

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, November 4, 2021 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
D. Alan Everett	Commissioner (Telephonic)
Trevor Laky	Acting Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Sylvia Simpson	Chief Financial Officer (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Stacie Allison	Controller (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. There were no other callers identified on the call.

Approval of Minutes of October 28, 2021 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the October 28, 2021 regular session meeting and Vice Chair Hennelly 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. 2C21/22-0008 M.G.M. Unlimited Construction LLC \$1,000
2. 2CNP21/22-0067 Scarizona Scaregrounds LLC \$10,000

Commissioner Everett removed from the Consent Agenda the Civil Penalty for Scarizona Scaregrounds LLC for further discussion.

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

Approval of Proposed Civil Penalties Against Uninsured Employers.

2CNP21/22-0067 Scarizona Scaregrounds LLC \$10,000

Commissioner Everett asked for more information considering the large citation for a seasonal operation with one employee, and the timeframe of the two prior citations.

Mr. Testini explained the Compliance Unit's three-step process, the first time a company is cited at a \$1,000 penalty and if they get cited a second time it is cited at \$5,000 and the third time it is cited at \$10,000. Scarizona was cited back in October 2018, November 2018 and now this is the third time. Even though they are seasonal, they come around every year and they do not have coverage for the people that work for them.

Mr. Testini and the Commissioners discussed the specifics of this employer as well as the follow up process for citations in general, including the process for injunction against an employer who ignores a third citation.

Commissioner Everett moved to approve the \$10,000 civil penalty for Scarizona Scaregrounds LLC. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Testini for the explanation, noting that they do not see a \$10,000 citation that often and it is good to understand the process.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2022.

Ms. Simpson noted a correction to page 2 of the Chart at the bottom for calendar year 2020 shows \$10.83 million and should be \$10.38 million. Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2021 is 1.75%. In fiscal year 2021 the total assessment revenue for the Administrative Fund was \$18 million and total expenses were \$20 million resulting in a decrease to the operating cash balance of \$2 million. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy an assessment to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and 1/2% under 1065(F) for Apportionment for a total rate of 1.5%. For calendar year 2021 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2022 of 6%, 4%, 2% and no change from the current 1.75% in premium projections along with the cash balance, operating budget and expenditures. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account, which is a goal and not a rule, Ms. Simpson recommends increasing the rate by .25% bringing the rate to 2%. While this would still not meet the \$5 million projected target it would keep it between \$3.6 and \$4.2 million that would provide sufficient funds and an operating cushion.

Chairman Schultz noted with what he has seen he is more optimistic than the projections.

Ms. Simpson reviewed the options for 2022 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2021 with a healthy unrestricted balance. The primary reason for the positive net position of the Special Fund are favorable market conditions which has increased the value of the investment portfolio over time and particularly the last year and a very large settlement from the escrow account held with The Department of Insurance and Financial Institutions (formerly the Department of Insurance) which was finally settled on how to split the funds. The actuarial liability has also gone down slightly and has been fairly stable the last few years which helps and there are sufficient funds to cover expenditures over the next year. She reviewed the analysis if there was not adequate funding what rate would need to be assessed. Ms. Simpson recommended to maintain the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2022.

Chairman Schultz noted the Commissioners have a decision on whether or not they were going to change the assessment rate for either the Administrative Fund or the Special Fund. The issue on the Special Fund is pretty obvious that we are very comfortably funded and everything looks like we are going to remain that way for the foreseeable future. The question is to change the assessment for the Administrative Fund. He noted based on his questions for Ms. Simpson what his position is in terms of whether to increase the assessment for the Administrative Fund from its current 1.75%.

Commissioner Everett noted he is optimistic also, and sees employment growth and wage growth and would be comfortable and lean toward maintaining the current 1.75%.

Vice Chair Hennelly commented that he joins both Chairman Schultz and Chairman Everett with respect to maintaining the 1.75% on the Administrative Fund and adopting the recommendation to maintain the Special Fund.

Ms. Pastor provided her viewpoint with respect to the self-insured community.

Chairman Schultz thanked Ms. Pastor for her comments, and he noted he has been watching NCCI rate reductions over the last five years as loss experience has improved. While he always appreciates a conservative approach, we also have a responsibility to the employers of Arizona to utilize the dollars they give up as carefully as we possibly can. What we do impacts employers significantly and as employers' expenses go up, they can afford fewer employees and he tries to look at everything the Commission does as how is this going to affect the overall economy and is what we are going to be doing or the changes we make, is it going to spur economic growth or it is going to curtail economic growth. He appreciated Ms. Pastor and Ms. Simpson and is still comfortable in believing that we can get by without increasing the assessment rate for the Administrative Fund.

Commissioner Everett moved to maintain the assessment rate under § 23-961(G) at 1.75%; under § 23-1065(A) at 0%; and under § 23-1065(F) 0% for CY 2022. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

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

Mr. Laky noted the Voluntary Protection Program application for the Tucson ICA building has been accepted, the next step is to schedule the VPP audit.

Commissioner Everett and Mr. Laky discussed the announcement of Federal OSHA's vaccine mandate.

Ms. Dimas confirmed Commission meeting dates through January 2022.

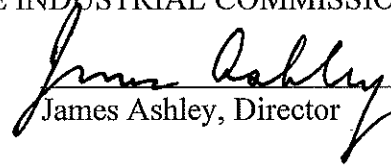
Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary