MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 18, 2018 – 1:00 p.m.

Present:Joseph M. Hennelly, Jr. Acting Chairman
Scott P. LeMarr Commissioner (Telephonic)
Steven J. Krenzel Commissioner
James Ashley Director
Gaetano Testini Chief Legal Counsel
Trevor Laky Legislative Affairs Chief / Public Information Officer
Sylvia Simpson Chief Financial Officer
Stacy Allison Accounting
Renee Pastor Self Insurance
Jessie Atencio ADOSH Director
Kara Dimas Commission Secretary

Acting Chairman Hennelly convened the meeting at 1:00 p.m. Also in attendance were Jeff Weber and Susie Weber (Reddy Rents); Dave Howard, Tracy Kopp and Brenda Pinegar (Premier Risk Management); Michael Fassett (Snell & Wilmer).

Approval of Minutes of October 11, 2018 Regular Meeting.

Commissioner Krenzel moved to approve the Minutes of the October 11, 2018 regular session meeting and Commissioner LeMarr seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr 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. 2C-17/18-0893 - Direct Web Development Group LLC
2. 2C-17/18-0650 - Juntos Ventures LLC
3. 2C-18/19-0079 - Rusty Gewecke, asm, dba Rusty's Restaurant
4. 2C-18/19-0081 - Simple Mobile Solutions, fka Simply Prepaid
5. 2C-17/18-0895 - Gracious Haven Healthcare, LLC

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

1. DG Retail, LLC
2. Ruan Transportation Management Systems, Inc.
Acting Chairman Hennelly reviewed the Consent Agenda. Commissioner Krenzel requested the self-insurance renewal for Ruan Transportation Management Systems, Inc. (Item (b)(2)) be moved to another week because of a potential conflict of interest. Acting Chairman Hennelly moved the DG Retail, LLC (Item (b)(1)) to the regular agenda.

Commissioner Krenzel moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

1. DG Retail, LLC

Acting Chairman Hennelly and Ms. Pastor discussed the concerns of the rather high denial rate but noted they are under 12% and that there were 38 claims files and 4 were denied. They are within the general parameters of retail employers.

Commissioner Krenzel moved to approve the renewal of self-insurance authority for DG Retail, LLC and Commissioner LeMarr seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr and Commissioner Krenzel 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 2019.

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. She then reviewed the staff memorandum and recommendations.

Acting Chairman Hennelly noted 1.75% is among the lowest the rate has been. He noted the calculation looks conservative and safe.

Ms. Simpson relayed staff’s recommendation that § 23-961(G) assessment rate remain the same for 1.75% in CY 2019. Ms. Simpson relayed staff’s recommendation that the Commission continue the §§ 23-1065(A) and 1065(F) assessments at 0% for CY 2019.

Commissioner LeMarr noted he is glad the rate continues to be as low as it is.

Mr. Ashley noted it is consistent with last year’s low rate and it will allow the agency to successfully perform its mission.

Commissioner LeMarr moved to approve 1.75% as the CY 2019 assessment rate under § 23-961(G); 0% as the CY 2019 assessment rate under § 23-1065(A); and 0% as the CY 2019 assessment rate under § 23-1065(F). Commissioner Krenzel seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr 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.

Acting Chairman Hennelly discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.
WBA, Inc., dba Reddy Rents  
2155 S Arizona Ave.,  
Yuma, AZ 85364

Site Location: 2155 S Arizona Ave.,  
Yuma, AZ 85364  
Inspection No: E5149 - 1311849  
Inspection Date: 04/19/2018

Fatality/Accident  
Years in Business: 35  
Empl. Covered by inspection: 4

SERIOUS -- Citation 1 - Item 1 --

a) Shop: An employee performed maintenance work on a Harlo forklift, model #HP6500-4wd-22-65 and serial #91708, including changing the hydraulic hoses, and the employer had not established lockout/tagout procedures and trained the employees to ensure that the equipment would be isolated and rendered inoperative prior to any work where the unexpected energizing or start-up could occur. 29 CFR 1910.147(c)(1)
Div. Proposal - $7,000.00  
Formula Amt. - $1,500.00

SERIOUS -- Citation 1 - Item 2 --

Div. Proposal - $1,500.00  
Formula Amt. - $1,500.00  
TOTAL PENALTY - $8,500.00  
TOTAL FORMULA AMT. - $3,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties.

Commissioner LeMarr and Mr. Atencio discussed the employee doing maintenance and operating the forklift.

Mr. Testini noted the name in the report listed WBS and WBA. Mr. Weber clarified that the correct name was WBA for Weber Business Association. Acting Chairman Hennelly noted the record should reflect the correct name should be WBA, Inc. dba Reddy Rents as reflected in the agenda.

Acting Chairman Hennelly and Mr. Atencio discussed the forklift operating at the time, the number of operators, and employee training.

Mr. Weber provided background on the family business starting in 1957 and the employee was with them for 22 years. He noted they have implemented the lock out/tag out process, developed an employee safety manual, SMDS sheets, fire extinguisher training, forklift training, safety cabinets, and eye-wash stations as recommended.

Commissioner Krenzel, Mr. Weber and Acting Chairman Hennelly discussed consultation services provided by ADOSH. Mr. Weber noted their new mechanic has experience putting together a safety program.

Based upon the company’s abatement efforts, concern to have a safe environment, and appreciation embracing the safety culture, Commissioner LeMarr moved to reduce the proposed
penalties by 20%, from $8,500.00 to $6,800.00. Commissioner Krenzel seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Oak Craft, Inc.
7733 W Olive Ave.,
Peoria, AZ 85345

Site Location: 7733 W Olive Ave.,
Peoria, AZ 85345

Inspection No: N8278 - 1321503
Inspection Date: 06/08/2018

SERIOUS – Citation 1 - Item 1a –

a) Production Area: Five employees were exposed to sound levels above 85 decibels of an 8-hour time-weighted average without implementing an effective Hearing Conservation Program. 29 CFR 1910.95(c)(1)
Div. Proposal - $1,800.00
Formula Amt. - $1,800.00

SERIOUS – Citation 1 - Item 1b –

a) Production area: Five employees were exposed to sound levels above 85 decibels of an 8-hour time-weighted average without receiving effective information and training on occupational noise exposure. 29 CFR 1910.95(k)(1)
Div. Proposal - $0.00
Formula Amt. - $1,800.00

SERIOUS – Citation 1 - Item 2a –

a) Spray Finishing area: Two employees were exposed to hazardous chemicals including, but not limited to; Sher-Wood Universal Primer White and Sher-Wood Dye Stain Mocha, and Sher-Wood Plus Conversion Varnish without implementing a written hazard communication program. 29 CFR 1910.1200(e)(1)
Div. Proposal - $1,800.00
Formula Amt. - $1,800.00

SERIOUS – Citation 1 - Item 2b –

a) Spray Finishing area: Two employees were exposed to hazardous chemicals including, but not limited to; Sher-Wood Universal Primer White and Sher-Wood Dye Stain Mocha, and Sher-Wood Plus Conversion Varnish without receiving effective information and training on hazardous chemicals. 29 CFR 1910.1200(h)(1)
Div. Proposal - $0.00
Formula Amt. - $1,800.00
TOTAL PENALTY - $3,600.00
TOTAL FORMULA AMT. - $7,200.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner Krenzel and Mr. Atencio discussed training and the five abatements made on the day of the inspection.
Acting Chairman Hennelly acknowledged that the facility is a substantial operation which just fell short in a couple of areas. Mr. Atencio discussed the need for resampling when a hearing conservation program is in place if changes are made on a few lines.

Based upon the company's abatement efforts, Commissioner Krenzel moved to reduce the proposed penalty by 20%, from $3,600.00 to $2,880.00. Commissioner LeMarr seconded the motion. Acting Chairman 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 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley provided an update on the new Claims IT system and a new roll out date of February, 2019.

Mr. Ashley noted discussion of a provision to make it easier for carriers to update changes of Third Party Administrators in the system so that information will be available to interested parties and maintained whenever a change occurs. He noted that Mr. Testini will provide additional information at a future meeting. Acting Chairman Hennelly noted he had heard comments while at the State Bar Seminar in Flagstaff and it makes sense that the process be addressed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2018. Acting Chairman Hennelly noted he may not be available for the Tucson meeting or for the last two meetings of the year.

Mr. Ashley reminded the commissioners that next week will be the second half of the Gemba walk for the remaining divisions.

Mr. Ashley provided an update on the Tucson outreach plans. He noted they would invite the state legislative representatives for the area.

Mr. Ashley announced that Mesquite Solar of Tonopah will celebrate their VPP Recertification with an event on November 14, 2018.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Acting Chairman Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:59 p.m.

ATTEST:

Kara Dimas, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director