

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, February 4, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Joe Gosiger	Vice Chairman
	Louis W. Lujano, Sr.	Member
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Acting Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Gary Norem	Chief Accountant
	Glenn Hurd	Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:03 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, John Soza of CST Risk Management, Jenypher Jones of Snell & Wilmer and Jeff Homer of General Dynamics.

Approval of Minutes of January 29, 2009 Meeting

The Commission unanimously approved the Minutes of the January 29, 2009 meeting on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1091	CHIRCO GRANITE FABRICATION, INC.
2C08/09-0963	KBH TRUCKING, L.L.C.
2C08/09-0083	PACIFICA ROADWAYS, LLC
2C08/09-0960	RICHARD HOPKINS & CAROL HOPKINS, HUSBAND & WIFE DBA BROWN BAG BURGER
2C08/09-0965	ROBERT ARAVE & PATRICIA ARAVE, HUSBAND & WIFE, DBA ROBERT'S COMPLETE AUTOMOTIVE
2C08/09-1094	THE JUNK GUYS JUNK REMOVAL SERVICE, LLC

Andrew 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), Mr. Wade recommended that a civil penalty of \$1,000.00 be assessed against employers #1091, 0963, 0083, 0960 and 0965. With regard to employer #1094, Mr. Wade recommended a penalty of \$500.00 be assessed since they obtained workers' compensation insurance coverage effective January 29, 2009. Following discussion, the Commission unanimously approved assessing a civil penalty of \$1,000.00 against employers #1091, 0963, 0083, 0960, 0965 and a civil penalty of \$500.00 against employer #1094 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of the first special session concerning the state budget for FY09. The state is expecting \$500 million in federal funds and has made cuts, primarily in education. He described the two bills that impact the Commission.

Mr. Butler provided the Commissioners with an updated legislative report of bills that would affect the agency. He stated that the Senate is continuing to work on the budget and have no bills assigned or committee hearings scheduled. Mr. Butler explained the amendments made to HB 2057 in the Banking & Insurance Committee on Monday. HB 2146 also came out of the Banking & Insurance Committee and is a Department of Insurance issue. All other Banking & Insurance bills were held until next Monday. Staff is continuing to have discussions on HB 2198 and is opposed to the bill as it is written. He stated that HB 2200, regarding off-label controlled substances, still needs some work to resolve the issues. SB 1262, the medical fee dispute bill, has been reworked. SB 1266 would eliminate drug and alcohol testing and appears to be a vehicle bill. SB 1298 is a clean up bill regarding minimum wage. SB 1334 would make illegal workers ineligible for workers' compensation benefits. SCR 1042 would alter the current workers' compensation system and give an injured worker two years from DOI to sue the employer. The only bills currently scheduled for hearing are 2198, 2199 and 2200.

Mrs. Weeks questioned the status of lawsuits regarding fund sweeps. Mr. Butler described his understanding of the status, stating that he believes that notices of claims have been filed. Mr. Butler also discussed the House Leadership and Governor's Committee chairmanships.

Discussion & Action of ADOSH Discrimination Complaints

#08-65 Frances Li v. Phoenix Job Corps Center - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Li. In her complaint, Ms. Li alleged that she was terminated as the result of making complaints to management in regards to unsafe kilns. The employer's response was that Ms. Li was not terminated for making complaints about unsafe kilns but was discharged from her employment for violations of company and DOL policies arising from an unauthorized field trip.

Mr. Perkins stated that there was no indication that Ms. Li was terminated as a result of her complaint regarding the kilns. The kilns were taken out of service when found to be damaged and there were not funds in the budget for repairs and the kilns were eventually removed from the premises. Ms. Li was terminated months later immediately following the investigation of an incident involving an unplanned, unscheduled field trip with the trainees. Following discussion of whether Ms. Li was terminated for the participation in protected activity, the Commission voted not to pursue the complaint based on the eight month lapse in time between bringing up concerns and termination on motion of Mrs. Weeks, second of Mr. Gosiger. Mr. Lujano voted nay.

#08-66 Dariusz Wysocki v. Ruan Transport Corporation - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Wysocki. In his complaint, Mr. Wysocki alleged that he was terminated for refusing to perform his work in an unsafe and unsanitary environment, specifically for refusing to work in the rain during a thunderstorm. The employer responded that Mr. Wysocki had a history of performance problems during his short employment and was ultimately terminated as a result of his refusal to work. Mr. Wysocki simply did not want to work in the rain and did not express any concerns

Discussion &/or Action regarding Operations of the Industrial Commission

Laura McGrory advised that the hiring freeze is continuing to impact the agency and that although the Commission has not obtained approval from ADOA to fill mission critical positions, the agency continues to meet its performance measures. She advised that the Commissioners may receive complaints regarding the phone system since some of the positions not filled are switchboard operators. She stated there are also statewide phone system problems, with Monday being the worst due to the heavy volume of calls. She stated that ADOA had taken steps to resolve that issue.

Mr. Gosiger advised that, on a positive note, he attended a meeting recently at which the Director of Labor, Randy Maruca, was specifically named for being cooperative and helpful. Ms. McGrory stated that it is a challenge to maintain customer satisfaction in face of the agency cuts and being short staffed, but that agency staff are doing the best that they can.

Ms. Hilton asked whether the Commission wanted to discuss scheduling one of the meetings in February for Tucson. It was agreed that this would be discussed at next week's meeting.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, February 12th.

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 go into Executive Session at 2:05 p.m. on motion of Mr. Delfs, second of Mr. Lujano. Executive Session Minutes are kept separately.

The Commission unanimously voted to return to General Session at 2:40 p.m.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:42 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *James C. Delfs*
Chairman

By *James C. Gruyer*
Vice Chairman

By *Thomas W. Lyndon, Sr.*
Member

ATTEST:

By *Marvin Weeks*
Member

Teresa Hulton
Commission Secretary

By *John A. McCarty Jr.*
Member