

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, February 26, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Joe Gosiger	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Acting Chief Legal Counsel
	Randall Maruca	Director, Labor Dept.
	Gary Norem	Chief Accountant
	Glenn Hurd	Accountant
	Kara Dimas	Office Manager, Legal Div.
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mrs. Weeks was not able to attend. Also in attendance was Jenypher Jones of Snell & Wilmer.

Approval of Minutes of February 19, 2009 Meeting

The Commission unanimously approved the Minutes of the February 19, 2009 general session on motion of Mr. Lujano, second of Mr. Gosiger. The Commission unanimously approved the Minutes of the February 19, 2009 executive session on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-0860	CONTINENTAL VILLAS EAST UNIT THREE DBA CONTINENTAL VILLA E UNIT 3 HOMEOWNERS ASSOCIATES DBA CONTINENTAL VILLAS E3 AKA CONTINENTAL VILLAS EAST UNIT III
2C06/07-0859	AIR PHOTO, INC.
2C08/09-0719	D.A.R. A. II. INC.

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 each of these employers. The Commission unanimously approved assessing a civil penalty of \$1,000.00 against employers #0860, 0859 and 0719 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Youth Employment Penalty

CL 08-09-0051 Delhi Palace LLC dba Delhi Palace Cuisine of India – Mr. Maruca advised that this involved a public complaint regarding a 15 year old who worked in excess of the hours allowed by statute. Following discussion, the Commission unanimously assessed the recommended penalty of \$200.00 on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion & Action of Proposed OSHA Citations and Penalties

Baker Commodities, Inc.  
PO Box 6518  
Phoenix, AZ 85005

Planned  
Yrs/Business – 13  
Empl. Cov. by Insp. – 60

Site Location: 3602 W. Elwood, Phoenix, AZ 85009  
Inspection #: A7717/312936925  
Insp. Date: 01/14/09

SERIOUS – Citation 1, item 1 – Employees were working next to an animal waste pit that was approximately 12' wide, 12' long and 5' deep without a standard railing installed. There were three other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 2 – A cork screw auger did not have a guard installed to prevent an employee from accidental contact with the rotating blades.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 3 – A hydraulic press did not have a point of operation guard installed to protect the operator from placing any part of his body into the danger zone during the operating cycle.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 4 – One employee was operating the cooker machine which had rotating sprockets and a chain drive without a guard installed to prevent accidental contact.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 5 – One employee worked on a 240 volt electrical control panel that was not de-energized.

Div. Proposal - \$ 875.00

Formula Amt. - \$ 875.00

TOTAL DIV. PROP. - \$4,375.00

TOTAL FORMULA AMT - \$4,375.00

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 \$4,375.00 on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that there was nothing new to report.

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

Ms. McGrory advised that the settlement bill was held in the Commerce Committee so that the stakeholders could continue to work on the bill. She explained the proposed legislation. The Commission has communicated to the stakeholders that it is opposed to the bill in its current form, in part, because it eliminates reopening rights for undisputed unknown industrially related conditions. She stated that she has not seen the latest draft.

With regard to the misconduct bill, Ms. McGrory and Mr. Butler met with the self insurers this morning to discuss additional changes to the bill that would satisfy the Commission's concerns about the bill. She explained how the proposed legislation would effect determinations of loss of earning capacity.

Ms. McGrory stated that with regard to the budget, the agency is on the Senate and House Appropriation Hearing Consent Agenda next Tuesday and Wednesday. She also stated that the Governor's Office, through OSPB, issued a directive instructing state agencies to submit an analysis of the impact on the agency of additional budget cuts of 5%, 10% 15% and 20%. These cuts would be in addition to the cuts already imposed as a result of the FY 09 Special Session.. She is working with staff to prepare this analysis.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Wednesday, March 4<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:22 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Paul C. Delfs*  
Chairman

By *Joseph A. Grogan*  
Vice Chairman

By *Henry W. Lyman, Sr.*  
Member

ATTEST:

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

*Teresa Hilton*  
Commission Secretary

By *J. A. McAty Jr.*  
Member