

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, March 13, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair (telephonic)
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Jessie Atencio	Acting Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:10 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of March 6, 2013 Meeting

The Commission unanimously approved the Minutes of the March 6, 2013 General Session on motion of Mr. McCarthy, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the March 6, 2013 Executive Session on motion of Ms. Strickler, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C11/12-1655 CITY MARKET DELI #2, L.L.C. DBA CITY MARKET DELI, DELI LICIOUS THINGS, DELI AND CATERING
2. 2C11/12-2113 DESERT AUTO GLASS, L.L.C.
3. 2C11/12-2656 GABBY DELIVERY PLUS, L.L.C. DBA DELIVERY PLUS FREIGHT PACK & SHIP
4. 2C12/13-0411 HUNTER EMPLOYMENT SERVICES, INCORPORATED DBA HUNTER EMPLOYMENT
5. 2C11/12-2659 LOCSON INVESTMENTS, L.L.C. DBA RAINBOW APARTMENTS
6. 2C12/13-0728 OASIS PAVILION NURSING AND REHABILITATION, L.L.C. DBA OASIS PAVILION NURSING AND REHABILITATION
7. 2C11/12-2527 PRIORITY WELL SERVICE, INC.

8. 2C12/13-0768 SUNRISE CAB, INC.
9. 2C12/13-0535 THOMAS N. GEORGE, A SINGLE MAN,  
DBA MIJANA

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that item #1 – City Market Deli – needed to be removed from the agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Mr. McCarthy.

Andrew Wade advised that with regard to employer #2C11/12-1655 City Market Deli, he is recommending a \$500.00 civil penalty be assessed rather than staff's earlier recommendation of a \$1,000 civil penalty because this employer has recently obtained workers' compensation insurance. The Commission unanimously assessed the recommended penalty of \$500.00 on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity on certain items of interest to the Commission and advised that Governor Brewer has released a proposal on AHCCCS and Medicaid expansion. Mr. Butler also described bills that had activity, HB 2485, SB's 1148, and 1310 and responded to questions from the Commissioners. Laura McGrory stated that she had made a short presentation to ASIA today regarding the large deductible policy issue and communicated that the role of the Commission is an educational one with the goal to be a resource for interested parties and stakeholders.

Discussion & Action of Proposed OSHA Citations & Penalties

Shade Industries, Inc.  
2940 Grand Ave.  
Phoenix, AZ 85017

Planned  
Yrs/Business – 2  
Empl. Cov. by Insp. – 2

Site Location: 399 E. Limberlost Dr., Tucson, AZ 85705  
Inspection #: F3875/316892942  
Insp. Date: 1/16/2013

SERIOUS – Citation 1 - Item 1 – Employees were allowed to use two DeWalt 4-1/2 inch angle grinders (model #D28402) with metal grinding wheels without any safety guards. (1926.300(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Two employees were working from a Genie S-65 aerial lift at a height that was approximately 15 feet above the ground level without utilizing a full-body harness and lanyard attached to the boom basket. (1926.453(b)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – An Employee was observed working from a Genie S-65 Aerial Lift at a height that was approximately 15 feet above the ground level and climbed out of the basket to remove a steel bracket. (1926.453(b)(2)(iv)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Employees had not been trained by a qualified person in the subject matter to recognize the hazards associated with the type of aerial lift being used and to understand the procedures to control and minimize those hazards. (1926.454(a)).

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

Jessie Atencio 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. Strickler.

Stern Produce Company, Inc.  
3200 S 7<sup>th</sup> St.  
Phoenix, AZ 85040

Planned  
Yrs/Business – 96  
Empl. Cov. by Insp. – 19

Site Location: 3200 S. 7<sup>th</sup> St., Phoenix, AZ 85040  
Inspection #: R1538/316892561  
Insp. Date: 1/08/2013

SERIOUS – Citation 1 - Item 1 – Warehouse Cooler/Freezer: Employees working in and around damaged metal storage racks were exposed to crushing and/or being struck by hazards. The vertical metal support members of in-use storage racks located in the cooler/freezer warehouse were bent and twisted thereby reducing the structural integrity of individual rack assemblies. Failure to inspect and repair such damage could result in catastrophic failure and collapse of one and/or multiple rack assemblies. (A.R.S § 23-403(A)).

Div. Proposal - \$4,500.00	Formula Amt. - \$4,500.00
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SERIOUS – Citation 1 - Item 2 – Warehouse/Dock area: Two employees were not trained in the safe operation of crown Equipment Corp. Model RC 5500 series, stand-up counterbalanced trucks, Crown Equipment Corp. Model FC 4500 series, sit down forklift and Crown Equipment Corp. Model PC 4500 series, Ryder pallet jack which was being used to load and unload palletized products from delivery trucks and storage racks. (1910.178(l)(1)(i)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$6,750.00	TOTAL FORMULA AMT. - \$6,750.00

Mr. Atencio summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. McCarthy commended ADOSH staff on the quicker turnaround time from inspection to presentation. In response to a question from Mr. Parker, Mr. Atencio explained why no discount for good faith applied to these citations. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,750.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Petition for Attorney's Fees

Richard E. Taylor v. Thomas W. McDonough - Andrew Wade stated that Attorney Richard E. Taylor has petitioned the Industrial Commission to set attorney's fees with respect to work performed for Mr. McDonough in connection with Mr. McDonough's April 7, 2009 workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by Mr. Taylor on behalf of Mr. McDonough.

Mr. Wade stated that Mr. Taylor has supplied the Commission with the amount of fees he has been paid from the permanent disability benefits but not the amount, if any, that has been paid out of temporary disability benefits. Mr. Sanders stated that he considered the total amount already received to be an important issue and also asked why there was no itemized statement of time spent submitted by the attorney. He also stated that in reviewing the contract it was very much in favor of the attorney with no protection for the client. The Commission discussed the contract and Ms. McGrory stated that the Commission has discretion to award a reasonable fee and the Commission is not bound by any contract between the parties. Following further discussion, Chairman Parker tabled consideration of the attorney fee petition to allow staff to obtain additional information including a summary work that Mr. Taylor performed and the total amount Mr. Taylor has received to date in attorney's fees. Mr. Sanders also requested that Mr. Taylor explain what he meant by of the actions taken in regard to "hotly debated" issues.

#### Announcements and Scheduling of Future Meetings

Ms. McGrory advised that panel interviews for ADOSH Director candidates have been scheduled for March 19 and 26, 2013. She suggested that the Commissioners may want to schedule their interviews for April 3<sup>rd</sup> beginning at 10:00 a.m. She also requested the Commissioners send her any draft questions they may have. She suggested that this item be on the agenda for the meeting on March 27<sup>th</sup> at which time the list of questions can be reviewed. The Commissioners agreed to schedule interviews all day on April 3<sup>rd</sup> with 1 hour set aside for each interview.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
Laura K. McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary