

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, November 17, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:02 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also present was Teresa Yi of Snell & Wilmer and Kathleen Wade, Jerry Morgan and Randy Thorson of Standard Pacific.

Approval of Minutes of November 4, 2010 Meeting

The Commission unanimously approved the Minutes of November 4, 2010 on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of ADOSH Discrimination Complaint

#10-60 Maria Romero, Maria Chavez and Yolanda Alvarez v Barrier-Wear, LLC - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Romero, Ms. Chavez and Ms. Alvarez. In their complaint, the complainants alleged that they were terminated from their employment for complaining to management about fumes being emitted by the gas heaters and calling 911 and receiving treatment at a local hospital from the ill effects of those fumes. The employer stated that the complainants were discharged due to their failure to meet productivity requirements.

Mr. Perkins presented a history of the complainants' employment. The Division recommendation was not to pursue the matter since there was no evidence to support a connection between the terminations and any protected activity. The Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

General Plumbing, Inc.  
257 W. 2<sup>nd</sup> Avenue  
Mesa, AZ 85210

Fatality  
Yrs/Business – 26  
Empl. Cov. by Insp. – 20

Site Location: 18146 W. Purdue Avenue, Waddell, AZ 85355  
Inspection #: Y5457/314820085  
Insp. Date: 08/16/10

SERIOUS – Citation 1, item 1 – Three employees were working within an attic which was 20' above the lower level and were not protected from falling (1926.501(b)(13)).  
(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – Three employees were working within an attic which was 20' above the lower level and had not received training to recognize the hazards of falling and the procedures to follow to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$14,000.00

TOTAL FORMULA AMT. - \$14,000.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Mr. Parker, second of Ms. Oster.

Standard Pacific of Arizona Inc. dba H S P Arizona, Inc.  
6710 N. Scottsdale Road #150  
Scottsdale, AZ 85253

Unprogram Related  
Yrs/Business – 11  
Empl. Cov. by Insp. – 37

Site Location: 18146 W. Purdue Avenue, Waddell, AZ 85355  
Inspection #: Y5457/314820077  
Insp. Date: 08/16/10

SERIOUS – Citation 1, item 1 – Three employees were working within an attic which was 20' above the lower level and were not protected by a fall protection system (1926.501(b)(13)).  
(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Mr. Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalty with no adjustment factors since the violation directly related to the fatality. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. Parker, second of Ms. Oster.

DaVita, Inc. dba Southwest Kidney DeVita  
Dialysis Partners LLC  
337 E. Coronado Road, Suite 101  
Phoenix, AZ 85004

Fatality  
Yrs/Business – 73  
Empl. Cov. by Insp. – 24

Site Location: 337 E. Corona Road, Suite 101, Phoenix, AZ 85004

Inspection #: N9589/314698945

Insp. Date: 07/21/10

SERIOUS – Citation 1, item 1 – The employer did not evaluate the workplace to determine if water treatment tanks were permit-required confined spaces (1910.146( c)(1)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

Ms. Oster recused herself from this matter. Mr. Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Mr. Parker, Mr. Perkins explained the difference between a confined space and a permit required confined space. Following discussion and inspection of photographs of this violation, Ms. Strickler made a motion to assess the recommended penalty of \$1,875.00 which died for lack of a second. Chairman Delfs asked if anyone would like to make an alternative motion. Mr. Parker requested additional time to think about the proposed citation and asked whether this matter could be re-visited later in the meeting. Chairman Delfs moved on to the next agenda item and stated the matter would be revisited later in the meeting.

#### Discussion & Action regarding New Employment Agency License

Spotlight Talent and Models – Randall Maruca advised that the application has been investigated by staff and that the Employment Advisory Council has recommended approval. Following discussion, the Commission unanimously approved the license on motion of Ms. Oster, second of Mr. Parker.

#### Discussion & Action regarding Reappointment of Two Employment Advisory Council Members

Terry D. Wien

Madalynn K. Terzenbach – Mr. Maruca stated that the Employment Advisory Council will have two vacancies as the result of term expirations of two of its current members. The terms of Mr. Terry D. Wien and Ms. Madalynn K. Terzenbach will expire December 31, 2010. Both Mr. Wien and Ms. Terzenbach have made significant contributions toward helping the Council achieve its goals and have made an enthusiastic commitment to serve over the next three years. Following discussion, the Commission unanimously reappointed Mr. Wien and Ms. Terzenbach to the Employment Advisory Council effective January 1, 2011 through December 31, 2013 on motion of Mr. Parker, second of Ms. Oster.

#### Discussion & Action of Proposed Youth Employment Penalty

CL 1011-0007 Tortilleria Dona Esperanza L.L.C. – Mr. Maruca advised that this involved a 17 year old youth who was injured while cleaning a commercial dough maker. The Department's investigation confirmed that she was working in, about or in connection with power-driven bakery machinery. Following discussion, the Commission assessed the

recommended penalty of \$600.00 on motion of Mr. Parker, second of Ms. Strickler.

#### Discussion & Action of Proposed OSHA Citations and Penalties

DaVita, Inc. dba Southwest Kidney DeVita Dialysis Partners LLC – The Commission returned to consideration of this agenda item. Mr. Parker requested clarification of the ADOSH inspection procedure relating to confined space. Mr. Perkins explained the procedure. Chairman Delfs stated that he would accept a new motion. The Commission approved issuing the citation and assessed the recommended penalty of \$1,875.00 on motion of Ms. Strickler, second of Mr. Parker. Ms. Oster had earlier recused herself and did not participate in the discussion or vote.

#### Discussion & Action regarding Application for Authorization to Self-Insure

Central Arizona Water Conservation District – Renee Pastor presented staff's report, which included an analysis of financial information and current credit rating and responded to questions from the Commissioners. Ms. Pastor stated that Administration is recommending approval of workers' compensation self-insurance authority based on the submission of a complete and satisfactory application, a clean audit report, Central Arizona Water Conservation District's stability and profitability with total assets at June 30, 2009 posting at just under \$2 billion, and acceptable bond and credit ratings. Following discussion, the Commission unanimously granted self-insurance authority effective January 1, 2011 on motion of Ms. Oster, second of Ms. Strickler.

#### Discussion & Action of Request for Renewal of Self-Insurance Authority

The Kroger Company - Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability, assets of just over \$23 billion and growth in a very turbulent economic environment, a clean audit report and acceptable bond and credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

#### Discussion & Action of Attorneys Fee Petition

Robert E. Wisniewski, Robert E. Wisniewski, P.C. v Joel Rodriguez - Andrew Wade advised that Robert Wisniewski has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Mr. Rodriguez in connection with his industrial injury claim. Mr. Wade gave a history of the claim and the work performed by Mr. Wisniewski on behalf of Mr. Rodriguez. Mr. Wisniewski withdrew from the attorney-client relationship. No attorney fees have been paid, and it is estimated that Mr. Wisniewski spent 11.7 hours on the case.

Mr. Wade presented several options to the Commission. After reviewing those options, Mr. Wade stated that his recommendation is to enforce the contingency fee agreement entered into by the parties for a maximum of \$375.00 of any settlement or permanent disability compensation benefits applicant is ultimately awarded. Following discussion, the Commission unanimously awarded 25% of any permanent disability compensation benefits or settlements

involving permanent disability benefits not to exceed \$375.00 on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0703	Arcadia Care, LLC
2C10/11-0707	Arcadia Villa Care, LLC
2C10/11-0704	Camelhead Care, LLC
2C10/11-0012	Harris Building and Development, Inc. dba Airmaxx Climate Control
2C10/11-0389	Silver Eagle Ventures, Ltd. dba Sissy's Pet Grooming Salon
2C10/11-0006	Timothy William Kunselman & Rosemary Kunselman, Husband & Wife dba Sun Valley Towing
2C09/10-2615	Zendejas #13, L.L.C.

Mr. Wade advised that with regard to the above listed 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), civil penalties are recommended against each of these employers. He stated that the first three files had been presented at a prior Commission meeting and tabled for more information. SCF Arizona has confirmed that employers #0703 and 0704 are covered under the same policy. He is recommending a reduced penalty of \$2,500.00 for employer #0703, and a reduced penalty of \$500.00 for employer #0704. With regard to employer #0707, the SCF has stated that this employer is not covered by the policy and he is recommending a civil penalty of \$5,000.00. He further recommended penalties of \$1,000.00 be assessed against the remaining employers. He responded to questions from the Commissioners and clarified that #0703, 0707 and 0704 have the same owner, but are different legal entities operating at different locations. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0012, 0389, 0006 and 2615; a civil penalty of \$2,500.00 against employer #0703; a civil penalty of \$500.00 against employer #0704; and a \$5,000.00 civil penalty against employer #0707 unless #0707 can provide documentation that their employees are covered under the SCF policy on motion of Mr. Parker, second of Ms. Strickler. The motion further stated that Legal Division staff will make the determination of whether the penalty for employer #0707 can be reduced to \$2,500.00.

Discussion &/or Action regarding Legislation

Ms. McGrory summarized meetings held to date with stakeholders and advised that additional meetings are being scheduled. She also stated that she and Mr. Butler are continuing to discuss legislative strategy and will present the Commission with an update at the December 9<sup>th</sup> meeting.

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

Ms. McGrory updated the Commissioners on the status of the Claims System Upgrade project and installation of the wireless routers. She also provided injury/illness lost work day statistics comparing public to private employers on both a National and state (Arizona) level. Arizona's numbers are dramatically better than the national averages and reflect well on the

state's OSHA program and Arizona public employers.

Mr. Wade provided a copy of a Court of Appeals published opinion relating to funds sweeps. He advised that Judge Grant has scheduled oral argument in the Special Fund v. Brewer action for December 10<sup>th</sup>.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, December 1<sup>st</sup> and will begin with the stakeholders' meeting. Meetings are also scheduled for December 9<sup>th</sup> and 16<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:08 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By \_\_\_\_\_

Chairman

By \_\_\_\_\_

Vice Chairman

By \_\_\_\_\_

Member

ATTEST:

By \_\_\_\_\_

Member

Teresa Hilton  
Commission Secretary

By \_\_\_\_\_

Member