

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at City of Casa Grande
510 East Florence Boulevard
Casa Grande, Arizona 85222
Thursday, June 28, 2018 – 1:30 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Stacey Rogan	Assistant Chief Legal Counsel
	Jason M. Porter	Chief Legal Counsel (Telephonic)
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Interim Director
	Alex Ceballos	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance were Donna Barrett and D.C. "Rooster" Cogburn with Rooster Cogburn Ostrich Ranch, L.L.C.

Approval of Minutes of May 24, 2018 Regular Meeting Minutes and June 7, 2018 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the May 24, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Approval of the minutes for June 7, 2018 were postponed to the next 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. 2C-17/18-0854 - Royal Shuttle LLC
2. 2CRP17/18-0190 - Beach Ventures, LLC
3. 2C-17/18-0531 - Chief Propane
4. 2CRP17/18-0180 - Craven Construction, LLC dba New Roof AZ
5. 2C-17/18-0606 - IFIXITUSA, LLC, dba Computers & Questions

6. 2C-17/18-0557 - Oak Park Motel & RV Park, Inc.
7. 2C-17/18-0668 - The Great Australian Bakery, LLC
8. 2C-17/18-0656 - Truck Repair Arizona, LLC, dba Dignity Diesel & Fleet

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

1. Empire Southwest, LLC,
2. Viad Corp
3. Learjet, Inc.
4. YRC, Inc. dba YRC Freight

Commissioner LeMarr moved to approve the 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 of Resolution Appointing Custodian of Records.

Mr. Ashley noted that 90% of claims records are now accessed electronically through the Claims Portal. He discussed the approval process for accessing records electronically and noted that additional approval process training is needed to facilitate the process. He recommended that Sklyer Romine and Coco Juniel be appointed as Custodians of Records.

Vice Chair Hennelly moved to appoint Mr. Romine and Ms. Juniel as Custodians of Records and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and/or Action pursuant to A.R.S. § 23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2019.

Ms. Rogan noted A.R.S. § 23-1041(E) requires the Commission to annually adopt a maximum average monthly wage, explained how the maximum average monthly wage is used in the workers' compensation system, and discussed the calculation of the maximum average monthly wage. Ms. Rogan recommended the maximum average monthly wage be set at \$4,741.57 for calendar year 2019.

Chairman Schultz noted the maximum average monthly wage is a formula driven calculation.

Commissioner LeMarr moved to set the maximum average monthly wage at \$4,741.57 for calendar year 2019 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/or action regarding approval of Medical Treatment Preauthorization Form (MRO 1.1) and delegation of authority to Jacqueline Kurth to modify Commission forms related to the functions of the Medical Resource Office and approve form alterations.

Ms. Rogan requested that the Commission approve the Medical Treatment Preauthorization Form and noted that staff was in the process of developing an online version of the form. She also discussed the need for Ms. Kurth to be able to make minor changes to the form, if necessary. She noted that the proposed resolution would not permit Ms. Kurth to deviate from form requirements in statute or administrative rule. Mr. Ashley noted that changes would also be stakeholder driven.

Chairman Schultz noted that the Arizona Medical Association was in support of the changes on behalf of the physician members. He stated that the form should streamline efficiency, get benefits to injured workers quickly, and resolve disputes in a timely manner.

Vice Chair Hennelly moved to approve the Medial Treatment Preauthorization Form and delegate authority to Ms. Kurth to modify Commission forms related to the functions of the Medical Resource Office and approve form alterations. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenznel voted in favor or the motion. The motion passed.

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.

Rooster Cogburn Ostrich Ranch, L.L.C.
17599 East Peak Lane,
Picacho, AZ 85141

Referral
Years in Business: 30
Empl. Covered by inspection: 1

Site Location: 17599 East Peak Lane,
Picacho, AZ 85141
Inspection No: W6968 - 1286919
Inspection Date: 12/29/2017

SERIOUS – Citation 1 - Item 1 –

- a) 17599 E. Peak Lane, Picacho, Arizona: A 48 inch lifted custom built tour vehicle, model and serial numbers unknown, was operated without a seatbelt. A.R.S. 23-403.A
- | | |
|----------------------------|---------------------------------|
| Div. Proposal - \$5,000.00 | Formula Amt. - \$1,000.00 |
| TOTAL PENALTY - \$5,000.00 | TOTAL FORMULA AMT. - \$1,000.00 |

Mr. Atencio discussed ADOSH’s investigation and summarized the citation and proposed penalty.

Commissioner LeMarr and Mr. Atencio discussed the routine inspection of vehicles performed by staff and whether the king pin would have been inspected.

Ms. Barrett described the family business, the background of the business, and the monster bus educational tour. She discussed the lack of seatbelts and noted it is a slow moving vehicle with frequent stops.

Commissioner LeMarr and Ms. Barrett discussed the injuries to the employee and the patrons. She noted everyone was treated and released from the hospital the same day and that there were not life threatening injuries.

Commissioner LeMarr and Ms. Barrett discussed abatement and vehicle modifications to prevent a similar incident from happening in the future. Ms. Barrett discussed safety policies regarding vehicle noises. She noted that, when the incident happened, the company ceased all truck operations. She noted that the incident happened during the heart of the tour season and the company took a

financial hit. She noted the company was in the process of building new trucks at the time of the incident. She described the process for modifying an old school bus into a monster tour truck. She noted improvements in the new trucks being built.

Commissioner LeMarr and Ms. Barrett discussed the location of the damaged vehicle, that it will be used for parts after the investigation is complete, and the second truck is parked in the barn.

Mr. Cogburn described the buses in use, including the military axels. He stated that the incident was caused by metal fatigue. He noted that the people that were hurt fell on top of each other. He stated that the accident was a "freak" incident and stated that the company was not doing anything wrong.

Mr. Atencio noted the company did take the truck out of service and noted the expense for the new buses being built that will have seat belts. He noted the entertainment/education part of the business and the need to get in and out of the seat.

Based on the company's prompt abatement and the cost the company is incurring to deploy safer vehicles, Commissioner Krenznel moved to reduce the proposed penalty by 25%, for a total proposed penalty of \$3,750.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted the importance and success of the Governor's June 11 visit to the Commission and the positive feedback from employees. He thanked all staff for participating.

Mr. Ashley and Mr. Laky discussed OSHA's approval of State Plan Change regarding Senate Bill 1478. Mr. Laky noted that the legislation codified ADOSH's Voluntary Protection Program and reorganized the Occupational Safety and Health Administration Review Board. He noted plans to notify the Legislature of the approval.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced plans to vote on a permanent ADOSH Director at a meeting in the near future.

Ms. Dimas confirmed Commission meeting dates through August 2018. The Commissioners discussed their availability through August 2018.

Mr. Ashley invited the Commissioners to a retirement celebration for Deputy Director Melinda Poppe on June 29, 2018.

Ms. Dimas presented two retirement resolutions: (1) Melinda Poppe, Deputy Director, for 15 years of state service; and (2) Babak Emami, State Occupational Safety Consultant Senior, for 28 years of state service.

Public Comment.

Mr. Atencio commented on the retirement of Mr. Emami after 28 years and discussed Mr. Emami's career with ADOSH. He noted that Mr. Emami wanted to thank the Commissioners and appreciated all of the opportunities. Chairman Schultz noted that a number of employers were highly complementary of Mr. Emami.

Mr. Atencio invited the Commissioners to attend the VPP Recertification for Insulfoam in Phoenix on July 11, 2018.

Mr. Atencio noted the next Safety Summit will be in Prescott at Embry-Riddle on August 15 and 16, 2018.

Mr. Atencio introduced Mr. Ceballos, noting that he recently joined ADOSH in the Tucson office. Mr. Ceballos noted he was glad for the opportunity and the Tucson staff had about 100 years' worth of experience and that the Commission would be a great place to learn.

There was no other 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 2:17 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary