

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007

Thursday, February 19, 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 |
|          | Noreen Thorsen        | Claims Manager             |
|          | Darin Perkins         | Director, ADOSH            |
|          | Gary Norem            | Chief Accountant           |
|          | Glenn Hurd            | Accountant                 |
|          | Teresa Hilton         | Commission Secretary       |

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, and Jenypher Jones of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler gave an update of the current budget situation and stated that the current year's budget appears to be off \$300 to \$400 million. He advised that he and Director McGrory met with Representative McComish to discuss the fund transfer issues involving the Special Fund. He described the discussions with Rep. McComish and others regarding the Commission's position regarding the transfer of Special Fund money. With regard to the FY 2010 budget and thereafter, Mr. Butler stated there will be budget deficits that are expected to be much worse.

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 other bills assigned or committee hearings scheduled.

Approval of Minutes of February 12, 2009 Meeting

The Commission approved the Minutes of the February 12, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained.

Discussion & Action regarding Appointment of Physician pursuant to A.R.S. §23-901.03

Steven Pike, M.D. – Noreen Thorsen advised that Dr. Pike has been certified by the Arizona Board of Medical Examiners as qualified with regard to occupational disease evaluations and examinations. She provided copies of his Curriculum Vitae as well as

confirmation of his license from the Arizona State Board of Medical Examiners. Following discussion, the Commission unanimously approved the appointment of Steven Pike, M.D. so that he may take part in an occupational disease consultation currently pending on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

|              |  |
|--------------|--|
| 2C08/09-0851 | ARIZONA PAINTING SPECIALISTS, LLC  |
| 2C07/08-1758 | CURTIS BYRD, A SINGLE MAN<br>DBA DIAMONDBACK MOVERS  |
| 2C08/09-0781 | JANICE K. KEIRNS, A SINGLE WOMAN<br>DBA NEW IMAGE TRANSPORT<br>AKA NEW IMAGE TRANSPORT COMPANY |
| 2C07/08-2457 | LESCO OPTICAL, INC.  |
| 2C07/08-2090 | LITZE, LLC   |
| 2C07/08-1060 | MEDICORP, INC.   |
| 2C08/09-1106 | YOUTSEY L.L.C. DBA NORTH 51 GRILL<br>AKA THE DIRTY DRUMMER                                     |

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 #0851, 1758, 0781, 2457, 2090 and 1106. With regard to employer #1060, Mr. Wade recommended a penalty of \$500.00 be assessed since they recently obtained workers' compensation insurance coverage. Following discussion, the Commission unanimously approved assessing a civil penalty of \$1,000.00 against employers #0851, 1758, 0781, 2457, 2090 and 1106 and a civil penalty of \$500.00 against employer #1060 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of ADOSH Discrimination Complaint

#08-68 Christopher Helms-Faircloth v. Arizona AFO, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Helms-Faircloth. In his complaint, Mr. Helms-Faircloth alleged that he was terminated because he questioned the employer about the chemicals he was using. He also had requested an elastomeric respirator. Mr. Helms-Faircloth stated that the employer told him that he was being terminated for putting a DVD in the computer. The employer's response was that Mr. Helms-Faircloth was terminated because he accessed a computer that he was told not to access. He down loaded screen savers and took another employee's speaker without permission from a work bench and hooked it up to the computer and played a DVD during work hours. Mr. Helms-Faircloth exhibited a rather carefree attitude about the whole incident and said that computers are able to do this sort of thing and he did not see what the big deal was. Considering his recent work history and attitude, the employer decided that they should terminate Mr. Helms-Faircloth.

Mr. Perkins stated that Mr. Helms-Faircloth was hired in March of 2008 and terminated in August 2008. Mr. Lujano stated that the chemical in question, methylethylketone, is very toxic. Mr. Perkins agreed and explained the mixing process and that employees were provided with appropriate PPE. He further stated that when Mr. Helms-Faircloth requested an elastomeric respirator, the employer provided it. Mr. Perkins stated that he believes the termination was due to Mr. Helms-Faircloth's lax attitude regarding the work environment and the computer system

on the CAD machines. The employer documented that he was told not to touch those two computers. Following the reprimand, Mr. Helms-Faircloth was terminated the next day. There was no indication that he was terminated as a result of voicing concerns about chemicals or requesting the respirator.

Following further discussion of whether Mr. Helms-Faircloth was terminated for the participation in protected activity, the Commission voted not to pursue the complaint on motion of Mr. Gosiger, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Benzieger Enterprises dba Philips Plumbing  
PO Box 32523  
Tucson, AZ 85751

Complaint  
Yrs/Business - 24  
Empl. Cov. by Insp. - 3

Site Location: South Frontage Road & West Beta, Sahuarita, AZ 85614  
Inspection #: N5645/312936529  
Insp. Date: 01/05/09

SERIOUS - Citation 1, item 1 - Employees were not trained by the employer in hazard recognition concerning trenches and excavations. The employer could not provide any documentation or proof that his employees were trained in hazards associated with trenching and excavation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - An employee working in a trench measuring 8' deep by approximately 40' long was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(b) or (c).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

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 increased the penalty for Citation 1, item 2 to the gravity-based penalty of \$2,500.00 for a total penalty of \$3,250.00 due to disregard for employee safety and number of years the employer has been in business on motion of Mr. Lujano, second of Mr. McCarthy.

Artistic Paver Mfg. Phoenix, Inc.  
1508 N. VIP Blvd.  
Casa Grande, AZ 85222

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

Site Location: 1508 N. VIP Blvd., Tucson, AZ 85222  
Inspection #: A9339/312836133  
Insp. Date: 12/04/08

SERIOUS - Citation 1, item 1 - The employer did not apply LO/TO procedures when employees were cleaning the inside of the cement mixing bowl units where the mixing blades are located.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - There were no guards on the bottom rollers of the conveyor

systems used to load dry cement into the mixers. The south ends of the two conveyors were 58 to 84 inches above the floor.

Div. Proposal - \$ 750.00  
TOTAL DIV. PROP. - \$1,500.00

Formula Amt. - \$ 750.00  
TOTAL FORMULA AMT - \$1,500.00

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 \$1,500.00 on motion of Mr. McCarthy, second of Mr. Gosiger.

Desert Trailer Systems, Inc.  
2733 West Buckeye Road  
Phoenix, AZ 85009

Complaint  
Yrs/Business - 25  
Empl. Cov. by Insp. - 2

Site Location: 2733 West Buckeye Road, Phoenix, AZ 85009  
Inspection #: U9805/312881329  
Insp. Date: 12/29/08

SERIOUS - Citation 1, item 1 - The employer did not properly evaluate the hazards of hydrofluoric acid to determine all protective equipment.  
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - The employer did not establish and implement a written respiratory protection program for employees using a tight-fitting, air purifying full face respirator that included the following elements:

- Procedures for selecting respirators for use in the workplace
- Medical evaluation of employees required to use respirators
- Fit testing procedures for tight-fitting respirators
- Procedures and schedules for cleaning, disinfecting, sorting, inspecting, repairing, discarding and otherwise maintaining respirators
- Training employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations
- Training of employees in the proper use of a respirator, including putting on and removing the, any limitations on their use, and their maintenance, and
- Procedures for regularly evaluating the effectiveness of the program

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - First aid facilities specific to the hazards of hydrofluoric acid were not readily available.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 4 - An emergency eyewash unit providing at least fifteen minutes of continuous flow and meeting the ANSI Z-358.1-1998 standard was not available. The eyewash present was only contained in a bottle and not sufficient enough for continuous flow.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 5 - A written hazard communication program had not been developed, implemented and maintained for employees who were potentially exposed in the

workplace to hazardous chemicals, substances and/or materials including hydrofluoric acid, sulfuric acid and alcohol.

Div. Proposal - \$ 750.00  
TOTAL DIV. PROP. - \$3,750.00

Formula Amt. - \$ 750.00  
TOTAL FORMULA AMT - \$3,750.00

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 \$3,750.00 on motion of Mrs. Weeks, second of Mr. Lujano.

Discussion &/or Action regarding Operations of the Industrial Commission

The Commission scheduled future meetings for Wednesday, March 4<sup>th</sup>, Thursday, March 12<sup>th</sup>, Thursday, March 19<sup>th</sup> and Thursday, March 26<sup>th</sup>.

Announcements

Ms. Hilton reminded the Commissioners that next week's meeting is on Thursday, February 26<sup>th</sup>.

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 1:40 p.m. on motion of Mr. Lujano, second of Mr. McCarthy. Executive Session Minutes are kept separately.


Upon return to General Session, the Commission unanimously directed staff to continue to work with the legislature to resolve the issues regarding the transfer of money from the Special Fund to the State General Fund. In the event that this issue is not resolved and unilateral action is taken, or appears that it will be taken to transfer Special Fund money to the State General Fund, then the Commission authorized the Legal Division and outside legal counsel to file whatever legal action is required to protect Special Fund monies on motion of Mr. Lujano, second of Mr. Gosiger.

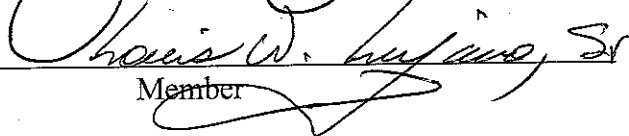
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:05 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA


By   
Chairman

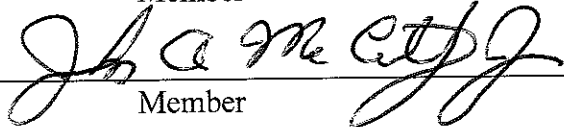
By   
Vice Chairman

By   
Member

ATTEST:

By \_\_\_\_\_  
Member

  
Commission Secretary

By   
Member