

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held in The Palm Room  
at The Wigwam Resort  
300 E. Wigwam Blvd., Litchfield Park, Arizona  
Friday, August 9, 2013 – 11:30 a.m.

Present:	David M. Parker	Chairman
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Bryce Rucker	ADOSH Compliance Officer
	Kara Dimas	Acting Commission Secretary

Chairman Parker convened the Commission meeting at 12:06 p.m. noting a quorum present. Vice Chair Susan Strickler was not able to attend. Also in attendance were Jeff Homer of General Dynamics and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of July 24, 2013 Meeting

The Commission unanimously approved the Minutes of the July 24, 2013 General Session on motion of Ms. Oster, second of Mr. Sanders. The Commission unanimously approved the Minutes of the July 24, 2013 Executive Session on motion of Mr. Hennelly, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C12/13-1654 Agape Therapy, LLC
2. 2C13/14-0248 BA Contracting & Restoration of Arizona, LLC
3. 2C12/13-0722 B&H Auto Repair and Towing LLC
4. 2C12/13-2249 Deborah Fines, a Single Woman, dba The Pudgy Pup
5. 2C12/13-0880 Events By Danielle, LLC
6. 2C12/13-0484 Hybrid Turf Corp.
7. 2C12/13-2250 I Buy Scrap L.L.C.
8. 2C11/12-1661 Kiddie Korral Inc. dba Kiddie Korral Hilltop
9. 2C12/13-1641 Kids Playhouse Day Care Center, Inc. dba Imagine Nation Preschool & Child Care Center
10. 2C12/13-1202 Rite-A-Way Services, Inc.
11. 2C11/12-2427 Shauna's Paw Spa and Pet Boutique LLC dba Shauna's Paw Spa and Pet Boutique
12. 2C13/14-0249 VJ & Son Painting & Drywall, L.L.C.

Chairman Parker stated that agenda item a. (9) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion

of Mr. Sanders, second of Ms. Oster. Andrew Wade advised that with regard to item a. (9) Kids Playhouse Day Care Center, Inc. dba Imagine Nation Preschool & Child Care Center, the employer has obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a. (9) on motion of Mr. Hennelly, second of Mr. Sanders.

Discussion & Action of ADOSH Discrimination Complaint.

#13-2603-04 Tyler Bushre vs. Manpowergroup US Inc. – Bill Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of any protected activity and adverse action. Chairman Parker also discussed issues related to professional employer organizations and the exclusive remedy protection with staff. Mr. Sanders noted that this was a very well written report and was clear cut. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations & Penalties

Rexam Beverage Can Company  
211 N. 51<sup>st</sup> Ave.  
Phoenix, AZ 85043

Planned  
Yrs/Business – 36  
Empl. Cov. by Insp. – 110

Site Location: 211 N. 51<sup>st</sup> Ave., Phoenix, AZ 85043  
Inspection #: J7272-317165066  
Insp. Date: 06/07/2013

SERIOUS – Citation 1 - Item 1 – A modification was made to the forks of a Clark forklift, model GCX20, serial number GX230-0888-7585KOF, where a hole near the tip of each fork was made and chains were attached through the holes to lift plant machine equipment when performing maintenance on that equipment. (1910.178(q)(6)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

- (a) Printer, Line #1: A Stolle Machinery, Rutherford Decorator and Basecoater/Printer, model and serial number unknown, did not have a guarding installed to prevent employees from placing any part of their body in rotating parts and getting caught between the beverage can roller and the lithograph paint roller. (1910.212(a)(1)).
- (b) Printer, Line #3: A Stolle Machinery, Rutherford Decorator and Basecoater/Printer, model number CMP, serial number 13500, did not have a guarding installed to prevent employees from placing any part of their body in rotating parts and getting caught between the beverage can roller and the lithograph paint roller. (1910.212(a)(1)).
- (c) Inside Bake Oven (IBO), Line #2: A conveyor belt system used to move beverage cans from the from the inside spray area to the inside bake oven did not have the end of the conveyor belt guarded to prevent employees from placing any parts of their body into

the conveyor belt system and getting caught in the rotating parts of the conveyor system or between the conveyor belt and the supporting framework. (1910.212(a)(1)).  
Div. Proposal - \$2,250.00 Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 3 – Pin Oven #3: One pin oven, model and serial number unknown had eight unguarded projecting shaft ends that were projecting more than one half the diameter of the shaft. (1910.219(c)(4)(i)).

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

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,750.00 on motion of Ms. Oster, second of Mr. Sanders.

The Klark Organization I, LLC  
2201 W. Mountain View Rd.  
Phoenix, AZ 85021

Complaint  
Yrs/Business – 22  
Empl. Cov. by Insp. – 31

Site Location: 4232 E. Cactus Rd., Phoenix, AZ 85040  
Inspection #: J7272-317165306  
Insp. Date: 06/14/2013

SERIOUS – Citation 1 - Item 1 – Two employees were installing joists, beyond an installed guardrail system, on the roof of a new apartment complex where they were exposed to a fall of approximately 44' to the ground below. (A.R.S. § 23-492.02(A)).

Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 – Two employees were working at a height of approximately 44' with anchorages not installed and used according to the manufacturer's instructions in order to support at 5,000 pounds per employee attached as part of a complete personal fall arrest system. (A.R.S. § 23-492.06(A)(3)).

Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00  
TOTAL PENALTY - \$4,000.00 TOTAL FORMULA AMT. - \$4,000.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners regarding. Mr. Sanders asked for details regarding prior violations and inspections. Mr. Sanders also asked for more information regarding the anchorage. Ms. Oster had questions regarding employee training. Following discussion, Chairman Parker stated that the matter would be held pending receipt of additional information regarding potential willful citations, training and prior inspections.

Fiesta Canning Co., Inc.  
7978 N. Central Hwy  
McNeal, AZ 85617

Complaint  
Yrs/Business – 29  
Empl. Cov. by Insp. – 50

Site Location: 7978 N. Central Hwy, McNeal, AZ 85043  
Inspection #: A9339-317038222  
Insp. Date: 03/21/2013

WILLFUL SERIOUS – Citation 1 - Item 1 – Vertical or inclined shafting was not enclosed with stationary casing(s) to prevent employees from being injured by the unguarded rotating shafts. (1910.219(c)(3)). 29 CFR 1910.219(c)(2): Horizontal shafting was not enclosed with stationary casing(s) to prevent employees from being injured by the unguarded rotating shafts. There were three instances of this violation.

Div. Proposal - \$42,000.00

Formula Amt. - \$42,000.00

WILLFUL SERIOUS – Citation 1 - Item 2 – Glass Line Production: An unguarded shaft ¾” in diameter projected two inches beyond the face of the motor and the external keyway was neither filled nor guarded. (1910.219(c)(4)(i)).

Div. Proposal - \$42,000.00

Formula Amt. - \$42,000.00

WILLFUL SERIOUS – Citation 1 - Item 3 – Bolts(s), nuts, or setscrews used in shaft coupling(s) extended beyond the flange of the coupling and were not covered with safety sleeve(s) to guard the rotating setscrews. (1910.219(i)(2)). There were three instances of the violation.

Div. Proposal - \$42,000.00

Formula Amt. - \$42,000.00

SERIOUS – Citation 2 - Item 1 – Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by conveyor belt systems. (1910.212(a)(1)). There were three instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 2 – Item 2 –

(a) – Gear(s) were not guarded by a complete enclosure or by one of the methods specified in 29 CFR 1910.219(f)(1)(ii) and (f)(1)(iii). There were two instances of this violation.

(b) – Sprocket wheels and chains which were seven feet or less above floors or platforms were not enclosed. (1910.219(f)(3)). There were two instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 2 – Item 3 – Maintenance Center: The Lincoln Electric Welder (Model #8712-404, 240 Volts) had a damaged cable at the handle of the Stinger Electrocode. (1910.254(d)(8)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 – Item 4 –

(a) – Each outlet box in completed installations did not have a cover, faceplate, or fixture canopy. (1910.305(b)(2)).

(b) – Each open energized electrical junction box was attached to the fence at the security entrance of the plant grounds. (1910.305(b)(2)). There was one other instance of this violation.

Div. Proposal - \$ 1,250.00

Formula Amt. - \$ 1,250.00

TOTAL PENALTY - \$130,750.00

TOTAL FORMULA AMT. - \$130,750.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He explained that this inspection was the result of a

complaint. Mr. Sanders asked about proof of abatement in the past for prior violations. Mr. Parker commented on separate citations. The Commission discussed the prior citation for the same violation and the incident in 2010 when an employee had his clothing caught in a machine. Ms. Oster asked about the process for follow-up visits and abatement verification. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$130,750.00 and nine non-serious on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Ms. McGrory advised that next week's agenda will include an executive session regarding the appointment of Chief ALJ and that information has been provided to each Commissioner for that agenda item.

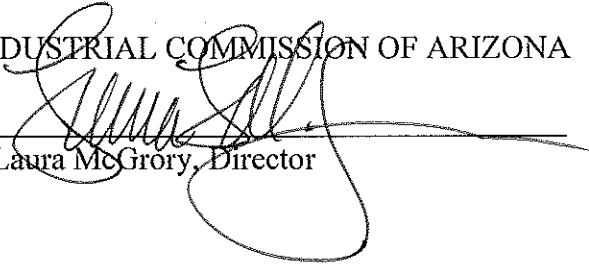
Mr. Parker asked that the self-insured renewals be placed on the consent agenda and explained the consent process.

Acting Secretary Dimas reminded the Commissioners that the next meeting is scheduled for Thursday, August 15, 2013. The Commission confirmed meeting dates of September 4, September 11 and September 17, 2013.


There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
Laura McGrory, Director

ATTEST:

  
Kara Dimas, Acting Commission Secretary