

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, February 4, 2010 – 1:00 p.m.

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

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chairman Weeks was not able to attend. Also present was Teresa Yi of Snell & Wilmer, Loren Kuenzi and Les McCauley of Agate Steel, William R. Luken of Performance Safety and Jeremy Bethancourt.

Approval of Minutes of January 28, 2010 Meeting

The Commission unanimously approved the Minutes of January 28, 2010 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of proposed legislation of interest to the Commission. He advised that a Special Session was called earlier this week to address the budget and he described the budget bills under consideration and the action taken so far.

Mr. Butler advised that the deadline for Senate bills was this past Monday and the deadline for House bills is next Monday. HB 2228 was heard in House Commerce yesterday and is expected out of Rules next week. Mr. Butler stated that he believes all of the amendments that the agency requested have been made. He stated that HB 2465 and SB 1214 are basically the same and there is a likelihood of a new draft version based on compromise between the parties. He has not seen the new draft version, but does not anticipate that it will necessitate the taking of a position by the agency. He described and responded to questions concerning new bills of interest - HB 2620, 2632 and 2639, HCR 2043, and SB 1228, 1229, 1230, 1233, 1242 and SCR 1042

SERIOUS – Citation 1, item 3 – One abrasive wheel grinder was lacking a tool work rest (1910.215(a)(4).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, item 4 – One air compressor was lacking a guard on the horizontal drive belt and pulleys (1910.219(d)(1) & (e)(1(i).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,350.00

TOTAL FORMULA AMT - \$2,350.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker asked questions regarding the general duty citation related to the auto lift. Mr. Perkins explained the different elements of a general duty citation, the existence of a national standard, and the industry practice. Mr. Lujano asked what would happen if an employee refused to work under the lift. Mr. Wade and Ms. McGrory described the different elements of a general duty citation versus OSHA discrimination in the context of an employee who refuses to work and one who voices safety concerns to his employer. Mr. Lujano stated that the gravity based penalty should be assessed for the first item with no good faith adjustment factor based on the egregious nature of the violation. Following further discussion and inspection of photographs of these violations, the Commission approved issuing the citations and assessed the recommended penalty of \$2,350.00 on motion of Mr. Delfs, second of Mr. McCarthy. Mr. Lujano voted nay.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-0809	Arcadia Care, LLC
2C09/10-0810	Arcadia Villa Care, LLC
2C09/10-0454	Brian M. Serino & Karen E. Serino, Husband & Wife dba The Ironing Lady, Inc.
2C09/10-0390	Caniceria El Mexicano, LLC dba El Mexicano Ranch Market
2C09/10-0040	Han Jay Wong, a Single Man & Kuei Hua Hsu, a Single Woman dba Highline International, Inc.
2C09/10-0128	J L B, Inc. dba La Salsistas
2C09/10-0661	L.A. Transportation LLC
2C09/10-0309	Nicolae Codrut Marinne & Karolina Marinne Gonez, Husband & Wife dba Casa Blanca Comprehensive Elder Care aka Casa Blanca ALH
2C09/10-0423	Pomeroy Arabians International, LLC dba Pomeroy Arabians International, LLLP
2C09/10-0355	Premier Exteriors of Arizona, LLC dba Premier Remodeling

Mr. 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), civil penalties have been recommended. Mr. Wade stated that investigation of employers #0809 and 0810 was a result of the staff initiated program rather than a wage or workers' compensation claim. With regard to employer #0454, this employer has obtained coverage and he recommended a reduced penalty of \$500.00. Mr. Wade further recommending civil penalties of

\$1,000.00 be assessed against employers #0809, 0810, 0390, 0040, 0128, 0661, 0309, 0423 and 0355. Mr. Wade responded to questions from the Commissioners regarding the compliance history of these employers.

The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #0809, 0810, 0390, 0040, 0128, 0661, 0309, 0423 and 0355 and a civil penalty of \$500.00 against employer #0454 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion &/or Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B)

Renee Pastor noted that the Commission is required to establish the discount rate each year for use in calculating the present value of an award that is commuted to a lump sum under A.A.C. R20-5-122. She explained the process under A.A.C. R20-5-121(B) and identified the applicable 3-month Treasury Bill rates reported for December 31 of 2009 and for the prior four years. Based on the rates and the formula in A.A.C. R20-5-121(B), the Administrative Division is recommending that the discount rate be set at 2.47% for calculating fixed period and permanent lump sum settlements. The 2.47% discount rate, if adopted, will replace the current discount rate of 2.89% as of today and will be in effect until the Commission calculates a new rate. Following discussion, the Commission unanimously approved the 2.47% discount rate on motion of Mr. Lujano, second of Mr. Parker.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission including Overview of Projects Managed by the Management Information Systems (MIS) Division

This presentation will be given when all members of the Commission are present.

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 there was nothing new to report.

Announcements and Scheduling of Future Meetings

The Commission scheduled future meetings for Wednesday, March 3rd, Thursday, March 18th and Thursday, March 25th. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, February 18th.

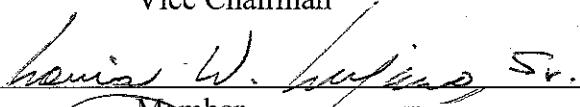
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:50 p.m.

APPROVED:

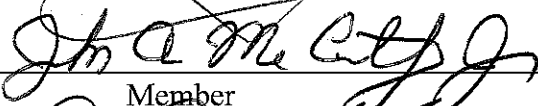
THE INDUSTRIAL COMMISSION OF ARIZONA

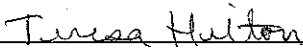
By 
Chairman

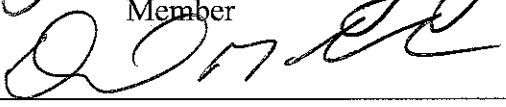
By _____
Vice Chairman

By 
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member