

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, August 5, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	D. Alan Everett	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call, was Anthony Acosta (Southwest Risk).

Approval of Minutes of July 29, 2021 Regular Meeting Minutes

Commissioner LeMarr moved to approve the Minutes of the July 29, 2021 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CC20/21-0099 Superior GC LLC \$1000

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

1. American Furniture Warehouse Co., Inc.
2. Arizona Municipal Risk Retention Pool
3. Learjet, Inc
4. Trademark Construction

Chairman Schultz noted American Furniture Warehouse Co, Inc. has an enviable experience modification factor and is doing an excellent job.

Chairman Schultz requested that Learjet, Inc. be moved to the regular agenda for further discussion.

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

Approval of Requests for Renewal of Self-Insurance Authority.

3. Learjet, Inc

Chairman Schultz noted his concerns with the experience modification factor (“e-mod”), that is outside the usual acceptable range.

Ms. Pastor noted their e-mod is going in the wrong direction and in 2019 requested ADOSH consultation services. She noted it was difficult to get them to commit to ADOSH consultation, and believes one obstacle is the concern for the bottom line.

Chairman Schultz asked Mr. Atencio about the progress in working with consultation. Mr. Atencio stated that since he will be in the Tucson area within the next couple of weeks, he will talk with Raytheon who know the folks at Bombardier to try and schedule a meeting.

Chairman Schultz would like if Raytheon could assist Learjet, Inc. He wanted to make sure that they will accept the consultation folks, beginning to work with them immediately, otherwise he would propose putting off authorizing their self-insurance or remove their authorization to self-insure. His concerns centered around the financial issues, the relatively small number of employees, and that a small number of claims could put them in serious financial difficulty.

Chairman Schultz is inclined to give them a provisional approval to October 1, and then revisit their authority.

Commissioner LeMarr believes using the bottom line as an excuse to not bring in consultation is ludicrous for a company that sells items at \$20 million, and supports the suggestion of a temporary extension.

Vice Chair Hennelly agreed with Commissioner LeMarr and Chairman Schultz that a temporary extension is appropriate with a message that they need to understand that this can go away, and probably will go away, if they do not improve the situation quickly and dramatically.

Chairman Schultz moved to give them a provisional approval to October 1, and then revisit their authority at a future meeting. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked Ms. Pastor for her work to get them to cooperate before bringing these issues to the Commission. He also thanked Mr. Atencio for making the special effort to visit those companies while in Tucson.

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

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Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Circle K Stores Inc. 1130 W Warner Rd Tempe, AZ 85282	Fatality/Accident Years in Business: 58 Empl. Covered by Inspection: 3
Site Location: 1955 W University Dr Mesa, AZ 85201	
Inspection No: L0487 - 1527027	
Inspection Date: 4/22/2021	

SERIOUS – Citation 1 - Item 1 –

- a) 1955 W University Dr, Mesa, AZ 85201: Two employees were exposed to Sanitizer Plus, without an eye wash station available. 29 CFR 1910.151(c)
- |                            |                                 |
|----------------------------|---------------------------------|
| Div. Proposal - \$2,000.00 | Formula Amt. - \$2,000.00       |
| TOTAL PENALTY - \$2,000.00 | TOTAL FORMULA AMT. - \$2,000.00 |

Mr. Atencio discussed ADOSH's investigation, summarized the serious citation, proposed penalty and three non-serious citations.

Commissioner LeMarr asked about the delay of information from the Medical Examiner's Office to have a better idea for the cause of death.

Mr. Atencio noted there are times when the Medical Examiner's Office is really busy or they have other things that are more pressing and it is a process to get their reports. In this instance he would have preferred to have it sooner rather than later, and could have presented to the Commission sooner, but he will work with staff and reach out to the Medical Examiner to see if there is any way to get rough information sooner to make sure the cases are presented in a timely manner.

Chairman Schultz noted that Circle K was previously cited for exit access and aiseways not being sufficiently wide enough and asked about the decision to keep it as non-serious since it had been previously cited.

Mr. Atencio noted that he left it up to the compliance officer and the supervisor then to determine the severity here when it comes to the probability of harm, and they came up with non-serious based on their information.

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Mr. Atencio commented that while on an inspection last week, he met Terry Nolan, the former Mayor of Dewey-Humboldt, who asked him to say hello to the Commission.

Chairman Schultz thanked Mr. Atencio and commented that he cannot wait to get back on the road, they meet a lot of incredible people and see a lot of terrific businesses.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented that when Mr. Atencio made the reference to Dewey-Humboldt he was thinking the same thing as Chairman Schultz, that they always enjoy the outreach missions around the state giving them a chance to meet with the local Mayors, City and Town Councilmembers, employers and employees and they are looking forward to getting those scheduled again.

Chairman Schultz read a resolution prepared for Commissioner Krenzel to thank him for his dedicated service to the Commission. The ceremonial resolution was unanimously approved on motion of Commissioner LeMarr and second by Vice Chair Hennelly.

Ms. Dimas confirmed Commission meeting dates through October 2021. Vice Chair Hennelly noted he would have to confirm the October 7 and 21 dates.

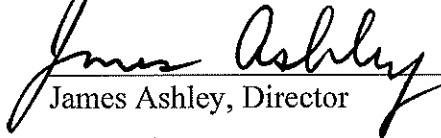
Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 1:41 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary