

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, October 14, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonically)
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Suzanne Marwil	Legal Counsel
	Miral Sigurani	Legal Counsel
	Darin Perkins	Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	CFO
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer.

Approval of Minutes of September 29, 2010 Meeting

The Commission approved the Minutes of September 29, 2010 on motion of Mr. McCarthy, second of Ms. Strickler. Mr. Parker abstained.

Discussion & Action regarding ADOSH Discrimination Complaints

Darin Perkins gave a brief summary of the statutes and rules pertaining to OSHA discrimination cases and explained what constitutes protected activity. He described the elements that must be proved to establish a violation of A.R.S. § 23-425 (OSHA discrimination).

#10-25 Ray Cuellar v City of Bisbee – Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Cuellar. In his complaint, Mr. Cuellar alleged that he was discriminated against by the City of Bisbee for filing a complaint on November 16, 2009 concerning a mold situation located in City Hall. He alleged this discrimination took the form of harassment, reprimands and changes to his work hours and duties. The City of Bisbee stated that they did not know who filed the mold complaint on November 16, 2009, and therefore, could not have discriminated in any way against Mr. Cuellar.

Mr. Perkins presented a history of Mr. Cuellar's employment and responded to questions from the Commissioners. The Division recommendation was not to pursue the matter since there was no evidence to support the actions taken against Mr. Cuellar as retaliation for his complaint to ADOSH, but rather, the actions taken by the City resulted from legitimate and lawful work-related issues. In addition, it appears that the personnel actions taken against Mr. Cuellar would have occurred even if he had not filed a complaint with ADOSH or raised

concerns regarding exposure to mold. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

#10-50 Alissa Downes v Gorman & Jones, PLC - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Downes. In her complaint, Ms. Downes alleged that she was terminated after informing her employer that she contacted ADOSH. The employer states that Ms. Downes was terminated because of poor work performance and other issues.

Mr. Perkins presented a history of Ms. Downes' employment and responded to questions from the Commissioners. The Division recommendation was to pursue the matter because Ms. Downes was terminated shortly after Mr. Gorman and Mr. Jones were informed that she had been in contact with ADOSH regarding potential safety problems. Mr. Jones admitted Ms. Downes may not have been terminated had it not been for her complaint to ADOSH. In response to a question from Mr. Parker, Mr. Perkins and Ms. McGrory described the process when the Commission decides to pursue a discrimination matter in Superior Court. Following discussion, the Commission unanimously voted to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

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

Golf International, Inc. 10440 Indian Wells Drive <u>Fountain Hills, AZ 85268</u>	Planned Yrs/Business – 28 Empl. Cov. by Insp. – 8
Site Location: 10440 Indian Wells Drive, Fountain Hills, AZ 85268	
Inspection #: N4762/314617952	
Insp. Date: 06/17/10	

SERIOUS – Citation 1, item 1 – The employer did not provide inspection procedures for their employees to use for the golf equipment lift (23.403(A)). There were four other instances of this violation.

(One inspection with no violations in the past three years).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1, item 2 – The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or 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 - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1, item 3 – One pedestal grinder did not have a guard covering the spindle end nut and flange on the wire wheel end of the pedestal grinder (1910.212(a)(1)).

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

SERIOUS – Citation 1, item 4 – One pedestal grinder did not have a safety guard installed on the abrasive wheel side to cover the spindle end, nut and flange projection on the left end of the grinder (1910.215(a)(2)). There was another instance of this violation.

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1, item 5 – One pedestal grinder did not have the work rest adjusted so that it was within one-eighth inch of the abrasive wheel, as the work rest was approximately one inch away from the abrasive wheel (1910.215(a)(4)). There was another instance of this violation.

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, item 6 – One 120/240 volt electrical circuit breaker panel was missing a circuit breaker or blank cover at slot numbers 8 and 10 on the right side, thereby exposing employees to contact with the energized electrical parts (1910.303(g)(2)(i)). There were two other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

NONSERIOUS – Citation 2, item 1 – The employer did not maintain and retain a Log and Summary of the recordable occupational injuries and illnesses for the establishment (1904.0001(a)(2)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$6,600.00

TOTAL FORMULA AMT. - \$6,600.00

Darin Perkins advised that this file had been presented previously to the Commission at which time additional information was requested, including whether not performing inspections on these types of lifts was common in the industry. ADOSH performed a survey and has determined that it is not common to not conduct inspections. Mr. 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 \$6,600.00 on motion of Ms. Strickler, second of Ms. Oster.

Rickabaugh, Inc.

447 W. Watkins St., Suite 10

Phoenix, AZ 85009

Site Location: 447 W. Watkins St., Suite 10, Phoenix, AZ 85009

Inspection #: Y5457/314698804

Insp. Date: 07/20/10

Complaint

Yrs/Business – 41

Empl. Cov. by Insp. – 9

SERIOUS – Citation 1, item 1 – A shop built work platform utilized on a forklift was not designed and constructed in conformance with the applicable requirements of ANSI A92.2-1969 (Vehicle Mounted Elevating and Rotating Work Platforms)(1910.67(b)(1)). (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – One employee was operating a forklift without formal training and certification (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One horizontal/vertical bandsaw was lacking a blade guard (1910.213(i)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A guard on a surface planer did not return automatically when released (1910.213(j)(3)). There was another instance of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. 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 \$3,000.00 on motion of Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding the FY 2009 Enhanced FAME Report.

Mr. Perkins summarized the U.S. Department of Labor's monitoring of state programs. He advised that Federal OSHA auditors reviewed all accident and fatality files, along with a sample of regular inspection and discrimination files as well as some financial records. He reviewed the substantive findings in the Enhanced FAME Report and stated that there were some areas in which he disagreed with the findings and other areas ADOSH has been working on for improvement. The Commission discussed the report and ADOSH's written response to the Report.

Discussion & Action regarding Arizona Minimum Wage Rate for 2011

Randy Maruca summarized the Arizona Minimum Wage and noted the language in A.R.S. § 23-363(B) that directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. He provided a computation of the proposed rate increase in the Arizona Minimum Wage Rate to become effective January 1, 2011. Mr. Maruca explained that the Consumer Price Index as of August 2010 was 1.1 percent higher compared to August 2009. In accordance with the requirements of the statute, he stated that the Labor Department recommends the Commission approve a new rate of \$7.35 effective January 1, 2011. Mr. Maruca responded to questions from the Commissioners and summarized the minimum wage range throughout the country. Ms. Strickler questioned whether a fiscal analysis to ascertain the impact on business had been performed. Mr. Maruca responded to the question. Ms. Strickler expressed concern for small employers particularly in light of the current state of the economy. Following further discussion, the Commission unanimously approved the rate of \$7.35 effective January 1, 2011 on motion of Mr. McCarthy, second of Ms. Oster. Ms. McGrory summarized the Commission's plan to publicize the new minimum wage.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Committee may move into Executive Session under A.R.S. §§38-431.03(A)(2) to discuss records exempt by law from public inspection. 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

Freeport-McMoran Copper & Gold, Inc. – Ms. Oster announced that she was recusing herself from discussion and action related to this matter. Renee Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's profitability, large size with total assets of just under \$26 billion, a clean audit report, and acceptable credit ratings. Following discussion, the Commission approved continuance of

self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy. Ms. Oster did not vote.

Knight Transportation, Inc. - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She explained that previously independent contractors were included under Knight's self-insurance program, but that this has been corrected. Mr. Parker expressed concern that all old claims will be covered. Ms. Pastor responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the consistent record of profitability, growing size with total assets of just under \$686.5 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Truly Nolen of America, Inc. - The Commissioners agreed that an Executive Session was not necessary since they had reviewed the confidential financial information and did foresee a need to discuss that financial information during the public session. Ms. Pastor presented staff's renewal report along with current Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's record of profitability, a clean audit report, the meeting of all requirements required for a self-insured employer in the State of Arizona, and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Viad Corp - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's large size with total worldwide assets of \$225 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C09/10-2909	Allen Moore & Lynn Moore, Husband & Wife dba Total Control
2C10/11-0022	Angela L. Thornton & Dean Thornton, Husband & Wife
2C10/11-0525	Creative Travel Management, L.L.C.
2C10/11-0634	Oasis At Wild Horse Ranch, LLC
2C10/11-0020	Devito Plastic Surgery, PLLC dba Devito Plastic Surgery Center aka Michele C. Devito, M.D. P.C.
2C09/10-2791	Diamond Allied Services, L.L.C. dba Certa Pro Painters
2C09/10-2921	J.E.S.V. Inc. dba Premier Cleaning Services aka Premier Cleaning Service aka Elizabeth Vargas dba Premier Cleaning Service
2C10/11-0109	Sun Horizon Specialized, LLC

Mr. Wade advised that with regard to the above listed employers, a compliance

investigation confirmed that they 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 are recommended against each of these employers. With regard to employer #2791, since they have recently obtained coverage, Mr. Wade recommended a penalty of \$500.00. He further recommended civil penalties of \$1,000.00 be assessed against employers #2909, 0022, 0020, 2921 and 0109 and civil penalties of \$5,000.00 be assessed against employers #0525 and 0634. He provided additional information regarding these employers and responded to questions from the Commission.

The Commission unanimously assessed civil penalties of \$500.00 against employer #2791; \$1,000.00 against employers #2909, 0022, 0020, 2921 and 0109; and \$5,000.00 against employers #0525 and 0634 on motion of Mr. McCarthy, second of Ms. Oster.

#### Discussion & Action of Attorney Fee Petition.

Robert E. Wisniewski, Robert E. Wisniewski, P.C., v Vlado Sulevski – Mr. Wade advised that Robert Wisniewski has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Mr. Sulevski in connection with his industrial injury claim. Mr. Wade gave a history of the claim and the work performed by Mr. Wisniewski on behalf of Mr. Sulevski. He explained the parties have resolved the attorney's fees issue, and have agreed to an attorneys' fee of 25% of the scheduled award.

Mr. Wade stated that his recommendation is to award attorneys' fees in the amount of 25% of any scheduled permanent benefits or settlement made in lieu of scheduled permanent benefits, not to exceed the sum of \$1,714.56, and he explained the factors that indicate this award is reasonable. Following discussion, the Commission unanimously awarded additional attorneys' fees in the amount of 25%, not to exceed the sum of \$1,714.56, on motion of Ms. Oster, second of Mr. McCarthy.

#### Discussion &/or Action regarding Legislation

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

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

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

#### Announcements and Scheduling of Future Meetings

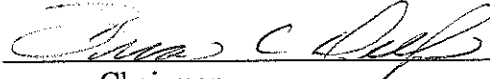
Mr. Wade introduced new staff attorney, Miral Sigurani, and summarized some strategic planning for Commission's collections unit.

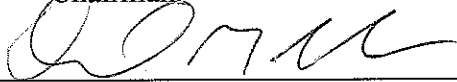
The Commissioners scheduled meetings for Wednesday, October 27<sup>th</sup>, Thursday, November 4<sup>th</sup> and Wednesday, November 17<sup>th</sup>.


There being no further business to come before the Commission and no public comment, Vice Chairman Parker adjourned the meeting at 3:00 p.m.


APPROVED:


THE INDUSTRIAL COMMISSION OF ARIZONA

By   
Chairman

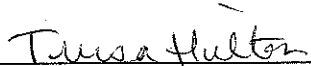
By   
Vice Chairman

By   
Member

By   
Member

By   
Member

ATTEST:

  
Commission Secretary