

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 12, 2020 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Jessie Atencio	ADOSH Director (Telephonic)
Lisa Padgett	Labor Director (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 were Theodore Kelly, Daniel Perez and Chris Ryan (Rush Truck Centers of Arizona DBA Rush Truck Center – Tucson).

Approval of Minutes of November 5, 2020 Regular Meeting Minutes.

Approval of the Minutes of the November 5, 2020 regular session meeting was moved to the agenda of the next regular session meeting.

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. 2CC20/21-0038 Blue Clear Sky Contracting LLC \$1,000
2. 2CRP20/21-0007 7 Diamonds Roofing LLC \$1,000

b. Discussion and Action regarding Proposed Youth Employment Penalty.

1. YL-2021-0002 999 Drinks, L.L.C. DBA Sumo Snow \$500
2. YL-2021-0034 Slide Works, Inc. \$400

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

Discussion and/or Action regarding Delegation of Authority to the Labor Department to issue civil penalties pursuant to A.R.S. § 23-364(F) & (G) where the total amount of the civil penalty is \$500 or less.

This Resolution deals with the Minimum Wage Program and Earned Paid Sick Time Program and delegates authority to the Labor Department to issue civil penalties that are \$500 or less without requiring the Commissioners' approval. A.R.S. § 23-108.03(B) allows the delegation of power and duties of the Commission to any section of the Commission. The practical effect would be the Labor Department could issue civil penalties of \$500 or less without requiring approval of the Commission.

Chairman Schultz noted it was pretty straight forward and will be an efficient delegation of authority.

Commissioner LeMarr made a motion to approve the delegation of authority to the Labor Department to issue civil penalties pursuant to A.R.S. § 23-364(F) and (G) where the total amount of civil penalty is \$500 or less. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and/or Action regarding Delegation of Authority to the Labor Department to issue cease and desist orders and associated civil penalties pursuant to A.R.S. § 23-236 for violations of Title 23, Chapter 2, Article 3 where the total amount of the civil penalty is \$500 or less.

This Resolution is similar except it applies to the Youth Employment Program and allows the Labor Department to issue civil penalties with respect to youth employment that are \$500 or less. The authority to delegate this power is vested in A.R.S. § 23-108.03(B). The practical effect would be the Labor Department could issue civil penalties in youth employment cases that are \$500 or less without approval from the Commission.

Vice Chair Hennelly made a motion to approve the delegation of authority to the Labor Department to issue cease and desist orders and associated civil penalties pursuant to A.R.S. § 23-236 for violations of Title 23, Chapter 2, Article 3, where the total amount of civil penalty is \$500 or less. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Chairman Schultz congratulated Ms. Padgett.

Mr. Ashley explained that the Labor Department will generate a report of all citations under \$500, similar to the report that ADOSH prepares for penalties under \$2,500, which also do not come before the Commission, to ensure the Commissioners are aware of what is happening.

Chairman Schultz stated that the reports are very helpful to both have a feel for how many visits are being made and the nature of the citations that are being issued and to provide trend information.

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.

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

Mr. Kelley mentioned the company did take immediate action on the citation to ensure each item was remediated. They are still waiting on the first item for the eyewash station, which they ordered right after the inspection but it is out of stock; they do have a shower available in that area that would allow for eye washing. They appreciated the guidance from Mr. Black, the compliance officer, on the various areas they could improve. He noted he would like the opportunity to provide documentation of their abatement efforts.

Chairman Schultz stated it sounds like the eye wash issue was addressed and asked if they conducted an inspection of the hoist. Mr. Kelley noted the annual inspections were completed on October 7, 2020 and they do have documentation of that inspection.

Chairman Schultz also asked if they addressed the issue with the outlet box. Mr. Kelley noted that the outlet boxes have been repaired.

Commissioner LeMarr and Mr. Atencio discussed the 15% good faith deduction on the citation was based on the compliance officer's communications with the employer and the employer's willingness to provide programs, provide upfront information in a timely manner and to address the citation items as quickly as they could. Mr. Atencio noted that they did have a firm commitment from the employer to abate the hazards.

Commissioner LeMarr moved to amend the citation and proposed penalties due to the robust safety protocols and the fact that they have abated or are in the process of abating the three citations, he would like to give the maximum good faith deduction.

Commissioner LeMarr moved amend the Citation and proposed penalties by an additional 25% for Good Faith/Quick Fix Discount for a total of \$3,656.25. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Chairman Schultz thanked the folks from Rush Trucking Centers for joining today and offering their input. The Commission likes to be transparent in what they do and very much appreciates the efforts of folks to improve safety in their workplace.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that the Commissioners have been sent a link to the ICA Safety and Health website for the Safety Committee that was discussed in detail at the last Commission Meeting.

Ms. Dimas confirmed Commission meeting dates through January 2020. Commissioner Hennelly noted that he was not sure about the December 10th date.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 1:37 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary