

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 25, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Noreen Thorsen	Claims Manager
	Mary Green	Ombudsman
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Financial Officer
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, and Jen Jones of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler gave an updated legislative report on bills of interest to the agency. HB2087 failed on Tuesday in Senate Commerce but may still be active or could be worked on over the summer. SB1262 passed the Senate and SB1266 has passed the Senate and House Commerce. With regard to the budget, the Supreme Court decided not to intervene in the delivery of the budget to the Governor. Negotiations began again yesterday between the Governor and Legislature. Mr. Butler stated there are a wide range of scenarios with regard to the budget and responded to questions from the Commissioners.

Approval of Minutes of June 17, 2009 Meeting

The Commission unanimously approved the Minutes of the June 17, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Request for Lump Sum Commutation

Maria De la Rosa #20072-960403 - Noreen Thorsen presented this lump sum petition. She advised that Ms. De la Rosa requested a lump sum commutation of her scheduled award of \$915.44 per month (present value \$9,758.59) in order to pay balances owed on credit cards and return to her native country. After the additional payments of \$2,746.32 are subtracted from the present value, the applicant would receive \$7,012.27. Ms. De la Rosa and her spouse are unemployed. No source of income is indicated.

Ms. Thorsen advised that the Claims Department is recommending approval of the lump sum commutation since it will allow Ms. De la Rosa to pay off debt and return to her native country. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action regarding Appointment of Custodian of Records

Mary Green – Noreen Thorsen introduced Ms. Green to the Commissioners and advised that the Claims Department is asking for approval for Ms. Green to be added to the list of Custodians of Records. The Commission unanimously appointed Ms. Green as Custodian of Records and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. Parker.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1846	Horizon Wallboard Systems, Inc.
2C08/09-0634	IRM Trucking, Inc.
2C08/09-1798	Philip J. Pokorny, a single man, dba Pokorny Chiropractic Clinic
2C08/09-1003	Qisai F. Putrus, a single man & Dany Ascie, a single man dba Capistrano's Italian Deli
2C08/09-1668	Samer Kirdassi, a single man dba S. Communications, Inc.
2C08/09-1295	Servicetrac, Inc.
2C08/09-1337	Tires & Auto Express LLC

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that a civil penalty of \$500.00 be assessed against employer #0634 since they have just obtained workers' compensation insurance coverage. He further recommended civil penalties of \$1,000.00 be assessed against employers #1846, 1003, 1668, 1295 and 1337. With regard to employer #1798, Mr. Wade recommended a civil penalty of \$5,000.00 since this is their second civil penalty. Mr. Wade answered questions from the Commissioners regarding IRM Trucking, Inc. The Commission unanimously assessed the recommended penalties of \$500.00 against employer #0634, \$1,000.00 against employers #1846, 1003, 1668, 1295 and 1337 and \$5,000.00 against employer #1798 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2010

Mr. Wade advised that the legislature amended the average monthly wage statute in 2007. The amendment provided for an increase in the average monthly wage from \$2,400 per month to \$3,000 per month for 2008 and to \$3,600 per month for 2009. For the calendar year 2010 and thereafter, the amended statute directed the Industrial Commission to adopt an amount that reflects the annual percentage increase in the Arizona mean wage and to increase the average monthly wage by that amount. He further advised that staff has obtained data the Commission is to use in adopting a new average monthly wage for calendar year 2010 and has performed the calculations. Staff is recommending the Commission adopt a new average monthly wage of \$3,763.44 for calendar year 2010 to reflect the annual percentage increase in the Arizona mean wage of 4.54%. Mr. Wade and Gary Norem explained the statistics and computation used by staff and responded to questions from the Commissioners. Following discussion, the Commission unanimously adopted the recommended new average monthly wage of \$3,763.44 for calendar year 2010 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Allied Waste Transportation Inc. – Darin Perkins advised that this case involved a fatality and was for discussion only. No violations were noted or citations recommended. He described the accident, stating that a garbage truck driver was killed when he was attempting to unjam the

compacting system of the garbage truck. It is believed that he fell into the compactor. Mr. Perkins also described the company's safety policies and rules, and the training received by the truck driver. Based on the Division's investigation, it appeared that the truck driver violated company safety rules when he left the truck running to unjam the compactor.

Elixir Industries
219 S. Mulberry
Mesa, AZ 85202

Planned
Yrs/Business – 55
Empl. Cov. by Insp. – 22

Site Location: 219 S. Mulberry, Mesa, AZ 85202
Inspection #: U9805/313398158
Insp. Date: 05/13/09

SERIOUS – Citation 1, item 1 – Skylight openings located in close proximity to HVAC units serviced by maintenance personnel were not guarded by a skylight screen or a fixed standard railing (1910.23(a)(4)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – A horizontal band saw did not have the unused portion of the saw blade properly guarded (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Lujano, second of Mrs. Weeks.

BT Moulding, LLC
3610 W. Osborn Rd., Suite 1
Phoenix, AZ 85019

Planned
Yrs/Business – 6
Empl. Cov. by Insp. – 7

Site Location: 3610 W. Osborn Rd., Suite 1, Phoenix, AZ 85019
Inspection #: U9805/313531998
Insp. Date: 05/26/09

SERIOUS – Citation 1, item 1 – Employees were operating two forklifts without formal training or certification (1910.178(l)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The Clark forklift was lacking a functioning seatbelt and was not removed from service (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The moulding machine was missing a point of operation guard (1910.212(a)(3)(ii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A compressed air receiver did not have the horizontal drive belt enclosed and pulleys guarded to prevent accidental contact with rotating parts, pinch points and in-going nip points (1910.219(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – A rip saw did not have a cover panel over live exposed wiring

to prevent accidental contact with live parts (1910.303(g)(2)(i))

Div. Proposal - \$ 750.00
TOTAL DIV. PROP. - \$3,750.00

Formula Amt. - \$ 750.00
TOTAL FORMULA AMT - \$3,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Biff Baker Fence Co., Inc.
3540 E. Golf Links Road
Tucson, AZ 85726

Planned
Yrs/Business - 31
Empl. Cov. by Insp. - 6

Site Location: 3540 E. Golf Links Road, Tucson, AZ 85726
Insp. #: N5645/313397770
Insp. Date: 05/12/09

SERIOUS - Citation 1, item 1 - A 6" right angle grinder was not provided with a safety guard (1910.243(c)(3)). There was another instance of this violation.
(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 2 - A pedestal grinder was not equipped with a safety guard that covered the spindle end, nut and flange.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Darin Perkins stated that the second citation is being removed from consideration. He summarized the remaining citation and proposed penalty as listed. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,250.00 on motion of Mrs. Weeks, second of Mr. Lujano.

Tenecor
4300 E. Magnolia Street
Phoenix, AZ 85034

Planned
Yrs/Business - 15
Empl. Cov. by Insp. - 15

Site Location: 4300 E. Magnolia Street, Phoenix, AZ 85034
Inspection #: A7746/313125650
Insp. Date: 03/20/09

SERIOUS - Citation 1, item 1 - The employer failed to ensure the exposed portion of a band saw blade was guarded and employees were not exposed to nip points and rotating parts of the band saw (1910.212(a)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a - A handfed rip saw was lacking a protective guard over the saw blade (1910.213(c)(1)).

Citation 1, item 2b - A handfed rip saw was lacking a spreader to prevent material from squeezing the saw and/or being thrown back at the operator (1910.213(c)(2)).

Citation 1, item 2c - A handfed ripsaw was lacking non-kickback fingers (1910.213(c)(3).
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 – The cutting bit of a table router was not enclosed or guarded so as to keep the operator's hand away from the cutting edge (1910.213(m)(1). There were two other instances of this violation.
Div. Proposal - \$750.00 Formula Amt. - \$750.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, item 4A – The employer failed to provide initial exposure monitoring to employees exposed to methylene chloride in order to determine each affected employee's exposure (1910.1052(d)(2).

Citation 1, item 4b - The employer failed to communicate the hazards associated with methylene chloride use to employees potentially exposed to methylene chloride in the workplace (1910.1052(k).

Citation 1, item 4c - The employer failed to provide information and training to employees potentially exposed to methylene chloride in the workplace (1910.1052(l)(1).
Div. Proposal - \$ 750.00 Formula Amt. - \$ 750.00
TOTAL DIV. PROP. - \$3,000.00 TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory outlined the agency's contingency plan in the event there is not a budget in place on June 30th. Chairman Delfs asked Director McGrory to pass on the Commission's thanks to Department Managers for their efforts in this area. It was discussed that in the event of a state agency shut down, Commission meetings would be held on an as needed basis.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Mr. Wade stated that the assigned Judge in Superior Court will hear oral argument regarding the Commission's request for a stay on Monday, June 29, 2009.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, July 2, 2009.

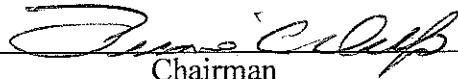
Ms. McGrory stated that she, Commissioner Parker, and Mr. Perkins, attended the VPP

presentation program for Hunt Construction this morning. She and Mr. Perkins explained the pilot program for construction companies and stated that Hunt has done a great job with their safety program.

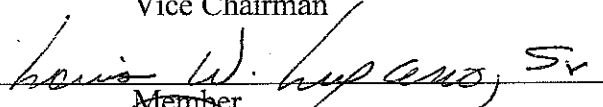
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:05 p.m.

APPROVED:

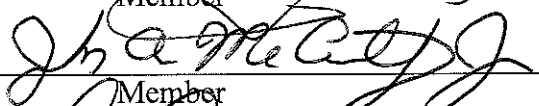
THE INDUSTRIAL COMMISSION OF ARIZONA

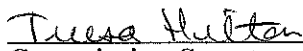
By 
Chairman

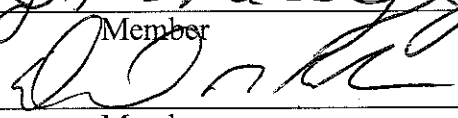
By _____
Vice Chairman

By 
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member