

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, January 12, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Bill Wright	Asst. Director, ADOSH
	Jessie Atencio	Asst. Director, ADOSH
	Harriet Turney	Chief Admin. Law Judge
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer. Mr. Delfs requested a moment of silence for those who were killed, wounded, and witnessed the events in Tucson last Saturday and for their families and friends.

Approval of Minutes of January 6, 2011 Meeting

The Commission unanimously approved the Minutes of January 6, 2011 on motion of Mr. McCarthy, second of Mr. Parker.

Bill Wright introduced Jessie Atencio, newly appointed Assistant Director for the ADOSH Tucson office to the Commissioners. He was welcomed by Chairman Delfs who extended him good luck and the support of the Commission.

Discussion & Action of Proposed OSHA Citations and Penalties

United Dairymen of Arizona
2008 S. Hardy Drive
Tempe, AZ 85282

Site Location: 2008 S. Hardy Drive, Tempe, AZ 85282
Inspection #: N9589/314820036
Insp. Date: 08/12/10

Referral
Yrs/Business – 40
Empl. Cov. by Insp. – 89

SERIOUS – Citation 1, item 1 – Employees working in the lactose bag filling room and non-fat milk bag filling room used compressed air to clean milk powder accumulations from equipment, thereby creating a potentially explosive/flammable atmosphere (23.403(A)). There was another instance of this violation

(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 2 – The danger zone between operating pneumatic cylinders and the machine frame was not guarded (1910.212(a)(3)(ii).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 3 – The pinch point between the horizontal belt and pulley was not guarded (1910.219(d)(1). There was another instance of this violation.

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 4 – A flexible extension cord was used in a Class 2, Division 2 hazardous location where explosive dust is processed (1910.307(c). There were four other instances of this violation.

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, item 5a – The chemical manufacturer did not obtain or develop material data sheets for Non-Fat Milk Powder, Lactose Powder, Milk Protein Powder or Whey Protein Powder (1910.1200(g)(1).

Citation 1, item 5b - The hazard communication training provided by the employer did not include the specific health and physical hazards associated with handling powdered milk products (1910.1200(h)(2)(ii).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

NONSERIOUS – Citation 2, item 1 – The log of Work-Related Injuries and Illnesses (OSHA Form 300) and the Summary of Work-Related Injuries and Illnesses (OSHA Form 300A) was not kept by the establishment (1904.0029(a).

Div. Proposal - \$ 550.00

Formula Amt. - \$ 550.00

TOTAL PENALTY - \$7,425.00

TOTAL FORMULA AMT. - \$7,425.00

Bill Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned the proposed citation for Citation 1, item 1 under the general duty clause. Following discussion, the Commission approved issuing the citations and assessed the recommended penalty of \$7,425.00 on motion of Mr. McCarthy, second of Ms. Strickler. Mr. Parker voted nay since he did not feel the general duty violation had been established.

Taukihaamea Tuione Pulotu, Jr. and
Melesia Lea Pulotu, husband and wife,
dba First Quality Masonry
922 Port Drive
Gilbert, AZ 85233

Unprogramed Related
Yrs/Business – 3
Empl. Cov. by Insp. – 2

Site Location: Old Pinal Courthouse, Butt Street, Florence, AZ 85232
Inspection #: A9339/314856972
Insp. Date: 09/02/10

SERIOUS – Citation 1, item 1 – The gas-powered mortar mixer had rotating blades that were not guarded (1926.300(b)(2).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The foreman elevated the aerial lift basket by extending the boom to the roof of the building 35-40' above ground, and did not wear any fall protection until the aerial lift man basket was in position at the chimney on the roof (1926.453(b)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The foreman working from the S-65 aerial lift was not provided any training as to when fall protection was required or the hazards and procedures to control or minimize those hazards (1926.454(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – An employee was allowed to work while standing on the sill of a gable window at 35-40' above ground without the use of any fall protection system (1926.501(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – An employee working along the window sill and exposed to a fall hazard was not provided any training as to when fall protection was required, the hazards and the procedures to control or minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Parker, second of Ms. Oster.

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) and (2) for discussion and consideration of applicants for Administrative Law Judge position of the Industrial Commission. The names of the applicants are confidential pursuant to A.A.C. R2-5-202

The Commission unanimously voted to go into Executive Session on motion of Mr. Delfs, second of Mr. McCarthy. Executive Session Minutes are kept separately.

General Session – Discussion and Action regarding Appointment of Administrative Law Judge

Upon return to General Session, Mr. Parker made a motion to offer the position to candidate #1. In the event candidate #1 does not accept the appointment, candidate #2 would be offered the position. Mr. McCarthy seconded the motion which was unanimously approved.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C10/11-0212

Ragazzi Restaurant, L.L.C. dba Trattoria Ragazzi

Andrew Wade advised that with regard to the above listed employer, 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), a civil penalty of \$1,000.00 is recommended against this employer. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously assessed a civil penalty of \$1,000.00 against employer #0212 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding Legislation

Ms. McGrory stated that Senator McComish has sponsored SB1102 which contains the conforming changes to Title 23 to address the privatization of SCF. Although the bill contains the Commission's proposed changes to §§ 23-961 (regarding the calculation of the "in-lieu" tax) and 23-966, the dialog continues with self-insured employers regarding how the deviation rate should be addressed. She also advised that she has been asked to address the Economic Development and Job Creation Committee next Wednesday regarding the Arizona Workers' Compensation System.

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

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

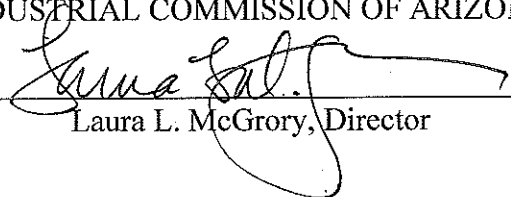
Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, January 19th. The Commissioners scheduled additional meetings for Wednesday, February 2nd, Wednesday, February 9th and Wednesday, February 23rd.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary