

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 17, 2012 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Manager
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of May 10, 2012 Meeting

Mr. McCarthy made a motion to approve the Minutes. Mr. Sanders stated he had a suggestion for a change on page two. Mr. McCarthy withdrew the motion. Mr. Sanders requested an addition to the Minutes on page two to add the underlined, "The Commission discussed the possibility of forming subgroups as the need arises and formalizing the Director Advisory Committee to become a Commission Advisory Committee at a later point in time." The Commission unanimously approved the Minutes of May 10, 2012 with that addition on motion of Mr. Sanders, second of Mr. McCarthy.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-1003 Excellence in Transportation, Inc.
 2. 2C11/12-1934 Icon Payment Solutions, Inc. dba
Axiom Merchant Services
 3. 2C11/12-1845 Master Ready Mix, Inc.
 4. 2C11/12-1894 Softech Computers Corporation

Chairman Parker stated that item number two needs to be removed from consideration and asked if any of the other listed items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Ms. McGrory stated this is a standing agenda item and there was nothing new to report. Scot Butler will come back in early June with nomination and election information.

Discussion & Action regarding Establishment of an Appeal Process for ADOSH Discrimination Cases

Darin Perkins explained that the Arizona Division of Occupational Safety and Health has been exploring options for a process where a complainant in a discrimination case can request reconsideration of an initial determination to dismiss his or her complaint or a determination not to pursue the matter. Mr. Perkins described the process in the federal OSHA Whistleblower Investigations Manual and explained why ADOSH must adopt a process that is at least as effective. Mr. Perkins presented several options and explained the reasons for his recommendation.

Mr. Sanders stated that he agreed with having ADOSH make the initial determination and the Commissioners hearing a request for reconsideration. He added that the request for reconsideration process should include the potential for the parties to address the Commission in person. Mr. Parker described the intent of the statute and the Commission rules with respect to the Commission's role in deciding whether to pursue a discrimination complaint taken in context of implementing a process that is at least as effective as the federal program. He noted the Commission's ability to delegate authority and monitor or to retain powers. He stated that he was comfortable with ADOSH screening out complaints and having the Commissioners hear requests for reconsideration. He asked if the proposed process would include those cases where ADOSH recommended pursuing the case but the Commissioners decided not to pursue. Mr. Perkins explained what situations the process would need to address. Mr. Wade stated that the Commission could choose to include a provision that would allow reconsideration in the circumstance where the Commission decided not to pursue. The Commission also discussed whether time frames should be added and some potential timing issues. Ms. McGrory commented on circumstances that might trigger formal rulemaking. Mr. Parker commented on rulemaking in the context of R20-5-682. The Commission discussed whether reconsideration would be limited to only new or previously undiscovered information. Mr. Sanders pointed out that even if there was no new information, the parties may view the same facts differently than ADOSH. Mr. Parker stated that in that case, a process that includes a de novo review would better accommodate that potential. Mr. McCarthy stated that he would like to see a more streamlined process and the de novo review would bog the system down. Ms. Strickler agreed. After further discussion, Mr. Parker stated the consensus is not to provide for a total de novo reconsideration and described an alternative. Ms. Strickler described components of the existing process for reviewing an administrative law judge's decision in the context of a workers' compensation case and explained why she would be more comfortable with a process that included some similar components. Mr. Sanders commented on having a more streamlined process and added that part of the Commission's obligation is to decide these matters and the Commission may have to expend the time necessary to do the best job.

The Commission instructed staff to prepare a draft outline of a process that includes the following components; the ADOSH Director only presents those cases that he believes should be pursued and the Commission will hear requests for reconsideration of those complaints that ADOSH decides not to pursue, the standard for review would allow the Commissioners to hear

argument, ask questions, and draw independent conclusions. Staff will also include recommendations regarding time frames. The process should also provide for reconsideration in cases where the Commission determines not to pursue.

Discussion & Action of ADOSH Discrimination Complaints

#12-8 Jon Morgan v. Sound Packaging - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Morgan. In his complaint, Mr. Morgan alleges that he was terminated because he told his Operations Manager, Andy Jones, and Maintenance Supervisor, Skip Bennett, that he was not given sufficient time to rest between shifts which made him accident prone and he had been shocked twice and tripped and fallen because he was tired. In response to the complaint, the employer presented its position with respect to Mr. Morgan's separation from employment.

Mr. Perkins presented a history of Mr. Morgan's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

#12-29 Larry Rice v. Sierra Vista Unified School District #68 - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Rice. In his complaint, Mr. Rice stated that he was given poor job reviews in retaliation for complaining about heat in the classroom from an air conditioning equipment failure, and paint fumes in the classroom from students painting a mural on a wall. The poor reviews resulted in the school not renewing his contract, and eventually to his termination. In response to the complaint, the employer presented its position with respect to Mr. Rice's separation from employment.

Mr. Perkins presented a history of Mr. Rice's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Mr. Sanders.

Discussion & Action of Proposed OSHA Citations & Penalties

Ky-Ko Roofing Systems, Inc.
1912 W. Parkside Lane
Phoenix, AZ 85027

Complaint
Yrs/Business - 17
Empl. Cov. by Insp. - 30

Site Location: 17212 N. Scottsdale Road, Scottsdale, AZ 85255
Inspection #: I7163/316452713
Insp. Date: 03/21/12

SERIOUS - Citation 1, Item 1 - Employees were removing clay tile, replacing the felt paper, baton boards and re-installing the clay tile on a 6:12 pitch roof approximately 30' above ground without utilizing a fall protection system (1926.501(b)(11)).

(No inspection history in the past three years).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, Item 2 – The employer did not implement a training program that instructed each employee in the recognition and avoidance of hazards associated with working at heights of 6’ or more above the ground (1926.503(a)(1)).

Div. Proposal - \$2,500.00	Formula Amt. - \$2,500.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Ideal Stucco & Masonry, L.L.C.
P.O. Box 77178
Tucson, AZ 85749

Unprogrammed Related
Yrs/Business – 25
Empl. Cov. by Insp. – 3

Site Location: 3046 N. Deer Track Road, Tucson, AZ 85749
Inspection #: A9339/316370378
Insp. Date: 02/10/12

SERIOUS – Citation 1, Item 1 – The employees were operating a gas powered cement mixer that was missing a safety guard on the rope starter pulley of the engine (1926.300(b)(2)). There was another instance of this violation.
(No inspection history in the past three years).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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GROUPED SERIOUS – Citation 1, Item 2(a) – The light duty scaffold system measuring 14 and 21 feet was not fully planked on all levels of the working platforms (1926.451(b)(1)).

Citation 1, Item 2(b) – The light duty scaffold system measuring 21 feet high, 70 feet long and three feet wide was not properly braced against the structure with compression and tension ties and some of the ties were incorrectly placed on scaffold (1926.451(c)(1)(ii)). There were two other instances of this violation.

Citation 1, Item 2(c) – The 14 and 21 foot high by 30/60/70 feet long and three feet wide scaffolds were erected without mudsills to protect them from settling into the ground (1926.451(c)(2)).

Citation 1, Item 2(d) – A light duty scaffold system measuring 21 feet high, 70 feet long and three feet wide was erected along the entire west side of the structure during the week of January 30, 2012 without a qualified competent person on site to ensure that the scaffold was properly erected and safe prior to allowing employees to work from it (1926.451(f)(7)). There were two other instances of this violation.

Citation 1, Item 2(e) – The scaffolds erected on site did not have toe boards installed to protect employees from falling objects (1926.451(h)(1)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, Item 3 – There were open and unguarded sides and ends on all scaffold systems on site (1926.451(g)(4)(i)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, Item 4 –Employees that were working on a light duty scaffold that measured 21 feet high, 70 feet long and three feet wide, had not received training to recognize those hazards associated with the type of scaffold being used and to understand the procedures to minimize or control those hazards (1926.454(a)). There were two other instances of this violation.

Div. Proposal - \$ 750.00 Formula Amt. - \$ 750.00
TOTAL PENALTY - \$3,000.00 TOTAL FORMULA AMT. - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. McCarthy, second of Ms. Oster.

Tram-Tek, Inc. Planned
3035 E. Chambers Street Yrs/Business – 35
Phoenix, AZ 85040 Empl. Cov. by Insp. – 61
Site Location: 3035 E. Chambers Street, Phoenix, AZ 85040
Inspection #: H1793/316474998
Insp. Date: 04/02/12

SERIOUS – Citation 1, Item 1 - One horizontal band saw did not have the unused portion of the blade guarded (1910.212(a)(1)).
(No inspection history in the past three years).

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

SERIOUS – Citation 1, Item 2 – An abrasive wheel bench grinder was lacking a guard to cover the spindle end, nut and flange projections (1910.215(a)(2)).

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

SERIOUS – Citation 1, Item 3 – One abrasive wheel bench grinder was lacking a work rest (1910.215(a)(4)).

Div. Proposal - \$100.00 Formula Amt. - \$100.00

SERIOUS – Citation 1, Item 4 –The angular exposure of the grinding wheel periphery and sides on a horizontal surface grinder exceeded 150 degrees (1910.215(b)(5)).

Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00
TOTAL PENALTY - \$3,600.00 TOTAL FORMULA AMT. - \$3,600.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commission. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Ms. Oster, second of Ms. Strickler.

Komatsu America Corp. Referral
18550 S. La Canada Drive #3 Yrs/Business – 23
Sahuarita, AZ 85629 Empl. Cov. by Insp. – 12
Site Location: 18550 S. La Canada Drive #3, Sahuarita, AZ 85629
Inspection #: F3875/316481993
Insp. Date: 04/18/12

SERIOUS – Citation 1, Item 1 – Employees were permitted to operate the aerial lift without

proper training in the use of personal fall arrest systems, care inspection and safe operation of the aerial lift (1910.067(c)(2)(ii)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, Item 2 – The electrical outlet located in the tool room had energized electrical wires that were exposed and hanging out from the bottom of the outlet (1910.303(b)(1)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of Request for Lump Sum Commutation

Sharon Latrielle #20103-560173 - Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained how approving the lump sum commutation would benefit Ms. Latrielle since purchasing a car would help in her job search. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Requests for Renewal of Self-Insurance Authority. The Commission 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

MTD Southwest, Inc. - The Commissioners agreed that an Executive Session was not necessary since they had reviewed the confidential financial information and did not foresee a need to discuss that financial information during the public session. Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report. Administration is recommending renewal of self-insurance authority due to the parent company's excellent financial record; acceptable credit ratings and a clean audit report. Chairman Parker again asked if any of the Commissioners felt an Executive Session was necessary. Hearing none, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy.

City of Mesa - Ms. Pastor presented staff's renewal report along with current Moody's, Standard and Poor's, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commission. Ms. Pastor advised that the City has established a self-insurance fund and is working on establishing a formal workers' compensation trust fund. The City uses a confidence level of 55% and a discount percentage of 3% for 2008 and prior years. It does not discount for the more current years. Administration is recommending renewal of workers' compensation self-insurance authority based on the City's large size with overall assets approaching \$3.5 billion, including net assets of \$1.65 billion, the financial protections afforded it as a governmental entity such as the ability to raise taxes, and receipt of a clean audit report.

The Commission unanimously approved continuance of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Tucson Unified School District No. 1 - Ms. Pastor presented staff's renewal report along with current Fitch and Dunn and Bradstreet bond and credit ratings. The District has a trust established for its workers' compensation purposes. The actuary report uses a confidence level of 75% and the discount percentage is 3%. Administration is recommending renewal of workers' compensation self-insurance authority based on the District's satisfactory financial condition; protections afforded it as a governmental agency; its clean audit report and acceptable bond and credit ratings. The Commission unanimously approved continuance of self-insurance authority on motion of Mr. Sanders, second of Mr. McCarthy.

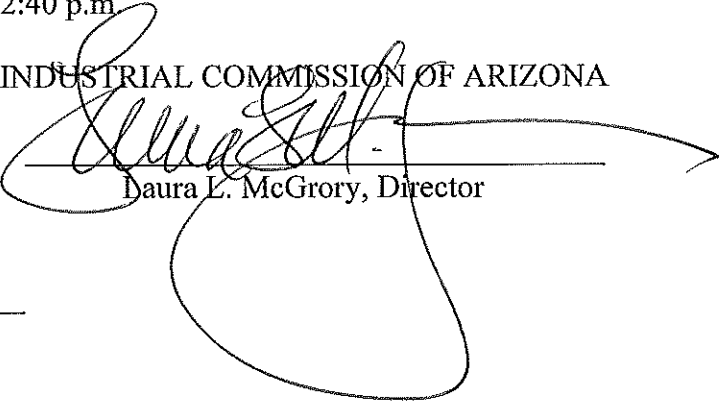
Announcements and Scheduling of Future Meetings

Ms. McGrory recommended that the Commission schedule the annual tax assessment hearing for June 28, 2012. The Commissioners agreed, and staff will place a Notice of Hearing on the Commission's website. The Commissioners moved the meeting scheduled for June 21st to the 14th. Currently scheduled meetings are as follows: May 23, June 7, June 14 and June 28, 2012.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura E. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary