

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, March 12, 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
	Darin Perkins	Acting Director
	Andrew Wade	Chief Legal Counsel
	Noreen Thorsen	Claims Manager
	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 Jason Weber of Snell & Wilmer.

Approval of Minutes of March 4, 2009 Meeting

The Commission unanimously approved the Minutes of the March 4, 2009 meeting on motion of Mr. Lujano, second of Mr. Gosiger.

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

Scot Butler provided an updated legislative report of bills of interest to the agency and advised that it is the last week for the House to hear bills and no bills have yet passed in the House. Mr. Butler advised he has a meeting this afternoon with the sponsors of HB2056. The Commission is opposed to the bill in its current form. Mr. Butler described amendments that have been proposed for HB2057, HB2087, HB2146, and HB2198. Mr. Butler also described the status of HB2199 and HB 2200.

The Senate continues to work on the budget and has not heard any bills. Mr. Butler stated that he will give a report next week on the status of the budget.

Discussion & Action of Request for Lump Sum Commutation

Daniel Godinez #20033-520467 - Noreen Thorsen advised that at its meeting last week, the Commission approved the lump sum request with the understanding that the proceeds would

be used to pay back child support. The Claims Department subsequently learned from Mr. Godinez's attorney that the proceeds would be used to purchase a car. Given the circumstances, Ms. Thorsen resubmitted the request for the Commission's further consideration.

Ms. Thorsen further advised that Mr. Godinez received a lump sum commutation in 2006, and at that time the request was to purchase a vehicle. It does not appear that that lump sum was used for that purpose. The Commission agreed to reconsider their previous decision on motion of Mr. Delfs, second of Mr. Gosiger. Mr. Lujano voted nay and expressed concern over Mr. Godinez's statement that he needs the vehicle in order to get back and forth to care for his children. The Commission discussed the issue of the back child support. Mr. Delfs stated that it is the Commission's obligation to assure that the proceeds from the lump sum would improve Mr. Godinez's financial position. He also expressed concern that Mr. Godinez did not use the previous lump sum for the purpose he had stated. Ms. Thorsen noted that since Mr. Godinez is employed and has the monthly award entitlement, he should be able to purchase a vehicle on payments.

Following further discussion, the Commission denied the lump sum commutation on motion of Mr. Delfs, second of Mr. McCarthy. Mr. Lujano voted nay. Mrs. Weeks stated that continuing to receive the monthly entitlement will also be a back up for the children in the event Mr. Godinez is no longer employed. Mr. McCarthy and Mr. Gosiger agreed that Mr. Godinez could purchase a cheaper vehicle with payments.

#### Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-0579	ALLEN DEAN PAYNE & VIRGINIA A. PAYNE HUSBAND & WIFE DBA ARR COMPLETE AUTO REPAIR
2C08/09-1146	FIRE HOUSE MANAGEMENT, L.L.C. DBA DIRTY DOGG SALOON
2C08/09-1451	NU U OF CHICAGO, LLC DBA NU U MED SPA AKA NU U MED SPA OF ARROWHEAD AKA NU U OF ARROWHEAD LLC AKA NU U OF ARROWHEAD LLC
2C08/09-1450	NU U OF CHICAGO, LLC DBA NU U MED SPA OF PARADISE VALLEY AKA NU U OF PARADISE CITY LLC AKA NU U OF PARADISE VALLEY, LLC

Andrew Wade advised that he is holding consideration of the civil penalty against employer #1451 and will put it back on next week's agenda. With regard to the remaining 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 \$1,000.00 be assessed against employers #0579 and 1146. With regard to employer #1450, he advised that this is their second civil penalty and that staff is recommending a penalty of \$5,000.00. The Commission unanimously approved assessing civil penalties of \$1,000.00 against employers #0579 and 1146 and a civil penalty of \$5,000.00 against employer #1450 on motion of Mr. Lujano, second of Mr. Gosiger.

## Discussion & Action of ADOSH Discrimination Complaints

#08-63 Pete Tartaglia v. Vulcan Materials Company – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Tartaglia. In his complaint, Mr. Tartaglia alleged that he was terminated because he requested a new pair of prescription tinted safety glasses. The employer's response was that Mr. Tartaglia was terminated for being insubordinate to his supervisor and other management employees regarding him wearing tinted safety glasses during night operations when he was told not to do so. Mr. Tartaglia was given several warnings before his termination, but he chose to ignore them.

Mr. Perkins stated that the company policy was to provide safety glasses on an annual basis. Mr. Tartaglia had received three pairs of prescription tinted glasses within a year and was denied a fourth pair. In October of 2008 he was provided with a clear pair of safety glasses, which he refused to wear. During the ADOSH investigation, Mr. Tartaglia stated that he did not need the glasses to do his work but that he wanted what he was entitled to.

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

#09-12 John Sharos v. Midway Chevrolet - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Sharos. In his complaint, Mr. Sharos alleged that he was terminated because he filed a complaint with ADOSH. Mr. Sharos complained about the employer's decision to discontinue supplying bottled water for the employees. The employer's response was that Mr. Sharos was terminated because he failed to service two customer's vehicles properly and failed to mark a set of tires as warranty tires. Mr. Sharos did not put the tires in the dealership warranty room, thus the tires were discarded, making it impossible for the dealership to be reimbursed for the faulty tires.

Mr. Perkins stated that Mr. Sharos was hired in November of 2005 and there did not appear to be any issues regarding his employment until August of 2008 when he filed the complaint with ADOSH. In mid September, he failed to mark tires for warranty and the dealership lost the credit. The same day, a customer complained about an oil leak and Mr. Sharos refused to go to the customer's home to check the vehicle. The vehicle was towed to the dealership and it was found that the oil drain plug was not tightened. The employer deducted the towing fee of \$170 from Mr. Sharos' paycheck. On October 30, 2008, Mr. Sharos serviced a truck and signed off that all maintenance had been completed. When the truck was examined, it was found that all of the work was not done, so Mr. Sharos was terminated at that time. Mr. Lujano questioned whether all of the technicians' work was reviewed and stated that quality control and management checks should be consistent. Mr. Perkins responded that question was not asked during the investigation. Mr. Lujano expressed concern that it appeared review of Mr. Sharos work was selective.

Mr. Perkins stated that there was no indication or evidence that management knew that Mr. Sharos was the person that filed a complaint with ADOSH about the company discontinuing bottled water for the employees. There was no evidence that Midway Chevrolet terminated Mr. Sharos for any other reason than job performance and falsifying maintenance records. Following further discussion of whether Mr. Sharos was terminated for the participation in protected activity, the Commission voted not to pursue the complaint on motion of Mr. McCarthy, second of Mrs. Weeks. Mr. Lujano voted nay.

Discussion &/or Action regarding Operations of the Industrial Commission

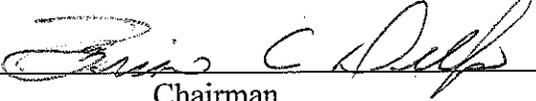
The Commission scheduled future meetings for Thursday, April 2<sup>nd</sup>, Thursday, April 9<sup>th</sup>, Thursday, April 16<sup>th</sup> and Thursday, April 30<sup>th</sup>. There will be no meeting the week of April 20<sup>th</sup>.  
Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, March 19<sup>th</sup>.

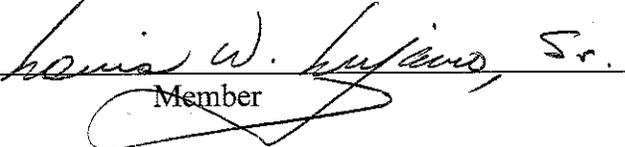
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:30 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

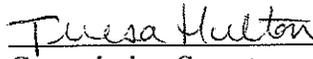
By   
Chairman

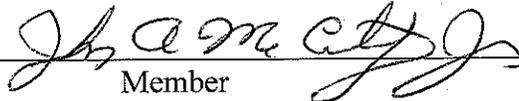
By \_\_\_\_\_  
Vice Chairman

By   
Member

ATTEST:

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

  
Commission Secretary

By   
Member