

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, October 1, 2009 – 1:00 p.m.

Present:	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Manager, Self Insurance
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Chief Accountant
	Jeri McAnerny	Tax Accountant
	Kara Dimas	Legal Dept. Office Manager
	Michael Hempel	MIS
	Teresa Hilton	Commission Secretary

Vice Chairman Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also in attendance were Jen Jones of Snell & Wilmer and Lisa Fain of Ballard Spahr.

Approval of Minutes of September 17, 2009 Meeting

The Commission unanimously approved the Minutes of the September 17, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

ABS Inc. dba Tiedemann Globe, Inc.	Accident
1411 S. 47 th Avenue, Suite 110	Yrs/Business – 12
Phoenix, AZ 85043	Empl. Cov. by Insp. – 121
<u>Site Location: 1411 S. 47th Avenue, Suite 110, Phoenix, AZ 85043</u>	
Inspection #: Q7984/313398034	
Insp. Date: 05/12/09	

SERIOUS – Citation 1, item 1 – Employees did not receive adequate training on the safe operation of the balers, and the machines were not adequately inspected or maintained (23.403(A).

(One inspection with one nonserious violation in past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 2 – The employer did not develop and implement a written lockout/tagout program and procedures for maintenance personnel, repair persons and/or set-up personnel to prevent release of stored energy during the performance of major/minor repair work on equipment such as the textile baler (1910.147(c)(1).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

SERIOUS – Citation 1, item 3 – A baler did not have an adequate guard installed to prevent the operator from placing any part of her body in the danger zone during the operating cycle (1910.212(a)(1).

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL DIV. PROP. - \$13,500.00

TOTAL FORMULA AMT - \$13,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He advised that the Division recommendation for items 1 and 3 was for the gravity-based penalty with no adjustment factors since the violations directly related to the serious injury. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$13,500.00 on motion of Mr. Parker, second of Mr. McCarthy.

Drury South, Inc. dba Drury Southwest, Inc.

Planned

101 S. Farrar Drive

Yrs/Business – 25

Cape Girardeau, MO 63701

Empl. Cov. by Insp. – 12

Site Location: 2335 W. Pinnacle Peak Road, Phoenix, AZ 85027

Inspection #: Y5457/313594996

Insp. Date: 07/06/09

SERIOUS – Citation 1, item 1 – One employee was working from a supported scaffold 8' long, 6' wide and 50' high that did not have guardrail systems installed along all open sides and ends of the platforms (1926.451(g)(4)(i).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – One employee was working from a personnel platform suspended from a crane (1926.550(g)(2).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,750.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$3,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Perkins stated that this employer was the general contractor and that the next case file is for the subcontractor on the same job site. He explained that in keeping with the practice of not assessing a higher penalty for the same violations, the Division recommendations for this employer are lower than the formula amount.

Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Southwest Lath and Plaster Company, Inc.

Planned

5150 E. Edith NE

Yrs/Business – 51

Albuquerque, NM 87107

Empl. Cov. by Insp. – 16

Site Location: 2335 W. Pinnacle Peak Road, Phoenix, AZ 85027

Insp. #: Y5457/313595001

Insp. Date: 07/06/09

SERIOUS – Citation 1, item 1 – One employee was working from a supported scaffold 8' long, 6' wide and 50' high that did not have guardrail systems installed along all open sides and ends of platforms (1926.451(g)(4)(i).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – One employee was working from a personnel platform suspended from a crane (1926.550(g)(2).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

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 \$2,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Aggregate Products Company
5420 W. Bethany Home Road
Glendale, AZ 85301

Planned
Yrs/Business – 46
Empl. Cov. by Insp. – 16

Site Location: 5420 W. Bethany Home Road, Glendale, AZ 85301

Insp. #: 17163/313738080

Insp. Date: 08/24/09

SERIOUS – Citation 1, item 1 – One swamp cooler was lacking a guard to prevent accidental contact with rotating squirrel cage (1910.212(a)(1). There was another instance of this violation. (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – An abrasive wheel bench grinder was lacking a guard to cover the spindle end, nut and flange projections (1910.215(a)(2).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – An abrasive wheel grinder was lacking the work rest to support off-hand grinding work (1910.215(a)(4).

Div. Proposal - \$ 100.00

Formula Amt. - \$ 100.00

TOTAL DIV. PROP. - \$1,600.00

TOTAL FORMULA AMT - \$1,600.00

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 \$1,600.00 on motion of Mr. Lujano, second of Mr. Parker.

Anasazi Door, LC
5650 S. 67th Avenue
Laveen, AZ 85339

Planned
Yrs/Business – 86
Empl. Cov. by Insp. – 4

Site Location: 5650 S. 67th Avenue, Laveen, AZ 85339

Insp. #: A7717/313697369

Insp. Date: 08/06/09

SERIOUS – Citation 1, item 1 – The cutting head for a wood shaper was not fully enclosed with

an adjustable guard designed so as to keep the operator's hands away from the cutting edge (1910.213(m)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – An edge belt sander did not have the in-going nip points guarded between the sanding belt and pulleys (1910.213(p)(4)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT -\$1,500.00

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 \$1,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

J&W Manufacturing Inc.

2401 S. 49th Avenue

Phoenix, AZ 85043

Planned

Yrs/Business – 10

Empl. Cov. by Insp. – 7

Site Location: 2401 S. 49th Avenue, Phoenix, AZ 85043

Insp. #: L3419/313738122

Insp. Date: 08/24/09

SERIOUS – Citation 1, item 1 - The rotating chuck for a metal working lathe was not provided with a barrier guard to protect the operator from rotating parts and/or flying chips (1910.212(a)(1)). There were 5 other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The point of operation for a full revolution mechanical press brake was not guarded to prevent the operator from having any part of the body in the danger zone during the operating cycle (1910.212(a)(3)(ii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The pedal mechanism(s) for a full revolution mechanical power press was not protected to prevent unintended operation from falling or moving objects or by accidental stepping onto the pedals (1910.217(b)(94)(i)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

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 1, item 4a – A full revolution mechanical power press had been modified to allow the use of a single hand trip (palm button) to activate the ram (1910.217(b)(6)(i)).

Citation 1, item 4b - A full revolution mechanical power press did not incorporate an anti-repeat feature (1910.217(b)(6)(ii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – Mechanical power presses did not incorporate a type of drive

motor starter (magnetic type) to prevent the machines from restarting in the event of a power source failure and the restoration of power (1910.217(b)(8)(iii). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 6 – A full revolution mechanical power press was not provided with a point of operation guard or point of operation device to prevent the operator from having any part of the body in the danger zone during the operating cycle (1910.217(c)(1)(i). There were two other instances of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$4,500.00

TOTAL FORMULA AMT - \$4,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano noted that the photos show a lot of debris around the machines which can be a hazard. Mr. Perkins stated that this will be discussed with the employer in informal conference. Mr. Lujano also questioned the use of the “C” clamp on the power press shown in photo #13 and wondered what it was being used for. Mr. Perkins stated that he would check with the compliance officer and report back to the Commission. Following further discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Valley Steel Supply, Inc.

8769 N. 75th Avenue

Peoria, AZ 85345

Planned

Yrs/Business – 8

Empl. Cov. by Insp. – 25

Site Location: 8769 N. 75th Avenue, Peoria, AZ 85345

Insp. #: I7613/313697351

Insp. Date: 08/06/09

SERIOUS – Citation 1, item 1 – An iron worker machine was lacking a guard at the point of operation (1910.212(a)(3)(ii).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – An abrasive wheel grinder was lacking the work rest to support off-hand grinding work (1910.215(a)(4).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, item 3 – One employee was using a 7" hand grinder which was lacking a guard (1910.234(c)(1).

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

TOTAL DIV. PROP. - \$1,450.00

TOTAL FORMULA AMT - \$1,450.00

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 \$1,450.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Scottsdale Healthcare Corporation - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report. She responded to questions from the Commissioners regarding the company's financials and lines of credit. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's financial strength with total assets of \$971.3 million, the receipt of a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Wal-mart Associates, Inc. - Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. She responded to questions from the Commissioners including the calculation of the experience modification rating and advised that in 2010 there will be three years of data for comparison. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the company's financial stability and profitability, with total assets of \$163.4 billion, the receipt of a clean audit report and acceptable credit ratings. Following discussion, the Commission granted continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Parker, second of Mrs. Weeks. Mr. Lujano voted nay. Mr. McCarthy recused himself.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

- 2C08/09-0716 Biegel & Co, LLC dba Colorado Place Business
Condominiums Association
- 2C09/10-0106 Black and White Janitorial, LLC
- 2C09/10-0058 EMPI, Inc. dba Eagle Property Management
- 2C09/10-0256 Hands On Labor, Inc.
- 2C09/10-0222 Weston Enterprise Group, LLC dba Golden
Dove Assisted Living

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 each of these employers. Mr. Wade responded to questions from the Commissioners regarding these employers. The Commission unanimously assessed the recommended penalties of \$1,000.00 against employers #0716, 0106, 0058, 0256 and 0222 on motion of Mr. Lujano, second of Mr. Parker.

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

Ms. McGrory advised that in response to a request from the Governor's Office of Strategic Planning and Budget, she prepared a draft response that lists the impact of a 15% reduction of the Commission's FY 2010 appropriated budget. She summarized the response and attachments and stated that subject to any recommendations or changes from the Commissioners, the response would be filed this afternoon. She responded to questions from the Commissioners and no recommendations or changes were suggested by the Commissioners.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

Announcements

The Commissioners scheduled future meetings for October 7, 14, 22, 29 and November 5th. Mr. Wade advised that a Request for Hearing has been filed related to a lump sum commutation request that the Commission denied and that this hearing will need to be scheduled.

Ms. McGrory advised that the Commission has received a request for comments, suggestions, or concerns from the Committee of Reference regarding the Sunset Review of the SCF. She has prepared a draft response for the Commissioners review. She stated that this could be an agenda item for next week's Commission meeting if any of the Commissioners wished to discuss the response before it was filed next Friday.

Mr. Parker stated that there was an article in the paper yesterday regarding a multi-state labor investigation of child labor violations at a call center in Casa Grande.

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

The Commission unanimously voted to go into Executive Session on motion of Mr. McCarthy, second of Mr. Lujano. Following the Executive Session, the Commission returned to General Session.

Executive Session Minutes are kept separately.

There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:30 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By ~~James C. DeLoach~~ signed in error JCD
Chairman

By Karen Weeks
Vice Chairman

By Louis W. Lyons Sr.
Member

ATTEST:

By James C. DeLoach
Member

Teresa Hilton
Commission Secretary

By Q. M. R.
Member