

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, September 17, 2020 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	Steven J. Krenzel	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Gaetano Testini	Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Lisa Padgett	Labor Director (Telephonic)
	Victoria Kamm	Labor Supervisor (Telephonic)
	Jennifer Krainski	Labor (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Anna Maria Stockton	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 were Marcia Philpott (Salt River Project); Jackie Wooldridge and Andrea Randall (Desert Mountain Club, Inc.); Jeff Clive (Maricopa County Sheriff's Office); Robert Smith (Marrs Construction Inc.) and Tammy Somo (Insure Compliance, LLC); and Shanlie Blair (Snell & Wilmer).

Approval of Minutes of August 27, 2020 and August 31, 2020 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the August 27, 2020 regular session meeting 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 Krenzel moved to approve the Minutes of the August 31, 2020 regular session meeting 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.

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. 2CNP19/20-0443 Tactical Masonry & Hardscapes LLC dba Rigid Masonry \$1,000
2. 2CNP19/20-0518 Gorrion Enterprises Inc dba El Gorrion Burrito \$1,000

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

1. American Furniture Warehouse Co. Inc.
2. Chevron U.S.A., Inc.
3. Salt River Project Agricultural Improvement and Power District and The Salt River Valley Water Users' Association (SRP)

Chairman Schultz complimented SRP on their experience modification factor and noted their commitment to keep a safe workplace for all of their employees.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda 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.

Discussion and Action regarding Proposed Youth Employment Penalty.

1. CL-1819-0441 and CL-1920-0502 Discount Tire Co., Inc.

Ms. Padgett summarized the Labor Department's two investigations, which included findings of violation of A.R.S. § 23-231(A)(7) for each investigation. Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$100.00 for each file.

Chairman Schultz noted a correction of the age of the minor as 16 requesting it be changed on the final.

Commissioner Krenznel moved to approve issuance of a Civil Penalty in the amount of \$100.00 for CL-1819-0441 Discount Tire Co., Inc. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve issuance of a Civil Penalty in the amount of \$100.00 for CL-1920-0502 Discount Tire Co., Inc. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

2. CL-1819-0452 KNDRS, LLC DBA Kneader's Bakery and Cafe

Ms. Padgett summarized the Labor Department's investigation, which included findings of violation of A.R.S. § 23-231(A)(10). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$100.00.

Commissioner Krenznel moved to approve issuance of a Civil Penalty in the amount of \$100.00 to KNDRS, LLC dba Kneader's Bakery and Cafe. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

3. CL-1819-0453 SLBC, L.L.C. dba Wetzel Pretzels

Ms. Padgett summarized the Labor Department’s investigation, noting that in the Employer’s response listed the name as SLBC Interprices, L.L.C. dba Wetzel Pretzels as listed on the agenda however the correct name is SLBC, L.L.C. dba Wetzel Pretzels. She summarized the findings of violation of A.R.S. § 23-231(A)(10) for this employer. Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$100.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of \$100.00 to SLBC, L.L.C. dba Wetzel Pretzels. 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.

4. CL-1819-0468 Son of a Nutcracker LLC, DBA The Red Onion

Ms. Padgett summarized the Labor Department’s investigation, which included findings of violation of A.R.S. § 23-231(A)(10). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$100.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of \$100.00 to Son of a Nutcracker LLC, DBA The Red Onion. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

5. CL-1819-0487 Shane 87, LLC DBA Shane's Pizza on 87

Ms. Padgett summarized the Labor Department’s investigation, which included findings of various violations of A.R.S. § 23-233(A)(3) and (A)(4); A.R.S. §23-231(A)(10); and A.R.S. §(A)(8)(b). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$900.00.

Commissioner LeMarr moved to approve issuance of a Civil Penalty in the amount of \$900.00 to Shane 87, LLC DBA Shane's Pizza on 87. 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 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.

Desert Mountain Club, Inc.	Fatality/Accident	
10550 Desert Hills Dr	Years in Business:	9
Scottsdale, AZ 85262	Empl. Covered by Inspection:	6
Site Location:	42429 N Saguaro Forest Dr	
	Scottsdale, AZ 85262	
Inspection No:	R2410 -1471591	
Inspection Date:	04/01/2020	

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. He noted that ADOSH was not recommending a citation.

Chairman Schultz commented that a tragic accident such as this can happen anytime, anywhere.

Ms. Wooldridge thanked the Commission for the opportunity to attend the meeting and noted this is the first time experiencing such an unfortunate and tragic accident, and she appreciates being a part of the process. She thanked Mr. Atencio for his thorough investigation.

Chairman Schultz thanked Ms. Wooldridge for attending and noted the Commission tries to be transparent about what the Commission does and makes sure to involve the employers that we regulate.

The Commission took no action.

J.D. Steel Co., Inc. 2101 W Jackson St <u>Phoenix, AZ 85009</u>	Fatality/Accident Years in Business: 50 Empl. Covered by Inspection: 20
Site Location: 380 N 1 <sup>st</sup> Ave Phoenix, AZ 85034	
Inspection No: Y8817 -1474341	
Inspection Date: 03/17/2020	

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. He noted there will be citations for another employer, that ADOSH was not recommending a citation for J.D. Steel Co., Inc.

Chairman Schultz inquired if there would be other citations issued to the other companies involved in the loading, rigging, and swinging of the load and the general safety on the jobsite. Mr. Atencio noted there will be.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

The Commission took no action.

Mr. Atencio noted the next two items involved the same entity but were different locations and the investigations were similar since it is the same entity and how they are doing things for policies and procedures to make sure employees are protected when it comes to COVID.

Maricopa County Sheriff's Office dba 4 <sup>th</sup> Avenue Jail 550 W Jackson St <u>Phoenix, AZ 85003</u>	Fatality/Accident Years in Business: 149 Empl. Covered by Inspection: 13
Site Location: 201 S 4 <sup>th</sup> Ave Phoenix, AZ 85003	
Inspection No: K6582 -1482576	
Inspection Date: 07/08/2020	

Mr. Atencio summarized ADOSH's investigation and reviewed the file. He noted that ADOSH was not recommending a citation.

Vice Chair Hennelly and Mr. Atencio discussed when masks became mandatory for employees at the Sheriff's Office on the job site. Vice Chair Hennelly asked if ADOSH's review included industry practices and what other entities are doing, since they are relying on the general duty in connection with COVID cases. Mr. Atencio explained that the review included the guidelines issued by Federal OSHA, CDC and Arizona Department of Health Services, and industry practices.

Vice Chair Hennelly and Mr. Atencio discussed if there was any follow-up or tracking on the "hub" that employees are required to review.

Chairman Schultz and Mr. Atencio discussed whether prior inspections included visits to this particular location on 4<sup>th</sup> Avenue and whether the victim's assignment to the guard tower was subsequent to developing symptoms.

Chairman Schultz responded to Vice Chair Hennelly's question about industry practices for similar institutions stating daily temperature testing is used and most facilities use the hub to educate the employees but most of the time there are penalties in place for failure to follow the guidelines established in the hub.

Mr. Clive with Maricopa County Sheriff's Office noted he had no comments and was available for questions.

Vice Chair Hennelly and Mr. Clive discussed how the material was presented on the hub and the tracking systems in place.

The Commission took no action.

Maricopa County Sheriff's Office  
dba Court Security Division  
550 W Jackson St  
Phoenix, AZ 85003

Fatality/Accident  
Years in Business: 149  
Empl. Covered by Inspection: 25

Site Location: 175 W Madison St  
Phoenix, AZ 85003  
Inspection No: K6582 -1484356  
Inspection Date: 07/16/2020

Mr. Atencio summarized ADOSH's investigation and reviewed the file. He noted that ADOSH was not recommending a citation.

Commissioner Krenzel and Mr. Clive discussed the interaction between 4<sup>th</sup> Avenue Jail and the Court Security Division, which is minimal.

The Commission took no action.

Chairman Schultz thanks Mr. Clive for his participation and answering questions.

BIMU Group LLC dba GLH Hotel  
1365 W Grant Rd  
Tucson, AZ 85745

Follow Up  
Years in Business: 1+  
Empl. Covered by Inspection: 10

Site Location: 1365 W Grant Rd  
Tucson, AZ 85745  
Inspection No: R3180 - 1470035  
Inspection Date: 03/17/2020

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 5a –

- a) Hotel: A written exposure control plan had not been established for employees who had occupational exposure to used needles and soiled linen in the rooms they cleaned. 29 CFR 1910.1030(c)(1)(i)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from bloodborne pathogens.

Div. Proposal - \$30,000.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 5b –

- a) Hotel: Employees were not provided sharps containers that were easily accessible when needed. 29 CFR 1910.1030(d)(4)(iii)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from bloodborne pathogens.

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 5d –

- a) Hotel: Employees were not offered a Hepatitis B vaccination as they were exposed to needles and soiled linen in rooms. 29 CFR 1910.1030(f)(1)(i)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from bloodborne pathogens.

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 5e –

- a) Hotel: Employees were not provided with bloodborne pathogens training as they were exposed to needles, soiled linens and other potentially infectious materials. 29 CFR 1910.1030(g)(2)(i)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from bloodborne pathogens.

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 6a –

- a) Hotel: A written hazard communication program had not been developed or implemented for employees who were exposed to Cloralen brand bleach and Netura-Clean RX. 29 CFR 1910.1200(e)(1)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from hazardous chemicals.

Div. Proposal - \$30,000.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 6b –

- a) Hotel: A safety data sheet (SDS) for Monogram Cleaning Disposables Disinfectant Bleach was not retained for employees who used the chemical in the workplace. 29 FR 1910.1200(g)(1)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from hazardous chemicals.

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

FAILURE TO ABATE - SERIOUS – Citation 1 - Item 6c –

- a) Hotel: Employees were not provided with training for chemicals used in the workplace such as Cloralen brand bleach, and Netura-Clean RX. 29 CFR 1910.1200(h)(1)

Pursuant to A.A.C. R20-6-627, within ten (10) calendar days of the abatement date, the employer must submit documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure employees are protected from hazardous chemicals.

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

REPEAT - SERIOUS – Citation 2 - Item 1 –

- a) Hotel Rooms and Laundry Rooms: Employees used Cloralen brand bleach and Purpose HF brand all-purpose cleaner without a suitable facility for the quick drenching of the eyes for immediate emergency use. 29 CFR 1910.151(c)

BIMU Group LLC was previously cited for a violation of this Occupational Safety And Health Standards or its equivalent standard 29 CFR 1910.151(C) which was contained in ADOSH Inspection Number 1423891, Citation 1 Item 2 and was affirmed as final order on January 17, 2020 and abated in August 2019 with respect to the workplace located at 1365 W Grant Rd Tucson, AZ 85745.

Div. Proposal - \$2,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$62,000.00

TOTAL FORMULA AMT. - \$8,000.00





SERIOUS – Citation 2 - Item 1b –

- a) Corner of Cotton Lane and Cactus Road, Surprise, AZ: Two employees were working in a 6 foot deep, 2 foot wide and 15 foot long trench without a copy of the protective system tabulated data present.
- |                 |            |                      |            |
|-----------------|------------|----------------------|------------|
| Div. Proposal - | \$0.00     | Formula Amt. -       | \$1,500.00 |
| TOTAL PENALTY - | \$4,500.00 | TOTAL FORMULA AMT. - | \$4,500.00 |

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

Vice Chair Hennelly and Mr. Atencio discussed that since the abatement photographs were one week after the inspection and the project is completed ADOSH accepted the completion as abatement.

Commissioner Krenzel and Mr. Atencio discussed photograph 7 and whether or not Insure Compliance, LLC was hired for this inspection.

Chairman Schultz and Mr. Atencio discussed that a foreman was on site.

Ms. Somo with Insure Compliance, who are safety consultants, were hired in March to help to assist with their safety program and were on site as a client in response to the ADOSH investigation, but were not hired as a result of this incident. She noted that Marrs takes safety quite seriously but because of a growth spurt they needed help to keep their employees safe. The foreman had extensive excavation and safety awareness training in February, and the 30 hour OSHA training which was finalized the end of May.

Commissioner Krenzel thanked her for the explanation.

Ms. Somo noted the picture was a week later because she was onsite for a job inspection and the compliance office had asked for a picture of the abatement.

Mr. Smith confirmed they brought on Insure Compliance proactively ahead of this citation because of the prior violation.

Vice Chair Hennelly 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.

Discussion and/or Action pursuant to A.R.S. §23-363(B) to Adopt the Minimum Wage for Calendar Year 2021.

Mr. Testini explained that in 2016 the Fair Wages and Healthy Families Act became law setting the minimum wage at \$10.00 per hour on or after January 1, 2017, \$10.50 on or after January 1, 2018, \$11.00 on or after January 1, 2019 and \$12.00 on or after January 1, 2020. Beginning January 2021 the minimum wage increases incrementally based on the increase in the cost of living which is measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) with the amount of the minimum wage increase rounded to the nearest multiple of five cents. He provided a computation of the proposed increase in the Arizona minimum wage to become effective

January 1, 2021. Mr. Testini explained that the Consumer Price Index as of August 2020 was 1.3 percent higher compared to August 2019. He explained that this results in an increase of \$0.0156 per hour and the statute directs the wage increase be rounded to the nearest multiple of five cents which means the rate will increase for 2021 - \$12.15 per hour. In accordance with the requirements of the statute, he stated that the Labor Department recommends the Commission approve the rate of \$12.15 per hour effective January 1, 2021 as the Arizona minimum wage.

Commissioner Krenzel moved to approve the Arizona minimum wage of \$12.15 effective January 1, 2021 for calendar year 2021. 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.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the State recently concluded the Annual Employee Engagement Survey. It is an opportunity for state employees of every agency to answer questions on how they view their employment and level of satisfaction. Specific results are not yet available, but the participation rate for the Industrial Commission was 91% which matched last year and exceeds the state average of 73%.

Chairman Schultz commented that he has the Employee Engagement summary poster from last year because the issues that came out of the positive survey were so important that he tries to implement them in his own work every day.

Mr. Ashley noted it is important and enjoys being able to implement many of the ideas, like, for example, the tuition and training reimbursement program previously.

Mr. Ashley noted a specialty team that was put together, the COVID-19 Response Team to handle complaints, questions and concerns from stakeholders and requests from employers on how to improve their job site, and utilizing the guidelines issued by the CDC, Federal OSHA, and the Arizona Department of Health Services. They receive 200 calls a weeks and have received over 500 complaints and concerns. The team also conducted community outreach to various organizations and associations to help employers and employees. The COVID 19 Response Team is the recipient of the Golden Hard Hat for the month of September.

Mr. Atencio thanked Mr. Ashley and Mr. Porter for recognizing them and the people that helped support them. They are still getting calls, inquiries and people requesting information. He noted about 90% of the companies they are checking with have policies in place by either following CDC or Arizona Department of Health Services guidelines. Arizona is taking the lead when it comes to doing the right thing proactively.

Mr. Ashley noted that it is important to us that when the community in any manner, employer, employee, stakeholder, association, entity of government, turns to us we want to be able to address their concerns and answer their questions as a valuable resource. That is what the team was able to do and will continue, and while the volume is down the work continues.

Chairman Schultz thanked the group for helping change the culture and wants the business community to see the Commission as the go to place for help, eliminating the fear. He noted he is using the material for the return to the workplace program and the information is getting used to help people return to the workplace safely.

Ms. Dimas confirmed Commission meeting dates through November 2020.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr 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 3:04 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary