

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 22, 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
	Randy Maruca	Director, Labor Dept.
	Darin Perkins	Director, ADOSH
	Gary Norem	Chief Accountant
	Kara Dimas	Office Manager, Legal
	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.

Approval of Minutes of January 15, 2009 Meeting

The Commission approved the Minutes of the January 15, 2009 general session on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained.

The Commission approved the Minutes of the January 15, 2009 executive session on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained.

Discussion &/or Action regarding Legislation

Scot Butler provided an initial list of bills of interest to the agency and advised that all but two of them were in the SCF draft that was discussed last week. The SCF bills are HB 2057, 2146, 2198, 2199 and 2200. He advised that he and Ms. McGrory will be meeting with a representative of the SCF tomorrow afternoon to discuss the proposals. Currently, none of the bills have been scheduled for hearing.

HB 2056 is from the Arizona Trucking Association and has two provisions. The first would allow out of state trucking companies to rely on out-of-state workers' compensation coverage when going through Arizona, which is contrary to the Arizona workers' compensation system and problematic for the agency from an operational standpoint. Mr. Butler and Ms. McGrory explained the current insurance requirements and that the proposal will result in workers' compensation claims being notified to the No Insurance Section of the Special Fund. The second provision concerns insurance requirements for oversize loads that are escorted by off duty officers through Arizona. Mr. Butler explained the provisions and that staff is seeking additional information from the trucking industry regarding the proposal. Mr. Butler explained

additional information from the trucking industry regarding the proposal. Mr. Butler explained HB 2087, which deals with PEO master policies and recommended that the agency oppose the bill as written. Mr. Butler also summarized HB 2422, which deals with misconduct and the impact on earning capacity determinations. He noted that the Commission opposed the bill the last year.

Mr. Butler stated that the budget discussions are continuing with proposals including cuts in education and DPS. He described the JLBC proposal for the Commission. He stated that he and Ms. McGrory met with members of Governor Brewer's transition team yesterday.

In response to a question from Mrs. Weeks, he stated that the agency does oppose HB 2198 as it is written.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C07/08-1771	MAGUIRE CHIROPRACTIC & ASSOCIATES, P.L.L.C.
2C06/07-0980	REBEIL TRUCKING CORPORATION
2C07/08-0957	RENE TRUCKING, L.L.C.

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 civil penalties of \$1,000.00 be assessed against employers #1771 and 0957. With regard to employer #0980, Mr. Wade recommended a civil penalty of \$5,000.00 because this employer has a prior \$1,000.00 penalty within the last five years. Following discussion, the Commission unanimously approved civil penalties of \$1,000.00 against employers #1771 and 0957 and a civil penalty of \$5,000.00 against employer #0980 on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion & Action of Attorney Fee Petition

Roberto Rios-Zaragoza v. Benjamin F. Manion - Mr. Wade advised that the law firm of Taylor and Associates has petitioned the Industrial Commission to set attorney's fees with respect to the work that they performed on behalf of Mr. Rios-Zaragoza. The firm had represented Mr. Rios-Saragoza for quite some time. Taylor and Associates had been negotiating a stipulation of loss of earning capacity benefits with the insurance carrier but Mr. Rios-Zaragoza terminated the relationship and retained a different attorney with a different firm. The stipulation that was eventually entered into is very similar to the one that Taylor and Associates had been working on. Mr. Lujano questioned the term "similar" and asked for clarification. Mr. Wade explained that the figures in the stipulations were not the same but were close.

Mr. Wade advised that Taylor and Associates has received \$1,357.95 in attorney fees. Mr. Wade described the work they performed, and advised that Taylor and Associates estimates that Mr. Manion spent 11 hours and the firm spent an additional six hours on Mr. Rios-Zaragoza's case. Mr. Rios-Zaragoza has retained new counsel who is presumably working with a contingent fee arrangement of twenty-five percent of the applicant's benefits as his compensation. The Legal Division is recommending either awarding attorney fees based on the

25% fee agreement between Mr. Rios-Zaragoza and Taylor and Associates, which could be for a period up to five years, or awarding attorney fees based on an hourly fee for the time invested. If the Commission decides to award fees on an hourly basis, staff is recommending that an additional \$407.05 in attorney fees be awarded. Following discussion, Mr. Gosiger made a motion to award attorney fees in the amount of \$407.05 to be paid over a six month period. Following further discussion, the motion was withdrawn and the Commission unanimously awarded attorney fees in the amount of \$407.05 to be paid over a one year period on motion of Mr. Delfs, second of Mr. Lujano.

Discussion & Action of proposed Youth Employment Penalty

CL 0809-0042 R.B. Electric, Inc. – Randall Maruca advised that this involved a 17 year old youth who sustained a laceration to the left leg while moving decking from a forklift. The investigation confirmed that, while he was not operating the forklift, he was unloading it which is considered a hazardous occupation. Following discussion, the Commission unanimously assessed the recommended penalty of \$600.00 on motion of Mr. Lujano, second of Mr. Gosiger.

Presentation of Labor Department's Quarterly Child Labor Report

October, November and December 2008 - Mr. Maruca advised that during this quarter, 150 cases were referred from Claims and one was referred from other sources. He noted that youth employment injuries are down, and that during the same quarter last year there were 267 cases reviewed, 16 cases were investigated, and three were found in violation of the youth employment laws. The average time from date of referral to completed investigation was 1.93 months and two investigations resulted in penalties greater than \$300.00. Mr. Maruca further advised that he is reviewing the Labor Department's operations. There was some discussion about the potential to educate youth in schools with regard to youth employment laws.

Discussion & Action of ADOSH Discrimination Complaint

#08-59 Brent DeWeese v. Adolfson & Peterson Construction, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. DeWeese. In his complaint, Mr. DeWeese alleged that he complained to management about back pain from the non-air ride seat of his truck and was terminated as the result of being off work for his back injury. The employer stated that the complainant had not told them he thought his back was injured because of driving one of their trucks. According to the employer, Mr. DeWeese was terminated due to abandonment of his position after his request for a leave of absence was denied and he did not return to work.

Mr. Perkins further advised that a week after his termination, on August 27, 2008, Mr. DeWeese asked to file a workers' compensation claim. According to Mr. DeWeese, he began complaining about his back the week after he was hired. In addition to the seat, he complained that the capacity of the truck was too small and that the air conditioning was not working. According to the employer, they examined the truck and determined that the capacity was adequate for the job and that the air conditioning was working properly. In mid-April they rented an additional water truck and Mr. DeWeese drove that truck. He complained about the capacity of that truck also. When the truck was returned to the rental company, Mr. DeWeese was again assigned to drive one of the regular trucks. This was on a second job site, and there did not appear to be any complaints about him driving this second truck.

In mid July he was returned to the first site and was assigned another truck. He began to

complain again about the seat hurting his back. On July 29, 2008, Mr. DeWeese called the employer and stated he was going to see his doctor. The doctor wrote a note stating that Mr. DeWeese needed to be off work until August 8, 2008 when he could return to work with no restrictions. On August 8, 2008, Mr. DeWeese called to say he was too sore to work and was going to the emergency room. Following that visit, Mr. DeWeese submitted another doctor's note, this time stating that he was to be off work until August 18, 2008 when he could return to work with no restrictions. On August 18, 2008, Mr. DeWeese returned to work and was given light duty. He left after one hour stating that his back hurt too much. He also called the safety director later that day and stated that he felt the light duty assignment was a demotion.

On August 19, 2008, Mr. DeWeese requested short term medical disability which was denied based on his short tenure with the employer. He then requested a leave of absence until September 22, 2008 which was denied. He did not return to work and the employer considered his failure to report to work as having abandoned his position and the employer terminated his employment on August 20, 2008.

Mr. Perkins stated that he did not believe that Mr. DeWeese's termination was the result of protected activity in complaining about the seat of his truck. Mr. Gosiger stated that the employer offered Mr. DeWeese light duty, which was not a demotion, and were paying him at the same rate of pay and that he was not entitled to short term medical disability because he had not been with the employer long enough to qualify. The Commission unanimously voted not to pursue the complaint on motion of Mr. Gosiger, second of Mr. McCarthy.

Discussion &/or Action regarding Operations of the Industrial Commission

Mr. Lujano asked for clarification regarding the Resolution giving authority to the Chief ALJ to interview and hire ALJ's. Ms. McGrory confirmed that the Resolution was drafted to implement the Commission's decision to delegate authority to interview candidates and to hire, contingent upon Commission approval of the selection.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, January 29th at 1:00 p.m. The Commissioners scheduling meetings for February on Wednesday the 4th, Thursday the 12th, Thursday the 19th and Thursday the 26th.

Ms. McGrory provided information on web-based training offered by NCCI along with sign up information and a course schedule. She also provided a copy of a letter that the Legal Division uses to explain the Commission's position on out of state trucking companies doing business with employees in Arizona.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:50 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By Brian C. Delfs
Chairman

By Joseph A. George
Vice Chairman

By Harold W. Lyland, Sr.
Member

ATTEST:

By Erin Weeks
Member

Teresa Hulston
Commission Secretary

By John A. McAty Jr.
Member