

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, February 25, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Administrator
	Gary Norem	Chief Financial Officer
	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 and Commissioner Parker were not able to attend. Also present were Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of February 18, 2010 Meeting

The Commission unanimously approved the Minutes of February 18, 2010 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Ca-Tel, LLC	Complaint
5280 N. Highway Drive	Yrs/Business – 11
Tucson, AZ 85705	Empl. Cov. by Insp. – 4
Site Location: 4450 S. Contractors Way, Tucson, AZ 85714	
Inspection #: P0775/314075185	
Insp. Date: 01/05/10	

SERIOUS – Citation 1, item 1 – Employees working in an excavation approximately 6'6" deep, 20' long and 2'5" wide had not been trained in the recognition and avoidance of unsafe conditions relating to excavations (1926.21(b)(2).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees working in an excavation approximately 6'6" deep, 20' long and 2'6" wide were not provided with a ladder, ramp or other safe means of egress (1926.651(c)(2).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – An excavation that was 6'6" deep, 20' long and 2'6" wide did not have the spoil piles at least two feet back from the edge of the excavation (1926.651(j)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – Four employees working in an excavation that was 6'6" deep, 20' long and 2'6" wide were not protected from cave-ins by an adequate protective system (1926.652(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

NONSERIOUS – Citation 2, item 1 – The OSHA 300 logs for the years 2006, 2007 and 2008 were requested on January 6th and 12th of 2010 and were not provided by the employer (1904.40(a)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL DIV. PROP. - \$5,500.00

TOTAL FORMULA AMT - \$5,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano noted the seriousness of the violations, and asked why the gravity based penalty had not been recommended. Mr. Perkins agreed that the violations were serious and explained the rationale behind the inspector's recommendations. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,500.00 on motion of Mr. Lujano, second of Mr. McCarthy with a provision that if this employer is cited again, that the Commission assess the gravity-based penalties.

Pacific Award Metals, Inc. dba Award Metals
50 S. 43rd Avenue
Phoenix, AZ 85009

Referral
Yrs/Business – 8
Empl. Cov. by Insp. – 12

Site Location: 50 S. 43rd Avenue, Phoenix, AZ 85009

Inspection #: I1763/314067984

Insp. Date: 12/10/09

SERIOUS – Citation 1, item 1 – One mechanical power press was not regularly inspected to ensure that all parts, auxiliary equipment and safe guards were in a safe operating condition (1910.217(c)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. He advised that the staff recommendation was for the gravity-based penalty with no adjustment factors because the violation directly caused or contributed to the serious bodily injury of an employee. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Requests for Lump Sum Commutation

Stephen Ard #98246-344293 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Ard requested a lump sum commutation of his unscheduled award of \$608.87 per month (present value \$144,953.68) in order to purchase a truck, pay for dental work, pay off

a credit card, pay back taxes, purchase a manufactured home, and pay his child support through September 2012. After subtracting a \$24,300.00 credit resulting from a prior lump sum commutation in an earlier claim from the present value of the present claim,, Mr. Ard would receive \$120,653.68 if the lump sum request is approved. Mr. Ard is unemployed. He receives \$845.00 in monthly social security disability benefits.

Ms. Thorsen advised that her recommendation is for approval, although she is concerned about Mr. Ard being able to survive solely on his social security benefits. She stated that she believes that he would benefit financially from purchasing the mobile home and paying off some debt. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. Lujano, second of Mr. McCarthy. After voting on the motion; Ms. Thorsen responded to questions from the Commissioners regarding the credit resulting from the prior lump sum commutation received by Mr. Ard.

Roberto Perez #97136-100681 - Noreen Thorsen presented this lump sum petition. She advised that Mr. Perez requested a lump sum commutation of his unscheduled award of \$33.42 per month (present value \$4,269.74) in order to pay two debts. Mr. Perez is unemployed. He receives \$844.00 in monthly social security benefits and \$289.31 for a loss of earning capacity award on a prior workers' compensation claim. His wife receives \$466.00 in monthly social security benefits.

Ms. Thorsen advised that her recommendation is for approval, although Mr. Perez will not be able to completely pay off both debts, he will be able to pay off one and reduce the amount owed on the other. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Request for Renewal of Self Insurance Authority

Pima County – Renee Pastor advised that she had previously presented this renewal report at which time the Commission requested more recent financial statements. The statements have now been received. The County has retained earnings of \$10 million in its workers' compensation trust and meets the qualifications for maintaining a fully-funded risk management fund as an alternative to the posting of other securities.

Chairman Delfs questioned whether the low ratio of total equity to total liabilities was an issue. Ms. Pastor explained that the County historically runs low ratios because they pay their debts more timely than some other entities and that their bonds are rated high. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the County's good financial condition; total assets of over \$390 million; clean audit reports; acceptable credit, bond and COP ratings; and recommends approval under A.A.C. R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. The Commission unanimously approved continuance of self insurance authority and exemption to posting securities on motion of Mr. McCarthy, second of Mr. Lujano.

Chairman Delfs stated that Ms. Pastor does an outstanding job of organizing and presenting the self insurance renewal information. He offered suggestions related to the information that is supplied to the Commission.

Discussion &/or Action regarding Legislation

Mr. Butler stated that there was nothing new to report on the various bills the Commission has been tracking and he summarized the bills of interest to the Commission. He advised that the Legislature continues to address the budget. In response to a request from Representative Hendrix, the sponsor of HB 2639, the Commission will her provide general FLSA information. This information was reviewed with the Commission.

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

This is a continuing agenda item and 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 motions and cross-motions for summary judgment have been filed and the judge has scheduled oral argument for April 23, 2010.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, March 3rd.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:30 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Brian C. Delfs*
Chairman

By *Marcin Weeks* signed in error
Vice Chairman

By *Lewis W. Lujano, Sr*
Member

ATTEST:

By *John A. McCarty*
Member

Teresa Hilton
Commission Secretary

By _____
Member