

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, July 8, 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
	Renee Pastor	Self Insurance Manager
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Asst. Chief Financial Officer
	William Wright	Asst. 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, Dave Ragle of ATL, Inc., Jen Jones of Snell & Wilmer and Jonathan Payne of PEO Edge, LLC.

Approval of Minutes of July 2, 2009 Meeting

The Commission approved the Minutes of the July 2, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy. Mrs. Weeks abstained.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Arizona Municipal Risk Retention Pool – Renee Pastor presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. Ms. Pastor responded to a question from Mr. Lujano concerning the reported number of employees and payroll. She advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the pool's solid financial position, total assets of \$63.5 million, ability to successfully manage the workers' compensation program for its member cities and towns and the receipt of a clean audit report and an acceptable credit rating.

In response to a question from Mrs. Weeks, Ms. Pastor advised that the reported liability for losses was limited to workers' compensation and did not include property/casualty liability. Mr. Parker asked whether the figure for unpaid losses was an actuarial estimate and she responded that it was and that the pool has an actuarial study done every year. She stated that the Pool's net income decreased, primarily due to a loss associated with their investment in Lehman Brothers. Mr. Delfs questioned the financials and asked how much of their cash on hand or equity is based on investment income and how much is from member contributions. He asked Ms. Pastor whether pools in general are in a preservation capital mode or investing aggressively. She advised that all four of the pools that are self insured manage their capital well and that she would review the LGIP (Local Government Investment Pool) reports and may also contact the State Treasurers' Office to obtain further information. Discussion followed regarding the pools' liability level and confidence level. Following discussion, the Commission

unanimously approved continuance of self-insurance authority 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

2C08/09-1664	A to Z Consulting, L.L.C. (FN) dba Pink Cabaret
2C08/09-1716	INQB8 LLC (A Delaware Limited Liability Company)
2C07/08-0019	Macohr, Inc. dba Thrifty Transmission & Auto aka Thrifty Transmissions
2C08/09-1054	Scent From Above Cleaning and Janitorial, 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 civil penalties of \$1,000.00 be assessed against employers #1664, 1716 and 1054. With regard to employer #0019, Mr. Wade recommended a civil penalty of \$5,000.00 since this is their second civil penalty. Mr. Wade responded to questions from the Commissioners regarding number of employees and wage and workers' compensation claims filed against each of these employers. The Commission unanimously assessed the recommended penalties of \$1,000.00 against employers #1664, 1716 and 1054 and assessed a civil penalty of \$5,000.00 against employer #0019 on motion of Mr. Parker, second of Mr. Lujano.

Discussion & Action of Proposed OSHA Citations and Penalties

Dats Trucking, Inc. 1845 N. 27 th Avenue Phoenix, AZ 85009	Accident Yrs/Business – 20 Empl. Cov. by Insp. – 77
Site Location: 1845 N. 27 th Avenue, Phoenix, AZ 85009	
Inspection #: S2603/313048928	
Insp. Date: 02/06/09	

SERIOUS – Citation 1, item 1 – The employer had not developed and implemented a written lockout/tagout program and procedures for maintenance personnel or repair persons to prevent the unexpected start up of equipment during the performance of repair work (1910.147(c)(1)). (No inspection history in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Bill Wright summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. He advised that the Division proposal was for the gravity-based penalty with no adjustment factors because the violation caused or contributed to serious bodily injury, illness, or death of an employee. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

ATL, Inc.
4455 S. Park Avenue, Suite 108
Tucson, AZ 85714

Unprogram Related
Yrs/Business – 42
Empl. Cov. by Insp. – 1

Site Location: Hawser Street & Twin Lakes Road, Tucson, AZ 85739
Inspection #: P0775/313160020
Insp. Date: 03/30/09

SERIOUS – Citation 1, item 1 – A employee testing for soil compaction in a type "C" soil excavation that was approximately 10' deep, 50' long and 5 1/2' wide had not been trained in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment (1926.21(b)(2)).

(One inspection with one nonserious violation in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – An employee testing for soil compaction in a type "C" soil excavation was allowed outside the unprotected area to enter and exit the excavation that was 10' deep, 50' long and 5 1/2' wide (1926.652(g)(1)(iii)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Bill Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, Mr. McCarthy made a motion to assess the gravity-based penalties of \$2,500.00 for each citation for a total penalty of \$5,000.00 based on the length of time the employer had been in business which was seconded by Mr. Lujano. Mr. Delfs, Mrs. Weeks and Mr. Parker voted nay and the motion failed. Following further discussion, the Commission approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mr. Parker, second of Mrs. Weeks. Mr. Lujano and Mr. McCarthy voted nay.

Spirit Underground
7620 N. Hartmann Lane, Suite 176
Tucson, AZ 85743

Complaint
Yrs/Business – 5
Empl. Cov. by Insp. – 6

Site Location: Hawser Street & Twin Lakes Road, Tucson, AZ 85739
Inspection #: P0775/313160012
Insp. Date: 03/30/09

SERIOUS – Citation 1, item 1 – Employees were installing an eight inch sewer pipe in a type "C" soil excavation that was approximately 18' deep, 325' long and 5' wide that were not trained in the recognition and avoidance of unsafe conditions and the regulations applicable to their work environment (1926.21(b)(2)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – An ATL employee testing for soil compaction in a type "C" soil excavation was allowed outside the unprotected area to enter and exit the excavation which was 10' deep, 50' long and 12' wide (1926.651(k)(2)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT - \$3,750.00

Bill Wright summarized the citations and proposed penalty as listed and advised that this

employer was the excavation contractor on the same site as the previous case file. Mr. Wright responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, Mr. Lujano made a motion to assess the gravity-based penalty of \$2,500.00 for each citation for a total penalty of \$5,000.00. There was no second for this motion. Mr. Parker asked about the 15% adjustment factor for good faith. Mr. Wright explained that the compliance officer felt that the company had a documented written and verbal safety program and most employees receive training but that two employees were missed. Mr. Parker made a motion to remove the good faith adjustment factor for a total penalty of \$4,500.00 which was seconded by Mr. McCarthy and unanimously approved. Mr. Lujano stated that the penalty assessed to the previous employer was lower even though they had been in business for 42 years which did not seem consistent since the violations were the same.

Nelson J. Greer, Painting Contractor, Inc.
3945 E. Hayhurst Lane
Tucson, AZ 85712

Complaint
Yrs/Business – 45
Empl. Cov. by Insp. – 6

Site Location: 295 W. 40th Street, Tucson, AZ 85713
Inspection #: F3875/313223638
Insp. Date: 04/22/09

SERIOUS – Citation 1, item 1 – The employer did not implement a training program for those employees that were exposed to fall hazards when working at elevated heights of 10' or more above the ground (1926.503(a)(1)).

(One inspection with 3 nonserious violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

Bill Wright summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. 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. McCarthy.

Pro-Built Contracting, Inc.
307 S. Rochester Court
Gilbert, AZ 85296

Unprogram Related
Yrs/Business – 16
Empl. Cov. by Insp. – 9

Site Location: 1159 N. Greenfield Road, Gilbert, AZ 85234
Inspection #: A7746/313581076
Insp. Date: 06/10/09

SERIOUS – Citation 1, item 1 – Employees working from a working surface 6' above ground level were not protected from falling by a guardrail system, safety net system or personal fall arrest system (1926.501(b)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer failed to provide employees exposed to fall hazards while working at a height of 6' above ground level with training to recognize the hazards of falling and how to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Bill Wright summarized the citations and proposed penalty as listed and responded to

questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Parker. In response to questions from Mr. Parker and Mr. Lujano, Ms. McGrory and Mr. Wright explained the fall protection standards and discussed conventional and alternative fall protection.

Chairman Delfs left the room briefly during the above discussion and Mrs. Weeks took over chair of the meeting. Mr. Delfs did not vote on the motion to issue the citation. Mr. Delfs returned to the meeting during discussion of the following case file.

Jarco Automotive Group, L.L.C.
dba Dave Polsky Auto Centers
171 W. Continental Road
Green Valley, AZ 85614

Complaint
Yrs/Business - 9
Empl. Cov. by Insp. - 5

Site Location: 171 W. Continental Road, Green Valley, AZ 85614
Inspection #: P0775/313125569
Insp. Date: 03/19/09

SERIOUS - Citation 1, item 1 - Employees were working in close proximity and beneath the automotive lifts without inspections, proper maintenance and care as recommended by the manufacturer (23.403(A)). There were three other instances of this violation.
(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 2 - The employer had a bench grinder on a pedestal that did not have a work rest installed (1910.215(a)(4)).

Div. Proposal - \$ 100.00

Formula Amt. - \$ 100.00

TOTAL DIV. PROP. - \$1,600.00

TOTAL FORMULA AMT - \$1,600.00

Bill Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,600.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler advised that he will provide a final written report on legislation within the next couple of weeks. The legislature is continuing work on the budget and there may be several more weeks in the Special Session.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that this is a continuing agenda item and there was nothing new to report. Chairman Delfs stated that Division presentations will be resumed at the end of the summer.

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 gave an update on the status of the Superior Court action. In response to a question from Mr. Delfs regarding litigation strategy, Ms. McGrory stated that if this is to be discussed, the Commission should move into Executive Session. Mr. Delfs asked if staff needed additional direction from the Commission. Mr. Wade replied that staff did not need additional direction at this time. The Commissioners agreed that an Executive Session was not necessary and noted that the agency's Director and legal counsel have the Commission's direction and approval to proceed as they deem necessary.

Announcements

Ms. McGrory stated that she would not be here next week. Mr. Delfs stated that there is no meeting scheduled the week of July 20th and asked if it was necessary to hold the next scheduled meeting on July 15th since there were only two ADOSH discrimination cases and two OSHA proposed penalty files. The Commissioners agreed to cancel the meeting on the 15th. The next meeting of the Commission will be held on Wednesday, July 29th. A meeting can be called before that date if anything urgent comes up.

Public Comment

Dave Ragle of ATL, Inc. addressed the Commission and stated that he shares the Commission's passion regarding trench safety. He stated that most trenching accidents are avoidable and that his company does have trench safety classes for employees. He stated that the individual that was in the trench had been trained and that there was no excuse for him being in the trench. He further stated that his company did not put the shoring in the trench and that as a point of clarification, the company is not a trenching consulting firm, but a soils and consulting firm. He stated that he will fine tune the company's training and safety program and manual and include competent person training. He asked if the Commission could delay issuing the citations until he could get the proper documentation and report back to them. Chairman Delfs stated that Mr. Ragle raised some valid points and that he would have the opportunity to submit his documentation for review during the informal conference.

There being no further business to come before the Commission, Chairman Delfs adjourned the meeting at 2:25 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Marcia Weeks*
Vice Chairman

By *James C. Delfs*
Vice Chairman

By *James W. Lyman, Sr.*
Member

ATTEST:

By *John M. [Signature]*
Member

Teresa Hiltner
Commission Secretary

By *[Signature]*
Member