

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, March 25, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Gary Norem	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner David Parker was not able to attend. Also present was Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of March 18, 2010 Meeting

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

Discussion & Action of ADOSH Discrimination Complaints

#10-02 Jesse Ramirez v Layne Christensen Company - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Ramirez. In his complaint, Mr. Ramirez alleged that he was exposed to a chemical and was terminated after requesting a respirator. The employer stated that Mr. Ramirez was terminated following a series of incidents that were not reported to his supervision in a timely manner.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint because there was insufficient evidence to establish a connection between the protected activity (Ramirez' request for a respirator) and the adverse action (Ramirez' termination). Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Delfs.

#10-14 Roger Pena v Morpower Electric - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Pena. In his complaint, Mr. Pena alleged that he was terminated because he complained about a foreman that had kicked a ladder out from under him. As a result, he fell off the ladder hurting his neck. The complainant also stated that the employer refused to allow him to seek medical attention and he was terminated soon after. The employer stated that Mr. Pena was terminated because he refused to do as the foreman told him. An argument started and the foreman and Mr. Pena had heated words. After that the foreman told Mr. Pena to leave the site if he was not going to do as asked.

A physical confrontation ensued. The Assistant Director of Operations, Gerry Bacon, told Mr. Pena to leave and again an argument started. Finally, Mr. Pena left the site making threats. Mr. Pena was terminated for insubordination.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint because there was insufficient evidence to establish a connection between the protected activity and the adverse action. It appears that Mr. Pena was terminated because of his behavior and actions. Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Lujano, second of Mr. McCarthy.

#10-17 Mary Schultz v Supershuttle - Phoenix - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Schultz. In her complaint, Ms. Schultz alleged that she experienced respiratory problems while working at the airport due to vehicle exhaust. As a result, she was relocated and received a reduction in pay. The employer stated that Ms. Schultz was removed from working at the airport and was given a position in dispatch with a compensable salary to those in the same position. This was higher than her original pay.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint. After learning of Ms. Schultz's respiratory issues from exhaust at the airport, management accommodated Ms. Schultz by removing her from temporary assignments at the airport. Removing these additional functions resulted in her being placed from her salary status to the hourly dispatch position with commensurate pay for any one in that position, as the pay for her salaried position could no longer be justified. Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mrs. Weeks.

#10-22 Keith Briggs v Rutherford Diversified Industries, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Briggs. In his complaint, Mr. Briggs alleged that he was dismissed because he brought up safety issues (lack of water rings (flotation devices) and water jugs) to management when they were conducting work by the Central Arizona Project. The employer stated that Mr. Briggs was terminated due to his inability to perform his work duties in a timely manner. The daily reports that were required of him were incomplete and late.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint. The Division recommendation was not to pursue the complaint because there was insufficient evidence to establish a connection between the protected activity and the adverse action. Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Lujano, second of Mrs. Weeks.

#### Discussion & Action of Proposed OSHA Citations and Penalties

Thundercloud Ranch, LLC  
28150 N. Alma School Road, #103 610  
Scottsdale, AZ 85262

Fatality  
Yrs/Business - 8  
Empl. Cov. by Insp. - 2

Site Location: 30513 N. 144<sup>th</sup> Street, Scottsdale, AZ 85262

Inspection #: Y5457/314075086

Insp. Date: 01/04/10

SERIOUS – Citation 1, item 1 – Two employees were not instructed in the safe operation and servicing of a powered posthole digger (1928.57(a)(6).  
(No inspection history in past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – A posthole digger with an auger bit was not guarded to protect against employee contact with positively driven rotating members of the power drive system (1928.57(b)(1)(iii).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$14,000.00

TOTAL FORMULA AMT. - \$14,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Design Tree Maintenance, Inc.  
22025 N. Black Canyon Hwy  
Phoenix, AZ 85027

Complaint  
Yrs/Business – 14  
Empl. Cov. by Insp. – 25

Site Location: 22025 N. Black Canyon Hwy, Phoenix, AZ 85027

Inspection #: Z5834/314020009

Insp. Date: 12/01/09

SERIOUS – Citation 1, item 1 – The employer did not ensure that each employee engaged in arboricultural operations such as tree trimming had been trained in accordance with ANSI Z133.1. (23.403(A).

(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – The employer did not ensure that employees engaged in tree trimming operations and exposed to fall hazards above 20' had two means of fall protection in accordance with ANSI Z133.1 (23.403(A).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One untrained employee operated an aerial lift when trimming palm trees with overgrown fronds or other trees unsafe to climb up to heights of 60' (1910.67(c)(2)(ii).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – One employee operated a chainsaw without wearing leg protectors (1910.132(a).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – One employee was using a worn climbing saddle, a damaged double-locking snap hood, a frayed end climbing line and a lanyard that had sustained a cut while working aloft in a tree 20' above ground level (1910.132(e). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 6 – The employer did not provide training for employees in the use, care and maintenance of personal protective equipment (i.e. climbing saddles, flip lines, lanyards, hearing protection, etc.)(1910.132(f)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 7 – The employer does not issue, free of charge, the required personal protective equipment for employee use on the jobsite (1910.132(h)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 8 – The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance and servicing on a machine or equipment where the unexpected energizing, start-up or release of stored energy could occur and cause injury (1910.147( c)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 9 – One 120/240 volt, 3 phase circuit breaker panel was missing its cover, thereby exposing employees to live electrical parts (1910.303(g)(2)(i)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2, item 1 – A log and summary (OSHA 300 log) of recordable injuries and illnesses for the calendar years 2006, 2007 and 2008 were not maintained for the establishment (1904.0001(a)(2).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL DIV. PROP. - \$7,800.00

TOTAL FORMULA AMT. - \$7,800.00

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 \$7,800.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Interstate Rock Products, Inc.  
42 S. 850 W  
Hurricane, UT 84737

Complaint  
Yrs/Business – 30  
Empl. Cov. by Insp. – 50

Site Location: HC-37, Willow Beach, AZ 86445

Inspection #: A7717/314168600

Insp. Date: 01/20/10

SERIOUS – Citation 1, item 1 – Three employees were using three roof access ways that were 3' wide, 5' long and approximately 12' high, which were lacking a guardrail system (1926.502(b)(13).

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – Three employees were working in an excavation that was approximately 13' deep, 5' wide from the edge of the excavation to the building wall and 55' long which did not have a protective system installed to preclude a cave-in or collapse (1926.652(a)(1).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 3 – Two employees were working in close proximity to reinforcing steel (rebar) that was lacking caps or covers to prevent the possibility of impalement (1926.701(b) There was another instance of this violation.

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
TOTAL DIV. PROP. - \$5,250.00	TOTAL FORMULA AMT. - \$5,250.00

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 \$5,250.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties against Uninsured Employers.

2C09/10-0696	Arcadia Farms, Ltd. dba Arcadia Farms
2C09/10-0572	Central West Express LLC
2C09/10-0705	Chip Off The Old Block LLC
2C09/10-0942	Gleneagle Residential Care & Adult Day Treatment Services dba Glen Eagle Mental Health Services
2C09/10-0271	Robert Brian Ratliff & Theresa Lynn Ratliff, Husband & Wife dba R & R Furniture

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 of \$1,000.00 have been recommended against the employers. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission. The Commission unanimously approved civil penalties of \$1,000.00 against employers #0696, 0572, 0705, 0942 and 0271 on motion of Mr. Lujano, second of Mr. McCarthy.

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

Ms. McGrory provided performance pay reduction and mandated furlough program information to the Commissioners. She advised that HB 2003 is effective June 15, 2010 and that it eliminates the performance pay program and authorizes a mandatory furlough program. She explained the impact on employees and Commission and explained the major points and options under the furlough program.

Discussion &/or Action regarding Legislation

Scot Butler advised there is nothing new to report regarding bill activity. He gave a recap of the budget activity.

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

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, April 1<sup>st</sup>.

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

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *James C. Reef*  
Chairman

By *Karen Wechs*  
Vice Chairman

By *Louis W. Lyano, Sr.*  
Member

ATTEST:

By *John A. Mc Caffrey*  
Member

*Teresa Hilton*  
Commission Secretary

By \_\_\_\_\_  
Member