

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 23, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Jason M. Porter	Deputy Director
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Brooks Rogers	ADOSH Compliance
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Beth Rau and Kevin Dykstra (Fry's Food Stores); Jan Swart (Exponent); Scot Butler (Unknown); Joe Valenzuela (American Furniture Warehouse); W. Mann (AZ Boiler); and Michael Fassett (Snell & Wilmer).

Public Hearing to accept comments and other information regarding the 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 introduced the agenda item, noting that the Commission had published a Notice of Public Hearing on April 22, 2019. He stated that public comments would be accepted through the conclusion of the public hearing. Chairman Schultz indicated that a written report regarding the assessment under A.R.S. § 23-1065(F) had been submitted into the record by staff.

Ms. Simpson summarized the written report and discussed § 23-1065(F), the Commission's prior assessment history, and whether current circumstances would permit an assessment under § 23-1065(F) for calendar year 2020.

Chairman Schultz thanked Ms. Simpson and noted it was an excellent summary.

Chairman Schultz invited questions and/or public comment. No public questions or comments were received.

Approval of Minutes of April 25, 2019 Regular Meeting, May 9, 2019 Regular Meeting, and May 16, 2019 Regular Meeting.

Vice Chair Hennelly moved to approve the Minutes of the April 25, 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 May 9, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Chairman Schultz abstained. The motion passed.

Vice Chair Hennelly moved to approve the Minutes of the May 16, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. Commissioner Krenzel 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. 2C-18/19-0630 Kiannah Parks dba GalPatch \$1000
2. 2C-18/19-0570 Leodegario Ortiz Valdez \$1000

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

1. Truly Nolen of America, Inc.
2. YRC, Inc. dba YRC Freight

c. Discussion and Action of Application for Self-Insurance Authority.

1. American Furniture Warehouse Co., Inc.

Chairman Schultz highlighted the incredible progress Truly Nolan of America, Inc. has made in providing a safer working environment for their employees, and the incredibly laudable experience modification factor of American Furniture Warehouse Co., Inc. Chairman Schultz reminded the Commissioners that staff has recommended a security deposit increase due to financial condition and outstanding losses for YRC, Inc. d/b/a YRC Freight. Commissioner Krenzel requested b.2. (YRC, Inc. d/b/a YRC Freight) be heard separately.

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

YRC, Inc. dba YRC Freight – Commissioner Krenzel noted a typographical error, and Ms. Pastor clarified that the denial rate of 5.75% does not exceed the Commission rate of 12%.

Commissioner Krenzel moved to approve YRC, Inc. dba YRC Freight for self-insurance and 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.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Informal Conference Pursuant to Arizona Administrative Code Title 20, Chapter 5, Article 6 Occupational Safety and Health Standards.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of anodes informal review.

-Fry's Food Store #86 - Mark Fairall - Y8817 – 1332771 & 1420625

Mr. Atencio summarized the complaints by a non-employee and inspections, and subsequent corrective actions of the employer. Mr. Atencio noted that the first complaint was also sent to Federal OSHA, who found ADOSH acted in accordance with the Arizona Field Operation Manual.

Chairman Schultz noted there were representatives from Fry's present and asked if they wanted to make any statement of new information.

Mr. Dykstra offered copies of their statement and exhibits, but the Commissioners already had these documents. - Mr. Dykstra introduced Ms. Rau the long time safety manager for Fry's and Mr. Swart, who was hired by Fry's to do a complete engineering evaluation.

Commissioner LeMarr asked Mr. Swart why they would need a GFI plug for the electric carts and Mr. Swart responded that they do not.

Ms. Rau outlined her experience with OSHA reporting, and mentioned the low experience modification and work Fry's has done to improve their safety programs. She noted the steps taken to investigate the incident including hiring an engineer to examine the entire building to ensure safety for both customers and employees.

Mr. Testini noted the options for a motion: 1. Affirm the determination of the ADOSH Director, 2. Order a re-inspection, or 3. Issue a citation.

Commissioner LeMarr moved to affirm the determination of the ADOSH director because the determination is supported by the investigation files, is supported by the response and evidence provided by Fry's, and based upon Federal OSHA's conclusion that ADOSH properly followed their processes and procedures in addressing the complaints; Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) to Discuss Arizona Division of Occupational Safety and Health Informal Conference Pursuant to Arizona Administrative Code Title 20, Chapter 5, Article 6 Occupational Safety and Health Standards.

-Fry's Food Store #86 - Mark Fairall - Y8817 – 1332771 & 1420625

This item was provisional and on the agenda in the event there was a need for an executive session to obtain advice from counsel. There was no need for an executive session.

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

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

TWI LLC
123 W Harvest Way
Willcox, AZ 85643

Referral
Years in Business: 10
Empl. Covered by inspection: 4

Site Location: 225 S Rail Road Ave.
Willcox, AZ 85643
Inspection No: E5149 -1363752
Inspection Date: 11/30/2018

SERIOUS – Citation 1 - Item 1 –

- a) 225 S Railroad Ave, Willcox, Arizona: Two employees were operating a Genie aerial lift, model #S-80X and serial numbers unknown, without training. 29 CFR 1926.21(b)(2)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 225 S Railroad Ave, Willcox, Arizona: One employee used Genie aerial lift, model #S-80X and serial numbers unknown, as an anchor point for their personal fall protection system while working on metal roof. 29 CFR 1910.502(d)(15)(ii)
Div. Proposal - \$2,800.00 Formula Amt. - \$2,800.00
TOTAL PENALTY - \$3,800.00 TOTAL FORMULA AMT. - \$3,800.00

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

Commissioner LeMarr and Mr. Atencio discussed that a co-worker did not unclip their safety equipment and remained in the basket to perform the same duties as the injured employee.

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

Commissioner LeMarr thanked Mr. Atencio for putting the next related cases together. Mr. Atencio noted the next three items were related as a multi-employer site and provided the background of ADOSH's investigation. He noted that LGE Corporation was the controlling employer, Pisani Construction was the creator of the holes and Sky Design Concepts was the exposed employer.

LGE Corporation DbA LGE Design Build
740 N 52nd St
Phoenix, AZ 85008

Unprogrammed Related
Years in Business: 24
Empl. Covered by Inspection: 2

Site Location: 1710 N Higley Rd
Mesa, AZ 85205
Inspection No: V4364 -1367446
Inspection Date: 11/27/2018

SERIOUS – Citation 1 - Item 1a –

Pisani Construction, LLC
461 N Gilbert Rd
Mesa, AZ 85205

Unprogrammed Related
Years in Business: 28
Empl. Covered by Inspection: 5

Site Location: 1710 N Higley Rd
Mesa, AZ 85205
Inspection No: V4364 -1366475
Inspection Date: 12/03/2018

SERIOUS – Citation 1 - Item 1 –

- a) 1710 N Higley Rd., Mesa, AZ, 85205, Roof: Three employees, sheeting a commercial roof accessed and egressed the roof through a hole that was not provided with a gate or offset. 29 CFR 1926.502(b)(13)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 1710 N Higley Rd., Mesa, AZ, 85205, Roof; Three employees working on a commercial roof that was approximately 30 ft. above ground level utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. 29 CFR 1926.502(f)(2)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 1710 N Higley Rd., Mesa, AZ, 85205, Roof: Three employees working on a commercial roof with an installed cover over a hole that was not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. 29 CFR 1926.502(i)(4)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed that the roof was accessed by riding the lift through a hole in the roof, and referred to photograph #4 and the guardrail system needed.

Commissioner LeMarr and Mr. Atencio discussed photograph #5 and the compliance officer's measurements that demonstrate the lift appears to be the wrong type of equipment for the job.

Vice Chair Hennelly and Mr. Atencio discussed that the guardrail in photographs #1 and #2 were installed after the accident.

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

Sky Design Concepts Inc.
4656 S 33rd St
Mesa, AZ 85205

Unprogrammed Related
Years in Business: 23
Empl. Covered by Inspection: 5

Site Location: 1710 N Higley Rd
Mesa, AZ 85205

Mr. Atencio summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed Citation 1, Item 3. Commissioner LeMarr stated that since neither Pisani nor Sky Design installed the flags improperly on the roof, only LGE should be issued a citation. Mr. Atencio noted it should be the same citations for the three employers, since it is multi-employer, and all three files are time sensitive.

Commissioner LeMarr, Mr. Ashley and Mr. Testini discussed the possibility of amending the prior approved citations to LGE Corporation.

Commissioner LeMarr suggested adding a citation to LGE or delete the citations from the other two companies.

Mr. Testini discussed options, since LGE was already approved they are not in a position to add anything. They can delete from the one that is currently under consideration.

Commissioner LeMarr moved to go into executive session to consult with legal counsel and Commissioner Krenzel seconded the motion.

The Commission went into Executive Session at 2:09 p.m.

The Commission returned to regular session at 2:17 p.m.

Chairman Schultz noted the item before the Commission is to approve or amend the citation and penalty for Sky Design Concepts Inc.

Commissioner LeMarr moved to amend the citation. He moved to approve Item 1a, Item 1b, Item 2, Item 4 and Item 5 for a total penalty of \$4,000, and remanded Item 3 back to ADOSH. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or Action regarding Proposed Settlement and Bond Release with MIG, LLC (successor in interest to Metromedia International Group, Inc.) related to Surety Bond No. 105003108.

Mr. Porter explained that Metromedia International Group ("MIG") (f/k/a Fuqua) self-insured their workers' compensation program from 1975 forward but has had no operations in Arizona for several decades. In 2007, to cover all of the liability from 1975 forward, MIG purchased a \$100,000 bond through Travelers Casualty and Surety Company of America, providing cash collateral. On June 30, 2014 MIG entered into bankruptcy, filing for reorganization in 2017. MIG is requesting the release of the bond to free the cash collateral. Through negotiations an agreement was reached to release the \$100,000 bond in exchange for a payment of \$90,000. Mr. Porter presented the draft Settlement Agreement and Bond Release for review and approval.

Chairman Schultz stated the projection of the actuarial liability going forward is very small.

Mr. Porter noted he was looking for a motion that would approve the Settlement Agreement as presented and authorize Director Ashley to execute all appropriate documents on behalf of the Commission. Commissioner LeMarr moved that motion. Commissioner Krenzel seconded the motion.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed unanimously.

Executive Session under A.R.S. § 38-431.03(A)(3) & (A)(4) regarding Proposed Settlement and Bond Release with MIG, LLC (successor in interest to Metromedia International Group, Inc.) related to Surety Bond No. 105003108.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley provided an update regarding the Pneumatic Elevator authorization process. The public hearing was held on Monday, May 20th and there were no public comments. The next step will place it on the agenda for approval by the Commission on June 6, 2019 to be filed with GRRC by June 18, 2019 and heard at the August 6, 2019 GRCC meeting; should it pass, it will become effective that day. He also noted that Mr. Atencio is working with industry experts to train the elevator inspectors in the pneumatic technology over the next 45 days.

Ms. Dimas confirmed Commission meeting dates through July 2019.

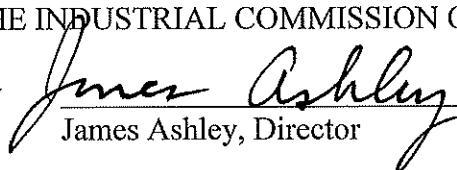
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel 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 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Public Hearing regarding the
Assessment of A.R.S. 23-1065(F)

Phoenix, Arizona

May 23, 2019

1:00 p.m.

Prepared by:
Denise R. Style, RPR
Certificate No. 50843

(ORIGINAL)

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SPEAKER: PAGE

Sylvia Simpson..... 5

BOARD:

- Mr. Dale Schultz, Chairman
- Mr. Joseph N. Hennelly, Commissioner
- Mr. Scott P. LeMarr, Commissioner
- Mr. James Ashley, Director
- Mr. Gaetano Testini, Chief Legal Counsel
- Mr. Jason M. Porter, Deputy Director

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1 P R O C E E D I N G S

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3 CHAIRMAN SCHULTZ: I would like to call
4 this meeting at the Industrial Commission to order,
5 and I would like to start with the pledge.

6 (Whereupon a brief pause was held.)

7 CHAIRMAN SCHULTZ: Thank you.

8 And now so that everyone has an
9 opportunity to put a name with a face I'm Dale
10 Schultz, and I'm the Chairman of the Commission.

11 MR. HENNELLY: Joe Hennelly,
12 Commissioner.

13 MR. LEMARR: Scott LeMarr, Commissioner.

14 MR. KRENZEL: Steve Krenzel,
15 Commissioner.

16 MR. ASHLEY: James Ashley, Director.

17 MR. TESTINI: Guy Testini, Chief Legal
18 Counsel.

19 MS. DIMAS: Kara Dimas, Commission
20 secretary.

21 MR. BUTLER: Scott Butler, just
22 watching.

23 (Inaudible.)

24 MR. PORTER: Jason Porter, Deputy
25 Director.

1 MR. VALENZUELA: Joe Valenzuela,
2 American Furniture Warehouse.

3 MS. SIMPSON: Sylvia Simpson, State
4 Fund.

5 (Inaudible.)

6 MR. DYKSTRA: Kevin Dykstra from Barnett
7 Fairborn.

8 MS. ROWE: Beth Rowe, Fry's Food Store,
9 safety manager.

10 CHAIRMAN SCHULTZ: Do you want to read
11 those back?

12 THE REPORTER: No.

13 CHAIRMAN SCHULTZ: Okay. Our first
14 order of business is a public hearing to accept
15 comments and other information regarding the
16 assessment under A.R.S. 23-1065(F). And I would
17 like to make an opening statement that notice of
18 this hearing was provided on April 22nd, 2019, and
19 at that time the public was invited to submit
20 comments. Comments will be accepted through the
21 close of today's hearing. At a later scheduled
22 meeting the Commission will discuss and may take
23 action on this assessment.

24 ICA staff has submitted a written report
25 into the record, and Ms. Sylvia Simpson, the ICA's

1 chief financial officer, will provide some
2 information regarding that report. After
3 Ms. Simpson presents her report the public will be
4 given the opportunity to present comments to the
5 Commission. For the record, although the record has
6 been open for public comment since April 22nd no
7 comments have been received.

8 With that I would like to thank you all
9 for attending and ask Sylvia to begin.

10 MS. SIMPSON: Good afternoon, Chairman
11 Schultz, Commissioners.

12 CHAIRMAN SCHULTZ: Sylvia, always a
13 pleasure.

14 MS. SIMPSON: Always a pleasure to be
15 here.

16 I'm here today to present information on
17 the apportionment assessment. Under Arizona Revised
18 Statute 23-1065(F) the Commission is authorized to
19 assess a one-half percent assessment if the total
20 annual reserve liability of the Special Fund for
21 apportionment under A.R.S. 10 -- 23-1065(E) and (C)
22 exceeds \$6 million. This rate has not been assessed
23 since 2015 due to having actuarial surplus.

24 As of June 30, 2018, the last actuarial
25 study that we had the Special Fund liability for

1 apportionment as determined by our actuary totaled
2 69.1 million at a conference level E, and this
3 liability greatly exceeds the 6 million required to
4 assess the one-half percent assessment. As such
5 there is justification and authority to assess the
6 one-half percent assessment under A.R.S. 23-1065(F)
7 for calendar year 2020.

8 The decision to set the apportionment
9 assessment rate will be discussed at a future
10 Commission meeting and will be based on the current
11 and projected financial condition and operating the
12 Special Fund.

13 At this point I'm happy to answer any
14 questions.

15 CHAIRMAN SCHULTZ: Questions for Sylvia?

16 Okay. Any additional information we
17 would like Sylvia to provide for our meeting when we
18 leave and will discuss the actual setting of the
19 assessment. The actuarial -- the summary of the
20 actuarial information I think is excellent. Thank
21 you for that.

22 Okay. This is now the opportunity for
23 the public to make comment or provide information.

24 Does anyone here have any information
25 they would like to provide to the Commission

1 relative to this -- the setting of this assessment?

2 Hearing none we will now move to our
3 next order of business.

4 (The proceedings concluded at 1:06 p.m.)

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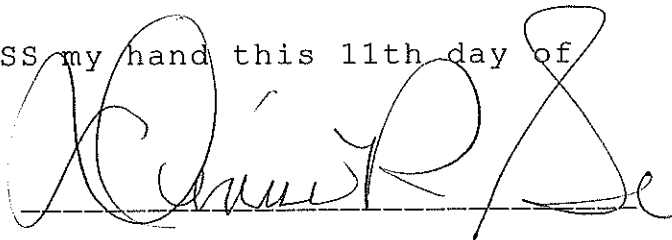
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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I HEREBY CERTIFY that the foregoing was taken before me, Denise R. Style; that all proceedings had upon the taking of said hearing were taken down by me in shorthand and thereafter reduced to writing by me and that the foregoing pages contain a full, true, and correct transcript of said shorthand record, all done to the best of my skill and ability.

WITNESS my hand this 11th day of
June, 2019.



Denise R. Style, RPR
AZ Certified Reporter No. 50843

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