

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, July 2, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Financial Officer
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

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

Approval of Minutes of June 25, 2009 Meeting

The Commission unanimously approved the Minutes of the June 25, 2009 meeting on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Marriott International, Inc. – Glenn Hurd presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's solid financial condition with worldwide assets of just over \$8.9 billion, their record of profitability, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Parker.

Medtronic, Inc. – Glenn Hurd presented staff's renewal report along with current Moody's and Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's solid financial condition with worldwide assets of just under \$22.2 billion, their record of profitability, a clean audit report and an acceptable credit rating. Mr. Parker questioned the unpaid claims liability of \$23,106 in relation to the 23 injuries reported. Ms. McGrory agreed that the figure seemed low and stated that staff would review the company's loss report and the claims files and report their findings to the Commission. The Commission unanimously tabled consideration of approved continuance of self-insurance authority until that information is received on motion of Mr. Parker, second of Mr. McCarthy.

Prudential Overall Supply Company – Glenn Hurd presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. He advised that since the company is privately held, no Moody's or Finch ratings were available. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's large size with assets totaling \$104.4 million, a clean audit report and an acceptable credit rating by Dunn and Bradstreet. In response to a question from Mr. Parker, Mr. Hurd provided the definition of a subchapter S corporation. The Commission unanimously granted continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Parker.

Executive Session pursuant to A.R.S. §38-431.03(A)(2) to Discuss Records Exempt by Law from Public Inspection regarding the Application for Renewal of Self Insurance Authority for Quiktrip Corporation.

Andrew Wade advised that the Commission has the option of moving into Executive Session if there were any questions regarding the confidential financial information provided by the company.

General Session for Discussion & Action regarding Application for Renewal of Self Insurance Authority for Quiktrip Corporation.

Glenn Hurd presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's good financial condition, an acceptable credit rating and the meeting of all requirements required for a self-insured employer in the State of Arizona. Mr. Parker questioned why claims profile information was only available for 2009 and not prior years. Mr. Hurd explained that Quiktrip has only been self insured for one year.

Mr. Lujano asked if the Commission needed to move into Executive Session to have any further questions regarding the financials answered. Mr. McCarthy made a motion to move into Executive Session, but then withdrew the motion. The Commission unanimously granted continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Delfs.

Discussion & Action of OSHA Discrimination Complaints

#09-06 Cheryl Reeves v. Akal Security, Inc. -- Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Reeves. In her complaint, Ms. Reeves alleged that she was refused work after providing management with a doctor's note stating that she was overexposed to carbon monoxide in the workplace. The employer stated that Ms. Reeves was removed from her jobsite per a doctor's note and was unable to work 40 hours as she was also banned from her City of Phoenix jobsite, per the City's request.

Mr. Perkins described the allegations and the employer's response in detail. He responded to questions from the Commissioners and advised that the ADOSH inspection conducted on October 29, 2008 did not reveal an overexposure of carbon monoxide. He stated that Ms. Reeve's doctor's report did not report a diagnosis of exposure, but indicated that she had a past history of exposure to carbon monoxide. Mr. Perkins stated that based on the information gathered during the investigation, there did not appear to be a link between the reduction in hours and the protected activity and recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy.

#09-19 James Entrekin v. Blue Ridge Unified School District #32 - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Entrekin. In his complaint, Mr. Entrekin alleged that he was terminated following a complaint to management regarding faulty forklift brakes. The employer stated that Mr. Entrekin was terminated following an investigation into complaints made by his co-workers and that he created a hostile environment.

Mr. Perkins described the allegations and the employer's response in detail. He advised that Empire CAT came out and repaired the forklift's brakes and also trained employees on the proper use of the brakes. He stated that from June to November, 2008, Mr. Entrekin's supervisor

received complaints regarding Mr. Entrekin's manner and management style and an investigation was conducted. Following the investigation, the School District Superintendent recommended that Mr. Entrekin be terminated. Mr. Perkins further stated that Mr. Entrekin's original complaint about the forklift brakes was originally valid, but had been addressed. He responded to questions from the Commissioners regarding the continued "red tagging" of the forklift and whether Mr. Entrekin operated it. The Commissioners questioned the timing of the termination in relation to Mr. Entrekin's complaint, the subsequent ADOSH inspection and the investigation into Mr. Entrekin's behavior. He stated that based on the information gathered during the investigation, there did not appear to be evidence or indication that Mr. Entrekin was discriminated against because of protected activity. He recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Delfs.

Discussion & Action of Proposed OSHA Citations and Penalties

AMC Consolidated  
P.O. Box 6702  
Phoenix, AZ 85009

Planned  
Yrs/Business - 14  
Empl. Cov. by Insp. - 13

Site Location: 1431 S. 39<sup>th</sup> Avenue, Phoenix, AZ 85005  
Inspection #: L3419/313555062  
Insp. Date: 06/03/09

SERIOUS - Citation 1, item 1 - A continuing, effective hearing conservation program was not instituted. (1910.95(c)(1) There were two other instances of this violation.  
(No inspection history in the past three years).

Div. Proposal - \$375.00

Formula Amt. - \$375.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 2, item 2a - A horizontal drive belt and two pulleys located along the right side of the conveyor were not fully enclosed and guarded to prevent contact with rotating parts, pinch points and in-running nip points. (1910.219(d)(1)(e)(i)

Citation 2, item 2b - A drive motor for the conveyor did not have the vertical drive belt and the two pulleys fully enclosed and guarded to prevent contact with rotating parts, pinch points and in-running nip points (1910.219(d)(1) and (e)(3)(i)

Div. Proposal - \$375.00

Formula Amt. - \$375.00

SERIOUS - Citation 1, item 3 - Sprocket wheels and drive chain located 7' or less above floors or platforms were not fully enclosed to prevent contact with rotating parts, pinch points and in-running nip points. (1910.219(f)(3). There was another instance of this violation

Div. Proposal - \$ 375.00

Formula Amt. - \$ 375.00

TOTAL DIV. PROP. - \$1,125.00

TOTAL FORMULA AMT - \$1,125.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,125.00 on motion of Mr. Parker, second of Mr. McCarthy.

Valley Pallet, Inc.  
3251 E. Gila Ridge Road  
Yuma, AZ 85364

Planned  
Yrs/Business - 3  
Empl. Cov. by Insp. - 35

Site Location: 3251 E. Gila Ridge Road, Yuma, AZ 85364  
Inspection #: A9339/313125809  
Insp. Date: 03/16/09

SERIOUS - Citation 1, item 1 - Six employees were operating a forklift without wearing the installed seatbelt. (1910.132(a))

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 2 - The employer had not established lockout/tagout procedures and trained employees to ensure that equipment would be rendered inoperative prior to any work where the unexpected start up could cause injury. (1910.147(c)(1))

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - Employees were allowed to operate the forklifts and none of the operators had been trained and evaluated in the safe operation of the forklift by the employer. (1910.178(l)(1)(i))

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 4 - The strain relief was pulled loose at the power box located on the horizontal band saw. (1910.305(g)(2)(iii)). There were six other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$5,000.00

TOTAL FORMULA AMT - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. McCarthy, second of Mr. Parker.

#### Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that staff managed the potential shut down well. A postmortem of the agency's response to the week's events will be conducted to improve future contingency planning. The Commissioners expressed their appreciation and asked Ms. McGrory to give their thanks to the managers and staff.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. 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 Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Mr. Wade stated that on June 29, 2009, Judge Grant granted the stay the Commission had requested. The Assistant Attorney General requested an evidentiary hearing which has been scheduled to begin on July 10, 2009.

#### Announcements


The Commission scheduled a regular meeting for Wednesday, August 5, 2009 at 1:00

p.m. Ms. Hilton reminded the Commissioners that the next meeting will be held on Wednesday, July 8, 2009.


There being no further business to come before the Commission and no public comment, Commissioner Lujano adjourned the meeting at 1:55 p.m.

APPROVED:

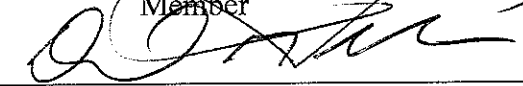
THE INDUSTRIAL COMMISSION OF ARIZONA

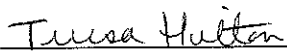
By   
Chairman

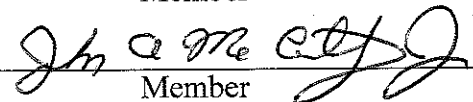
By \_\_\_\_\_  
Vice Chairman

By   
Member

ATTEST:

By   
Member

  
Commission Secretary

By   
Member