MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 17, 2009 – 1:00 p.m.

Present: Brian Delfs
Marcia Weeks
Louis W. Lujano, Sr.
John A. McCarthy, Jr.
David Parker
Laura McGrory
Andrew Wade
Darin Perkins
Randall Maruca
Gary Norem
Teresa Hilton

Chairman
Vice Chairman
Member
Member
Member (video conference)
Director
Chief Legal Counsel
Director, ADOSH
Director, Labor Dept.
Chief Financial Officer
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 Jason Weber of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Mr. Butler updated the Commissioners on the Special Session, which started today. He explained that it was now limited to budget cuts since the deadline had already passed for getting issues on the ballot. The Special Session will not be a one day session since the legislature did not have the votes to suspend the rules. Therefore, no action would be taken today. He advised that the current budget deficit is $1.6 to $1.7 billion with collections still lagging well behind. Arizona is one of the three bottom states for economic recovery. Mr. Butler described the proposed legislation and stated that the Commission is not included. He responded to questions from the Commissioners and stated that if anything happens in terms of the Special Session, he will let Ms. McGrory know.

Approval of Minutes of December 10, 2009 Meeting

The Commission approved the Minutes of December 10, 2009 on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Parker abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Thomas Moore dba Tommy’s Erection
19047 E. Mauna Loa
Glendale, CA 91740

Unprogram Related
Yrs/Business – 35
Empl. Cov. by Insp. – 3

Site Location: 2345 E. Irvington Road, Tucson, AZ 85713
Inspection #: F3875/313891699
Insp. Date: 10/08/09
SERIOUS – Citation 1, item 1 – The employer had a 4 1/2" right angle grinder that was not equipped with a safety guard (1926.300(b)(1)).
(One inspection with one serious violation in the past three years).

Div. Proposal - $800.00  
Formula Amt. - $800.00

SERIOUS – Citation 1, item 2 – Employees working 13' above the ground along the edge of the roof, installing angles to the top surface of the building, were not protected from falling by the use of a guardrail system, safety net system or personal fall arrest system (1926.501(b)(1)).

Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1, item 3 – Employees who were exposed to fall hazards on the jobsite were not trained to recognize the hazard of falling and the procedures to be followed in order to minimize those hazards (1926.503(a)(1)).

Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

TOTAL DIV. PROP. - $2,800.00  
TOTAL FORMULA AMT - $2,800.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano noted that this company had been in business for 35 years and asked Mr. Perkins to impress upon them the need for training and fall protection for the safety of their employees. Mr. Lujano made a motion to assess the recommended penalty of $2,800.00 which was seconded by Mrs. Weeks. Mr. Parker stated that the most recent article in the National Safety Council’s magazine addresses the top ten OSHA citations and notes that fall protection and scaffolding in construction are in the top ten. Since the Commission frequently sees these violations, he questioned if there were other things the agency could do to promote education and help employers understand safer work practices. Mr. Perkins responded to the question and stated that even though ADOSH’s resources are stretched thin, they are conducting training classes and have other educational efforts. Mrs. Weeks questioned whether a penalty may be negotiated down in informal conference if the employer agrees to train employees. Mr. Perkins described some of the approaches used in resolving cases. The question was called for and the Commission unanimously approved issuing the citations and assessed the recommended penalty of $2,800.00.

Barrier Wear, LLC  
9 Ojo Court  
Rio Rico, AZ 85648

Site Location: 9 Ojo Court, Rio Rico, AZ 85648  
Inspection #: F3875/313946998  
Insp. Date: 10/21/09

SERIOUS – Citation 1, item 1 – Employees were operating a forklift without the use of a 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 – Employees operating the forklift had not been trained or certified in the safe operation of forklifts (1910.178(l)(1)(i)).

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. Parker, second of Mr. Lujano.

Pinal County Sheriff’s Office, Complaint
Adult Detention Center
971 Jason Lopez Circle Yrs/Business – 100+
Florence, AZ 85132 Empl. Cov. by Insp. – 350

Site Location: 971 Jason Lopez Circle, Florence, AZ 85132
Insp. #: T3633/313962839
Insp. Date: 10/30/09

SERIOUS – Citation 1, item 1 – The procedures listed in the Pinal County Tuberculosis Control Plan were not being followed in that all employees had not received annual training and all employees had not received annual PPD skin tests (23.403(A)). (One inspection with two serious and one nonserious violations in the past three years).

Div. Proposal - $2,125.00 Formula Amt. - $2,125.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards.

Citation 1, item 2a – The Bloodborne Pathogens Exposure Control Plan had not been updated since 1995 (1910.1030(c)(1)(iv).

Citation 1, item 2b - Employees working in job classifications which had been determined to have occupational exposure to bloodborne pathogens had not received annual training meeting the requirements of the standard (1910.1030(g)(2)(ii)(C).

Div. Proposal - $2,125.00 Formula Amt. - $2,125.00
TOTAL DIV. PROP. - $4,250.00 TOTAL FORMULA AMT - $4,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano stated that these violations also put citizens at risk. Mr. McCarthy questioned the adjustment factor for good faith. Mr. Perkins explained that the county had programs in place in the past but they seemed to have fallen by the wayside over time. Mr. Parker stated that he is acquainted with the Pinal County Risk Manager who is now aware that the plans were out of date and testing has been arranged for on site. He stated that the county appears to be taking this matter very seriously. Following discussion of these violations, the Commission approved issuing the citations and assessed the recommended penalty of $4,250.00 on motion of Mr. McCarthy, second of Mrs. Weeks. Mr. Lujano voted nay.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1072 American Air Standard Inc.
2C09/10-0033 Church On The Street, Inc.
2C08/09-1916 Tina Diane Marino, a Single Woman dba Defined Finishes
2C08/09-1748 Willie Jones & Dorothy Jones, Husband & Wife, dba La Casa Health Care, Inc.
Mr. Wade advised that a compliance investigation confirmed that the previously 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 #1072, 1916 and 1748. Mr. Wade stated that employer #0033 has obtained coverage and stated that he recommended a reduced penalty of $500.00. Mr. Wade responded to questions from the Commissioners. The Commission unanimously approved civil penalties of $1,000.00 be assessed against employers #1072, 1916 and 1748 and a civil penalty of $500.00 against employer #0033 on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed Youth Employment Penalty

Rim Country Rehab Inc. dba Rim Country Health & Retirement Community – Randall Maruca advised that this involved a 14 year old youth who worked after 11:00 p.m. and in excess of the hours allowed by statute. Mr. Lujano made a motion to assess the recommended penalty of $70.00 which was seconded by Mr. McCarthy. Since the youth worked as an assistant aid in a nursing home, Mr. Parker questioned whether there was any bloodborne pathogen exposure. Mr. Maruca responded that the Labor Department did not investigate that issue. Mr. Parker requested that the motion be amended to add referring the file to ADOSH for investigation of the bloodborne pathogen standard. The motion was amended and the Commission unanimously assessed the recommended penalty of $70.00.

Discussion & Action regarding Reappointment of Employment Advisory Council Member

Dani C. Green – Mr. Maruca advised that Ms. Green has served two terms on the Council and that the current term will expire December 31, 2009. Ms. Green has expressed her willingness to serve another term on the Council, and Mr. Maruca is recommending that she be reappointed. Ms. Green has made significant contributions towards helping the Council achieve its goal and has made an enthusiastic commitment to serve for the next three years. Following discussion, the Commission unanimously reappointed Ms. Green to the Employment Advisory Council for a new term effective January 1, 2010 through December 31, 2012 on motion of Mr. McCarthy, second of Mr. Lujano and asked Mr. Maruca to express the Commission’s appreciation to Ms. Green for her service.

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

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

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 the Special Fund’s response to the State’s Motion for Summary Judgment will be filed tomorrow. The Superior Court has scheduled a telephonic hearing on January 4, 2010 related to the Motions to Intervene that were filed by the business and labor
groups.

Announcements

The Commission scheduled meetings for Thursday, January 7th, Wednesday, January 13th, Thursday, January 21st and Thursday, January 28th. Chairman Delfs suggested that the Commission continue to schedule weekly meetings one month in advance and that they can be cancelled if there is a light agenda. It was discussed that the statute does not require that the Commission meet weekly. It was also agreed that there was not a need to hold a meeting on Thursday, December 31st.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:35 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By:

Chairman

By:

Vice Chairman

By:

Member

ATTEST:

By:

Member

By:

Member

Commission Secretary