

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, March 19, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Joe Gosiger	Vice Chairman (telephonic)
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Gary Norem	Chief Financial Officer
	Randall Maruca	Director, Labor Department
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mrs. Weeks was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, Jen Jones of Snell & Wilmer, Lisa Fain of Ballard Spahr and Jeremy Bethancourt of LeBlanc Building Co.

Approval of Minutes of March 12, 2009 Meeting

The Commission unanimously approved the Minutes of the March 12, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Requests for Renewal of Self-Insurance Authority

Catholic Healthcare West – Gary Norem presented staff's renewal report along with a Dunn and Bradstreet credit report rating. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability, large size with assets of just under \$10.9 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Costco Wholesale Corporation – Gary Norem presented staff's renewal report along with a Dunn and Bradstreet credit report rating and ratings from Fitch and Moody's. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's continued profitability and growing size with total worldwide assets now standing at \$20.7 billion, a clean audit report and an acceptable credit ratings and credit scores. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Lujano.

Valley Schools Workers' Compensation Pool – Gary Norem presented staff's renewal report along with a Dunn and Bradstreet credit report rating. The higher than average experience modification rate was discussed. Mr. Norem advised that the Pool states that all of the districts encourage their employees to go to the clinic for minor bumps and bruises, thus increasing their

claims. The Pool has put a nurse line program in place to alleviate this problem. Administration is recommending renewal of workers' compensation self-insurance authority based on the Pool's ability to maintain reserves at the 90 percent confidence level, the financial and legal protections afforded the Pool and its three members, clean audit reports rendered by the Arizona Department of Insurance and the Pool's independent auditor and an acceptable credit rating. Ms. McGrory questioned the DOI audit performed in 2004 and asked if there was any more current audit information regarding litigation. Mr. Norem responded that he believed there was also an independent audit done and that he would check and let the Commission know. The Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1355	ARIZONA ROADRUNNER SHUTTLE, LLC
2C08/09-1171	KEVIN NICKELL & DEBBIE NICKELL HUSBAND & WIFE DBA KIDSVILLE
2C08/09-1334	LUCKY SIGNS, INC.
2C08/09-1163	OLD SCHOOL RECYCLING, LLC
2C08/09-0475	VICKIE FRAZIER & RAY LUJAN HUSBAND & WIFE DBA FUN N JUMP, INC. AKA FUN N JUMP MOONWALK AKA THE BOUNCE ARENA, LLC AKA EXTREME ROCKWALLS AKA MS. MARGARITAS AZ., INC.

Andrew Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that a civil penalty of \$5,000.00 be assessed against employer #1355 since this is their second civil penalty. Mr. Wade further recommended that penalties of \$1,000.00 be assessed against employers #1171, 1334, 1163 and 0475. The Commission unanimously approved assessing a civil penalty of \$5,000.00 against employer #1355 and civil penalties of \$1,000.00 against employers #1171, 1334, 1163 and 0475 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Youth Employment Penalty

CL 0809-0046 Valentyn T. Yemez, dba Florencia The Pizza Bistro – Randy Maruca advised that this involved a 15 year old youth who was injured when he cut his hand on broken glass while washing dishes. The Labor Department's investigation confirmed an hours violation in that the youth worked beyond 9:30 p.m. and in excess of three hours on school days. The Commission unanimously assessed the recommended penalty of \$200.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of ADOSH Advisory Board Candidate

Diane M. Robinson – Darin Perkins advised that the Board is in need of an additional representative. He recommended that the Commission appoint Ms. Robinson to the ADOSH Advisory Board and provided a copy of her resume. The Commission agreed that Ms. Robinson

was well qualified with an impressive resume and unanimously appointed her to the Board on motion of Mr. McCarthy, second of Mr. Lujano. Chairman Delfs asked that Mr. Perkins pass on to Ms. Robinson the Commission's appreciation that she was willing to serve on the Board.

Discussion & Action of Proposed OSHA Citations and Penalties

Progressive Services Inc. dba Progressive Roofing
23 N. 35th Avenue
Phoenix, AZ 85009

Fatality
Yrs/Business – 31
Empl. Cov. by Insp. – 8

Site Location: 16750 W. Garfield St., Goodyear, AZ 85338

Inspection #: S2603/312623762

Insp. Date: 09/25/08

SERIOUS – Citation 1, item 1 – The employer did not install and provide all fall protection systems required before employees began work.

(17 inspections in the past three years with 4 nonserious violations).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – One 31" x 31" roof hole lacked a secured hole cover to prevent accidental displacement by wind, equipment or employees.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 3 – The employer did not ensure that one 3/8" 4' x 8' sheet of particle board used to cover a 31" x 31" roof hole was marked or identified as a hole cover.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$21,000.00

TOTAL FORMULA AMT - \$21,000.00

Darin Perkins summarized the citations and proposed penalty as listed. He advised that the first three case files are related and involve the same incident. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$21,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Chasse Building Team, Inc.
1733 E. McKellips Road, Suite 112
Tempe, AZ 85281

Unprogram Related
Yrs/Business – 1
Empl. Cov. by Insp. – 2

Site Location: 16750 W. Garfield Street, Goodyear, AZ 85338

Inspection #: S2603/312672033

Insp. Date: 09/25/08

WILLFUL SERIOUS – Citation 1, item 1 – One 31" x 31" roof hole lacked a secured hole cover to prevent accidental displacement by wind, equipment or employees.

(No inspection history in the past three years).

Div. Proposal - \$70,000.00

Formula Amt. - \$70,000.00

SERIOUS – Citation 2, item 1 – The employer did not ensure that one 3/8" 4' x 8' sheet of particle board used to cover a 31" x 31" hole was marked or identified as a hole cover.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$77,000.00

TOTAL FORMULA AMT - \$77,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$77,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Steel Placement, LLC
3114 W. Thomas Road
Phoenix, AZ 85017

Unprogram Related
Yrs/Business – 2
Empl. Cov. by Insp. – 4

Site Location: 16750 W. Garfield Street, Goodyear, AZ 85338
Inspection #: S2603/312881097
Insp. Date: 09/25/08

SERIOUS – Citation 1, item 1 – One 31" x 31" roof hole lacked a secured hole cover to prevent accidental displacement by wind, equipment or employees.
(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 2, item 1 – The employer did not ensure that one 3/8" 4' x 8' sheet of particle board used to cover a 31" x 31" hole was marked or identified as a hole cover.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$14,000.00

TOTAL FORMULA AMT - \$14,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Lab Express, Inc.
505 W. McDowell Road, Bldg A
Phoenix, AZ 85003

Complaint
Yrs/Business – 6
Empl. Cov. by Insp. – 8

Site Location: 505 W. McDowell Road, Bldg A, Phoenix, AZ 85003
Inspection #: A7746/313048902
Insp. Date: 01/30/09

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, item 1a – The employer failed to develop and implement a written Exposure Control Plan designed to eliminate or minimize employee exposure to bloodborne pathogens or other potentially infectious material.

Citation 1, item 1b - The employer did not ensure universal precaution procedures were used by employees to prevent contact with blood and other potentially infectious materials.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – The employer did not ensure an eyewash station was immediately available for employees to flush mucous membranes potentially exposed to blood

or other potentially infectious materials.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – The employer failed to provide bloodborne pathogen training and information to employees exposed to blood and other potentially infectious materials.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Operations of the Industrial Commission

Laura McGrory advised that the Governor's Office intends to release the agency impact analyses that address additional budget cuts of 20% over what has already been implemented. She described the purpose of the impact analysis. In response to a question from Mr. Lujano regarding reducing employment, she advised that with regard to the FY09 budget cuts passed in the January 2009 Special Session, the Legislature left it up to each agency to determine how to implement the additional budget cuts. She then described how the Commission has handled the budget cuts. Chairman Delfs stated that Director McGrory and Division heads have done an outstanding job in identifying areas to cut the budget without effecting employment.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, March 26th.

Discussion &/or Action regarding Legislation. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Contemplated Litigation or Settlement Discussions in order to avoid Litigation arising out of Bills passed in the Forty-Ninth Legislature, First Special Session (2009). 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

The Commission unanimously voted to move into Executive Session on motion of Mr. Delfs, second of Mr. McCarthy. Executive Session Minutes are kept separately.

Upon return to General Session, Scot Butler provided an updated legislative report of bills of interest to the agency, noting that the only bill to receive any floor action was HB 2146, which passed the Committee of the Whole. Mr. Butler described amendments that have been proposed and the status of HB's 2056, 2087, 2198 and 2422. Regarding the budget, both the House and Senate continue to work on the FY 2009 and FY 2010 budgets. The Appropriations Committees have completed their review of the state agencies. The Commission was placed on their consent agendas during this process.

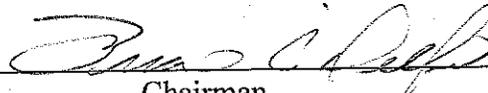
Mr. Butler described Governor Brewer's proposal for 2010. There continues to be a wide range of unknown options including budget cuts and fund sweeps. The initial set of budget

proposals from the Appropriations Chairs should be coming out in the next couple of weeks.

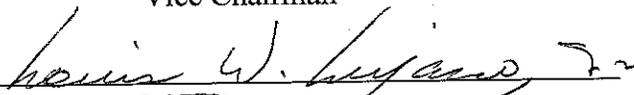
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:15 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

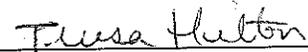
By 
Chairman

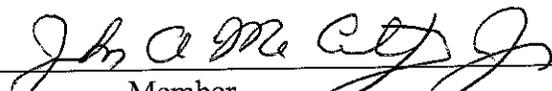
By _____
Vice Chairman

By 
Member

ATTEST:

By _____
Member


Commission Secretary

By 
Member