

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, November 4, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Miral Sigurani	Legal Counsel
	Stephen Ball	Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Manager
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present were Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of October 27, 2010 Meeting

The Commission unanimously approved the Minutes of October 27, 2010 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of the Arizona 2010 General Election Legislative results and discussed the make-up of the Legislature. He stated that the two most significant issues to be addressed this year are the state budget and economic development.

Discussion & Action of ADOSH Discrimination Complaints

#10-36 Kelly Birkett v Swift Aviation Group - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Birkett. In her complaint, Ms. Birkett alleged that she was discharged because 1) the company believed that she was the employee that filed a safety and health complaint with ADOSH; 2) she provided evidence to a co-worker that he used in his DES case against the company regarding unsafe workplace conditions; and 3) she told management of her intentions to report her concerns regarding the legality of Swift Aviation's lavatory/potable water vehicle. The employer stated that Ms. Birkett had a long history of being chronically late to work. The company has documentation of the write-ups and counseling sessions for tardiness and other matters. She was written up for swearing/cussing and talking in a derogatory manner about the company and other employees. She was reprimanded for making remarks about a co-worker's sexual orientation. She was reprimanded for engaging in a verbal confrontation with a co-worker in front of customers. Ms. Birkett was also written-up for making derogatory comments in the maintenance hanger and had to be told to keep her comments to herself. She was also counseled for engaging in verbal

confrontations with other employees on various occasions. Last of all, she was involved in time-card fraud and was terminated on January 20, 2010.

Mr. Perkins presented a history of Ms. Birkett'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 a connection between Ms. Birkett's termination and any protected activity. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

#10-70 Mike Saenz v Big O Tires - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Saenz. In his complaint, Mr. Saenz alleged that he was discharged because he took photos of safety problems in the shop and because he threatened to contact ADOSH. The employer stated that Mr. Saenz had a negative attitude, was argumentative, and was not complying with shop and corporate policies regarding promotions. The company was in the process of hiring individuals to replace Mr. Saenz. Mr. Saenz did state he was going to contact OSHA, but the decision had already been made to terminate his employment.

Mr. Perkins presented a history of Mr. Saenz's employment and responded to questions from the Commissioners. The Division recommendation was not to pursue the matter since the evidence gathered during the investigation supports the employer's claim that they had already planned to terminate Mr. Saenz prior to the protected activity for legitimate business reasons. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Mr. Parker.

In response to a question from Ms. Oster, Mr. Perkins explained that staff's goal is to conclude their investigation within 90 days, which is not always possible due to the number of complaints, complexity of issues, and staffing shortage.

Discussion & Action regarding Appointment of Member to the Elevator Advisory Board

Randy Storr - Mr. Perkins advised that there is a vacancy on the Elevator Advisory Board for a member representing labor and recommended that Mr. Storr be appointed to fill the vacancy. The Commission agreed that Mr. Storr was well qualified and unanimously appointed him to the Elevator Advisory Board on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action regarding Appointment of Member to the Boiler Advisory Board

Brent Johnson, P.E. - Mr. Perkins stated that Mr. Johnson is well qualified and that he is recommending that Mr. Johnson be appointed to fill a vacancy on the Boiler Advisory Board. Chairman Delfs explained that the agency had to seek legislation to allow for outside inspectors due to the large number of inspections and backlog. The Commission agreed that Mr. Johnson was well qualified and unanimously appointed him to the Boiler Advisory Board on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding Request for Lump Sum Commutation

Ricky Crockett #20072-900727 - Noreen Thorsen presented this lump sum petition. Ms. Thorsen advised that her recommendation is for approval, since the lump sum proceeds will allow Mr. Crockett to purchase a vehicle and rent an apartment. Mr. Parker questioned the rehabilitative benefit that the lump sum would provide. It was discussed that Mr. Crockett has no other income and did not pursue vocational rehabilitation. Ms. Oster agreed that she did not see an ultimate financial benefit. The Commission unanimously denied the lump sum request on

motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action regarding Application for Self Insurance Authority

Regis Corporation – Renee Pastor presented staff's report, which included an analysis of financial information and current credit rating and responded to questions from the Commissioners. Ms. Pastor stated that Administration is recommending approval of workers' compensation self-insurance authority based on the submission of a complete and satisfactory application, a clean audit report, the company's stability and profitability with total assets of June 30, 2009 posting at just under \$1.9 billion, and acceptable credit ratings. Following discussion, the Commission unanimously granted self-insurance authority effective December 1, 2010 on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0703	Arcadia Care, LLC
2C10/11-0707	Arcadia Villa Care, LLC
2C09/10-2427	Arizona Glass Works, L.L.C. dba Novus Glass
2C10/11-0221	BC Fabrication, L.L.C. dba KSH Marine
2C10/11-0704	Camelhead Care, LLC
2C10/11-0018	Chef Alisah, L.L.C. dba Chef Alisah's Restaurant
2C09/10-3485	Craig Heck, a single man, dba Heck of a Deal Rod, Custom & Collision aka Heck of a Deal Hot Rods & Customs
2C09/10-2123	Express Marble & Granite, L.L.C.
2C09/10-0649	Grumpy Jakes BBQ, LLC dba Grumpy Jakes BBQ aka Grumpy Jakes BBQ & Catering
2C09/10-0153	Jacqueline M. Norton, a Single Woman, dba P.J.'s Restaurant
2C10/11-0504	Old Pueblo Steel, Inc.
2C09/10-1012	Victor C. Dominguez & Angela C. Dominguez, Husband & Wife, dba Gabi's Cafe

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. He recommended civil penalties of \$2,500.00 be assessed against employers #0703 and 0707 and a civil penalty of \$500.00 be assessed against employer #0704 since they recently obtained coverage. It was discussed that these three companies have one policy under the Camelhead Care LLC although they are technically three separate employers. Mr. Wade recommended penalties of \$1,000.00 be assessed against the remaining employers. He provided additional information regarding these employers and responded to questions from the Commissioners. Following discussion, Chairman Delfs tabled consideration of civil penalties against employers #0703, 0707 and 0704 until clarification can be provided that the policy does include all employees. The Commission unanimously assessed civil penalties of \$1,000.00 against employers #2427, 0221, 0018, 3485, 2123, 0649, 0153, 0504 and 1012 on motion of Mr. Parker, second of Ms. Strickler.

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

Ms. McGrory advised that she met with OSPB staff this week to discuss projected revenues for the agency and that she and Scot Butler will be meeting with legislative staff to discuss budget issues. Current ADOSH staffing and salaries was also discussed, and Ms. McGrory stated that she is exploring alternative pay plans. Mr. Parker suggested that, with regard to federal OSHA funding, it would be helpful for the agency to bolster its outreach program.

Announcements and Scheduling of Future Meetings

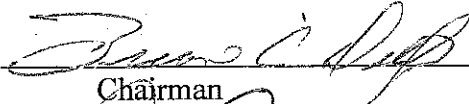
Ms. McGrory stated that the Commissioners have received invitations to the VPP ceremony for Cintas and encouraged them to attend if possible.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, November 17th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:15 p.m.

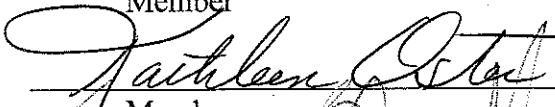
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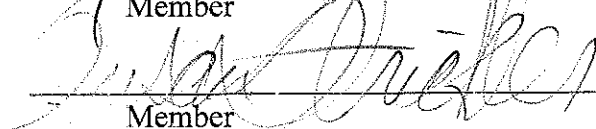
THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Chairman

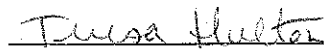
By 
Vice Chairman

By _____
Member

By 
Member

By 
Member

ATTEST:


Commission Secretary