

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

Present:	David Parker	Chairman
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member (telephonic)
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self-Insurance Manager
	Karen Axsom	Director, Labor Dept.
	Michael Hawthorne	Chief Financial Officer
	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 were Scot Butler, the agency's lobbyist, and Eda Barolli of Snell & Wilmer.

Approval of Minutes of October 3, 2012 Meeting

With a correction to page two, paragraph one, to change "purse" to "pursue," the Commission unanimously approved the Minutes of the October 3, 2012 meeting on motion of Ms. Oster, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided a summary of the upcoming general election including a list of ballot propositions. Mr. Butler also discussed the issue of large deductible policies and possible legislation. Mr. Butler responded to questions from the Commissioners and stated that he and staff would continue to work on this topic and he described efforts to involve stakeholders.

Laura McGrory reviewed an analysis of data addressing the impact of policies with deductible coverage on collection of revenue and statutory deposits and responded to questions regarding the data.

Discussion & Action of ADOSH Discrimination Complaint

#12-40 Dmitri Dournov v Pilot Freight Services – Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Dournov. In his complaint, Mr. Dournov alleges his weekly hours were reduced and he was terminated in retaliation for the filing of a safety and health complaint with ADOSH. In response to the

complaint, the employer presented its position with respect to Mr. Dournov's separation from employment.

Mr. Perkins presented a history of Mr. Dournov'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. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

#12-59 Howard Byrne v University of Arizona - Mr. Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Byrne. In his complaint, Mr. Byrne stated that his supervisory duties were taken away, a portion of his pay was taken away, he was given a poor performance review, and he was ultimately laid off because he reported that he was exposed to radiation from a C-arm machine and was concerned about being exposed in the future due to the cavalier attitude of his supervisor. In response to the complaint, the employer presented its position with respect to Mr. Byrne's separation from employment.

Mr. Perkins presented a history of Mr. Byrne'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. 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

Valley Wide Plastering Construction, Inc.
1121 W. Ranch Road
Tempe, AZ 85284

Unprogrammed Related
Yrs/Business - 32
Empl. Cov. by Insp. - 6

Site Location: 1491 E. Goldcrest Street, Tucson, AZ 85710
Inspection #: F3189/316592898
Insp. Date: 07/06/12

SERIOUS - Citation 1 - Item 1 - Two employees were working on an unfinished roof deck at an approximate height of 11'- 0", and a fall protection plan containing all the elements outlined in subparagraphs 1-10 had not been implemented (A.R.S. § 23-492(7)(A)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS - Citation 1 - Item 2(a) - Six employees were working from a 3' x 10' fabricated frame scaffold at an approximate height of 9'- 0" without the working level of the scaffold being fully planked between the front uprights and the guardrail supports (1926.451(b)(1)).

Citation 1 - Item 2(b) - Two employees were working from a 3' x 10' fabricated frame scaffold where the platform was installed so that the space between adjacent units was more than one inch wide (1926.451(b)(1)(i)).

Citation 1 - Item 2(c) - Six employees were working from a 3' x 10' fabricated frame scaffold at a height of approximately 15'- 0" where the scaffold platform was not at least 18 inches wide (1926.451(b)(2)).

Citation 1 - Item 2(d) – Six employees were working from a 3' x 10' fabricated frame scaffold at a height of approximately 7'- 10'' where the platform consisted of three wooden planks, and none of the three wooden planks extended over the centerline of its support on the south end by at least 6 inches or was restrained (1926.451(b)(4)).

Citation 1 - Item 2(e) – Six employees were working from a 3' x 10' fabricated frame scaffold at a height of approximately 7'- 10'' where the platform consisted of three wooden planks approximately 12 feet long, one of which extended over its support approximately 36 inches and did not have guardrails which would block employees access to the cantilevered portion of the plank (1926.451(b)(5)(ii)).

Citation 1 - Item 2(f) – Where the scaffolding abutted the covered entrance at the front door of the structure, the roof of the covered entrance was being utilized for access onto the adjacent scaffold platform and the covered entrance was approximately 39 inches below the scaffold platform (1926.451(e)(1)).

Citation 1 - Item 2(g) – Two employees were observed utilizing the cross braces of a 3' x 10' fabricated frame scaffold to access and egress the scaffold (1926.451(e)(9)(iv))

Citation 1 - Item 2(h) – Two employees were working on a fabricated frame scaffold 3' wide, 10' long and 15' high, which was located on a level that was approximately 15 feet above the ground surface below, that did not have a mid-rail installed at the south end of the scaffold platform to prevent a fall to a lower level (1926.451(g)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – A 3' x 10' x approximately 15' high fabricated frame scaffold was being utilized which had not been inspected by a competent person prior to the work shift (1926.451(f)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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.

Desert Vista, Inc.
24564 N. Lake Pleasant Hwy.
Peoria, AZ 85383

Unprogrammed Related
Yrs/Business – 17
Empl. Cov. by Insp. – 3

Site Location: 16966 W. Watkins Street, Goodyear, AZ 85338

Inspection #: F3189/316612316

Insp. Date: 07/18/12

SERIOUS – Citation 1 – Item 1 – An employee was working at a height of up to approximately 10'- 6'' on the unfinished roof surface of a structure and was not trained in accordance with the requirements of 29 CFR 1926.503 (A.R.S. § 23-492(9)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS – Citation 1 - Item 2(a) – Two employees were working from a 3' x 10' fabricated frame scaffold at a height of up to approximately 13'- 9'' without the working level of the scaffold being fully planked between the front uprights and the guardrail supports (1926.451(b)(1)). There was another instance of this violation.

Citation 1 - Item 2(b) – Two employees were working from a 3' x 10' fabricated frame scaffold where the platform was installed such that the space between adjacent planks was approximately four inches wide (1926.451(b)(1)(i)).

Citation 1 - Item 2(c) – One employee was working on an approximately 9-1/2" wide scaffold plank supported at each end by roofing materials creating a scaffolding system, and the width of the platform was not at least 18 inches wide and the height of the plank was greater than 10 feet above a lower level (1926.451(b)(2)).

Citation 1 - Item 2(d) – Two employees were working from a 3' x 10' fabricated frame scaffold where the scaffold legs and base plates did not bear on mud sills or other foundation in that the base plates were being supported by the surrounding ground area (1926.451(c)(2)). There was another instance of this violation.

Citation 1 - Item 2(e) – Where the scaffolding changed direction, scaffolding platforms more than two feet (0.6m) above adjacent scaffold platforms were being utilized for access onto the scaffolding and were not provided with an adequate means of access (1926.451(e)(1)).

Citation 1 - Item 2(f) – An employee was utilizing the cross braces of a 3' x 10' fabricated frame scaffold to access and egress the scaffold (1926.451(e)(9)(iv)).

Citation 1 - Item 2(g) – An employee was observed working on a single scaffold plank at a height greater than 10 feet above a lower level and was not protected from falling to the lower level by guardrails or another fall protection device to prevent a fall (1926.451(g)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – A 3' x 10' fabricated frame scaffold which was being utilized at the time of the inspection had not been inspected by a competent person prior to the work shift (1926.451(f)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – Two employees were not trained in the recognition and avoidance of the hazards associated with the use of fabricated frame scaffolds (1926.451(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Ms. Strickler, second of Ms. Oster.

Francis & Sons I, LLC
7221 W. Bell Road
Glendale, AZ 85308

Complaint
Yrs/Business – 15
Empl. Cov. by Insp. – 15

Site Location: 7221 W. Bell Road, Glendale, AZ 85308

Inspection #: R1538/316691344

Insp. Date: 09/13/12

SERIOUS – Citation 1 - Item 1 – Employer failed to provide employees with drinking water (1926.141(b)(1)(i)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

GROUPED SERIOUS – Citation 1 - Item 2(a) – A junction box located above the soap and wax dispenser was not effectively closed (1910.305(b)(1)(i)). There were two other instances of this violation.

Citation 1 - Item 2(b) – A black flexible power cord which supplied power to a pendant receptacle did not have strain relief (1910.305(g)(2)(iii)). There were two other instances of this violation.

Citation 1 - Item 2(c) – Two junction boxes located within the car wash tunnel were not weatherproof. The subject boxes were repaired with duct tape rather than properly repaired and/or replaced (1910.305(e)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Darin Perkins advised that he is holding this file for further information.

Chairman Parker announced a five minute break at 2:30 p.m.

Chairman Parker resumed the meeting at 2:35 p.m.

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

Chairman Parker asked if any of the Commissioners wanted to discuss confidential information in Executive Session. Hearing no request, he stated Ms. Pastor could present her report and the Commission could go into Executive Session later if needed.

Prudential Overall Supply Company – Ms. Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating and responded to questions from the Commission. Administration is recommending renewal of workers' compensation self-insurance authority based on Prudential's financial stability, the statutory deposit of \$700,000 in U.S. Treasury Notes, acceptable credit rating scores, and a clean audit report. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders. Chairman Parker requested that staff obtain information from the Arizona Department of Environment Quality regarding Park Euclid WQARF site liability and include that information in staff's report.

Discussion & Action of Application for Renewal of Self-Insurance Authority.

Dole Food Company, Inc. - Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commission. Administration is recommending renewal of workers' compensation self-insurance authority based on Dole Food's large size with total worldwide assets of over \$4.27 billion, a clean audit report, and fair credit and bond ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Oster.

Pilot Travel Centers, LLC - Ms. Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit report and responded to questions from the Commission. Administration is recommending renewal of workers' compensation self-insurance authority based on Pilot Travel Center's consistent record of profitability and assets of over \$4.2 billion, a clean audit report, and acceptable credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Smith Pre-Cast, Inc. - Renee Pastor provided additional information that Smith Pre-Cast supplied in response to the Commission's request. The additional information included a full loss run for all states and entities included in U.S. Concrete's reports, details regarding losses, a summary of the loss fund of \$11.5 million, an explanation of Smith Pre-Cast's intent with large losses, and Smith Pre-Cast's claims administration. Ms. Pastor also addressed the loss run from 2004 - 2012 from Smith Pre-Cast and read a copy of the e-mail she received from Mr. Maidens this morning. Following discussion, Chairman Parker tabled consideration of self-insurance renewal pending receipt of additional information including claims processing questions, Smith Pre-Cast's practices regarding first aid claims and whether they have a designated medical clinic.

TMC Healthcare - Chairman Parker recused himself from consideration of this agenda item. Vice Chair Oster took over chairmanship of the meeting. Ms. Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. Administration is recommending renewal of workers' compensation self-insurance authority based on the TMC's financial stability, large size with assets totaling just under \$490.9 million as of December 31, 2011, a clean audit report, and an acceptable credit rating. The Commission approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler. The motion passed four votes in favor of granting renewal of self-insurance authority. Mr. Parker did not vote.

Weyerhaeuser Company - Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, Standard & Poor's, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commission. Administration is recommending renewal of workers' compensation self-insurance authority based on Weyerhaeuser's return to profitability, large size with total assets of \$12.6 billion, a clean audit report and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Chairman Parker asked the other Commissioners whether they would be comfortable putting the consideration of self-insurance renewals back on the Consent Agenda. The Commissioners agreed that they would like to continue to have them presented individually.

Discussion & Action of Attorneys' Fee Petition

Briana Chua v Vasile Samartinean - Andrew Wade advised that Briana Chua, an attorney with Taylor and Associates, has petitioned the Industrial Commission to set attorney's fees with respect to work performed for Mr. Samartinean in connection with Mr. Samartinean's March 3, 2009 workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by Ms. Chua on behalf of Mr. Samartinean. Attorney fees in the amount of \$9,365.91 have been paid to date, and it is estimated that Ms. Chua spent 36 hours on the case and there were 11 hours of "assistant" time. Ms. Chua successfully pursued the many different issues in this case and obtained a favorable outcome.

Mr. Wade explained staff's recommendation and responded to questions from the Commission. Following discussion, the Commission unanimously granted additional attorneys' fees of \$77.51 to be paid out of Mr. Samartinean's monthly benefits for a five year period for a total of \$4,650.60 on motion of Mr. Sanders, second of Ms. Oster and gave approval for Mr. Wade to type in their signatures on the Findings and Order.

Discussion & Action regarding Arizona Minimum Wage Rate for 2013

Karen Axsom explained that the Commission is authorized to enforce and implement the 2006 Raise the Minimum Wage for Working Arizonians Act. She noted that A.R.S. § 23-363(B) directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. She provided a computation of the proposed increase in the Arizona minimum wage to become effective January 1, 2013. Ms. Axsom explained that the Consumer Price Index as of August 2012 was 1.7 percent higher compared to August 2011. She explained that this results in an increase of \$0.13 per hour and the statute directs the wage increase be rounded to the nearest multiple of five cents which means the increase will be \$0.15 per hour. Adding \$0.15 to the 2012 Arizona minimum wage of \$7.65 results in the amount of \$7.80. In accordance with the requirements of the statute, she stated that the Labor Department recommends the Commission approve a new rate of \$7.80 per hour effective January 1, 2013. The Commission unanimously approved the Arizona minimum wage of \$7.80 effective January 1, 2013 for calendar year 2013 on motion of Ms. Oster, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings

Chairman Parker confirmed that the meetings scheduled for October 24, November 8, 14 and 28, December 5 (if needed), 12, 19, 2012 and January 9, 2013 were still acceptable to the Commissioners. Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, October 24, 2012.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 3:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGroary, Director

ATTEST:



Teresa Hilton, Commission Secretary