

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, March 3, 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
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs had not yet arrived. Others in attendance included Scot Butler, the agency's lobbyist; Stephen L. Weiss, attorney at law; Larry Weniger of Bull Moose Tube Co.; Harry Monroe of Coventry Health Care; Ruth Unks of Maricopa County Community College District; Chic Older of the Arizona Medical Association; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of February 23, 2011 Meeting

The Commission unanimously approved the Minutes of the February 23, 2011 Executive Session on motion of Mr. McCarthy, second of Ms. Oster.

The Commission unanimously approved the Minutes of the February 23, 2011 General Session on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Bull Moose Tube of Casa Grande, LLC	Planned
dba Bull Moose Tube Company	Yrs/Business – 7
1001 N. Jefferson Avenue	Empl. Cov. by Insp. – 22
<u>Casa Grande, AZ 85122</u>	

Site Location: 1001 N. Jefferson Avenue, Casa Grande, AZ 85122

Inspection #: T3633/315297575

Insp. Date: 02/03/11

SERIOUS – Citation 1, item 1 – Employees who changed the guides on the back section of the slitter worked from a step placed against the guardrail of the slitter pit so that the effective height of the guardrail was 22" above the work platform and the distance from the work platform to the bottom of the pit was approximately 13' (1910.23(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – Two guards intended to prevent employee contact with the pipe-forming rollers were lifted out of place, and two other guards were damaged so that the pipe rollers covered by the guards were not adequately guarded (1910.212(a)(3)(ii)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

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 3a – Sections of the horizontal shafting powering the pipe transfer equipment between the mill and the bundler machine were not protected (1910.219(c)(2)(i)).

Citation 1, item 3b - Shaft ends which were not smooth were not guarded (1910.219(c)(4)(i)).

Citation 1, item 3c - The guard for the belt and pulleys which powered the pipe washer was damaged so that the belt was not fully enclosed and the pulleys guarded (1910.219(d)(1)).

Citation 1, item 3d - A sprocket wheel and chain on the north end of the paint dryer was not enclosed (1910.219(f)(3)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$5,625.00

TOTAL FORMULA AMT. - \$5,625.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Mr. McCarthy made a motion to assess the recommended penalty of \$5,625.00, which was seconded by Ms. Strickler. Vice Chairman Parker invited Mr. Weniger to address the Commission. Mr. Weniger stated he felt that the proposed penalty was unfair since the ADOSH inspector was a hygienist and not a safety inspector who did not understand the trade. He stated that some of the guarding issues were not practical and would encumber production, making the work more dangerous. Also, the violations have been corrected, and some were addressed immediately. Mr. Parker explained the process including the potential for Mr. Weniger to request an informal conference with ADOSH to discuss the issues. In response to Mr. Weniger's comments, Mr. Perkins described the compliance officer's qualifications and stated that the inspector has inspected numerous manufacturing plants and that he believes the citations are valid. Mr. McCarthy restated his prior motion, which was seconded by Ms. Strickler and unanimously approved.

Jabil Circuit, Inc.
615 S. River Drive
Tempe, AZ 85281

Site Location: 615 S. River Drive, Tempe, AZ 85281

Inspection #: U9805/315283051

Insp. Date: 01/19/11

Planned

Yrs/Business – 6

Empl. Cov. by Insp. – 1,337

SERIOUS – Citation 1, item 1 – Employees were working on a platform approximately 8' above ground which was lacking adequate guarding (1910.23(c)(1)).
(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – Two electrical circuit breaker panels were lacking two blankout

covers each (1910.305(b)(1). There were four other instances of this violation.

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$3,375.00

TOTAL FORMULA AMT. - \$3,375.00

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 \$3,375.00 on motion of Ms. Oster, second of Mr. McCarthy.

Chairman Delfs arrived at this point and took over chairmanship of the meeting.

Discussion &/or Action regarding Legislation

Scot Butler provided an update of proposed legislation of interest to the Commission. Mr. Butler discussed HB's 2151, 2476, 2541, 2584, 2616 and 2617 and SB's 1102, 1264 and 1567 and responded to questions from the Commissioners. With regard to HB 2617, Mr. Butler stated that based on discussion and meetings with the sponsor and interested parties, he is recommending that the Commission oppose the bill as introduced but leave open the ability to continue to discuss other revisions. Following discussion, the Commission unanimously voted to oppose HB 2617 as introduced but remain open to further discussion on alternative versions of the bill that are not as open ended and difficult to implement on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Use of Fee Discount Agreements in the Arizona Workers' Compensation System and Recommended Changes to the Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Laura McGrory stated that as a follow-up to earlier action taken last August by the Commission regarding the 2010 Physicians' Fee Schedule, a stakeholders committee was formed to address the use of fee discount agreements between physicians and payers. The committee consisted of the following individuals: Chic Older, Arizona Medical Association; Dr. Beth Purdy and Kendra Balazs, The Orthopedic Clinic Association; Chris Garland, Arizona Self-insurers Association; Greg Gilbert, Concentra; Harry Monroe, Coventry Health Care; and Cathy Vines, SCF Arizona. Ms. McGrory introduced Chic Older and Harry Monroe to the Commissioners. She stated that the committee met on four occasions from last October through this February, focusing on finding a way to improve communications between physicians and payers regarding network issues and discussing the issue of fee disputes that involve network discounts. She stated that the committee has recommended language for inclusion in the fee schedule, which has been provided to the Commissioners. The proposed language would be added to the Introduction of the Fee Schedule. Ms. McGrory summarized the committee's recommendations regarding the proposed language, and that the committee recommended that, if approved by the Commission, the changes become effective 90 days after posting on the web site. Ms. McGrory thanked the committee members for their hard work and for the valuable insight and information each brought to the process.

Chairman Delfs echoed his appreciation to the committee members. He expressed concern about making changes to the fee schedule in mid-cycle and without an additional opportunity for public comment. Ms. McGrory acknowledged that historically changes have been made to the fee schedule in its annual update, noting that this issue is a continuing

discussion item from last year's fee schedule process that was included as part of the staff study and public hearing process. Ms. McGrory also explained the process for providing notice to the public regarding changes to the Fee Schedule. The Commission discussed the process of implementing changes "mid-cycle" and Mr. Older and Mr. Monroe responded to questions from the Commission regarding the same. Following further discussion, the Commission unanimously instructed staff to allow for a 30 day public comment period regarding the Committee's recommendation, with concurrent legal review and bring the matter back to the Commission on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Request for Renewal of Self Insurance Authority

Maricopa County Community College District - Renee Pastor introduced Ruth Unks, Risk Manager for the District, and presented staff's renewal report along with current Moody's, Fitch, Standard & Poor's and Dunn and Bradstreet bond and credit ratings. Ms. Unks explained the changes the District has recently made, including moving workers' compensation administration to the risk management area and stated that Ms. Pastor has been very helpful in giving direction and providing information regarding how things can be done better. She explained the District's current budget constraints and asked questions about self-insurance requirements. Mr. Parker and Ms. Pastor responded to her questions. Mr. Delfs stated that self-insured employers need to demonstrate their ability to meet future liabilities. Ms. Oster asked Ms. Unks if they would move forward with establishing a trust fund for workers' compensation claims. Ms. Unks stated that she would make that recommendation to the board.

Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the District's good, stable condition in economic turbulence, with a strong financial position at year-end and adequate resources and reserves to meet all current obligations and good bond and credit ratings. Mr. Parker commented that he feels more confident since the self-insurance program has been moved under Ms. Unks' authority and made a motion to approve continuance of self-insurance which was seconded by Ms. Oster. Mr. Delfs stated that the establishment of a trust fund would give a greater comfort level in the future, especially given the uncertain economic conditions. Mr. Parker agreed that an internal service fund can be swept while a trust fund cannot. The Commission unanimously voted to approve continuance of self-insurance authority.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

- 2C10/11-0377 Canyon Taxi, LLC dba Canyon Taxi
- 2C10/11-0576 Harrison & Harrison Flooring, L.L.C.
fka Floors To Go of Tucson, L.L.C.
- 2C10/11-1434 Hugo's Landscaping L.L.C.
- 2C10/11-0337 THT Flooring, LLC
- 2C10/11-0700 Two Brothers Enterprise, Inc. dba T & J Asian Cuisine
- 2C10/11-1280 Wholesale Dentistry Group, L.L.C.
dba Deer Valley Smiles

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 \$500.00 are recommended against employers #0337 and 0700

since they have recently obtained coverage. Mr. Wade further advised that civil penalties of \$1,000.00 are recommended against employers #0377, 0576 and 1280 and a civil penalty of \$5,000.00 is recommended against employer #1434 since this is their second civil penalty. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously assessed civil penalties of \$500.00 against employers #0337 and 0700, civil penalties of \$1,000.00 against employers #0377, 0576 and 1280, and a civil penalty of \$5,000.00 against employer #1434 on motion of Mr. McCarthy, second of Mr. Parker.

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. McGrory announced that Susan Strickler's confirmation hearing before the Senate took place earlier this week. Mr. Wade advised that a request for hearing has been filed by a claimant against the Commission's denial of his lump sum commutation request. The Commission discussed potential dates, and to provide a 30 day's notice of the hearing, scheduled the hearing for April 6, 2011.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, March 10th.

There being no further business to come before the Commission and no further public comment, Chairman Delfs adjourned the meeting at 2:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary