

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, January 28, 2010 – 1:00 p.m.

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| Present: | Brian Delfs | Chairman |
| | Marcia Weeks | Vice Chairman |
| | Louis W. Lujano, Sr. | Member (telephonic) |
| | John A. McCarthy, Jr. | Member |
| | David Parker | Member (video conference) |
| | Laura McGrory | Director |
| | Andrew Wade | Chief Legal Counsel |
| | Darin Perkins | Director, ADOSH |
| | Noreen Thorsen | Claims Manager |
| | Renee Pastor | Self Insurance Administrator |
| | Gary Norem | Chief Financial Officer |
| | Glenn Hurd | Asst. Chief Financial Officer |
| | Teresa Hilton | Commission Secretary |

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Scot Butler, the agency's lobbyist, Teresa Yi of Snell & Wilmer, Milli Lee of AZ ASSE and Jeremy Bethancourt.

Approval of Minutes of January 13, 2010 Meeting

The Commission unanimously approved the Minutes of January 13, 2010 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of ADOSH Discrimination Complaint

#09-67 Steven Magee v Solon Corporation - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Magee. In his complaint, Mr. Magee alleged that he was terminated for bringing a safety complaint to the attention of his employer. The employer stated that they terminated Mr. Magee's employment for abandonment of his job when he did not show up for work for over a week.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. Mrs. Weeks stated that there did not appear to be a connection between the safety issue and the termination. The Commission unanimously voted not to pursue the complaint on motion of Mrs. Weeks, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Riggs & Ellsworth Electric Inc.
529 S. Lebaron
Mesa, AZ 85210

Planned
Yrs/Business – 12
Empl. Cov. by Insp. – 2

Site Location: 1037 S. Country Club Drive, Mesa, AZ 85210
Inspection #: A7746/314074782
Insp. Date: 12/21/09

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

Citation 1, item 1a – The work platform of the mobile scaffold was not fully decked (1926.451(b)(1)(i)).

Citation 1, item 1b - The mobile frame scaffold was not inspected by a competent person before being utilized by the employees (1926.451(f)(3))

Citation 1, item 1c - The mobile frame scaffold was lacking horizontal and diagonal bracing which would prevent racking or collapse of the mobile scaffold (1926.452(w)(1)).

Citation 1, item 1d - The wheel stems for the mobile scaffold were not pinned or otherwise secured into the scaffold legs (1926.452(w)(9)).
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The mobile scaffold was lacking a guardrail system around the work platform (1926.451(g)(4)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Employees performing work on a scaffold had not been provided training to recognize the hazards of working on a scaffold and how to minimize those hazards (1926.454(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

A.F. Lorts Company, Inc.
15836 W. Eddie Albert Way
Goodyear, AZ 85338

Planned
Yrs/Business – 44
Empl. Cov. by Insp. – 115

Site Location: 15836 W. Eddie Albert Way, Goodyear, AZ 85338
Inspection #: U9805/314074758
Insp. Date: 12/10/09

SERIOUS – Citation 1, item 1 – A radial arm saw was lacking a bottom protective guard

(1910.213(h)(1).

(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,375.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Donald Greathouse dba Mardon Nametag Company
2026 S. Craycroft Road
Tucson, AZ 85711

Complaint
Yrs/Business - 30
Empl. Cov. by Insp. - 20

Site Location: 2026 S. Craycroft Road, Tucson, AZ 85711

Inspection #: P0775/313990459

Insp. Date: 11/18/09

SERIOUS - Citation 1, item 1 - The employer had nine embroidery machines that did not have the vertical drive belts fully enclosed (1910.219(e)(3)(i).

(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 2 - A circuit breaker box was lacking the panel board cover (dead front), exposing live electrical parts (1910.305(d).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. McCarthy, second of Mr. Parker.

Discussion &/or Action regarding Legislation

Scot Butler presented a legislative report and summarized proposed bills that may be of interest to the Commission including HB 2228, 2256, 2280, 2316, 2318, 2460, 2465, 2532, 2594, HC 2021 and 2032, and SB 1070 and 1214 and responded to questions from the Commission.

With regard to HB 2228, Mr. Butler described some of the background behind this bill that would allow the Commission to authorize third party elevator inspectors to perform inspections that are required by statute. Mr. Butler and Ms. McGrory described the present elevator program and they explained the proposed changes to the elevator statutes and responded to questions from the Commissioners. The Commission discussed the provisions in the bill that would allow for suspension or revocation of authorization and the assessment of civil penalties. As the bill is written, the Commission is authorized to take these actions but the Commission could delegate these functions to the Division at a later time.

With regard to HB 2594, Mr. Butler and Ms. McGrory explained that the bill appears identical to legislation introduced and opposed by the agency last year. Mr. Butler explained the bill and stated that unless otherwise directed by the Commission, he will communicate that the Commission remains opposed to the bill.

Discussion & Action of Request for Lump Sum Commutation

Donald LaDaga #20062-970077 - Noreen Thorsen presented this lump sum petition. She advised that Mr. LaDaga requested a lump sum commutation of his unscheduled award of \$1,600.08 per month (present value \$353,969.70) in order to purchase a house and pay off existing debt. This would leave him debt free outside of every day living expenses. He also wants to move to Atlanta, Georgia where his family resides. After subtracting advanced amounts of \$3,200.16 from the present value of the commutation, Mr. LaDaga would receive \$146,799.84 if the lump sum request is approved. Mr. LaDaga is unemployed. His wife is currently receiving unemployment benefits of \$450.00 weekly.

Although the insurance carrier has agreed to the lump sum commutation, they have expressed concerns regarding the ability of Mr. LaDaga to manage his financial affairs due to neuropsychological impairment. Ms. Thorsen advised that her recommendation is for denial. She agreed it would be beneficial to Mr. LaDaga to move to Georgia where he has family support and to purchase a home. She also understands their difficulty in meeting their day to day living expenses with the income they currently have. However, she is concerned as to whether or not Mr. LaDaga truly comprehends that if the lump sum were approved he would sacrifice over \$200,000 in benefits. She is also concerned that if the lump sum is approved and the monthly benefit of \$1,600 ends, they will not have sufficient monthly income to meet their expenses.

Following discussion, Mrs. Weeks suggested that the request be denied and Mr. LaDaga be advised to come back in six months after his wife has pursued obtaining employment and he has appealed the social security disability denial. Mr. Lujano made a motion to deny the lump sum request and suggested that Mr. LaDaga could appeal the decision and appear before the Commission to demonstrate how he will exist without the monthly entitlement which was seconded by Mr. Parker. In response to a question from Mr. Delfs regarding the advance, Ms. Thorsen explained that the carrier gets credit for any amounts advanced on the award and that amount would be deducted from the \$150,000.00 if the lump sum were approved. Mrs. Weeks questioned whether Mr. LaDaga could request another advance from the carrier in order to move to Georgia. Mr. Parker agreed that Mr. LaDaga could request another advance, make the move and reapply for the lump sum after his wife has obtained employment. Following further discussion, the Commission unanimously voted to deny the lump sum request.

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

The City of Glendale - Renee Pastor presented staff's renewal report along with current Moody's general obligation bonds, revenue bonds and certificate of participation ratings; rating from Standard and Poor's for bonded debt and revenue bonds; and Dunn and Bradstreet credit report. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the City's financial stability, the receipt of a clean audit report, good bond ratings and acceptable credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. McCarthy, second of Mr. Parker.

Maricopa County - Renee Pastor presented staff's renewal report along with current Moody's general obligation bonds, revenue bonds and certificate of participation ratings; and Dunn and Bradstreet credit report. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the County's financial strength, the financial protections afforded it as a governmental entity, and the receipt of a clean audit report. Following discussion, the

Commission unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Mr. McCarthy.

Valley Schools Workers' Compensation Pool - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report. She responded to questions from the Commissioners regarding the ownership and status of the Pool. She stated that she believed the Pool was privately owned and that there was a trust involved. Mr. McGrory stated that staff would obtain additional information regarding the ownership status and the intergovernmental agreement and supply that information to the Commission. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Pool's ability to maintain reserves at the 90% confidence level, the financial and legal protections afforded the Pool and its three members; total assets of just over \$16.5 million, a clean audit report, and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

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| 2C09/10-1146 | Cultous Transportation Inc. |
| 2C09/10-0753 | DLine, L.L.C. dba Fahrenheit Tanning, LLC |
| 2C09/10-0487 | Frank C. Wood, et al dba Wood Family Joint Venture |
| 2C09/10-0605 | Just Like Home, LLC |
| 2C09/10-0492 | Rodica Delicia Lonca, dba Agave Assisted Living Home II |
| 2C09/10-0552 | Too Kool, LLC dba Warren's Jazz Bistro |

Mr. Wade advised that a compliance investigation confirmed that the above listed employers 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), civil penalties have been recommended. Mr. Wade stated that a civil penalty of \$5,000.00 is recommended against employer #1146 since this is their second civil penalty and he summarized the history of this employers' noncompliance. Mr. Wade stated that employer #0753 has obtained coverage and that he recommended a reduced penalty but it was up to the Commission to determine whether to assess a reduced penalty of \$500.00. Mr. Delfs stated that this employer had a no insurance claim and that he would be opposed to reducing the penalty. Mrs. Weeks agreed. With regard to employer #0487, Mr. Wade stated that he would ask that this proposed penalty be removed from consideration to allow further investigation regarding ownership of the business. Mr. Wade further recommended that civil penalties of \$1,000.00 be assessed against employers #0605, 0492 and 0552.

Mr. Parker noted that we are seeing a lot of civil penalties against adult care homes. Mr. Wade acknowledged that there have been a large amount of adult care facilities without insurance and he described an emphasis program recently initiated by the Legal Division. From a list of 3,000 licenses for care facilities, an initial survey has indicated that 90% of the licensees did not have coverage. The Compliance Section has started sending inquiry letters and staff will perform follow-up investigations as needed. The Commission approved civil penalties of \$5,000.00 against employer #1146, \$500.00 against employer #0753 and \$1,000.00 against employers #0605, 0492 and 0552 on motion of Mr. Lujano, second of Mr. Parker. Mr. Delfs and Mr. McCarthy voted nay.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory advised that the U.S. Department of Labor, Occupational Safety and Health Administration (Federal OSHA) is currently conducting an audit of Arizona's OSHA

program. She expects Federal OSHA to issue a written report of their findings. She and Mr. Perkins responded to questions from the Commissioners regarding the audit procedure.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. 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 Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Mr. Wade stated that there was nothing new to report.

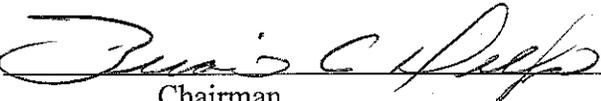
Announcements and Scheduling of Future Meetings

It was discussed that meetings are scheduled for February 4, 18 and 25.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:45 p.m.

APPROVED:

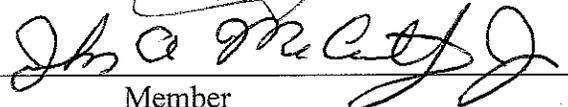
THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Chairman

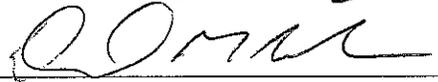
By _____
Vice Chairman

By 
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member