

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 7, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Steven Welker	Labor Director
	Lisa Padgett	Labor Investigations Supervisor
	Victoria Kamm	Labor Investigator
	Jessie Atencio	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Laure Lamy (Workers' Compensation Research Institute (WCRI)); David Watkins (Big O Metals); and Shanlie Blair (Snell & Wilmer).

Chairman Schultz noted the agency is in the midst of a VPP Audit and in accordance with VPP Commission meetings will start with emergency evacuation procedures. The exits and emergency procedures were noted.

Approval of Minutes of September 19, 2019 Regular Meeting Minutes and October 24, 2019 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the September 19, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the October 24, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly abstained. 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CLP18/19-0960 Local Arborist LLC \$1000
2. 2CLP19/20-0095 Darren and Son's Lawn Care LLC \$5000
3. 2C19/20-0088 Holt's Cleaning Service LLC dba Holts Carpet and Tile Cleaning \$1000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Fedex Ground Package System, Inc.

Chairman Schultz noted the increase to the Fedex Ground Package System experience modification factor.

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

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 2020.

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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 the current assessment rates.

Chairman Schultz explained the tax assessment and revenue flow for the visitors.

Ms. Simpson reviewed the staff memorandum and options for 2020 noting there is a one-time funding request for MIS technology projects to be competed in FY 2021 and FY 2022. Ms. Simpson recommended that the § 23-961(G) assessment rate remain the same for 1.75% in CY 2020.

Commissioner LeMarr, Ms. Simpson and Mr. Ashley discussed the one-time software expense which is not part of the operating budget but requires legislative approval for spending authority.

Ms. Simpson recommended that the Commission continue the §§ 23-1065(A) and 1065(F) Special Fund assessments at 0% for CY 2020.

Commissioner LeMarr, Chairman Shultz and Ms. Simpson discussed that this would mark five years in a row at 0% for the Special Fund.

Chairman Schultz, Vice Chair Hennelly and Ms. Simpson discussed the current balance and ability to weather a modest downturn for both funds and the portfolio.

Chairman Schultz thanked Mr. Ashley and the administrative team for containing operative expenses at a stable level.

Commissioner LeMarr moved to approve 1.75% as the CY 2020 assessment rate under § 23-961(G); 0% as the CY 2020 assessment rate under § 23-1065(A); and 0% as the CY 2020 assessment

rate under § 23-1065(F). Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Presentation from Workers' Compensation Research Institute (WCRI).

Laure Lamy with Workers' Compensation Research Institute (WCRI) discussed what WCRI does and their role in helping workers' compensation programs in various states. WCRI is a non-profit research institute which publishes research, including about 40 reports a year, to provide credible objective research that states can use to understand the delivery of benefits to injured workers for the purpose of public policy reform. She explained the diverse membership allows WCRI to be an objective entity.

Ms. Lamy noted the recent Arizona physician dispensing reform has been an important issue around the country. Ms. Lamy highlighted the findings of several of WCRI's recent studies and the reforms that followed the findings.

Chairman Schultz stated the Commission relied heavily on the WCRI research when making changes to the Medical Fee Schedule, changes to RBRVS and the structure of the reimbursements placing more emphasis on primary care and physical medicine and rehabilitation. Chairman Schultz expressed appreciation for all the work WCRI does.

Mr. Ashley stated that the 2021 WCRI Conference will be in Phoenix. Ms. Lamy noted that last year was the first time that the WCRI annual event was held outside of Boston, and because of the success in Phoenix, WCRI will be back in 2021.

Mr. Ashley thanked Ms. Lamy and noted that WCRI is a great resource for data, research and statistics.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL1819-0357 – Phoenix Group Metals, L.L.C.

Mr. Welker summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-231(a)(7) and (a)(8). Mr. Welker recommended that the Commission approve issuance of a Civil Penalty in the amount of \$600.00.

Commissioner LeMarr and Mr. Welker discussed how the underage youth obtained employment, that the company did not use E-verify, but now the company has implemented a new policy.

Commissioner LeMarr and Vice Chair Hennelly commended the Labor Department on the thorough investigation.

Mr. Welker noted he had several more files and would bring them to the Commission a couple at a time.

Chairman Schultz appreciated the opportunity for them to train the Commissioners and appreciates the diligence and completeness of the investigation which makes the files easier to review.



- a) Plasma Cutter Area: An employee was required to use a 3M brand tight-fitting half-mask respirator 6200 series during machine cleanup without receiving a medical evaluation. 29 CFR 1910.134(e)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 1c –

- a) Plasma Cutter Area: An employee was required to use a 3M brand tight-fitting half-mask respirator 6200 series during machine cleanup without receiving a fit test prior to initial use of the respirator. 29 CFR 1910.134(f)(2)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 1d –

- a) Plasma Cutter Area: An employee was required to use a 3M brand tight-fitting half-mask respirator 6200 series during machine cleanup without receiving training on how to check the seals and procedures for maintenance and storage of the respirator. 29 CFR 1910.134(k)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 2 –

- a) Plasma Cutter Area: One compressed gas, flammable, hydrogen cylinder, was stored within 5 feet of oxygen cylinders without a barrier at least 5 feet high and a fire-resistance rating of at least one-half hour. 29 CFR 1910.253(b)(4)(iii)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 3a –

- a) Plasma Cutter Area(s): Two employees were exposed to zinc oxide fumes/dust without implementing an adequate written Hazard Communication Program.
- b) Fabrication Area: Three employees were exposed to hazardous chemicals including, but not limited to, Purple Power Cleaner/Degreaser, Champions Choice Galv-Off, WD-40 Multi-Use aerosol, and 3M High Power Brake Cleaner without implementing an adequate written Hazard Communication Program. 29 CFR 1910.1200(e)(1)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 3b –

- a) Plasma Cutter Area(s): Two employees were exposed to zinc oxide fumes/dust without maintaining the required safety data sheets in the workplace for each hazardous material.
- b) Fabrication Area: Three employees were exposed to hazardous chemicals including, but not limited to, Purple Power Cleaner/Degreaser, Champions Choice Galv-Off, WD-40 Multi-Use aerosol, and 3M High Power Brake Cleaner without maintaining the required safety data sheets in the workplace for each hazardous chemical. 29 CFR 1910.1200(g)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 3c –

- a) Plasma Cutter Area(s): Two employees were exposed to zinc oxide fumes/dust without providing information and training.
- b) Fabrication Area: Three employees were exposed to hazardous chemicals including, but not limited to, Purple Power Cleaner/Degreaser, Champions Choice Galv-Off, WD-40 Multi-Use aerosol, and 3M High Power Brake Cleaner without providing information and training. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00	Formula Amt. - \$1,200.00
TOTAL PENALTY - \$3,600.00	TOTAL FORMULA AMT. - \$9,600.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr, Chairman Schultz and Mr. Atencio discussed the types of masks being provided, the lack of fit testing and if any warnings or usage instructions are on the mask box.

Commissioner LeMarr noted the grouping was generous on behalf of the employer and could have been much higher.

Commissioner Krenzel noted this was a planned inspection and asked if the employer was aware of consultation services.

Mr. Watkins was not aware of the ADOSH consultation services, but provided background on the company and conveyed his positive experience with the inspection and commended Mr. Viray who ADOSH should be proud to have on staff. Mr. Watkins highlighted the changes made, corrective actions taken and improvements made by the company.

Commissioner LeMarr and Mr. Watkins discussed abatement of the infractions including getting professional assistance and audits of each department, adding SDS and standardizing materials.

Commissioner LeMarr moved to amend the citation proposing a 25% reduction for a total of \$2,700.00, because of the company's quick abatement and implementation of robust programs. Vice Chair Hennelly seconded the motion and noted he appreciated what the company has done. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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 2019. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted we are in the midst of the VPP Audit, with the opening conference on Wednesday starting the three day process. Chairman Schultz commented that there are some very talented Special Government Employees doing the inspection.

Mr. Ashley stated that at the suggestion of Chairman Schultz a standing safety item on the meeting agenda will start on November 14<sup>th</sup>.

Mr. Ashley reviewed the ICA Strategic Plan including the FY20 Annual Objectives, Objective Metrics, Annual Initiatives, and the progress and successes to date.

Mr. Ashley is planning a tour for the Commissioners of the agency building including the roof top and generator building.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the divisions were appreciative of Commissioner LeMarr and Commissioner Krenzel judging the employee engagement activity and announced the division winners of the Halloween/Fall Decorating Contest.

Ms. Dimas confirmed Commission meeting dates through December 2019.

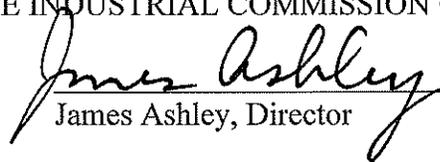
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary