

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007
Thursday, June 9, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Stephen Ball	Legal Counsel
	Molly Jones	Claims Manager
	William Warren	ADOSH Director
	Steve Black	Compliance Officer
	Phil Murphy	Compliance Officer
	Brian Downen	Compliance Officer
	Pat Ireland	Compliance Officer
	JR Imes	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. in the Auditorium.

Public Hearing to accept comments and other information regarding the one-half percent assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

Chairman Schultz stated that the Commission had published a notice of hearing on May 9, 2016, inviting public comment regarding the one-half percent assessment under A.R.S. § 23-1065(F). He noted that public comment would be accepted until the conclusion of the meeting. He further explained that the Commission would discuss and may take action on this assessment at a subsequent meeting.

Chairman Shultz noted that Commission staff had submitted a written report regarding the assessment. Ms. Simpson addressed the Commission and summarized the report. She discussed § 23-1065(F), the Commission's prior assessment history, and whether current circumstances justify an assessment under § 23-1065(F) for calendar year 2017.

Chairman Schultz explained that the Commission could consider making an assessment under § 23-1065(F) and noted that this determination would be made at a later time after further review. Chairman Schultz invited questions and/or public comment. No questions or comments were offered. Chairman Schultz temporarily recessed the meeting to move to Conference Room 308.

The meeting reconvened at 1:14 p.m. in Conference Room 308. Also present at the meeting were Selma Sipes, William Cowles, Stephanie Stinson with TestAmerica Laboratories, Michelle Kunzman with the Attorney General's Office, and Jason Weber with Snell & Wilmer.

Approval of Minutes of May 12, 2016 and May 26, 2016 Regular Meetings.

Commissioner LeMarr moved to approve the Minutes of the May 12, 2016 Regular Session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Vice Chair Hennelly moved to amend the Minutes of the May 26, 2016 Regular Session meeting (and to approve the Minutes as amended) to clarify that Commissioner LeMarr's motion to amend the proposed Younger Brothers ADOSH Citation, made during the May 26, 2016 meeting, had in fact passed by a vote of 2-1. Vice Chair Hennelly proposed that the word "not" be deleted from the sentence "Vice Chair Hennelly noted that the motion did not pass." Commissioner LeMarr seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Chairman Schultz 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.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2C15/16-0028 A-Taxicab Service LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 - 1. Heartland Express, Inc.
 - 2. MTD Southwest, Inc.
 - 3. Washington Elementary School District No. 6

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 Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles reported on the approval of the treatment guideline rules and the status of the Commission's website development project. He also mentioned that APS had heard about the Voluntary Protection Program (VPP) legislation at the federal level and would like to partner with

the Commission to see what it means for Arizona. Finally, Mr. Charles discussed the letter he would like to send to members of Congress, committee staff, and bill sponsors regarding the VPP legislation (Senate Bill 2881). He requested that the Commissioners approve and sign the letter so it could be sent out.

Chairman Schultz commented on the approval of the treatment guideline rules, noting that it was a significant step forward. He commented on the adoption of evidence based medicine guidelines and their use, including helping to address the over-use of opioid medications. He reported on numerous calls he received congratulating the Commission on the accomplishment.

Chairman Schultz also commented on the VPP, noting that it is an incredible program that enables the Commission to partner with employers to assure safe workplaces. He discussed the process for an employer to become VPP certified and recertified, noting that certification is a significant accomplishment. He noted that the Commission will be emphasizing the VPP and doing everything it can to build partnerships with employers throughout the state.

Discussion & Action of Resolution Appointing Custodians of Records.

Ms. Jones explained the proposed resolution to appoint two employees (Sandra Perez and Melissa Smith) as custodians of records for the Commission, noting the need for additional custodians of records. Commissioner Orchard moved to approve the appointments and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

- 15-3633-20 Lockhart vs. Pinal County dba Pinal County Juvenile Detention Center
- 15-3633-22 Molina vs. Pinal County dba Pinal County Juvenile Detention Center
- 15-3633-21 Cuevas vs. Pinal County dba Pinal County Juvenile Detention Center

Mr. Warren explained that the three discrimination cases arise out of the same underlying events and recommended that the three complaints be heard together. The Commissioners agreed with the recommended approach.

Mr. Warren summarized the complaints, the employer's response, and the findings of the ADOSH investigation. He indicated that ADOSH could not determine whether a violation of A.R.S. § 23-425(B) occurred.

Commissioner Orchard moved to go into executive session and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed. Mr. Porter advised the Commissioners about the scope of what could be discussed during executive session.

The Commission moved into executive session at 1:31 p.m.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

- 15-3633-20 Lockhart vs. Pinal County dba Pinal County Juvenile Detention Center
- 15-3633-22 Molina vs. Pinal County dba Pinal County Juvenile Detention Center
- 15-3633-21 Cuevas vs. Pinal County dba Pinal County Juvenile Detention Center

The Commission returned to regular session at 2:06 p.m.

Chairman Schultz invited further questions. Hearing none, he invited Ms. Sipes (mother of Brandywine Lockhart) to address the Commission. Ms. Sipes inquired about Commission procedure in making a determination on the discrimination complaints and if there were appeal rights. She noted her disagreement with the ADOSH findings and commented on the circumstances leading to the three discrimination complaints. Chairman Schultz explained that the Commissioners would be making a determination on the complaints and invited Ms. Sipes to make additional comments. Ms. Sipes commented further about the circumstances leading to the three discrimination complaints.

Chairman Schultz invited further questions. Commissioner Orchard asked Ms. Sipes who her daughter was. Ms. Sipes responded that it was Ms. Lockhart. Chairman Schultz noted that the ADOSH report does reflect that two employees were terminated and one voluntarily resigned. Ms. Sipes commented on the reason for the resignation. Chairman Schultz asked whether that employee filed a claim for a hostile work environment. Ms. Sipes responded to the question.

Commissioner Orchard asked Mr. Warren who had received a copy of the ADOSH reports. Mr. Warren responded to the question.

Chairman Schultz invited Ms. Kunzman to address the Commission. Ms. Kunzman stated that she represents Pinal County Juvenile Services. She noted that the three employees were covered employees and each appealed the disciplinary actions taken by Pinal County Juvenile Services. She stated that a hearing was held in August 2015, and that the hearing officer had issued findings of fact and conclusions of law. She explained the hearing process and testimony that was presented. Ms. Kunzman invited the Commission to defer to the hearing officer's findings.

Chairman Schultz noted that the Commission had a thorough letter from Kirstin Story, which presented the law. He recapped the issue that was before the Commission and noted that the Commission would not defer to the hearing officer, as it had conducted its own investigation. He asked whether any of the other Commissioners would like to see the materials discussed by Ms. Kunzman. No requests were made. Ms. Kunzman commented on the scope of the hearing officer's findings. Chairman Schultz commented on the scope of the Commission's determination.

Chairman Schultz invited further comment or questions. Hearing none, Commissioner Orchard moved to accept the recommendations of ADOSH to not pursue the three complaints further and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

TestAmerica Laboratories, Inc.
 4625 E Cotton Center Blvd., Ste 189
 Phoenix, AZ 85040

Fatality/Accident
 Years in Business: 17
 Empl. Covered by inspection: 71

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Ms. Poppe reported on the adoption of the treatment guideline rules and next steps in the implementation of the portal to support the administrative piece of the new rules. She discussed planned community outreach activities to educate the public about the new rules. She also reported on the status of the Commission's website development project, including fillable forms.

Chairman Schultz commented on the implementation of the portal, noting that it was great that the portal would be done in concert with the new website. Mr. Ashley commented about the new website and fillable forms project.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced scheduled tours of a UPS facility in West Phoenix and the Palo Verde Nuclear Generating Station.

Mr. Ashley noted that the July 14, 2016 Commission Meeting would be held at the Yavapai County Courthouse in Prescott. He reported that planning was underway for the Prescott trip, including attempting to schedule a tour of the Ruger firearms facility.

Mr. Ashley reported on planned stakeholder meetings regarding possible legislative ideas or administrative improvements to the Commission.

Chairman Schultz reported that he had received a LinkedIn connection from the Chandler Chamber of Commerce. He thanked everyone for their efforts to connect with the community.

Mr. Warren reminded the Commission of the Safety Summit on July 6 and 7 in Flagstaff. He also informed the Commissioners about two workplace accidents that had occurred that day, one involving an employee who had been killed and another involving an employee who had been seriously injured.

Ms. Dimas announced Commission meeting dates in June and July 2016.

Chairman Schultz discussed the retirement resolution for Susana Chavez and congratulated her on her service at the Commission.

Public Comment.

Chairman Schultz invited Mr. Cowles to address the Commission.

Mr. Cowles discussed problems he was having with the Special Fund regarding occupational training to fly drones. He expressed concerns about rules and regulations that prohibit him from being self-employed after re-training. He expressed concerns about the legality of the rules and regulations. He also expressed concerns regarding the terms of a contract used by a third-party rehabilitation vendor. Chairman Schultz asked whether the contract was with the third-party rehabilitation company. Mr. Cowles responded to the question and discussed testing being conducted by the rehabilitation company.

Mr. Cowles requested that the Commissioners review the issues he presented and provide a response. Chairman Schultz clarified that what Mr. Cowles believed is that the Special Fund had told him that it would not pay for drone training because Mr. Cowles intended to be self-employed after the training. Mr. Cowles responded. Chairman Schultz recapped the issue presented by Mr. Cowles and Mr. Cowles added that he would like someone to look into the contracts used by the third-party rehabilitation company. Chairman Schultz commented on the contract issue and Mr. Cowles stated his understanding that the rehabilitation company was under contract with the Special Fund.

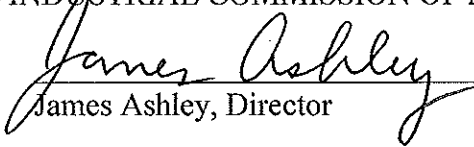
Mr. Ashley invited Mr. Cowles to discuss the issues further with members of the Commission's leadership team. Mr. Cowles stated he would be happy to discuss further.

Chairman Schultz commented on the purpose of public comments and the Commission's commitment to improve services. He commented on a timeframe to provide Mr. Cowles a response.

Chairman Schultz invited further public comment. Hearing none, Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed and the meeting was adjourned at 2:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary