

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, March 4, 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
	Suzanne Scheiner Marwil	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 was Jenypher Jones of Snell & Wilmer.

Approval of Minutes of February 26, 2009 Meeting

The Commission unanimously approved the Minutes of the February 26, 2009 meeting on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion & Action of Request for Lump Sum Commutation

Daniel Godinez #20033-520467 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Godinez requested a lump sum commutation of his scheduled award of \$1,515.86 per month (present value \$24,162.81). The original request was made in order to pay arrears of child support, purchase a car and repay rent to his parents. Ms. Thorsen advised that after subtracting the additional payment made by the carrier and the attorney fees, he would receive \$16,985.21, so would apply the amount toward the back child support. Mr. Godinez is employed, earning \$1,600.00 per month.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Mr. Godinez to get his back child support almost current. Mrs. Weeks expressed concern regarding whether in granting the lump sum, the Commission could be assured the funds would be used for the back child support. Mr. Wade explained the child support collection process in the context of workers' compensation. Following further discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1124	HENDERSON GROUP, INC. DBA HENDERSON & ASSOCIATES
2C08/09-0074	LAS MARIPOSAS INTERNATIONAL TRADING CO., LTD.
2C08/09-0576	SUNRISE CAB, INC.
2C08/09-0795	STRATEGIC HEALTH PARTNERS, L.L.C.
2C08/09-1141	TOYONDA AUTO REPAIRS, L.L.C.
2C08/09-0988	WILLIAM JEWETT & ALICIA JEWETT HUSBAND & WIFE DBA ALICE'S RESTAURANT & CANTINA AKA ALICE'S RESTAURANT CONTINA

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 #1124, 0074, 0576, 1141 and 0988. With regard to employer #0795, he advised that they have recently obtained workers' compensation insurance coverage and that staff recommends a penalty of \$500.00. The Commission unanimously approved assessing civil penalties of \$1,000.00 against employers #1124, 0074, 0576, 1141 and 0988 and a civil penalty of \$500.00 against employer #0795 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Attorneys' Fees Petition

Julie Moreno-Forney v. Richard E. Taylor – Mr. Wade advised that Ms. Moreno-Forney has petitioned the Industrial Commission to set attorney's fees with respect to the work that Mr. Taylor performed on her behalf. Mr. Taylor has represented Ms. Moreno-Forney since 1988 and has been received attorneys' fees since that time. Ms. Moreno-Forney has asked that the Commission determine that she owed her attorney no further attorneys' fees. Mr. Taylor has agreed to waive any future attorneys' fees. Following discussion, the Commission unanimously decided that Taylor and Associates is not entitled to any further attorneys' fees on motion of Mr. Lujano, second of Mr. Gosiger.

Discussion & Action of ADOSH Discrimination Complaint

#08-28 Dennis Sheehan v. Xerox Corporation – Chairman Delfs asked whether the Commissioners felt an Executive Session was warranted. They agreed that the matter could be handled in General Session. Mr. Wade advised that at a prior meeting, the Commission had voted to pursue this matter by referring the case to the Legal Division to investigate some unanswered questions. The Commission's questions related primarily to the lack of documentation of Mr. Sheehan's request for a transfer from Honeywell after he reported a workplace threat and to whether Xerox regularly suspended people via e-mail, as it did Mr. Sheehan.

Mr. Wade stated that Mr. Sheehan's complaint alleged retaliation by the employer because he had brought a threat from another co-worker to management's attention. Mr. Wade presented the information gathered during the investigation and stated that Xerox provided

significant documentation related to Mr. Sheehan's work performance and other circumstances in the workplace over the last year he worked for Xerox. In summary, he stated that Mr. Sheehan's actions in reporting the threat would be considered protected activity, but he recommended that the Commission not pursue the matter since there was no evidence that Mr. Sheehan's reporting of the threat was a substantial reason for any adverse action taken against him. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Lujano, second of Mr. Gosiger. Mr. Gosiger stated that the memorandum to the Commission was very well done and commended Ms. Marwil for her work on the case.

Discussion & Action of Proposed OSHA Citations and Penalties

TCS & S Inc. dba Network Alignment and Brakes  
6615 W. Bethany Home Rd.  
Glendale, AZ 85301

Complaint  
Yrs/Business - 15  
Empl. Cov. by Insp. - 20

Site Location: 6615 W. Bethany Home Rd., Glendale, AZ 85301  
Inspection #: Y5457/312993843  
Insp. Date: 01/22/09

SERIOUS - Citation 1, item 1 - Two employees were using two mounted lifts without working locking latches engaged as per the manufacturer's recommendations and limitations for safe operation of two Rotary Lift Two Post Surface Mounted lifts (car hoists). There were two other instances of this violation.

(One inspection with no violations in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 2 - A brake lathe was lacking guards on the exposed horizontal shaft to prevent accidental contact with rotating parts.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

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 \$2,250.00 on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that the agency is continuing to evaluate cost reducing measures and is receiving helpful suggestions from employees. She advised that the agency has implemented energy saving measures and notified vendors that certain services will be reduced.

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 HB 2087 and HB 2198 were both heard in the Commerce

Committee this morning and passed out of Committee with amendments. The Commission's lobbyist, Scot Butler, testified that the Commission was opposed to both bills as written. Regarding HB 2087, staff is continuing to work with stakeholders regarding additional language to address the agency's concern which relate to additional liability of the Special Fund and possible decline in tax revenue.

With respect to HB 2198, Ms. McGrory described the bill, as amended, noting the Commission continues to oppose the bill because it eliminates reopening rights for future unknown industrially related conditions. She stated that significant progress has been made on the bill and the parties may agree to add language to address the Commission's concerns.

Ms. McGrory advised that this is the last week for bills to be heard on the House side, and Mr. Butler will be at next week's meeting to give a full update on all House bills affecting the Commission. She also stated that Governor Brewer is addressing the House and Senate at 4:00 p.m. today.

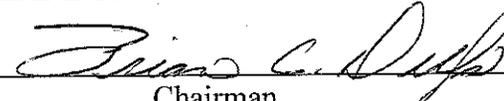
Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, March 12<sup>th</sup>.

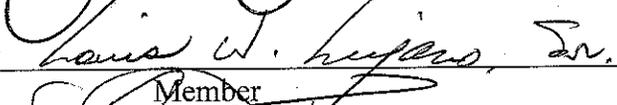
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:22 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

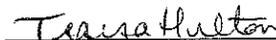
By   
Chairman

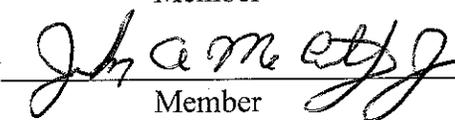
By   
Vice Chairman

By   
Member

By   
Member

ATTEST:

  
Commission Secretary

By   
Member