

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 9, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Michael Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	William Warren	Director, ADOSH
	Chris Brandon	Compliance Officer
	Melinda Poppe	Chief ALJ
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Matt Saxe of Lang, Baker & Klain, PLC; and Jason Weber of Snell and Wilmer.

Approval of Minutes of December 18, 2013 Meeting

The Commission approved the Minutes of the December 18, 2013 Commission meeting on motion of Mr. Sanders, second of Ms. Oster with a vote of 4-0. Mr. Hennelly did not participate in the vote.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C12/13-2268 A Amigo Foodmart, Inc., dba
A Amigos Food Market
2. 2C13/14-0013 Anthem Senior Living, LLC
3. 2C13/14-0835 Arizona All Transportation Inc. dba
AZ All Trans
4. 2C11/12-0886 Diva Martinez, a Single Woman, dba
Ramirez Wheel Fashion aka

- | | | |
|-----|--------------|--|
| | | Ramirez Wheel Fashions |
| 5. | 2C12/13-1404 | Ezee Towing & Impound LLC |
| 6. | 2C13/14-0193 | Global X-Press, LLC |
| 7. | 2C12/13-1507 | JHR Electric Transports, LLC dba
Electric Wheels |
| 8. | 2C12/13-2165 | Kaljos Enterprise LLC |
| 9. | 2C12/13-2075 | Padilla-Valle, LLC dba
San Carlos Bay Seafood Restaurant |
| 10. | 2C12/13-1513 | Sedona Adventure Outfitters and Guides, Inc.
dba Sedona Adventure Tours |
| 11. | 2C11/12-0231 | Smokym Enterprises Incorporated dba
Big T Trucking II |
| 12. | 2C13/14-0362 | Trailer Industries, Inc. |
| 13. | 2C12/13-0133 | Triple Y, LLC dba Splash Car Wash |

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Arizona Municipal Risk Retention Pool
2. Carondelet Health Network
3. Federal Express Corporation dba FedEx Express
4. FedEx Freight, Inc.
5. FedEx Ground Package System, Inc.
6. Intel Corporation
7. Parker Hannifin Corporation
8. University of Arizona Health Network

Chairman Parker stated that agenda items a (4) and (8), along with b (1), (3), (4) and (5) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Sanders, second of Ms. Oster.

Andrew Wade advised that with regard to items a (4) Diva Martinez, a Single Woman, dba Ramirez Wheel Fashion aka Ramirez Wheel Fashions and a (8) Kaljos Enterprise LLC, the employers have obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against these two employers. The Commission unanimously assessed the recommended penalty of \$500.00 against employers a (4) and (8) on motion of Mr. Sanders, second of Ms. Oster.

Vice-Chair Strickler took over chair of the meeting for the following agenda item only.

Discussion & Action of Request for Renewal of Self-Insurance Authority

Arizona Municipal Risk Retention Pool – Chairman Parker recused himself from consideration of this agenda item. The Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Hennelly with a vote of three in favor. There was no discussion and Mr. Parker did not participate in the vote.

Chairman Parker resumed chair of the meeting.

Federal Express Corporation dba FedEx Express -

FedEx Freight, Inc. -

FedEx Ground Package System, Inc. -

Ms. Oster asked about the posting of the security deposits for these three FedEx companies. Ms. Pastor and Mr. Hawthorne explained that the three companies are increasing their statutory deposits as recommended by staff and usually companies will wait for the Commission's approval before they obtain the bond. The language in the Resolution is changed from "has" filed to "shall" file the necessary bond. Discussion followed regarding the statutory requirement that bonds be posted prior to renewal, and renewal dates were discussed. The Commission unanimously approved renewal of self-insurance authority for Federal Express Corporation dba FedEx Express on motion of Ms. Oster, second of Ms. Strickler. The Commission unanimously approved renewal of self-insurance authority for FedEx Freight, Inc. and FedEx Ground Package System, Inc. contingent upon posting the proper bond on motion of Ms. Oster, second of Mr. Hennelly.

Discussion &/or Action regarding Legislation

Chairman Parker asked if there had been any feedback regarding the agency's SB1310 report. Ms. McGrory stated that the SCF Arizona, now CopperPoint Mutual Insurance, has informed staff that the SCF may have additional information and a meeting has been scheduled with the SCF. Ms. McGrory stated that other than that, there has been no feedback.

Discussion & Action of OSHA Proposed Citations & Penalties

Chandler Unified School District # 80 – This agenda item was for discussion only and involved a fatality. No violations were noted or citations recommended.

Five Sharp, LLC dba Just In Time Refrigeration
2715 W. Grovers Ave. #100
Phoenix, AZ 85083

Fatality/Accident
Yrs/Business – 2 mos.
Empl. Cov. by Insp. – 2

Site Location: 619 S. Sunshine Blvd., Eloy, AZ 85083
Inspection #: F3875-317242915
Insp. Date: 07/16/2013

SERIOUS – Citation 1 - Item 1 – ADOSH office was not notified within eight hours of the death of an employee from a work-related accident. (1904.39(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Roof Refrigeration Unit: A written lockout/tagout program consisting of energy control procedures, employee training and periodic inspections had not been established or implemented for employees. (1910.147(c)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 3 – Roof Refrigeration: An employee was not provided with Personal Protective Equipment while working around live electrical wires. (1910.135.(a)(1)(i)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$8,500.00

TOTAL FORMULA AMT. - \$8,500.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Citation 1 – Item 2 was for the gravity based penalty with no adjustment factors since the violation directly related to the fatality. Mr. Parker stated he was concerned about the employer’s practice of “hot work” and not providing protective equipment and asked if Citation 1, Item 3 should be the gravity based penalty with no adjustment factors. Ms. Oster noted that this is the third fatality of this type that has recently come before the Commission and suggested that information to educate employers on lock/out tag/out be placed on the agency’s website. Following further discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,500.00 on motion of Ms. Oster, second of Mr. Hennelly.

Pacific Insulation Company - This agenda item was for discussion only and involved a fatality. No violations were noted or citations recommended.

Pinnacle MGT, LLC dba OnCall Staffing - This agenda item was for discussion only and involved a fatality. No violations were noted or citations recommended. Mr. Parker stated that information regarding the direct employer should be placed on a future agenda for discussion.

Chapman Ford, L.L.C.
7100 E. McDowell Rd.
Scottsdale, AZ 85257

Complaint
Yrs/Business – 2
Empl. Cov. by Insp. – 105

Site Location: 7100 E. McDowell Rd., Scottsdale, AZ 85257

Inspection #: J7272-317322915

Insp. Date: 09/18/2013

SERIOUS – Citation 1 - Item 1:

a) – Quick Lane Service Line: A Rotary automotive lift, model SPO12N510, serial number BVR07H0009, was not removed from service when the lift’s safety latch system was not operating properly and self-closing lift controls were overridden. (A.R.S. § 23-403(A)).

b) – Quick Lane Service Line: Employees had not been provided training on how to safely operate, maintain and inspect automotive lifts prior to employees using the vehicle lift, in order to recognize and avoid unsafe conditions such as malfunctioning parts and inoperable safety devices (A.R.S. § 23-403(A)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

Bill Warren and Chris Brandon summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, Chairman Parker tabled consideration of the citations for review for a possible willful classification.

Mr. Sanders requested that ADOSH staff supply the Commissioners with descriptions of previous violations.

WORKPLACE LOCATED AT THE NORTHEAST CORNER OF DROMEDARY DR. AND WARNER RANCH DR, CHANDLER, AZ.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 2 - Item 1 – Northwest corner of W. Elliot Rd and Cambridge St.: The employer did not train one employee on the hazards associated with excavation work. (1926.21(b)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 2 – Northwest corner of W. Elliot Rd and Cambridge St.: One employee was working in a 9' 6" deep excavation that was approximately 2' to 5' wide at the top and bottom and 5' in length which did not have the spoil pile two feet back from the edge of the excavation. (1926.651(j)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$8,000.00

TOTAL FORMULA AMT. - \$8,000.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned whether the citation should be classified as a "willful serious" rather than a "repeat serious" inasmuch as the prior citation may establish actual knowledge of the requirements of the standard. Ms. McGrory questioned whether there should also be a citation for the trench not being properly shored. Chairman Parker tabled consideration of the citations for additional review by staff.

Valley Lumber & Truss LLC
9425 Commerce Drive
Kingman, AZ 86401

Complaint
Yrs/Business – 1
Empl. Cov. by Insp. – 35

Site Location: 9425 Commerce Drive, Kingman, AZ 86401

Inspection #: R1538-317334480

Insp. Date: 10/07/2013

SERIOUS – Citation 1 - Item 1 – The employer did not establish an adequate energy control program for the location, or energy control procedures for specific equipment, to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (1910.147(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – The employer did not instruct each powered industrial truck (forklift) operator in the safe operation of such equipment. (1910.178(l)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3:

a) Speed saw shed: Three Speed Saws, model numbers SCA- 18, serial numbers unknown, were inadequately guarded to prevent accidental contact with the rotating blade. (1910.212(a)(1)). There were two other instances of this violation.

b) Component Saw Shed: One Clary saw (metric cut) model number 329, serial number 329-263, was lacking a guard to completely enclose the exposed sprocket and chain. (1910.219(f)(3)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4:

a) Table 1 Shed: One flexible electrical cord which supplied power to a SkilSaw, model and serial number unknown, had the outer insulation of the flexible cord damaged (i.e., cuts, split). (1910.305(f)(1)). There were two other instances of this violation.

b) Floor joist shed: One yellow flexible electrical cord, used to supply power to portable hand tools, had the outer insulation pulled away from the strain relief device. (1910.305(g)(2)(iii)).

c) Floor joist shed: One 4" X 4" receptacle box was lacking a flip down weatherproof cover. (1910.305(j)(2)(v)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

Bill Warren summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,250.00 on motion of Ms. Oster, second of Mr. Hennelly.

Discussion & Action regarding Appointment Process of Administrative Law Judges under A.R.S. §23-108.02

Chairman Parker stated that this matter has been placed on the agenda due to questions from Mr. Sanders. Ms. McGrory presented an overview of the current administrative law judge (ALJ) selection process. Mr. Parker summarized the process the Commission discussed several weeks ago. He stated that he believed that what was decided at the prior meeting was that the Chief ALJ would interview the candidates on the hiring list (as selected by the Commissioners and Chief ALJ) and then return to the Commission with recommendations for second interviews by the Commissioners of the top two or three candidates. Mr. Sanders stated that was not his understanding of the prior decision and he explained why. He stated that he thought the Chief ALJ, acting as a recruiter, would provide the full list of qualifying candidates to the Commissioners to interview. He stated that the Commissioners should make the decision about the value judgments of the candidates. He stated that he values the Chief ALJ's opinion, but believes the Commissioners should interview all of the candidates to make sure the individuals appointed will fairly administer the laws, which are complicated laws. He stated that the ALJ's make decisions regarding lifetime benefits, which involve significant amounts of money and liability to the parties in the system. He presented information about workers' compensation costs and how illegal aliens are obtaining benefits in the workers' compensation system. He described how he was uncomfortable with a public comment that he believes he heard from an ALJ at a recent seminar and used this example to illustrate the importance of the Commission interviewing the candidates. He explained that the Commission should vet the candidates, and question them as to their qualifications, value judgments, and whatever else might be appropriate. Mr. Parker responded that the Commission should look for ALJ's who understand the law, and who will fairly, impartially, and consistently apply the law. He also explained that if people are not happy with the law, then they need to change the law. He explained that ALJ's are entitled to express their personal opinions that they may state outside of the courtroom. Mr. Sanders stated he agreed, and reiterated his concern about biased statements made by an ALJ. Additional discussion took place regarding the role of the Chief ALJ in the interview process.

Mr. Sanders reiterated his position and explained how the Commission functions as a citizen oversight committee.

Ms. Oster stated that she was comfortable with the Chief ALJ conducting the first round of interviews and making recommendations to the Commission from a short list for the Commissioners to conduct second interviews. Ms. Oster also stated that it is not the role of the Commission to be looking at moral issues in this process. Mr. Sanders responded that he is not looking at moral issues, but value judgments and he explained that what the Commission is doing is no different than what Congress does with respect to a Presidential appointment.

Mr. Parker summarized the process as follows: HR will create a hiring list. The Chief ALJ will present to the Commission the hiring list and resumes of candidates on the hiring list in Executive Session. The Commission will select who will be interviewed and the Chief ALJ will have the opportunity to add people to the list of candidates to be interviewed. Following the initial interviews by the Chief ALJ, the Commissioners would receive, in Executive Session, the Chief ALJ's evaluation and recommendations of those interviews. From the candidates interviewed by the Chief ALJ, the Commissioners would select candidates for a second interview. Following interviews by the Commissioners, the Commissioners may make an appointment.

Ms. Oster asked for clarification regarding whether the Commissioners would be conducting interviews based on a "short list" recommended by the Chief ALJ, or whether the Commissioners would select candidates for a second interview from the list of people interviewed by the Chief ALJ. Following additional discussion, Mr. Parker asked if the Commissioners were comfortable with the Commissioners selecting individuals for a second interview from all of the candidates interviewed by the Chief ALJ. No one objected to this process. In response to questions from Mr. Parker, Ms. McGrory stated that this process would not create any issues for staff. Mr. Wade thought the process was also acceptable, though he would confirm with the agency's HR manager.

Following further discussion, Mr. Sanders made a motion that the ALJ appointment process would be as follows: Following an external job announcement for an ALJ position, HR will create a hiring list, which identifies those individuals who meet the qualifications of the position. That list will be presented, along with copies of the candidates' resumes, to the Commissioners, who will review, in Executive Session, which candidates should be interviewed by the Chief ALJ. The Chief ALJ can also request that additional candidates be interviewed by the Chief ALJ. After the Chief ALJ has conducted the initial interviews, she will provide the Commission with her evaluation and recommendations from those interviews. By a majority vote of the quorum present, the Commission will decide, from the list of candidates interviewed by the Chief ALJ, which candidates they wish to schedule for a second interview by the Commissioners. At that point, Executive Session interviews will be scheduled. The motion was seconded by Mr. Parker.

Ms. Oster asked if the HR Manager and Mr. Wade could be present at the Commission interviews. It was agreed that they would be present if requested by the Commissioners. Mr. Hennelly clarified that the process includes the ability of the Chief ALJ to add, from the hiring list, candidates to be interviewed by the Chief ALJ. This would take place at the meeting (in Executive Session) held by the Commission to select the names of the candidates to receive an initial interview. He also stated that he was comfortable with the process as previously agreed to

by the Commission (interviewing from a short list submitted by the Chief ALJ), and he explained why he believed that Commissioners were fulfilling their duties under that process. While he preferred the prior process, he stated that he was willing to go along with the proposed process. Following additional discussion, the motion was unanimously approved.

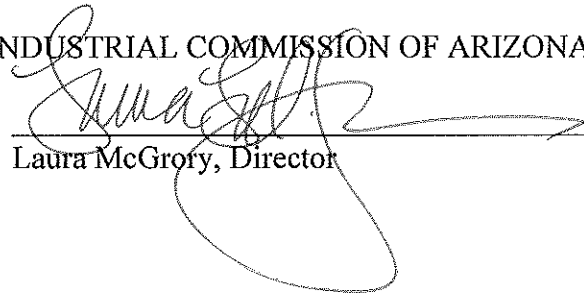
Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for January 22, 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:10 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary