above applicable exposure levels. He discussed his background and commitment to safety. He discussed the employer's growing safety program and efforts to develop a strong safety culture.

Chairman Schultz noted his appreciation for the employer's quick abatement and positive safety culture.

Citing good faith and quick abatement, Commissioner Orchard moved to reduce the proposed penalties as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$2,250.00 to \$1,800.00; and (2) reduce the proposed penalty for Citation 1, Item 2 from \$1,800.00 to \$1,440.00; for a total proposed penalty of \$3,240.00. 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 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.

In Mr. Ashley's absence, there was no discussion concerning this agenda item.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2017. The Commissioners agreed to cancel the December 7, 2017 meeting.

Ms. Dimas discussed the Administrative Division's Christmas Potluck.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 4:08 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary