

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, July 3, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Bernadette Burick	Legal Counsel
	William Warren	Director, ADOSH
	J.R. Imes	Compliance Officer, ADOSH
	Renee Pastor	Manager, Self Insurance
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Also in attendance were Stephanie Coulter of Cavanagh Law Firm; Jeff Homer of General Dynamics; Rock Lagoon of Roofing SW; and Andrea Lewis of Snell and Wilmer.

Following the call to order, Chairman Parker requested a moment of silence in remembrance of the 19 firefighters who gave their lives battling the Yarnell Hill Fire.

Approval of Minutes of June 19, 2013 Meeting

The Commission unanimously approved the Minutes of the June 19, 2013 meeting on motion of Mr. Sanders, second of Mr. McCarthy.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C11/12-1244 SGCO LLC, dba SG & Company
2. 2C12/13-1767 Ciao Baby Catering LLC dba Zulu Café
3. 2C12/13-0277 Price & Associates LLC

Chairman Parker stated that agenda item a (3) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion of Mr. McCarthy, second of Ms. Oster. Andrew Wade advised that with regard to item a (3) Price & Associates LLC, the employer has obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a (3) on motion of Ms. Strickler, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Chairman Parker stated that there is nothing new to report and that Scot Butler, the agency's lobbyist, will be at the next meeting for a legislative update.

Discussion & Action regarding ADOSH Discrimination Complaints

#12-67 Kais Alnuaymi vs. Mijana Entertainment Group, LLC dba Mijana Restaurant - Mr. Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Warren responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster. Mr. Sanders noted that the narrative and interviews were very well written.

#13-2603-02 Pedro Espinoza vs. F & S Management VI, LLC dba Francis and Son's Car Wash - -- Mr. Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Warren responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler. Mr. Sanders expressed his compliments for the good job Mr. Rucker had done on the investigation summary.

#13-3633-08 Randall Rivera vs. StrongGo Industries LLC - Mr. Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Warren responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Crackalackin LLC - Bill Warren advised that this involved a fatality due to electric shock in which the deceased victim was found on the premises. Inspection findings indicate that the deceased was a person familiar to both tenants and employees working in the building. The victim may have been a homeless person and performed odd jobs for a multitude of people in the building, including sweeping, cleaning out trash cans, sorting metal, and whatever odd jobs he could do. No violations were noted and no citations were recommended.

Roof USA Service Center (Arizona) LLC - Mr. Warren advised that this involved a fatality in which the employee was descending a fixed ladder carrying two-five gallon empty plastic buckets in his right hand. His left hand was gripping the left hand rail on the ladder. The employee momentarily lost his grip with the left handrail and when trying to re-establish his grip he lost his balance falling approximately fifteen (15) feet to the floor sustaining fatal injuries. The Commission reviewed photographs of the scene. Mr. Warren responded to questions

Sprayfoam Southwest, Inc.
2401 E. Magnolia
Phoenix, AZ 85034

Planned
Yrs/Business - 42
Empl. Cov. by Insp. - 6

Site Location: 4445 S. 12th St., Phoenix, AZ 85040
Inspection #: F3189-17023430
Insp. Date: 03/14/2013

SERIOUS - Citation 1 - Item 1 - Three employees were not protected from falling through a 48" x 48" skylight, approximately fourteen feet (14') to the concrete floor below, by a guardrail system, by use of a personal fall arrest system, or by a cover secured over the skylight. (1926.501(b)(4)(i)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS - Citation 1 - Item 2 - Two employees were working beyond the warning line system on the roof of a building under construction where they were exposed to a fall of approximately 14' - 6". (1926.501(b)(10)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren advised that this file had been presented to the Commission previously at which time the Commission requested additional information. He advised that J.R. Imes had contacted manufacturers of different types of skylights regarding ratings and strength of the skylights and stated that although some skylights meet the general industry standards, none meet construction standards. Mr. Warren described how an employer could comply with the construction standards. The Commission further discussed the issue.

Rock Lagoon, Safety Officer for Sprayfoam Southwest, advised that the specifications from the general contractor read that the skylights were in accordance with OSHA standards and provided for 200 pounds. Mr. Lagoon stated that the general contractor did not provide a change order or any updated information on the skylights. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,000.00 on motion of Mr. McCarthy, second of Ms. Oster. The motion included authorizing Mr. Warren latitude in informal conference.

Superstition Feed, LLC
666 N. Idaho Road
Apache Junction, AZ 85119

Complaint
Yrs/Business - 30
Empl. Cov. by Insp. - 11

Site Location: 666 N. Idaho Road, Apache Junction, AZ 85119
Inspection #: H1793-317038065
Insp. Date: 03/18/2013

SERIOUS - Citation 1 - Item 1 - A semi-trailer was parked at the loading docks with an opening between the trailer floor and loading dock large enough into which a person could step. The gap between the parked semi-trailer and loading dock was six inches. (1910.23(a)(8)(ii)). There were three other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – The side door of a semi-trailer 54 inches above the ground was not guarded or provided with stairs thereby exposing employees to a fall. (1910.23(c)(1)). There was one other instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Storage of material created an unbalanced load resulting in the trailer tipping forward when loaded. (1910.176(b)). There was one other instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 - Forklift operators were not provided training and workplace evaluations were not conducted. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 –

(a) Toyota powered industrial truck (Model 7FGU25, Serial Number 80687) had an inoperative factory installed backup alarm. (1910.178(p)(1)). There was one other instance of this violation.

(b) A Toyota powered industrial truck (Model 7FGU25, Serial Number 80687) had not been inspected daily prior to being placed in service. (1910.178(q)(7)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commissions discussed how Item 2 related to a general industry standard and Ms. McGrory asked whether there are agricultural standards that would apply. Mr. Warren commented on the circumstances. Following discussion, Mr. Parker made a motion to delete Citation 1, Item 1 for a total penalty of \$3,000.00 which was seconded by Mr. McCarthy. Mr. Wade suggested that the citation could be issued as a nonserious with no penalty to be certain the hazard is abated. Mr. Parker amended his motion to make Citation 1, Item 1 a nonserious citation with no penalty. Mr. McCarthy agreed to the amendment for his second and the motion was unanimously approved.

Chairman Parker called for a short break at 2:55 p.m. The meeting resumed at 3:05 p.m.

Discussion & Action of Application for Renewal of Self-Insurance Authority.

ABF Freight System, Inc. – Ms. Pastor presented staff's renewal report along with a current Experian credit report and responded to questions from the Commission. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the company's financial soundness; a clean audit report and good credit ratings. Following discussion, the Commission unanimously granted renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Manpower Group, Inc. – Ms. Pastor presented staff's renewal report along with current bond ratings from Moody's, Standard and Poor's, and a current Experian credit report. Ms.

Pastor stated that staff is recommending continuance of workers' compensation self-insurance authority based on the company's financial stability, large size with total assets of almost \$7.01 billion; acceptable credit ratings and a clean audit report. The Commissioners expressed concern over the high incident and claims denial rates. Ms. McGrory suggested that staff could solicit additional information. Following further discussion, the Commission unanimously approved continuance of authorization to self-insure on motion of Mr. McCarthy, second of Mr. Sanders.

Phoenix Newspapers, Inc. – Ms. Pastor presented staff's renewal report along with a current bond rating from Moody's and a current Experian credit report. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the parent company's excellent financial record, total worldwide assets of just under \$6.4 billion; acceptable credit ratings and a clean audit report. The Commission discussed whether to increase the letter of credit and agreed they were comfortable staying at 125%. The Commission unanimously approved renewal of authorization to self-insure on motion of Ms. Strickler, second of Ms. Oster.

Safeway, Inc. – Mr. McCarthy recused himself from this agenda item. Ms. Pastor presented staff's renewal report along with current bond ratings from Fitch, Standard & Poor's, and Moody's, along with a current Experian credit report. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability, large size with total assets of just under \$14.6 billion; a clean audit report and good credit ratings. Following discussion, the Commission granted renewal of authorization to self-insure on motion of Mr. Sanders, second of Ms. Strickler. Mr. McCarthy did not participate in the discussion or the vote.

Announcements

Ms. McGrory asked if the Commission could move to the agenda item for Announcements as she had another meeting to attend in a few minutes and may have to leave before the Commission meeting ends. Mr. Parker stated the Commission would move to Announcements. Ms. McGrory stated that ADOSH staff has responded to the Yarnell Hill Fire accident and will be participating in the investigation. Mr. Parker stated the Commission would return to the Self-Insurance item.

The Salvation Army, Western Territory and Affiliates – Ms. Pastor presented staff's renewal report along with a current Experian credit report and stated that this company has not come before the Commission since 2008. Mr. Parker explained the delay administratively. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the company's stability, their high liquidity and debt status ratios demonstrating ability to honor debts as they become due; a clean audit report, and acceptable credit ratings. Following discussion, the Commission unanimously approved continuance of authorization to self-insure on motion of Mr. McCarthy, second of Mr. Sanders.

Wal-Mart Associates, Inc. – Mr. McCarthy recused himself from this agenda item. Ms. Pastor presented staff's renewal report along with current Fitch, Moody's and Standard and Poor's bond ratings and a current Experian credit report. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability and profitability, with total assets of just over \$203.1 billion; a clean audit report and acceptable credit ratings. The Company has been working with OSHA in

an effort to improve its safety program and reduce its experience ratings. Following discussion, the Commission approved continuance of authorization to self-insure on motion of Mr. Sanders, second of Ms. Oster. Mr. McCarthy did not participate in the discussion or the vote.

Discussion &/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 2014

Andrew Wade gave a brief historical background of the Commission's ministerial duty to adopt a maximum average monthly wage that will be used in setting the average monthly wage in workers' compensation claims. He advised that the Governor's Regulatory Review Council (GRRC) is scheduled to consider the Commission's rulemaking package at the GRRC meeting scheduled for July 9, 2013. Staff is recommending the Commission adjust the average monthly wage, as directed by statute, to reflect the annual percentage increase in the Arizona mean wage of 1.7% which results in an average monthly wage of \$4,256.94 for calendar year 2014. Mr. Wade explained the recommendation for the index in the proposed rule. The Commission unanimously adopted the staff recommendation and set the maximum average monthly wage at \$4,256.94 for calendar year 2014 on motion of Mr. McCarthy, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings

Mr. Wade stated that the Court of Appeals has issued an order to the State to file a response to the motions for reconsideration in the Special Fund v. Brewer matter and the Commissions discussed the process.

Chairman Parker thanked John McCarthy for his years of service and stated that Mr. McCarthy has agreed to remain available if he is needed for a quorum. Mr. McCarthy stated that it had been an honor and a privilege to serve on the Commission.

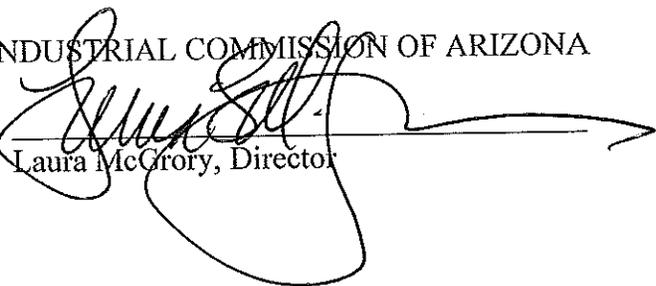
Ms. McGrory stated that Claims Manager Melinda Poppe has talked with the workers' compensation claims adjuster handling the Yarnell Hill fire fatalities to let them know that the Commission is available to provide assistance as needed.

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, July 10, 2013. Chairman Parker changed the tentatively scheduled meeting on October 9th to October 10th.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 4:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura McGrory, Director

ATTEST:


Teresa Hilton, Commission Secretary