

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, February 9, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	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
	Darin Perkins	Director, ADOSH
	Pam Sanchez	Asst. Claims Manager
	Yoko Lozano	Claims Receptionist
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Others in attendance included Scot Butler, the agency's lobbyist; Stephen L. Weiss, attorney at law; Eda Barolli of Snell & Wilmer; and Lisa Laird.

Discussion &/or Action regarding Legislation

Scot Butler provided an update of proposed legislation of interest to the Commission. Mr. Butler discussed HB's 2151 and 2584 and SB's 1102, 1264 and 1567 and responded to questions from the Commission. He also discussed new bills – HB 2616 and 2617 and SB 1201 and 1339 and provided his recommendations to the Commission.

Stephen L. Weiss addressed the Commission with regard to HB 2617. He expressed concerns about the impact the proposed legislation could have on injured workers and on the operations of the Commission. He also explained how the proposed legislation could result in the shifting of costs for industrial injuries from industry to the taxpayer/public sector. Mr. Weiss asked if the Commission would accept written comments on the proposed legislation from stakeholders and Chairman Delfs stated that letters should be directed to Director McGrory for dissemination and thanked Mr. Weiss for his comments.

Approval of Minutes of February 2, 2011 Meeting

The Commission unanimously approved the Minutes of February 2, 2011 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of ADOSH Discrimination Complaints

#10-63 Amanda Fries and Sonya Endres v Estrella Animal Hospital, Inc. - Darin Perkins presented a summary of the Division's investigation of discrimination complaints filed by Ms. Fries and Ms. Endres. In their complaints, Ms. Fries and Ms. Endres alleged that they were

terminated after the company deduced that it was one of them who filed a complaint with the Arizona Division of Occupational Safety and Health. In response to the complaint, the employer stated that Ms. Fries and Ms. Endres were terminated for violating zero tolerance safety rules.

Mr. Perkins presented a history of Ms. Fries' and Ms. Endres' employment and chronology of events and responded to questions from the Commission. Mr. Perkins explained that Ms. Fries and Ms. Endres both signed a zero tolerance policy, they were aware that they were violating company policies when they arrived to work wearing crocs and having food at Comb's desk, and were terminated as a result. There was no evidence that management knew the source of the ADOSH complaint and no direct connection between the protected activity (complaint with ADOSH) and the adverse action (employees' termination). The Division recommendation was not to pursue the matter. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Mr. Parker.

#11-09 Barbara McElmurry v State of Arizona Department of Agriculture - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. McElmurry. In her complaint, Ms. McElmurry alleged that she was harassed and then fired for bringing up health and safety issues to the employer and to ADOSH. The employer's position was that Ms. McElmurry was not harassed, but employment was terminated for insubordination.

Mr. Perkins presented a history of Ms. McElmurry's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no direct evidence of a causal link between the protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy. Ms. Oster noted that there do seem to be HR issues since Ms. McElmurry was the only employee who was ordered to have a physical.

Discussion & Action of Proposed OSHA Citations and Penalties

City of Phoenix, Public Works Department
200 W. Washington St. 12th Floor
Phoenix, AZ. 85003

Site Location: 4019 W. Glenrosa, Phoenix, AZ 85019
Inspection #: U9805315150581
Insp. Date: 11/23/10

Fatality
Yrs/Business – 100
Empl. Cov. by Insp. – 10

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

Citation 1, item 1a – The employer did not develop and implement a written lockout/tagout program to protect employees servicing heavy equipment vehicles (1910.147(c)(1)).

Citation 1, item 1b - The employer did not provide specific training for the de-energization of stored energy sources that the employees are exposed to while working with heavy equipment (1910.147(c)(7)(i)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity based penalty with no adjustment factors since the violations directly contributed to the fatality. Mr. Parker commented that this type of hazard may be overlooked and not included in lock/out tag/out education since the stored energy issue is usually thought of as related to electrical rather than release of pressure. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. McCarthy, second of Ms. Strickler.

RCC Holdings, LLC dba Andrew Lauren Interiors
3669 E. LaSalle Street
Phoenix, AZ 85040

Complaint
Yrs/Business – 1
Empl. Cov. by Insp. – 13

Site Location: 3669 E. LaSalle Street, Phoenix, AZ 85040
Inspection #: N9589/315113639
Insp. Date: 11/15/10

SERIOUS – Citation 1, item 1 – Exit routes were not maintained free and unobstructed (1910.37(a)(3)).

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – A written respiratory protection program that included the provision in 1910.134(c)(1)(i-ix) with worksite specific procedures was not established and implemented for required respirator use when employees were exposed to airborne crystalline silica during dry cutting and finishing of granite stone products(1910.134(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

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 3a – The employer did not maintain a written hazard communication program at the workplace where employees worked with granite stone, acetone and polyester adhesives (1910.1200(c)(1)).

Citation 1, item 3b - The employer did not have a material safety data sheet for granite stone products which are cut, ground and polished by employees, thereby exposing employees to silica dust (1910.1200(g)(1)).

Citation 1, item 3c - The employer did not provide effective information and training on the hazards associated with cutting and grinding on granite stone which generates silica dust (1910.1200(h)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 2, item 2 – The employer did not develop and implement a noise monitoring program when employee exposure to noise while using hand-held stone cutting, grinding and polishing equipment likely equaled or exceeded an 8-hour time-weighted average of 85 decibels (1910.95(d)(1)).

Div. Proposal - \$ 700.00

Formula Amt. - \$ 700.00

TOTAL PENALTY - \$5,950.00

TOTAL FORMULA AMT. - \$5,950.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,950.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Requests for Lump Sum Commutation

Marvin McLaughlin #20091-100386 – Pam Sanchez presented this lump sum petition. Ms. Sanchez advised that the Division's recommendation is for approval, since the lump sum proceeds will allow Mr. McLaughlin to purchase a car to help him in his job search and would allow him to pay his lease through July 2011. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Ms. Strickler.

Jerry Roberts #20082-910288 – Pam Sanchez presented this lump sum petition. Ms. Sanchez advised that the Division's recommendation is for denial, due to concerns about his employment status and lack of income. Mr. Roberts moved to Iowa where he has family. He indicates he works intermittently but doesn't indicate he is looking for a full time job. He also indicates he has applied for Social Security, but the Social Security Administration has not responded to his application. Following discussion, the Commission denied the lump sum request on motion of Mr. Parker, second of Mr. McCarthy. Ms. Oster and Ms. Strickler abstained.

Rafael Zaconi #20100-330196 – Pam Sanchez presented this lump sum petition. Ms. Sanchez advised that the Division's recommendation is for approval, since the lump sum will allow Mr. Zaconi to return to Mexico so he can work on the family farm. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

- 2C09/10-2097 Apolotran Xpress, LLC
- 2C10/11-0319 Chalo's La Casa Reynoso (Safford), L.L.C.
dba Chalo's Mexican Food Restaurante
- 2C10/11-0963 Fair Exchange Auto Sales Company
- 2C10/11-1105 Jacqueline M. Norton, a Single Woman,
dba P.J.'s Restaurant
- 2C10/11-1103 Mohammed S. Elsayed & Kuswer Elsayed,
Husband & Wife dba Allstar Moving & Storage, Inc.
aka Allways Moving & Storage
- 2C10/11-0105 SS Cellular, L.L.C.

Andrew 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 of \$1,000.00 are recommended against employers #2097, 0319, 0963, 1103 and 0105. Mr. Wade further advised that a civil penalty of \$5,000.00 is being

recommended against employer #1105 since this is their second civil penalty. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission assessed civil penalties of \$1,000.00 against employers #2097, 0319, 0963, 1103 and 0105 and a civil penalty of \$5,000.00 against employer #1105 and authorized Mr. Wade to reduce the penalty for employer #1105 to \$2,500.00 if evidence of insurance is provided within 45 days on motion of Mr. Parker, second of Ms. Oster. Mr. Delfs voted nay.

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

Ms. McGrory stated there was nothing new to report.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for Wednesday, February 23rd and Thursday, March 3rd.

There being no further business to come before the Commission and no further public comment, Chairman Delfs adjourned the meeting at 2:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary